

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.

The New Jersey Supreme Court has held that the term “frivolous” should be given restrictive interpretation, in light of the premise that in a democratic society, citizens should have ready access to all branches of government. McKeown-Brand v. Trump Castle Hotel & Casino, 132 N.J. 546 (1993). The two-prong test is one of objective reasonableness. Iannone v. McHale, 245 N.J. Super. 17, 29 (App. Div. 1990). However, courts that have interpreted the act clearly indicate that either “prong” of the statute may serve as the basis for the imposition of sanctions. Fargas v. Scott, 251 N.J. Super. 169, 190 (Law Div. 1991).

In his defense, Mr. DiDomenica states that he filed the complaint because it appeared that although there were many substitute teachers, the same few were always called. He submits that he and other substitutes felt that these people were friends of Mr. Ferraina. He contends that some of the substitutes called did not have a state license and if that were true, it would appear to be unethical conduct. Mr. DiDomenica sets forth that in his conversations with Mr. Ferraina, he never told him that his teaching was unacceptable, nor did he tell him that he did not have control over the placement of substitutes. Last, he sets forth that he has always supported Mr. Ferraina and his efforts as a chief school administrator and never had any intention to cause harassment or malicious injury to him.

The Commission finds that complainant filed the within complaint to force the school district to call him as a substitute. He filed against Mr. Ferraina even though it was very clear that Mr. Ferraina was not responsible for calling in substitutes or selecting whom to call. Further, the administration had provided Mr. DiDomenica with clear reasons for the district's failure to call him. There is no evidence that complainant ever had a sincerely held belief that the superintendent had violated the Ethics Act in connection with the selection of substitutes. Complainant's allegations of bias and reverse discrimination in the selection of substitutes off the list are specious at best. Even if the allegations were true, complainant sets forth no information linking the superintendent to the telephone callers who he alleges are biased. Thus, the Commission finds that the complainant filed the complaint in bad faith for the purpose of harassment and further finds that it meets the standard of a frivolous complaint set forth in subsection 1 above. Therefore, the Commission finds that sanctions are appropriate.

In the School Ethics Commission complaint form, the Commission advises every complainant that it may impose sanctions for the filing of a frivolous complaint. It also asks each complainant to certify that he or she has read that provision. The Commission realizes that not everyone understands the standard or knows how the Commission decides that sanctions are appropriate. However, clearly one must have some foundation for his claim of an ethics violation. By invoking the sanction, the Commission seeks to deter complainants such as this who seek a result for themselves and fail to allege any facts that could lead to a finding that a violation has occurred. Considering the foregoing factors, the Commission imposes a fine of \$50.00 to be paid within 30 days of complainant's receipt of this decision.

CONCLUSION

For all the foregoing reasons, the Commission finds that Mr. DiDomenica's complaint was frivolous and that sanctions are appropriate. In light of the circumstances, the Commission finds that the appropriate sanction is \$50.00.

This is a final agency decision that can be appealed only to the New Jersey Superior Court - Appellate Division.

Paul C. Garbarini
Chairperson

Resolution Adopting Decision on Request for Sanctions -- C11-96

Whereas, the School Ethics Commission has reconsidered its decisions on sanctions in light of complainant not having been given the opportunity to respond to the request for sanctions; and

Whereas, the Commission has now considered Mr. DiDomenica's response to the request for sanctions; and

Whereas, after reconsideration, the Commission finds that the complaint was frivolous and imposes sanctions in the amount of \$50.00; and

Whereas the Commission has reviewed the proposed decision of its staff setting forth the above findings and Order; 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.

Paul C. Garbarini, Chairman

I hereby certify that the Resolution
was duly adopted by the School
Ethics Commission at its public meeting
on November 26, 1996

Lisa James-Beavers
Executive Director

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