Petitioner's Exceptions to ALJ Recommended Order
yates
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fec
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retired_in_fla, "Amy Toman"
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From: <yates@lindayates.com>
To: fec@myfloridalegal.com
Cc: retired_in_fla@yahoo.com, "Amy Toman" <Amy.Toman@myfloridalegal.com>
History: This message has been replied to.

1 Attachment

Petitioner's Exceptions to ALJ Recommended Order.pdf

Dear Ms. Malphurs, Petitioner Linda Yates pursuant to section 120.57(1)(k), Florida Statutes and rule 28-106.217 of the Florida Administrative Code, submits the attached exceptions to the Recommended order (RO) issued by Administrative Law Judge Linzie Bogan on August 7, 2017.

Respectfully,
Linda Yates
Petitioner – Pro Se
6475 Munsing Avenue
North Port, Florida 34291

STATE OF FLORIDA
FLORIDA ELECTIONS COMMISSION

LINDA YATES,

Petitioner, FEC CASE NO. 16-362
vs. DOAH CASE NO. 17-1593F

KATHY SCHURE,

Respondent.
_____/

PETITIONER'S EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE'S RECOMMENDED ORDER

Petitioner Linda Yates pursuant to section 120.57(1)(k), Florida Statutes and rule 28-106.217 of the Florida Administrative Code, files the following exceptions to the Recommended order (RO) issued by Administrative Law Judge Linzie Bogan on August 7, 2017.

Introduction

The Petition for costs and attorney's fees was considered by Florida Elections Commission (FEC) at its regularly scheduled meeting on February 28, 2017 (FEC hearing). At the FEC hearing the FEC voted unanimously finding that Yates' Petition made a prima facie showing of entitlement to costs and attorney fees and referred the matter to the Department of Administrative Hearings (DOAH) for a hearing involving disputed issues of material fact and for the entry of a Recommended Order determining whether the Petitioner is entitled to an award of attorney's fees and costs and if so what amount is due.

It is important to note aside from the Preliminary Statement in the RO omitting the FEC's ruling that the Petition made a Prima Facie showing of entitlement to costs and attorney fees, other misleading statements in the ALJ's Preliminary Statement are: 1) Yates "presented the testimony of six witnesses (including the testimony of Ms. Schure)". However, the record evidence shows Yates' called five fact witnesses and one expert witness, attorney Stephen Slepin, who was qualified by the ALJ as an expert witness as to the reasonableness of attorney's time and fees (DOAH transcript page 195). 2) The ALJ states "Ms. Schure testified on her own behalf and called no other witnesses." However, the record evidence shows, Schure did call one witness, Yates. Schure was afforded the opportunity to directly examine, call as a witness, Yates and she did (DOAH transcript page 247, 248 and 256).

There was also an error in the stated Petitioner's exhibits that were admitted into evidence. On Exhibit # 5, the City Commission meeting minutes of October 25, 2016, was admitted, Exhibit #15 was not. It is stated in the official transcript on page 187 lines 13-25 and page 188 lines 1-9 that the ALJ

erroneously stated that he was admitting Exhibit #15 but the Exhibit being offered and admitted was actually Exhibit #5. On August 11, 2017 Petitioner's filed a request of correction to Petitioner's exhibits admitted into evidence. By letter dated August 17, 2017 sent to all parties, the ALJ acknowledged the Petitioner is correct that Exhibit 5 was misidentified and that Exhibit 5 was indeed admitted into evidence and Petitioner's Exhibit 15 was not admitted into evidence.

Following the FEC's ruling as to the prima facie sufficiency of the Petition and Order referring the case to DOAH on March 16, 2017, the material issues of disputed facts in this case were: did Kathy Schure file her elections complaint against Yates with malicious intent to injure Yates' reputation by filing her complaint with knowledge that her allegation Yates had violated chapter 104 or 106 was false and/or did she filed her complaint with reckless disregard for whether her complaint contained false allegations of fact material to a violation of chapters 104 or 106, and if so what amount of award for costs and attorney fees is Yates entitled to. At the onset of the hearing, the ALJ confirmed these were the material issues to be resolved (DOAH transcript page 29 Lines 10-20). However, the RO, in an arbitrary and unreasonable departure from the material issues, answered no, particularly in conclusion #17, failing to take into proper consideration the facts and laws relating to the matter, when based on the record evidence and standards of 106.265(6), the answer is clearly and convincingly yes.

EXCEPTIONS

Petitioner takes no exceptions to Finding of Facts paragraph 1 and Conclusions of Law paragraphs 10, 11, 12, 13, 14, and 16 in the Recommended Order.

Petitioner states her exceptions to the remainder of the Recommended Order paragraphs wherefore the Findings of Fact ignored the record, were contrary to the competent substantial evidence, mischaracterized some findings and stated Conclusions of Law that are in conflict with or incorrectly applies the law governing complaints filed with the Florida Elections Commission in determining eligibility for award of Attorney Fees and Costs in accordance with 106.265(6) Florida Statute and rule 2B-1.0045 of the Florida Administrative code. The Petitioner respectfully requests the Florida Elections Commission review the record in its entirety and reject unsupported findings of fact, make corrections to statements in error of the competent substantial evidence, reject and/or modify conclusions of law with substitution of conclusions of law that are as or more reasonable than that which is rejected or modified, and find that Petitioner has met the requirements of 106.265(6) F.S and rule 2B-1.0045 and therefore is entitled to award of costs and attorney fees.

Exception #1 – RO page 3 Finding of Fact # 2 states in part: *"On August 22, 2016, Kathy Schure, who at all times relevant hereto was a resident of the City of North Port …"*,

Petitioner takes exception to this statement that is not a finding based upon the competent substantial evidence. The record evidence shows Schure actually has been a resident of the City of North Port since 2000 (DOAH transcript page 212 lines 1-3 and exhibit 12), and she held ill will toward Yates long before she filed her elections complaint on August 22, 2016 with emphasis on Yates' past financial matters (DOAH transcript page 244 lines 8-11 and 25 and page 245 line 1), and she was distressed when Yates was reelected in 2014 (DOAH transcript pages 64 -66). Schure admitted that the only person she had looked at the financial background, was Yates (DOAH pg 53 ln 15-18). When asked if she had publicized any information on others, Schure's response was, "No. Because it wasn't important." (DOAH transcript

pg 55). Schure's enmity of Yates is revealed on other pages of the DOAH transcript including but not limited to page 44, 48, 51, 53-55, 57, 64, 65.

Upon review of the entire record, because this part of RO finding of fact #2 was not based on the competent substantial evidence, the Petitioner requests the FEC modify #2 to reflect Schure has been a resident since 2000 and admitted she harbors ill will toward Yates with emphasis on Yates' past financial matters and she was distressed when Yates was reelected in 2014.

Exception #2 – RO page 3 Finding of Fact #2 states in part Schure: *"... filed a Complaint with the Florida Elections Commission alleging in material part the following:"* and then recites excerpts from page 5 of her elections complaint pertaining to allegations of sunshine and ethics violations.

Petitioner takes exception to this finding which ignores the totality of Schure's complaint as it pertains to the disputed issues of material fact and is not based upon the competent substantial record evidence. As the record evidence shows, in **material** part, Schure filed a sworn Florida Elections Commission Complaint asserting on page 1 section 3 that Yates allegedly had violated the Florida Election code chapters 104, 106 or Section 105.071 by writing **"see attached"**. The attachment, pages 5-7, listed only alleged violations of ethics law and chapter 286 and chapter 119, all of which are *immaterial* to chapters 104 and 106 that Schure alleged Yates had violated in section 3 on page 1 of her elections complaint.

The material issue at dispute was **not** Schure's allegations of sunshine, ethics and public records laws, but rather did Schure file her elections complaint with malicious intent to harm Yates' reputation by knowingly making a false allegation that Yates violated the Florida Election code chapters 104 or 106 **and/or** with reckless disregard for whether her complaint contained false allegations of fact material to chapters 104 or 106. These material issues were the essence of the six hour hearing of testimony with many documents admitted into evidence, all of which are the competent substantial record evidence. The RO finding of fact #2 only cites immaterial parts of Schure's complaint with absolutely **no mention of the material disputed issues nor reference to the testimony or evidence admitted**; it's as if an evidentiary hearing on the Petition did not even take place.

Upon review of the entire record, because the RO finding of fact #2 was not based on the competent substantial evidence as it pertains to issues of dispute, the Petitioner requests the FEC modify #2 to state: in material part, Schure filed a sworn Florida Elections Commission Complaint alleging on page 1 section 3 that Yates had violated the Florida Election code Chapters 104, 106 or Section 105.071 by writing "see attached". The attachment, pages 5-7, listed only alleged violations of ethics law and chapters 286 and 119 all of which are immaterial to chapters 104 and 106 that Schure had alleged Yates violated in section 3 on page 1 of her complaint.

Exception #3 – RO pages 3 and 4 Finding of Fact #3 states: *"On the complaint form, Ms. Schure identified Ms. Yates as a "candidate" for the city commission for the City of North Port. Although Ms. Yates was a member of the city commission on August 22, 2016, she was not a candidate for this office as noted by Ms. Schure in the Complaint."*

Petitioner takes exception to these two sentences being directly contradictive to each other and in part contrary to the record evidence. Petitioner also takes exception to RO endnote #4 in its entirety which incorrectly states "Schure *erroneously* identified Yates was a candidate".

At the time an Elections Complaint is filed a member of the city commission may or may not also be a candidate. Schure filed her elections complaint on August 22, 2016 and swore under oath on August 17, 2016 the information on her complaint form was true and correct. On her complaint form page 1 section 2 it states "If individual is a candidate, list the office or position sought" to which Schure responded "Commissioner (City)". It is undisputed that **Schure in her complaint asserted Yates was a candidate**. Schure testified at the DOAH hearing several times that **she knew "full well"** Yates was **not** a candidate (DOAH transcript pg 102 ln 13; pg 143 ln 4-5). There is no competent substantial evidence in the record that Schure noted in her Complaint that Yates was a Commissioner who was not a candidate. The record evidence also shows Schure testified "***I assumed that any complaint to the elections commission must involve a candidate***"(DOAH transcript page 230). Schure **intentionally** asserted Yates was a candidate; this was no accident.

Upon review of the entire record, because the RO finding of fact #3 was not based on the competent substantial evidence, the Petitioner requests the FEC modify #3 to state: "On her complaint form, Ms. Schure asserted Ms. Yates was a "candidate" for the city commission for the City of North Port. Although Ms. Yates was a member of the city commission on August 22, 2016, she was not a candidate for this office. Ms. Schure assumed that any complaint to the elections commission must involve a candidate and intentionally stated Ms. Yates was a candidate, though Schure knew that her assertion was not true.

Exception #4 – RO page 4 Finding of Fact # 4 states: *"The complaint form used by Ms. Schure to assert her allegations against Ms. Yates directs the complainant (Ms. Shure) to "[p]lease list the provisions The Florida Elections Code that you believe the person named above may have violated [and that] [t]he Commission has jurisdiction only to investigation [sic] . . .* ***Chapter 104, Chapter 106, and Section 105.071, Florida Statutes.****"*

The Petitioner takes exception in part as to the ALJ's omission of competent substantial evidence in the record that shows on page 1 in section 3 of her complaint Schure did not leave this section **blank** (see Exhibit 3, page LY-34). Instead, Schure stated **"See Attached"** alleging Yates had violated the Florida Election Code material to Chapters 104 and 106. Procedurally it is an essential requirement that the competent substantial evidence in the record not be ignored and that findings are to be based on such evidence. The ALJ's finding merely recites the FEC's language on page 1 section 3 of the complaint form and **omits** Schure's written response in that section as to her allegation that Yates had violated chapters 104 and or 106.

Upon review of the entire record, because the RO finding of fact #4 was not based on the competent substantial evidence, the Petitioner requests the FEC modify #4 to state: "The complaint form used by Ms. Schure to assert her allegations against Ms. Yates directs the complainant (Ms. Shure) to "[p]lease list the provisions The Florida Elections Code that you believe the person named above may have violated [and that] [t]he Commission has jurisdiction only to investigation [sic] . . . **Chapter 104, Chapter 106, and Section 105.071, Florida Statutes.**" In section 3 on page 1 Ms. Schure alleged Yates violated chapters 104, 106 and/or 105.071 by writing "See Attached".

Exception #5 – RO page 4 Finding of Fact # 5, Petitioner takes exception to the first sentence which states: *"The Complaint filed by Ms. Schure makes no reference to chapter 104, chapter 106 or section 105.071."*

While the sworn **Complaint** filed by Schure makes no reference to chapters 104 or 106 in her narrative **on pages 5-7** of her complaint, on page 1 in section 3 of her **Complaint Schure does allege Yates had violated those chapters. Schure wrote "see attached"** in that section 3 **attesting** that her attachment contained the facts, actions, documents and other evidence to support her allegation that Yates violated chapters 104 and/or 106. Schure offered no evidence in her attachment indicating she believed Yates violated any election laws, but rather **only** referenced Florida Statutes chapters 286 and 119 and case law dealing with open government laws. The record evidence shows Schure admitted to the Florida Elections Commission at the February 28, 2017 hearing that her elections complaint "had nothing to do with the election" (exhibit 2 LY8 Ln 16-18) and asserted she had "filed on the Sunshine Law" (exhibit 2 LY 14 ln 2-3). Schure also stated she did not submit additional information because she accepted the FEC's ruling (exhibit 2 LY12 Ln21-23). At the DOAH hearing on June 14, 2017 Schure repeatedly asserted Yates violated Sunshine law including statements: I know she's breaking the Sunshine Law; I filed this because you're breaking the Sunshine Law (DOAH transcript page 57 Ln 9-13). The competent substantial evidence in the record shows Schure knowingly filed her sworn elections complaint **falsely alleging** in section 3 on page 1 that Yates violated election laws chapters 104 and/or 106 **with reckless disregard** for whether her attached narrative contained fact material to chapters 104 and/or 106.

Yates' Petition sets forth clearly it is only in section 3 on page 1 of the complaint where Schure asserted her allegation Yates had violated chapters 104 and/or 106 and there was no attachment of such violations to election laws chapters 104 or 106. There is no competent substantial evidence in the record that Schure did not **consciously write in this section "see attached".** On February 28, 2017 when the FEC unanimously determined Yates' Petition met the criteria for a prima facie showing of entitlement to costs and attorney fees, the FEC knew, based on the entirety of Schure's complaint, their own letter of legal insufficiency, and the Petition, that Schure's attachment only asserted violations outside the FEC's jurisdiction and other than Schure's allegation in this section of the complaint, nowhere else did Schure make any allegations pertaining to violations of election laws.

If Schure' assertion **"See Attached"** in section 3 on page 1 of her complaint form was not sufficient for establishing Schure made an allegation that Yates had violated chapter 104 or 106, the FEC should have and would have dismissed the Petition for costs and attorney fees because there would not have been a prima facie showing. The FEC voted unanimously for that prima facie showing, which the ALJ completely failed to mention.

Upon review of the entire record, because the RO finding of fact #5 was not based on the competent substantial record evidence, the Petitioner requests the FEC modify #5 to state: The sworn complaint filed by Ms. Schure makes no reference to chapters 104 or 106 in her narrative on pages 5-7 of her complaint; **however**, on page 1 in section 3 of her complaint **Schure does allege Yates had violated those chapters**. Schure wrote "see attached" in section 3 attesting to FEC that her attachment contained the facts, actions, documents and other evidence to support her allegation that Yates violated Chapters 104 and/or 106. Schure offered no evidence in her attachment indicating she believed Yates violated any election laws, but rather only referenced Florida Statutes chapters 286 and 119 and case law dealing with open government laws. Ms. Schure was notified her complaint was legally insufficient, and she was given 14 days to provide additional information. Schure did not submit anything. Schure admitted to the Florida Elections Commission at the

February 28, 2017 hearing that her elections complaint "had nothing to do with the election" and asserted she had "filed on the Sunshine Law". Schure also stated she did not submit additional information because she accepted the FEC's ruling. At the DOAH hearing on June 14, 2017 Schure reasserted she filed her complaint because she alleged Yates violated Sunshine law. However, Schure filed her sworn elections complaint alleging in section 3 on page 1 that Yates violated election laws chapters 104 and/or 106 **though she knew her allegation was not true.** Regardless of whether Schure's attachment contained facts material to violations of chapters 104 and/or 106, she made the assertion of material violation in section 3 on page 1 of her complaint.

Exception #6 – RO page 4 Finding of Fact #6 states: *"By correspondence dated August 25, 2016, the Elections Commission informed Ms. Yates that Ms. Schure filed a complaint against her and that she had "14 days after receipt of the complaint to file an initial response," and that the Elections Commission would "not determine the legal sufficiency of the complaint" until expiration of the referenced 14-day response period."*

Petitioner takes exception to the ALJ's misrepresentation of the contents of the FEC's letter that is in the record as exhibit 3 page LY 32. The record evidence shows this letter actually states "On August 22, 2016, the Florida Elections Commission received the enclosed complaint **alleging that you violated Florida's Election Laws**." Whether or not Schure provided sufficient facts to support her allegation Yates had violated Florida's Election Laws does not negate that fact that Schure filed a complaint alleging Yates had violated Florida's Election Laws. This fact is further confirmed in RO #8, which is the October 20, 2016 letter from the Elections Commission informing Schure "The Florida Elections Commission has received **your complaint alleging violations of Florida's election laws**." By the FEC's and Yates' receipt of Schure's sworn elections complaint, each had no choice but to proceed with actions necessary as result of a formal complaint **alleging violation of Florida's Election Laws**. Further, the FEC's letter states, "The respondent [Yates] shall have 14 days after receipt of the complaint to file an initial response, and the **executive director** may not determine the legal sufficiency of the complaint during that time period." RO finding of fact #6, as stated, is absent the facts as in the record evidence. Had Yates not filed the Petition for costs and attorney fees after the case had been closed, the case would not have been in front of the Elections Commission.

Upon review of the entire record, because the RO finding of fact #6 was not based on the competent substantial evidence, the Petitioner requests the FEC modify #6 to state: By correspondence dated August 25, 2016, the Elections Commission informed Ms. Yates that "On August 22, 2016, the Florida Elections Commission received the enclosed complaint **alleging that you violated Florida's election laws**. Section 106.25(2), Florida Statutes states: The Respondent shall have 14 days after receipt of the complaint to file an initial response, and the **executive director** may not determine the legal sufficiency of the complaint during that time period."

Exception #7 - RO page 4 Finding of Fact #7 the first sentence states: *"On August 28th, Ms. Yates hired Douglas A. Daniels, Esquire, an attorney in good standing with The Florida Bar, to represent her before the Elections Commission."*

Petitioner takes exception to the mischaracterization of legal services retained by Yates that was actually for the **defense of the elections complaint filed by Schure**, which at some point could have gone before the elections commission. Yates' affidavit, Exhibit 19, states, "As a layperson and having no prior experience with this kind of matter, I retained the legal services of Mr. Doug Daniels, Esquire, for the purposes of submitting a timely response to the Florida Elections Commission and to ensure that the FEC complaint was handled in the

most appropriate, efficient and effective manner to **ensure my credibility and reputation was not impaired**." In addition, the Affidavit of Mr. Daniels, exhibit 18, describes the purposes of legal services rendered as it pertains to defense of the elections complaint filed by Schure. Also the record evidence shows Petitioner released Mr. Daniels on January 27, 2017.

Upon review of the entire record, because the RO finding of fact #7, first sentence, was not based on the competent substantial evidence, the Petitioner requests the FEC modify #7 the first sentence to state: On August 28th, Ms. Yates hired Douglas A. Daniels, Esquire, an attorney in good standing with The Florida Bar, to represent her in defense of the elections complaint filed by Ms. Schure. Mr. Daniels services were rendered through January 27, 2017.

Exception #8 - RO pages 4 & 5 Finding of Fact # 7, the second sentence, states *"Mr. Daniels charged Ms. Yates $400.00 per hour for work related to the Complaint filed by Ms. Schure."*

Petitioner takes exception to this inaccurate statement that is not based on the competent substantial record evidence. Per Mr. Daniels' Affidavit of Time and Fees, exhibit 18, Mr. Daniels charged Yates $400.00 per hour for 8.8 hours for a total of $3,520 and $300.00 per hour for 1.9 hours for a total of $570 with a grand total of $4,090. The Affidavit by Yates, exhibit 19, as to expenses incurred through June 2, 2017 as result of the elections complaint filed by Schure, confirms the time and fees charged by Mr. Daniels. Yates' Affidavit also attests to additional costs she has incurred of $880.49 in pursuing the Petition since January 27, 2017. Furthermore, though not mentioned in the RO finding of fact #7, attorney Stephen Slepin was called upon by Yates as an expert witness to opine on his experience in regards to the complaint, the Petition and the reasonableness of attorney's costs and fees. Mr. Slepin was recognized and qualified by the ALJ as an expert; however, the ALJ limited Slepin's testimony for the purposes of **opining only** as to the reasonableness of the attorney costs and fees incurred by Yates (DOAH transcript page 195 Ln 11-14 and page 203 Ln 23-24). Mr. Slepin testified the hours expended and rate billed by Daniels were reasonable (DOAH transcript pages 204 & 205).

Upon review of the entire record, because the RO finding of fact #7, second sentence, was not based on the competent substantial evidence, the Petitioner requests the FEC modify #7 the second sentence to state: For the work related to the Elections Complaint filed by Ms. Schure, Mr. Daniel's charged Yates $400.00 per hour for 8.8 hours for a total of $3,520 and $300.00 per hour for 1.9 hours for a total of $570 with a grand total of $4,090. Mr. Slepin was recognized and qualified as an expert for the purposes of opining as to the reasonableness of the attorney costs and fees incurred by Yates. Mr. Slepin testified that the hours expended and rate billed by Mr. Daniels were reasonable. Yates incurred additional costs of $880.49 in pursuing the Petition since January 27, 2017.

Exception #9 – RO page 5 Finding of fact #8, Petitioner takes exception to this finding to the extent which it ignores the record evidence nearly in its entirety. The ALJ only recites the occurrence and contents of correspondence from the FEC to Schure on October 20, 2016 and **omits** the publication of Schure's Complaint also on October 20, 2016 (exhibit 3 LY59) as well as other deceitful actions by Schure pertaining to her Complaint.

On October 20, 2016 the *Herald Tribune* newspaper posted an article online regarding the Florida Election Complaint Schure had filed with the FEC on August 22, 2016. The article was titled "Commission to discuss alleged Sunshine Law violation" and raised question of Yates. The article also

noted that the complaint was filed with the Florida Elections Commission on **July 22**. That date was not accurate; however, that date was based on the copy of the FEC complaint that Schure had **altered** and then provided to the City (exhibit 3 pg LY 59-61).

On September 9, 2016, **before the FEC completed its most basic legal sufficiency review**, Schure hand-delivered to the City Clerk's office an **altered** copy of her FEC complaint alleging Yates had violated election law. Schure insisted that the City Clerk submit her alleged FEC complaint into the public record and distribute it to all City Commissioners (exhibit 3 LY 43-49; DOAH page 185 lines 1–8). The content was identical to the complaint she had sent to the FEC **excep**t for the two pages with the "notarized" sworn oath **and** the first page of her attachment. **Schure had whited out** the date of August 1, 2016 on the narrative, page 5 (exhibit 3 LY47), and **switched the two "notarized" pages** that were dated August 17, 2016 with two notarized pages showing July 22, 2016 (exhibit 3 LY44 &LY46). These two "notarized" pages were identical with the notary stamp in the exact same place and all text and markings exactly the same. Furthermore, these two "notarized" pages were also identical to the July 22, 2016 "notarized" page from Schure's separate complaint that she had submitted to the FEC in July against Jacqueline Moore (exhibit 3 LY83). According to notary Joy Crowley's testimony her records for July 22, 2016 show **no customer transaction with three notary signature fees that day** (DOAH transcript pg 153 ln 14-19). Schure delivered an altered version of her FEC Complaint to the City, misrepresenting to the City and the public that her FEC complaint was filed in July rather than the true date in August.

On October 18, 2016, Schure's **altered** FEC complaint was published on the city's website as an agenda item for discussion at the October 25, 2016 Commission Meeting as requested by then-Commissioner Cheryl Cook, Schure's friend of 15 years as she testified at the DOAH hearing (DOAH transcript page 69 ln 12-22).

On October 25, 2016, the *North Port Sun* newspaper published an article with the headline, "Commission to discuss thrown-out elections complaint." The Commission meeting took place at 6 p.m. that same day. The meeting agenda was approved with the removal of item 6G for discussion of Schure's alleged and **altered** FEC Complaint. Though the City Commission did not discuss the item, City Clerk Adkins testified that the meeting minutes are a **permanent record** and Schure's alleged and altered FEC complaint stays in the meeting file and will remain accessible on the city's website for a long time (DOAH transcript pg 189 ln 2-5 and exhibit 5). Schure's FEC complaint caused damage to Yates' reputation that is **permanent and irreversible**.

Upon review of the entire record, because the RO finding of fact #8 was not based on the competent substantial evidence or in compliance with essential requirements of law by failure to take into proper consideration the facts and law relating to the disputed issues of facts before the ALJ for determining whether the elements of 106.265(6) were met, the Petitioner requests the FEC modify #8 to include: On October 20, 2016 the *Herald Tribune* newspaper posted an article online regarding the Florida Election Complaint Schure had filed with the FEC on August 22, 2016. The article was titled "Commission to discuss alleged Sunshine Law violation" and raised question of Yates. On September 9, 2016 Schure hand-delivered to the City an **altered** copy of her alleged FEC complaint and requested that the City Clerk submit her alleged FEC complaint into the public record and distribute it to all City Commissioners. The content was identical to the complaint Schure had filed with the FEC except she had whited out the date of August 1, 2016 on page 5 and switched the two notarized pages that were

dated August 17, 2016 with two pages showing a notary date of July 22, 2016 that where identical to the July 22, 2016 notarized page from Schure's FEC complaint she had filed in July against another individual. On October 18, 2016, Schure's altered FEC complaint was published on the city's website as an agenda item for discussion at the October 25, 2016 Commission Meeting as requested by then-Commissioner Cheryl Cook, Schure's friend of 15 years. On October 25, 2016, the *North Port Sun* newspaper published an article with the headline, "Commission to discuss thrown-out elections complaint." The Commission meeting took place at 6 p.m. that same day. Schure's alleged and altered FEC Complaint was removed from the meeting agenda, however, the meeting minutes are a permanent record and Schure's alleged and altered FEC complaint against Yates stays in the meeting file and will remain accessible on the city's website for a long time.

Exception #10 – RO page 6 Finding of fact # 9 states: *"Ms. Schure offered no additional information in support of her allegations and the Elections Commission, by correspondence dated December 30, 2016, informed Ms. Yates that the Complaint was dismissed due to legal insufficiency."*

Petitioner takes exception to the mischaracterization that the Complaint was dismissed when the record reflects the case was **closed**. Rule 2B-1.0025 F.A.C. makes clear, a case that is legally insufficient is "closed". The Complaint had not gone to the Commission for disposition, rather the legal insufficiency of the complaint had been determined by the executive director, as noted in the letter to Schure dated October 20, 2016, (exhibit 7) and since Schure had not submitted additional information to correct the stated grounds of insufficiency the case was **closed** as stated in the December 30, 2016 letter (exhibit 3 LY63).

Upon review of the entire record, because the RO finding of fact #9 is not based on the competent substantial record evidence, the Petitioner requests the FEC modify #7 to state: Ms. Schure offered no additional information in support of her allegations and the Elections Commission, by correspondence dated December 30, 2016, informed Ms. Yates that the case was closed due to legal insufficiency.

Exception # 11 - RO page 8 and 9 Conclusions of Law # 15 – The ALJ's conclusion includes excerpts from the Hadeed case (an ethics commission case) and the statement *"Hadeed is persuasive, if not controlling, in resolving the instant dispute."*

Petitioner takes exception to the ALJ's interpretation and application to the instant case. The ALJ's statement *"Hadeed is persuasive, if not controlling, in resolving the instant dispute",* should be **rejected and substituted** with the following that is as or more reasonable than the ALJ's statement:

Unlike the Hadeed case, **the instant case is distinctly different**. As stated in endnote #3:

> *"The court in Hadeed noted that the Ethics Commission found three allegations in the "hundreds of pages of inflammatory, disparaging, and conclusory allegations in the complaints" that "were material to possible ethics violations." Because of these material allegations, it was necessary for the court to determine "whether these factual allegations—stripped of the tacked-on hyperbolic legal conclusions that accompany them in the complaints—are false."*

1). The Hadeed court addressed the question of whether those 3 material allegations were **false** and found, quote: **"They are not."** The statements made were **true** and the court explained *"The Commission found that these actions were part of the official's duties and not ethical breaches.* ***Accordingly, there are no false***

allegations *of fact in the complaints that are material to a violation of the Code to support a request for costs and fees."*

2) **Contrary to Hadeed, in the instant case**, one seemingly precedent for the Elections Commission, though Schure made numerous unsubstantiated allegations in the attachment to her complaint about other laws immaterial to election law, the only **underlying material allegation Schure made** that Yates had violated Florida Election laws chapters 104, 106 or section 105.071 was on page 1 in section 3 asserting "see attached" – **which is a false allegation.**

3) The **Hadeed case also differs from the instant case** in that the Ethics Commission **denied Hadeed's Petition** for costs and attorney fees. In Hadeed, though not violations, the 3 material allegations **were true,** therefore, the ethics commission did not find a prima facie showing for a claim for costs and attorney fees and **the petition was dismissed;** it never went to DOAH. That is **not** the situation with the instant case. Yates' Petition was specific as to the material false allegation being on page 1 in section 3, and the elections commission found a prima facie showing on February 28, 2017.

4) **Unlike the Hadeed case**, Yates' Petition did not state a claim under 106.265(6) because Schure made allegations of violations of laws outside the FEC's jurisdiction. Yates explicitly pointed out in her Petition the FEC was not the proper venue to adjudicate those matters and did not speak to the truth or falsity of such allegations not germane to the issue of **the allegation Schure had made that Yates violated election laws**.

The stated grounds in Yates' Petition was that in Schure's sworn complaint on page 1 in section 2, Schure asserted Yates was a candidate and on page 1 in section 3 Schure alleged Yates violated Florida Election laws chapters 104, 106 or section 105.071 by writing "see attached" and, therefore, Yates requested a hearing to prove that Schure had filed her elections complaint with malicious intent to injure Yates reputation because at the time she filed her complaint Schure ***knew*** Yates was not a candidate and Schure ***knew*** that her allegation Yates violated Florida Election laws chapters 104 or 106 ***was false*** and Schure filed her complaint ***with reckless disregard*** for whether her complaint contained false allegations of fact material to a violation of chapter 104 or chapter 106.

The Elections Commission unanimously found *"The Petition made a Prima Facie showing of entitlement to costs and attorney's fees in connection with this matter."* The fact that Schure made no other allegations of violation of election laws in her complaint other than her allegation on page 1 in section 3 that Yates violated Florida Election laws chapters 104, 106 or section 105.071 was already established by the FEC's ruling as to the prima facie sufficiency of the Petition; otherwise the Petition would have been denied, as in Hadeed, because everything else would have been moot and there would have been no cause for a hearing.

Having found Yates' Petition made a prima facie showing of entitlment to an award of costs and attorney fees, the FEC referred the Petition to DOAH for a hearing involving the disputed issues of material facts. Schure did not file a response to Yates' petition; however, Schure appeared at the FEC hearing on February 28, 2017 and disputed having filed her complaint with malice, but confirmed her complaint had nothing to do with election.

5) The Hadeed case may be persuasive when complaints include a multitude of allegations, both material and immaterial, and all material allegations are true even though they may not meet the threshold of a violation and the complaints are found legally insufficient. **However, that was not the circumstance in**

the instant case. Cases more akin to this case, which are also within the jurisdiction of the Florida Election Commission, are Gaylord A. Wood Jr. vs. R.C. "Rick" Lussy FEC 16-357 (DOAH 17-1594F) and Yeago vs. Barnas FEC13-125 (DOAH 13-4759F).

In Wood vs. Lussy, although this case is still pending final order from the FEC, it is important to note the remarkably similar circumstances as in the Yates vs. Schure case: 1) When Mr. Lussy filed the complaint against Mr. Wood, he knew that Mr. Wood was not an elected official or candidate for elected office. 2) Mr. Lussy offered no evidence to support the allegations of his Complaint Affidavit. 3) He offered no evidence that Mr. Wood violated sections 104.051, 104.011, or 104.091. 4) Mr. Lussy offered no evidence that would support a finding that he could reasonably think that Mr. Wood violated the prohibitions of those statutes. 5) Mr. Lussy offered only his bare assertions, most deal with complaints about property appraisals by Mr. Skinner, responses to requests for documents under Florida's Public Records Act, and Mr. Skinner's maintenance of the property tax rolls.

Also, **nearly the same as in the instant case**, an FEC's letter to Mr. Lussy dated October 19, 2016, stated: *"The Florida Elections Commission has received your complaint alleging violations of Florida's election laws. I have reviewed your complaint and find it to be legally insufficient. This complaint fails to state a cognizable claim under Chapter 104 or 106, Florida Statutes. The complaint is, therefore, beyond the jurisdiction of the Florida Elections Commission and legally insufficient."*

On July 21, 2017 a **DOAH Recommended Order was issued** in the Wood case with a conclusion "Mr. Lussy filed his Complaint Affidavit against Mr. Wood **with reckless disregard for whether the complaint contained false allegations of material fact. Ill will or malice motivated him.** The requirements of section 106.265(6) **are met**." **The same conclusions in application of the law should apply to Yates vs. Schure.**

Similarly, in the Yeago vs. Barnas case, Mr. Barnas was found to have maintained a **conscious indifference to the truth or falsity of his allegations**, which **constitutes reckless disregard** for the truth of the allegations made by Mr. Barnas in his FEC complaint. "Ms. Yeago was simply a means to an end, enabling Mr. Barnas to file an FEC complaint against an organization who he felt opposed something he favored."

Exception #12 – RO page 9 Conclusion of Law # 17 - This conclusion states: *"Having reviewed the allegations of the underlying complaint that Ms. Schure filed against Ms. Yates with the elections Commission, it is not necessary to address the veracity of the allegations because they are framed exclusively within the context of chapters 119 and 286, neither of which falls within the jurisdiction of the Elections Commission.[3/] Ms. Schure's allegations that Ms. Yates violated chapters 286 and 119 are immaterial to whether Ms. Yates violated chapters 104 and 106, which respectively deal with elections requirements and matters related to campaign finance. Therefore, in accordance with Hadeed, Ms. Yates is not entitled to recover her fees and costs because Ms. Schure's allegations against her are immaterial to any purported violation of either chapter 104 or 106.[4/]*

Petitioner takes exception to conclusion #17 and **requests rejection in its entirety including endnotes 3 and 4**. The instant case was **not** referred to DOAH for a determination of legal insufficiency of the complaint **nor** to address the veracity of Schure's allegations pertaining to chapters 119 and 286.

Furthermore, Petitioner takes exception to the procedural conduct at the hearing being inconsistent with the essential requirements of law. Aside from the presiding officer's tolerance for Schure's cursing, belligerence and badgering of witnesses, also concerning was the ALJ's diversion from a hearing that was to be solely for the purpose of hearing the disputed issues of material fact as to Yates' Petition for award of costs and attorney fees as order by the FEC on March 16, 2017. It was acknowledged and undisputed from when the case was found to be legally insufficient and subsequently closed, that Schure's allegations within her elections complaint regarding accusations of Sunshine, ethics and public records law violations were outside the FEC's jurisdiction, and the validity of such allegations **were not** of issue to be heard in this venue. However, at the hearing, despite numerous objections by Yates, the ALJ allowed Schure to admit exhibits and ask questions material to Schures allegations of violations of sunshine law, ethics law and public records law. The Petitioner was denied appropriate due process and representation with respect to such allegations that were clearly not for adjudication at the DOAH hearing, as it was previously established those allegations were outside the jurisdiction and authority of Florida Elections Commission.

Prior to the DOAH hearing, the FEC had already determined Schure's allegations that Yates violated chapters 286 and 119 were immaterial to whether Yates violated chapters 104 and 106 and found Schure's complaint legally insufficient and closed the case on December 30, 2016. Yates then filed her Petition and **the FEC, by a 7-0 vote on February 28, 2017 found,** *"The Petition made a Prima Facie showing of entitlement to costs and attorney's fees in connection with this matter."* The fact that Schure made no other allegations of violation of election laws in her complaint other than her allegation on page 1 in section 3 that Yates violated Florida Election laws chapters 104, 106 or section 105.071, was already established by the FEC's ruling as to the prima facie sufficiency of the Petition; otherwise the Petition would have been denied, as in Hadeed, because everything else would have been moot and there would have been no cause for a hearing. **As detailed in exception #11, the circumstances of the Hadeed case do not correlate to the instant case.**

The RO Conclusion of Law # 14 refers to Brown v. Florida Commission on Ethics, 969 So. 2d 553, 560 (Fla. 1st DCA 2007) as to the standard of malice and elements of a claim for attorney fees and costs. In accordance with Brown, Yates is entitled to recover her fees and costs. In the instant case, the material issue of Schure's malicious intent is addressed throughout the entire the record which includes her admittance of ill will toward Yates with emphasis on Yates' past financial matters, distress when Yates was reelected in 2014 and desire to file a complaint against Yates, stating "I just wanted to file a complaint". Furthermore, shortly after filing her complaint with the FEC, **Schure altered** the FEC complaint documents and distributed them for public accessibility through the City of North Port, thereby bringing widespread publicity to her alleged elections complaint, which she knew was false. All of these actions conclusively establish that Schure filed her complaint with malicious intent to injure Yates' reputation.

Furthermore, in Brown the **complainant had filed** an ethics complaint **without checking into the facts**, and admitted that he conducted no investigation prior to filing the ethics complaint. In examining the phrase "reckless disregard for the truth," the **Brown court defined it as a conscious indifference to the truth**. In the instant case, a review of the entire record and the competent substantial evidence warrants just as reasonable conclusion of law, akin to Brown. Schure's convoluted and contradictory testimony reveals **Schure maintained a conscious indifference to the truth or falsity of her allegation that Yates violated election law chapters 104 or 106 by recklessly ignoring her knowledge that her concerns on**

pages 5-7 did not pertain to election laws. Schure testified she had researched Sunshine law and knew what that law is, but she did not research election law and she did not know what those laws were. However, having filed an elections complaint against Jacqueline Moore with details and citation of election law just one month prior to filing her elections complaint against Yates, Schure demonstrated she had at least some knowledge of election law and her ability to reference it. Schure admitted that someone else wrote the narrative (pages 5-7) attached to her complaint and there was information contained in it that she did not know or understand. **Schure filed her complaint with reckless disregard by failing to reasonably research or verify whether the statements, hearsay, provided to her by a friend were not only true and accurate to Schure's own knowledge but most importantly whether they were germane to Schure's allegation that Yates violated election law chapters 104 or 106.**

As the **Brown** Court addressed, while public officials are subjected to public opinion that may be vehement, caustic, and unpleasant, the right to freely express opinions does not give right to use it as a sword to justify baseless legal proceedings. Had Schure made her false accusations and defamatory statements verbally or in communications materials, certainly Yates could have ignored Schure's comments, responded with her own statements or voluntarily pursued legal action. However, when Schure willfully filed her sworn elections complaint utilizing the Florida Elections Commission process, Schure drew Yates into legal proceedings involuntarily, leaving Yates with no choice but to defend herself. Here in this proceeding Yates is not seeking damages for slander or defamation, she is merely trying to recover the expenses she incurred in defending herself pertaining to the complaint filed by Schure. This distinction is critical as to its implications upon any public servant if irresponsible actions with reliance upon ignorance and/or freedom of expression were to be used as a shield for initiating a legal proceeding without merit or with conscious disregard of an agency's jurisdiction or based on false allegations and or hearsay.

The competent substantial record evidence shows Schure's strategically orchestrated filing of a Florida Elections Complaint was with an underlying motive to inflict shame on Yates' reputation and inflict financial harm. Schure's calculated and willful actions sets a precedent in the most egregious example of misuse of the Florida Elections Complaint process and deceit to not only a State agency, but also the City of North Port and the public in general with a malicious intent to harm an elected official whom she did not support. Schure's complaint is blatantly political and shameful, without merit, and Schure filed it in bad faith.

If the ALJ's conclusion of law #17 were to be considered reasonable, the implications would set a egregious precedent, enabling and encouraging individuals to submit election violation Complaints to the Florida Elections Commission for allegations ***intentionally immaterial*** to the FEC's jurisdiction. As result, the FEC would be inundated with processing complaints outside of its jurisdiction, many filed by complainants for the sole purpose of damaging the reputation of their targeted respondent(s). When the administrative complaint process is used with malicious intent for nothing more than a means to a political end, the public is deprived of the FEC's vital role for the public good. To preserve the integrity of the resources available to the public, the FEC process and that of any other government agency must not be thwarted and utilized for illegitimate reasons merely to inflict harm to elected officials and candidates. This case is a textbook example of conscious disregard of the FEC's true purpose as a means for someone to bring disrepute upon an elected official they do not support. If Schure's abuse of the FEC is tolerated without accountability, that would enable others to exploit the FEC and agencies like it, by maliciously filing sham complaints, thereby draining the agency

resources that would otherwise be used for legitimate complaints. Any person of common understanding would find the ALJ's interpretation of the utilization of the FEC's complaint form and processes to be not only unreasonable but contrary to the legislature's intent in adopting section 106.265(6) which serves to ensure responsibility and accountability of unscrupulous individuals that use the process to harm state, local and judicial elected officials.

Petitioner respectfully requests the Elections Commission reject the RO Conclusion of Law #17 in its entirety including endnotes 3 and 4 and substitute a Conclusion of law as follows which is as or more reasonable than that of the ALJ:

In accordance with Brown, the Petitioner has proven by "clear and convincing evidence" that Schure filed an elections complaint against Yates with a malicious intent to injure Yates' reputation by filing her complaint with knowledge that the complaint contained a false allegation Yates had violated chapter 104 or 106 and with reckless disregard for whether the complaint contains false allegations of fact material to a violation of chapter 104 or 106, meeting the requirements of 106.265(6) and as such Yates is entitled to costs and attorney fees.

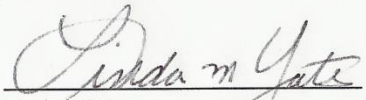
While there is an inherent expectation a report of an evidentiary hearing and Recommended Order would thoroughly and accurately reflect the record, even if all of the ALJ's finding of facts were applied as in the RO (though severely deplete of the existence of the preponderance of facts in the record) findings of facts numbers 1, 2, 3, 4, 5, 6, 8 and 9 establishes the facts that a reasonable mind can conclude, Schure filed her elections complaint that essentially had nothing to do with election laws despite clear direction, as recited in RO #4, with reckless disregard as to whether her complaint contains false allegations of fact material to a violation of chapters 104 or 106 and given the opportunity to cure the legal insufficiency of her complaint Schure did not contest that finding nor submit any additional information to support her allegation Yates had violated chapters 104 and/or 106. In addition the RO finding of fact # 7, corrected as to the amount charged in accordance with the record evidence, established the fact Yates incurred costs and attorney fees as result of the elections complaint filed by Schure. Based on such findings of facts and supported by the RO conclusions of law numbers 10, 11, 12, 13, 14 and 16 and rejection of 15 and 17, Petitioner requests the FEC substitute the RO Conclusion #17 with the following conclusion of law, which is as or more reasonable than that of the ALJ:

The Petitioner has proven by "clear and convincing evidence" that Schure filed an elections complaint against Yates with a malicious intent to injure Yates' reputation by filing her complaint with knowledge that the complaint contained a false allegation Yates had violated chapter 104 or 106 and with reckless disregard for whether the complaint contains false allegations of fact material to a violation of chapters 104 or 106, meeting the requirements of 106.265(6) and as such Yates is entitled to costs and attorney fees.

Exception #13 – RO page 10 - Recommendation

Petitioner takes exception to the ALJ's Recommendation paragraph in its entirety and based upon the foregoing, Petitioner respectfully requests the Florida Elections Commission enter a final order Recommending the award to Petitioner Linda Yates of attorney's fees in the amount of $4,090 and costs of $880.49 for a total of $4,970.49 in addition to the amounts of subsequent costs incurred in proving entitlement to an award and the amount of costs and fees.

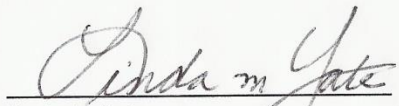
Respectfully submitted,



Linda M Yates
Petitioner – Pro Se
6475 Munsing Avenue
North Port, Florida 34291
yates@lindayates.com
941-423-0444

CERTIFICATE OF SERVICE

I, hereby certify that a copy of the foregoing PETITIONER'S EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE'S RECOMMENDED ORDER was furnished this 21st day of August, 2017 to AMY TOMAN, Collins Building Suite 224, 107 West Gaines Street, Tallahassee FL 32399-1050 electronically at amy.toman@myfloridalegal.com and to KATHY SCHURE, 3720 West Price Boulevard, North Port Florida 34286 by US mail and electronically at retired_in_fla@yahoo.com and to Donna Malphurs, Agency Clerk, Florida Elections Commission The Collins Building, Suite 224, 107 West Gaines Street Tallahassee, Florida 32399-1050 electronically at fec@myfloridalegal.com.



Linda M Yates
Petitioner – Pro Se
6475 Munsing Avenue
North Port, Florida 34291
yates@lindayates.com
941-423-0444