

Complainant alleges that the Respondent failed to disclose his service to this organization, and that whether compensated or not, was in substantial conflict with the proper discharge of his duties in the public interest and prejudiced his judgment in the exercise of his official duties. N.J.S.A. 18A:12-24(a), (d); N.J.S.A. 18A:12-24.1(f) and N.J.S.A. 18A:12-25.

In his Answer, the Respondent argues that the Complaint was filed out of time and fails to allege any conduct which is in violation of the Act, and that membership and involvement with the CCBHBOE does not constitute impaired judgment. Further, CCBHBOE does not do business with the District, nor any other business or organization. The Respondent does not deny that CCBHBOE solicits for and raises funds to support candidates it support, but contends it does so within the bounds of the law. He further alleges that the Complaint is frivolous.

FINDINGS OF PROBABLE CAUSE

This matter is before the Commission for a determination of probable cause pursuant to N.J.A.C. 6A:28-10.9, processing of complaints alleging *both* prohibited acts and a violation of the Code of Ethics for School Board Members. A finding of probable cause is not an adjudication on the merits, but, rather an initial review whereupon the Commission makes a preliminary determination whether the matter should proceed to an adjudication on the merits, or whether further review is not warranted.

Pursuant to N.J.A.C. 6A:28-10.9, in a “combination” complaint such as this, the Commission first determines whether, based on the record before it, probable cause exists to credit the allegations in the Complaint that the Respondent engaged in prohibited acts. Here, and as set forth below, the Commission determined that the Complaint was filed out of time and did not reach the merits of the case. Accordingly, the Complaint was dismissed in its entirety.

Allegations of Prohibited Acts

Failure to Meet Commission’s Filing Regulations:

Allegations that are Time-Barred

As a preliminary matter, the Respondent asserts that the Complaint is untimely, pursuant to N.J.A.C. 6A:28-6.5 in that any Complaint related to the Respondent’s Board actions should have been filed no later than 180 days from the date of the incident alleged in the Complaint as a violation of the Act.

Complaints shall be filed within 180 days of notice of the events which form the basis of the alleged violation(s). **A complainant shall be deemed to be notified of events which form the basis of the alleged violation(s) when he or she knew of such events or when such events were made public so that one using reasonable diligence would know or should have known.** N.J.A.C. 28-6.5(a). (emphasis added)

The Respondent argues that the Complainant first observed the CCBHBOE Facebook page in June 2014, and that her financial disclosure statement was available to the public since early 2015, and should, therefore, be considered time barred. In its review of the Complaint, the Commission determines the Complainant has not alleged a specific violation that occurred on a specific date within the past 180 days prior to the filing as required, and finds, therefore, that this allegation was filed out of time. In reaching this result, the Commission considered that the CCBHBOE was available to the public for investigation for the entire period and that the Complainant could have inquired into the purpose and function of the group at any point. Similarly, although the Complainant failed to provide an actual date in her Complaint in order to calculate the timeliness of the allegation involving the financial disclosure statement, the Commission determined that to be March 18, 2015, the date on which the Respondent's financial statement was accepted by the Department of Education and posted to the Commission's website as a fair endpoint.¹ Pursuant to statute, the latest date the Complaint could have filed this allegation would have been September 14, 2015, 180 days from March 18, 2015. Since the Complainant filed her Complaint on January 8, 2016, 295 days March 18, 2015, the reasonable date by which she would have been aware of the information in the disclosure statements, and beyond the 180-day time limitation, the Commission also determined that this allegation was time-barred.

The Commission recognizes that limitation periods of the type herein serve to discourage dilatoriness and provide a measure of repose in the conduct of school affairs. Kaprow v. Berkley Township Bd. of Educ., 131 N.J. 571, 587 (1993). Thus, "notice of the alleged violation" must be interpreted in a manner that anticipates the reasonable diligence of the complainant(s). In addressing potential violations of the School Ethics Act, the Commission must balance the public's interest in knowing of potential violations against the important policy of repose and a respondent's right to fairness. The time limitations set forth in the regulations must be enforced if it is to operate in a fair and consistent manner. Phillips v. Streckenbein et al., Edgewater Park Bd. of Educ., Burlington County, C19-03 (June 24, 2003).

As noted above, "A complainant shall be deemed to be notified of events which form the basis of the alleged violation(s) when he or she knew of such events or when such events were made public so that one using reasonable diligence would know or should have known." N.J.A.C. 28-6.5. Further, although the Commission recognizes that the regulatory time period may be relaxed, in its discretion, in any case where a strict adherence thereto may be deemed inappropriate or unnecessary or may result in injustice, N.J.A.C. 6A:28-1.8, it finds no extraordinary circumstances in this matter that would compel relaxation. Accordingly, the Complaint is dismissed as untimely.

REQUEST FOR SANCTIONS

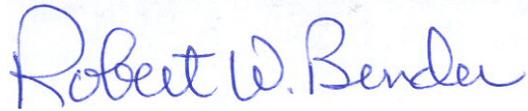
The Respondent asserts that the Complaint herein is frivolous. At its meeting on February 23, 2016, the Commission considered the Respondent's request that the Commission find that the Complaint was frivolous and impose sanctions pursuant to N.J.S.A. 18A:12-29(e). The Commission can find no evidence which might show that the Complainant **filed** the

¹ The Commission notes that the Respondent's 2015 financial disclosure statement was accepted by the Executive County Superintendent on March 18, 2015.

Complaint in bad faith solely for the purpose of harassment, delay or malicious injury. The Commission also has no information to suggest that the Complainant should have known that the Complaint was without any reasonable basis in law or equity or that it could not be supported by a good faith argument for an extension, modification or reversal of existing law. N.J.A.C. 6A:28-1.2. Therefore, the Commission finds that the Complaint is not frivolous and denies the Respondent's request for sanctions against the Complainant.

DECISION

Pursuant to N.J.S.A. 18A:12-29(b), the Commission hereby notifies the Complainant and Respondent that it finds the Complaint was filed out of time and is, therefore, dismissed. This decision is a final decision of an administrative agency and, therefore, it is appealable only to the Superior Court--Appellate Division. See, New Jersey Court Rule 2:2-3(a).



Robert W. Bender
Chairperson
School Ethics Commission

Mailing Date: March 23, 2016

Resolution Adopting Decision – C03-16

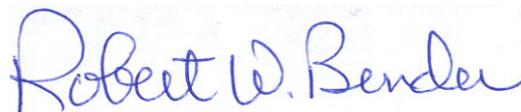
Whereas, the School Ethics Commission has considered the pleadings filed by the parties;

Whereas, at its meetings on February 23, 2016, the Commission found the Complaint not frivolous; and

Whereas, at its meeting of February 23, 2016, the Commission found the Complaint to be filed untimely, and dismissed the Complaint in its entirety; and

Whereas, the Commission has reviewed, and agrees with, the proposed probable cause notice;

Now Therefore Be It Resolved, that the Commission hereby adopts the proposed probable cause notice in this matter and directs its staff to notify all parties to this action of said notice.



Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on March 22, 2016.



Joanne M. Restivo
Acting Executive Director
School Ethics Commission