

## CS/SB 7014 (1<sup>st</sup> Eng.)

### Analysis: Personal Knowledge other than Hearsay

#### *Section 6, Lines 273-274*

- This provision of the bill was modeled after s. 106.25(2), F.S., which prescribes the process for complaints filed with the Florida Elections Commission (FEC):

The commission shall investigate all violations of this chapter and chapter 104, but only after having received either a sworn complaint or information reported to it under this subsection by the Division of Elections. *Such sworn complaint must be based upon personal information or information other than hearsay.*

- The definition of “hearsay” under that section was the subject of litigation before the Fourth District Court of Appeal (DCA), in *Florida Elections Com’n v. Valliere*, 45 So.3d 506 (2010).
- In that case, the appellees argued the term “hearsay” should be defined narrowly—to the extent that no statement or record of any kind could ever be used in a citizen complaint, even business records or statements by a candidate admitting to a campaign violation.
- The court rejected that argument and adopted a broader definition of “hearsay” focused on the reliability of underlying information contained in a complaint.
- As with complaints to the FEC, complaints filed with the Commission on Ethics (COE) do not involve a “trial or hearing” at the initiation of the complaint process. The following illustration as stated by the court is illustrative of the distinction:

The better interpretation of the new statutory limitation preserves the distinction between, on the one hand, hearsay that will never be admissible – e.g., the overheard barber shop conversation – and, on the other hand, hearsay that, by itself, is admissible – e.g., the admission of the candidate-or will likely be admissible – e.g., with the testimony of a records custodian, the campaign treasure’s report, as provided by [s]ection 90.80[3](6)(a), Florida Statutes. This interpretation, distinguishing between admissible hearsay and inadmissible hearsay, governs the acceptance of affidavits in summary judgment practice under Rule 1.510, Florida Rules of Civil Procedure, which requires that affidavits be based on ‘personal knowledge [and] shall set forth such facts as would be admissible in evidence....’ *Id.*

- Based on the application of similar language used in s. 106.25(2), F.S., and as interpreted by the Fourth DCA, the intended meaning of the term “hearsay” in CS/SB 7014 (1<sup>st</sup> Eng.) is *inadmissible* hearsay. The goal is to prevent an ethics complaint from being based on gossip or rumor. This does not require personal knowledge, or to have been in the room when the unethical behavior occurred. This interpretation is consistent with the processes of the FEC and strikes a balance that requires complaints be based on credible, reliable information in order to initiate an ethics investigation.