

BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS

In re STEPHAN CARTER,)	
)	
Respondent.)	Complaint No. 15-088
)	DOAH Case No. 16-3637EC
)	
)	Final Order No. 17-007
_____)	

FINAL ORDER AND PUBLIC REPORT

This matter came before the State of Florida Commission on Ethics ("Commission"), meeting in public session on March 10, 2017, on the Recommended Order ("RO") of an Administrative Law Judge ("ALJ") of the Division of Administrative Hearings ("DOAH") rendered on January 3, 2017.

Background

This matter began with the filing in 2015 of an ethics complaint by Jeffrey Ashton ("Complainant"), who was then State Attorney of the Ninth Judicial Circuit, against Stephan Carter ("Respondent"). The complaint alleged that the Respondent, as General Counsel to the Orange County Clerk of Courts, violated the Code of Ethics by obtaining severance payouts while still being employed as General Counsel to the Clerk of Courts. By an order rendered April 23, 2015, the Commission on Ethics' Executive Director determined that the allegation of the complaint concerning the Respondent's acceptance of funds from Orange County—which he claimed as a severance package—while still employed by the Clerk of Courts was legally sufficient to indicate possible violation of Sections 112.313(6) and 112.313(7)(a), Florida Statutes, and ordered Commission staff to investigate the complaint, resulting in a Report of Investigation ("ROI") dated September 4, 2015.

By order rendered October 28, 2015, the Commission found probable cause to believe the Respondent violated Section 112.313(6), Florida Statutes, by obtaining funds from Orange County, which the Respondent claimed as a severance package, while still employed by the Clerk of Courts. The Commission found no probable cause to believe the Respondent violated Section 112.313(7)(a), Florida Statutes.

The matter was forwarded to DOAH for assignment of an ALJ to conduct a formal hearing and prepare a recommended order. The Respondent and the Advocate filed a joint factual stipulation on September 10, 2016. A formal evidentiary hearing was held before the ALJ on September 20-21, 2016, in Orlando, Florida. The Advocate filed a proposed recommended order with the ALJ on November 28, 2016.

On January 3, 2017, the ALJ entered his Recommended ("RO") finding that Respondent violated Section 112.313(6), Florida Statutes, and recommending a penalty of public censure and reprimand against the Respondent.

On January 17, 2017, the Advocate timely submitted to the Commission an exception to the RO. On January 26, 2017, the Respondent submitted to the Commission his exceptions to the RO. On January 31, 2017, the Advocate submitted to the Commission a motion to strike Respondent's exceptions to the RO. On March 2, 2017, the Respondent submitted to the Commission a Memorandum of Law Re the Commission's Consideration of the Recommended Order. On March 3, 2017, the Advocate submitted to the Commission a Motion to Strike Respondent's Memorandum of Law. Both the Respondent and the Advocate were notified of the date, time, and place of the Commission's final consideration of this matter; and both were given the opportunity to make argument during the Commission's consideration.

Standards of Review

Under Section 120.57(1)(l), Florida Statutes, an agency may reject or modify the conclusions of law and interpretations of administrative rules contained in a recommended order. However, the agency may not reject or modify findings of fact made by an ALJ unless a review of the entire record demonstrates that the findings were not based on competent, substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law. See, e.g., Freeze v. Department of Business Regulation, 556 So. 2d 1204 (Fla. 5th DCA 1990), and Florida Department of Corrections v. Bradley, 510 So. 2d 1122 (Fla. 1st DCA 1987). "Competent, substantial evidence" has been defined by the Florida Supreme Court as such evidence as is "sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusions reached." DeGroot v. Sheffield, 95 So. 2d 912, 916 (Fla. 1957).

The agency may not reweigh the evidence, may not resolve conflicts in the evidence, and may not judge the credibility of witnesses, because such evidential matters are within the sole province of the ALJ. Heifetz v. Department of Business Regulation, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985). Consequently, if the record of the DOAH proceedings discloses any competent, substantial evidence to support a finding of fact made by the ALJ, the Commission on Ethics is bound by that finding.

Under Section 120.57(1)(l), Florida Statutes, an agency may reject or modify the conclusions of law over which it has substantive jurisdiction and the interpretations of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion or interpretation and must make a finding

that its substituted conclusion or interpretation is as or more reasonable than that which was rejected or modified.

An agency may accept the entirety of a hearing officer's findings of fact and conclusions of law, yet still reject the recommended penalty and substitute an increased or decreased recommended penalty. Criminal Justice Standards and Training Comm'n v. Bradley, 596 So. 2d 661, 664 (Fla. 1992). Under Section 120.57(1)(l), Florida Statutes, an agency may reduce or increase the recommended penalty only upon a review of the complete record, stating with particularity the agency's reasons for reducing or increasing the recommended penalty, and citing to the record in support of its action.

Having reviewed the RO and the complete record of the proceeding and the Advocate's and the Respondent's exceptions and having heard the arguments of the Advocate and the Respondent, the Commission on Ethics makes the following rulings, findings, conclusions, recommendation, and disposition:

Ruling on Advocate's Exception

1. In her exception, the Advocate takes issue with paragraphs 73 and 74 of the RO, which state:

73. In light of the facts in this matter, the undersigned determines that a civil penalty is not warranted. Respondent returned all moneys he obtained through his unethical conduct. Respondent also resigned from his position with the Clerk's Office. He is not eligible for rehire. At this time, imposing a fine on Respondent does not appear to accomplish any meaningful objective except retribution. [n.6] Aside from the subject matter of this action, by all accounts, Respondent served competently and dutifully during the time he was employed by the Clerk's Office. Ms. Gardner commented on Respondent's "extraordinary performance and leadership." [n.7] Both Ms. Gardner and Ms. Reilly extended Respondent merit increases to his salary based on his "individual performance." [n.8]

6/ Generally, the five principles of sentencing include 1) denunciation, 2) deterrence, 3) protect the public, 4) retribution, and 5) retaliation.

7/ See Advocate Exhibit 3 which is a letter from Ms. Gardner to Respondent, dated January 7, 2009.

8/ On November 26, 2012, Respondent received a merit increase raising his hourly salary from \$64.72 to \$68.60. On December 20, 2013, Respondent received an increase in his base rate of pay of 3.0 percent.

74. Accordingly, the undersigned recommends a public censure and reprimand as the appropriate penalty for Respondent's violation of section 112.313(6). The penalty should effectively address Respondent's unethical conduct and denounce his unacceptable behavior.

More particularly, the Advocate requests that the Commission on Ethics increase the ALJ's recommended penalties and state with particularity in its final order the reasons set forth in the Advocate's exception, making a finding that a \$10,000 civil penalty, along with the recommended public censure and reprimand, is justified. In light of the facts in this matter, the Commission on Ethics determines that a civil penalty is warranted, accepts the Advocate's exception, strikes paragraphs 73 and 74 of the RO to the extent that the paragraphs recommend that a civil penalty is not warranted, and increases Respondent's recommended penalties to add a \$10,000 civil penalty for the following reasons:

- Respondent used clandestine means to secure a severance payment to which he knew he was not entitled, including requiring secrecy from the employees who questioned his scheme, circumventing the established office process, and avoiding the creation of a record of the transactions (R-I: 121-124; R-II:163-164, 166, 177-178, 193);
- Respondent coerced, harassed, and intimidated subordinate employees and demanded that they cooperate in order to carry out his unlawful scheme, which was in contradiction to their knowledge of the proper office procedures (RI-121-124; RI-139; R-II:174-177, 185, 192, 244-246, 253-256, 264);
- Respondent showed a callous indifference to subordinate co-workers by potentially placing their employment in jeopardy by demanding that they violate office policies and state law in order to accomplish his illicit, self-serving endeavor (R-II:255-257, 274-275);

- Adjustments to the severance payment demanded by Respondent increased his gross payment from \$58,000 to \$156,443.11 (RI-146; R-II:184-186, 203-206, 212-214, 219-230); and
- At the final hearing (RIII-431-433) and also in the Respondent's untimely exceptions seeking reconsideration of the ALJ's conclusion of law set forth in the RO, Respondent continued to deny that he violated any duty to his office.

In accord with penalties imposed in prior cases,¹ and based upon a review of the complete record and for the reasons stated with particularity above, which cite to the record and justify the increase, a public censure and reprimand and a civil penalty of \$10,000 are recommended as the appropriate penalties for Respondent's violation of Section 112.313(6), Florida Statutes.

Ruling on Respondent's Exceptions

In his exceptions, which were untimely filed and contain no citations to the record, Respondent disputes none of the statements in the paragraph above, and asks the Commission on Ethics to relitigate the complaint and find that Respondent did not violate Section 112.313(6). The Commission grants the Advocate's motion to strike Respondent's exceptions and rejects Respondent's exceptions which were untimely filed and which fail to adhere to the basic pleading requirements set forth in Section 120.57(1)(k), Florida Statutes, which require each exception to clearly identify the disputed portion of the recommended order by page number or paragraph, identify the legal basis for the exception, and include appropriate and specific citations to the record. The ALJ's determination in paragraph 60 of the RO is based on competent substantial

¹In re Renee Lee, Case No. 11-6063EC (Fla. DOAH July 11, 2012)(imposing \$5,000 civil penalty and public censure and reprimand on Respondent, a county attorney, for violation of Section 112.313(6) for authorizing a legal opinion justifying a one percent raise in her salary without need for County Commission approval); In re Gerald Buhr, Ethics Commission Complaint No. 10-098 (imposing stipulated \$2,500 civil penalty on Respondent, a city attorney, for violation of Section 112.313(6), Florida Statutes, for increasing his hourly rate for legal services without City Commission approval).

evidence as to its factual findings, is a correct statement of applicable law, and is based on proceedings which complied with essential requirements of law.

Ruling on Respondent's Memorandum of Law

The Commission on Ethics declines consideration of the Respondent's Memorandum of Law because it is untimely and unauthorized and, accordingly, the Commission on Ethics also declines consideration of the Advocate's Motion to Strike Respondent's Memorandum of Law.

Findings of Fact

The Commission on Ethics accepts and incorporates into this Final Order and Public Report the findings of fact in the Recommended Order from the Division of Administrative Hearings.

Conclusions of Law

The Commission on Ethics accepts and incorporates into this Final Order and Public Report the conclusions of law in the Recommended Order from the Division of Administrative Hearings.

Disposition

Accordingly, the Commission on Ethics determines that Respondent violated Section 112.313(6), Florida Statutes, and recommends that the Governor publicly censure and reprimand Respondent and impose a civil penalty of \$10,000 upon Respondent.

ORDERED by the State of Florida Commission on Ethics meeting in public session on
March 10, 2017.

Date Rendered

Matthew F. Carlucci
Chair, Florida Commission on Ethics

THIS ORDER CONSTITUTES FINAL AGENCY ACTION. ANY PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER HAS THE RIGHT TO SEEK JUDICIAL REVIEW UNDER SECTION 120.68, AND SECTION 112.3241, FLORIDA STATUTES, BY FILING A NOTICE OF ADMINISTRATIVE APPEAL PURSUANT TO RULE 9.110 FLORIDA RULES OF APPELLATE PROCEDURE, WITH THE CLERK OF THE COMMISSION ON ETHICS, AT EITHER 325 JOHN KNOX ROAD, BUILDING E, SUITE 200, TALLAHASSEE, FLORIDA 32303 OR P.O. DRAWER 15709, TALLAHASSEE, FLORIDA 32317-5709; AND BY FILING A COPY OF THE NOTICE OF APPEAL ATTACHED TO WHICH IS A CONFORMED COPY OF THE ORDER DESIGNATED IN THE NOTICE OF APPEAL ACCOMPANIED BY THE APPLICABLE FILING FEES WITH THE APPROPRIATE DISTRICT COURT OF APPEAL. THE NOTICE OF ADMINISTRATIVE APPEAL MUST BE FILED WITHIN 30 DAYS OF THE DATE THIS ORDER IS RENDERED.

cc: Mr. Stephan Carter, Respondent
Ms. Elizabeth A. Miller, Commission Advocate
Mr. Jeffrey Ashton, Complainant
The Honorable J. Bruce Culpepper, Division of Administrative Hearings