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'Remarkably Unusual' Bail For Sandusky Raises Eyebrows

BY BEN PRESENT

Of the Legal Staff

The most recent development in a seemingly growing list of unanswered questions stemming from the Jerry Sandusky Penn State sex abuse scandal — the \$100,000 unsecured bail given to Sandusky earlier this month — had some attorneys specializing in sex crimes nonplussed.

"Shockingly low," said Christopher Mallios, the attorney adviser for Aequitas: The Prosecutors' Resource on Violence Against Women.

"Did he get some special consideration because of his prominence in the community?" he said. "I don't know but it sure looks that way."

Though prosecutors had asked for Sandusky to pay \$500,000, wear a leg monitor and surrender his passport, Magisterial District Judge Leslie A. Dutchcot decided upon \$100,000 as bail for the embattled former coach. Sandusky faces a 40-count indictment on a slew of sex-related charges following a lengthy grand jury investigation that led to allegations that he abused eight victims. Sandusky, 67, would likely spend the rest of his life in prison if convicted on the more serious charges.

Philadelphia criminal defense attorney Richard Q. Hark, who said he has represented several alleged sex offenders, told *The Legal* he has never seen \$100,000 unsecured bail for individuals charged with similar offenses. He called the decision "remarkably unusual."

While the bail did reflect "excellent legal representation" by Sandusky's attorney, Joseph Amendola, Hark said, "it is not on par with the everyday alleged sex offenders' bail throughout the counties within which



MALLIOS



HARK

we practice."

Now, Hark added, Sandusky could pose a threat to the community, and that includes himself.

"This guy may be saying, 'I'm better off killing myself,'" he said, adding that a jail has the benefit of a suicide watch.

Hark said the "stench that is permeating throughout this case" is that of giving priority to the high-profile actors in the case rather than the "public safety of the community and our children." Considering the widespread allegations implicating several high-ranking figures at the university, Hark said that "seems to be the guiding principle."

Sandusky's case drew comparisons to recent charges filed against a Philadelphia baseball coach and court crier alleged to have sexually assaulted one player and supplied another with drugs and alcohol. According to a report on Philly.com, the website of the *Philadelphia Inquirer* and *Daily News*, Louis Spadaccini faced \$2 million bail and was denied on an appeal to lower it. Spadaccini's lawyer said in a story that appeared on the website that his client is "an innocent man."

"The Spadaccini case is interesting," Mallios said. "There's just a working guy. No high position, no prestige, and it certainly

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appears that he was a person treated differently in the criminal justice system."

Mallios said the two cases aren't perfectly comparable because Sandusky's case is out of Centre County while Spadaccini was charged in Philadelphia.

But he said a seven-digit bail figure could certainly have been expected in Sandusky's case.

"That's the type of bail I would have expected in a case like this," he said. "There's such a great incentive to flee there. To release him with no ankle bracelet and not having to put up any money ... it's just out of proportion to what we see in serious child rape cases and this is a very serious child rape case."

But white-collar criminal defense attorney William Costopoulos said the questioning of the bail was unwarranted, adding that the conditions of Sandusky's release will likely accomplish the "only purpose" of bail: to ensure Sandusky appears in court.

"It's not intended to be punitive," Costopoulos said.

Costopoulos also observed that Sandusky, while out on bail, is subject to other restrictions, including not seeing his grandchildren.

According to a report from Reuters, Centre County Common Pleas Court Judge Thomas Kistler issued an order barring unsupervised contact with the coach's three grandchildren on behalf of the children.

While questions have stirred following reports that Dutchcot donated to and volunteered at Sandusky's charity, The Second Mile, Costopoulos said the recent scrutiny devoted to the judge was unwarranted.

"That [she donated to The Second Mile] doesn't suggest the judge was corrupt or ill-motivated," Costopoulos said. "And though prosecutors and the court of public opinion would have liked him put in without any bail, incarcerated immediately with no amount of money being set, that is not the purpose of bail."

"This magistrate made a gracious contribution for what was a good cause and I just don't see that as an issue," Costopoulos said.

Costopoulos said he did not think the donation reflected an undertaking the judge needed to disclose and "certainly not one that cried out for a recusal."

If anything, the donation "would have been a factor that would have brought angst to the magistrate" rather than present a conflict.

Pennsylvanians for Modern Courts took a different position.

"Judge Dutchcot should have put this information on the record and given the parties an opportunity to request her recusal from the case," the organization said in a statement on its website. "Given the high media attention and public scrutiny of the case, we believe that Judge Dutchcot should have given serious consideration to recusing, even if no party had requested it."

"We believe that recusal would have been the wise decision in this case, but Pennsylvania gives a lot of discretion to judges regarding recusal decisions," the statement said.

NOWHERE TO HIDE

While the bail was largely greeted with surprise, two criminal defense attorneys interviewed by *The Legal* said the high-profile nature of the case minimizes the flight risk Sandusky poses.

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"It's not like he can slip across the state and expect not to be recognized," said Dennis J. Cogan, a Philadelphia criminal

defense attorney. "Leaving the country would be awfully difficult."

Still, Cogan said a court could consider the coach to be a flight risk and a danger to the community based on the allegations, which he said were important considerations in deciding upon bail.

Nils Frederiksen, a spokesman for the state Attorney General's Office, said Sandusky told the court he did not have a passport.

"This is a horrific case and the frenzy is at fever pitch, but I just don't think what the magistrate did to assure his presence was egregious or unconscionable," Costopoulos

added. "Because it's discretionary and particularly knowing there is no place for Sandusky in the world to run and hide, I don't believe any standard has been violated."

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