

---

<b>IN THE MATTER OF</b>	:	<b>BEFORE THE SCHOOL</b>
	:	<b>ETHICS COMMISSION</b>
	:	
	:	
<b>JAMES CHIEGO</b>	:	<b>Docket No. C51-05</b>
<b>UNION TOWNSHIP</b>	:	
<b>BOARD OF EDUCATION</b>	:	<b>DECISION ON</b>
<b>HUNTERDON COUNTY</b>	:	<b>REMAND</b>
	:	

---

**PROCEDURAL HISTORY**

This matter arises from a complaint filed on November 18, 2005 by Amy Bailey and Frank Goldberg alleging that James Chiego, a member of the Union Township Board of Education (Board), violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. Specifically, complainants allege that Mr. Chiego violated N.J.S.A. 18A:12-24.1(a), (c), (e), (f) and (g) of the Code of Ethics for School Board Members. Mr. Chiego filed a timely response, through his attorney, Philip E. Stern, Esq.

At its March 28, 2006 public meeting, the Commission voted to find that Mr. Chiego violated N.J.S.A. 18A:12-24.1(g) of the Code of Ethics for School Board Members. The Commission also voted to dismiss the remaining allegations. Since the complaint involved an allegation of perjury, the Commission also voted to refer the charge of perjury to the Attorney General’s Office.

After the March 28, 2006 meeting, the Commission granted both parties the opportunity to provide input into its determination regarding the imposition of a sanction on Mr. Chiego. At its April 25, 2006 public meeting, the Commission vacated its decision of March 28, 2006 finding that Mr. Chiego violated N.J.S.A. 18A:12-24.1(g), voted to find that Mr. Chiego violated N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members and voted to recommend that the Acting Commissioner of Education impose a penalty of censure. The Commission also decided not to forward the matter to the Attorney General’s Office.<sup>1</sup>

By decision dated June 16, 2006, the Acting Commissioner concurred with the recommended penalty of censure, and on July 25, 2006, the Commission adopted a resolution of censure. On August 14, 2006, the respondent appealed the determination to

---

<sup>1</sup> According to the decision issued by the School Ethics Commission, on September 25, 2005, Mr. Chiego signed a certification, which was submitted to the Commission in the matter of Patricia Lee, et al. v. Barri Beck, C01-05, (September 27, 2005). The Commission did not accept the certification of Mr. Chiego, in that it was submitted on the afternoon of September 26, 2005, the day before the September 27, 2005 Commission meeting when C01-05 was heard. The certification contained information regarding Mr. Chiego’s interpretation of what occurred at the September 22, 2005 Union Township Planning Board meeting.

the State Board of Education.<sup>2</sup> On appeal, the State Board granted a motion to participate by the Deputy Attorney General on behalf of the Commission and the Commissioner. On June 6, 2007, the State Board further granted appellant Chiego's motion to supplement the record with an affidavit of Patricia Lee, President of the Board at the time the appellant submitted the certification at issue. By decision dated August 1, 2007, the State Board remanded the matter to the Commission,

for any further proceedings which it deems necessary in order to determine in the first instance whether, on the basis of the record as supplemented, the appellant had "take[n] any private action that may compromise the Board in violation of N.J.S.A. 18A:12-24.1(e), and if so, to recommend an appropriate sanction to the Commissioner. In The Matter of the Censure of James Chiego Pursuant to N.J.S.A. 18A:12-29(c), Union Township Board of Education, Hunterdon County, State Board Slip op. at p. 5.

In so doing, the State Board set aside the censure imposed by the Acting Commissioner pending a determination on remand as to whether the appellant violated the Act. The State Board did not retain jurisdiction.

On September 25, 2007, the Commission considered the State Board's decision and voted to rehear the matter in order to determine whether the respondent took private action that may compromise the Board in violation of N.J.S.A. 18A:12-24.1(e). The parties were so notified by letter dated October 1, 2007. On January 22, 2008, pursuant to N.J.S.A. 18A:12-32, the Commission voted to place the matter in abeyance pending a matter in municipal court involving the complainants and the respondent. On May 12, 2008, the Commission was notified by the complainant that the municipal proceeding was resolved. The matter was scheduled for hearing before the Commission on August 26, 2008, but adjourned at the request of respondent's new council. The matter was rescheduled for a hearing on December 16, 2008. On November 18, 2008, the respondent filed a Motion to Dismiss the remanded matter. The complainant filed a response to the Motion on December 5, 2008. Both filings were considered at the Commission's meeting on December 16, 2008, at which time the Commission voted to deny the Motion to Dismiss. The matter was scheduled for a hearing on February 24, 2009, solely on the question of whether the complainant, in light of the evidence brought before the State Board, has demonstrated that the respondent violated N.J.S.A. 18A:12-24.1(e). At the February 24, 2009 meeting, the Commission found that the complainant

---

<sup>2</sup> Prior to the enactment of P.L. 2008, c. 36, State Board of Examiners and School Ethics Commission decisions were appealable to the State Board of Education. P.L. 2008, c. 36 removed the authority of the State Board of Education to hear appeals of determinations of the Commissioner of Education, the State Board of Examiners, and the School Ethics Commission, providing instead that determinations of the Commissioner shall be deemed final agency actions and determinations of the State Board of Examiners and School Ethics Commission shall be appealable to the Commissioner.

had failed to demonstrate that the respondent had violated N.J.S.A. 18A:12-24.1(e) and dismissed the complaint.

## **SUMMARY OF THE RECORD**

This matter was heard by the Commission at its February 24, 2009 meeting on the sole issue of whether the certification signed by Mr. Chiego and submitted in support of Patricia Lee et al. v. Beck, C01-05 (September 27, 2005) violated N.J.S.A. 18A:12-24.1(e). In attendance were complainant, Frank Goldberg and complainant's witness Michael Beck, and the respondent, James Chiego, represented by his attorney Paul Barger, Esq., and his witness Michael Sroka.

In support of his claim that Mr. Chiego's certification was a violation of N.J.S.A. 18A:12-24.1(e), Mr. Goldberg requested the Commission to consider the initial position of Mr. Chiego's counsel that Mr. Chiego had not been acting as a board member when he signed the certification. Mr. Goldberg testified that, despite a subsequent affidavit submitted by Patricia Lee to the contrary, she had stated in several public appearances that Mr. Chiego acted on his own and she had no knowledge about Mr. Chiego's certification. Mr. Goldberg testified that he went to a Board meeting requesting an apology for Mr. Chiego's inflammatory statement in his certification.<sup>3</sup> In response, Ms. Lee personally apologized to Mr. Goldberg, but stated that she did not have the authority to apologize on behalf of the Board. Mr. Goldberg testified that, at the Board meeting, Mr. Chiego said that he would apologize "when hell freezes over."

Mr. Goldberg referred the Commission to an affidavit of John Scott, Chairman of the Planning Board, which was considered as evidence at the March 28, 2006 hearing by the Commission. John Scott therein affirmed that he had conversations with Ms. Lee, wherein she indicated that she was aware that Mr. Chiego would be filing something, but that she had not seen what was filed.

Mr. Goldberg then read into the record paragraph 14 of a September 26, 2005 affidavit by Mr. Chiego that was submitted to the Commission in another matter before it:

The Goldbergs appear to have received preferential treatment and received a variance (here the complainant stated that it was not a variance but rather a waiver) which would not normally be granted and the Mayor, Mr. Beck, Barri Beck's husband partook and approved of the actions taken in this meeting. For the foregoing reasons I believe that Mr. Goldberg's statement may be compromised or conflicted.

Mr. Goldberg claimed that Mr. Chiego then refuted paragraph 14 claiming that he did not read it.

---

<sup>3</sup> There was no testimony as to the date of this Board meeting.

Mr. Goldberg testified that there was a problem between the Planning Board and the Board because of Mr. Chiego's certification. He stated that the attorney for the Planning Board felt that there was a problem and the certification would undermine the relationship with the Board.

Michael Beck testified for Mr. Goldberg and stated that he is a resident of Union Township, the former Mayor of Union Township and he was a member of the Planning Board. Mr. Beck recalled when Ms. Lee appeared before the Planning Board in October 2005. He claimed that she came before the Planning Board to address concerns that the Planning Board had about a "letter" written by Mr. Chiego that alleged that there was some sort of corrupt deal to grant Mr. Goldberg a variance. Mr. Beck stated that, "there was concern on the Planning Board because we did not issue Mr. Goldberg a variance, we issued him a temporary waiver." Mr. Beck testified that Ms. Lee appeared before the Planning Board and said that she had no knowledge that Mr. Chiego had submitted the certification, and "that it was not representing the school Board."

Mr. Beck further testified that he was in the audience at a Board meeting where Mr. Goldberg sought an apology from Mr. Chiego. He testified that, in response, Ms. Lee stated that the actions taken by Mr. Chiego were not Board actions and were not supported by the Board. Mr. Beck reviewed the minutes of the October 4, 2005 Planning Board meeting and recalled that Ms. Lee came before the Planning Board because the Board was seeking help from the Planning Board and the town for the construction of a new school. Mr. Beck maintained that Ms. Lee also came before the Planning Board to try and allay the Planning Board's concerns regarding Mr. Chiego's certification; she was trying to repair the damage that was done. Mr. Beck described how the Planning Board had discussions during executive session that it needed to take action because, if it did not, then it gave the appearance that the false accusations were true. The Planning Board President was instructed to contact the Planning Board's attorney to write a letter to the Executive Director of the Commission to set the record straight that there had not been any collusion between the Planning Board and Mr. Goldberg. Mr. Beck stated that, in his opinion, the certification of Mr. Chiego damaged the relationship between the Planning Board and the Board; there was a concern and a desire not to overly cooperate and there was little or no communication between the Board and the township officials at that time. Mr. Beck claimed that false accusations do not create an atmosphere where cooperation comes easily.

Under cross-examination, Mr. Beck stated that he was the Mayor for the 2005 calendar year. He stated that he was elected in 2003 and served as the Deputy Mayor in 2004. He explained that he did not get reelected after 2005. In describing the lack of communication between the Board and the Planning Board, Mr. Beck gave an example of the plan to build the new school where money was tight and road work needed to be done. He noted how every year the town submitted a request to the State for aid for road works projects and to do that they had to change priorities on which roads to seek help for from the State. Mr. Beck indicated that the road for the new school was only one-third done, and, if there was a good relationship between the Planning Board and the Board, it would have been easier to seek State aid for the road for the new school. He

claimed that Mr. Chiego's certification did not make the Planning Board want to change its priorities and to collaborate to finish the school road, but he did confirm that the road was built. In describing the actual damage that was done, Mr. Beck claimed that Mr. Chiego's certification delayed or inhibited cooperation with the school Board; however, he admitted that the road for the school was finished. Mr. Beck testified that there was a pattern of misbehavior and misconduct and a complete unwillingness to communicate by the entire Board. He further explained that there were other reasons that the parties were not communicating, including the fact that the Board refused to designate a liaison between the Board of education and the Planning Board.

Mr. Goldberg then entered into the record exhibit C-2, a Union Township newspaper article regarding the Planning Board's reaction to Mr. Chiego's certification.

Pursuant to N.J.A.C. 6A:28-6.9(c), upon completion of Mr. Goldberg's case, and prior to Mr. Chiego's testimony, Mr. Barger made a Motion to Dismiss. After hearing argument from the parties, the Commission deliberated and determined to deny the motion.

Mr. Chiego then testified that he attended the October 2005 Planning Board meeting and Mr. Goldberg was also at the meeting. He explained that two days after the Planning Board meeting he received a phone call from the Board counsel who said that she was told that he was at a Planning Board meeting and there might be some things that may help with the Board's ongoing case with Barrie Beck. The Board attorney asked Mr. Chiego to create an affidavit as to what he witnessed at the Planning Board meeting with regards to Mr. Goldberg. Mr. Chiego stated that he told the Board attorney that he would write something out about the Planning Board meeting, which he would fax to her so that she could create an affidavit. Mr. Chiego explained that the Board attorney sent an affidavit and he reviewed the first couple of pages which appeared to be what he said. The cover sheet said, "this affidavit is almost verbatim what you sent me." Mr. Chiego confirmed that he did not read paragraph 14 and it was something that he would never have written. Mr. Chiego admitted that he did not take the time to read the entire affidavit. He testified that he signed it and sent it back and then put it in an envelope in the back of his car. About two weeks later, Mr. Chiego got a phone call from Ms. Lee, who was in the middle of a meeting with the Planning Board, saying that someone had distributed the affidavit. He claimed that he had forgotten about the affidavit because he had been told that it was a dead issue since it was never even accepted. He stated that he then went out to his car and got out the envelope and read paragraph 14 and was as upset as everyone else because it was not his language.

In describing the role of Patricia Lee at that time, Mr. Chiego stated that Ms. Lee mentioned to the Board attorney that, since Mr. Chiego had been at a Planning Board meeting, the Board attorney should talk to Mr. Chiego because Ms. Lee thought that Mr. Chiego could show that Mr. Goldberg had a conflict with the Becks. He confirmed that he did not personally pay the Board attorney, but that the Board paid for her services. Mr. Chiego explained that the reason he prepared the affidavit was because the Board attorney asked him to because he had been at the Planning Board meeting. He further

confirmed that Board members were asked to file individual affidavits if there was anything they could add to the Board's ongoing litigation with Ms. Beck.

Mr. Chiego confirmed that Patricia Lee was president of the Board at the time of the September 25, 2005 Planning Board meeting and he made her aware that he was asked to file an affidavit in the Beck matter in furtherance of the Board's interest in the litigation.

On cross-examination, Mr. Chiego explained that the purpose of paragraph five in the certification was to show that Mr. Beck should have recused himself during the Planning Board meeting in relation to the issue of Mr. Goldberg's sub-division.

On re-direct, Mr. Chiego reviewed complainant's Exhibit C-1, which included several emails between Ms. Lee and Mr. Chiego. Mr. Chiego testified that he was not familiar with the emails and he did not send the emails. He further testified that he did not recognize the language in the emails.<sup>4</sup>

Michael Sroka, on behalf of Mr. Chiego, testified that he was a member of the Board on September 22, 2005, he was aware of the matter Lee v. Beck that was before the Commission and he participated in that litigation. He indicated that he was currently the Board president and had been for three years. He further testified that the Board attorney made requests for Board members to file affidavits in connection with the litigation if they had any information pertinent to the filing. He stated that the purpose of the affidavits was to substantiate the charges. Mr. Sroka stated that he was aware of Mr. Chiego's affidavit and the affidavit of Ms. Lee that had been filed with the State Board in this matter. Mr. Sroka confirmed that Ms. Lee was aware that Mr. Chiego was filing the affidavit. He claimed that he believed that this was a Board matter and Mr. Chiego did not act independently of the Board when he made the affidavit. Mr. Sroka maintained that Mr. Chiego's affidavit did not have any impact on the Board's relationship with the Planning Board.

On cross-examination, Mr. Sroka testified that, in the past three years, he went before the Planning Board on another matter as a representative of the Board, and the Board went before the Planning Board to request to sub-divide part of the school property in preparation for sale. The Planning Board gave approval, but it was subsequently determined that the Board did not need Planning Board approval. Mr. Sroka testified that he did not know that Mr. Chiego was submitting the September 25, 2005 affidavit and that the Board members did not know what other Board members were doing. He explained that the Board attorney was in charge of preparing the Lee v. Beck case.

Mr. Goldberg provided rebuttal testimony regarding Exhibit C-1 explaining that he received the emails from Mrs. Beck. He also claimed that the wording in the emails was similar to Mr. Chiego's certification.

---

<sup>4</sup> Mr. Barger objected to entering the emails into evidence because no one had verified the authenticity of the emails. Exhibit C-1 was accepted into the record and the Commission Chairperson indicated that it would be accorded the appropriate weight.

## FINDINGS OF FACT

The Commission was able to discern the following facts based on the pleadings, all documents submitted and the testimony of the parties:

1. Mr. Chiego was a member of the Board at all times relevant to this matter. He is currently not on the Board.
2. Mr. Chiego attended a September 22, 2005 Planning Board meeting and was in the audience when Mr. Goldberg appeared before the Planning Board.
3. A few days later, Board counsel contacted Mr. Chiego by phone and requested him to create an affidavit as to what he witnessed at the Planning Board meeting.
4. Mr. Chiego indicated that he could not prepare an affidavit, but he told the Board counsel that he would write something up and fax it to her.
5. Board counsel agreed to create an affidavit from what Mr. Chiego provided to her. After she received information from Mr. Chiego, she prepared an affidavit. She then faxed the affidavit to Mr. Chiego which he signed on September 25, 2005.
6. Board members were asked by the Board attorney to file individual affidavits if there was anything they could add to the Lee v. Beck matter.
7. In a March 6, 2006 affidavit, John Scott, who was the Chairman of the Planning Board at the time of the affidavit, certified that Ms. Lee indicated to the Planning Board that “she was aware that Mr. Chiego would be filing “something,” but had not seen anything that he had filed.” (John Scott’s March 6, 2006 affidavit at paragraph 2)
8. In an October 11, 2006 affidavit, Patricia Lee, who was Board president at the time of the affidavit, certified that she was aware that Mr. Chiego had filed the September 25, 2005 affidavit and that he did so in furtherance of the Board’s interest in a School Ethics Case against a former Board member. (Patricia Lee’s October 11, 2006 affidavit at paragraph 4)
9. The relationship between the Planning Board and the Board was strained for various reasons, including the Board’s refusal to designate a Board liaison to the Planning Board. Mr. Chiego’s affidavit added to the strained relations.

## ANALYSIS

The Commission initially notes that, pursuant to N.J.S.A. 18A:12-29, the complainants bear the burden of factually proving by a preponderance of credible evidence any violations of the Code of Ethics for School Board Members. The

complainants allege that Mr. Chiego's act of signing the certification violated N.J.S.A. 18A:12-24.1(e). N.J.S.A. 18A:12-24.1(e) provides:

I will recognize that authority rests with the Board of education and will make no personal promises nor take any private action that may compromise the Board.

To find a violation of N.J.S.A. 18A:12-24.1(e), the Commission must first determine whether Mr. Chiego's action in signing the certification was private action. Private action means action taken by a Board member "that is beyond the scope of the duties and responsibilities" of the Board member. See, N.J.A.C. 6A:28-7.1. The question here is whether the complainant provided sufficient evidence to show that Mr. Chiego's signing of the September 25, 2005 affidavit was beyond the scope of the duties and responsibilities of Mr. Chiego in his role as a Board member. Mr. Goldberg's testimony offered no personal or direct knowledge relating to his allegation. Mr. Beck, on behalf of Mr. Goldberg, testified that Ms. Lee appeared before the October 2005 Planning Board meeting and stated that Mr. Chiego was not representing the Board when he filed the September 25, 2005 certification. Mr. Beck also testified that, when the complainant sought an apology from the Board at a Board meeting, Ms. Lee indicated that the actions taken by Mr. Chiego were not part of Board actions and the Board was not behind him.

In support of his allegation, Mr. Goldberg relied upon Exhibit C-1, which consisted of several emails between Ms. Lee and Mr. Chiego, which was refuted by Mr. Chiego. Mr. Goldberg also relied upon Exhibit C-2 a Union Township newspaper article. Mr. Goldberg referred the Commission to an affidavit from Mr. Scott, Chairman of the Planning Board at the time. In the affidavit, Mr. Scott certified that, at a Planning Board meeting, Ms. Lee said she was aware that Mr. Chiego would be filing something, but she had not seen anything that he had filed. (John Scott's March 6, 2006 affidavit at paragraph 2.) Mr. Scott did not appear before the Commission at its February 24, 2009 meeting. Mr. Goldberg also provided testimony regarding Ms. Lee's contradictory statements regarding Mr. Chiego's certification. Mr. Goldberg testified that Ms. Lee had stated in several public appearances that Mr. Chiego acted on his own and she had no knowledge about Mr. Chiego's certification. Mr. Goldberg then referred the Commission to Ms. Lee's October 11, 2006 certification wherein she affirmed that she was aware that Mr. Chiego had filed the September 25, 2005 certification, and that he did so in furtherance of the Board's interest in Lee v. Beck. (Patricia Lee's October 11, 2006 certification at paragraph 4) Ms. Lee did not appear before the Commission at its February 24, 2009 meeting.

Mr. Chiego testified it was only after the Board attorney contacted him regarding his knowledge of an October 2005 Planning Board meeting that he provided her with information which she used to prepare the September 25, 2005 affidavit. He testified that he signed the affidavit upon the Board attorney's request. He further testified that Board members were asked by the Board attorney to file individual affidavits if there was



anything they could add to the ongoing litigation by the Board against another Board member.

Upon a review of all of the evidence presented, the Commission determines that the complainant has failed to meet his burden required by N.J.S.A. 18A:12-29. The Commission notes that complainant's entire case rested solely on hearsay evidence. While hearsay evidence is admissible pursuant to N.J.A.C. 1:1-15.5, it is also subject to the "residuum rule," which requires that findings be supported by a residuum of competent evidence. Matter of Tenure Hearing of Cowan, 224 N.J.Super. 737 (App. Div. 1988).

Based on the foregoing, the Commission finds that the complainant has failed to provide factual competent evidence to prove the Mr. Chiego took private action when he signed the September 25, 2005 affidavit. Moreover, the Commission finds that the complainant has similarly failed to provide factual competent evidence to prove that Mr. Chiego's action, private or not, was of such a nature that, under the circumstances, it could have compromised the Board.

### **DECISION**

For the reasons discussed above, the Commission finds that the complainant did not factually prove that Mr. Chiego violated N.J.S.A. 18A:12-24.1(e). Accordingly this matter is dismissed. This decision is a final decision of an administrative agency. Therefore, it is appealable only to the Superior Court--Appellate Division. See, New Jersey Court Rule 2:2-3(a).

---

Robert W. Bender  
Acting Chairperson

## **Resolution Adopting Decision on Remand – C51-05**

**Whereas**, the School Ethics Commission has considered the pleadings filed by the parties, the documents submitted in support thereof and the testimony of the parties; and

**Whereas**, at its meeting of April 25, 2006 the Commission found that Mr. Chiego violated N.J.S.A. 18A:12-24.1(e) and recommended that the Commissioner of Education impose a sanction of censure; and

**Whereas**, by decision dated June 16, 2006, the Acting Commissioner concurred with the recommended penalty of censure and, on July 25, 2006, the Commission adopted a resolution of censure; and

**Whereas**, by decision dated August 1, 2007 the State Board of Education remanded the matter to the Commission; and

**Whereas**, at its meeting of February 24, 2009, the Commission found that the complainant did not factually prove that Mr. Chiego violated N.J.S.A. 18A:12-24.1(e) and dismissed this matter; and

**Whereas**, the Commission reviewed a draft decision prepared by its staff and agrees with the 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.

---

Robert W. Bender, Acting Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its public meeting on March 24, 2009.

---

Joanne Boyle  
Executive Director