

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
)
 IN THE MATTER OF:)
 COMPLAINT C2013-062)
)
 State Ethics Commission,)
 Complainant;)
)
 vs.)
)
 Richard B. Guess,)
 Respondent.)
 _____)

BEFORE THE STATE ETHICS COMMISSION

STATE ETHICS
 COMMISSION

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DECISION AND ORDER

This matter comes before the State Ethics Commission by virtue of a complaint filed by the Commission on November 7, 2012. On January 16, 2013, pursuant to S. C. Code Ann. § 8-13-320(10)(i)(Supp. 2012), the State Ethics Commission reviewed the above-captioned complaint charging the Respondent, Richard B. Guess, with a violation of Section 8-13-1140 and probable cause was found.

Present at the Hearing on March 20, 2013 were Commission Members E. Kay Biermann Brohl, Chair, Priscilla Tanner and George Carlton Manley. Respondent was present and appeared *pro se*. Complainant was represented by Cathy L. Hazelwood, General Counsel. The following charge was considered:

COUNT ONE
FAILURE TO FILE A STATEMENT OF ECONOMIC INTEREST REPORT
SECTION 8-13-1140, S.C. CODE ANN., 1976, AS AMENDED

That the Respondent, Richard B. Guess, a Division Director of the SC Department of Mental Health, did in Richland County, fail to timely file a 2012 annual Statement of Economic Interests form on or before April 15, 2012 in violation of Section 8-13-1140.

FINDINGS OF FACT

Having carefully reviewed the evidence presented, the Commission finds as fact

1. The Respondent, Richard B. Guess, is a Division Director of the SC Department of Mental Health. He was required to file an annual Statement of Economic Interests form (SEI) prior to April 15th of each year.

2. Kristin Smith, administrative coordinator of the Commission's non-compliance office, testified that Respondent became a division director for the Department of Mental Health in 2005 and he began filing annual SEIs then. Respondent was penalized in a September 5, 2012 letter for failure to file the 2012 SEI. That letter was re-sent certified on October 2, 2012 and delivered on October 9, 2012. Penalties began to accrue on October 19, 2012. Respondent filed his 2012 SEI on November 14, 2012, but did not pay the late-filing penalty of \$1,700.00.

3. Investigator Dan Choate testified that he spoke to Respondent on November 13, 2012. Respondent advised him that he would file his 2012 SEI. He stated that family problems caused him to be late in filing. He stated he would submit a statement regarding his family issues.

4. Respondent testified that 2012 had been a very painful year for him. Family members had become ill and died more than once in 2012. He was recovering from his own injuries. He testified that he had been late in 2009 and paid the late-filing penalty which was the only time until now that he had ever had a problem with the filing. He simply asked the Commission to give him any consideration it could.

CONCLUSIONS OF LAW

Based upon the Findings of Fact, the Commission concludes, as a matter of law:

1. During all times relevant, the Respondent, Richard B. Guess, was a public employee, as defined by Section 8-13-100(25).

2. The State Ethics Commission has personal and subject matter jurisdiction

3. Sections 8-13-1110 and 8-13-1140 provide that certain public employees shall file a Statement of Economic Interests at the time of assuming the duties of the position and annually thereafter prior to April 15.

4. Section 8-13-1510(1) provides as follows:

Except as otherwise specifically provided in this chapter, a person required to file a report or statement under this chapter who files a late statement or report or fails to file a required statement or report must be assessed a civil penalty as follows:

(1) a fine of one hundred dollars if not filed within five days after the established deadline provided by law in this chapter;

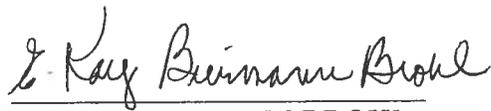
DECISION

NOW, THEREFORE, based on the foregoing Findings of Fact and Conclusions of Law, the State Ethics Commission has determined based upon a preponderance of evidence that Respondent Richard B. Guess is in violation of Section 8-13-1140; and therefore, Respondent Richard B. Guess is hereby assessed a reduced late-filing penalty of \$100.00 to be paid within 30 days of receipt of the order.

FINALLY, Respondent Richard B. Guess has ten (10) days from receipt of this order to appeal this Decision and Order to the full Commission.

IT IS SO ORDERED THIS 10th DAY OF May, 2013.

STATE ETHICS COMMISSION


E. KAY BIERMANN BROHL
CHAIRMAN

COLUMBIA, SOUTH CAROLINA