State of Florida
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*"A Public Office is a Public Trust"*

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# MEMORANDUM

TO: Members, Commission on Ethics
FROM: Chris Anderson
SUBJECT: Complaint No. 15-174, In re GEORGE HANNS
DATE: July 10, 2019

Accompanying this memorandum, please find a draft Final Order Determining Appellate Costs And Attorney Fees prepared by your staff. The draft is for your use as you consider the Recommended Order from the Division of Administrative Hearings (DOAH) Administrative Law Judge (ALJ) in the appellate costs and attorney fees matter in which George Hanns (the respondent in the ethics complaint filed against him) seeks a determination, pursuant to an order of the First District Court of Appeal, of the amount of appellate costs and attorney fees in his favor against Dennis McDonald (the complainant in the ethics complaint filed against Hanns), and any argument by McDonald or Hanns at your Commission meeting on July 26, 2019. No exceptions to the Recommended Order were filed by either party. Neither Hanns nor McDonald participated in writing the draft; no Commission member had any input in the writing of the draft; and, of course, you are not required to accept the draft. Both Hanns and McDonald were provided copies of the draft.

Copy to: Mr. Mark Herron and Mr. Albert T. Gimbel, Attorneys for George Hanns
Mr. Dennis McDonald

BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS

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| In re GEORGE HANNS,<br><br>Respondent. | Complaint No. 15-174<br>DOAH Case No. 19-0426FE<br>DCA Case No. 1D18-0205<br>Final Order No. 19-___ |

FINAL ORDER DETERMINING APPELLATE COSTS AND ATTORNEY FEES

This matter came before the State of Florida Commission on Ethics (Commission), meeting in public session on July 26, 2019, on the Recommended Order (RO) of an Administrative Law Judge (ALJ) of the Division of Administrative Hearings (DOAH) rendered on June 7, 2019.

Background

This matter began several years ago when Dennis McDonald filed an ethics complaint against George Hanns. The Commission on Ethics dismissed the complaint with a finding of no probable cause. Thereafter, Hanns sought costs and attorney fees against McDonald under Section 112.317(7), Florida Statutes, resulting in the Commission's determination (via its Final Order Determining Costs and Attorney Fees rendered December 13, 2017), pursuant to an earlier recommended order of the ALJ, that McDonald was liable for costs and attorney fees in favor of Hanns (total amount, $59,042.53). McDonald appealed the Final Order to the District Court of Appeal, the Court dismissed the appeal, Hanns sought appellate costs and attorney fees against McDonald, the Court awarded Hanns appellate costs and attorney fees, and the Court remanded the matter to the Commission for determination of the amount of appellate costs and attorney fees if Hanns and McDonald were unable to agree on an amount. Hanns and McDonald were unable to agree on an amount. The matter was referred to DOAH to hold a hearing and enter a

recommended order as to the amount. DOAH held the hearing; and the hearing resulted in the Recommended Order (RO) now before the Commission that recommends a determination of appellate costs and attorney fees in the total amount of $11,149.17.

After entry of the RO, the parties (Hanns and McDonald) had 15 days to file with the Commission exceptions to the RO. Neither party filed exceptions. Both Hanns and McDonald were notified of the date, time, and place of the Commission's final consideration of this appellate costs/attorney fees matter; and both were given the opportunity to appear and 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.

Having reviewed the RO and the complete record of the DOAH appellate costs/fees proceeding, and having heard the arguments of those of the parties which appeared and made argument at its final consideration of this matter, the Commission on Ethics makes the following findings, conclusions, and determination:

Findings of Fact

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

Determination

Accordingly, the Commission on Ethics determines that the amount of appellate costs and attorney fees in favor of Hanns against McDonald is $11,149.17.

ORDERED by the State of Florida Commission on Ethics meeting in public session on July 26, 2019.

_____
Date Rendered

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*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. Mark Herron and Mr. Albert T. Gimbel, Attorneys for George Hanns
Mr. Dennis McDonald
The Honorable Suzanne Van Wyk, Division of Administrative Hearings
Ms. Kristina Samuels, Clerk of the Court, First District Court of Appeal