



The Commission initially notes that the filing of a Torts Claim Notice is not a matter “actually pending in any court of law or administrative agency of this State.” N.J.S.A. 18A:12-32 (emphasis added). Rather, pursuant to N.J.S.A. 59:8-3, it is a presentation to a public entity or public employee of a claim. Because the parties have not shown that this matter is actually pending in a court of law or administrative agency of this State, the Commission found that the matter should not be held in abeyance pursuant to N.J.S.A. 18A:12-32. As a result, the Commission voted to deny the Motion to Dismiss. (Saxton v. Belsky, Ramapo-Indian Hills Board of Education, C35-08 (February 24, 2009) at page 2)

Thereafter, the respondent filed an Answer to the complaint on March 16, 2009.

By letter dated July 2, 2009, the respondent filed a second Motion to Dismiss based on the assertion that, in April 2009, the complainant had filed a matter against him in Superior Court. The respondent also requested attorney’s fees. The complainant was accorded an opportunity to respond to the second motion. By letter dated July 21, 2009, complainant’s counsel requested that the matter be “adjourned” until the civil action is resolved or, in the alternative, the matter be dismissed without prejudice to the complainant to pursue the within matter at the end of the civil suit. Counsel asserts that the complainant’s request for attorney’s fees should be denied. At its meeting on August 25, 2009, the Commission considered the parties’ papers with respect to the second Motion to Dismiss and determined to grant the complainant’s request to dismiss the within complaint without prejudice, for the reasons set forth below.

## **SUMMARY OF THE PLEADINGS**

The complaint alleges that, at the April 28, 2008 Board meeting, where the Board was scheduled to honor the complainant in his role as superintendent, the respondent read a prepared statement about the complainant attacking the complainant’s job performance. On July 23, 2008, the respondent repeated similar comments in emails and public notifications prior to the July 2008 Board meeting, which were sent to parents of students and members of the public. On July 28, 2008, the respondent published and distributed his “response to censure resolution” which included similar comments. (Amended Complaint at Counts 1-7) The complainant claims that the respondent’s conduct violated N.J.S.A. 18A:12-24.1(g), (i) and (j) of the Code of Ethics for School Board Members. (Id., at Counts 1-7) The complainant further alleges that on November 28, 2008, the respondent telephoned him and advised him that he had until Friday to withdraw the within complaint or it would have a serious affect on the complainant’s pension. (Id. at Count 8) The complainant claims that the respondent’s conduct violated N.J.S.A. 18A:12-24.1(a), (e), (f) and (j) of the Code of Ethics for School Board Members.

## ANALYSIS

The respondent's second Motion to Dismiss the complaint is based on the undisputed fact that the complainant filed a civil action against the respondent in Superior Court in April 2009. The civil action, according to the respondent, "is based solely on [his] April 28, 2008 statement to the Ramapo Indian Hill Regional High School District Board of Education." (Respondent's Second Motion at page 1) The respondent therefore reasons that "the matter before the Commission should be dismissed pursuant to N.J.A.C. 6A:28-6.3(c), which provides that the Commission will 'not process any complaint or issue a final ruling or advisory opinion on any matter actually pending in any court of law or administrative agency of the State.'" (Id.) The respondent specifically requests that the Commission dismiss the complaint with prejudice.

The respondent further notes that the complainant failed to notify the Commission when the civil complaint was filed and his failure to do so suggests bad faith. Thus, the respondent requests that the complainant be sanctioned "for his deceit and bad faith." (Id. at page 2) The respondent adds, "Further, if it has the power to do so, the Commission should compel Saxton to pay me \$8,750 to compensate me for the time and effort expended in the preparation of the Answer (*i.e.*, my legal fees of 25 hours at \$350/hour)." (Ibid.)

In response, counsel for the complainant acknowledges that a complaint was filed against the respondent in Superior Court. Counsel states:

My client does not intend to utilize the Ethics Commission to further his civil suit and never intended to do so. What we did expect is that the decision as to the ethics complaint would be reached before such time as the decision had to be made whether to file the civil action. Due to the statute of limitations on the issues of slander and libel, the civil complaint had to be filed in the Superior Court or be barred. (Complainant's Response to Motion at page 1).

Counsel for the respondent then requests that the matter be adjourned until the civil action is resolved. In the alternative, counsel adds, "[i]f the Commission cannot adjourn or table the matter until that time, my client would like the right to pursue this matter upon the conclusion of the civil matter." (Id.) In so doing, counsel notes that her client should not be prejudiced for any delay in this matter caused by the respondent's filing of two motions to dismiss. Counsel also asserts that the request for attorney's fees should be denied. (Id.)

Initially, the Commission notes that N.J.S.A. 18A:12-32 provides the following:

The commission shall not process any complaint, issue a final ruling or issue any advisory opinion on a matter actually pending in any court of law or administrative agency of this State.

In accordance with this statute, all complainants are required to certify, upon filing a complaint, that the matter is not pending in any other court of law or administrative agency of this State.

N.J.A.C. 6A:28-6.3. The complainant so certified and further affirmed, as required, “I will advise the School Ethics Commission if I subsequently become aware that this is a pending matter elsewhere.” (Amended Complaint at page 13). Thus, there was an affirmative duty for the complainant, or counsel acting on his behalf, to notify the Commission of the filing of any matter which might implicate the Commission’s functions and duties pursuant to N.J.S.A. 18A:12-32. Both failed to do so. Nevertheless, upon request, the parties provided the Commission with a copy of the civil complaint filed in Superior Court.

In its prior decision denying the respondent’s motion to dismiss this complaint, the Commission stated, “Even assuming, *arguendo*, that there was a matter actually pending in a court of law or administrative agency of this State, the Commission would not dismiss the matter, but would put it in abeyance until the pending matter was resolved.” Saxton, supra at page 2, footnote 1)<sup>2</sup> In this connection, the Commission ordinarily engages in an analysis to determine whether the ethics complaint pending before it is also “a matter actually pending in any court of law or administrative agency of this State” so as to preclude its review of the ethics complaint under N.J.S.A. 18A:12-32. Upon review of the civil complaint filed in Superior Court, Paul Saxton v. Ira Belsky, John Does 1-20, Superior Court, Bergen County Docket No. L-3903-09, the Commission is not persuaded that its review of the matter docketed as C35-08 is precluded by the filing of the civil complaint.

However, the Commission acknowledges that counsel for the complainant proposes an alternative: that the matter be dismissed without prejudice to the complainant’s right to pursue an ethics complaint at the conclusion of the civil matter. Counsel specifically states, “If the matter is therefore dismissed without prejudice with the right of my client to pursue the ethics complaint at the conclusion of the civil suit, that result is acceptable to my client.” (Complainant’s Response to the Motion at page 2)

The Commission, therefore, grants the complainant’s request for a dismissal without prejudice. It does so with the clear proviso that any complaint filed after May 18, 2009 must comport with the Commission’s newly-adopted regulations set forth at N.J.A.C. 6A:28-1 et seq. As such, if the complainant chooses to pursue the within claims, he may request relaxation of the 180-day filing requirement.

Finally, the respondent’s request for sanctions and/or assessment of fees is denied. Although the Commission is authorized pursuant to N.J.S.A. 18A:12-29(e) to assess a fine not to exceed \$500 in the event that it finds a complaint was frivolous pursuant to the standard set forth in N.J.A.C. 6A:28-1.2, there is no such authority for the Commission to award other fees and costs to a party to a complaint.

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<sup>2</sup>Notwithstanding this statement, the respondent filed a second motion to dismiss, based on the now-pending civil matter.

## **DECISION**

For the reasons set forth above, the Commission: (1) denies the respondent's second Motion to Dismiss the complaint with prejudice; (2) denies the respondent's request for sanction and/or assessment of attorney's fees; (3) declines the complainant's request to place the matter in abeyance pursuant to N.J.S.A. 18A:12-32, and (3) grants the complainant's request for dismissal of the matter docketed as C35-08 without prejudice to the complainant's right to refile the claims raised therein in accordance with rules set forth at N.J.A.C. 6A:28-1 et seq.

Paul C. Garbarini  
Chairperson

## **Resolution Adopting Decision – C35-08**

**Whereas**, the School Ethics Commission has considered the papers filed pursuant to the respondent's Second Motion to Dismiss; and

**Whereas**, at its meeting on August 25, 2009, the Commission granted the complainant's request for dismissal of the matter docketed as C35-08 without prejudice to any right to refile the claims raised therein in accordance with rules set forth at N.J.A.C. 6A:28-1 et seq.; and

**Whereas**, the Commission has reviewed and approved the decision memorializing said action;

**Now Therefore Be It Resolved** that the Commission hereby adopts the decision and directs its staff to notify all parties to this action of its decision herein.

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Paul C. Garbarini, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its public meeting on September 22, 2009.

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Joanne Boyle, Executive Director

