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Handling of legal case is issue in race

Attorney general hopeful faces ethics complaint

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Columbus - Keith Phillips spent four months in jail in 2003 and lost his job after twice pleading no contest to sexually importuning another man - a crime that doesn't exist under state law.

The 23-year-old Bedford resident's convictions were later overturned, and he's now seeking justice. Whether he gets it may help determine who will be Ohio's next attorney general.

In a convoluted case in Trumbull County Common Pleas Court that already has landed in three other courts, Phillips last month accused Sen. Marc Dann, a Democratic candidate for attorney general, of fraud. Dann has fought back by vigorously denying the charges and threatening Phillips' lawyer, Randi Barnabee, with legal sanctions.

Barnabee retreated Friday, dismissing Dann from the case but leaving Dann's junior associate, Benjamin Joltin, and others as defendants. Instead, Barnabee said, Phillips will file an ethics complaint against Dann and pursue a refund of the \$2,000 that Phillips paid the firm.

Phillips claims that Dann failed to disclose that he had a conflict of interest when he referred Phillips to Joltin.

The suit says Joltin subsequently advised Phillips to plead no contest to a misdemeanor importuning charge while already on probation in an earlier importuning case for allegedly soliciting a 17-year-old boy for sex.

The second conviction landed Phillips in jail for a crime that the Ohio Supreme Court had found to be unconstitutional seven months earlier.

In an interview, Phillips denied doing anything wrong in either case and said he had wanted to go to trial. He said he wants all of the parties involved to acknowledge that they humiliated and took advantage of his naiveté by "accusing me and charging me and convicting me of something that wasn't even on the books. I want them to understand that they did that, and my life is ruined because of it."

Dann's critics, including his opponent in the May primary, former Cleveland Law Director Subodh Chandra, have been circulating information about the case, saying it is evidence of such serious legal incompetence that it jeopardizes Dann's law license. Their allegations have angered Dann and Ohio Democratic Party officials, who say the charges are false.

"Marc Dann deserves better than this gutter-level politicking," said party spokesman Brian Rothenberg.

Clearly, the once-genteel race to determine who will face the probable Republican candidate, state Auditor Betty Montgomery, is getting ugly.

"Subodh has been pretty systematic about telling people that I am somehow flawed as a candidate because I've been reprimanded by the state bar," Dann said, referring to his 2004 censure by the Supreme Court for

mishandling a spousal support case. "He also made a very specific effort with party leaders to try to educate them about this Keith Phillips case and tell them that I'm somehow unelectable because of it."

That's true, Chandra acknowledges.

"The public record shows that Keith Phillips, who was represented by Marc Dann and another attorney in Marc Dann's firm, took their advice and as a result pleaded guilty and served four months in jail for a crime that did not exist," he said, misstating Phillips' plea. "The inescapable fact is that Marc Dann and his firm were paid to protect Keith Phillips' interests, and they failed to take the most basic steps possible."

That's where Chandra and Phillips are wrong, Dann says.

Dann notes that Phillips did not have a lawyer in the first case. In the second case, police initially charged him with felony importuning because the alleged victim was a 14-year-old boy.

That's when Phillips' grandmother, Barbara Berndt, went to see Dann.

Berndt contends that Dann told her he had a conflict of interest because he had discussed Phillips' earlier charge with the Warren Municipal Court's judge, Thomas Gysegem.

Dann disputes that, acknowledging that he had a discussion with Gysegem about a case in which the judge never named the defendant but that may have been the Phillips case. He says that the discussion would not have prevented him from representing Phillips and that he referred Berndt to Joltin because he was no longer accepting criminal cases.

Dann says that negates the claim that he had a conflict of interest under Ohio's Code of Professional Responsibility, which says that if a lawyer is required to decline employment, "no partner or associate of his or his firm may accept or continue such employment." He also notes that a lawsuit Phillips filed against him and others in federal court in Cleveland was dismissed in March 2005.

But even if all that is true, Dann still has a problem because he allowed a junior partner to plead Phillips no contest to a nonexistent crime and failed to explore Phillips' alibi, Chandra and Barnabee say.

Although felony importuning of a minor is a crime, Phillips, while represented by Dann's firm, pleaded no contest to misdemeanor importuning — the nonexistent crime. On top of that, Joltin ignored reams of time card and witness evidence showing that Phillips was at work when he was alleged to have solicited the 14-year-old, Chandra and Barnabee say.

Dann scoffs at that claim, saying, "I have never met a criminal defendant who said that they were guilty." He also contends that Joltin helped Phillips get out of jail early because Gysegem had it in for Phillips and could have held him for six months had Phillips elected to try the felony case.

Joltin and Gysegem remain as defendants in Phillips' case — the latter for slander. The judge told a Warren reporter it wasn't his job to know that the importuning law had been repealed, adding that Phillips "has a habit of pulling his pants down around young boys, and as far as I'm concerned that's still illegal in the state of Ohio."

Joltin did not return a call seeking comment, and Gysegem declined to comment.

Dann's father-in-law, Bentley Lenhoff, has waded into the fray by posting information on a political blog that Chandra says is racially offensive.

Lenhoff, former director of the Youngstown Playhouse, posted comments made in 1996 by Republican U.S. Rep. Dan Burton in which Burton said he agreed with a writer who described India as having "a rotten, corrupt, repressive and anti-people system."

The congressman made his comments after Baltimore lawyer Lalit Gadhia was convicted of laundering illegal campaign contributions from Indian nationals through a political action committee for which Chandra served as treasurer.

Burton never mentioned Chandra, and Chandra was not implicated in the fraud. He cooperated with the Justice Department and was later hired by the department as a federal prosecutor in Cleveland.

Nevertheless, in an e-mail to the blog, Lenhoff referred to the Gadhia case as "a blot on Subodh's escutcheon [sic]." To have a blot on one's escutcheon is to disgrace one's reputation.

Lenhoff did not return a phone call seeking comment, but Dann said his father-in-law was probably just frustrated and standing up for him.

"I believe Subodh that he was an innocent victim of somebody else's fraud," he said.

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