

IN THE MATTER	:	Before the School
	:	Ethics Commission
OF	:	
	:	Docket No.: C29-96
MELINDO PERSI, SUPERINTENDENT;	:	
DR. WILLIAM SURIANO; AND	:	
BRUCE POLKOWITZ,	:	
<i>EDISON TOWNSHIP BOARD OF</i>	:	DECISION
<i>EDUCATION, MIDDLESEX COUNTY</i>	:	
_____	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed by James Kukor against Superintendent of Edison Township Schools Melindo Persi, William Suriano and Bruce Polkowitz on September 3, 1996. The complaint alleges that respondent Melindo Persi attempted to use his position as Superintendent in Edison to secure unwarranted privileges for himself in connection with a traffic accident that occurred in early December 1995. Respondents William Suriano and Bruce Polkowitz filed their answers on October 23, 1996. Respondent Melindo Persi filed his answer on November 6, 1996, pursuant to an extension granted by the Commission. Each denied that they violated the School Ethics Act in connection with the December accident. Each also asked that Mr. Kukor be sanctioned for filing a frivolous complaint.

By letter dated January 15, 1997, Mr. Kukor advised the Commission that he was withdrawing the complaint against Dr. Suriano and Mr. Polkowitz. However, he advised that he was still pursuing his complaint against Mr. Persi. The parties were given notice that the matter would be heard at the February 25, 1997, meeting of the School Ethics Commission. All parties were given the opportunity to testify at the Commission meeting on February 25, 1997. Complainant James Kukor testified before the Commission as did Melindo Persi, who appeared with counsel, Viola Lordi, Esq.

On February 28, 1997, the Commission informed the parties that it had not found probable cause to credit the allegations in the complaint that Mr. Persi violated N.J.S.A. 18A:12-24(b) of the School Ethics Act. Thus, it invited the parties to submit written statements on whether the complaint of Mr. Kukor meets the standard of a frivolous complaint such that the Commission should impose a sanction. The Commission received timely statements from both Mr. Kukor and Viola Lordi, Esq. At its March 25, 1997, meeting, the Commission determined that the complaint was frivolous and that Mr. Kukor should be sanctioned in the amount of \$500.00. It stated the reasons orally and directed that staff place the decision in writing.

FACTS

After reviewing the pleadings and the subsequent submissions and hearing testimony in this matter, the Commission finds the following facts to be undisputed. At all times relevant, Bruce Polkowitz was a member of the Edison Township Board of Education. He was also an employee of the Edison Township police department. William Suriano was also an Edison Township board member at all times relevant to the complaint. Melindo Persi was at all times relevant, the Superintendent of the Edison Township public schools.

On the night of December 5, 1995, Melindo Persi was involved in a traffic incident involving a pedestrian. His undisputed description of the accident was that he was proceeding through an intersection in Edison when he heard a thud. He did not see anyone, but he stopped and got out of his car. He then saw a woman on the ground. Four or five police cars came to the scene. They tried to speak to the woman, but she did not speak English. Mr. Persi spoke to a witness at the scene who said that the woman ran across the street and into his mirror on the passenger side. When he spoke to the police officer, Mr. Persi asked for Sergeant Polkowitz. He said he did so because he wanted a friendly face there. He does not reside in Edison Township. The officer he spoke to told him that Sgt. Polkowitz was not working that night. Officer Suriano then approached him. He is the brother of board member Suriano. Mr. Persi did not know the officer. Officer Suriano took his statement and that was the end of the incident. He never spoke to Officer Suriano after that. He did not speak with William Suriano regarding the incident. He did not speak to Sgt. Polkowitz that night. He did not receive a summons.

Sgt. Polkowitz corroborates by his affidavit that he was off duty on December 5, 1995, and did not know about the accident until the next day when a co-worker told him about it. He also corroborated that Mr. Persi did not ask him for any type of favor regarding the incident or any other matter. He did not speak to anyone on Mr. Persi's behalf and does not know whether a summons did or did not issue against him that night. Similarly, Mr. Suriano corroborates by his affidavit that he had no knowledge of the traffic incident when it occurred. He found out later that his brother was present at the scene of the accident in his capacity as an Edison Township Police Officer. He submits that he has no involvement or knowledge of the incident beyond this.

Mr. Kukor contends that Mr. Persi's request for Sgt. Polkowitz is evidence that he attempted to use his official position to secure unwarranted privileges or advantages for himself in violation of N.J.S.A. 18A:12-24(b). Ms. Lordi argues that Mr. Kukor should have withdrawn the complaint against Mr. Persi at the same time that he withdrew it against Dr. Suriano and Mr. Polkowitz. She contends that his failure to do so and proceed without any evidence shows his malicious intent to injure and harass Mr. Persi. Mr. Kukor, in response, argues that his complaint was not frivolous and that there was only one reason for Mr. Persi's request for Sgt. Polkowitz.

The Commission now decides whether the above facts constitute a violation of N.J.S.A. 18A:12-24(b) of the School Ethics Act.

ANALYSIS

Complainant urges the School Ethics Commission to find that respondent Melindo Persi violated section N.J.S.A. 18A:12-24(b) in connection with his actions on December 5, 1995. Subsection (b) provides:

No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family, or others.

The Commission finds that Mr. Persi's merely asking for Sgt. Polkowitz at the scene of the accident, without any evidence that he did so as an attempt to avoid a summons for the accident, is insufficient evidence that he attempted to use his official position to secure unwarranted privileges for himself. The record shows that the police had no evidence at the scene that the accident was in any way caused by Mr. Persi. The pedestrian could not speak English and an independent witness told the police that the pedestrian ran into Mr. Persi's vehicle in a 50 mph speed zone. The police apparently had no evidence that the pedestrian was in the crosswalk or that she had the right of way. Thus, there are ample reasons why the police failed to issue a summons against Mr. Persi. The record is devoid of any evidence that Mr. Persi ever contacted Mr. Polkowitz or Mr. Suriano with the purpose of exonerating himself from any misconduct. Thus, the Commission does not find any evidence that Mr. Persi attempted to use his official position to secure unwarranted privileges for himself in violation of N.J.S.A. 18A:12-24(b).

DECISION ON PROBABLE CAUSE

For all of the foregoing reasons, the Commission does not find probable cause to credit the allegations in the complaint that Melindo Persi violated the School Ethics Act and dismisses the complaint against him.

DECISION ON REQUEST FOR SANCTION

In his answer, respondent requested that the Commission find Mr. Kukor's complaint to be frivolous pursuant to N.J.S.A. 18A:12-29(e) and fine him accordingly. By letter dated February 28, 1997, the Commission advised complainant and respondent that it determined to dismiss Mr. Kukor's complaint because there was no probable cause to credit the allegations. The Commission also advised Mr. Kukor and Mr. Persi that it was going to consider the issue of whether the complaint is frivolous and give them the opportunity to submit in writing their positions on this issue.

Mr. Kukor submitted a response to the Commission on March 7, 1997, in which he argues that the police report of the incident which led to the filing of the complaint might not have been the only police document and that there might be others which state something different than the

December 21, 1995 police report. Mr. Kukor then goes on to discuss various other alleged incidents concerning Mr. Persi, which are not the subject of this complaint.

Mr. Persi responded by letter dated March 11, 1997 and filed with the Commission on March 13, 1997. In support of his claim that the complaint is frivolous, Mr. Persi argues that Mr. Kukor offered no evidence to support the allegations in the complaint. He also argues that Mr. Kukor withdrew the complaint against Sgt. Bruce Polkowitz and Dr. William Suriano when they provided sworn answers that demonstrated that the allegations in the complaint were not true. Mr. Persi contends that Mr. Kukor's failure to withdraw the complaint against him on the same facts demonstrates that Mr. Kukor proceeded with the complaint in bad faith.

After careful consideration of the arguments raised by both Mr. Kukor and Mr. Persi, as well as the facts in this case, the Commission concludes that Mr. Kukor's complaint is frivolous, pursuant to the standard set forth in N.J.S.A. 18A:12-29(e). This statute provides:

If prior to the hearing the commission determines, by majority vote, that the complaint is frivolous, the commission may impose on the complainant a fine not to exceed \$500. The standard for determining whether a complaint is frivolous shall be the same as that provided in subsection b of section 1 of P.L.1988, c.46 (C.2A:15-59.1).

The standard set forth in N.J.S.A. 2A:15-59.1(b) is as follows:

b. 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.

Thus, pursuant to N.J.S.A. 18A:12-29(e), the Commission may find a complaint filed against a school official under the School Ethics Act to be frivolous if the complaint was commenced or continued in bad faith with the intent to harass, delay or cause malicious injury or if the complainant knew or should have known that there was no reasonable basis for his complaint.

Regarding N.J.S.A. 2A:15-59.1(b)(1), the making of a false allegation in and of itself is not sufficient to find a frivolous complaint. The allegation must be made in bad faith for the purpose of harassment, delay or malicious injury. McKeown-Brand v. Trump Castle Hotel & Casino, 132 N.J. 546, 561 (1993); Weed v. Casie Enterprise, 279 N.J. Super. 517, 532 (App. Div. 1995). In determining this, one must consider the totality of the circumstances. Ibid. Regarding

N.J.S.A. 2A:15-59.1(b)(2), this section imposes “...a duty of reasonable investigation prior to commencing suit.” Chernin v. Mardon Corp., 244 N.J. Super. 379, 384 (Ch. Div. 1990). Either prong of section 59.1(b) may be satisfied in order to find that a complaint is frivolous. Fagas v. Scott, 251 N.J. Super. 169, 189 (Law Div. 1991). Moreover, “...continued prosecution of a claim or defense may, based on facts becoming known to the party after the filing of the initial pleading, be sanctionable as baseless or frivolous even if the initial assertion of the claim or defense was not.” Iannone v. McHale, 245 N.J. Super. 17, 31 (App. Div. 1990).

The complainant essentially based his complaint on theory of conspiracy whereby Mr. Persi sought out Board members Polkowitz and Suriano with the intent of having them take actions to ensure that there were no negative consequences to Mr. Persi as a result of the accident. In answer to the complaint, Sgt. Polkowitz stated that he was not on duty at the time of the accident. He further stated that he did not appear at the scene, he did not make any inquiry into the matter, he did not speak to anyone on behalf of Mr. Persi and Mr. Persi never asked him for any favors regarding the incident. Dr. Suriano responded to the complaint by stating under oath that he did not use his position as a Board member to secure his brother a job with the Edison Police Department and he has no knowledge or involvement regarding the traffic accident. Mr. Persi also submitted a written statement under oath in which he swore that he did not ask Sgt. Polkowitz for any favors concerning the accident.

By letter dated January 15, 1997, Mr. Kukor notified the Commission that he wished to withdraw his complaint against Dr. Suriano and Sgt. Polkowitz, because he was satisfied with their answers. Mr. Kukor, however, continued to press his complaint against Mr. Persi. Mr. Kukor did this when he had sworn testimony in which others alleged to be involved unequivocally stated that Mr. Persi had not approached them for any favors or help. Indeed, the sworn statements of Sgt. Polkowitz and Dr. Suriano clearly state that they had no involvement or discussions concerning the traffic accident with Mr. Persi or anyone in authority. Despite being provided with this information, which he accepted as true as evidenced by his withdrawal of the complaint against Sgt. Polkowitz and Dr. Suriano, Mr. Kukor continued to proceed with his claim against Mr. Persi when the only fact he had was that Mr. Persi asked for Sgt. Polkowitz at the scene. If Mr. Kukor accepted the statements of Sgt. Polkowitz and Dr. Suriano as true, then there apparently was no basis to continue the complaint against Mr. Persi. At that point, there was no evidence of collusion between Mr. Persi and Sgt. Polkowitz or Dr. Suriano as alleged.

Mr. Kukor also submitted with his complaint a copy of the police report on the traffic accident. The police report indicated that there were two independent witnesses to the accident who stated that the pedestrian ran into traffic and that Mr. Persi did not have a chance to avoid hitting the pedestrian. In his response to the Commission’s inquiry of whether his complaint was frivolous, Mr. Kukor suggests that this report was prepared after other reports that might show some fault on the part of Mr. Persi. Mr. Kukor, however, provides no such “other” reports, nor does he offer any reasonable support whatsoever for his theory that they may exist.

Although Mr. Kukor's complaint against Mr. Persi concerned only Mr. Persi's inquiry at the scene concerning Sgt. Polkowitz, Mr. Kukor attached several newspaper articles concerning various other matters concerning the Board and Mr. Persi. In his papers in response to the Commission's letter inviting submission on the issue of whether the complaint is frivolous, Mr. Kukor spends much time complaining about other actions of Mr. Persi. Moreover, Mr. Kukor used the opportunity to submit his position on whether the complaint was frivolous to attack Mr. Persi. His March 7, 1997, letter primarily is a discussion of what Mr. Kukor perceives to be "character deficiencies" of Mr. Persi and a recitation of incidents unrelated to the allegations in the complaint.

Mr. Persi and Mr. Kukor both appeared before the Commission on February 25, 1997, and were given the opportunity to make any statements and submit any additional information. Mr. Kukor had nothing new to add and Mr. Persi corroborated Sgt. Polkowitz's and Dr. Suriano's statements. In light of the information submitted and Mr. Persi's sworn testimony before the Commission, the Commission gave Mr. Kukor an opportunity to withdraw his complaint against Mr. Persi. He declined.

After reviewing the totality of the circumstances, the Commission finds that Mr. Kukor filed and continued his complaint in bad faith for the purpose of harassing or causing malicious injury to Mr. Persi. Even if Mr. Kukor had a basis to file the complaint initially, it became apparent during its pendency that there was no violation of the Act, yet Mr. Kukor continued against Mr. Persi. He had ample opportunity to withdraw the complaint yet chose not to do so. The attachment to the complaint of newspaper articles unrelated to the allegations suggests that Mr. Kukor may have an intention other than to determine whether Mr. Persi's actions alleged in the complaint violated the School Ethics Act. Mr. Kukor's March 7, 1997, above discussed response demonstrates that he continued to pursue the complaint not because of the incident in question, but because Mr. Kukor has some on-going battle with Mr. Persi.

Not only do Mr. Kukor's actions in pursuing this complaint demonstrate that he was acting in bad faith for the purpose of harassing Mr. Persi, they also demonstrate that Mr. Kukor knew or should have known that there was no reasonable basis for his complaint. As discussed above, Mr. Kukor's complaint ultimately amounted to an allegation that Mr. Persi asked for Sgt. Polkowitz at the scene. Despite all of Mr. Kukor's innuendoes and suggestions that Mr. Persi asked this question with improper motives, this is not enough to sustain any complaint. Mr. Kukor recognized that there was no basis to proceed with his complaints against Sgt. Polkowitz and Dr. Suriano, yet he continued to pursue Mr. Persi. Mr. Kukor had ample opportunity to withdraw his complaint against Mr. Persi, yet he failed to do so. The Commission finds that it was not reasonable to proceed based on the allegations and the information provided.

This is especially true since although he is acting pro se, Mr. Kukor is familiar with the provisions of the School Ethics Act and its procedures. This is the fourth complaint Mr. Kukor has filed with the Commission. Complaint C09-96, filed on May 2, 1996, was dismissed because there was no probable cause to credit the allegations in the complaint. He withdrew Complaint

C18-96 when he sought to withdraw the complaint against Mr. Suriano and proceed against Mr. Persi, but was told that he had never named Mr. Persi. One other complaint is still pending. The Commission finds that Mr. Kukor's prior experience with the Commission also supports a finding that he knew or should have known that there was no reasonable basis for his complaint.

After consideration of the facts and circumstances surrounding this complaint, the Commission finds that the maximum penalty of \$500.00 should be imposed. Mr. Kukor was given the opportunity to withdraw his complaint against Mr. Persi when it became obvious that there was no basis for it, but he failed to do so. He failed to do so even after he withdrew his complaint against Sgt. Polkowitz and Dr. Suriano. Mr. Kukor used this complaint as a means to attack Mr. Persi. The Commission considers seriously all complaints filed before it. The Commission should not, however, be used as a means to air grievances not related to a complaint and launch personal attacks. Mr. Kukor did this when he attached unrelated newspaper articles to his complaint and when he discussed Mr. Persi's perceived "character deficiencies" in his response to the frivolous complaint charge.

CONCLUSION

For the foregoing reasons, the Commission dismisses the complaint against Mr. Persi. The Commission also finds the complaint to be frivolous pursuant to N.J.S.A. 18A:12-29(e) and imposes a \$500.00 sanction against Mr. Kukor.

Upon adoption by resolution of the Commission, this decision constitutes final agency action and is appealable to the Superior Court -- Appellate Division.

Respectfully submitted,

Michael Pecklers
Acting Chair, School Ethics Commission

Resolution Adopting Decision -- C29-96

Whereas, the School Ethics Commission has considered the pleadings filed by the parties and the documents submitted in support thereof and has considered the arguments raised by parties in subsequent submissions; and

Whereas, the Commission finds no probable cause to credit the allegations that Melindo Persi violated N.J.S.A. 18A:12-24(b) of the School Ethics Act and therefore, dismisses the complaint against him; and

Whereas, the Commission has considered arguments by the parties regarding whether the complaint was frivolous pursuant to N.J.S.A. 18A:12-29(e); and

Whereas, the Commission finds that the complaint meets the standard set forth in N.J.S.A. 2A:15-59.1 for a frivolous complaint and therefore, believes that a sanction of \$500.00 is appropriate; and

Whereas the Commission has reviewed the proposed decision of its staff setting forth the above conclusions; 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.

Michael Pecklers, Vice-Chair

I hereby certify that the Resolution
was duly adopted by the School
Ethics Commission at its public meeting
on April 8, 1997

Lisa James-Beavers
Executive Director