

## Letter to the Editor: Mirror, Mirror on the Wall

Clifton has a new version of the fairytale of Snow White. In Clifton's version of this fairytale, the question is "Mirror, mirror on the wall do I have an ethical conflict to be the Board of Education general counsel?" In Clifton's fairytale, it is the ex- BOE attorney Anthony D'Elia who asks and answers the question in the mirror. Let me explain.

On September 28, 2009, under the letterhead of the law firm of Chasan, Leyner & Lamparello, Mr. D'Elia sent a letter to Judge Rothstadt regarding the "John Traier v. Clifton Board of Education Case (docket # PAS-L-2507-09)". You may remember that BOE commissioner John Traier filed a lawsuit against the Clifton Board of Education to rehire the two attorneys (Anthony D'Elia and Anthony Sciarrillo) who were not rehired by the BOE at the April 2009 reorganization meeting. Renta, St. Clare, Fraulo, and Tahan enjoined this lawsuit with Mr. Traier. Mr. D' Elia's letter is a self-serving attempt to convince the judge that he should be appointed as general counsel despite the fact that he admits that he helped and rendered legal advice in the preparation of this lawsuit for Mr. Traier and his attorney of record Vincent Failla.

Here are some key quotes from D'Elia's letter. "Mr. Traier and the other members of the majority are not prohibited from participation in the appointment of my firm as Board counsel, nor does any assistance that I rendered to Mr. Failla during the course of this proceeding create a conflict....I provided background information to Mr. Failla regarding Board policies and practices, and offered suggestions and language for various filings with the Court which Mr. Failla completed and then filed in this case; nothing more. None of this creates any ethical issues.... However, if the Court disagrees and feels that, as least, further investigation is warranted, then I would withdraw my proposal to serve as general counsel to the Clifton Board of Education...I would withdraw my proposal if the Court feels the need to address any of the ethical allegations raised by the defendants in this case."

Please keep in mind that the current interim BOE general counsel, Patrick English both verbally in public and by letter dated September 4, 2009 to the BOE and in a letter to Judge Rothstadt dated October 1, 2009 states that he believes he can not render any opinion to the legal eligibility of any firm applying for the General Counsel position since he is one of the candidates for this position and he "did not think it appropriate to render any rulings regarding that position as a result of obvious conflict of interest consideration....and cannot give that advice without violating the precepts of RPC 1.7(A)(2)....It is unwise to have any decisions appear to be tainted by self interest. It can also be argued that RPC 1.7(A)(2) applies in that it may be perceived that there is a conflict by the personal interest of the lawyer, to quote the rule."

Furthermore, in its 2004 revisions to the New Jersey Rules of Professional Conduct (RPCs), the New Jersey Supreme Court reaffirmed its commitment to the principle that public entities cannot cure lawyer conflicts. (see RPCs 1.7(b)(1), 1.8(1) and 1.9(d) and NJ Bar Association ("State Bar") Brief in the Supreme Court's review of APCE Opinion 697 (November 9, 2005).

Therefore, Mr. D'Elia recent letter to the Judge is nothing more than a poor self-servicing attempt to convince the Judge that he should ignore the Rules of Professional Conduct and the NJ Supreme Court's opinion and just appoint D'Elia as general counsel.

One must ask what is the motive behind this 6 month battle to reinstate D'Elia and Sciarello as BOE attorney? What D'Elia's letter does is to prove that the board's countercomplaint was correct in that his firm provided legal advice to John Traier & company in this lawsuit. Furthermore, D'Elia's involvement in this lawsuit as made his firm an adversary to the same board which he now wants to be appointed as board attorney. Mirror, mirror on the wall do I have a conflict in being appointed general counsel? There is only one answer and it is YES, without a question of a doubt!

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