

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: GARY SIPLIN, )  
 )  
 Respondent. ) Case No. 08-3482EC  
 )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a final hearing was conducted in this case on May 19, 2009, in Tallahassee, Florida, before Administrative Law Judge R. Bruce McKibben of the Division of Administrative Hearings.

APPEARANCES

For Advocate: James H. Peterson, III, Esquire  
Office of the Attorney General  
The Capitol, Plaza Level 01  
Tallahassee, Florida 32399-1050

For Respondent: Mark Herron, Esquire  
Messer, Caparello & Self, P.A.  
2618 Centennial Place  
Post Office Box 15579  
Tallahassee, Florida 32317

STATEMENT OF THE ISSUE

The issue in this case (as stipulated to by the parties) is whether Respondent, Gary Siplin, violated Subsection 112.313(6), Florida Statutes (2008),<sup>1</sup> by using his position as state senator to bully a deputy sheriff into yielding to Respondent's desire to access a football stadium parking lot by way of a barricaded route.

PRELIMINARY STATEMENT

A Complaint naming Respondent was filed with the Florida Commission on Ethics (the "Commission") by Marcus Robinson on December 1, 2006. The Complaint alleged that Respondent, Gary Siplin, a state senator, attempted to use his position as a member of the Florida Legislature to avoid or circumvent a posted traffic blockade. The Commission conducted a preliminary investigation of the matters set forth in the Complaint and issued its Report of Investigation on February 22, 2007. Based upon the findings in the initial investigation, an Advocate's Recommendation was issued on March 15, 2007, by the Advocate for the Florida Commission on Ethics (the "Advocate") recommending that the Commission find probable cause concerning the allegations in the Complaint. The Commission issued an Order Finding Probable Cause dated August 1, 2007.

The Commission then forwarded the Complaint and related materials to the Division of Administrative Hearings ("DOAH") for the purpose of conducting the mandated public hearing on the allegations and the Commission's findings.

At the public hearing held at the date and place set forth above, the Advocate presented the testimony of three witnesses: Senator Gary Siplin, Respondent; Deputy First Class Marcus Robinson, Orange County Sheriff's Department; and Deputy Corporal James J. Russell, Orange County Sheriff's Department.

The Advocate's Exhibits 1 through 4 were admitted into evidence. Respondent testified on his own behalf and also called his wife, Victoria Pierre-Siplin. Respondent's Exhibits 1 and 2 were admitted into evidence. Respondent asked for and received official recognition of Sections 30.073 and 30.49, Florida Statutes, and Chapter 89-507, Laws of Florida.

At the conclusion of the public hearing, the parties advised that a transcript of the hearing would be ordered. The parties requested and were given 30 days from the date the transcript was filed at DOAH to submit proposed findings of fact and conclusions of law. The Transcript was filed on June 3, 2009, and each party timely submitted Proposed Findings of Fact and Conclusions of Law.

#### FINDINGS OF FACT

1. Respondent is currently serving as a state senator for the State of Florida. He has been in the Florida Senate since his initial election in 2002. Prior to that, Respondent served two years in the Florida House of Representatives. Respondent is a lawyer licensed in the State of Florida. His legal business involves the areas of litigation and general practice. At all times relevant to this proceeding, Respondent was a state senator.

2. On November 18, 2006, Respondent went to a football game being held at the Florida Citrus Bowl site in Orlando,

Florida. Respondent was not an alumnus of either of the two schools playing in that game: Bethune-Cookman University and Florida A & M University. Rather, he was attending the game pursuant to an invitation from a group who wanted other attendees to interact with public officials. Respondent had attended this football game on several prior occasions as a guest of the event planners.

3. Respondent and his wife had picked up a package containing their football tickets and a parking pass the night prior to the game. The parking ticket provided a parking spot in close proximity to the stadium. The parking ticket had a map and directions on its reverse side showing how to access the parking area. On the day of the game, Respondent, his wife, sister-in-law, and a niece proceeded to the game.

4. The parking ticket's directions indicated that Respondent should drive east on Carter Street and then turn left onto Rio Grande Avenue to access the designated parking area. As he was going down Carter Street toward his turn, Respondent asked for directions and was told by a police officer/deputy to proceed further east on Carter before turning. Respondent proceeded to Rio Grande Avenue to turn north. However, when Respondent (driving his wife's 2003 Volvo SUV) turned left on Rio Grande Avenue, there was a traffic barrier saying "Road Closed." The traffic organizers had decided to close Rio Grande

Avenue due to the large amount of pedestrian traffic expected on that road prior to the game.

5. Respondent pulled his vehicle up to the road barrier and rolled down his window just as a Hispanic female law enforcement officer approached. Respondent identified himself to the officer as "Senator Gary Siplin." The female officer purportedly told Respondent that the parking lot was full. However, the officer did not testify, and there was no non-hearsay evidence presented as to what the officer actually said to Respondent.

6. After the female officer walked away, Deputy Robinson approached Respondent's vehicle. Again, Respondent identified himself as "Senator Gary Siplin."<sup>2</sup> Respondent and his wife remember Robinson also telling them that the parking lot was full. Robinson maintains he never told them the lot was full, only that they could not proceed down Rio Grande Avenue because it was being used for pedestrian traffic.

7. At this point in time, it was approximately 1:00 p.m., some three or four hours prior to kickoff for the football game. It is, as Respondent testified, highly unlikely the parking lot would be full at that time. In fact, a picture taken by Respondent's sister-in-law upon their arrival indicates that the lot was essentially empty.<sup>3</sup> Therefore, it makes no sense that the law enforcement officers would tell Respondent the lot was

full. The deputy's testimony is more credible on the issue of whether Respondent was told that the lot was full.

8. Respondent was told to back his vehicle onto Carter Street and proceed east for approximately two blocks for access to the parking lot. Respondent refused to move his vehicle. He was told at least three or four more times to move the vehicle, but continued to refuse the order. After several refusals, Respondent began to get angry and raised his voice. At that point, Robinson radioed his supervisor, Corporal Russell.

9. Russell, who was at a post a couple of blocks away from the Carter/Rio Grande intersection, walked over to respond to Robinson's call. Once he arrived, Russell was briefed by Robinson, who told him the following:

- The vehicle at the barrier was being driven by Gary Siplin, a state senator.
- Siplin had asked several times to speak to Robinson's supervisor.
- Siplin had been told to proceed down Carter Street to the next entrance to the parking area, but had refused several times.
- Robinson had decided to issue several citations to Siplin for infractions, including the refusal to obey traffic laws and failure to wear a seat belt.

10. After being briefed by Robinson, Russell approached Respondent's vehicle and introduced himself as Robinson's supervisor. Respondent introduced himself as "Senator Gary Siplin." Respondent told Russell that Robinson would not let him through the barrier. Russell explained again to Respondent why Rio Grande Avenue was closed, i.e., that there was too much pedestrian traffic in the area to safely allow vehicles on that road. Russell asked Respondent to move his vehicle down Carter Street for two blocks to the next parking lot entrance, but Respondent refused. Corporal Russell remembers telling Respondent that a handicapped parking lot was full, but did not tell Respondent that his designated lot was full.

11. Respondent continued to ask for a supervisor. Russell then called his supervisor, Lieutenant Boynes, on his radio. Russell cannot remember if Respondent asked him to call Boynes or whether he did so at his own volition. However, upon talking with Boynes and discussing the situation, Russell opted to allow Respondent through the barricade, rather than placing him under arrest (his other option under the circumstances).

12. Russell opined it was better not to place Respondent under arrest, because it "[p]robably would not be good for our agency or probably good for him or probably good for the Citrus Bowl people who were present there that day." Russell allowed

Respondent through the barrier and had him pull over to await the citations that Robinson was writing.

13. It is unclear why Respondent refused to obey the traffic signs and failed to yield to the law enforcement officers' directions. Although his parking pass indicated that Rio Grande Avenue was the route to take, there is no indication that Respondent believed such written instructions superseded traffic laws or officers' instructions. Even if Respondent was being erroneously told that the lot was full, he provided no rational basis for disobeying the law or the instructions from law enforcement officers.

14. Robinson ultimately issued only one citation to Respondent, i.e., for refusal to obey traffic laws. The citation was challenged by Respondent in traffic court and appealed after it was upheld by the traffic court. After filing the appeal, Respondent paid the fine imposed by the court. That is, Respondent ultimately acknowledged violation of traffic laws during the incident discussed above.<sup>4</sup>

15. Russell remembers Respondent asking him to call the Orange County Sheriff, Kevin Beary. Russell remembers Respondent saying that he had Sheriff Beary's telephone number programmed into his cell phone. However, Respondent testified that he and the sheriff were political enemies and that he would never have called him. If so, it would not have been in his



best interest to call the sheriff under the circumstances extant at that time. If there was indeed enmity between the two men, Respondent's testimony is more credible on this point.

16. At some point in the discussion between Robinson and Respondent, the issue of Robinson's job came up. It is unclear who raised the issue or whether it was made as a threat from Respondent or, conversely, as a challenge by Robinson. The testimony on that subject is contradictory. Mrs. Siplin says that Robinson asked, "So, do you want my job?", but Robinson says Respondent stated, "I'll have your job." There is not sufficient evidence to make a clear finding of fact on this issue. However, taken in light of all the facts and the demeanor of the witnesses, it is more likely that Respondent threatened Robinson than that Robinson brought up the subject as a challenge to Respondent.

17. No vehicles were allowed through the barrier other than the one driven by Respondent. Other cars attempted to travel north on Rio Grande Avenue throughout the day, but they were all redirected back to Carter Street. Only Respondent was allowed through the barrier (for the reasons set forth above).

18. A few days after the football game, Robinson met with other law enforcement officers to discuss the situation involving Respondent. Robinson asked for advice as to whether he should file an ethics complaint against Respondent. A

discussion ensued, opinions were gathered, and Robinson (on his own accord), ultimately, decided to file a complaint. The complaint was not filed on behalf of the Orange County Sheriff's Office or the City of Orlando. It is a complaint by a self-described concerned citizen (Robinson).

19. Respondent testified under oath that despite serving one term of office in the Florida House of Representatives and being elected three times to the Florida Senate, he was unaware of, had never read, and doesn't remember ever being given educational training about the Code of Ethics for Public Officers and Employees (the "Code"). Respondent stated only that, "I've heard about it. I haven't seen it."

20. In the Joint Prehearing Stipulation filed in this matter, Respondent acknowledged that he is subject to the Code. However, he stated under oath at final hearing that "I don't know what I stipulated to. The lawyer does. I don't know." The incredulity of this testimony (especially coming from a member of the Florida Bar and a public officer) makes Respondent's statements concerning other facts about the incident less believable. To the extent Respondent's testimony contradicts facts stated by other witnesses, his testimony is given less weight.

21. When asked specifically whether he believed the Code would prohibit him from using his position to influence others

or gain a privilege, Respondent would only say, "Like I said, I haven't read the Code of Ethics, you know, so that's my response." Again, Respondent indicates a clear absence of knowledge about the Code or its authority over a person in his position.

22. Respondent seemed nonplussed about the charges against him, stating that he could not even remember what he was charged with in this matter. Nor could Respondent remember what he said under oath during the preliminary ethics investigation underlying the instant case.

23. Further, Respondent could not remember if he attended traffic court to contest the traffic citations (although it was established in the record that he did so and paid the fine which had been imposed). He could not remember the two deputies when they stood up at the final hearing (but remembered what they allegedly told him concerning the parking lot being full). His complete lack of recall of the events makes it difficult to give any of his testimony much weight.

24. In his testimony, Respondent's testimony was not precise and explicit. Respondent was confused about the facts in issue. Upon a comparative consideration of the demeanor of the witnesses, the context of the statements, and the undisputed facts, it is difficult to give any degree of certainty to the testimony of Respondent.

CONCLUSIONS OF LAW

25. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding pursuant to Subsection 120.57(1), Florida Statutes.

26. Section 112.322, Florida Statutes, and Florida Administrative Code Rule 34-5.0015, authorize the Commission to conduct investigations and to make public reports on complaints concerning violations of Part III, Chapter 112, Florida Statutes, i.e., the Code.

27. The burden of proof, absent a statutory directive to the contrary, is on the party asserting the affirmative of the issue in the proceedings. Department of Transportation v. J.W.C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981); Balino v. Department of Health and Rehabilitative Services, 348 So. 2d 349 (Fla. 1st DCA 1977). In the present action, the Commission-- through its Advocate--is asserting the affirmative of the issue, i.e., that Respondent violated provisions of Subsection 112.313(6), Florida Statutes.

28. Within the Code, Subsection 112.313(6), Florida Statutes, states 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.

29. The term "corruptly" is defined in Subsection 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.

30. A public officer is defined as "any person elected or appointed to hold office in any agency, including any person serving on an advisory body." § 112.313(1), Fla. Stat. Respondent clearly falls within the definition of public officer.

31. A public servant is defined in Subsection 838.014(6), Florida Statutes, as:

(a) Any officer or employee of a state, county, municipal, or special district agency or entity;

(b) Any legislative or judicial officer or employee; . . . .

Respondent is a public servant for purposes of this proceeding.

32. Commission proceedings that seek recommended penalties against a public officer or employee require proof of the alleged violations(s) by clear and convincing evidence. See Latham v. Florida Comm'n on Ethics, 694 So. 2d 83 (Fla. 1st DCA

1997). The clear and convincing evidence standard is the Commission's standard of proof in this case.

33. Clear and convincing evidence is an intermediate standard of proof which is more than the "preponderance of the evidence" standard used in most civil cases, but less than the "beyond a reasonable doubt" standard used in criminal cases.

See State v. Graham, 240 So. 2d 486 (Fla. 2d DCA 1970).

Further, clear and convincing evidence has been defined as evidence which:

[R]equires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 1st DCA 1983).  
(Citations omitted)

34. The Commission has, by clear and convincing evidence, established that Respondent:

- Is a public servant and a public official;
- Did identify himself as a state senator for the purpose of seeking to avoid or circumvent a traffic barrier;
- Attempted to gain an advantage or special benefit solely on the basis of his position as a public official; and

- Acted corruptly as defined by statute.

35. Respondent made it a point to advise each law enforcement officer with whom he came into contact on November 18, 2006, of his position, i.e., a state senator. It is apparent that Respondent acted with wrongful intent to obtain a benefit, albeit, very minute in the scheme of things, for himself and his family members (wife, sister-in-law and niece).

36. Further, Respondent's willful refusal to obey traffic laws and the instructions given by uniformed law enforcement officers was contrary to his obligations under the Code. Such behavior is wrong for any citizen and is especially egregious for a member of the Legislature and a practicing attorney.

37. It is the duty of the Florida Senate to punish or expel its members. Art. III, §§ 2 and 4, Fla. State Constit. The Commission on Ethics has the initial responsibility of investigating complaints against public officials and, upon a finding of violation, forwarding its findings to the Legislature for final action. See § 112.324(4), Fla. Stat. In the instant case, the Commission made a finding of probable cause and, then, utilized DOAH to conduct the final fact-finding element of their investigation.

38. Respondent argues that the holding in Florida Commission on Ethics v. Plante, 369 So. 2d 332 (Fla. 1979), divests jurisdiction of this case from the Commission on Ethics

and, by extension, from DOAH. Respondent argues that Subsection 112.324(4), Florida Statutes, requiring the Commission to recommend a penalty to the Legislature, no longer has force and effect. It is the opinion of the undersigned Administrative Law Judge that Respondent's reading of Plante is erroneous.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that a final order be entered by the Commission on Ethics finding that Respondent, Gary Siplin, violated the Code of Ethics for Public Officers and Employees and that a penalty of censure, public reprimand, and attendance at continuing education concerning the Ethics Code is warranted; also, that a recommendation be forwarded to the State Legislature for imposition of an appropriate sanction.

DONE AND ENTERED this 20th day of July, 2009, in Tallahassee, Leon County, Florida.



---

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



Filed with the Clerk of the  
Division of Administrative Hearings  
this 20th of July, 2009.

ENDNOTES

<sup>1/</sup> Unless otherwise stated, all references to the Florida Statutes shall be to the 2008 codified version.

<sup>2/</sup> Robinson already knew who Respondent was because Respondent was the senator in Robinson's home district; Respondent had recently been on the news, etc.

<sup>3/</sup> At final hearing, Respondent could not positively identify himself in the photograph, but stated the picture had been taken immediately upon arrival in the parking lot as evidence that the lot was not full. Respondent's credibility on this point is questionable.

<sup>4/</sup> A second citation for failure to wear a seatbelt was going to be issued, but Respondent's wife explained to the officer that Respondent had only removed his seatbelt in order to get his driver's license from his wallet. That citation was not issued.

COPIES FURNISHED:

Philip C. Claypool, Executive Director  
Florida Commission on Ethics  
3600 Macclay Boulevard, South  
Suite 201  
Post Office Drawer 15709  
Tallahassee, Florida 32317-5709

James H. Peterson, III, Esquire  
Office of the Attorney General  
The Capitol, Plaza Level 01  
Tallahassee, Florida 32399-1050

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

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

Mark Herron, Esquire  
Messer, Caparello & Self, P.A.  
2618 Centennial Place  
Post Office Box 15579  
Tallahassee, Florida 32317

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.