

On October 29, 2013, the respondent appeared with her attorney, Arthur G. Margeotes, Esq. but the complainant failed to appear. Since the complainant has the burden to factually establish a violation of the Code of Ethics for School Board Members in accordance with the standards set forth at N.J.A.C. 6A:28-6.4(a), but Complainant Wilson was not present to carry his burden of proving his case, the Commission dismissed the within complaint with prejudice for failure to prosecute.

ANALYSIS

Pursuant to N.J.S.A. 18A:12-29(b) and N.J.A.C. 6A:28-6.4, it is the complainant's burden to factually establish a violation of the Code of Ethics for School Board Members in accordance with the standards set forth in the Commission's regulations. The Commission recognizes that when conducting hearings on complaints that solely allege a violation of the Code of Ethics for School Board Members, such hearings shall be conducted in accordance with the rules of the Office of Administrative Law. N.J.A.C. 6A:28-10.8(c). Thus, the only evidence, which the Commission may consider in this matter, is that which is accepted by it and included in the record of the hearing. N.J.A.C. 1:1-15.1(a).

Throughout the pendency of the complaint before the Commission, Complainant Wilson failed to comply with any of the standards asked or required of him:

1. He did not cure the deficiencies in his complaint.
2. He did not contact this Office by phone when requested to do so.
3. He did not submit his Verification of Attendance, including his witness list.
4. He did not take the opportunity to submit his evidence when given additional time.
5. He did not attend the hearing.

In short, Complainant Wilson did nothing more than to file a defective complaint. Here, by letter of October 17, 2013, the complainant was duly notified of his burden of proof and also advised that his failure to appear to prosecute his complaint may result in the respondent moving to dismiss this matter, thereby precluding the Commission's review on the merits. He was also advised that, if he did not wish to prosecute the allegations in this complaint, he could withdraw the complaint by notifying the Commission and respondent's counsel in writing, pursuant to N.J.A.C. 6A:28-10.6(a). Notwithstanding these clear directives, the complainant did not withdraw his complaint and failed to appear for the very proceeding which he initiated and which the Commission specifically reserved for consideration of his allegation(s), without a stated reason or basis. In a further effort to protect the complainant's rights, the Commission sent its final letter by overnight mail on November 18, 2013, granting him an opportunity to explain his non-appearance. Because the complainant failed to appear to prosecute the allegations in his complaint by means of legally competent evidence, he did not meet his burden pursuant to N.J.A.C. 6A:28-6.4 and the Commission, therefore, grants the respondent's Motion to Dismiss with prejudice.

DECISION

Having failed to submit an explanation for his nonappearance and noting the burden of proof in this matter, the Commission dismisses the within complaint with prejudice for failure to prosecute. This decision is a final decision of an administrative agency, which is appealable only to the Superior Court--Appellate Division. See, New Jersey Court Rule 2:2-3(a).

Mark J. Finkelstein
Acting Chairperson

Mailing Date: November 27, 2013

Resolution Adopting Decision C17-13

Whereas, at its meeting on July 30, 2013, the Commission voted to retain this matter for hearing before the Commission; and

Whereas, by letter dated September 10, 2013, the parties were notified that this matter would be scheduled for hearing at the Commission's meeting on October 29, 2013; and

Whereas, on several occasions the respondent was advised of his failure to comply with the requirements for hearing his complaint; and

Whereas, at the hearing on October 29, 2013, the respondent failed to appear for the scheduled hearing; and

Whereas, the respondent did not submit an explanation for his failure to appear; and

Whereas, at its meeting on November 26, 2013, the Commission voted to dismiss the complaint with prejudice and to approve the decision memorializing said action;

Now Therefore Be It Resolved that the Commission hereby adopts the decision and directs its staff to notify all parties to this action of its decision herein.

Mark J. Finkelstein, Acting Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on November 26, 2013.

Joanne M. Restivo
Interim Executive Director
School Ethics Commission