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State of Florida
COMMISSION ON ETHICS
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MEMORANDUM

TO: Commission Members
FROM: Phil 
SUBJECT: Complaint No. 09-122, In re Nancy Argenziano
DATE: May 17, 2010

Attached is a draft of a Public Report Withdrawing and Dismissing Complaint that would dismiss this complaint, based on the Complainant's request to allow her to withdraw it. Also attached is a Motion for Review of Legal Sufficiency and To Dismiss Complaint, filed by the Respondent, to which is attached the Complainant's affidavit in which she requests that the complaint be withdrawn. Finally, attached is a memorandum from Senior Investigator Powell, which describes his interview with the Complainant, during which she reiterated her desire to withdraw this complaint.

You will also see in your file a Notice of Withdrawal As Counsel, filed by the Complainant's attorney, and a response filed by that attorney's attorney that incorporates 22 exhibits.

This has to be the most bizarre situation I have seen during the last 30 years – the Respondent's attorney filing a motion that adopts an affidavit provided by the Complainant, followed by the Complainant's attorney withdrawing from representation of the Complainant, followed by a response filed by the Complainant's former attorney's attorney.

HISTORY OF THE CASE:

At the April meeting, the Commission voted to dismiss Complaint No. 09-126, In re Nancy Argenziano, as being legally insufficient. That complaint alleged a variety of circumstances surrounding the Respondent's involvement with a legislative lobbyist (Roger Pennington) who

had worked for the Respondent during her campaigns and who had represented the Florida Municipal Electric Association. The present complaint contains the same allegations, but also includes several allegations regarding the Respondent's financial disclosure statements that were not contained in the other complaint. Although the allegations regarding the Respondent's relationship with the lobbyist are legally insufficient, as they were in the other complaint, some of the financial disclosure allegations are legally sufficient to indicate possible violations (the analysis is contained in the Determination of Investigative Jurisdiction and Order to Investigate that is contained in your materials for this file).¹

Before we could get into the investigation, the Respondent's attorney filed the Motion For Review of Legal Sufficiency and To Dismiss Complaint. That Motion argues (in part) that the law's requirement that a complaint be filed "under oath or affirmation" was not complied with because the Complainant (now states that she) signed a blank complaint form, knew nothing about the matters contained in the complaint, and requests to withdraw the complaint. The Complainant's affidavit to that effect is attached to the Motion.

In response to this Motion, staff wrote to the Complainant's attorney and asked whether he continued to represent the Complainant, in light of the allegations made in the Motion and affidavit. Complainant's counsel then withdrew and, through counsel of his own, has filed a response that vehemently disputes the allegations made by the Complainant in the affidavit, although without providing an affidavit of his own.

Because the Complainant's affidavit was provided by the Respondent's attorney, staff felt it was important to ascertain the extent to which withdrawal was motivated by the Respondent, so Investigator Powell was asked to interview the Complainant, under oath. During that sworn statement, the Complainant confirmed her statements in the affidavit, confirmed her desire to withdraw the complaint, and stated that she has not been approached by anyone asking that she withdraw her complaint or that anyone had promised her anything in return for its withdrawal.

WITHDRAWAL OR DISMISSAL FOR LACK OF JURISDICTION?

The Commission's Rules contemplate the possibility that a Complainant may wish to withdraw the complaint before the Commission has taken final action:

34-5.0025 Withdrawal of Complaints. After a complaint has been filed with the Commission, the Commission may permit the complainant(s) to withdraw the complaint only for good cause shown. Withdrawal shall be requested in writing, signed by the complainant(s) and witnessed by a notary public, stating the facts and circumstances constituting good cause. The Executive Director shall prepare a written recommendation regarding disposition of the request which shall be given to the Commission together with the request. "Good cause" shall be determined based upon the legal sufficiency or insufficiency of the complaint to allege a violation of the Code of Ethics or other breach of public trust, the stage in disposition of the complaint arrived at before the request was received, and the reasons given by the complainant(s) for wishing to withdraw the complaint. If withdrawal is permitted, the Commission shall order the complaint

¹ Staff waited to begin investigating Complaint 09-122 until after the Commission agreed at the April meeting that Complaint No. 09-126 was legally insufficient.

dismissed and shall proceed in accordance with Rule 34-5.002 as if the complaint had been found insufficient under that rule.

The Commission's Rules also contemplate that the Respondent may be able to file a motion to dismiss for lack of jurisdiction:

34-5.005 Motions to Dismiss for Lack of Jurisdiction. Within a reasonable time before the hearing specified in Rule 34-5.006 is to be held, respondent may file with the Commission a written motion to dismiss the complaint for lack of jurisdiction which motion shall state with particularity the grounds therefor. The respondent shall simultaneously serve a copy of any such motion upon the Advocate. The Commission shall hear arguments of the respondent and Advocate on such motion prior to the hearing on the complaint specified in Rule 34-5.006. If the Commission finds that it has jurisdiction over matters alleged in the complaint, it shall deny respondent's motion with respect to those allegations and shall proceed to the hearing. If the Commission finds that it has no jurisdiction over matters alleged in the complaint, it shall order the complaint dismissed with respect to those allegations and shall proceed in accordance with Rule 34-5.002 as if such allegations had been found insufficient under that rule.

It is my recommendation that the Commission consider only the question of whether to allow withdrawal of the complaint, because it appears that the jurisdictional question of whether a proper complaint was filed at all will probably necessitate an investigation and determination of the matters that are deeply disputed between the Complainant and her former counsel. Those matters may have criminal implications, as well.

GOOD CAUSE FOR WITHDRAWAL HAS BEEN SHOWN:

According to Rule 34-5.0025, "good cause" is based upon the legal sufficiency or insufficiency of the complaint to allege a violation, the stage in disposition of the complaint arrived at before the request was received, and the reasons given by the complainant(s) for wishing to withdraw the complaint.

Here, although most of the allegations in the complaint are legally insufficient, some of the financial disclosure allegations are sufficient enough to justify an investigation. If the complaint is withdrawn, another complaint could be filed alleging the same matters. We have not put a significant amount of time into the investigation, yet, so withdrawal would not result in a waste of State resources. As far as the reasons for wanting to withdraw the complaint, the Complainant has reaffirmed the statements in her affidavit and has stated that no one has asked her to withdraw the complaint or promised her anything in return for withdrawing it.

Finally, handling the case as a withdrawal rather than dismissing it on jurisdictional grounds will conserve our investigative resources, since determining exactly how the complaint was generated may have ramifications that may generate interest from other agencies, such as the Florida Bar or FDLE.

BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS

In re NANCY ARGENZIANO,)
)
)
)
Respondent.)
_____)

Complaint No. 09-122

PUBLIC REPORT AND ORDER DISMISSING COMPLAINT

On Friday, June 4, 2010, the Commission on Ethics met in executive session and considered the request for withdrawal of this complaint filed by Ms. Cynthia Gray, pursuant to Commission Rule 34-5.0025, F.A.C.

The Commission voted to grant withdrawal for good cause shown and to dismiss the complaint pursuant to Commission Rules 34-5.0025 and 34-5.002, F.A.C., for the following reason: the Complainant has filed a notarized request for withdrawal of the complaint, stating that she signed the complaint form in blank, is without knowledge about any of the matters which are contained in the complaint or its exhibits, and wishes to withdraw the complaint.

Accordingly, this complaint is hereby dismissed with the issuance of this public report.

ORDERED by the State of Florida Commission on Ethics meeting in executive session on June 4, 2010.

Date Rendered

Roy Rogers
Chair, Florida Commission on Ethics

cc: Mr. Ronald G. Meyer, Attorney for Respondent
Ms. Cynthia Gray, Complainant

BEFORE THE FLORIDA COMMISSION ON ETHICS
STATE OF FLORIDA

In Re: NANCY ARGENZIANO

Case No. 09-122

COMMISSION ON ETHICS
DATE RECEIVED
APR 01 2010

MOTION FOR REVIEW OF LEGAL SUFFICIENCY
AND TO DISMISS COMPLAINT

The Respondent in the above-styled matter, Commissioner Nancy Argenziano, requests that the issue of the legal sufficiency of the complaint which has been filed herein be reviewed and thereafter that the complaint be dismissed.

In support of this motion, the Commission is respectfully shown as follows:

1. Pursuant to Section 112.324(1), Florida Statutes, the Commission's jurisdiction may only be invoked upon its receipt of "a written complaint executed on a form prescribed by the commission and signed under oath or affirmation by any person."
2. In order for a document to be validly considered to be "under oath," certain formalities must be abided. For example, a notary may not notarize a document unless the affiant is physically present [*see* Section 117.107(9), Florida Statutes]. A notary may not notarize a document which is blank [*see* Section 117.107(10), Florida Statutes]. It is a criminal offense for a notary to make a false or fraudulent acknowledgment [*see* Section 117.105, Florida Statutes].
3. The Commission's prescribed form for making a complaint cognizable by it requires that a complainant attest to the following statement of personal knowledge:

I, the person bringing this complaint, do depose on oath or affirmation and say that the facts set forth in the foregoing complaint and attachments thereto are true and correct to the best of my knowledge and belief.

4. The complaint which was filed in the above-style matter appeared facially to be a complaint under oath executed by "C. Gray" based upon the complainant's knowledge of the facts. However, subsequent developments establish that not to be the case.

5. Attached to this motion and incorporated herein by reference is the affidavit of Cynthia E. Gray, the person who was represented to have signed the complaint in the above-styled matter while she was performing investigative services (unrelated to the complaint) for Tallahassee attorney Steven R. Andrews. The complaint was notarized by "Marlyne S. Tyre," an employee of Steven R. Andrews. However, Exhibit A discloses the fatal deficiencies of the complaint, as follows:

A. Cynthia Gray was asked by Steven R. Andrews to sign the complaint in blank because she was told by him that it was his practice to have his investigators do so. Gray signed the complaint in blank without knowing what it would be used for (Exhibit A, Paragraph 4).

B. At the time the complaint was signed by Cynthia Gray, the Notary who attested to her signature, Marlyne S. Tyre, was not present (Exhibit A, Paragraph 6).

C. Cynthia Gray has no personal knowledge of the allegations of the complaint and its attachments (Exhibit A, Paragraphs 5 and 8).

D. Cynthia Gray requests to withdraw the complaint based on the above facts (Exhibit A, Paragraph 13).

6. Accordingly, the Commission has not been presented with a "written complaint executed on a form prescribed by the commission and signed under oath or affirmation" by a person who has knowledge of the facts alleged; it is legally deficient.

7. Moreover, in Exhibit A (paragraph 13), Ms. Gray has requested to withdraw the complaint. Rule 34-5.0025, Florida Administrative Code authorizes the complainant to request the

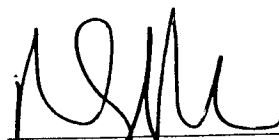
withdrawal of a complaint for good cause. In a similar circumstance to the case presented here, the Commission, in CEO 08-128, ordered a complaint voluntarily dismissed for good cause pursuant to Rules 34-5.0025 and 34-5.002, F.A.C., stating “[t]he Complainant filed a notarized request for withdrawal of the complaint, prior to the determination of legal sufficiency, stating that she thought that someone else was filing the complaint and asked that her name be removed as the Complainant.”

8. Therefore, the Commission is without a jurisdictional basis to maintain the above-styled complaint and the complainant has provided good cause for the withdrawal and dismissal of the complaint. Rather than facilitate the charade and misuse of the Commission processes, the Commission should enter an order finding the complaint to be legally insufficient or withdrawn for good cause and dismiss it.

WHEREFORE, the Commission is respectfully requested to enter an order finding the complaint to be legally insufficient or withdrawn and dismissing the complaint.

Respectfully submitted,

MEYER, BROOKS, DEMMA AND BLOHM, P.A.
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By: 
RONALD G. MEYER
Florida Bar No. 0148248

ATTORNEY FOR RESPONDENT

BEFORE THE FLORIDA COMMISSION ON ETHICS
STATE OF FLORIDA

COMMISSION ON ETHICS
DATE RECEIVED
APR 01 2010

In Re: NANCY ARGENZIANO

Case No. 09-122

AFFIDAVIT

BEFORE ME, the undersigned authority, did personally appear Cynthia E. Gray, who, upon having been first duly sworn, did depose and state as follows:

1. I reside at 1921 Buckwood Drive, Tallahassee, Florida 32317. I can be reached by telephone at (850) 570-1207.

2. I am making this affidavit by my own personal knowledge.

3. I have been presented with a copy of the complaint which was filed in the above-referenced case to determine whether the signature on the bottom of the complaint is my signature. The signature on the complaint is, in fact, my signature. However, at the time I affixed my signature to the complaint, the complaint was blank and had no attachments to it.

4. The complaint was signed by me at the request of Steven R. Andrews, Esquire, an attorney for whom I was performing investigative services unrelated to the above-styled case. He presented the blank complaint to me during a meeting at Café Cabernet where only the two of us were present. He advised me that he had all of the investigators used by him sign such complaints in blank for his future use.

5. I am wholly without knowledge of any of the allegations contained in the complaint or any of the exhibits attached to it. At the time I signed the blank complaint, I knew nothing about

CG Initial ⁵⁴

EXHIBIT

A

the Respondent Nancy Argenziano or any of the matters which are contained in the complaint or its exhibits.

6. At the time I signed the complaint, Marlyne S. Tyre, the person whose notary stamp is affixed to the complaint, was not present. I know Marlyne Tyre to be an employee of Steven R. Andrews, Esquire.

7. I have also been presented a copy of a document entitled "Motion to File Amicus Curiae Petition" which was filed in the Florida Supreme Court by Steven R. Andrews, Esquire, in Case Number SC 09-1910. The motion alleges that a person named "C. Gray" is the movant and attaches as Exhibit A the complaint in Case Number 09-122 filed with the Florida Commission on Ethics. The motion contains, on page 4, a signature line purportedly signed by someone named "C. Gray," the movant. Until shown this motion on March 11, 2010, I had never seen it nor is that my signature on page 4 of the motion. I am completely unaware of any of the allegations set forth in the Motion to File the Amicus Curiae Petition and I never requested or authorized Steven R. Andrews, Esquire, or anyone else, to file such a pleading on my behalf.

8. Insofar as anyone puts any reliance on the fact that I have made a sworn complaint against Nancy Argenziano, or that I have any knowledge of the facts in the complaint, for any reason whatsoever, such reliance is misplaced.

9. Steven R. Andrews, Esquire, employs an investigator named Rick Hollister to do investigative services for his office. I asked Mr. Hollister about signing a complaint form in blank and Mr. Hollister advised me that he has done that in the past and has been paid the sum of up to \$1,800.00 for doing so. However, I have never been paid or been offered payment for signing the blank complaint.

10. I was later advised by Steven R. Andrews, Esquire, that as a result of my signing the

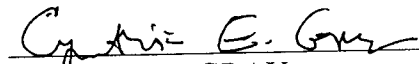
complaint, he would assist me in becoming employed with Florida Power and Light Corporation as an investigator, and that Florida Power and Light Corporation had an interest in the complaint against Ms. Argenziano being made. I was advised that a Lobbyist named Brian Ballard would assist me in obtaining such employment; no such employment was offered to me.

11. The services I performed for Steven R. Andrews, Esquire, were performed primarily during the months of October - December, 2009.


12. Upon learning that the complaint form which I had signed in blank had been utilized to misrepresent that I was bringing a complaint or that I had any personal knowledge of any of the allegations of the complaint, I determined to make this affidavit to correct the record.

13. Based on the foregoing facts, I request that the complaint against Nancy Argenziano filed under my name be withdrawn.

FURTHER YOUR AFFIANT SAYETH NAUGHT.


CYNTHIA E. GRAY

SWORN to and SUBSCRIBED before me on this 31st day of March, 2010.

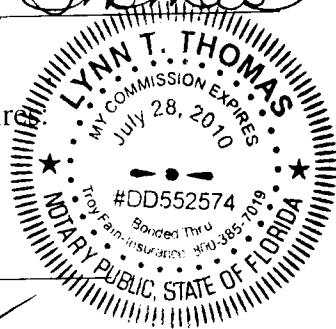

NOTARY PUBLIC

My Commission Expires

Personally Known _____

I.D. Produced

Type of I.D. 6600-105-60-947-1





Roy Rogers
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TO: Phil Claypool, Executive Director

FROM: A. Keith Powell, Senior Investigator

SUBJECT: Complaint 09-122 In re ARGENZIANO

DATE: May 14, 2010

On October 5, 2009, the Commission on Ethics received the above-referenced complaint concerning Public Service Commission Chair Nancy Argenziano. On February 18, 2010, the Executive Director determined the allegations of the complaint were sufficient to warrant a preliminary investigation to determine if the Respondent violated Article II, Section 8, Florida Constitution, Sections 112.3144, and 112.3145, Florida Statutes, and Section 350.041(7)(h), Florida Statutes. Counsel for the Respondent, Mr. Ronald Meyer, advised this investigator of concerns he had been made aware of concerning the circumstances surrounding the filing of the complaint. Subsequently, on April 1, 2010, Mr. Meyer provided the Commission on Ethics with an affidavit from Ms. Cynthia E. Gray of Tallahassee, indicating she is "C. Gray," the Complainant in the above-referenced complaint.

According to the affidavit, Ms. Gray advises that she has been shown a copy of the above-referenced Complaint and confirms that it is her signature that appears on the signature line for the Complainant. However, she also notes that at the time she affixed her signature to the complaint form, the complaint was blank and had no attachments.

Significantly, Ms. Gray advises that she signed the blank complaint form at the request of Tallahassee attorney Steven R. Andrews, an attorney for whom she was performing contracted investigative services unrelated to this subject complaint. Mr. Andrews, she advises, informed her that he has all of the investigators that work for him to sign such complaints in blank for his future use. Ms. Gray also advises that she has no personal knowledge of any of the allegations contained in the complaint or the exhibits attached to it. Further, she noted that at the time she signed the complaint in question, the notary, Marlyne S. Tyre, who at the time was employed by Mr. Andrews, was not present and did not witness her signing the complaint.

On May 14, 2010, Ms. Gray provided a sworn statement to this investigator in which she confirmed the information included in her affidavit and confirmed her desire to withdraw the complaint from consideration by the Commission on Ethics. Ms. Gray stated that she has not been approached by anyone asking that she withdraw her complaint, and denied that anyone has promised her anything in return for agreeing to withdraw her complaint.