

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 14TH DAY OF AUGUST, 2024

Allison Chris Myers

Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Nicholas F. Angiulo
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
P.O. Box 312
Trenton, New Jersey 08625-0312

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO.: CSV 06874-23

AGENCY NO.: 2024-165

**IN THE MATTER OF FRANKLIN SOSA,
HUDSON COUNTY DEPARTMENT OF
CORRECTIONS.**

Michael P. Rubas, Esq., for appellant Franklin Sosa (Rubas Law Offices,
attorneys)

Donald L. Gardner, Esq., for respondent Hudson County Department of
Corrections

Record Closed: May 9, 2024

Decided: June 11, 2024

BEFORE **WILLIAM COURTNEY, ALJ:**

PROCEDURAL HISTORY

Appellant Franklin Sosa is a corrections officer employed by respondent Hudson County Department of Corrections. Officer Sosa was suspended for a period of 75 days pursuant to a Final Notice of Disciplinary Action ("FNDA") dated July 5, 2023. On July 11, 2023 Sosa filed a timely appeal of the FNDA and the matter was transferred to the Office of Administrative law for resolution.

A prehearing conference was held on August 23, 2023 and deadlines for discovery were discussed and agreed upon by counsel. The agreed upon dates for discovery were placed in a Prehearing Order (“PHO”) that was issued by the court on September 15, 2023. Section 7 of the PHO required the parties to serve discovery on or before September 5, 2023 and to provide responsive answers to discovery requests on or before November 3, 2023. The PHO also required that any disputes concerning discovery be “promptly brought to the attention of Judge Courtney”, the Administrative Law Judge assigned to the case. The PHO also contained the agreed upon hearing date of January 23, 2024.

On September 15, 2023, in compliance with the PHO, appellant served interrogatories, document requests and requests to admit, upon respondent. No objections were made to appellant’s discovery requests. Respondent filed no discovery requests.

On November 9, 2023, 5 days after the discovery deadline had passed, the parties participated in a status conference with the court and respondent indicated that his overdue discovery responses would be forthcoming. Almost two months later, on January 10, 2024, appellant wrote to advise the court that discovery had still not been provided by respondent and he expressed concern that the delay was preventing him from filing a motion for summary decision. Appellant also expressed concern that the previously agreed upon hearing date was now less than 2 weeks away and would most certainly need to be adjourned because of respondent’s failure to provide discovery. Understanding appellant’s need for discovery this court adjourned the January 23, 2024 hearing date.

The court then scheduled a status conference for March 4, 2024. At the conference the court set a strict deadline of April 5, 2024, for respondent to provide responsive answers to the outstanding discovery requests. This date was selected by the court because respondent represented to the court that the answers would be provided by that date. Furthermore, based on respondent’s agreement to provide the outstanding discovery responses by April 5th, the court set May 10, 2024 as the deadline for appellants to file his motion for summary decision and June 11, 2024 as the

new hearing date. All these new and agreed upon dates were placed in an amended PHO dated March 11, 2024 and distributed to the parties.

On April 15, 2024, appellant filed a motion to dismiss the FNDA based on respondent's failure to provide responsive answers to discovery in accordance with the orders of this court. Respondent filed no opposition to appellant's motion. In accordance with N.J.A.C. 1:1-10.5, on May 9, 2024, respondent was provided with an opportunity to be heard with regard to appellant's request for the imposition of sanctions for failing to provide discovery.

LEGAL ANALYSIS

The purpose of discovery is to facilitate the disposition of cases by streamlining the hearing and enhancing the likelihood of settlement or withdrawal. N.J.A.C. 1:1-10.1. The rules are designed to achieve this purpose by giving litigants access to facts which tend to support or undermine their position or that of their adversary. Id. In this case, I **FIND** that respondent's disregard of this court's prehearing orders requiring responsive answers to discovery by certain dates has entirely frustrated the discovery process and has prevented appellants access to facts necessary to properly present his case.

The Rules require the parties to respond to discovery requests within 15 days of their receipt. N.J.A.C. 1:1-10.4(c). In this case however, the initial PHO provided respondent 60 days to provide responsive answers. If respondent believed the discovery was somehow improper, he had ample opportunity to object in accordance with N.J.A.C. 1:1-10.4. No such objection was made by respondent. Furthermore, even though both prehearing orders in this case required the parties to promptly bring any discovery disputes to the attention of this court, respondent never indicated any problem with the discovery requests.

With extensions, respondent was provided with 7 months to provide responsive answers to appellant's discovery requests but still failed to either answer or object to those discovery requests. Respondent knew of appellant's intent to file a motion for summary disposition once the discovery was provided but still disregarded the

discovery deadline set in the First Amended PHO resulting in appellant's inability to file for summary decision. Then, when appellant filed this motion to dismiss the FNDA based on respondent's failure to provide discovery, respondent filed no opposition to the motion¹.

After waiting an additional 5 days past the deadline for respondent to file opposition to appellant's motion to dismiss, in accordance with N.J.A.C. 1:1-10.5 respondent was provided an opportunity to be heard on the imposition of sanctions pursuant to N.J.A.C.1:1-14.14. At oral argument² on the on the issue of sanctions, which took place on May 9, 2024, counsel for respondent indicated that he knew there were outstanding interrogatories in this case, but he believed that the information appellants' counsel was seeking had already been already provided to him in a separate case appellants' counsel had filed against Hudson County. He then stated:

[B]ased on [his] review of the interrogatories [in this case], if there is anything in addition to what has been asked of the County that should be submitted, I respectfully request just a couple of days to do so. Once again, the review that I have had of the interrogatories suggests that [they] were not overly burdensome or a time-consuming request. It's something that I could probably do, although I don't see the need to do it.

Based upon the respondent's own observation that discovery requests were not overly burdensome and could provide responsive answers in a couple of days, I **FIND** that respondent has failed to provide any credible explanation or reason why the discovery requests were not answered. I further **FIND** that if respondent believed the discovery had already been provided because the County provided the same or similar information in another case not involving the appellant, they should have said that in a timely response to the discovery requests made in this case. If they had provided such an explanation in a timely fashion, appellant could have raised an issue concerning the

¹ The Motion was filed on April 15, 2024. N.J.A.C. 1:1-12.2(b) requires that any opposition is to be filed within 10 days form the filing of the motion. No responsive papers were filed within the 10-day period and no extensions were requested.

² Michael P. Rubas, Esq. appeared at the oral argument on behalf of appellant arguing for the imposition of sanctions and Donald L. Gardner, Esq. appeared on behalf of respondent arguing against the imposition of sanctions.

sufficiency or propriety of such a response in November of last year. Moreover, respondent has failed to provide this court with any support for its position that discovery provided in one case relieves them of their obligation to respond to discovery in a totally separate case that involves similar issues.

For the reasons set forth above, I **FIND** this motion to be uncontested and that respondent has failed to provide any reasonable explanation for its noncompliance with the prehearing orders entered in this matter or its failure to provide discovery. I therefore **CONCLUDE** that appellant's request to dismiss the FNDA as well as his request for back pay, benefits and seniority is appropriate and should be granted. I also **FIND** that an award of attorney's fees to the appellant is appropriate under N.J.A.C. 4A: 2-2.12 and N.J.A.C. 1:1-14.14 and I will award appellant attorney's fees in the amount of \$375.00³. Not only do I **FIND** this fee request by Mr. Rubas extremely reasonable, I **FIND** that it complies with the fee limits set forth in N.J.A.C. 4A:2-2.12(c)(3) which states that "a [p]artner or equivalent in a law firm with 15 or more years of experience in the practice of law, or, notwithstanding the number of years of experience, with a practice concentrated in employment or labor law: [may be reimbursed at the rate of] \$175.00 to \$200.00 per hour."

ORDER

IT IS on this 10th day of June, 2024 **ORDERED** that:

1. Appellant's motion to dismiss the July 5, 2023 FNDA is **GRANTED**; and
2. Respondent shall provide appellant with all back pay, benefits and reinstate all seniority lost as a result of the 75-day suspension; and
3. Respondent shall pay attorney's fees in the amount of \$395.00 within 75 days of the date of this order.

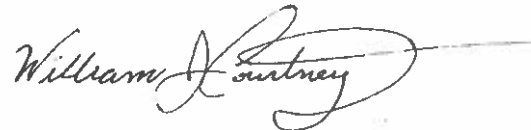
³ At the request of the court, Mr. Rubas submitted a certification of services dated June 10, 2024 seeking fees in the amount of \$395.00. The Certification provided a recitation of Mr. Rubas's education and experience handling litigated cases and a detailed breakdown of the fees he charged in connection with the filing of this motion. Mr. Rubas billed aa rate of 150.00 per hour which was well within the statutory range and well below the amount he could have billed given his experience as a litigator

The relief granted herein fully disposes of all disputed issues in this case.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



June 11, 2024

DATE

WILLIAM COURTNEY, ALJ

Date Received at Agency:

June 11, 2024

Date Mailed to Parties:

June 11, 2024

db

APPENDIX

List of Exhibits

For Appellant:

1. April 15, 2024 Certification of Micheal P. Rubas, Esq.
2. June 10, 2024 Certification of Micheal P. Rubas, Esq. [Certification of Services]

For Respondent:

None

**SETTLEMENT AGREEMENT BETWEEN FRANKLIN SOSA
AND
THE COUNTY OF HUDSON**

This Settlement Agreement and Release (hereinafter referred to as the "Agreement") is entered into this 31st day of July 2024, between the County of Hudson (hereinafter referred to as the "County") and Hudson County Correctional Police Officer Franklin Sosa (hereinafter referred to as "Officer Sosa" or the "Employee" or the "Releasor")

WHEREAS, Officer Sosa was charged by a Preliminary Notice of Disciplinary Action, dated February 15, 2023, relating to an incident on February 10, 2023;

WHEREAS, Officer Sosa was suspended for 75-working days by a Final Notice of Disciplinary Action, July 5, 2023;

WHEREAS, Officer Sosa filed a Major Discipline Appeal with the Civil Service Commission that was assigned to the Honorable William Courtney, A.L.J., State of New Jersey Office of Administrative Law, under the title In the Matter of Franklin Sosa, Hudson County Department of Corrections, OAL DKT. NO. CSV 06874-23;

WHEREAS, the Honorable William Courtney, A.L.J., issued an Initial Decision on June 11, 2023;

WHEREAS, the parties have now amicably resolved this matter without the need for further litigation;

NOW, THEREFORE, in consideration of the premises and conditions set forth herein, the County and Officer Sosa;

1. DISCIPLINARY ACTION

a. Officer Sosa pleads guilty to Charge No. 4 of the Preliminary Notice of Disciplinary

Action, dated February 15, 2023, charging him with Neglect of Duty;

b. The balance of charges contained in the Preliminary Notice of Disciplinary Action, dated February 15, 2023, are hereby dismissed.

c. Officer Sosa agrees to accept and will receive a suspension of 25-working days, time served;

d. The County of Hudson will reimburse Sosa 50 working days of backpay, benefits and seniority;

e. The Final Notice of Disciplinary Action, July 5, 2023, will be vacated and records will be amended, and a new Final Notice of Disciplinary Action will be issued to reflect a suspension of 25-working days in exchange for Officer Sosa's guilty plea to Charge 4 alleging Neglect of Duty;

f. The County of Hudson will pay attorney fees and costs in the amount of \$395.00 to Michael P. Rubas, Esq. within 30 days of the execution of this agreement;

g. Prior to the execution of the agreement, counsel for Officer Sosa will advise the Civil Service Commission and the Office of Administrative Law that the matter should be marked "Settled." If the Agreement is not executed for any reason, Officer Sosa reserves the right to seek relief before the Civil Service Agreement and/or Office of Administrative Law which may include, but not be limited, seeking to enforce the Initial Decision, dated June 11, 2024.

2. COMPLETE RELEASE AND COVENANT NOT TO SUE

a. In further consideration of the settlement herein above, the Employee, his heirs, assigns and agents (hereinafter referred to collectively as "Releasor") voluntarily enter into this Agreement, and certify that he has not been threatened or coerced into signing this Agreement, on the terms which follow:

b. Except as reserved in section 4 below, Releasor hereby releases, waives and discharges the County, its affiliated departments, and its officers, trustees, agents, employees, successors and assigns (hereinafter collectively referred to as the "Releasees") from each and every claim, demand, cause of action, obligation, damage, complaint, or action or writ of any kind, nature, character or description that Releasor had, now has, or may in the future have against the Releasees on account of or arising out of any matter or thing that has happened, developed or occurred prior to the date of this Agreement related to the Disciplinary Action. This Complete Release includes, but is not limited to, any claim, demand, cause of action, obligation, claim for damages of any kind, complaint, expense, compensation, or action or writ of any kind, nature, character or description arising out of or under Federal, State or municipal statute or ordinance and any other law (whether such be common law, decisional law or statutory law), rule, regulation, executive order or guideline, and any and all claims for attorney's fees and costs arising from the above acts including, but not limited to:

i. Any claim, cause of action, demand or complaint arising out of or under the New Jersey Law Against Discrimination (NJLAD) which, among other things, prohibits discrimination in employment on the basis of an individual's race, creed, color, religion, sex, national origin, ancestry, age,

marital status, affectional or sexual orientation, familial status, handicap, atypical hereditary cellular or blood trait or liability for service in the Armed Forces of the United States.

- ii. Any federal claim, cause of action demand or complaint arising out of or under the Federal Title VII of the Civil Rights Act of 1964 (Title VII) or the Civil Rights Act of 1991, as amended, which, among other things, prohibit discrimination in employment on account of a person's race, color, religion, sex or national origin.
- iii. Any claim, cause of action, demand or complaint arising out of or under the Federal Age Discrimination in Employment Act of 1967, as amended (ADEA), which among other things, prohibits discrimination in employment on account of a person's age. iv. Any claim, cause of action, demand or complaint arising out of or under the Federal Americans with Disabilities Act (ADA), which, among other things, prohibits discrimination in employment on account of a person's disability or handicap.
- iv. Any claim, cause of action, demand or complaint arising out of or under the Federal Family and Medical Leave Act (FMLA) which, among other things, entitles an employee to take reasonable leave for medical reasons for the birth or adoption of a child, and for the care of a child, spouse or parent who has a serious health condition and any claim, cause of action, demand or complaint arising out of under the New Jersey Family Leave Act (NJFLA).
- v. Any claim, cause of action demand or complaint arising out of or under the Federal Rehabilitation Act of 1973, as amended, which among other things, prohibits discrimination in employment by Federal contractors against

individuals with disabilities.

vi. Any claim, cause of action, demand or complaint arising out of or under the Federal Employee Retirement Income Security Act of 1974, as amended (ERISA), which among other things, regulates pension and welfare plans and prohibits interference with individual rights protected under that statute.

vii. Any claim, cause of action, demand or complaint arising out of or under the Federal Older Workers Benefit Protection Act (OWBPA) which, among other things, amends provisions of ADEA and prohibits discrimination in employment and employment benefits on account of a person's age.

viii. Any claim, cause of action, demand or complaint arising out of or under the Conscientious Employee Protection Act (CEPA) which, among prohibits retaliatory action by an employer against an employee who objects to practices that she reasonably believes are incompatible with a clear mandate of law or public policy concerning public health, safety, or welfare. The aforesaid list shall not be deemed exhaustive but by way of example and the recitation of a release of all claims as set forth in 2a. shall not be diminished thereby.

c. Releasor has not and shall not hereafter seek money damages against the County or the Releasees in any matter lodged within the New Jersey Division on Civil Rights, the U.S. Equal Employment Opportunity Commission (EEOC) or with any Federal, State, or local court or agency which has been settled herein. Nothing herein shall be construed as limiting any individual's right to file a charge of discrimination should he feel that he was a victim of unlawful discrimination.

d. If Releasor violates this Complete Release by filing any claim, charge or complaint as prohibited above, Releasor agrees to pay all costs and expenses of defending against the suit incurred by County and/or the Releasees, including reasonable attorney's fees.

3. **NO DISPARAGING STATEMENTS.**

To the extent permitted by law, the parties agree that they will not make any statement(s) that has, have, or can be expected to have the effect of disparaging the County or any of its employees or the employee. The County agrees that absent a court order, it will limit its response to any inquiry concerning the employee to confirmation of the dates of her service but nothing else.

4. **RESERVED CAUSE OF ACTION**

Notwithstanding the releases stated herein, the releasor does not release any claim or right he might have to a worker's compensation claim.

5. **NON-ADMISSION OF LIABILITY**

This Agreement is executed, and all consideration is given in final settlement of disputed claims and shall not be construed as an admission of any allegation or of liability by Releasor, except as expressly provided in Paragraph 1 herein, or by the County, by whom any such liability is expressly denied.

6. **INDEMNIFICATION.**

If Releasor violates this Agreement in any way, Releasor agrees to pay in addition to all other remedies allowed by law or this Agreement, all costs and expenses incurred by the opposing party because of such violation, including reasonable attorney's fees.

7. **CONSULTATION WITH ATTORNEY**

Releasor has consulted with his attorney and /or Union Representative with respect to this

Agreement and has reviewed with his/her Union Representative and/or attorney all of the terms and conditions of this Agreement prior to executing this Agreement.

8. **REASONABLE PERIOD OF TIME.**

Releasor agrees that he has been given a reasonable period of time of at least 21 days within which to review and consider this Agreement prior to executing this Agreement, but that Releasor may waive this 21-day period by signing in the space provided at the end of this Agreement.

9. **COMPLETE AGREEMENT.**

This Agreement contains the entire agreement between Releasor and the County, and each of them, with respect to the subject matter and supersedes all prior agreements, understandings and/or dealings whether written or otherwise with respect to the same subject matter. There is no agreement on the part of the County to do anything other than what is expressly stated in this Agreement. This Agreement shall in all respects be interpreted, enforced, and governed by the Laws of the State of New Jersey. It is understood between and among all parties hereto that the terms of this settlement shall not have any precedential effect or constitute binding practice.

10. **MODIFICATION.**

No modification or amendment of this Agreement will be enforceable unless it is in writing and signed by the party to be charged.

11. **SEVERABILITY**

Should any provision of this Agreement be declared or determined by any court of competent jurisdiction to be illegal, invalid or unenforceable, the legality, validity, and enforceability of the remaining parts, terms, or provisions shall not be affected thereby and said illegal, unenforceable or invalid part, term, or provision shall be deemed not part of this Agreement.

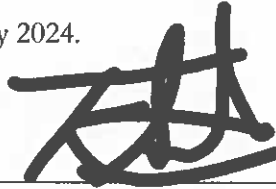
12. **ATTESTATION.**

Releasor represents and warrants that she has carefully read each and every provision of this Agreement and that she fully understands all of the terms and conditions contained in each provision of this Agreement. Releasor represents that she enters into this Agreement voluntarily, of her own will, without any pressure or coercion from any person or entity including, but not limited to, the County and/or Releasees.

13. **REVOICATION**

Releasor may revoke this Agreement within seven (7) days after the date this Agreement is executed by Releasor. This revocation must take the form of written notice by Releasor that Releasor intends to revoke this Agreement. This revocation must be provided directly to Director Becky Scott, 30 Hackensack Avenue, Kearny, New Jersey, 07032

IN WITNESS WHEREOF, and intending to be legally bound hereby, I, Franklin Sosa, execute the foregoing Agreement this 31st day of July 2024.



Franklin Sosa, Employee

Michael P. Rubas

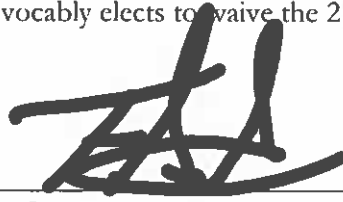
Michael P. Rubas, Counsel for Franklin Sosa

Becky Scott

Becky Scott Director
Hudson County Dept. of Corrections

WAIVER

By signing below, the undersigned hereby irrevocably elects to waive the 21-day period referred to in the 8th recital of this Agreement.

A handwritten signature in black ink, appearing to be 'Franklin Sosa', written over a horizontal line.

Franklin Sosa

DATED: July 31, 2024