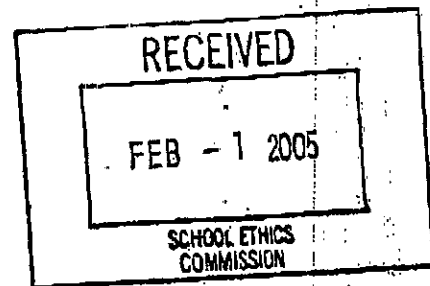


NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4433-03T5

DR. JOSEPH T. ATALLO,
Petitioner-Appellant,



v.
GREGORY G. JOHNSON and
THE STATE OF NEW JERSEY
SCHOOL ETHICS COMMISSION,
Respondents-Respondents.

Submitted December 6, 2004 - Decided

JAN 8 1 2005

Before Judges Cuff and Hoens.

On appeal from a final decision of the
School Ethics Commission, Docket No. C34-03.

Theodore E. Kyles, attorney for plaintiff.

Peter C. Harvey, Attorney General, attorney
for respondent the School Ethics Commission
(Lewis A. Scheindlin, Assistant Attorney
General, of counsel; Allison Colsey Eck,
Deputy Attorney General, on the brief).

Respondent Gregory G. Johnson has not filed a brief.

PER CURIAM

Plaintiff Joseph T. Atallo appeals from the decision of the
School Ethics Commission dismissing his ethics complaint against

defendant Gregory Johnson and sanctioning him for filing a frivolous pleading. We affirm.

The relevant facts are as follows. Plaintiff is a member of the Paterson Board of Education. In August 2003, plaintiff filed an ethics complaint against defendant, charging him with violating the confidentiality provisions governing ethics matters. See N.J.S.A. 18A:12-21 to -24; N.J.A.C. 6A:28-6.1. In particular, plaintiff's complaint asserted that defendant had violated the ethics rules by preparing a status report describing other ethics complaints concerning plaintiff and disseminating that report to the members of the Board other than plaintiff. At the time of the events relevant to this appeal, defendant was an attorney engaged in private practice who served as special legal counsel to the School District pursuant to a consulting contract.

In response to that complaint, the School Ethics Commission advised plaintiff in writing that it was only authorized to hear complaints against school officials and that it had previously concluded that an attorney is not a school official within the meaning of the School Ethics Act. The Commission then asked plaintiff to set forth the basis on which he believed that defendant was a school official subject to its jurisdiction. Plaintiff responded, contending that defendant had, subsequent

to the time when he wrote the memorandum that was the subject of the complaint, become the in-house counsel to the school district pursuant to the terms of an employment contract and that he had exercised authority for recommending purchases on behalf of the district. Based on these facts, plaintiff asserted that defendant was a school official and was therefore within the purview of the Act. After giving this explanation as to why he believed that defendant was a school official subject to the School Ethics Act, plaintiff filed a further complaint, raising the same allegations against defendant with the District XI Ethics Committee of the Supreme Court of New Jersey.

Plaintiff did not withdraw the complaint that he had previously filed with the School Ethics Commission and did not advise the Commission of his filing with the District XI Ethics Committee.

At its meeting on February 3, 2004, the Commission determined that at the time of the events complained of, defendant was not a school official within the meaning of the School Ethics Act because he was a private attorney serving only as special counsel pursuant to a consulting agreement rather than an employee of the District. Based on that finding, the Commission concluded that it lacked jurisdiction to consider the allegations brought by plaintiff and it dismissed the complaint.

The Commission also considered defendant's application to find that plaintiff's complaint against him was frivolous. The Commission noted that when plaintiff filed his District XI ethics complaint, he was aware that allegations of ethical violations by attorneys are governed by the Supreme Court through the District Ethics Committees. See R. 1:20-1 to -23. It further found that, as a part of his filing with the School Ethics Commission, plaintiff had certified that the matter was not then pending before any other court or administrative body and had certified that he would advise the Commission if he became aware of any other action addressing the same issues thereafter but that he had failed to advise the Commission of his District XI complaint.

Based on these facts, the Commission concluded that plaintiff was aware that the allegations he sought to raise did not fall within the purview of the School Ethics Act and were more properly asserted through the system of attorney discipline. It therefore concluded that plaintiff "should have known that there was no reasonable basis in law for an ethics complaint and there was no good faith argument that could be made to support an extension of existing law." Based on these findings, the Commission, in addition to dismissing plaintiff's complaint, found that his pleading was frivolous and imposed a

fine on him of \$250 as a sanction. The Commission embodied its findings and conclusions in its written decision, Decision No. C34-03, and formally passed a resolution adopting those findings and conclusions on February 24, 2004.

On appeal, plaintiff argues that the Commission erred both in dismissing the complaint and in imposing a sanction on him for filing a frivolous pleading. We have considered these arguments in light of the record and the applicable legal precedents and have concluded that they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(D)-(E). We therefore affirm for substantially the reasons expressed by the School Ethics Commission in Decision No. C34-03, adopted February 24, 2004. We add only the following brief observations.

We first note that when we review a final agency decision, the scope of our review is limited. See George Harms Constr. Co. v. N.J. Turnpike Auth., 137 N.J. 8, 27 (1994). In particular, we note that because this decision rests on the agency's "interpretation of [the] statute[] . . . within [the agency's] implementing and enforcing responsibility," it is entitled to our deference. Wnuck v. N.J. Div. of Motor Vehicles, 337 N.J. Super. 52, 56 (App. Div. 2001) (quoting In re Appeal by Progressive Cas. Ins. Co., 307 N.J. Super. 93, 102

(App. Div. 1997)); see In re Pub. Serv. Elec. and Gas Co., 167 N.J. 377, 384 (2001). Applying these precedents, we find no ground on which to disturb the findings and conclusions of the Commission.

The Commission is authorized to hear complaints against school officials pursuant to N.J.S.A. 18A:12-29. The Act defines a school official as follows: "a board member, an employee or officer of the New Jersey School Boards Association . . . or an administrator." N.J.S.A. 18A:12-23. An administrator is further defined to include a person holding a position "which does not require that the person hold any type of certificate but is responsible for making recommendations regarding hiring or the purchase or acquisition of any property or services by the local school district." Ibid.; N.J.A.C. 6A:28-1.2. At the time when defendant prepared and sent the memorandum about which plaintiff complains, he was an attorney in private practice who was acting as special counsel pursuant to a consulting agreement. As such, he was not a school official as that position is defined by the Act because he was neither an employee nor an administrator of the school district.

Moreover, after plaintiffs learned through the inquiry from the Commission that it had a concern about whether it had jurisdiction over the complaint, he filed his attorney ethics

complaint with the District XI Ethics Committee raising the same allegations against defendant. When he did so, plaintiff failed to advise the Commission of the duplicate filing.

We conclude, as did the Commission, that plaintiff knew that defendant was not within the purview of the School Ethics Act, knew that the appropriate disciplinary forum was the District Ethics Committee and therefore knew that there was no good faith basis for continuing with the complaint he had earlier filed with the Commission. We concur, therefore, in the Commission's conclusion that a sanction for filing a frivolous pleading was appropriate. See N.J.S.A. 18A:12-29(e) (incorporating N.J.S.A. 2A:15-59.1 by reference). We find no error in the Commission's analysis or in the amount it assessed as a sanction.

Affirmed.

I hereby certify that the foregoing is a true copy of the original on file in my office.

Jan Flynn
CLERK OF THE APPELLATE DIVISION