

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CHARLES OSBORNE,)
)
 Petitioner,)
)
 vs.) Case No. 04-4110FE
)
 ALEXANDER J. MILANICK,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

This cause came on for formal hearing before Harry L. Hooper, Administrative Law Judge with the Division of Administrative Hearings, on May 11, 2005, in Daytona Beach, Florida.

APPEARANCES

For Petitioner: Martin A. Pedata, Esquire
Martin Pedata, P.A.
505 East New York Avenue, Suite 8
DeLand, Florida 32724

For Respondent: Gary S. Edinger, Esquire
305 Northeast First Street
Gainesville, Florida 32601

STATEMENT OF THE ISSUE

The issue is whether Respondent Alexander J. Milanick should be required to pay attorney fees and costs in the amount of \$4,976.00 to Petitioner Charles Osborne to compensate

Petitioner for his defense of an ethics complaint filed with the Florida Commission on Ethics.

PRELIMINARY STATEMENT

In a letter dated July 18, 2003, Respondent Alexander J. Milanick (Dr. Milanick), through his attorney, James J. Kearns, initiated an inquiry by the Florida Commission on Ethics (Commission). The letter addressed certain actions of Petitioner Charles Osborne (Mr. Osborne), taken while he was mayor of the Town of Beverly Beach. The Commission, in a Determination of Investigative Jurisdiction and Order to Investigate dated September 26, 2003, determined that the Commission should investigate the allegations made by Dr. Milanick. In order to defend against these allegations, Mr. Osborne retained Robert J. Riggio as his attorney.

Subsequent to the investigation, the Commission, in a Public Report dated September 8, 2004, dismissed the complaint on a finding of no probable cause.

Subsequently, Mr. Osborne filed a Petition for Costs and Attorney Fees, which was filed with the Commission on October 1, 2004. Dr. Milanick filed his Objection to Respondent's Petition for Costs and Attorney Fees, which was filed by the Commission on October 29, 2004.

On November 12, 2004, the Commission forwarded the matter to the Division of Administrative Hearings. A hearing was

scheduled for February 1, 2005. Pursuant to a Joint Emergency Motion to Continue and Reschedule Hearing, the hearing was rescheduled for April 19 and 20, 2005. Pursuant to Respondent's Motion to Continue, the hearing was rescheduled for May 11 and 12, 2005, in Daytona Beach, and was heard on May 11, 2005.

At the hearing, Mr. Osborne testified in his own behalf and presented the testimony of four witnesses and offered ten exhibits into evidence, which were accepted. Dr. Milanick testified in his own behalf and presented the testimony of four witnesses and offered twenty exhibits into evidence and all were accepted.

Official recognition was taken of Milanick v. Town of Beverly Beach, 820 So. 2d 317 (Fla. 5th DCA 2001) and Milanick, et al. v. Town of Beverly Beach, et al., Case No. 00-288-CA (Fla. 7th Jud. Cir.).

A Transcript was filed on June 10, 2005. Subsequently, Petitioner and Respondent timely filed Proposed Recommended Orders, which were considered in the preparation of this Recommended Order.

References to statutes are to Florida Statutes (2004) unless otherwise noted.

FINDINGS OF FACT

1. The Town of Beverly Beach, Florida has a population of about 600 located in Flagler County, Florida. It is about one

mile from north to south, and occupies about .4 square miles. It is bounded on the west by the Intracoastal Waterway and on the east by the Atlantic Ocean. U.S. Highway A1A is the main north-south route through the town.

2. Mr. Osborne is an aerospace engineer who served on the Beverly Beach Town Commission from 1997 through March 1999. He was mayor from March 1999 until 2001. He has lived at 2641 Osprey Circle, in Beverly Beach, in a home constructed at that location, since 1995. This residence is closer to the southern boundary of Beverly Beach than to the northern boundary.

3. Dr. Milanick is a dentist who, along with his brother John, and a person named McGee, during times pertinent, owned land immediately north of Beverly Beach. On the property then and currently owned by Dr. Milanick, and east of A1A, is a restaurant named the Shark House. The premises has also been known as Crabby Joe's.

4. In 1995, Dr. Milanick applied to the Town Commission to have his property, and that of his brother, and that of McGee, annexed into the town limits of Beverly Beach. He did this by asking a Mr. Taylor to do what was necessary to cause the annexation to occur. Mr. Taylor thereafter filed a petition with the Town Commission.

5. By Ordinance 95-9-4, the Town Commission, in 1995, assented to the request and it was made effective November 15,

1995. The Ordinance purported to annex the Milanick property into the Town of Beverly Beach and to zone it general commercial. Mr. Osborne was not a member of the Town Commission and was not mayor during this time.

6. The Ordinance, however, was defective in four ways. The Ordinance purported to annex the property into Bunnell, Florida; it was not properly signed by all commissioners; it was not publicly noticed; and it did not provide a legal description of the property. It was not filed with either the Flagler County Clerk of the Court or the Florida Secretary of State.

7. The matter languished until 1997 when Dr. Milanick determined that his property had not in fact been moved within the boundaries of Beverly Beach. Dr. Milanick brought this to the attention of the Town Commission in October 1997.

8. At a Town Commission meeting on December 3, 1997, the Town Attorney stated that he had not had a chance to look into the Milanick and Shark House issue. At a Town Commission meeting on February 4, 1998, Dr. Milanick inquired as to the progress being made on the annexation of his property and was told that the Town Attorney would get with him and discuss the procedure. Subsequently, the Town Attorney, Pat McCormick, suggested that it would be necessary to start the process from the beginning if the land was to be annexed.

9. At a Town Commission meeting on March 4, 1998, Mayor Osborne stated that there was no benefit to the annexation of the

Shark House. One member of the Town Commission suggested that they honor past commitments. Dr. Milanick was in attendance at this meeting.

10. At a Town Commission meeting on May 5, 1999, Dr. Milanick and his brother again attended the Town Commission meeting and requested the annexation of their property and discussed the procedure that would be necessary. At a Town Commission meeting on June 2, 1999, a motion was made to go forward with Ordinance 95-9-4 and to amend the official city map and legal description to include the Shark House property. The motion passed but Mayor Osborne vetoed it.

11. During a regular monthly meeting of the Town Commission on July 7, 1999, James Kearns, an attorney retained by Dr. Milanick, who was authorized to act for Dr. Milanick, appeared and requested that the Commission direct the Town Clerk to sign Ordinance 95-9-4 and to forward it to the county and the state in order to determine if the Ordinance was valid. This request was approved by the Town Commission. Mayor Osborne, vetoed the measure. Thereafter, the veto was over-ridden by the Commission.

12. At a Town Commission workshop on July 21, 1999, there was additional discussion regarding the annexation of the Shark House. Mr. Kearns accused Mayor Osborne of discussing the Milanick annexation matter with Sid Crosby, Clerk of the Court of Flagler County. Mayor Osborne denied the charge. The discussion

became heated and accusatory and Mayor Osborne threatened to have the sheriff eject Mr. Kearn from the meeting.

13. Subsequent to the action of the Town Commission of July 7, 1999, the Town Clerk, Douglas Courtney, took Ordinance 95-9-4 to Syd Crosby, Clerk of the Court for Flagler County. In a memorandum dated July 26, 1999, Mr. Courtney reported to the Town Commission that Mr. Crosby would not file Ordinance 95-9-4 because it was defective. One of the defects cited was that the instrument purported to annex the land into the City of Bunnell, Florida.

14. No creditable evidence was adduced which indicated that Mayor Osborne visited Syd Crosby for the purpose of preventing the recording of the annexation of Dr. Milanick's property. Mr. Crosby concluded from the beginning that Ordinance 95-9-4 was not recordable.

15. Mayor Osborne suggested some solutions which would permit the annexation, including, re-submission of a proper application. Over a period of time some "glitch" bills were considered which would annex the land. However, none passed.

16. Mr. Kearn attended the Town Commission meeting on February 2, 2000, and the minutes of the meeting noted that he was accompanied by "a person taking notes." Following this meeting, in a February 16, 2000, letter to Dennis Knox Bayer, Town Attorney, Mr. Kearn claimed that Mayor Osborne had a

personal vendetta against Dr. Milanick, and that he was exercising dictatorial efforts to prevent citizens to speak at town meetings. He further demanded that ". . . all Town officials, including you as their representative, refrain from saying things that are simply and blatantly false, which only serve to incite Mr. Milanick."

17. At a town meeting on March 1, 2000, Mr. Kearn complained about the annexation not being on the agenda and Mayor Osborne stated that a request for inclusion on the agenda had not been made in writing. Mr. Kearn was permitted to speak for three minutes, he spoke for three minutes, and immediately thereafter Mayor Osborne adjourned the meeting.

18. On or about April 25, 2000, Dr. Milanick and his brother John, filed suit against the Town of Beverly Beach and Mayor Osborne personally, in the Circuit Court of the Seventh Judicial Circuit in and for Flagler County. The suit alleged that the Town of Beverly Beach and Mayor Osborne violated the civil rights of the Milanicks. The suit alleged that Mayor Osborne had a vendetta against Dr. Milanick and should be held personally liable to Dr. Milanick.

19. The Circuit Court dismissed the civil rights count against Mayor Osborne and the town, and this dismissal was affirmed by the Fifth District Court of Appeal. The Circuit Court also dismissed the mandamus action, finding that the 30-day limitations' period for filing a petition for a writ of

certiorari applied and that a prima facie case for mandamus had not been established. The Fifth District Court of Appeal, on October 19, 2001, remanded that count to the Circuit Court with directions to grant the petition for mandamus, but upheld the dismissal of the civil rights counts.

20. On January 23, 2003, the Circuit Court entered its Alternative Writ of Mandamus. The Writ incorporated the allegations of Plaintiff's Complaint by reference and ordered that the Defendants take whatever steps necessary to sign and record Ordinance 95-9-4. When this occurred, Mr. Osborne was no longer an elected official of Beverly Beach.

21. The Circuit Court complaint filed by Dr. Milanick recited that the recording of the ordinance did not occur because Mayor Osborne conferred with the Clerk of the Court to block recording of the ordinance. The adoption of the matters recited in the complaint as true, by the appellate court, does not make them proven facts because no evidence was taken in the case. The complaint, moreover, alleges actions, such as being tyrannical and peevish, which could not in any event constitute a violation of a person's civil rights. The complaint does not allege that Mr. Osborne took any action, as mayor, because he wished to obtain a personal advantage and does not allege that the annexation of Dr. Milanick's real property would affect Mr. Osborne's real property in terms of value or otherwise.

22. As of the date of the hearing, Dr. Milanick's property had not been annexed into the corporate limits of Beverly Beach.

23. Mr. Osborne, while serving as mayor, was not helpful in causing the annexation to occur and it is apparent that his relations with Mr. Kearn were not amicable. Mr. Osborne, while serving as mayor was irascible, intimidating, and controlling.

24. Mr. Osborne believed that the annexation would bring no benefit to Beverly Beach and believed it would, "change the town's character." Mr. Osborne gained nothing directly or personally by preventing, or making difficult, the annexation of Dr. Milanick's land. As an elected official, he was permitted to advance his own ideas with regard to what he believed would be best for Beverly Beach and for himself as a citizen and property owner of Beverly Beach. He could act in this regard so long as he did not secure a special privilege, benefit, or exemption for himself, as opposed to a general benefit.

25. A letter signed by Mr. Kearn dated July 18, 2003, accompanied by an affidavit signed by Dr. Milanick, requested that the Commission conduct an investigation into the activities of Mr. Osborne during the period when he was the mayor of Beverly Beach. For reasons which become apparent hereafter, this letter, which had the words "Via Airborne Overnight Mail" stamped on its face, will be hereinafter referred to as the

"Airborne" letter. The following statements were contained in the "Airborne" letter:

Specifically, while Mayor, Charles Osborne simply refused to sign and record the ordinance duly adopted by the Town, which annexed land into the Town as a general commercial, simply because he personally did not want anymore general commercial land in the Town, which could jeopardize his personal investment in the Town.

He also met with the former Clerk of Court for Flagler County, Mr. Syd Crosby, to persuade the Clerk to not record anything regarding the annexation of such land, in order to prevent the completion of the annexation.

He thus plainly put his purely personal concerns, ahead of his duties as mayor, and fiduciary duty to the citizens of Beverly Beach.

The mayor still refused to oblige the Town's request, or to honor the duly adopted resolution, for his own personal reasons, irrespective of his duties as mayor to the citizens of Beverly Beach....

Even worse, he met with the former Clerk of Circuit Court of Flagler County, Mr. Syd Crosby, to attempt to persuade Mr. Crosby to *not* record any ordinance presented by the Town, annexing the Milanicks' property.

Mayor Osborne repeatedly ignored and defied the will of the Town to complete the annexation, to pursue his own personal agenda, i.e., stopping annexation of land as general commercial.

26. The "Airborne" letter then parroted items that indicated that the Circuit Court had found to be true, as follows:

Additionally, Mr. Osborne simply does not allow anyone to speak with whom he disagrees, or to address matter that he does not want addressed.

Mayor Osborne has...

a. refused to put the Milanicks' matters or requests on the Town Council agenda;

b. taken action regarding the Milanicks' properties, without any notice to the Milanicks, or without knowledge by the Milanicks that such action was being taken against their property, as required by the Town's own law;

c. refused to allow the Milanicks to speak to matters that affect their personal and property interests, once the Town Council had opened discussion regarding the annexation and zoning of the Milanicks' properties;

d. blatantly and willfully misrepresented the Milanicks' positions, actions, and statements at Town meetings, beyond the scope of the privilege normally attendant to a politician's statements at such meeting, in order to defeat the Milanicks' requests, and to harm the Milanicks;

e. refused to honor Ordinances passed by previous Town councils, as detailed above;

f. refused to follow through with completing the annexation approved by previous council members of the Town;

g. worked to undercut the recording of the completion of the signing of the ordinance, and the recording of the ordinance, to

complete the annexation, all as detailed above.

27. The matters in paragraph 25, are misleading because they indicate that the Circuit Court found these items to be true when in fact no evidentiary proceedings with regard to these items occurred in the Circuit Court.

28. Moreover, the Complaint alleged several matters which Dr. Milanick either knew to be untrue, or should have known that it was untrue. Specifically, the Complaint alleged that Mayor Osborne "did not want anymore general commercial land in the Town, which could jeopardize his personal investment in the Town." This allegation implies that he was acting for some personal and specific reason financial reason, as opposed to a general opposition to development. This allegation, had it been true, would have been actionable pursuant to Section 112.313(6)

29. The Complaint also alleged that Mayor Osborne met with Syd Crosby in order to prevent the annexation of the Milanicks' property. This allegation, coupled with the allegation as to a financial interest, bolsters the asserted improper purpose.

30. Based on this Complaint, the Executive Director of the Commission issued a Determination of Investigative Jurisdiction and Order to Investigate, which was filed with the Commission on September 26, 2003, and assigned Complaint Number 03-091.

31. Investigator Travis Wade of the Commission was directed to conduct a preliminary investigation into whether or not there was probable cause to believe a violation of Section 112.313(6), Florida Statutes, had occurred. That section reads as follows:

(6) 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.

32. Mr. Osborne learned of the Determination of Investigative Jurisdiction and Order to Investigate and thereafter retained Robert J. Riggio, of the firm of Riggio & Mitchell, P.A., located in Daytona Beach, as his attorney. Mr. Riggio worked on the case from October 24, 2003, until September 29, 2004. He charged \$150 per hour, which is below the customary charge in the Daytona Beach area, and the hourly rate therefore, is reasonable. He expended 33 hours which is reasonable. He expended \$180 in costs. These expenditures totaled \$4,976 which was billed to Mr. Osborne. He paid the bill.

33. On April 6, 2004, a second letter dated July 18, 2003, was sent to the Commission by Mr. Kearn by facsimile. This will

be referred to as the "Fax" letter. This was precipitated by a request to Mr. Kearn from Investigator Wade that he provide a copy of the original letter.

34. The "Fax" letter differed from the "Airborne" letter. In the second paragraph of the "Fax" letter the following sentence appears: "Specifically, while Mayor, Charles Osborne simply refused to sign and record the ordinance duly adopted by the Town, which annexed land just north of Mr. Osborne's manufactured home" And in the fourth paragraph of the "Fax" letter, the following sentence appears: "The Mayor objected, because it would serve to annex land as general commercial, just north of his own manufactured home." It further stated that his motivation was ". . . stopping land as commercial near him."

35. Mr. Kearn testified under oath that when Investigator Wade was discussing the case with him, that he, Mr. Kearn, realized the "Fax" letter was a draft that had been sent to Investigator Wade in error. Mr. Kearn said that the "Fax" letter was a draft that had subsequently been edited by Dr. Milanick who knew, July 18, 2003, that Mr. Osborne did not live in a manufactured home located immediately south of the property which was sought to be annexed.

36. Mr. Kearn said that it the "Airborne" letter was supposed to be the operative document. He said that he realized

that the "Fax" letter was being used by Investigator Wade when he was talking to him on the telephone on June 8, 2004, and that he advised Investigator Wade of the error. He testified that he made it perfectly clear to Investigator Wade that the "Airborne" letter was the operative document.

37. Investigator Wade's Report of Investigation, however, recites that during the telephone interview of Mr. Karn, that Mr. Karn advised him that Mr. Osborne resided in a mobile home community immediately south of the Milanick property, while he served as mayor and that Mr. Osborne's interest in stopping the annexation was to use his position for his personal benefit.

38. At the hearing, Investigator Wade stated under oath that Mr. Karn advised him during their telephone conversation that Mr. Osborne resided in a mobile home community immediately south of the Milanick property while he was serving as mayor. Investigator Wade stated that the issue of whether or not Mr. Osborne lived in the immediate vicinity of the Milanick property was the key element in his investigation because if that were true, stopping the annexation could be a personal benefit to Mr. Osborne. Mr. Wade was a disinterested and credible investigator and witness and his testimony is taken as true and accurate.

39. Mr. Osborne did not live in either a manufactured or mobile home. The type of home he lived in is irrelevant. What

is relevant is that Mr. Osborne did not live adjacent to, or in the vicinity of, the Milanick property. In fact, Mr. Osborne did not live near the north side of town. He lived closer to the south side of town and it is unlikely that the annexation of the Milanick property would have an economic effect on Mr. Osborne's property.

40. Mr. Kearn was aware of Mr. Osborne's resident address because he had him served with a civil suit at his residence in 2000. Mr. Kearn knew that Mr. Osborne did not live in a mobile home community, or in a manufactured home near the Milanick property, or anywhere near it. Nevertheless, he asserted that to be true when he talked to Investigator Wade.

41. Mr. Kearn is the attorney and agent of Dr. Milanick. Mr. Kearn is, therefore, the alter ego of Dr. Milanick so that the actions of Mr. Kearn, are the actions of Dr. Milanick.

42. The Commission, found in their Public Report, dated September 8, 2004, that Mr. Osborne's opposition to the annexation was not connected to any desire to secure a benefit for himself. The Commission dismissed the Milanick complaint on a finding of "no probable cause."

CONCLUSIONS OF LAW

43. The Division of Administrative Hearings has jurisdiction over the subject matter of and the parties to this

proceeding. § 120.57(1), Fla. Stat. and Fla. Admin. Code R. 34-5.0291.

44. Section 112.317(8) provides as follows:

112.317. Penalties

(8) In any case in which the commission determines that a person has filed a complaint against a public officer or employee with a malicious intent to injure the reputation of such officer or employee by filing the complaint with knowledge that the complaint contains one or more false allegations or with reckless disregard for whether the complaint contains false allegations of fact material to a violation of this part, the complainant shall be liable for costs plus reasonable attorney's fees incurred in the defense of the person complained against, including the costs and reasonable attorney's fees incurred in proving entitlement to and the amount of costs and fees. If the complainant fails to pay such costs and fees voluntarily within 30 days following such finding by the commission, the commission shall forward such information to the Department of Legal Affairs, which shall bring a civil action in a court of competent jurisdiction to recover the amount of such costs and fees awarded by the commission.

45. Florida Administrative Code Rule 34-5.0291, provides as follows:

34-5.0291. Award of Attorney's Fees.

(1) If the Commission determines that a person has filed a complaint against a public officer or employee with a malicious intent to injure the reputation of such officer or employee by filing the complaint with knowledge that the complaint contains one or more false allegations or with

reckless disregard for whether the complaint contains false allegations of fact material to a violation of the Code of Ethics, the complainant shall be liable for costs plus reasonable attorney's fees incurred in the defense of the person complained against, including the costs and reasonable attorney's fees incurred in proving entitlement to and the amount of costs and fees.

(2) The Commission shall make such a determination only upon a petition for costs and attorney's fees filed with the Commission by the public officer or employee complained against within 30 days following a dismissal of the complaint. Such petition shall state with particularity the facts and grounds which would prove entitlement to costs and attorney's fees. Staff shall forward a copy of said petition to the complainant by certified mail, return receipt requested.

(3) If the facts and grounds alleged in the complaint are not sufficient to state a claim for costs and reasonable attorney's fees, the Commission shall dismiss the petition after an informal proceeding. If it appears that the facts and grounds are sufficient, the Chair after considering the Commission's workload, shall direct that the hearing of the petition be held before the Division of Administrative Hearings, the full Commission, or a single Commission member serving as hearing officer. Commission hearing officers shall be appointed by the Chair. The hearing shall be a formal proceeding under Chapter 120, F.S., and the Uniform Rules of the Administration Commission, Chapter 28-106, F.A.C. All discovery and hearing procedures shall be governed by the applicable provisions of Chapter 120, F.S., and Chapter 28-106, F.A.C. The parties to the hearing shall be the respondent and the complainant(s), who may be represented by legal counsel.

(4) The respondent has the burden of proving the grounds for an award of costs and attorney's fees.

(5) If the petition is heard by the full Commission, it shall direct staff to prepare an order complying with Chapter 120, F.S., incorporating its findings and either granting or denying the petition. The draft of that order shall be modified or adopted at the next Commission meeting.

(6) If the petition is heard by a Commission hearing officer or, DOAH administrative law judge, in order to assist the Commission in evaluating any exceptions that may have been filed, Commission staff will provide a draft final order analyzing the exceptions. Copies shall be provided to the parties prior to the final hearing.

46. Mr. Osborne has the burden of proof. Fla. Admin. Code R. 34-5.0291(4).

47. Mr. Osborne must prove entitlement to costs and attorney fees by a preponderance of the evidence.

§ 120.57(1)(j), Fla. Stat.

48. The requirement that the complaint be filed with a malicious intent to injure the reputation of an officer, by filing the complaint with knowledge that the complaint contains one or more false allegations, or with reckless disregard for whether the complaint contains false allegations of fact, represents a change from the law prior to 1995.

49. The Commission has held that the change which inserted the requirement of "knowledge" or "reckless disregard" for the truth, means that the "actual malice" standard of New York Times

v. Sullivan, 376 U.S. 254 (1964), is applicable to proving entitlement to attorney fees and costs in proceedings brought pursuant to Section 112.317(8). In re Michael Addicott, Florida Commission on Ethics (COE Case No. 05-207 April 26, 2005).

50. In Addicott, the Administrative Law Judge found that the complainant did not have actual knowledge that any of the allegations were false. On the other hand, in the present case it is clear that Mr. Kearn knew that Mr. Osborne did not live immediately south of the Milanick property. Because a material fact was falsely alleged, the reckless disregard issue does not have to be addressed.

51. It is clear in this case that an antagonistic relationship developed between Mr. Kearn and Mr. Osborne over a period of time. This was manifested by testy exchanges at Town Commission meetings and a threatening and accusatory letter directed to the Town Attorney stating that the delay in annexation was serving to incite Mr. Milanick. At some point, the antagonism degenerated into a malicious attempt to cause Mr. Osborne trouble. This was evidenced by the civil rights suit filed seeking to make Mr. Osborne personally liable, and by the complaint filed with the Commission.

52. Mr. Osborne has proved entitlement to attorney fees in accordance with Section 112.317(8).

53. In Florida Patient Compensation Fund v. Rowe, 472 so. 2d 1145 (Fla. 1985), the Court adopted the criteria set forth in Disciplinary Rule 2-106(6) (now renumbered 4-1.5) of the Florida Bar Code of Professional Responsibility to be used in determining reasonable attorney's fees. The criteria to be considered include: (1) the time and labor required, the novelty and difficulty of the question involved and the skill requisite to perform the legal services properly; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or of the circumstances; (6) the nature and length of the professional relationship with the client; (7) experience, reputation and ability of the lawyer or lawyers performing the services; (8) whether the fee is fixed or contingent.

54. Using the above standard, the fees sought are reasonable.

55. It is the Commission's responsibility to provide a hearing for Mr. Osborne to establish fees and costs which were incurred after the hearing. Kaminsky v. Lieberman, 675 So. 2d 261 (Fla. 4th DCA 1996).

RECOMMENDATION

Based upon the Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Florida Commission on Ethics enter an order requiring Dr. Milanick to pay Mr. Osborne \$4,976.00.

DONE AND ENTERED this 1st day of July, 2005, in Tallahassee, Leon County, Florida.



HARRY L. HOOPER
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 1st day of July, 2005.

COPIES FURNISHED:

Kaye Starling, Agency Clerk
Commission on Ethics
3600 Maclay Boulevard, South, Suite 201
Post Office Drawer 15709
Tallahassee, Florida 32317-5709

James J. Kearn, Esquire
James J. Kearn, P.A.
138 Live Oak Avenue
Daytona Beach, Florida 32114-4912

Gary S. Edinger, Esquire
305 Northeast First Street
Gainesville, Florida 32601

Martin A. Pedata, Esquire
Martin Pedata, P.A.
505 East New York Avenue, Suite 8
DeLand, Florida 32724

Robert J. Riggio, Esquire
Riggio & Mitchell, P.A.
400 South Palmetto Avenue
Daytona Beach, Florida 32114

Bonnie J. Williams, Executive Director
Commission on Ethics
3600 Maclay Boulevard, South, Suite 201
Post Office Drawer 15709
Tallahassee, Florida 32317-5709

Phillip C. Claypool, General Counsel
Commission on Ethics
3600 Maclay Boulevard, South, Suite 201
Post Office Drawer 15709
Tallahassee, Florida 32317-5709

Virilindia Doss, Esquire
Office of the Attorney General
The Capitol, Plaza Level 01
Tallahassee, Florida 32399-1050

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.