

BEFORE THE BOARD OF COMMISSIONERS
ON
GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF OHIO

11-2026

In Re: :

Complaint against :

Case No. 11-024

Marc Edward Dann
Attorney Reg. No. 0039425

Findings of Fact,
Conclusions of Law and
Recommendation of the
Board of Commissioners on
Grievances and Discipline of
the Supreme Court of Ohio

Respondent,

Disciplinary Counsel

Relator.

FILED
DEC 05 2011
CLERK OF COURT
SUPREME COURT OF OHIO

:

INTRODUCTION

{¶1} This matter was heard on November 3, 2011 in Cleveland, Ohio, before a panel consisting of John H. Siegenthaler, Judge Robert P. Ringland, and Judge Arlene Singer, chair. None of the panel members resides in the district from which the complaint neither arose or served as a member of the probable cause panel that reviewed the complaint pursuant to Gov. Bar R. V, Section 6(D)(I). Attorney Alvin E. Mathews represented Respondent. Attorney Joseph M. Caligiuri represented Relator.

{¶2} On April 14, 2011, the hearing panel was assigned to this matter. The matter initially was submitted to the hearing panel as consent to discipline, pursuant to BCGD Proc. Reg. 11. The agreement was timely filed with the Board. The hearing panel recommended acceptance of the agreement; however, after consideration, the Board rejected the agreement and remanded the matter to the panel for further proceedings.

{¶3} Respondent was admitted to the practice of law in Ohio on November 16, 1987 and is subject to the Code of Professional Responsibility, Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.

{¶4} Relator has charged Respondent with violating Prof. Cond. R. 8.4(h) [conduct that adversely reflects on a lawyer's fitness to practice law].

{¶5} The bases for the complaint are the convictions and the facts underlying the convictions obtained against Respondent in the Franklin County Municipal Court. Case no. 2010 CRB 9998-1, 2.

{¶6} In Count 1 of the complaint, Respondent was charged with violating R.C. 2921.43(A)(1):

(A) No public servant shall knowingly solicit or accept, and no person shall knowingly promise or give to a public servant, either of the following:

(1) Any compensation, other than as allowed by divisions (G), (H), and (I) of section 102.03 of the Revised Code or other provisions of law, to perform the public servant's official duties, to perform any other act or service in the public servant's public capacity, for the general performance of the duties of the public servant's public office or public employment, or as a supplement to the public servant's public compensation;

(2) Additional or greater fees or costs than are allowed by law to perform the public servant's official duties.

{¶7} In Count 2, Respondent was charged with violating R.C. 102.02(D):

(D) No person shall knowingly file a false statement that is required to be filed under this section."

{¶8} Both violations are 1st degree misdemeanors. Respondent entered an *Alford* plea as to Count 1 and a guilty plea as to Count 2, and was found guilty of both counts. Respondent

was sentenced on Count 1 to a \$500 fine and on Count 2 to a \$500 fine and ordered to perform 500 hours of community service to be completed by June 30, 2012.

{¶9} Respondent was previously found to have violated the Code of Professional Responsibility and was publicly reprimanded. *Mahoning Cty. Bar Assn. v. Dann*, 101 Ohio St.3d 266, 2004-Ohio-716

{¶10} The parties have rested on the stipulations of fact and conclusions of law they submitted previously with the consent to discipline.

FINDINGS OF FACT

{¶11} Respondent served as Ohio Attorney General from January 8, 2007 until May 14, 2008. The facts underlying the criminal violations occurred during this time period.

Facts underlying Count 1 of the Criminal Complaint

{¶12} Respondent had hired Anthony Gutierrez as the Director of General Services at the Ohio Attorney General's office. Respondent hired Leo Jennings as the Communications Director at the Ohio Attorney General's office. They were thus public servants.

{¶13} Sometime after February 5, 2007, Respondent through his campaign committee, Dann for Ohio Committee, provided Gutierrez free rental housing and associated expenses totaling at least \$7,178. On or about May 18, 2007, Respondent authorized the "Marc Dann OAG Transition Corp." to provide to Gutierrez a \$5,000 interest free loan.

{¶14} Sometime after March 5, 2007, Respondent provided free rental housing and associate expenses paid through direct hotel billings for Leo Jennings. Also, a \$3,000 per month "consulting fee" was paid to Jennings' business, Progressive Solutions Group (PSG), to

compensate Jennings for rent and associated living expenses. The total of these payments exceeded \$30,000. The payments were made through the Dann for Ohio Committee.

{¶15} The payments for Gutierrez and Jennings terminated prior to May 2, 2008. Both Gutierrez and Jennings were employed by the Ohio Attorney General's office during the time period in question.

Facts underlying Count 2 of the Criminal Complaint

{¶16} On or about April 26, 2007, Respondent filed his required 2006 financial disclosure statement with the Ohio Ethics Commission. Respondent did not disclose his receipt of 15 checks, totaling \$17,540.86, from the Dann for Ohio Committee. The checks were reimbursements for hotel rooms, parking, mileage, food, supplies, insurance for the campaign vehicle, and other related expenses.

{¶17} On or about April 15, 2008, Respondent filed his 2007 financial disclosure statement without disclosing the source of funds used for travel expenses for his travel to and attendance at a Democratic Attorneys General Association seminar in Scottsdale, Arizona between January 26-30, 2007. He was accompanied by his two minor children, Gutierrez's two minor children, and two other unidentified individuals.

{¶18} Respondent and his party travelled by private jet owned by Imaginaire Private Jet Charter. BFD Aircraft, LLC leased the private jet for this purpose and paid Imaginaire \$20,803.52. BFD Aircraft is affiliated with Ben Barnes Group, LP, founded by Ben Barnes who contributed \$10,000 to Dann's campaign for Attorney General.

CONCLUSIONS OF LAW

{¶19} The parties have agreed and stipulated and the panel finds by clear and convincing evidence that Respondent violated Prof. Cond. R. 8.4(h).

MITIGATION AND AGGRAVATION

{¶20} The parties have stipulated to and the panel finds the following mitigating factors pursuant to BCGD Proc. Reg. 10 (B)(2): full and free disclosure to the Board and cooperative attitude toward proceedings; good character and reputation evidence; and imposition of other penalties and sanctions.

{¶21} The parties have stipulated to and the panel finds the following aggravating factor pursuant to BCGD Proc. Reg. 10 (B)(1): prior disciplinary record.

SANCTION

{¶22} In the consent to discipline, the parties stipulated to a six-month suspension from the practice of law, all stayed. However, when the stipulations were later resubmitted, Relator reserved the right to amend his recommendation at the conclusion of the hearing. At that time, Relator requested that Respondent's Ohio license to practice law be suspended for one year, all stayed. Respondent requests a stayed suspension.

{¶23} Respondent has completed his community service and has paid his fines ordered in the criminal matters. He has presented letters from ten people, including four judges, attesting to his good character. At the hearing, testimony as to Respondent's good character was presented by two clients and an attorney who shares office space with him. A staff attorney from the Legal Aid Society of Cleveland, who in addition to submitting a letter, testified for Respondent. She is in charge of keeping track of pro bono hours contributed by attorneys.

Respondent completed his community service requirements through this pro bono program. Previous to his criminal sentence, Respondent had participated in this pro bono program, and he continued his participation after completion of his mandatory community service.

{¶24} Respondent presented testimony on his own behalf. He testified to the humiliation he and his family had experienced because of his actions. Respondent's family bonds have been broken or frayed and his relationship with his children has suffered. He is especially regretful for the pain he has caused his children.

{¶25} His explanations for his missteps revolve around his self-described hubris and arrogance. Respondent explained that he did not expect to win the election for attorney general and was apparently not prepared to immediately hire staff or properly organize his office. He testified that the other newly elected state office holders had hired many experienced persons, some from the attorney general's office, and he was left to set up a system to hire new employees, some of whom had little or no government experience. He claimed that because his staff wanted to "accommodate" him, they recommended for hiring those they thought he wanted to hire, rather than those he should have hired. As a result, he hired people that he should not have.

{¶26} He explained that the payments from his campaign committee for rent and other expenses for Gutierrez and Jennings were to avoid paying public funds for their political work. As he had been critical of his predecessor for allowing state employees to do political work on state time, he wanted to compensate his own employees for doing political work outside of state hours. Even though Respondent was aware that the state had enacted legislation prohibiting additional compensation, remembering the case of a previous lieutenant governor who had

accepted additional compensation from a campaign committee, he accepted what was told to him without question, *i.e.* that his office had been advised that campaign funds could be used for that purpose.

{¶27} Respondent filed incorrect financial disclosure statements because he reported the payments to himself from the campaign committee on his campaign reports and did not think that he had to include these payments on his financial disclosure statements also. He claims he did report the use of the private jet for his travel to the Democratic Attorneys General Association seminar payments on his financial disclosure statement. He reported the “Democratic Attorneys General Association” as the source of travel expense payment of \$7,687.14, rather than the \$20,803.52 paid by BFD Aircraft LLC, affiliated with a campaign contributor. Respondent explains that he arrived at the reported amount by following Federal Election Commission guidelines, using the value of two first class airline tickets. He further states that someone else prepared the statements for him whom he relied on to do the necessary “legal” research and analysis as to what and how to report payments and expenses. The fact remains that he plead guilty to the charges.

{¶28} Counsel have cited *Disciplinary Counsel v. Taft*, 112 Ohio St.3d 155, 2006-Ohio-6525 and *Disciplinary Counsel v. Forbes*, 122 Ohio St.3d 171, 2009-Ohio-2623 in support of an appropriate sanction.

{¶29} In *Taft*, a public reprimand was ordered when Respondent failed to report over 50 gifts (mostly golf outings and other events) on his financial disclosure statement. He was found to have violated DR 1-102(A)(6) [conduct that adversely reflects on a lawyer’s fitness to practice law] pursuant to a consent to discipline agreement filed with and accepted by the Board and the

Supreme Court. Taft had been charged with four counts of violating R.C. 102.02(D) [filing false financial disclosure statements). He pleaded no contest to the charges, was found guilty, and was sentenced. The Board characterized Tafts's actions as "carelessness."

{¶30} In *Forbes*, Respondent was found to have violated DR 1-102(A)(6) after being convicted of four violations of R.C.102.02(D) (filing false financial disclosure statements) and two violations of R.C. 102.03(E) (accepting gifts of such character as influence the performance of his duties as a public official), after a full hearing before a panel of the Board at which he tried to "explain away" his actions. The Court found this to be an aggravating factor and ordered his license suspended for six months, all stayed. The panel and the Board had recommended that Forbes receive a public reprimand.

{¶31} The parties also cite *Disciplinary Counsel v. Carroll* , 106 Ohio St.3d 84, 2005-Ohio-3805. Carroll, as a member of the Ohio State Barber Board, submitted inaccurate and improper reimbursement requests. He was found to have violated DR 1-102(A)(6) and DR 1-102(A)(4) [conduct involving dishonesty, fraud, deceit, or misrepresentation]. His full cooperation, restitution, acknowledgement of responsibility, resignation from the Barber Board, no selfish or dishonest motive, genuine remorse without excuses, service to financially needy clients, no harm to legal clients, criminal prosecution and payment of a fine, and good character and reputation were all factors cited by the Court. The Court found that Carroll had already been appropriately punished and stated that "the public would not be well served by his actual suspension," noting that Carroll was no longer accountable to the public for his work hours. Because of this mitigating evidence, Carroll was given a stayed suspension, rather than an actual suspension. Compare *Disciplinary Counsel v. Fowerbaugh*, 74 Ohio St.3d 187, 1995-Ohio-261,

¶13 [“A violation of DR 1-102(A)(4) usually requires an actual suspension from the practice of law for an appropriate period of time”].

¶32 } The panel recognizes that *Taft*, *Forbes*, and *Carroll* are precedent for no more than a stayed, suspended license sanction. We must fashion a sanction keeping in mind that the primary purpose of the sanction is not to punish the offender, but to protect the public. See *Disciplinary Counsel v. O’Neill*, 103 Ohio St.3d 204, 2004-Ohio-4704; *Ohio State Bar Ass’n. v. Weaver* (1975), 41 Ohio St.2d 97, and *Disciplinary Counsel v. Hunter*, 106 Ohio St.3d 418, 2005-Ohio-5411.

¶33 } As a consequence of his criminal conviction, Respondent cannot hold public office for seven years. Respondent expresses no or very little interest in future public office. However, the fact remains that Respondent’s position as the Attorney General of Ohio sets him apart from other lawyers. In the least, Respondent’s explanations for his conduct speak poorly to his judgment. Poor judgment is not an aggravating factor. However, whether or not his explanations were sensible or credible, they are not an excuse. The panel cannot help but wonder at the harm to the reputation of the legal profession and to the confidence of the public in the office of Attorney General when the chief law officer in the state has committed ethical errors and tries to explain them away as Respondent has.

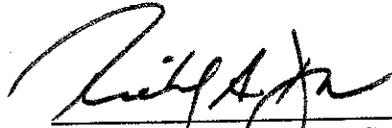
¶34 } The panel recommends that Respondent’s license to practice be suspended for six months.

BOARD RECOMMENDATION

Pursuant to Gov. Bar R. V, Section 6(L), the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on December 1, 2011. The

Board adopted the Findings of Fact, Conclusions of Law, and Recommendation of the panel and recommends that Respondent, Marc Edward Dann, be suspended from the practice of law in the State of Ohio for six months. The Board further recommends that the cost of these proceedings be taxed to Respondent in any disciplinary order entered, so that execution may issue.

Pursuant to the order of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio, I hereby certify the foregoing Findings of Fact, Conclusions of Law, and Recommendations as those of the Board.



**RICHARD A. DOVE, Secretary
Board of Commissioners on
Grievances and Discipline of
the Supreme Court of Ohio**