



CHARLES COUNTY ETHICS COMMISSION

Advisory Opinion 22-01

DATE: December 19, 2022

OPINION REQUESTED:

On July 1, 2022, the Charles County Ethics Commission received a complaint from Mr. [REDACTED] who at the time was a candidate for elected office. His complaint concerned an opposing candidate, and alleged as follows:

Mr. [REDACTED] alleged violations of the Charles County Ethics Code Chapter 170, specifically that Commissioner [REDACTED] failed to report earned income during the 2017, 2018 & 2019 reporting years. See, Charles County Code §170-6(G)(8).1

On August 16, 2022, the Charles County Ethics Commission met, in part, to review Mr. [REDACTED] complaint. After reviewing the complaint and the disclosure forms, the Commission concluded that there was sufficient evidence of a potential violation, and therefore, pursuant to Rule 12 of the Commission's Rules of Procedure, a letter was sent to Commissioner [REDACTED] on September 26, 2022, informing him of the complaint and allegations and offering him the opportunity to request a hearing or otherwise respond to the allegations. On October 18, 2022, Commissioner [REDACTED] sent a letter to the Commission responding to the allegations. In his response, Commissioner [REDACTED] stated the following:

When completing the Financial Disclosure forms for Charles County Government I filled out the disclosure with the understanding that my Salary and Income from the [REDACTED] [REDACTED] was already public information and disclosed under a [REDACTED] employee salary disclosure policy. During subsequent Disclosure Statements filed in Charles County I did place my [REDACTED] [REDACTED] Salary on the Financial Disclosure form as a best practice moving forward. Additionally, I misread subsection G to include salary that I earned as an employee of a business that I or my spouse owned. Once informed of this error and during subsequent Disclosure Statements I documented accordingly.

Upon receiving Commissioner [REDACTED] response, the Commission met to consider all of the evidence and circumstances surrounding this allegation. After review and discussion by the Commission, the Commission voted unanimously to adopt and issue the following decision:

¹ Additionally, despite being informed that the 2021 disclosure forms had not been reviewed, Mr. [REDACTED] alleged that Commissioner [REDACTED] failed to file his 2021 disclosure form. That allegation was dismissed as unfounded and without evidence pursuant to Rule 11 of the Commission's Rules of Procedure.

FINDINGS OF FACT

The Commission finds that the following are the relevant facts of the case:

1. The Charles County Ethics Code, Chapter 170, requires all candidates for office (relevant to the disclosure year 2017 in this case) and elected officials (years 2018 & 2019) to file financial disclosure forms.
2. The Charles County financial disclosure forms are generally comprised of an initial summary questionnaire and then subsequent detailed "schedules" which provide further information.
3. The Summary Questionnaire directs the person to the detailed schedules only in the event of an affirmative answer (i.e. If your answer to this question is "Yes", please fill out Schedule G.)
4. In 2017, Candidate ██████████ completed and submitted a financial disclosure statement pursuant to the Charles County Ethics Code, Chapter 170.
5. Commissioner ██████████ completed and submitted a financial disclosure statement for the years 2018-2021.
6. In his 2017 disclosure statement, Candidate ██████████ answered "Yes" to the summary question regarding whether or not his spouse was employed in the affirmative and in addition, the corresponding Schedule F which called for additional detailed information.
7. In his 2017 disclosure statement, Candidate ██████████ answered "No" to the summary questionnaire portion of the statement that requested the following:
"G. I or my spouse received earned income either as an employee or sole or part owner of a business entity."
8. Part G of the 2017 disclosure form directs the person completing it to fill out Schedule G only in the event of an affirmative answer, thus Candidate ██████████ did not fill out schedule G.
9. In his 2018 disclosure statement, now Commissioner ██████████ answered similarly to paragraphs six-eight above, disclosing his spouse's employment in Schedule F, but answering "no" to Schedule G.
10. The 2019 disclosure statement was a different form which only asked to "Recertify" that the information in the 2018 disclosure statement had not changed.
11. The Commission finds as fact that ██████████ has never hidden nor tried to hide his employment as a ██████████ has stated that fact

repeatedly on the record during public hearings and it finds that his salary is a matter of public record.

12. The Commission further finds as fact that one of the purposes of the financial disclosure forms is to uncover potential conflicts of financial interest that could unduly and improperly influence the decision-making and exercise of discretion vested in an elected official.
13. The Commission finds as fact that the wording in the Summary Questionnaire is confusing in as much as it could be misread to request that the person disclose income earned from a business that the person or their spouse owns.
14. Further the Commission finds as fact that the directions at the end of the Summary Questionnaire, which only directs the person to Schedule G if they answer "Yes," would reasonably explain why that Schedule had no further completed answers.
15. The Commission finds as fact that when the Charles County Ethics Commission reviews submitted financial disclosure forms each year, no feedback is given to any filer that would have made them aware of any alleged error and that the only feedback provided to a filer is if all of the questions to the form are not answered.
16. The Commission finds as fact that [REDACTED] was a political challenger to Commissioner [REDACTED] in the 2022 Board of County Commissioners election when he filed this complaint.

ANALYSIS

Charles County Government has adopted the Charles County Ethics Code, declaring its statement of purpose and policy in §170-2:

- A. The Board of County Commissioners of Charles County, Maryland, recognizing that our system of representative government is dependent in part upon the people maintaining the highest trust in their public officials and employees, finds and declares that the people have a right to be assured that the impartiality and independent judgment of public officials and employees will be maintained.
- B. It is evident that this confidence and trust is eroded when the conduct of the County's business is subject to improper influence and even the appearance of improper influence.
- C. For the purpose of guarding against improper influence, the Board of County Commissioners of Charles County enacts this Code of Ethics to require County elected officials, officials, employees, and individuals appointed to boards and commissions to disclose their financial affairs and to set minimum standards for the conduct of local government business.

Similarly, the State of Maryland has declared that the purpose of the financial disclosure forms is to require the filer to identify real estate interests, equity interests, and other relationships such as employment, debts and gifts so that the public can be assured that the impartiality and independent judgment of those officials and employees will be maintained.

In order to effect the purpose and policy set forth in §170-2 of the Code, Section 170-6 requires all candidates for public office or elected officials complete a financial disclosure form, which in subsection §170-6 G(8)(a) specifically requests, the name and address of each place of employment from which the filer received earned income.

After a review of all of the facts, the filer, Commissioner ██████████ failed, as a result of a misinterpretation of the wording of the form, to disclose his employment as a ██████████ ██████████ on the 2017 and 2018 form. With respect to the 2019, it did not restate the question, but merely asked the filer if the previous information had changed, which according to the evidence it had not. Relevant to this case, however is the fact that Commissioner ██████████ employment, employer and his salary are a matter of public information and have been fully disclosed to the public during his campaign and during public hearings – a fact the Commission finds relevant to its determination of whether a violation occurred.

Finally, the Commission finds Commissioner ██████████ explanations regarding the error to be credible. Having read the summary statement in the financial disclosure form, the Commission can understand how a reasonable filer could mistakenly believe that it requires disclosure of income from a business that is owned by the filer or their spouse. Moreover, a more complete and accurate description of what is required to be disclosed in Schedule G is not provided to the filer until such time as they read the actual schedule and then only until the filer reads to the last sentence. The Summary Questionnaire, however, only directs the filer to review Schedule G upon an affirmative answer of “Yes” to the summary question. Thus, if a filer misreads the question in the summary questionnaire, it is easy, at least in the Commission’s eyes, to understand how they could fail to fully review and disclose the more detailed information required in Schedule G.

As a result of the above determinations, the Commission finds as a matter of law that Commissioner ██████████ error in completing the 2017 & 2018 forms was caused by a reasonable misinterpretation of the wording in the Summary Questionnaire and a mistake regarding the already public disclosure of his employment status and that it was not done in an attempt to thwart the intent of the Code, or with an intent to deceive the public or an intent to commit a fraud. *See, Brown v. State*, 255 Md. 610 (1961) (perjury requires a willful and deliberate material misstatement that is not the result of surprise, confusion or bona fide mistake). The Commission further finds that there was no error or violation in the 2019 disclosure forms as it was simply recertifying that his employment status had not changed.

Additionally, the Commission concludes as a matter of law, that Commissioner ██████████ prior to any allegations being made, became aware of the error and corrected it on his 2020 and 2021 financial disclosure forms. Therefore, there is no continuation of the violation for the Commission to discipline. Section 170-10A.(1)(a) authorizes the Commission to issue a cease and desist order to any potential violator, however, that provision is inapplicable to the facts as presented here.

The Commission further concludes as a matter of law that Commissioner ██████████ employment, even if unknown to the public, could not exert the type of financial influence that the Code was designed to protect against. The ██████████ does not do business with Charles County, does not contract with Charles County nor does it present any matters to the Charles County Commissioners which could somehow influence Commissioner ██████████ policy making role with the County. Additionally, the Commission finds as a matter of law, the Commissioner ██████████ has disclosed his employment in other public and Charles County Government forums, and that his employment is a matter of public record such that any allegation of a violation would be considered *de minimus* and would not rise to the level of requiring any disciplinary measure as contemplated by §170-10 A.(1)(b).

Given the facts of this case, the nature of conduct, the circumstances surrounding the conduct and inapplicability of any penalty provision, the Charles County Ethics Commission, for the reasons more fully stated above, finds as a matter of law that while Commissioner ██████████ erred while completing his disclosure form, that error occurred as a result of a bona fide mistake and does not amount to a violation of the provisions of the Charles County Code of Ethics, more specifically subsection 170-6. Therefore, the Commission finds that under the facts of this complaint, Commissioner ██████████ did not violate the Charles County Code of Ethics.

APPROVED THIS 19th day of December 2022.

ETHICS COMMISSION OF
CHARLES COUNTY, MARYLAND

Natalie Cotton

Natalie Cotton (Jan 4, 2023 11:15 EST)

Natalie E. Cotton, Chairman

Shara Hendler

Shara Hendler (Jan 4, 2023 11:34 EST)

Shara Hendler, Esquire, Member

Cecelia Miller

Cecelia Miller (Jan 6, 2023 08:57 EST)

Cecelia Miller, Member

Christopher L. Nickerson

Christopher Nickerson, Member