

**SPECIAL WORKSHOP MEETING  
BOARD OF COMMISSIONERS  
TOWN OF REDINGTON SHORES  
TUESDAY, APRIL 25, 2023 – 5:00 P.M.  
AGENDA**

**CALL TO ORDER**

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

**APPEARANCES AND PRESENTATIONS**

**OLD BUSINESS**

1. Commissioners Orientation

**NEW BUSINESS**

None

**MISCELLANEOUS**

Workshop Meeting- Wednesday, April 26, 2023 – 6:00 p.m.

Regular Meeting- Wednesday, May 10, 2023 – 6:00 p.m.

Workshop Meeting- Wednesday, May 31, 2023 – 6:00 p.m.

**ADJOURNMENT**

“Persons are advised that, if they decide to appeal any decisions made at this meeting, they will need a record of the proceedings, and, for such purpose, they may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.”

“The Town maintains a tape recorder for all public hearings. In the event that you wish to appeal a decision, the tape may or may not adequately ensure a verbatim record of the proceedings. Therefore, you may wish to provide a court reporter at your expense.”

**New Commissioner Orientation**  
**Records, Sunshine & Ethics Overview**  
**First Amendment Issues**  
**Miscellaneous Issues**

### **First Amendment Issues**

- Public comment period
- Right to speak statute
- Retaliation

### **Public Records Issues**

“Public records” means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

(b) A custodian of public records or a person having custody of public records may designate another officer or employee of the agency to permit the inspection and copying of public records, but must disclose the identity of the designee to the person requesting to inspect or copy public records.

(c) A custodian of public records and his or her designee must acknowledge requests to inspect or copy records promptly and respond to such requests in good faith. A good faith response includes making reasonable efforts to determine from other officers or employees within the agency whether such a record exists and, if so, the location at which the record can be accessed.

(d) A person who has custody of a public record who asserts that an exemption applies to a part of such record shall redact that portion of the record to which an exemption has been asserted and validly applies, and such person shall produce the remainder of such record for inspection and copying.

The custodian of public records shall furnish a copy or a certified copy of the record upon payment of the fee prescribed by law. If a fee is not prescribed by law, the following fees are authorized:

- (a)1. Up to 15 cents per one-sided copy for duplicated copies of not more than 14 inches by 8 1/2 inches;

2. No more than an additional 5 cents for each two-sided copy; and
3. For all other copies, the actual cost of duplication of the public record.
  - (b) The charge for copies of county maps or aerial photographs supplied by county constitutional officers may also include a reasonable charge for the labor and overhead associated with their duplication.
  - (c) An agency may charge up to \$1 per copy for a certified copy of a public record.
  - (d) If the nature or volume of public records requested to be inspected or copied pursuant to this subsection is such as to require extensive use of information technology resources or extensive clerical or supervisory assistance by personnel of the agency involved, or both, the agency may charge, in addition to the actual cost of duplication, a special service charge, which shall be reasonable and shall be based on the cost incurred for such extensive use of information technology resources or the labor cost of the personnel providing the service that is actually incurred by the agency or attributable to the agency for the clerical and supervisory assistance required, or both.

**Specific Issues to Think About:**

- Facebook pages
- Twitter
- Texting

### **Public Officials Using Personal Accounts:**

The individual public official, not the governmental agency, should bear the duty (and thus the expense) of responding to a public records request involving his or her personal accounts. AGO 08-07

Once an email or text involving agency business is created using a public official's personal account, the public official becomes the "agency" and is thus personally responsible for complying with the state records retention policies, including the need to establish a method of retaining records per the State's records retention schedule. *Butler v. City of Hallandale Beach*, 68 So.3d 278 (4<sup>th</sup> DCA 2011)

## **Ethics Issues**

112.313 Standards of conduct for public officers, employees of agencies, and local government attorneys.—

(1) **DEFINITION.**—As used in this section, unless the context otherwise requires, the term “public officer” includes any person elected or appointed to hold office in any agency, including any person serving on an advisory body.

(2) **SOLICITATION OR ACCEPTANCE OF GIFTS.**—No public officer, employee of an agency, local government attorney, or candidate for nomination or election shall solicit or accept anything of value to the recipient, including a gift, loan, reward, promise of future employment, favor, or service, based upon any understanding that the vote, official action, or judgment of the public officer, employee, local government attorney, or candidate would be influenced thereby.

(3) **DOING BUSINESS WITH ONE’S AGENCY.**—No employee of an agency acting in his or her official capacity as a purchasing agent, or public officer acting in his or her official capacity, shall either directly or indirectly purchase, rent, or lease any realty, goods, or services for his or her own agency from any business entity of which the officer or employee or the officer’s or employee’s spouse or child is an officer, partner, director, or proprietor or in which such officer or employee or the officer’s or employee’s spouse or child, or any combination of them, has a material interest. Nor shall a public officer or employee, acting in a private capacity, rent, lease, or sell any realty, goods, or services to the officer’s or employee’s own agency, if he or she is a state officer or employee, or to any political subdivision or any agency thereof, if he or she is serving as an officer or employee of that political subdivision. The foregoing shall not apply to district offices maintained by legislators when such offices are located in the legislator’s place of business or when such offices are on property wholly or partially owned by the legislator. This subsection shall not affect or be construed to prohibit contracts entered into prior to:

- (a) October 1, 1975.
- (b) Qualification for elective office.
- (c) Appointment to public office.
- (d) Beginning public employment.

(4) **UNAUTHORIZED COMPENSATION.**—No public officer, employee of an agency, or local government attorney or his or her spouse or minor child shall, at

any time, accept any compensation, payment, or thing of value when such public officer, employee, or local government attorney knows, or, with the exercise of reasonable care, should know, that it was given to influence a vote or other action in which the officer, employee, or local government attorney was expected to participate in his or her official capacity.

(5) **SALARY AND EXPENSES.**—No public officer shall be prohibited from voting on a matter affecting his or her salary, expenses, or other compensation as a public officer, as provided by law. No local government attorney shall be prevented from considering any matter affecting his or her salary, expenses, or other compensation as the local government attorney, as provided by law.

(6) **MISUSE OF PUBLIC POSITION.**—No public officer, employee of an agency, or local government attorney shall corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others. This section shall not be construed to conflict with s. 104.31.

(7) **CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.**—

(a) No public officer or employee of an agency shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, an agency of which he or she is an officer or employee, excluding those organizations and their officers who, when acting in their official capacity, enter into or negotiate a collective bargaining contract with the state or any municipality, county, or other political subdivision of the state; nor shall an officer or employee of an agency have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties.

1. When the agency referred to is that certain kind of special tax district created by general or special law and is limited specifically to constructing, maintaining, managing, and financing improvements in the land area over which the agency has jurisdiction, or when the agency has been organized pursuant to chapter 298, then employment with, or entering into a contractual relationship with, such business entity by a public officer or employee of such agency shall not be prohibited by

this subsection or be deemed a conflict per se. However, conduct by such officer or employee that is prohibited by, or otherwise frustrates the intent of, this section shall be deemed a conflict of interest in violation of the standards of conduct set forth by this section.

2. When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or be deemed a conflict.

(b) This subsection shall not prohibit a public officer or employee from practicing in a particular profession or occupation when such practice by persons holding such public office or employment is required or permitted by law or ordinance.

(8) DISCLOSURE OR USE OF CERTAIN INFORMATION.—A current or former public officer, employee of an agency, or local government attorney may not disclose or use information not available to members of the general public and gained by reason of his or her official position, except for information relating exclusively to governmental practices, for his or her personal gain or benefit or for the personal gain or benefit of any other person or business entity.



## **Ethics & Voting Conflicts**

No county, municipal, or other local public officer shall vote in an official capacity upon any measure which would inure to his or her special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s. 112.312(2); or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer. Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of the officer's interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.

For purposes of this subsection, the term "participate" means any attempt to influence the decision by oral or written communication, whether made by the officer or at the officer's direction.

"Special private gain or loss" means an economic benefit or harm that would inure to the officer, his or her relative, business associate, or principal, unless the measure affects a class that includes the officer, his or her relative, business associate, or principal, in which case, at least the following factors must be considered when determining whether a special private gain or loss exists:

1. The size of the class affected by the vote.
2. The nature of the interests involved.
3. The degree to which the interests of all members of the class are affected by the vote.
4. The degree to which the officer, his or her relative, business associate, or principal receives a greater benefit or harm when compared to other members of the class.

**112.3142. Ethics training for specified constitutional officers:**

(2)(b) All elected municipal officers must complete 4 hours of ethics training each calendar year which addresses, at a minimum, s. 8, Art. II of the State Constitution, the Code of Ethics for Public Officers and Employees, and the public records and public meetings laws of this state. This requirement may be satisfied by completion of a continuing legal education class or other continuing professional education class, seminar, or presentation if the required subjects are covered.

(2)(e) The Legislature intends that a constitutional officer or elected municipal officer who is required to complete ethics training pursuant to this section receive the required training as close as possible to the date that he or she assumes office. A constitutional officer or elected municipal officer assuming a new office or new term of office on or before March 31 must complete the annual training on or before December 31 of the year in which the term of office began. A constitutional officer or elected municipal officer assuming a new office or new term of office after March 31 is not required to complete ethics training for the calendar year in which the term of office began.

The Florida Commission on Ethics has issued an advisory opinion, answering a series of questions under the new Senate Bill 2 four hour ethics training requirements for “constitutional officers,” including county commissioners. The Advisory Opinion concluded that:

- (1) the county attorney’s office, other local government attorney, or any person with knowledge of the required subjects may provide the training;
- (2) the training can be satisfied through attendance of a pre-recorded program, a webinar, or a formal written study program;
- (3) a credit “hour” consists of at least 50 minutes of training;
- (4) the four-hour requirement is measured by a calendar year (1/1 to 12/31, beginning with the year 2013); and (5) the training does not necessarily have to reflect the most recent legislative changes to count toward the four-hour requirement.

## Whistleblowing Law:

### **112.3187. “Whistle-blower's Act.”**

**Legislative intent.**--It is the intent of the Legislature to prevent agencies or independent contractors from taking retaliatory action against an employee who reports to an appropriate agency alleging:

- \* violations of law on the part of a public employer or independent contractor that create a substantial and specific danger to the public's health, safety, or welfare
- \* improper use of governmental office, gross waste of funds, or any other abuse or gross neglect of duty on the part of an agency, public officer, or employee

**Nature of information disclosed.**--The information disclosed under this section must include:

(a) Any violation or suspected violation of any federal, state, or local law, rule, or regulation committed by an employee or agent of an agency or independent contractor which creates and presents a substantial and specific danger to the public's health, safety, or welfare.

(b) Any act or suspected act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, suspected or actual Medicaid fraud or abuse, or gross neglect of duty committed by an employee or agent of an agency or independent contractor.

**To whom information disclosed.**--The information disclosed under this section must be disclosed to any agency or federal government entity having the authority to investigate, police, manage, or otherwise remedy the violation or act, including, but not limited to, the Office of the Chief Inspector General, an agency inspector general or the employee designated as agency inspector general under [s. 112.3189\(1\)](#) or inspectors general under [s. 20.055](#), the Florida Commission on Human Relations, and the whistle-blower's hotline created under [s. 112.3189](#). However, for disclosures concerning a local governmental entity, including any regional, county, or municipal entity, special district, community college district,

or school district or any political subdivision of any of the foregoing, the information must be disclosed to a chief executive officer as defined in [S. 447.203\(9\)](#) or other appropriate local official.

## **Sunshine Issues**

### **Florida Statute § 286.011**

(1) All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, including meetings with or attended by any person elected to such board or commission, but who has not yet taken office, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

(2) The minutes of a meeting of any such board or commission of any such state agency or authority shall be promptly recorded, and such records shall be open to public inspection. The circuit courts of this state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizen of this state.

(3)(a) Any public officer who violates any provision of this section is guilty of a noncriminal infraction, punishable by fine not exceeding \$500.

(b) Any person who is a member of a board or commission or of any state agency or authority of any county, municipal corporation, or political subdivision who knowingly violates the provisions of this section by attending a meeting not held in accordance with the provisions hereof is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(c) Conduct which occurs outside the state which would constitute a knowing violation of this section is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

#### **Executive sessions:**

- Attorney-Client sessions to discuss pending litigation to which the entity is presently a party before a court or administrative agency, provided that the following conditions are met:
  - (a) The entity's attorney shall advise the entity at a public meeting that he or she desires advice concerning the litigation.

(b) The subject matter of the meeting shall be confined to settlement negotiations or strategy sessions related to litigation expenditures.

(c) The entire session shall be recorded by a certified court reporter. The reporter shall record the times of commencement and termination of the session, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of the session shall be off the record. The court reporter's notes shall be fully transcribed and filed with the entity's clerk within a reasonable time after the meeting.

(d) The entity shall give reasonable public notice of the time and date of the attorney-client session and the names of persons who will be attending the session.

- Union strategy sessions

## **Voting Requirement and Contacts in Quasi-Judicial Matters**

Florida Statutes § 286.012 provides:

A member of a...municipal governmental board...who is present at a meeting of any such body at which an official decision, ruling, or other official act is to be taken or adopted may not abstain from voting in regard to any such decision, ruling, or act; and a vote shall be recorded or counted for each such member present, unless, with respect to any such member, there is, or appears to be, a possible conflict of interest under s. 112.311, s. 112.313, s. 112.3143, or additional or more stringent standards of conduct, if any, adopted pursuant to s. 112.326. \*\*\* If the official decision, ruling, or act occurs in the context of a quasi-judicial proceeding, a member may abstain from voting on such matter if the abstention is to assure a fair proceeding free from potential bias or prejudice.

Florida Statutes § 286.0115 provides in relevant part:

(1)(b) As used in this subsection, the term “local public official” means any elected or appointed public official holding a county or municipal office who recommends or takes quasi-judicial action as a member of a board or commission.

(c) Any person not otherwise prohibited by statute, charter provision, or ordinance may discuss with any local public official the merits of any matter on which action may be taken by any board or commission on which the local public official is a member. Adherence to the following procedures shall remove the presumption of prejudice arising from ex parte communications with local public officials.

1. The substance of any ex parte communication with a local public official which relates to quasi-judicial action pending before the official is not presumed prejudicial to the action if the subject of the communication and the identity of the person, group, or entity with whom the communication took place is disclosed and made a part of the record before final action on the matter.
2. A local public official may read a written communication from any person. However, a written communication that relates to quasi-judicial action pending before a local public official shall not be presumed prejudicial to the

action, and such written communication shall be made a part of the record before final action on the matter.

3. Local public officials may conduct investigations and site visits and may receive expert opinions regarding quasi-judicial action pending before them. Such activities shall not be presumed prejudicial to the action if the existence of the investigation, site visit, or expert opinion is made a part of the record before final action on the matter.
4. Disclosure made pursuant to subparagraphs 1., 2., and 3. must be made before or during the public meeting at which a vote is taken on such matters, so that persons who have opinions contrary to those expressed in the ex parte communication are given a reasonable opportunity to refute or respond to the communication.



## Gifts

Florida Statutes § 112.3148 provides in relevant part:

(3) A reporting individual or procurement employee is prohibited from soliciting any gift from a vendor doing business with the reporting individual's or procurement employee's agency, a political committee as defined in s. 106.011, or a lobbyist who lobbies the reporting individual's or procurement employee's agency, or the partner, firm, employer, or principal of such lobbyist, where such gift is for the personal benefit of the reporting individual or procurement employee, another reporting individual or procurement employee, or any member of the immediate family of a reporting individual or procurement employee.

(4) A reporting individual or procurement employee or any other person on his or her behalf is prohibited from knowingly accepting, directly or indirectly, a gift from a vendor doing business with the reporting individual's or procurement employee's agency, a political committee as defined in s. 106.011, or a lobbyist who lobbies the reporting individual's or procurement employee's agency, or directly or indirectly on behalf of the partner, firm, employer, or principal of a lobbyist, if he or she knows or reasonably believes that the gift has a value in excess of \$100; however, such a gift may be accepted by such person on behalf of a governmental entity or a charitable organization. If the gift is accepted on behalf of a governmental entity or charitable organization, the person receiving the gift shall not maintain custody of the gift for any period of time beyond that reasonably necessary to arrange for the transfer of custody and ownership of the gift.

## **Legislative v. Quasi-Judicial Role**

Adoption of policies generally applicable to all vs. adjudicating the property rights of a specific owner.

## **Land Use and Zoning**

- What is the Comprehensive Plan?
- What is the zoning code?
- What is a variance?
- Bert Harris Act

**When a Public Official is charged with a violation, will their  
agency provide representation?**

**111.07. Defense of civil actions against public officers, employees, or agents**

Any agency of the state, or any county, municipality, or political subdivision of the state, is authorized to provide an attorney to defend any civil action arising from a complaint for damages or injury suffered as a result of any act or omission of action of any of its officers, employees, or agents for an act or omission arising out of and in the scope of his or her employment or function, unless, in the case of a tort action, the officer, employee, or agent acted in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. Defense of such civil action includes, but is not limited to, any civil rights lawsuit seeking relief personally against the officer, employee, or agent for an act or omission under color of state law, custom, or usage, wherein it is alleged that such officer, employee, or agent has deprived another person of rights secured under the Federal Constitution or laws. Legal representation of an officer, employee, or agent of a state agency may be provided by the Department of Legal Affairs. However, any attorney's fees paid from public funds for any officer, employee, or agent who is found to be personally liable by virtue of acting outside the scope of his or her employment, or was acting in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property, may be recovered by the state, county, municipality, or political subdivision in a civil action against such officer, employee, or agent. If any agency of the state or any county, municipality, or political subdivision of the state is authorized pursuant to this section to provide an attorney to defend a civil action arising from a complaint for damages or injury suffered as a result of any act or omission of action of any of its officers, employees, or agents and fails to provide such attorney, such agency, county, municipality, or political subdivision shall reimburse any such defendant who prevails in the action for court costs and reasonable attorney's fees.

### **Purpose of statute:**

This section governing representation of public officers at public expense recognized common-law principle that public officer is entitled to representation at public expense in a lawsuit arising from *performance of official duties* while *serving a public purpose*; to deny public official representation for acts purportedly arising from performance of his official duties would have a chilling effect upon proper performance of his duties and diligent representation of public interest. [Nuzum v. Valdes, App. 3 Dist., 407 So.2d 277 \(1981\)](#)

### **“Civil action” required:**

This *section does not authorize* the board of county commissioners to reimburse individual commissioners for *attorney fees* incurred during investigation of alleged violations of Government-in-the-Sunshine Law, *when no formal charges were filed against commissioners*; however, payment of attorney fees by a governmental unit may be authorized under certain circumstances in view of common law principle that public officers are entitled to a defense at expense of the public in defending against unfounded allegations of official misconduct. [Florida Op. Atty. Gen. 86-35](#)

City council member who successfully defended charges of unethical conduct before the *Florida Commission on Ethics* was *not entitled to city reimbursement* of legal expenses *under this section*; *since the Commission is part of the legislative branch*, a proceeding before that investigative body is not a “civil action.” [Chavez v. City of Tampa, App. 2 Dist., 560 So.2d 1214 \(1990\)](#), review denied [576 So.2d 285](#). It would *not be legal to pay out of county funds the expenses*, costs and attorneys' fees, incurred *in defense of a county commissioner against criminal charges*, in connection with the operation of his office, and against charges made against him by the Governor in his order suspending the said commissioner from office. AGO 69-40

### **Statute applies to retired public officials:**

A retired county officer is entitled to be reimbursed for reasonable attorney's fees incurred in successfully defending a civil lawsuit *for actions taken by that county officer while in office* if the charge arose from the performance of official duties and while the officer was serving a public purpose. AGO 98-12

### **Governing board can exercise judgment over reimbursement requests:**

Under this section allowing representation of public officer in civil suit at public expense primary *determination as to allowance of counsel is placed in respective governmental unit* rather than judiciary upon challenge by private litigant, although this does not preclude other properly authorized public officials like attorney general from challenging expenditures made under statute. [Nuzum v. Valdes, App. 3 Dist., 407 So.2d 277 \(1981\)](#)

### **Common Law Right to Recover Fees**

A common law doctrine affording public officials the right to legal representation at taxpayer expense in defending themselves against litigation arising out of their *public duties* and *while serving a public purpose*. See [Thornber v. City of Ft. Walton Beach, 568 So.2d 914, 917 \(Fla. 1990\)](#) (“entitlement to attorney’s fees arises independent of statute, ordinance, or charter.”)

This common law right applies to county officials and to ethics proceedings. See [Ellison v. Reid, 397 So.2d 352, 354 \(1<sup>st</sup> DCA 1981\)](#) (“If a public officer is charged with misconduct while performing his official duties and while serving a public purpose, the public has a primary interest in such a controversy and should pay the reasonable and necessary legal fees incurred by the public officer in successfully defending against unfounded allegations of official misconduct.”)

Under [Thornber](#), a public official is not entitled to taxpayer funded representation simply because an allegation of misconduct arises in the course of his public duties. Rather, the context out of which the alleged misconduct arose must also serve a public purpose. In [Ellison](#), a property appraiser’s participation in a training seminar served a public purpose. In [Lomelo](#), a mayor’s use of his authorized power to release an arrestee served a public purpose. In [Chavez](#), a city council member’s vote, although part of her official duties, served only her private financial interests and not a public purpose.

### **Provision of attorney or payment of fees does not constitute “extra compensation” to the public official:**

Authorization of payment of public funds for reasonable attorney fees incurred by any past or present county commissioner in successfully defending prosecution for violation of open public meetings law does not authorize unlawful supplement to compensation of county officers. [Askew v. Green, Simmons, Green and Hightower, P.A., 348 So.2d 1245 \(1<sup>st</sup> DCA 1977\)](#), certiorari denied [366 So.2d 879](#).

## **Can an Elected Official Recover Attorney Fees From an Unsuccessful Ethic Code Accuser?**

112.317(7): In any case in which the *commission determines* that a person has filed a *complaint* against a public officer or employee with a *malicious intent to injure the reputation* of such officer or employee by filing the complaint *with knowledge that the complaint contains one or more false allegations or with reckless disregard for whether the complaint contains false allegations of fact material to a violation* of this part, the complainant shall be liable for costs plus reasonable attorney fees incurred in the defense of the person complained against, including the costs and reasonable attorney fees incurred in proving entitlement to and the amount of costs and fees. If the complainant fails to pay such costs and fees voluntarily within 30 days following such finding by the commission, the commission shall forward such information to the Department of Legal Affairs, which shall bring a civil action in a court of competent jurisdiction to recover the amount of such costs and fees awarded by the commission.

### **Fees can be recovered if representation is by an in-house county attorney:**

Commission on Ethics properly allowed recovery of attorneys by county official against whom frivolous complaint was filed with Commission for hours expended in obtaining dismissal of the complaint despite claim that the county official had no obligation to pay the county attorneys who represented her. *Couch v. Commission on Ethics*, 617 So.2d 1119 (5th DCA 1993).

### **The standard for recovery, however, is very high:**

The elements of a claim by a public official for recovery of costs and attorney fees from a person who has filed an ethics complaint are that: (1) the complaint was made with a malicious intent to injure the official's reputation; (2) the person filing the complaint knew that the statements made about the official were false or made the statements about the official with reckless disregard for the truth; and (3) the statements were material. *Brown v. State, Com'n on Ethics*, 969 So.2d 553 (1<sup>st</sup> DCA 2007), review denied, 980 So.2d 1070.

### **Examples of recovery requests denied or granted:**

Although commission on ethics found there was no probable cause to believe that commissioner of port authority had violated § 112.313, governing standards of conduct for public officers and employees concerning conflicting employment, where such determination was not made until after commission had conducted factual investigation and legal research, complaint could not be characterized as completely untenable or clearly frivolous; thus, commission's assessment of attorney fees against claimants on basis that complaint was filed with malicious intent and that complaint was frivolous in law or fact was error. *Taunton v. Tapper*, 396 So.2d 843 (1<sup>st</sup> DCA 1981).

Party was not entitled to attorney fees and costs under provision of this section allowing the same in any case in which the commission on ethics determines that a person has filed a complaint against public officer or employee with malicious intent to injure reputation of such officer or employee and in which such complaint is found to be frivolous and without basis in law or fact as the commission determined that party's complaint was not frivolous in law or fact, even though it found summarily that there was no probable cause to constitute a violation of the code of ethics. *Malfregeot v. Mobile Home Park Owners and Dealers of Martin County, Inc.*, 388 So.2d 341 (4<sup>th</sup> DCA 1980).

Award of \$8,000 in attorney fees against Chair of local party Executive Committee for relying solely on a news article to file a complaint against commissioner while he had no personal knowledge related to the charge and could have easily confirmed charge was not valid had he made basic inquiries was upheld. *Couch v. Commission on Ethics*, 617 So.2d 1119 (5<sup>th</sup> DCA 1993).