

OCT 23 2024

**BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS**

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In re: Jeff Bergosh,

Respondent.

Complaint No.: 24-162

ADVOCATE'S RECOMMENDATION

The undersigned Advocate, after reviewing the Complaint, Response to Complaint, and Report of Investigation filed in this matter, submits this Recommendation in accordance with Rule 34-5.006(3), F.A.C.

RESPONDENT/COMPLAINANT

Respondent, Jeff Bergosh, serves on the Escambia County Commission. Complainant is Pam Childers of Pensacola, Florida.

JURISDICTION

The Executive Director of the Commission on Ethics determined that the Complaint was legally sufficient and ordered a preliminary investigation for a probable cause determination as to whether Respondent violated Section 112.313(6), Florida Statutes. The Commission on Ethics has jurisdiction over this matter pursuant to Section 112.322, Florida Statutes.

The Report of Investigation was released on October 11, 2024.

ALLEGATION

Respondent is alleged to have violated Section 112.313(6), Florida Statutes, by using his position to secure a privilege, benefit, or exemption for himself and/or another.

APPLICABLE LAW

Section 112.313(6), Florida Statutes, provides as follows:

MISUSE OF PUBLIC POSITION. No public officer, employee of an agency, or local government attorney shall corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others. This section shall not be construed to conflict with s. 104.31.

The term "corruptly" is defined by Section 112.312(9), Florida Statutes, as follows:

"Corruptly" means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of a public servant which is inconsistent with the proper performance of his or her public duties.

In order to establish a violation of Section 112.313(6), Florida Statutes, the following elements must be proved:

1. Respondent must have been a public officer or employee.
2. Respondent must have:
 - a) used or attempted to use his or her official position or any property or resources within his or her trust,
or
 - b) performed his or her official duties.
3. Respondent's actions must have been taken to secure a special privilege, benefit or exemption for him- or herself or others.
4. Respondent must have acted corruptly, that is, with wrongful intent and for the purpose of benefiting him- or herself or another person from some act or omission which was inconsistent with the proper performance of public duties.

ANALYSIS

In 2016, Respondent was elected to represent Escambia County's District 1 as a commissioner and was subsequently re-elected in August of 2020. (ROI 4)

In 2019, the Escambia County Medical Director Dr. Rayme Edler filed a complaint with the Florida Department of Health (DOH) Bureau of Emergency Medical Oversight against then-paramedic Matthew Selover. (ROI 5-7) In January 2020, Selover filed a Complaint of Discrimination against the Escambia County Commission and Elder. (ROI 8)

In May 2020, Dr. Edler filed a False Claims Act Complaint against the County alleging, in part, that the County knowingly filed claims for medical services performed by uncertified and unqualified personnel, for emergency transportation when it provided non-emergency transportation, and for advanced life support when it provided only basic life support. (ROI 9) The parties reached a settlement with the County paying \$3,500,000 to resolve claims that ambulance and emergency medical technicians lacking the requisite certifications provided healthcare services via emergency medical services and transportation with Escambia County Emergency Medical Services during the period of January 1, 2013 through December 31, 2020. (ROI 9 Footnote 2)

In the summer of 2021, the County Commission met and agreed to settle Selover's lawsuit with a payment of \$199,999.99 and Selover agreeing to irrevocably release the County from any and all claims and demands, actions, causes of actions, damages, expenses, or cost of whatever nature. (ROI 10, 12, 13, 39, Exhibit A1-A4) Selover filed a motion to dismiss his lawsuit due to the settlement. (ROI 14) The case was dismissed with prejudice on August 2, 2021. (ROI 14)

In June 2021, DOH filed an administrative complaint against Selover. (ROI 11) Also occurring on August 2nd, Selover executed an agreement with DOH regarding the administrative

complaint. (ROI 15) The agreement stipulated that Selover neither admits nor denies the allegations and he received a letter of reprimand against his paramedic certification, was required to complete 12 hours of continuing education, and pay an administrative fine of \$4,000 and reimburse costs of \$2,610.02 (total of \$6,610.02), within one year of issuance of the Final Order.

(ROI 15) The Final Order, incorporating the settlement agreement, was filed and recorded on October 13, 2021. (ROI 15) Selover satisfied his financial obligations as outlined in the Final Order on October 13, 2021. (ROI 15)

However, on August 16, 2022, Selover's attorney, James Poindexter, sent notice to County Attorney Alison Rogers advising that Selover requested that the County reimburse him for the fine and investigative costs associated with his DOH agreement. (ROI 16, 39, Exhibit B1-B2) On August 22, 2022, Assistant County Attorney Will Nelson emailed County Attorney Rogers and provided six points against payment of the fines and costs. (ROI 17)

After receiving a follow-up request from Poindexter, County Attorney Rogers responded that,

Please be aware that there is no legal basis upon which I could possibly process this bill or the firm's previous request for payment of the DOH fine and cost of prosecution paid by Mr. Selover. In 2021, Mr. Selover executed a release when he settled his case as a precondition to payment from our carrier. That release covered and therefore waived any and all future payments on his behalf related to these events... Finally, in Florida law, there is no lawful public purpose for the payment of a fine and cost of prosecution, or your firm's bill for asking that we pay you for it.
(ROI 18, 19)

This response appears to have prompted Selover to contact Respondent asking if he was aware the payment had not been processed and stating that he believed Respondent would make it happen or use his (Respondent's) discretionary funds. (ROI 20, Exhibit C) Respondent replied that he had spoken with County Attorney Rogers and that, "if it's legal for me to do so I will pay

that out of my discretionary I just have to get two votes to go along with me and I think I'll be able to do that given everything they put you through.” (ROI 20, Exhibit C)

At the October 6, 2022 Commission meeting, Respondent presented the issue to the Commission and requested a motion that the payment for Selover’s fine and fees served a public purpose and to pay it, if necessary, from his discretionary funds. (ROI 21) A commissioner made a motion directing County Attorney Rogers to authorize payment of \$6,610.02 for the fine and cost of prosecution, and \$350.00 in collection fees from Respondent’s District 1 discretionary funds. (ROI 21) Respondent asked County Attorney Rogers if the motion “checked the boxes” in terms of being a public purpose to which she responded that it would be helpful for the motion indicate there is a legislative finding¹ that it serves a public purpose. (ROI 21) The commissioner modified his motion directing legal counsel to make the payments noted because of the legislative findings of it serving a public purpose, and that the source of those funds be District 1 discretionary dollars. (ROI 21) The motion passed three to one. (ROI 21) On October 10, 2022, County Attorney Rogers prepared a voucher to facilitate payment and submitted the voucher to the Clerk of Court. (ROI 22, Exhibit B-8)

On January 11, 2023, Codey Leigh, General Counsel for the Clerk of Court, sent an email to County Attorney Rogers advising the expenditure for Selover was not approved, providing, “In the Settlement Agreement, Respondent acknowledged the costs were his legal obligation and further consented to pay all financial obligations within 1 year of entry of a Final Order.” (ROI 24) General Counsel Leigh advised he was unable to find any authority to support payment to satisfy fines and costs arising from an administrative enforcement, and that the expenditure,

¹ Escambia County is not a charter county. The five-member Board of County Commissioners has legislative powers. (ROI 21 Note)

lacking any legal authority, was unauthorized. (ROI 24, Exhibit B9-B11) County Attorney Rogers expressed her disappointment and forwarded the message to Respondent. (ROI 25)

At a February 2, 2023 Commission meeting, County Attorney Rogers informed the Commission of the Clerk's concerns and requested direction on how to handle it. (ROI 26) A commissioner expressed agreement with the Clerk's stance to which Respondent responded that Selover saved the Commission tens of thousands of dollars because he (Selover) planned to fight the allegation and he (Respondent) believed Selover would be successful. (ROI 26) The Commission ultimately voted to direct County Attorney Rogers to file a "Writ of Mandamus,"² which was filed on March 7, 2023. (ROI 26, 27, 28, Exhibit D1-D4) The Writ of Mandamus was directed to the Complainant, in her capacity as the Escambia County Clerk of the Court, and ordered her to pay \$6,960.02, to Delegal & Poindexter, P.A., as reimbursement of an administrative fine and costs and attorney fees, on behalf of Selover. (ROI 28, Exhibit D1-D4)

On December 7, 2023, Escambia County submitted responses to the Clerk's Request for Admissions in which Attorney Rogers admitted that "on or before October 6, 2022, Commissioner Bergosh was informed by an employee or agent of the County that County Attorney Rogers declined to process payment of Matthew Selover's fine and cost of prosecution and investigation because payment by the County did not serve a lawful public purpose." (ROI 29, Exhibit D-9) However, testimony from Respondent and County Attorney Rogers also reflects that there was discussion on the lawful public purpose component. (ROI 40, 47) As noted above, subsequent to Respondent and County Attorney Rogers' discussion, the County Commission voted that there was a lawful public purpose.

² A writ of mandamus is an order from a court to an inferior government official ordering the government official to properly fulfill their official duties or correct an abuse of discretion.

On June 21, 2024, the County filed a Notice of Voluntary Dismissal With Prejudice regarding the Writ of Mandamus. (ROI 32, Exhibit D13-D14) As of October 1, 2024, the Clerk's Office has not issued a payment to Selover for the fine and/or investigative costs as he requested. (ROI 32 Note)

Complainant, Escambia County Clerk and Comptroller, alleges Respondent voted to improperly expend public dollars to cover Selover's fine and cost of prosecution and investigation. (ROI 2) It is alleged that the County Attorney informed Respondent that the expenditure was unlawful, yet Respondent told his fellow County Commissioners that the County Attorney had said it was legal and appropriate. (ROI 2) It is further alleged that, after the expenditure vote passed at Respondent's urging, he pushed to sue the Clerk's office for payment after it determined that it could not make the payment because the payment was unlawful. (ROI 2)

Complainant explained in her role as the County's Comptroller, she serves as an auditor and must employ discretion and judgment when processing payments. (ROI 34) She advised that invoices flow through a narrowing scope of review and approval that includes certifying that all necessary documentation is provided, that policies and procedures are accurate, that there is a legal purpose for the payment, and there is Commission approval. (ROI 34) She further advised that the Comptroller's staff researched the matter, contacting other counties and legal counsel, and none indicated having approved the payment of a personal fine. (ROI 35) She concluded that the Commission simply verbalizing, "this is a public purpose" is not enough to make such a payment appropriate. (ROI 36)

Respondent believed that Selover's choice to settle served a public purpose in that it stopped the meter on the publicly funded legal fees. (ROI 43) Respondent recalled only that

County Attorney Rogers saying that the County was not *obligated* to pay and the Clerk had informed her there was no statutory basis compelling payment. (ROI 49)

County Attorney Rogers recalled that Respondent initially assumed Selover would pay the fine and costs from the settlement and he mentioned the release. (ROI 40) Her recollection was that following their discussion, they agreed not to pay the fines and costs and that she would advise Poindexter of the decision. (ROI 40) Subsequently, Respondent called her and said Selover was treated wrongly, that the County should pay the fine and costs, to use his discretionary fund to make the payment, and put the item on the Commission's agenda. (ROI 40) When asked to explain her response to admissions regarding the Writ of Mandamus, County Attorney Rogers advised if the Commission, as a legislative body, wished to approve payment of Selover's fine and costs, they must do so by stating a public purpose which it did on October 22nd. (ROI 40, 41)

There is insufficient evidence to reflect that Respondent brought the matter to the County Commission in a manner that was inconsistent with the proper performance of his public duties. While County Attorney Rogers initially opined that Selover's request to pay the fine and fees should be rejected, she then offered an alternative option that the County Commission voted to accept as a means to pay the fine and fees.

Therefore, based on the evidence before the Commission, I recommend that the Commission find no probable cause to believe that Respondent violated Section 112.313(6), Florida Statutes.

RECOMMENDATION

It is my recommendation that:

There is no probable cause to believe that Respondent violated Section 112.313(6), Florida Statutes, by using his position to secure a privilege, benefit, or exemption for himself and/or another.

Respectfully submitted this 23rd day of October, 2024.


MELODY A. HADLEY

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