STATE OF FLORIDA
FLORIDA ELECTIONS COMMISSION

In Re: Myron J. Rosner **Case No.: FEC 11-087**

/

TO: Benedict P. Kuehne, Esquire
Law Office of Benedict P. Kuehne, PA
Miami Tower, Suite 3550
100 SE 2nd Street
Miami, FL 33131-2154

Stephanie Kienzle
7535 SW 26 Court
Davie, FL 33314-1003

NOTICE OF HEARING (CONSENT ORDER)

A hearing will be held in this case before the Florida Elections Commission on **May 18, 2016, at 9:00 am,** *or as soon thereafter as the parties can be heard,* at the following location: **Senate Office Building, Room 110-S, 404 South Monroe Street, Tallahassee, FL 32399.**

Failure to appear in accordance with this notice will constitute a waiver of your right to participate in the hearing. Continuances will be granted only upon a showing of good cause.

This hearing will be conducted pursuant to Section 106.25, Florida Statutes, which governs your participation as follows:

If you are the Respondent, you may attend the hearing, and you or your attorney will have *5 minutes* to present your case to the Commission. However, some cases (including those in which consent orders or recommendations for no probable cause are being considered) may be decided by an *en masse* vote and, unless you request to be heard or the Commission requests that your case be considered separately on the day of the hearing, your case will *not* be individually heard.

If you are the Complainant, you may attend the hearing, but you will *not* be permitted to address the Commission. In addition, some cases (including those in which consent orders or recommendations for no probable cause are being considered) may be decided by an *en masse* vote and, unless the Respondent requests to be heard or the Commission requests that the case be considered separately on the day of the hearing, the case will *not* be individually heard.

If you are an Appellant, and you have requested a hearing, you may attend the hearing, and you or your attorney will have *5 minutes* to present your case to the Commission.

Please be advised that both confidential and public cases are scheduled to be heard by the Florida Elections Commission on this date. As an Appellant, Respondent or Complainant in one case, you will ***not*** be permitted to attend the hearings on other confidential cases.

The Commission will electronically record the meeting. Although the Commission's recording is considered the official record of the hearing, the Respondent may provide, at his own expense, a certified court reporter to also record the hearing.

If you require an accommodation due to a disability, contact Donna Ann Malphurs at (850) 922-4539 or by mail at 107 West Gaines Street, The Collins Building, Suite 224, Tallahassee, Florida 32399, at least 5 days before the hearing.

See further instructions on the reverse side.

Amy McKeever Toman
Executive Director
Florida Elections Commission
May 3, 2016

Please refer to the information below for further instructions related to your particular hearing:

If this is a hearing to consider **an appeal from an automatic fine**, the Filing Officer has imposed a fine on you for your failure to file a campaign treasurer's report on the designated due date and, by filing an appeal, you have asked the Commission to consider either (1) that the report was in fact timely filed; or (2) that there were unusual circumstances that excused the failure to file the report timely. You are required to prove your case. If the Commission finds that the report was filed timely or that there were unusual circumstances that excused the failure, it may waive the fine, in whole or in part. The Commission may reduce a fine after considering the factors in Section 106.265, Florida Statutes. If the Commission finds that the report was not timely filed and there were no unusual circumstances, the fine will be upheld.

If this is a hearing to consider a **consent order before a determination of probable cause has been made**, the Commission will decide whether to accept or reject the consent order. If the Commission accepts the consent order, the case will be closed and become public. If the Commission rejects the consent order or does not make a decision to accept or deny the consent order, the case will remain confidential, unless confidentiality has been waived.

If this is a hearing to consider a **consent order after a determination of probable cause has been made**, the Commission will decide whether to accept or reject the consent order. If the Commission accepts the consent order, the case will be closed. If the Commission rejects the consent order or does not make a decision to accept or deny the consent order, the Respondent will be entitled to another hearing to determine if the Respondent committed the violation(s) alleged.

If this is a **probable cause hearing**, the Commission will decide if there is probable cause to believe that the Respondent committed a violation of Florida's election laws. Respondent should be prepared to explain how the staff in its recommendation incorrectly applied the law to the facts of the case. *Respondent may not testify, call others to testify, or introduce any documentary or other evidence at the probable cause hearing.* The Commission will only decide whether Respondent should be *charged* with a violation and, before the Commission determines whether a violation has occurred or a fine should be imposed, Respondent will have an opportunity for another hearing at which evidence may be introduced.

If this is an **informal hearing**, it will be conducted pursuant Sections 120.569 and 120.57(2), Florida Statutes; Chapter 28 and Commission Rule 2B-1.004, Florida Administrative Code. At the hearing, the Commission will decide whether the Respondent committed the violation(s) charged in the Order of Probable Cause. The Respondent will be permitted to testify. However the Respondent may not call witnesses to testify.

Respondent may argue why the established facts in the Staff Recommendation do not support the violations charged in the Order of Probable Cause. At Respondent's request, the Commission may determine whether Respondent's actions in the case were willful. The Respondent may also address the appropriateness of the recommended fine. If Respondent claims that his limited resources make him unable to pay the statutory fine, *he must provide the Commission with written proof of his financial resources* at the hearing. A financial affidavit form is available from the Commission Clerk.

STATE OF FLORIDA
FLORIDA ELECTIONS COMMISSION

Florida Elections Commission,
Petitioner,

v.

Agency Case No. FEC 11-087
F.O. No. FOFEC <#>

Myron Rosner,
Respondent.
_____/

CONSENT ORDER

Respondent, Myron Rosner, and the Florida Elections Commission (Commission) agree that this Consent Order resolves all of the issues between the parties in this case. The parties jointly stipulate to the following facts, conclusions of law, and order.

FINDINGS OF FACT

1. On January 31, 2014, the staff of the Commission issued a Staff Recommendation, recommending to the Commission that there was probable cause to believe that Respondent violated Chapter 106, Florida Statutes.

2. On December 4, 2015, the Commission entered an Order of Probable Cause finding that there was probable cause to charge the Respondent with the following violations:

> **Count 1:**
>
> During his 2011 campaign for Mayor of the City of Miami Beach, Respondent violated Section 106.19(1)(a), Florida Statutes, by accepting a contribution in excess of the limits prescribed by Section 106.08, Florida Statutes, when he accepted an in-kind contribution

of at least $6,352.48 from Martin Outdoor Media for political advertisements on bus benches.

Count 2:

On or about April 15, 2011, Respondent violated Section 106.07(5), Florida Statutes, when he certified that his amended 2011 G2 Report was true, correct, and complete when it was not.

Count 3:

On or about May 23, 2011, Respondent violated Section 106.07(5), Florida Statutes, when he certified that his amended 2011 G2 Report was true, correct, and complete when it was not.

Count 4:

On or about June 9, 2011, Respondent violated Section 106.07(5), Florida Statutes, when he certified that his amended 2011 G2 Report was true, correct, and complete when it was not.

Count 5:

On or about April 15, 2011, Respondent violated Section 106.19(1)(c), Florida Statutes, when he falsely reported or deliberately failed to include information required by Chapter 106, Florida Statutes.

Count 6:

On or about May 23, 2011, Respondent violated Section 106.19(1)(c), Florida Statutes, when he falsely reported or deliberately failed to include information required by Chapter 106, Florida Statutes.

Count 7:

On or about June 9, 2011, Respondent violated Section 106.19(1)(c), Florida Statutes, when he falsely reported or deliberately failed to include information required by Chapter 106, Florida Statutes.

3. Respondent contested the probable cause finding, but expressed a desire to enter into negotiations directed toward reaching a consent agreement in order to bring this matter to a resolution.

4. Respondent and staff stipulate that if the case went to trial, the Commission staff would be able to present evidence of the following facts:

A. Respondent was a candidate for re-election for the office of Mayor of the City of Miami Beach during the 2011 election cycle, and he served as his

own campaign treasurer.

B. During his campaign, Respondent negotiated a contract with Martin Outdoor Media to provide advertisements for the campaign for $4,500 for a period of thirty days.

C. Martin Outdoor Media left Respondent's campaign advertisements up until April 15, 2011, which was a period of more than thirty days.

D. Respondent filed an amended 2011 G2 Report on April 15, 2011, and certified the report was true, correct, and complete when it was not. Respondent disclosed that he received a $500 in-kind contribution from Martin Outdoor Media, when in fact, the true value of the benefit as determined by Martin Outdoor Media is $6,352.48.

E. Respondent filed a second amended 2011 G2 Report on May 23, 2011, and he certified the report was true, correct, and complete when it was not. Respondent disclosed that he received a $500 in-kind contribution from Martin Outdoor Media, when in fact, the true value of the benefit as determined by Martin Outdoor Media is $6,352.48.

F. Respondent filed a third amended 2011 G2 Report on June 9, 2011, and he certified the report was true, correct, and complete when it was not. Respondent disclosed that he received a $500 in-kind contribution from Martin Outdoor Media, when in fact, the true value of the benefit as determined by Martin Outdoor Media is $6,352.48.

CONCLUSIONS OF LAW

5. The Commission has jurisdiction over the parties to and subject matter of this cause, pursuant to Section 106.26, Florida Statutes.

6. The Commission staff and the Respondent stipulate that although the violations charged in the Order of Probable Cause may not have been knowingly committed, all elements of the violations can be proven by clear and convincing evidence.

ORDER

7. Respondent and the staff of the Commission have entered into this Consent Order voluntarily and upon advice of counsel.

8. Respondent shall bear his own attorney's fees and costs that are in any way

associated with this case.

9. The Commission will consider the Consent Order at its next available meeting.

10. Respondent voluntarily waives the right to any further proceedings under Chapters 104, 106, and 120, Florida Statutes, and the right to appeal the Consent Order.

11. This Consent Order is enforceable under Sections 106.265 and 120.69, Florida Statutes. Respondent expressly waives any venue privileges and agrees that if enforcement of this Consent Order is necessary, venue shall be in Leon County, Florida, and Respondent shall be responsible for all fees and costs associated with enforcement.

12. If the Commission does not receive the signed Consent Order and the penalty by **April 15, 2016**, the staff withdraws this offer of settlement and will proceed with the case.

13. Payment of the civil penalty by cashier's check, or money order good for at least 120 days, or attorney trust account check, is a condition precedent to the Commission's consideration of the Consent Order.

PENALTY

WHEREFORE, based upon the foregoing facts and conclusions of law, the Commission finds that the Respondent has violated the following provisions of Chapter 106, Florida Statutes, and imposes the following fines:

A. Respondent violated Section 106.19(1)(a) Florida Statutes, on one occasion when he accepted an in-kind contribution of at least $6,352.48 from Martin Outdoor Media as determined by Martin Outdoor Media, in excess of the limits prescribed by Section 106.08, Florida Statutes. Respondent is fined $1,900 for the violation.

B. Respondent violated Section 106.075 Florida Statutes, on three occasions

when he certified that his amended 2011 G2 Reports were true, correct, and complete when they were not. Respondent is fined $100 for each of the three counts for a total of $300.

C. Respondent violated Section 106.19(1)(c) Florida Statutes, on three occasions for falsely reporting or deliberately failing to include information required by Chapter 106, Florida Statutes, when he filed amended 2011 G2 Reports on April 15, 2011, May 23, 2011, and on June 9, 2011. Respondent is fined $100 for each of the three counts for a total of $300.

Therefore it is

ORDERED that the Respondent shall remit to the Commission a civil penalty in the amount of **$2,500**, inclusive of fees and costs. The civil penalty shall be paid cashier's check or money order good for at least 120 days, or by attorney trust account check. The civil penalty shall be payable to the Florida Elections Commission, 107 West Gaines Street, Collins Building, Suite 224, Tallahassee, Florida, 32399-1050.

Respondent hereby agrees and consents to the terms of this Consent Order on April 14, 2016.

Benedict P. Kuehne, Esq.
100 SE 2nd Street, Ste. 3550
Miami, FL 33131-2154

Myron Rosner
Exempt pursuant to Chap. 119, F.S.

Commission staff hereby agrees and consents to the terms of this Consent Order on _____, 2016.

Amy M. Toman, J.D.
Florida Elections Commission
107 West Gaines Street
The Collins Building, Suite 224
Tallahassee, FL 32399-1050

Approved by the Florida Elections Commission at its regularly scheduled meeting held on May 18-19, 2016 in Tallahassee, Florida.

M. Scott Thomas, Chairman
Florida Elections Commission

Copies furnished to:
Amy M. Toman, Executive Director
Benedict P. Kuehne, Esq., Respondent's Attorney
Stephanie Kienzle, Complainant

BENEDICT P. KUEHNE, P.A.
IOTA TRUST ACCOUNT
100 SE 2ND STREET STE 3550
MIAMI, FL 33131-2154

SABADELL UNITED BANK
MIAMI, FL
63-964/670

0983

4/14/2016

PAY TO THE ORDER OF Florida Elections Commission $ **3,000.00

Three Thousand and 00/100********** DOLLARS

Florida Elections Commission
107 West Gaines Street, Suite 224,
Tallahassee, FL 32399-1050.

MEMO FEC 11-087 & FEC 11-089

[redacted]

Benedict P. Kuehne
AUTHORIZED SIGNATURE

THIS DOCUMENT MUST HAVE A COLORED BACKGROUND, ULTRAVIOLET FIBERS AND AN ARTIFICIAL WATERMARK ON THE BACK - VERIFY FOR AUTHENTICITY.

LAW OFFICE OF
BENEDICT P. KUEHNE
PROFESSIONAL ASSOCIATION

BENEDICT P. KUEHNE*
SUSAN DMITROVSKY
MICHAEL T. DAVIS

*Board Certified
Appellate Practice and
Criminal Trial Practice

MIAMI TOWER, SUITE 3550
100 S.E. 2nd Street
MIAMI, FLORIDA 33131-2154
Telephone: 305.789.5989
Facsimile: 305.789.5987
ben.kuehne@kuehnelaw.com
susand@kuehnelaw.com
mdavis@kuehnelaw.com

FORT LAUDERDALE OFFICE

200 S.W. 1st Avenue, Suite 1200
Ft. Lauderdale, FL 33301-2229

REPLY TO: Miami

April 14, 2016

Amy M. Toman, Executive Director
Florida Elections Commission
107 West Gaines Street, Suite 224
Tallahassee, FL 32399-1050
Tel: 850.922.4539

2016 APR 15 P 2:34

Re: FEC 11-087 & 11-089
FEC v. Myron Rosner
Settlement Documents

Dear Executive Director Toman:

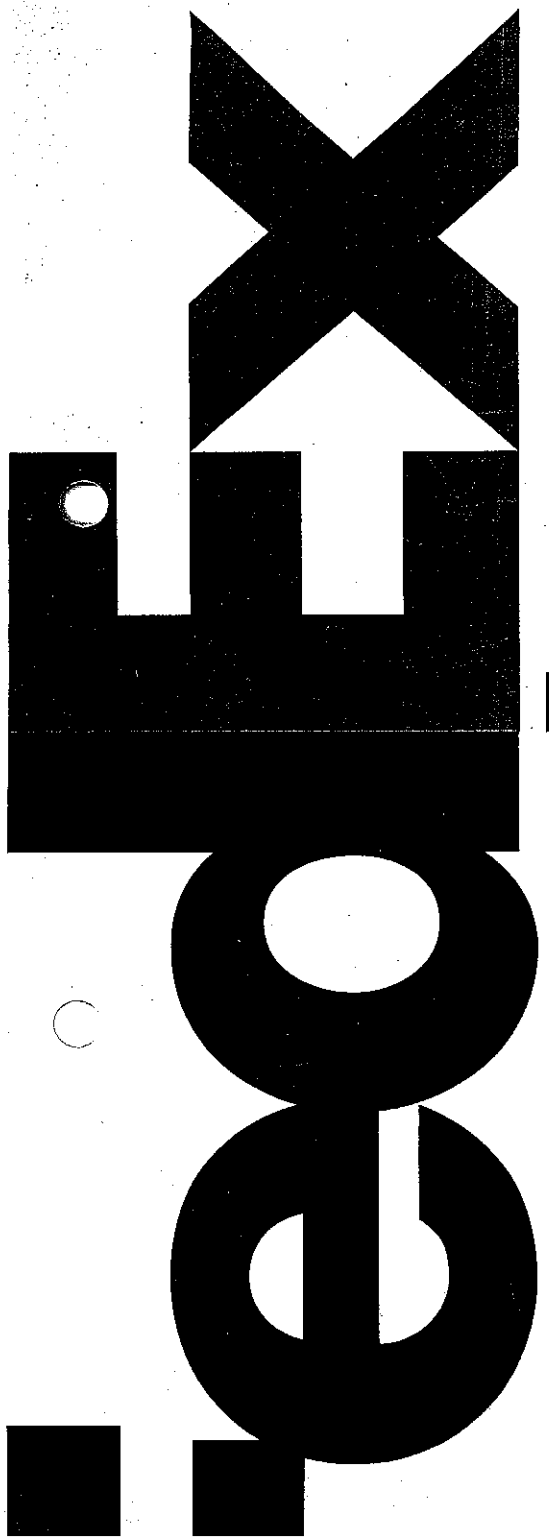
Pursuant to our settlement agreement, I enclose the executed Consent Orders in Case Nos. FEC 11-087 and 11-089. These settlements constitute full and complete resolution of these matters with no admission of liability on the part of Mr. Rosner. I also enclose my law firm Trust Account check in the amount of $3,000.00 in full payment of the agreed civil penalty.

Please acknowledge receipt of this submission.

Respectfully submitted,

Benedict P. Kuehne

BENEDICT P. KUEHNE



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ORIGIN ID:MPBA (305) 789-5989
BENEDICT KUEHNE
LAW OFFICE BENEDICT KUEHNE PA
100 S.E. 2D STREET, SUITE 3550

MIAMI, FL 33131
UNITED STATES US

SHIP DATE: 14APR16
ACTWGT: 1.00 LB
CAD: 1125302/INET3730

BILL SENDER

TO ERIC LIPMAN, GENERAL COUNSEL
FLORIDA ELECTIONS COMMISSION
107 W GAINES STREET, SUITE 224

TALLAHASSEE FL 32399
(850) 922-4539 X 104 REF ROSNER-1881
INV:
PO: DEPT

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FL-US

2016 APR 15 P 2:33

FEC 11-087 & 089, Rosner
Benedict P. Kuehne to: Jaakan Williams 02/10/2016 03:16 PM

Mr. Williams –

This letter confirms my conversation with you today during which I waived the time requirement to transmit the referenced matters to DOAH for at least 21 days from today in order to facilitate our ongoing case discussions.

Benedict P. Kuehne
Law Office of Benedict P. Kuehne, P.A.
100 S.E. 2d Street, Suite 3550
Miami, FL 33131-2154
305.789.5989 x7 Tel
305.789.5987 Fax
ben.kuehne@kuehnelaw.com
bkuehne@bellsouth.net
www.kuehnelaw.com

FEC 11-087 & 089, Rosner
Benedict P. Kuehne to: Jaakan.Williams@myfloridalegal.com 02/09/2016 10:46 AM
Cc: "Mark Herron (mherron@lawfla.com)"

*** CONFIDENTIAL SETTLEMENT DISCUSSIONS ***

Good morning Jaakan –

As I make my final preparations for Mr. Rosner's upcoming criminal court trial, I wanted to speak with you about any settlement terms in the event Mr. Rosner prefers to bring his cases to an agreed conclusion. Let me know when you can speak about the case. Thanks.

Benedict P. Kuehne
Law Office of Benedict P. Kuehne, P.A.
100 S.E. 2d Street, Suite 3550
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ben.kuehne@kuehnelaw.com
bkuehne@bellsouth.net
www.kuehnelaw.com

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

STATE OF FLORIDA
Plaintiff,

v.

MYRON JOEL ROSNER
Defendant.

CASE NO: F12023663
JUDGE: MARTIN BIDWILL

PLEA AGREEMENT

The State and the defendant, MYRON JOEL ROSNER, agree to the following:

1. The defendant shall plead guilty to one (1) felony count of Unlawful Compensation/Reward for Official Behavior in violation of Florida Statute 838.016(2). The Defendant's plea of guilty is irrevocable.

2. The defendant understands that, if he were to go to trial and was found guilty to the charge to which he is pleading in case F12-023663, he would face a maximum sentence of fifteen (15) years in prison.

3. The defendant waives all rights to which he would be entitled if he went to trial, including but not limited to:

a. The right to persist in a plea of not guilty;
b. The right to a jury trial;
c. The right to assistance of counsel during a jury trial;
d. The right to compel the attendance of witnesses on the Defendant's behalf;
e. The right to confront and cross-examine state witnesses;
f. The right against self-incrimination;
g. The right to appeal all matters relating to any judgments.

4. The defendant shall plead guilty.

5. When the Court accepts the defendant's plea of guilt, adjudication shall be withheld.

6. MYRON JOEL ROSNER has paid $3,000.00 for cost recovery.

7. The defendant shall be sentenced to three (3) years' probation, with an agreement for early termination at the conclusion of two (2) years provided the defendant has satisfied all conditions and is in compliance with all terms of probation. Upon successful completion of six (6) months of probation with no violations, the State will not oppose a request for conversion of

the remainder of the probation term to administrative probation. The following special conditions of probation apply to the entire period of probation, in addition to the standard conditions of probation:

a. The defendant shall not file a motion to mitigate or terminate any part of his sentence except as set forth in this paragraph.
b. The defendant shall not qualify or run for public office during the term of his probation.
c. The defendant shall file no other motions with respect to this agreement without the consent of the Assistant State Attorney.
d. The defendant shall comply with all other standard conditions that are imposed by probation pursuant to F.S. 948.03.
e. The defendant is authorized to travel for family purposes throughout the United States and Canada upon informing his probation officer/supervisor in advance and providing an itinerary and contact information during the entire period of travel.

8. Failure to comply with and/or complete the conditions in paragraph seven (7) of this agreement shall be a violation of the defendant's probation.

9. All of the agreements between the State of Florida and the defendant are contained within this Agreement. There are no other agreements between the State of Florida and the defendant with regard to this case.

10. This plea agreement does not grant transactional immunity for any other crimes. This plea agreement does not grant immunity for other crimes that occur subsequent to the entering of this agreement.

11. This agreement is executed and effective on February 24, 2016.

Respectfully Submitted,

KATHERINE FERNANDEZ RUNDLE
STATE ATTORNEY

By: _____
Luis Perez-Medina
Assistant State Attorney
Florida Bar # 22844

_____
Myron Joel Rosner

Defendant
"I have consulted with my attorney and I have fully reviewed this Plea Agreement and voluntarily agree to abide by all of its terms and obligations".

Benedict P. Kuehne

Benedict P. Kuehne
Attorney for Defendant
Florida Bar # 233293
"I have fully advised my client of the terms and obligations of this plea agreement. I am satisfied that my client fully understands all of the terms and conditions of this agreement and voluntarily agrees to abide by its terms."

Richard Barron
Florida Bar 178675

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

Case No. F12-023663
Judge MARTIN BIDWILL

vs.

MYRON JOEL ROSNER

Defendant

FILED
FEB 24 2016
CLERK

ORDER RATIFYING TERMS OF PLEA AGREEMENT

THIS CAUSE having come on to be heard upon the joint Motion of the Defendants and the State for an Order Ratifying Terms of Plea Agreement, it is hereby

ORDERED AND ADJUDGED that the said Motion be and the same is GRANTED, and the Court, by this Order, expresses its intention to sentence the Defendants in the manner and to the extent stipulated in the said plea agreement

DONE AND ORDERED in Chambers at Miami, Miami-Dade County, Florida, this the 24th day of February, 2016.

Martin J. Bidwill

CIRCUIT JUDGE

Martin J. Bidwill

IN THE COUNTY COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA.

DIVISION		CASE NUMBER
CRIMINAL	MEMORANDUM OF COSTS	F-12-23643

THE STATE OF FLORIDA VS. MYRON ROSNER

PLAINTIFF DEFENDANT/RESPONDENT

FILED
FEB 24 2016
CLERK

Court Costs/Fines/Fees		Amount	Statute	Discharge* Code	Note
Crimes Prevention Fund (Ord. 98-171)		$ 50.00	775.083(2)		
County/State (LETTF)		$ 5.00	938.01(1)/938.15		
Crimes Compensation Trust Fund (CCA)		$ 50.00	938.03(4)		
Local Criminal Justice Trust Fund		$ 225.00	938.05(1)		
Add'l Court Costs (Ord. 04-116)		$ 65.00	939.185(1)(a)		
Surcharge (Ord. 05-123)		$ 85.00	939.185(1)(b)		
Teen Court (Ord. 98-185)		$ 3.00	938.19(2)		
Cost of Prosecution		$ 100.00	938.27(8)		
Public Defender Application Fee	☐	$ 50.00	27.52(1)(b)		
Cost of Defense	☐	$ 100.00	938.29		
Fine	☐	$	775.083 (1)		
Surcharge (5% of Fine)	☐	$	938.04		
Crime Stopper's Program	☐	$ 20.00	938.06		
Prostitution Civil Penalty	☐	$ 500.00	796.07(6)		
Domestic Violence Surcharge	☐	$ 201.00	938.08		
Rape Crisis Trust Fund	☐	$ 151.00	938.085		
Child Advocacy Trust	☐	$ 151.00	938.10(1)		
FDLE Operating Trust Fund	☐	$ 100.00	938.25		
Alcohol & Drug Abuse Programs	☐	$	938.21		
	☐	$			

TOTAL MANDATORY (ALL CASES) $ 583.00

Additional pursuant to specific requirements (fines/costs/fees as noted above) $

GRAND TOTAL $ 703.00 **DUE TODAY** Mar. 24, 2016

Payment is to be made by **cash, credit card (MC or Visa), money order or cashier's check** payable to, the **Clerk of the Courts.** Note, include your name, above case number, and write, "Fine/Costs" on your payment. Credit Card payments can also be made online at the Clerk's web address: www.miami-dadeclerk.com. Payment locations are:
Richard E. Gerstein Justice Building, 1351 N.W. 12th St., Suite 9000, Miami, FL 33125
Miami-Dade Flagler Building, 140 W. Flagler St., Room 1502, Miami, FL 33130

Defendant's Signature: _____ Date: Feb 24, 2016

Defendant Current Address: 1121 NE 178 St N Miami FL 33162
(Street) (City) (State) (Zip)

Done and Ordered in Miami-Dade County, Florida this 24 day of Feb, 2016

Judge's Signature
MARTIN J. BIDWILL

*DISCHARGE CODES:
C- CONVERTED TO COMMUNITY SERVICE
J- JUDGMENT/LIEN
P- PLEA (STATE NEGOTIATED)
S- SUSPENDED
T- TIMED SERVED
W- WAIVED

BENEDICT P. KUEHNE, P.A.
IOTA TRUST ACCOUNT
100 SE 2ND STREET STE 3550
MIAMI, FL 33131-2154

SABADELL UNITED BANK
MIAMI, FL
63-964/670

0968

2/24/2016

PAY TO THE ORDER OF Miami-Dade Comm on Ethics & Public Trust $ **1,500.00

One Thousand Five Hundred and 00/100********** DOLLARS

Miami-Dade Commission on Ethics & Public Trust
19 West Flagler Street, # 820
Miami FL 33130

MEMO [redacted]

Benedict P. Kuehne MP
AUTHORIZED SIGNATURE

Details on Back. Security Features Included

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BENEDICT P. KUEHNE, P.A. / IOTA TRUST ACCOUNT 0968

Miami-Dade Comm on Ethics & Public Trust	2/24/2016	
1881		1,500.00

BPK IOTA Trust 0065 1,500.00

BENEDICT P. KUEHNE, P.A. / IOTA TRUST ACCOUNT 0968

Miami-Dade Comm on Ethics & Public Trust	2/24/2016	
1881		1,500.00

BPK IOTA Trust 0065 1,500.00

BENEDICT P. KUEHNE, P.A.
IOTA TRUST ACCOUNT
100 SE 2ND STREET STE 3550
MIAMI, FL 33131-2154

SABADELL UNITED BANK
MIAMI, FL
63-964/670

0969

2/24/2016

PAY TO THE ORDER OF Miami-Dade Public Corruption Unit $ **1,500.00

One Thousand Five Hundred and 00/100********** DOLLARS

Miami-Dade Public Corruption Unit

MEMO [redacted]

Benedict P. Kuehne
AUTHORIZED SIGNATURE

Details on Back. Security Features Included

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BENEDICT P. [redacted] 0969

Miami-Dade Public Corruption Unit 2/24/2016

1881 1,500.00

BPK IOTA Trust 0065 1,500.00

BENEDICT P. KUEHNE, P.A. / IOTA TRUST ACCOUNT 0969

Miami-Dade Public Corruption Unit 2/24/2016

1881 1,500.00

BPK IOTA Trust 0065 1,500.00

E07051/89235 (3/12) 624602 Rev 3/11

LAW OFFICE OF
BENEDICT P. KUEHNE
PROFESSIONAL ASSOCIATION

BENEDICT P. KUEHNE*
SUSAN DMITROVSKY
MICHAEL T. DAVIS
*Board Certified
Appellate Practice and
Criminal Trial Practice

MIAMI TOWER, SUITE 3550
100 S.E. 2ND Street
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Telephone: 305-789-5989
Facsimile: 305-789-5987
ben.kuehne@kuehnelaw.com
susand@kuehnelaw.com
mdavis@kuehnelaw.com

FORT LAUDERDALE OFFICE

1 W. Las Olas Blvd, Ste 500
Fort Lauderdale, FL 33301

REPLY TO: Miami

February 24, 2016

Luis Perez-Medina, Assistant State Attorney
1350 NW 12 Avenue
Miami, FL 33136-2111
luisperez-medina@miamisao.com

Re: Rosner, Myron
Tender of Payment

Dear Mr. Perez-Medina:

I enclose my Trust Check in the amount of $1,500.00, payable to the Miami-Dade Police Department Public Corruption Unit, on behalf of Myron Rosner, as payment of the agreed costs.

Respectfully submitted,

Benedict P. Kuehne

BENEDICT P. KUEHNE

LAW OFFICE OF
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FORT LAUDERDALE OFFICE

1 W. Las Olas Blvd, Ste 500
Fort Lauderdale, FL 33301

REPLY TO: Miami

February 24, 2016

Michael P. Murawski, Ethics Advocate
Miami-Dade Commission on Ethics & Public Trust
19 West Flagler St., Suite 820
Miami, FL 33130
Murawsk@miamidade.gov

Re: Rosner, Myron
Tender of Payment

Dear Mr. Murawski:

I enclose my Trust Check in the amount of $1,500.00 on behalf of Myron Rosner as payment of the agreed costs.

Respectfully submitted,

Benedict P. Kuehne

BENEDICT P. KUEHNE

Your payment has been confirmed and authorized. Your confirmation number is **11075-2742870**. An email confirmation has been sent to you. Please print this page for your records.

Benedict Kuehne
100 SE 2d Street # 3550
Miami, FL
P: (Phone) 3057895989

Date: 3/2/2016 10:28:38 PM

Receipt #: 11075-2742870

Receipt

Item Description	Price	Quantity	Item Subtotal
Court Cost/Fine Pay Case: F-12-023663	$703.00	1	$703.00
		Total:	**$703.00**

Criminal Justice and Civil Infraction, Clerk of the Courts
1351 NW 12th Street, Suite 9000
Miami, Florida 33125
(305) 275-1155

Payments will post to the case in 1-2 business days.

2012 DEPOSITIONS WITNESS LIST

Name of Witness	Address	Helpful	NOA on file	Subpoena No.:
Charles Tresize (maintenance worker, formerly at **MOM**)	19900 NW 37th Ave., Lot B75 Miami Gardens, FL 33056 **NOTE:** Gated community; home after 4:30 p.m. **PH:** 754-234-8561	Requested witness fee and mileage		11-087-109 12/17/12; 9:00 a.m.
Detective Luis O. Rodriguez Badge (I.D.) No. 4080	Miami-Dade County P.D., Public Corruption Investigations Bureau **PH:** 305-629-2593 (direct line); FAX: 305-372-6319	yes	**Court Services:** 305-375-5555; **Angela Staton, PH:** 305-548-5781; **FAX: 305-548-5786.**	11-087-107 12/17/12 9:45 a.m.
Stephanie Kienzle—Complainant	Home: 1653 NE 178th Street North Miami Beach, FL 33162; ***Work:** 1330 SE 4th Ave., Ste. G, Fort Lauderdale, FL 33316. **NOTE:** ring bell for entry. **PH:** (cell) 305-335-2093 and (W) 954-761-7707	yes	No	11-087-76 12/17/12; 10:45 a.m.
Scott Martin (**MOM**)	***150 NW 70th Ave., Ste. 5, Plantation, FL 33317	yes	Yes; David B. Rothman PH: 305-358-9000	11-087-77 12/17/12; 1:00 p.m.
David A. Davila (**MOM & R&D**)	150 NW 70th Ave., Ste. 5, Plantation, FL 33317. 5754 Isles Circle Tamarac, FL 33321 **PH:** 954-937-4577	yes	No	11-087-111 12/17/12; 1:45 p.m.
Analia "Ana" Ladines (formerly at **MOM**)	***9141C SW 23rd St. Davie, FL 33324 **PH:** 954-445-4350	yes	Yes; David B. Rothman PH: 305-358-9000	11-087-78 12/17/12; 2:45 p.m.

*** New address since original subpoena was issued in 2011.

Pamela L. Latimore, CMC North Miami Beach City Clerk PH: (305) 787-6001 FAX: (305) 787-6026 Email: pamela.latimore@citynmb.com	Office of the City Clerk 17011 NE 19th Ave. North Miami Beach, FL 33162	yes		11-087-112 12/18/12 9:00 a.m.
Investigator Kennedy Rosario	Miami-Dade County Commission on Ethics and Public Trust, 19 W. Flagler St., Ste. 820, Miami, FL 33130 (w) PH: (305) 350-0615; Cell PH [redacted]	Yes **NOTE:** Personal information is exempt pursuant to Chapter 119, F.S.—former L.E.	Deposition completed 11/19/12. **NOTE:** Retiring 11/30/12.	11-087-105
Felix Barcelo (inventory control, formerly at **MOM**)	3720 Harrison St., Apt. 1 Hollywood, FL 33021 **PH:** 954-274-5481		**NOTE:** Not available on 12/17-18/12. Leaves home at 7 a.m.; returns home at 7 p.m.	11-087-110
Myron Joel Rosner—Respondent	1121 NE 178th Terrace North Miami Beach, FL 33162		Yes; Ben Kuehne PH: 305-789-5989	11-087-76
"Frank Tavanier" (**Franck Tavernier;** former Rosner camp. mgr.)	20030 NW 65th Court Hialeah, FL 33015 PH: 786-266-6562		No	11-087-79
R & D Printing & Design, LLC -- "**R&D**"	Mr. Boris Hernan Polania 4500 N. Hiatus Rd., Ste. 211, Sunrise, FL 33351-7984; **PH:** 954-825-1840	yes		N/A

*** New address since original subpoena was issued in 2011.

Pamela L. Latimore, CMC North Miami Beach City Clerk PH: (305) 787-6001 FAX: (305) 787-6026 Email: pamela.latimore@citynmb.com	Office of the City Clerk 17011 NE 19th Ave. North Miami Beach, FL 33162	yes		11-087-112 12/18/12 9:00 a.m.
Investigator Kennedy Rosario	Miami-Dade County Commission on Ethics and Public Trust, 19 W. Flagler St., Ste. 820, Miami, FL 33130 (w) PH: (305) 350-0615; (cell) PH: 754-264-4190	Yes **NOTE:** Personal information is exempt pursuant to Chapter 119, F.S.—former L.E.	Deposition completed 11/19/12. **NOTE:** Retiring 11/30/12.	11-087-105
Felix Barcelo (inventory control, formerly at **MOM**)	3720 Harrison St., Apt. 1 Hollywood, FL 33021 **PH:** 954-274-5481		**NOTE:** Not available on 12/17-18/12. Leaves home at 7 a.m.; returns home at 7 p.m.	11-087-110
Myron Joel Rosner—Respondent	1121 NE 178th Terrace North Miami Beach, FL 33162		Yes; Ben Kuehne PH: 305-789-5989	11-087-76
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R & D Printing & Design, LLC -- "**R&D**"	Mr. Boris Hernan Polania 4500 N. Hiatus Rd., Ste. 211, Sunrise, FL 33351-7984; **PH:** 954-825-1840	yes		N/A

*** New address since original subpoena was issued in 2011.

870 So.2d 834

BROOKWOOD EXTENDED CARE CENTER OF HOMESTEAD, LLP, d/b/a Brookwood Gardens Convalescent Center, Appellant,
v.
AGENCY FOR HEALTHCARE ADMINISTRATION, Appellee.

No. 3D02-3060.

District Court of Appeal of Florida, Third District.

August 13, 2003.

Header ends here.

[870 So.2d 835]

Powell & Mack and Theodore E. Mack, Tallahassee, for appellant.

Gregory J. Philo, Tallahassee, for appellee.

[870 So.2d 836]

Before COPE, SHEVIN, and WELLS, JJ.

WELLS, Judge.

Brookwood Extended Care Center of Homestead, LLP, d/b/a Brookwood Convalescent Center appeals from a final order denying its request for an administrative hearing. We reverse.

A. AHCA's Survey

On April 12, 2002, the Agency for Health Care Administration ("AHCA"), the state agency responsible for licensing and regulating nursing homes, conducted its annual regulatory survey inspection of Brookwood, a licensed nursing home. Following that survey, AHCA issued a detailed forty-eight page Statement of Deficiencies (a Form 2567-L), detailing fact-based instances of psychological abuse; lack of supervision and interventions to prevent wandering and aggressive behaviors; failure to investigate allegations of abuse, neglect and mistreatment; failure to ensure residents' dignity and sense of individuality; failure to provide appropriate and effective activities to meet the needs of cognitively impaired residents; failure to maintain a clean environment; failure to keep the noise level tolerable; failure to individualize care plans for bladder and bowel management and to address aggressive, violent, and transitory behavior; failure to provide adequate nursing staff to prevent some residents from physically and psychologically abusing other residents; failure to ensure sanitary procedures to prevent food-borne illnesses; and failure to use administrative resources effectively to ensure appropriate and adequate interventions to prevent some residents from abusing others.

Based on observations and interviews with residents at Brookwood during the survey, AHCA determined that conditions at Brookwood presented a threat to the health, safety and welfare of the residents and imposed an immediate moratorium on new admissions to the facility. AHCA also filed a three count administrative complaint against Brookwood alleging that based on the annual survey, observations, interviews and record review, the facility failed (1) "to ensure that there was sufficient staff to provide nursing and related services to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident" as required by law; (2) "to assess appropriate interventions and implement procedures to protect residents from occurrences of neglect and lack of supervision of residents with wandering and aggressive behaviors who have access to all areas of the facility"; and (3) "to use its resources effectively and efficiently to

deter 17 wandering residents identified by the facility from going into other resident rooms uninvited and to prevent 10 facility identified abusive residents from physically and mentally abusing other residents." The complaint, which detailed many of the facts stated in the Form 2567-L Statement of Deficiencies, sought assessment of a $6,000 survey fee, issuance of a conditional license, and imposition of a $75,000 administrative fine. The complaint expressly advised Brookwood of its right to request an administrative hearing under sections 120.569 and 120.57 of the Florida Statutes and attached an explanation of rights.

B. Brookwood's Petition for Administrative Review

In response to AHCA's thirty-seven page complaint and forty-eight page Statement of Deficiencies, Brookwood filed a two-and-one-half page Petition for Formal Administrative Hearing to which copies of AHCA's survey, the Statement of Deficiencies, moratorium order, and complaint were attached. That petition, in pertinent part, generally denied "each and every

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factual allegation set forth in the Statement of Deficiencies, the Order of Immediate Moratorium and the Administrative Complaint," and alleged "that the ultimate facts will show that at all times pertinent to the licensure survey [Brookwood] was in compliance with all aplicable [sic] laws and regulations."

In response to this Petition, AHCA issued an order to show cause to Brookwood advising that no administrative hearing could be granted from the Order of Immediate Moratorium, and because the Statement of Deficiencies Form 2567-L did not constitute agency action, it would not support administrative review. Brookwood was advised that its request for formal hearing relating to the Administrative Complaint failed to satisfy the requirements of Rule 28-106.201(2) of the Florida Administrative Code, which requires that formal hearing requests contain a "statement of all disputed issues of material fact" and a "concise statement of the ultimate facts ... including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action."

Rather than amending its petition to satisfy the requirements of Rule 28-106.201, Brookwood took issue with AHCA's demand that *Brookwood* detail which facts were in dispute and that *Brookwood* identify the facts that it contended warranted reversal or modification of ACHA's proposed action. Brookwood's counsel wrote to the agency:

> Finally, these form orders to show cause started appearing under one of your predecessors. I had hoped that they were gone with her demise. As is obvious from this letter, I have a problem with the way the current AHCA administration is trying to thwart the administrative hearing process. The requirements of Rule 28-106.201, F.A.C. are meant to allow the agency to identify the agency action being challenged. It is not a discovery process or a means of limiting the issues being challenged. When an agency issues a complaint, it is the party setting out the facts. When I file my petition on a complaint, I merely have to state that I deny those facts. There is no reason for me to restate every fact already listed in the complaint. It is ridiculous for the agency to argue that it does not know what facts are at issue when the agency is the one

> who set out the facts in its complaint.
>
> At the point in time that I file a petition, there has been no discovery, so I cannot state that certain facts are not in dispute. Once the matter is at DOAH and discovery and pretrial discussions have taken place, the issues not in dispute are weeded out. That is the purpose of the administrative hearing process. When I know that there are only certain issues that my client disputes, I identify those in the petition. But when we are disputing the entire agency action that is based on all of the underlying facts stated in the complaint, I have the right to dispute all of the facts and state concisely that I dispute all of the facts alleged. By doing so, I have identified all of the specific facts (as set forth in the complaint) that warrant reversal. Please also note that contrary to what your attachment says, there is no requirement in the rule that I provide a statement of the facts as my client "perceives them to be".[1]

In response to this letter, AHCA amended its order to show cause to eliminate any

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confusion over whether Brookwood had timely petitioned for administrative relief and again advised Brookwood that it had to comply with the requirements of Rule 28-106.201(2) or its petition would be dismissed. Brookwood responded by filing a petition virtually identical to its first bare-bones petition and prefaced it with the statement that:

> Brookwood is only filing this amended petition because AHCA has threatened to deny its request for a hearing alleging that its petition was not legally sufficient. AHCA is attempting to deny Brookwood's right to a hearing based on legal pleading technicalities. AHCA knows what facts and law are at issue because AHCA stated the relevant facts and law in its order of moratorium and complaint in this matter which were attached to Brookwood's petition. The purpose of setting forth facts and law in a petition is to put the agency on notice of the matter in dispute. The purpose of a petition is not to limit the facts that Brookwood wishes to challenge at hearing or to force Brookwood to set forth its position before it has had a chance to implement discovery. AHCA issued the petition, AHCA knows what the facts are. The only possible reason for AHCA to question Brookwood's petition is to deny Brookwood a hearing on matters that AHCA knows that it cannot defend at hearing.

On October 11, 2002, Brookwood's petition for administrative hearing was denied; it was ordered to pay $81,000 (the $75,000 fine and $6,000 in costs) to AHCA. Brookwood appeals. For the following reasons, we reverse.

C. Under the One Dismissal Rule, Brookwood May (and Must) Still Amend

Brookwood claims that its denial of all of the facts alleged in the administrative complaint and moratorium order and its statement that all of the facts detailed in these

documents were "untrue and warranted reversal," combined with its attachment and incorporation of these documents to its petition for administrative hearing, constitute *substantial* compliance with the requirements of subparagraph 120.54(5)(b)4 of the Florida Statutes and Rule 28-106.201(2) of the Florida Administrative Code. *See Accardi v. Dep't of Envtl. Protection*, 824 So.2d 992, 996 (Fla. 4th DCA 2002). They do not.

Section 120.54, Florida Statutes (2003), provides in pertinent part:

> (5) Uniform rules.—
>
> > (a)1. By July 1, 1997, the Administration Commission shall adopt one or more sets of uniform rules of procedure.... The uniform rules shall establish procedures that comply with the requirements of this chapter....
>
> * * *
>
> > (b) The uniform rules of procedure adopted by the commission pursuant to this subsection shall include, but are not limited to:
>
> * * *
>
> > 4. Uniform rules of procedure for the filing of petitions for administrative hearings pursuant to s. 120.569 or s. 120.57. Such rules shall require the petition to include:
> >
> > a. The identification of the petitioner.
> >
> > b. A statement of when and how the petitioner received notice of the agency's action or proposed action.
> >
> > c. An explanation of how the petitioner's substantial interests are or will be affected by the action or proposed action.
> >
> > d. A statement of all material facts disputed by the petitioner or a
>
> [870 So.2d 839]
>
> > statement that there are no disputed facts.
> >
> > e. A statement of the ultimate facts alleged, including a statement of the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action.
> >
> > f. A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes.
> >
> > g. A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the proposed action.

(Emphasis added).

Relatedly, section 120.569, Florida Statutes (2003) provides:

> (c) Unless otherwise provided by law, a petition or request for hearing shall include those items required by the uniform rules adopted pursuant to s. 120.54(5)(b)4. Upon the receipt of a petition or request for hearing, the agency shall

> carefully review the petition to determine if it contains all of the required information. A petition shall be dismissed if it is not in substantial compliance with these requirements or it has been untimely filed....

(Emphasis added).

Likewise, Rule 28-106.201 of the Florida Administrative Code, outlining "Initiation of Proceedings" provides:

> (2) All petitions filed under these rules shall contain:
>
> (a) The name and address of each agency affected and each agency's file or identification number, if known;
>
> (b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;
>
> (c) A statement of when and how the petitioner received notice of the agency decision;
>
> (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
>
> (e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;
>
> (f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action; and
>
> (g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

(Emphasis added).

Fla. Admin. Code R. 28-106.201 ("Initiation of Proceedings"); *see* Fla. Admin. Code R. 59-1.018 (AHCA providing: "The Uniform Rules of Procedure are adopted").

AHCA relies on the above stated rules and statutory provisions as supporting its decision. Brookwood's counsel answers with a recalcitrant insistence that in previous years the unrefined denials such as the one he asserted below sufficed to secure hearings on agency actions. The simple answer to this is that the rules have changed. In 1998, the Florida Legislature amended section 120.54 to add subparagraph (5)(b)4. *See* ch. 98-200, § 3, at

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1830-31, Laws of Fla. Section 120.569, was likewise amended at that time to reflect the mandatory nature of section 120.54. The agency thereafter amended its rules. The amended statute and rules are crystal clear. In a proceeding governed by Rule 28-106.201, the burden is now on the person or entity petitioning for an administrative hearing to state the ultimate facts, to identify the facts that are in dispute, and to allege the facts that warrant, in the petitioner's opinion, reversal.[2] *See also* ch. 03-94, § 2, Laws of Fla. (enacted

after the final order in the instant case and further amending section 120.54(5)(b) 4 to expressly "require *the petition* to include" a statement of disputed facts and the ultimate facts warranting reversal) (emphasis added). General denials and non-specific allegations of compliance will no longer suffice.

Brookwood's suggestion that rather than dismissing its petition, AHCA should have passed it on to DOAH to permit DOAH to rule on the sufficiency of its petition is also behind the times. As observed in The Florida Bar, Florida Administrative Practice § 4.7, at 4-11 (6th ed.2001):

Although more latitude previously had been given, see, e.g., *Anthony Abraham Chevrolet Co. v. Collection Chevrolet Co.*, 533 So.2d 821 (Fla. 1st DCA 1988), 1998 revisions to the APA now require agencies to review petitions for compliance with these requirements before forwarding them to DOAH. F.S. 120.569(2)(c)-(2)(d).... Before the 1998 revisions, agencies commonly would refer deficient petitions to DOAH and address defects through motions to the administrative law judge. This procedure no longer is allowed.

AHCA properly refused to pass Brookwood's deficient petition on to DOAH.

In addition to its claim that the specificity at issue had never been required in the past, is Brookwood's final salvo that the discovery necessary to draft a petition for a hearing with the specificity required in the uniform rules and Rule 28-106.201(2), has not yet occurred at the early stage of the proceedings—within 21 days of receipt of written notice of the agency's decision— when the petition is required, thus making the task impossible and illogical. *See* Fla. Admin. Code R. 28-106.111(2).

The response to this point is two fold. First, a time extension is generally available to permit the investigation necessary to draft a petition. *See* Fla. Admin. Code R. 28-106.111(3)("[a]n agency may, for good cause shown, grant an extension of time for filing an initial pleading"); Fla. Admin. Code R. 28-106.204(5)("[m]otions for extension of time shall be filed prior to the expiration of the deadline sought to be extended and shall state good cause for the request"). And statements made at this point of entry into the proceedings generally will not bar subsequent amendment of the petition. *See* Fla. Admin. Code R. 28-106.202.

Second, as conceded by counsel, there will in most instances be at least some factual determinations undisputed by the petitioner seeking a hearing. Just as the agency is obligated to give citizenry "fair notice" of the charges being faced, *see Totura v. Department of State*, 553 So.2d 272, 273 (Fla. 1st DCA 1989), it is fair to narrow the factual matters in dispute and alert the agency to the undisputed aspects of the charges at issue. Considering the

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costs associated with any agency action, an effort to tailor those expenses while still providing a full and fair opportunity to be heard, cannot be faulted. Thus, we find application of the rule both logical and entirely capable of being accomplished.

In sum, AHCA properly found Brookwood's hearing request to be legally insufficient. Brookwood's initial hearing request amounted to no more than a conclusory statement disputing every fact and legal conclusion no matter how perfunctory. Its amended request did little more than reiterate its earlier response. While a petitioner's efforts to comply with the above stated statutory requirements should be viewed for substantial compliance so as to allow the opportunity for a hearing and resolution of the matter on its merits,[3] the agency in this case was faced with no more than a Petitioner's insistent refusal to follow

the above stated statutory provisions. *See McIntyre v. Seminole County Sch. Bd.*, 779 So.2d 639 (Fla. 5th DCA 2001)(where only item employee failed to include in hearing request was how he became aware of School Board's action, the deficiency would not be deemed dispositive, and employee's letter was sufficient to meet the minimum requirements listed in section 120.54(5)(b) 4 for a hearing request).

Despite Brookwood's noncompliance, we conclude that the facility should be accorded the opportunity to conform its petition to the "uniform rules." Section 120.569 authorizes such action, as it instructs "[d]ismissal of a petition shall, *at least once*, be without prejudice to petitioner's filing a timely amended petition curing the defect, unless it conclusively appears from the face of the petition that the defect cannot be cured." (Emphasis added). Rule 28-106.201 similarly provides that dismissal of a petition for non-compliance with the rule shall "at least once, be without prejudice to petitioner's filing a timely amended petition curing the defect." Fla. Admin. Code R. 28-106.201 ("Initiation of Proceedings"); *see* Fla. Admin. Code R. 59-1.018 (AHCA providing: "The Uniform Rules of Procedure are adopted").

Here, the action was dismissed only once, that being after issuance of the second (the amended) order to show cause and the amended response. Brookwood is, therefore, still entitled to one more chance to comply with the rules. Taking Brookwood's counsel at his word, the petition's insufficiencies were the result of counsel's past experience as to the showing necessary to secure a hearing, rather than any effort to thwart, violate, or evade the law.

Accordingly the order under review is reversed and the matter is remanded for Brookwood to file a petition for hearing in compliance with subparagraph 120.54(5)(b)4, Rule 28-106.201, and the statements made herein.

SHEVIN, J., concurs.

COPE, J. (specially concurring).

I agree on the ultimate result, but write separately to address the responsibilities of agencies in considering requests for a

[870 So.2d 842]

formal hearing, and to suggest that the Legislature needs to amend the statute.

I.

Without realizing it was doing so, the Legislature has created a system that is hazardous to those who want to request an administrative hearing.

In the present case, the Agency for Health Care Administration ("AHCA") filed an administrative complaint against Brookwood Extended Care Center in which it sought to impose an administrative fine of $81,000.

Under the current version of the Administrative Procedure Act ("APA"), Brookwood's request for a formal hearing was processed by AHCA—the very agency which desired to impose the administrative fine.

AHCA replied to the request for hearing by sending Brookwood a form saying the request for an administrative hearing was not good enough. AHCA did this even though Brookwood asserted that it disputed every fact set forth in the administrative complaint.

Brookwood filed an amended petition for administrative hearing.

AHCA decided that the amended petition did not contain sufficient particularity as required by paragraph 120.569(2)(c), Florida Statutes (2002). AHCA denied the petition for administrative hearing and entered a final order assessing a fine of $81,000 against Brookwood.

There is an inherent conflict of interest in this system. The administrative agency which wishes to assess the administrative penalty is the same agency which is allowed to deny a hearing outright, simply on the basis of deficiencies—real or imagined—in the petition for administrative hearing.

AHCA advised us at oral argument that the agency clerk takes paragraph 120.569(2)(c), Florida Statutes (2002) to be a legislative mandate to dismiss petitions for hearing which do not comply with the statute. I have no quarrel with the idea that the statutes must be obeyed, but if the agency which is assessing the administrative fine is also the agency determining the right to a hearing, then the agency's power to deny a hearing must be carefully circumscribed.

II.

It goes without saying that the due process clause of the Federal and Florida Constitutions applies in administrative hearings. *See, e.g., Cherry Communications, Inc. v. Deason,* 652 So.2d 803, 804 (Fla.1995); *United Ins. Co. v. State Dept. of Ins.,* 793 So.2d 1182, 1183 (Fla. 1st DCA 2001). Litigants are entitled to fair notice and an opportunity to be heard before a fine or other administrative penalty is imposed upon them.

Because of due process considerations, if there is any doubt about the sufficiency of the petition, the doubt must be resolved in favor of granting the administrative hearing.

This also follows from the wording of the statute itself. The statute allows dismissal only if the petition "is not in substantial compliance with these requirements...." § 120.569(2)(c), Fla. Stat. (emphasis added); *see also id.* § 120.569(2)(d). The statute requires the agency to look at the substance of the petition. Substantial compliance, not perfect compliance, is all that is required. Nitpicking and hypertechnical reading of petitions are not allowed.

Measured against a substantial compliance standard, the Brookwood petition for administrative hearing was, in my view, legally sufficient. While I agree with the

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majority that a general denial is not appropriate in proceedings of this type, the substance of the dispute is clear. The propriety of the administrative fine is going to hinge on factual determinations and factual inferences regarding the conditions at Brookwood at the time of the inspection.

The next problem in this case is what I must characterize as a double standard employed by AHCA. AHCA's reason for rejecting the petition for hearing was its conclusion that the petition for hearing was insufficiently particularized. However, AHCA itself failed to give the litigant any particularity in rejecting the petition.

After Brookwood requested the administrative hearing, it received a form on which AHCA had checked the following item:

The request for hearing was legally insufficient.

> Please note: If this item is checked, the Agency recognizes that you requested a formal hearing pursuant to the provisions of Section 120.569 and 120.57(1), Florida Statutes. Your request, however, did not meet the requirements of Rule 28-106.201(2), Florida Administrative Code, as required by law and as noted on the Election of Rights form that you returned to the Agency. Since your request for hearing did not conform to the Rule, the

> Agency is required by law to deny it. See Section 120.569(2)(c), Florida Statutes.
>
> You have time, however, to amend your request for hearing if it was received on time. Please ensure that the amended request includes the information required by Rule 28-106.201(2), Florida Administrative Code, and that the Agency Clerk receives the amended request on or before fifteen (15) days of the date on which the Agency Clerk signed this Order to Show Cause.

R. 108.

Attached to this form was a document which listed nine items which must be included in a request for a formal hearing. AHCA did not identify which item or items it had found to be insufficient. The agency also attached the text of Rule 28-106.201. Again, AHCA did not identify which item or items it deemed insufficient.

Litigants should not have to guess at their peril what is wrong with the petition for administrative hearing. If the agency thinks the petition is not sufficiently particularized, then the agency must likewise identify the deficiency with reasonable particularity.[4]

III.

In my view, the Legislature should revisit Section 120.569, Florida Statutes, in light of the due process concerns outlined above. Further, it seems advisable to amend the statute with regard to administrative action that is initiated by the filing of an administrative complaint.

The administrative complaint in this case is thirty-six pages long, with fifty pages of attachments, setting forth the facts said to support the imposition of the $81,000 fine. At oral argument AHCA acknowledged, and I agree, that it would be sufficient for the defendant to submit a document which set forth those paragraphs of the administrative complaint which were admitted, denied, or as to

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which the defendant is without knowledge. The approach would, in other words, be similar to that which is followed under Florida Rule of Civil Procedure 1.110(c). To my way of thinking, such an approach would simplify the procedure for those agency actions which are initiated by administrative complaint.

The problem with the present version of section 120.569 is that it is a one-size-fits-all mechanism. The statute appears designed primarily for the situation in which an agency takes an action, such as a denial of a license, by writing the applicant a letter briefly setting forth the grounds for the denial. In that situation, if the applicant requests an administrative hearing, it is logical to require the applicant to file a petition for administrative hearing which spells out the nature of the dispute so as to allow a determination whether material facts are at issue which would require a referral to the Division of Administrative Hearings.

Where the agency proceeding is initiated by an administrative complaint, the situation is quite different. Where there is an administrative complaint, the agency has already identified the material facts which are said to support the disciplinary action. It does not serve any useful purpose to ask the litigant to draft another statement of the disputed issues of fact; it should be sufficient to identify only those portions of the administrative complaint which the defendant intends in good faith to dispute.

We were advised at oral argument that in general, if a litigant simply repeats all of the allegations of the administrative complaint in the petition for administrative hearing as disputed issues of fact, then AHCA will grant the petition and forward the case to the Division of Administrative Hearings. It is a waste of time and paper to have the identical factual matters stated twice: initially in the administrative complaint and then repeated in the petition for administrative hearing.

IV.

The courts and administrative officers should safeguard the constitutionally protected right to a fair hearing in the administrative process. The statute requires substantial compliance, not strict compliance, in submitting a petition for an administrative hearing. All doubt should be resolved in favor of granting an administrative hearing. A detailed reiteration of the facts contained in an administrative complaint is unnecessary; there only needs to be a brief specification of the facts which are controverted in good faith.

Statutory modification may well be warranted, especially as relates to administrative proceedings which are initiated by an administrative complaint.

Notes:

1. This last comment came in response to ACHA's paraphrasing of the Administrative Code's requirements as obligating a petitioner to "list ... the facts in dispute" and to state the facts as the petitioner "perceives them to be."

2. It should be noted that neither party to this appeal has suggested that this proceeding is governed by any rule other than 28-106.201.

3. Brookwood's reliance on *Scott v. Department of State*, 828 So.2d 1091(Fla. 2d DCA 2002), to support its contention that it substantially complied with applicable administrative rules is misplaced. *Scott* involved the revocation of a license governed by Rule 28-107.004 which provides for administrative review of orders that "suspend, revoke, annul, or withdraw a license," and expressly states that "[t]he agency complaint shall be the petition [for administrative hearing]...." The administrative complaint in this case did not seek to suspend, revoke, annul or withdraw Brookwood's license. Thus, Rule 28-106.201, as both parties confirm, rather than Rule 28-107.004, applies.

4. Although not raised as an issue in this case, I am hard pressed to see how the agency can deny a hearing outright. The point of paragraphs 120.569(2)(c) and (d) is to determine whether to refer the petition to the Division of Administrative Hearings. If there are no disputed issues of material fact, then it would appear that the litigant must nonetheless be given an informal hearing under subsection 120.57(2), Florida Statutes.

STATE OF FLORIDA
FLORIDA ELECTIONS COMMISSION
Case No. FEC 11-087

FLORIDA ELECTIONS COMMISSION

versus

MYRON J. ROSNER
_____/

NOTICE OF REQUEST FOR FORMAL ADMINISTRATIVE HEARING

Myron J. Rosner submits this request for a formal administrative hearing before an administrative law judge in the Division of Administrative Hearings. Respondent disputes material facts in the Staff Recommendation, including but not limited to the material facts contained in Paragraphs Counts 1, 2, 3, 4, 5, 6, and 7. Respondent contests the legal conclusions stated in the Staff Recommendation. Respondent denies commission of the violations alleged in the Order of Probable Cause, and incorporates his prior submissions to the Florida Elections Commission, among other information to be submitted during the course of formal administrative proceedings.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I CERTIFY the foregoing was January 4, 2016, to:

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By: S/ *Benedict P. Kuehne*
BENEDICT P. KUEHNE

STATE OF FLORIDA
FLORIDA ELECTIONS COMMISSION
Case No. FEC 11-089

FLORIDA ELECTIONS COMMISSION

versus

MYRON J. ROSNER
_____/

NOTICE OF REQUEST FOR FORMAL ADMINISTRATIVE HEARING

Myron J. Rosner submits this request for a formal administrative hearing before an administrative law judge in the Division of Administrative Hearings. Respondent disputes material facts in the Staff Recommendation, including but not limited to the material facts contained in Paragraphs Counts 1, 2, and 3. Respondent contests the legal conclusions stated in the Staff Recommendation. Respondent denies commission of the violations alleged in the Order of Probable Cause, and incorporates his prior submissions to the Florida Elections Commission, among other information to be submitted during the course of formal administrative proceedings.

Respectfully submitted,

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By: *S/ Benedict P. Kuehne*
BENEDICT P. KUEHNE

FEC 11-087 & 089, Supplemental Petitions for Formal Administrative Hearings
Benedict P. Kuehne
to:
Florida Elections Commission, Jaakan.Williams@myfloridalegal.com, Amy.Toman@myfloridalegal.com
01/26/2016 05:06 PM
Cc:
"Mark Herron (mherron@lawfla.com)"
Hide Details
From: "Benedict P. Kuehne" <ben.kuehne@kuehnelaw.com>
To: Florida Elections Commission <fec@myfloridalegal.com>, "Jaakan.Williams@myfloridalegal.com" <Jaakan.Williams@myfloridalegal.com>, "Amy.Toman@myfloridalegal.com" <Amy.Toman@myfloridalegal.com>
Cc: "Mark Herron (mherron@lawfla.com)" <mherron@lawfla.com>

2 Attachments

Supplemental Petition for Formal Administrative Hearing FEC11-087.1-22-2015.pdf

Supplemental Petition for Formal Administrative Hearing FEC11-089.1-22-2015.pdf

As submitted.

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STATE OF FLORIDA
FLORIDA ELECTIONS COMMISSION
Case No. FEC 11-087

FLORIDA ELECTIONS COMMISSION

versus

MYRON J. ROSNER
_____/

SUPPLEMENTAL PETITION FOR FORMAL ADMINISTRATIVE HEARING

Myron J. Rosner, pursuant to the statutory requirements of §§ 120.54(5)(b), 120.569, Florida Statutes (2015), and Rule 2B-01.0027, Florida Administrative Code, submits this request for a formal administrative hearing before an administrative law judge in the Division of Administrative Hearings. Rosner disputes material facts in the Order of Probable Cause and the Staff Recommendation as more fully set out below.

1. Myron Rosner's address for contact purposes is C/O Law Office of Benedict P. Kuehne, P.A., 100 S.E. 2d Street, Suite 3550, Miami, FL 33131-2154. Tel: 305.789.5989. Fax: 305.789.5987. Email: ben.kuehne@kuehnelaw.com.

2. Rosner received the Order of Probable Cause by email and U.S. Mail to counsel of record Benedict P. Kuehne on or about December 8, 2015.

3. Rosner's substantial interests are affected by the Order of Probable Cause, including but not limited to the imposition of potential sanctions and monetary assessments. According to Rule 2B-1.0027(11), of the Florida Administrative Code, an order of probable cause allows for the setting of a hearing involving disputed issues of material fact.

4. Rosner challenges and disputes the material facts contained in the Order of Probable Cause, including but not limited to the following Counts:

> **Count 1**
> During his 2011 campaign for Mayor of the City of Miami Beach, Respondent violated Section 106.19(1)(a), Florida Statutes, by accepting a contribution in excess of the limits prescribed by Section 106.08, Florida Statutes, when he accepted an in-kind contribution of at least $6,352.48 from Martin Outdoor Media for political advertisements on bus benches.
>
> *Rosner disputes that he received a contribution in excess of the limits prescribed by Section 106.08, Florida Statutes. Rosner disputes that he accepted an in-kind contribution of at least $6,352.48 from Martin Outdoor Media for political advertisements on bus benches, on or about the date asserted.*

Rosner also disputes that he willfully violated Sections 106.19(1)(a) and 106.08, Florida Statutes.

Count 2

On or about April 15, 2011, Respondent violated Section 106.07(5), Florida Statutes, when he certified that his amended 2011 G2 Report was true, correct, and complete when it was not.

Rosner disputes that his amended 2011 G2 Report was not true, was incorrect, and was incomplete, on or about the date asserted. Rosner also disputes that he willfully violated Section 106.07(5), Florida Statutes.

Count 3

On or about May 23, 2011, Respondent violated Section 106.07(5), Florida Statutes, when he certified that his amended 2011 G2 Report was true, correct, and complete when it was not.

Rosner disputes that his amended 2011 G2 Report was not true, was incorrect, and was incomplete, on or about the date asserted. Rosner also disputes that he willfully violated Section 106.07(5), Florida Statutes.

Count 4

On or about June 9, 2011, Respondent violated Section 106.07(5), Florida Statutes, when he certified that his amended 2011 G2 Report was true, correct, and complete when it was not.

Rosner disputes that his amended 2011 G2 Report was not true, was incorrect, and was incomplete, on or about the date asserted. Rosner also disputes that he willfully violated Section 106.07(5), Florida Statutes.

Count 5
On or about April 15, 2011, Respondent violated Section 106.19(1)(c), Florida Statutes, when he falsely reported or deliberately failed to include information required by Chapter 106, Florida Statutes.

Rosner disputes that he falsely reported or deliberately failed to include information required by Chapter 106, Florida Statutes, on or about the date asserted. Rosner also disputes that he willfully violated Section 106.19(1)(c), Florida Statutes.

Count 6
On or about May 23, 2011, Respondent violated Section 106.19(1)(c), Florida Statutes, when he falsely reported or deliberately failed to include information required by Chapter 106, Florida Statutes.

Rosner disputes that he falsely reported or deliberately failed to include information required by Chapter 106, Florida Statutes, on or about the date asserted. Rosner also disputes that he willfully violated Section 106.19(1)(c), Florida Statutes.

Count 7
On or about June 9, 2011, Respondent violated Section 106.19(1)(c), Florida Statutes, when he falsely reported or deliberately failed to include information required by Chapter 106, Florida Statutes.

Rosner disputes that he falsely reported or deliberately failed to include information required by Chapter 106, Florida Statutes, on or about the date asserted. Rosner also disputes that he willfully violated Section 106.19(1)(c), Florida Statutes.

5. Statement of the ultimate facts alleged, including a statement of the specific facts Rosner contends warrant reversal or modification of

the agency's proposed action. In addition to the specific fact in dispute identified in ¶4, Rosner disputes that any of his actions violated provisions of the cited Florida Statutes, or that his actions subject him to administrative enforcement or sanctions.

6. A statement of the specific rules or statutes that Rosner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes. Section 106.25(3), Florida Statues, requires that each count set forth in the order finding probable cause be dismissed in that Petitioner did not willfully violate any of the statutory provisions as alleged by the Commission. The underlying statutes cited by the Commission in the Order of Probable Cause were not violated by Rosner's actions, and are being misapplied by the Commission.

7. A statement of the relief sought by Rosner, stating precisely the action Rosner wishes the agency to take with respect to the proposed action. Rosner requests that he be granted a formal administrative hearing with respect to the allegations set forth in the order finding probable cause. Rosner further requests that this request for formal

administrative hearing be referred to the Division of Administrative Hearings for the assignment of an administrative law judge to conduct a formal proceeding; to enter a final order finding and concluding that Rosner did not violate Chapter 106, Florida Statutes, as alleged in the order of finding probable cause; to enter a final order dismissing the complaint; and to order such other relief as appropriate, including the award of costs and attorney's fees to the extent permitted by law.

Respectfully submitted,

s/ Benedict P. Kuehne
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CERTIFICATE OF SERVICE

I CERTIFY the foregoing was emailed on January 26, 2016, to:

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By: *S/ Benedict P. Kuehne*
BENEDICT P. KUEHNE

FLORIDA ELECTIONS COMMISSION
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January 20, 2016

Benedict P Kuehne
Law Offices of Ben Kuehne
Miami Towers, Suite 3550
100 SE 2nd Street
Miami, Florida 33131-2154

RE: Myron J. Rosner, Case Nos.: FEC 11-087 and FEC 11-089

Dear Mr. Kuehne:

The Florida Elections Commission received your request for a Formal Hearing before the Division of Administrative Hearings in the matters of FEC vs. Myron Rosner, case numbers 11-087 and 11-089. However, your request for a Formal Hearing in those matters failed to substantially comply with the requirements of Section 120.569, Florida Statutes.

Therefore, your request for a Formal Hearing in case numbers FEC 11-087 and FEC 11-089 has been denied. Unless a timely filed cured petition is received by the close of business on January 29, 2016, these cases will be included on the February 17-18, 2016 Commission agenda and heard before the Commissioners of the Florida Elections Commission as an informal hearing.

Sincerely,

Jaakan A. Williams
Assistant General Counsel

JW/dam

STATE OF FLORIDA
FLORIDA ELECTIONS COMMISSION
Case No. FEC 11-087

FLORIDA ELECTIONS COMMISSION

versus

MYRON J. ROSNER
_____/

NOTICE OF REQUEST FOR FORMAL ADMINISTRATIVE HEARING

Myron J. Rosner submits this request for a formal administrative hearing before an administrative law judge in the Division of Administrative Hearings. Respondent disputes material facts in the Staff Recommendation, including but not limited to the material facts contained in Paragraphs Counts 1, 2, 3, 4, 5, 6, and 7. Respondent contests the legal conclusions stated in the Staff Recommendation. Respondent denies commission of the violations alleged in the Order of Probable Cause, and incorporates his prior submissions to the Florida Elections Commission, among other information to be submitted during the course of formal administrative proceedings.

Respectfully submitted,

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By: S/ *Benedict P. Kuehne*
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870 So.2d 834

BROOKWOOD EXTENDED CARE CENTER OF HOMESTEAD, LLP, d/b/a Brookwood Gardens Convalescent Center, Appellant,
v.
AGENCY FOR HEALTHCARE ADMINISTRATION, Appellee.

No. 3D02-3060.

District Court of Appeal of Florida, Third District.

August 13, 2003.

Header ends here.

[870 So.2d 835]

Powell & Mack and Theodore E. Mack, Tallahassee, for appellant.

Gregory J. Philo, Tallahassee, for appellee.

[870 So.2d 836]

Before COPE, SHEVIN, and WELLS, JJ.

WELLS, Judge.

Brookwood Extended Care Center of Homestead, LLP, d/b/a Brookwood Convalescent Center appeals from a final order denying its request for an administrative hearing. We reverse.

A. AHCA's Survey

On April 12, 2002, the Agency for Health Care Administration ("AHCA"), the state agency responsible for licensing and regulating nursing homes, conducted its annual regulatory survey inspection of Brookwood, a licensed nursing home. Following that survey, AHCA issued a detailed forty-eight page Statement of Deficiencies (a Form 2567-L), detailing fact-based instances of psychological abuse; lack of supervision and interventions to prevent wandering and aggressive behaviors; failure to investigate allegations of abuse, neglect and mistreatment; failure to ensure residents' dignity and sense of individuality; failure to provide appropriate and effective activities to meet the needs of cognitively impaired residents; failure to maintain a clean environment; failure to keep the noise level tolerable; failure to individualize care plans for bladder and bowel management and to address aggressive, violent, and transitory behavior; failure to provide adequate nursing staff to prevent some residents from physically and psychologically abusing other residents; failure to ensure sanitary procedures to prevent food-borne illnesses; and failure to use administrative resources effectively to ensure appropriate and adequate interventions to prevent some residents from abusing others.

Based on observations and interviews with residents at Brookwood during the survey, AHCA determined that conditions at Brookwood presented a threat to the health, safety and welfare of the residents and imposed an immediate moratorium on new admissions to the facility. AHCA also filed a three count administrative complaint against Brookwood alleging that based on the annual survey, observations, interviews and record review, the facility failed (1) "to ensure that there was sufficient staff to provide nursing and related services to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident" as required by law; (2) "to assess appropriate interventions and implement procedures to protect residents from occurrences of neglect and lack of supervision of residents with wandering and aggressive behaviors who have access to all areas of the facility"; and (3) "to use its resources effectively and efficiently to

deter 17 wandering residents identified by the facility from going into other resident rooms uninvited and to prevent 10 facility identified abusive residents from physically and mentally abusing other residents." The complaint, which detailed many of the facts stated in the Form 2567-L Statement of Deficiencies, sought assessment of a $6,000 survey fee, issuance of a conditional license, and imposition of a $75,000 administrative fine. The complaint expressly advised Brookwood of its right to request an administrative hearing under sections 120.569 and 120.57 of the Florida Statutes and attached an explanation of rights

B. Brookwood's Petition for Administrative Review

In response to AHCA's thirty-seven page complaint and forty-eight page Statement of Deficiencies, Brookwood filed a two-and-one-half page Petition for Formal Administrative Hearing to which copies of AHCA's survey, the Statement of Deficiencies, moratorium order, and complaint were attached That petition, in pertinent part, generally denied "each and every

[870 So.2d 837]

factual allegation set forth in the Statement of Deficiencies, the Order of Immediate Moratorium and the Administrative Complaint," and alleged "that the ultimate facts will show that at all times pertinent to the licensure survey [Brookwood] was in compliance with all aplicable [sic] laws and regulations."

In response to this Petition, AHCA issued an order to show cause to Brookwood advising that no administrative hearing could be granted from the Order of Immediate Moratorium, and because the Statement of Deficiencies Form 2567-L did not constitute agency action, it would not support administrative review. Brookwood was advised that its request for formal hearing relating to the Administrative Complaint failed to satisfy the requirements of Rule 28-106.201(2) of the Florida Administrative Code, which requires that formal hearing requests contain a "statement of all disputed issues of material fact" and a "concise statement of the ultimate facts ... including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action."

Rather than amending its petition to satisfy the requirements of Rule 28-106.201, Brookwood took issue with AHCA's demand that *Brookwood* detail which facts were in dispute and that *Brookwood* identify the facts that it contended warranted reversal or modification of ACHA's proposed action. Brookwood's counsel wrote to the agency:

> Finally, these form orders to show cause started appearing under one of your predecessors I had hoped that they were gone with her demise. As is obvious from this letter, I have a problem with the way the current AHCA administration is trying to thwart the administrative hearing process. The requirements of Rule 28-106.201, F.A.C. are meant to allow the agency to identify the agency action being challenged. It is not a discovery process or a means of limiting the issues being challenged When an agency issues a complaint, it is the party setting out the facts When I file my petition on a complaint, I merely have to state that I deny those facts There is no reason for me to restate every fact already listed in the complaint It is ridiculous for the agency to argue that it does not know what facts are at issue when the agency is the one

> who set out the facts in its complaint.
>
> At the point in time that I file a petition, there has been no discovery, so I cannot state that certain facts are not in dispute. Once the matter is at DOAH and discovery and pretrial discussions have taken place, the issues not in dispute are weeded out. That is the purpose of the administrative hearing process. When I know that there are only certain issues that my client disputes, I identify those in the petition. But when we are disputing the entire agency action that is based on all of the underlying facts stated in the complaint, I have the right to dispute all of the facts and state concisely that I dispute all of the facts alleged. By doing so, I have identified all of the specific facts (as set forth in the complaint) that warrant reversal. Please also note that contrary to what your attachment says, there is no requirement in the rule that I provide a statement of the facts as my client "perceives them to be" [1]
>
> Brookwood is only filing this amended petition because AHCA has threatened to deny its request for a hearing alleging that its petition was not legally sufficient. AHCA is attempting to deny Brookwood's right to a hearing based on legal pleading technicalities. AHCA knows what facts and law are at issue because AHCA stated the relevant facts and law in its order of moratorium and complaint in this matter which were attached to Brookwood's petition. The purpose of setting forth facts and law in a petition is to put the agency on notice of the matter in dispute. The purpose of a petition is not to limit the facts that Brookwood wishes to challenge at hearing or to force Brookwood to set forth its position before it has had a chance to implement discovery. AHCA issued the petition, AHCA knows what the facts are. The only possible reason for AHCA to question Brookwood's petition is to deny Brookwood a hearing on matters that AHCA knows that it cannot defend at hearing.

In response to this letter, AHCA amended its order to show cause to eliminate any

[870 So.2d 838]

confusion over whether Brookwood had timely petitioned for administrative relief and again advised Brookwood that it had to comply with the requirements of Rule 28-106.201(2) or its petition would be dismissed. Brookwood responded by filing a petition virtually identical to its first bare-bones petition and prefaced it with the statement that:

On October 11, 2002, Brookwood's petition for administrative hearing was denied; it was ordered to pay $81,000 (the $75,000 fine and $6,000 in costs) to AHCA. Brookwood appeals. For the following reasons, we reverse.

C. Under the One Dismissal Rule, Brookwood May (and Must) Still Amend

Brookwood claims that its denial of all of the facts alleged in the administrative complaint and moratorium order and its statement that all of the facts detailed in these

documents were "untrue and warranted reversal," combined with its attachment and incorporation of these documents to its petition for administrative hearing, constitute *substantial* compliance with the requirements of subparagraph 120.54(5)(b)4 of the Florida Statutes and Rule 28-106.201(2) of the Florida Administrative Code. *See Accardi v. Dep't of Envtl. Protection*, 824 So.2d 992, 996 (Fla. 4th DCA 2002). They do not

Section 120.54, Florida Statutes (2003), provides in pertinent part:

> (5) Uniform rules.—
>
> (a)1. By July 1, 1997, the Administration Commission shall adopt one or more sets of uniform rules of procedure.... The uniform rules shall establish procedures that comply with the requirements of this chapter....
>
> * * *
>
> (b) The uniform rules of procedure adopted by the commission pursuant to this subsection shall include, but are not limited to:
>
> * * *
>
> 4. Uniform rules of procedure for the filing of petitions for administrative hearings pursuant to s. 120.569 or s. 120.57. Such rules shall require the petition to include:
>
> a. The identification of the petitioner.
>
> b. A statement of when and how the petitioner received notice of the agency's action or proposed action.
>
> c. An explanation of how the petitioner's substantial interests are or will be affected by the action or proposed action.
>
> d. A statement of all material facts disputed by the petitioner or a
>
> [870 So.2d 839]
>
> statement that there are no disputed facts.
>
> e. A statement of the ultimate facts alleged, including a statement of the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action.
>
> f. A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes.
>
> g. A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the proposed action.

(Emphasis added).

Relatedly, section 120.569, Florida Statutes (2003) provides:

> (c) Unless otherwise provided by law, a petition or request for hearing shall include those items required by the uniform rules adopted pursuant to s. 120.54(5)(b)4. Upon the receipt of a petition or request for hearing, the agency shall

> carefully review the petition to determine if it contains all of the required information. A petition shall be dismissed if it is not in substantial compliance with these requirements or it has been untimely filed....

(Emphasis added)

Likewise, Rule 28-106 201 of the Florida Administrative Code, outlining "Initiation of Proceedings" provides:

> (2) All petitions filed under these rules shall contain:
>
> (a) The name and address of each agency affected and each agency's file or identification number, if known;
>
> (b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;
>
> (c) A statement of when and how the petitioner received notice of the agency decision;
>
> (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
>
> (e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;
>
> (f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action; and
>
> (g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

(Emphasis added)

Fla. Admin. Code R. 28-106.201 ("Initiation of Proceedings"); *see* Fla. Admin. Code R. 59-1.018 (AHCA providing: "The Uniform Rules of Procedure are adopted").

AHCA relies on the above stated rules and statutory provisions as supporting its decision. Brookwood's counsel answers with a recalcitrant insistence that in previous years the unrefined denials such as the one he asserted below sufficed to secure hearings on agency actions. The simple answer to this is that the rules have changed. In 1998, the Florida Legislature amended section 120.54 to add subparagraph (5)(b)4. *See* ch. 98-200, § 3, at

[870 So. 2d 840]

1830-31, Laws of Fla. Section 120.569, was likewise amended at that time to reflect the mandatory nature of section 120.54. The agency thereafter amended its rules. The amended statute and rules are crystal clear. In a proceeding governed by Rule 28-106.201, the burden is now on the person or entity petitioning for an administrative hearing to state the ultimate facts, to identify the facts that are in dispute, and to allege the facts that warrant, in the petitioner's opinion, reversal.[2] *See also* ch. 03-94, § 2, Laws of Fla. (enacted

after the final order in the instant case and further amending section 120.54(5)(b) 4 to expressly "require *the petition* to include" a statement of disputed facts and the ultimate facts warranting reversal) (emphasis added). General denials and non-specific allegations of compliance will no longer suffice.

Brookwood's suggestion that rather than dismissing its petition, AHCA should have passed it on to DOAH to permit DOAH to rule on the sufficiency of its petition is also behind the times. As observed in The Florida Bar, Florida Administrative Practice § 4.7, at 4-11 (6th ed.2001):

> Although more latitude previously had been given, see, e.g., *Anthony Abraham Chevrolet Co. v. Collection Chevrolet Co.*, 533 So.2d 821 (Fla. 1st DCA 1988), 1998 revisions to the APA now require agencies to review petitions for compliance with these requirements before forwarding them to DOAH. F.S. 120.569(2)(c)-(2)(d). Before the 1998 revisions, agencies commonly would refer deficient petitions to DOAH and address defects through motions to the administrative law judge. This procedure no longer is allowed.

AHCA properly refused to pass Brookwood's deficient petition on to DOAH.

In addition to its claim that the specificity at issue had never been required in the past, is Brookwood's final salvo that the discovery necessary to draft a petition for a hearing with the specificity required in the uniform rules and Rule 28-106.201(2), has not yet occurred at the early stage of the proceedings—within 21 days of receipt of written notice of the agency's decision— when the petition is required, thus making the task impossible and illogical. *See* Fla. Admin. Code R. 28-106.111(2).

The response to this point is two fold. First, a time extension is generally available to permit the investigation necessary to draft a petition. *See* Fla. Admin. Code R. 28-106.111(3)("[a]n agency may, for good cause shown, grant an extension of time for filing an initial pleading"); Fla. Admin. Code R. 28-106.204(5)("[m]otions for extension of time shall be filed prior to the expiration of the deadline sought to be extended and shall state good cause for the request"). And statements made at this point of entry into the proceedings generally will not bar subsequent amendment of the petition. *See* Fla. Admin. Code R. 28-106.202.

Second, as conceded by counsel, there will in most instances be at least some factual determinations undisputed by the petitioner seeking a hearing. Just as the agency is obligated to give citizenry "fair notice" of the charges being faced, *see Totura v. Department of State*, 553 So.2d 272, 273 (Fla. 1st DCA 1989), it is fair to narrow the factual matters in dispute and alert the agency to the undisputed aspects of the charges at issue. Considering the

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costs associated with any agency action, an effort to tailor those expenses while still providing a full and fair opportunity to be heard, cannot be faulted. Thus, we find application of the rule both logical and entirely capable of being accomplished.

In sum, AHCA properly found Brookwood's hearing request to be legally insufficient. Brookwood's initial hearing request amounted to no more than a conclusory statement disputing every fact and legal conclusion no matter how perfunctory. Its amended request did little more than reiterate its earlier response. While a petitioner's efforts to comply with the above stated statutory requirements should be viewed for substantial compliance so as to allow the opportunity for a hearing and resolution of the matter on its merits,[3] the agency in this case was faced with no more than a Petitioner's insistent refusal to follow

the above stated statutory provisions. *See McIntyre v. Seminole County Sch. Bd.*, 779 So.2d 639 (Fla. 5th DCA 2001)(where only item employee failed to include in hearing request was how he became aware of School Board's action, the deficiency would not be deemed dispositive, and employee's letter was sufficient to meet the minimum requirements listed in section 120.54(5)(b) 4 for a hearing request).

Despite Brookwood's noncompliance, we conclude that the facility should be accorded the opportunity to conform its petition to the "uniform rules." Section 120.569 authorizes such action, as it instructs "[d]ismissal of a petition shall, *at least once,* be without prejudice to petitioner's filing a timely amended petition curing the defect, unless it conclusively appears from the face of the petition that the defect cannot be cured." (Emphasis added) Rule 28-106.201 similarly provides that dismissal of a petition for non-compliance with the rule shall "at least once, be without prejudice to petitioner's filing a timely amended petition curing the defect." Fla. Admin. Code R. 28-106.201 ("Initiation of Proceedings"); *see* Fla. Admin. Code R. 59-1.018 (AHCA providing: "The Uniform Rules of Procedure are adopted").

Here, the action was dismissed only once, that being after issuance of the second (the amended) order to show cause and the amended response. Brookwood is, therefore, still entitled to one more chance to comply with the rules. Taking Brookwood's counsel at his word, the petition's insufficiencies were the result of counsel's past experience as to the showing necessary to secure a hearing, rather than any effort to thwart, violate, or evade the law.

Accordingly the order under review is reversed and the matter is remanded for Brookwood to file a petition for hearing in compliance with subparagraph 120.54(5)(b)4, Rule 28-106.201, and the statements made herein.

SHEVIN, J., concurs.

COPE, J. (specially concurring).

I agree on the ultimate result, but write separately to address the responsibilities of agencies in considering requests for a

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formal hearing, and to suggest that the Legislature needs to amend the statute.

I.

Without realizing it was doing so, the Legislature has created a system that is hazardous to those who want to request an administrative hearing.

In the present case, the Agency for Health Care Administration ("AHCA") filed an administrative complaint against Brookwood Extended Care Center in which it sought to impose an administrative fine of $81,000.

Under the current version of the Administrative Procedure Act ("APA"), Brookwood's request for a formal hearing was processed by AHCA—the very agency which desired to impose the administrative fine.

AHCA replied to the request for hearing by sending Brookwood a form saying the request for an administrative hearing was not good enough. AHCA did this even though Brookwood asserted that it disputed every fact set forth in the administrative complaint.

Brookwood filed an amended petition for administrative hearing.

AHCA decided that the amended petition did not contain sufficient particularity as required by paragraph 120.569(2)(c), Florida Statutes (2002). AHCA denied the petition for administrative hearing and entered a final order assessing a fine of $81,000 against Brookwood.

There is an inherent conflict of interest in this system. The administrative agency which wishes to assess the administrative penalty is the same agency which is allowed to deny a hearing outright, simply on the basis of deficiencies—real or imagined—in the petition for administrative hearing.

AHCA advised us at oral argument that the agency clerk takes paragraph 120.569(2)(c), Florida Statutes (2002) to be a legislative mandate to dismiss petitions for hearing which do not comply with the statute. I have no quarrel with the idea that the statutes must be obeyed, but if the agency which is assessing the administrative fine is also the agency determining the right to a hearing, then the agency's power to deny a hearing must be carefully circumscribed.

II.

It goes without saying that the due process clause of the Federal and Florida Constitutions applies in administrative hearings. *See, e.g., Cherry Communications, Inc. v. Deason,* 652 So.2d 803, 804 (Fla.1995); *United Ins. Co. v. State Dept. of Ins.,* 793 So.2d 1182, 1183 (Fla. 1st DCA 2001). Litigants are entitled to fair notice and an opportunity to be heard before a fine or other administrative penalty is imposed upon them.

Because of due process considerations, if there is any doubt about the sufficiency of the petition, the doubt must be resolved in favor of granting the administrative hearing.

This also follows from the wording of the statute itself. The statute allows dismissal only if the petition "is not in substantial compliance with these requirements...." § 120.569(2)(c), Fla. Stat. (emphasis added); *see also id.* § 120.569(2)(d). The statute requires the agency to look at the substance of the petition. Substantial compliance, not perfect compliance, is all that is required. Nitpicking and hypertechnical reading of petitions are not allowed.

Measured against a substantial compliance standard, the Brookwood petition for administrative hearing was, in my view, legally sufficient. While I agree with the

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majority that a general denial is not appropriate in proceedings of this type, the substance of the dispute is clear. The propriety of the administrative fine is going to hinge on factual determinations and factual inferences regarding the conditions at Brookwood at the time of the inspection.

The next problem in this case is what I must characterize as a double standard employed by AHCA. AHCA's reason for rejecting the petition for hearing was its conclusion that the petition for hearing was insufficiently particularized. However, AHCA itself failed to give the litigant any particularity in rejecting the petition.

After Brookwood requested the administrative hearing, it received a form on which AHCA had checked the following item:

> The request for hearing was legally insufficient
>
> Please note: If this item is checked, the Agency recognizes that you requested a formal hearing pursuant to the provisions of Section 120.569 and 120.57(1), Florida Statutes. Your request, however, did not meet the requirements of Rule 28-106.201(2), Florida Administrative Code, as required by law and as noted on the Election of Rights form that you returned to the Agency. Since your request for hearing did not conform to the Rule, the

> Agency is required by law to deny it. See Section 120.569(2)(c), Florida Statutes.
>
> You have time, however, to amend your request for hearing if it was received on time. Please ensure that the amended request includes the information required by Rule 28-106.201(2), Florida Administrative Code, and that the Agency Clerk receives the amended request on or before fifteen (15) days of the date on which the Agency Clerk signed this Order to Show Cause.

R. 108.

Attached to this form was a document which listed nine items which must be included in a request for a formal hearing. AHCA did not identify which item or items it had found to be insufficient. The agency also attached the text of Rule 28-106.201. Again, AHCA did not identify which item or items it deemed insufficient.

Litigants should not have to guess at their peril what is wrong with the petition for administrative hearing. If the agency thinks the petition is not sufficiently particularized, then the agency must likewise identify the deficiency with reasonable particularity.[4]

III.

In my view, the Legislature should revisit Section 120.569, Florida Statutes, in light of the due process concerns outlined above. Further, it seems advisable to amend the statute with regard to administrative action that is initiated by the filing of an administrative complaint.

The administrative complaint in this case is thirty-six pages long, with fifty pages of attachments, setting forth the facts said to support the imposition of the $81,000 fine. At oral argument AHCA acknowledged, and I agree, that it would be sufficient for the defendant to submit a document which set forth those paragraphs of the administrative complaint which were admitted, denied, or as to

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which the defendant is without knowledge. The approach would, in other words, be similar to that which is followed under Florida Rule of Civil Procedure 1.110(c). To my way of thinking, such an approach would simplify the procedure for those agency actions which are initiated by administrative complaint.

The problem with the present version of section 120.569 is that it is a one-size-fits-all mechanism. The statute appears designed primarily for the situation in which an agency takes an action, such as a denial of a license, by writing the applicant a letter briefly setting forth the grounds for the denial. In that situation, if the applicant requests an administrative hearing, it is logical to require the applicant to file a petition for administrative hearing which spells out the nature of the dispute so as to allow a determination whether material facts are at issue which would require a referral to the Division of Administrative Hearings.

Where the agency proceeding is initiated by an administrative complaint, the situation is quite different. Where there is an administrative complaint, the agency has already identified the material facts which are said to support the disciplinary action. It does not serve any useful purpose to ask the litigant to draft another statement of the disputed issues of fact; it should be sufficient to identify only those portions of the administrative complaint which the defendant intends in good faith to dispute.

We were advised at oral argument that in general, if a litigant simply repeats all of the allegations of the administrative complaint in the petition for administrative hearing as disputed issues of fact, then AHCA will grant the petition and forward the case to the Division of Administrative Hearings. It is a waste of time and paper to have the identical factual matters stated twice: initially in the administrative complaint and then repeated in the petition for administrative hearing.

IV.

The courts and administrative officers should safeguard the constitutionally protected right to a fair hearing in the administrative process. The statute requires substantial compliance, not strict compliance, in submitting a petition for an administrative hearing. All doubt should be resolved in favor of granting an administrative hearing. A detailed reiteration of the facts contained in an administrative complaint is unnecessary; there only needs to be a brief specification of the facts which are controverted in good faith.

Statutory modification may well be warranted, especially as relates to administrative proceedings which are initiated by an administrative complaint.

Notes:

1. This last comment came in response to ACHA's paraphrasing of the Administrative Code's requirements as obligating a petitioner to "list . . . the facts in dispute" and to state the facts as the petitioner "perceives them to be."

2. It should be noted that neither party to this appeal has suggested that this proceeding is governed by any rule other than 28-106.201.

3. Brookwood's reliance on *Scott v. Department of State*, 828 So.2d 1091(Fla. 2d DCA 2002), to support its contention that it substantially complied with applicable administrative rules is misplaced. *Scott* involved the revocation of a license governed by Rule 28-107.004 which provides for administrative review of orders that "suspend, revoke, annul, or withdraw a license," and expressly states that "[t]he agency complaint shall be the petition [for administrative hearing] . . . ." The administrative complaint in this case did not seek to suspend, revoke, annul or withdraw Brookwood's license. Thus, Rule 28-106.201, as both parties confirm, rather than Rule 28-107.004, applies.

4. Although not raised as an issue in this case, I am hard pressed to see how the agency can deny a hearing outright. The point of paragraphs 120.569(2)(c) and (d) is to determine whether to refer the petition to the Division of Administrative Hearings. If there are no disputed issues of material fact, then it would appear that the litigant must nonetheless be given an informal hearing under subsection 120.57(2), Florida Statutes.

FEC 11-087 - Notice of Request for Formal Administrative Hearing and Notice of Appearance
Benedict P. Kuehne
to:
Florida Elections Commission
01/05/2016 12:03 AM
Hide Details
From: "Benedict P Kuehne" <ben.kuehne@kuehnelaw.com>
To: Florida Elections Commission <fec@myfloridalegal.com>
History: This message has been forwarded.

2 Attachments

Notice Requesst for Formal Administrative Hearing.FEC11-087.1-4-2015.pdf Notice of Appearance 1-4-2016.pdf

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STATE OF FLORIDA
FLORIDA ELECTIONS COMMISSION
Case No. FEC 11-087

FLORIDA ELECTIONS COMMISSION

versus

MYRON J. ROSNER
_____/

NOTICE OF APPEARANCE

Notice is given that Benedict P. Kuehne of the Law Office of Benedict P. Kuehne, P.A. appears as counsel for respondent Myron J. Rosner in this proceeding.

Respectfully submitted,

s/ Benedict P. Kuehne
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STATE OF FLORIDA
FLORIDA ELECTIONS COMMISSION
Case No. FEC 11-087

FLORIDA ELECTIONS COMMISSION

versus

MYRON J. ROSNER
_____/

NOTICE OF REQUEST FOR FORMAL ADMINISTRATIVE HEARING

Myron J. Rosner submits this request for a formal administrative hearing before an administrative law judge in the Division of Administrative Hearings. Respondent disputes material facts in the Staff Recommendation, including but not limited to the material facts contained in Paragraphs Counts 1, 2, 3, 4, 5, 6, and 7. Respondent contests the legal conclusions stated in the Staff Recommendation. Respondent denies commission of the violations alleged in the Order of Probable Cause, and incorporates his prior submissions to the Florida Elections Commission, among other information to be submitted during the course of formal administrative proceedings.

Respectfully submitted,

s/ Benedict P. Kuehne
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CERTIFICATE OF SERVICE

I CERTIFY the foregoing was January 4, 2016, to:

Donna Ann Malphurs, Agency Clerk
Florida Elections Commission
The Collins Building, Suite 224
107 West Gaines Street
Tallahassee, FL 32399-1050
fec@myfloridalegal.com

By: *S/ Benedict P. Kuehne*
BENEDICT P. KUEHNE

CERTIFICATE OF SERVICE

I CERTIFY the foregoing was emailed January 4, 2016, to:

Donna Ann Malphurs, Agency Clerk
Florida Elections Commission
The Collins Building, Suite 224
107 West Gaines Street
Tallahassee, FL 32399-1050
fec@myfloridalegal.com

By: S/ *Benedict P. Kuehne*
BENEDICT P. KUEHNE

STATE OF FLORIDA
FLORIDA ELECTIONS COMMISSION

Florida Elections Commission,
Petitioner,

Case No.: FEC 11-087

v.

Myron J. Rosner
Respondent.
_____/

ORDER OF PROBABLE CAUSE

THIS MATTER was heard by the Florida Elections Commission (Commission) at its regularly scheduled meeting on November 17, 2015, in Tallahassee, Florida.

Based on the Complaint, Report of Investigation, Staff's Recommendation, and oral statements made at the probable cause hearing, the Commission finds that there is **probable cause** to charge Respondent with the following violations:

Count 1

During his 2011 campaign for Mayor of the City of Miami Beach, Respondent violated Section 106.19(1)(a), Florida Statutes, by accepting a contribution in excess of the limits prescribed by Section 106.08, Florida Statutes, when he accepted an in-kind contribution of at least $6,352.48 from Martin Outdoor Media for political advertisements on bus benches.

Count 2

On or about April 15, 2011, Respondent violated Section 106.07(5), Florida Statutes, when he certified that his amended 2011 G2 Report was true, correct, and complete when it was not.

Count 3

On or about May 23, 2011, Respondent violated Section 106.07(5), Florida Statutes, when he certified that his amended 2011 G2 Report was true, correct, and complete when it was not.

Count 4

On or about June 9, 2011, Respondent violated Section 106.07(5), Florida Statutes, when he certified that his amended 2011 G2 Report was true, correct, and complete when it was not.

Count 5

On or about April 15, 2011, Respondent violated Section 106.19(1)(c), Florida Statutes, when he falsely reported or deliberately failed to include information required by Chapter 106, Florida Statutes.

Count 6

On or about May 23, 2011, Respondent violated Section 106.19(1)(c), Florida Statutes, when he falsely reported or deliberately failed to include information required by Chapter 106, Florida Statutes.

Count 7

On or about June 9, 2011, Respondent violated Section 106.19(1)(c), Florida Statutes, when he falsely reported or deliberately failed to include information required by Chapter 106, Florida Statutes.

DONE AND ORDERED by the Florida Elections Commission on November 17, 2015.

M. Scott Thomas, Chairman
Florida Elections Commission

Copies furnished to:
Jaakan A. Williams, Assistant General Counsel
Ben Kuehne, Attorney for Respondent
Mark Herron, Attorney for Respondent
Stephanie Kienzle, Complainant

NOTICE OF RIGHT TO A HEARING

As the Respondent, you may elect to resolve this case in several ways. First, you may elect to resolve this case by consent order where you and Commission staff agree to resolve the violation(s)s and agree to the amount of the fine. The consent order is then presented to the Commission for its approval. To discuss a consent order, contact the FEC attorney identified in the Order of Probable Cause.

Second, you may request an informal hearing held before the Commission, if you do not dispute any material fact in the Staff Recommendation. You have 30 days from the date the Order of Probable Cause is filed with the Commission to request such a hearing. The date this order was filed appears in the upper right-hand corner of the first page of the order. At the hearing, you will have the right to make written or oral arguments to the Commission concerning the legal issues related to the violation(s) and the potential fine. At the request of Respondent, the Commission will consider and determine willfulness at an informal hearing. Otherwise, live witness testimony is unnecessary.

Third, you may request a formal hearing held before an administrative law judge in the Division of Administrative Hearings (DOAH), if you dispute any material fact in the Staff Recommendation. You have 30 days from the date the Order of Probable Cause is filed with the Commission to request such a hearing. The date this order was filed appears in the upper right-hand corner of the first page of the order. At the hearing, you will have the right to present evidence relevant to the violation(s) listed in this order, to cross-examine opposing witnesses, to impeach any witness, and to rebut the evidence presented against you.

If you do not elect to resolve the case by consent order or request a formal hearing at the DOAH or an informal hearing before the Commission within 30 days of the date this Order of Probable Cause is filed with the Commission, the case will be sent to the Commission for a formal or informal hearing, depending on whether the facts are in dispute. The date this order was filed appears in the upper right-hand corner of the first page of the order.

To request a hearing, please send a written request to the Commission Clerk, Donna Ann Malphurs. The address of the Commission Clerk is 107 W. Gaines Street, Collins Building, Suite 224, Tallahassee, Florida 32399-1050. The telephone number is (850) 922-4539. The Clerk will provide you with a copy of Chapter 28-106, *Florida Administrative Code*, and other applicable rules upon request. No mediation is available.