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**IN THE MATTER OF**

**OF**

**JOSEPH FERRAINA AND AIDES,**  
*Long Branch Board of Education*  
*Monmouth County*

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**BEFORE THE  
SCHOOL ETHICS COMMISSION**

**Docket No.: C11-96**

**DECISION  
ON REQUEST FOR  
SANCTIONS**

### **PROCEDURAL HISTORY**

This matter arises from a claim by Franco DiDomenica against Joseph Ferraina, Superintendent of Schools in Long Branch. Mr. DiDomenica alleges that the superintendent violated the School Ethics Act, N.J.S.A. 18A:12-21 *et seq.*, in connection with the selection and use of substitute teachers in the district. In his complaint, Mr. DiDomenica did not name any “aides” to Mr. Ferraina, nor did he make any specific allegations against any specific “aides.” Therefore, the claim against the “aides” was dismissed for lack of specificity. Respondent denies the allegations in the complaint and requests that the School Ethics Commission impose sanctions against the complainant for filing a frivolous complaint as allowed by N.J.S.A. 18A:12-29e.

Mr. Ferraina appeared with his attorney and the Assistant Superintendent, Diane Deloche, at the October 22, 1996, meeting of the School Ethics Commission. The Commission dismissed the complaint at its October meeting and found that there were valid reasons to issue sanction Mr. DiDomenica for filing a frivolous complaint pursuant to N.J.S.A. 18A:12-29e. However, the Commission decided to reconsider this finding in light of the fact that Mr. DiDomenica had not been provided the opportunity to respond to respondent’s request for sanctions. It invited Mr. DiDomenica to respond and the Commission received his response on November 13, 1996. The Commission now issues this decision on the request for sanctions only.

### **RESPONDENT’S REQUEST FOR SANCTIONS**

The School Ethics Commission may impose sanctions against a complainant for filing a frivolous complaint pursuant to N.J.S.A. 18A:12-29e. This provision sets forth the Commission can impose on a complainant a fine not to exceed \$500.00 if prior to the hearing the Commission determines, by majority vote, that the complaint is frivolous. The standard for finding a complaint frivolous is set forth at N.J.S.A. 2A:15-59.1. It reads:

In order to find that a complaint, counterclaim, cross-claim or defense of the nonprevailing party was frivolous, the judge shall find on the basis of the pleadings, discovery, or the evidence presented that either:

- 1) The complaint...was commenced, used or continued in bad faith, solely for the purpose of harassment, delay or malicious injury; or
- 2) The nonprevailing party knew, or should have known, that the complaint...was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law.

The New Jersey Supreme Court has held that the term “frivolous” should be given restrictive interpretation, in light of the premise that in a democratic society, citizens should have ready access to all branches of government. McKeown-Brand v. Trump Castle Hotel & Casino, 132 N.J. 546 (1993). The two-prong test is one of objective reasonableness. Iannone v. McHale, 245 N.J. Super. 17, 29 (App. Div. 1990). However, courts that have interpreted the act clearly indicate that either “prong” of the statute may serve as the basis for the imposition of sanctions. Fargas v. Scott, 251 N.J. Super. 169, 190 (Law Div. 1991).

In his defense, Mr. DiDomenica states that he filed the complaint because it appeared that although there were many substitute teachers, the same few were always called. He submits that he and other substitutes felt that these people were friends of Mr. Ferraina. He contends that some of the substitutes called did not have a state license and if that were true, it would appear to be unethical conduct. Mr. DiDomenica sets forth that in his conversations with Mr. Ferraina, he never told him that his teaching was unacceptable, nor did he tell him that he did not have control over the placement of substitutes. Last, he sets forth that he has always supported Mr. Ferraina and his efforts as a chief school administrator and never had any intention to cause harassment or malicious injury to him.

The Commission finds that complainant filed the within complaint to force the school district to call him as a substitute. He filed against Mr. Ferraina even though it was very clear that Mr. Ferraina was not responsible for calling in substitutes or selecting whom to call. Further, the administration had provided Mr. DiDomenica with clear reasons for the district's failure to call him. There is no evidence that complainant ever had a sincerely held belief that the superintendent had violated the Ethics Act in connection with the selection of substitutes. Complainant's allegations of bias and reverse discrimination in the selection of substitutes off the list are specious at best. Even if the allegations were true, complainant sets forth no information linking the superintendent to the telephone callers who he alleges are biased. Thus, the Commission finds that the complainant filed the complaint in bad faith for the purpose of harassment and further finds that it meets the standard of a frivolous complaint set forth in subsection 1 above. Therefore, the Commission finds that sanctions are appropriate.

In the School Ethics Commission complaint form, the Commission advises every complainant that it may impose sanctions for the filing of a frivolous complaint. It also asks each complainant to certify that he or she has read that provision. The Commission realizes that not everyone understands the standard or knows how the Commission decides that sanctions are appropriate. However, clearly one must have some foundation for his claim of an ethics violation. By invoking the sanction, the Commission seeks to deter complainants such as this who seek a result for themselves and fail to allege any facts that could lead to a finding that a violation has occurred. Considering the foregoing factors, the Commission imposes a fine of \$50.00 to be paid within 30 days of complainant's receipt of this decision.

## **CONCLUSION**

For all the foregoing reasons, the Commission finds that Mr. DiDomenica's complaint was frivolous and that sanctions are appropriate. In light of the circumstances, the Commission finds that the appropriate sanction is \$50.00.

This is a final agency decision that can be appealed only to the New Jersey Superior Court - Appellate Division.

Paul C. Garbarini  
Chairperson

**Resolution Adopting Decision on Request for Sanctions -- C11-96**

Whereas, the School Ethics Commission has reconsidered its decisions on sanctions in light of complainant not having been given the opportunity to respond to the request for sanctions; and

Whereas, the Commission has now considered Mr. DiDomenica's response to the request for sanctions; and

Whereas, after reconsideration, the Commission finds that the complaint was frivolous and imposes sanctions in the amount of \$50.00; and

Whereas the Commission has reviewed the proposed decision of its staff setting forth the above findings and Order; and

Whereas, the Commission agrees with the proposed decision;

Now Therefore Be It Resolved that the Commission hereby adopts the proposed decision referenced as its decision in this matter and directs its staff to notify all parties to this action of the Commission's decision herein.

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Paul C. Garbarini, Chairman

I hereby certify that the Resolution  
was duly adopted by the School  
Ethics Commission at its public meeting  
on November 26, 1996

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Lisa James-Beavers  
Executive Director

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