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Client

IN THE DISTRICT COURT OF APPEAL
FOR THE SECOND DISTRICT
STATE OF FLORIDA

MARK FRONCZAK,

Petitioner,

v.

Case No. 2D06-1464

SCHOOL BOARD OF PINELLAS
COUNTY, FLORIDA,

Respondent.

**PETITIONER'S RESPONSE IN OPPOSITION TO RESPONDENT'S
MOTION TO STAY OR IN THE ALTERNATIVE MOTION TO
HOLD IN ABEYANCE PETITION FOR WRIT OF MANDAMUS**

Petitioner, Mark Fronczak, provides this response in opposition to Respondent's Motion in compliance with this Court's May 12, 2006 Order. For reasons explained more fully below, Petitioner contends that the outcome of the administrative hearing concerning Mr. Fronczak's employment termination is irrelevant to Mr. Fronczak's fee entitlement under Section 1012.26, Florida Statutes. The issue of whether or not Mr. Fronczak's alleged misconduct arose out of and in the course of the performance of his assigned duties and responsibilities is not one that the Administrative Law Judge in the employment termination case will be addressing. Further, Section 1012.26 requires Respondent to hold the requested criminal defense fee hearing

irrespective of the findings of the ALJ in the termination matter since Mr. Fronczak was charged with and acquitted of crimes that unquestionably were alleged to have occurred during class time, and he incurred legal expenses in successfully defending himself against those classroom-based criminal charges.

1. There is no dispute that the misconduct that resulted in the pertinent criminal charges against Mr. Fronczak allegedly occurred in his classroom, during regular instructional time and involved a student assigned to his class for instruction.

2. There is also no dispute that a jury acquitted Mr. Fronczak of all criminal charges that arose from these classroom misconduct allegations. As a consequence of his acquittal on all criminal charges concerning acts of alleged class time misconduct, it is obvious that Mr. Fronczak was acting within the course of his assigned teaching responsibilities at the time of the alleged classroom misconduct.

3. In light of these uncontested facts, the provisions of Section 1012.26, Florida Statutes (2006) clearly require Respondent to reimburse Mr. Fronczak's reasonable expenses for legal services in his defense against those criminal charges. Further, the statute mandates that reimbursement of Mr. Fronczak's legal expenses must be made in the context of a public hearing of the specific kind Petitioner asks this Court to order by Writ of Mandamus.

4. The only arguably disputed issue left for school board resolution at the public hearing envisioned by Section 1012.26 is the reasonableness of Mr. Fronczak's legal fees and expenses. As to that matter, Section 1012.26 requires a separate board hearing for public consideration and school board determination.

5. Administrative Law Judge C.S. Holifield recently presided over an administrative hearing concerning Mr. Fronczak's challenge to the termination of his tenured employment with the Pinellas County School Board (Case No: 06-0331). Judge Holifield is charged with determining whether or not, by a preponderance of the evidence, Respondent proved that Mr. Fronczak engaged in the same acts of alleged sexual misconduct for which the criminal jury has already acquitted him, and whether or not any proven misconduct by Mr. Fronczak constitutes just cause for his employment termination. Judge Holifield is, however, not charged with making a determination as to whether the alleged misconduct arose out of and in the course of the performance of Mr. Fronczak's assigned duties and responsibilities, even if she were to find that the misconduct was demonstrated under the preponderance standard.

6. Respondent points to principles of judicial economy to support its position that this Court should stay or hold this matter in abeyance; however, under these circumstances, no judicial economies will be accomplished by such a delay. Judge Holifield's preponderance of the evidence factual findings in the employment

case about the allegations of classroom misconduct by Mr. Fronczak will in no way alter the significance under Section 1012.26 of the criminal case acquittals related to that same conduct. A separate hearing on fees will still be necessary based upon the jury's acquittal verdicts and the expenditure of funds by Mr. Fronczak for legal services associated with his criminal case defense.

7. Further, regardless of the outcome of the employment termination hearing, and regardless of any factual finding or legal conclusion Judge Holifield might render that could even remotely be viewed by Respondent as relevant to the "course of assigned duties" question in the Section 1012.26 fee hearing, Mr. Fronczak must still be given an opportunity to fully litigate the "arising out of and in the course of assigned duties" issue should the School Board raise it at the Section 1012.26 hearing.

8. Contrary to the Respondent's assertion that termination hearing findings and conclusions could be dispositive as to Mr. Fronczak's fee entitlement, thereby obviating the need for a separate fee hearing,¹ Mr. Fronczak clearly and conclusively meets all the requirements of Section 1012.26, which therefore mandates that the Respondent schedule a separate fee entitlement hearing. It is inherently obvious from

¹ Respondent has certainly not agreed in its Motion to pay Mr. Fronczak's reasonable criminal case fees and expenses if he prevails in the employment termination case.

a review of the scope and purpose of teacher termination hearings under Section 1012.33, Florida Statutes (2006) that Judge Holifield will make no findings that can be dispositive of either the reasonable fee or "course of assigned duties" issues that would properly be presented at the hearing required by Section 1012.26.

9. The unnecessary delay sought by the Respondent in its Motion would also compound the injustice of this situation in the context of Mr. Fronczak's pursuit of his entitlement to Section 1012.26 fees and expenses since December, 2005. Respondent did not act expeditiously act when confronted with Mr. Fronczak's December, 2005 fee and expense demand, but rather waited until after the Mandamus action was filed and the termination hearing was imminent before raising that hearing's pendency as a basis for further delay.

10. In the event, however, that this Court finds it appropriate to delay the Section 1012.26 fee hearing until such time as there is a recommended and/or final order in the termination proceeding, that delay can be more equitably accomplished by the issuance of a Writ commanding that the Respondent hold the Section 1012.26 fee entitlement hearing by a specified date far enough in the future to reasonably anticipate prior completion of the employment termination case.

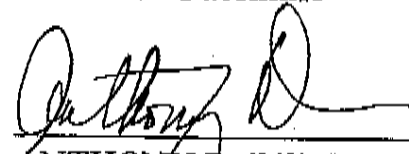
WHEREFORE, Petitioner asks the Court to deny Respondent's Motion to Stay or in the Alternative Motion to Hold in Abeyance Petition for Writ of Mandamus and

issue the requested Writ of Mandamus ordering Respondent to schedule a Section 1012.26 fee hearing within a time period the Court deems reasonable and appropriate.

Respectfully submitted,

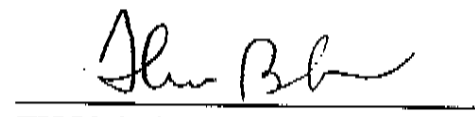
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ANTHONY D. DEMMA
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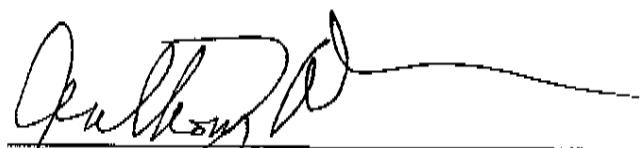


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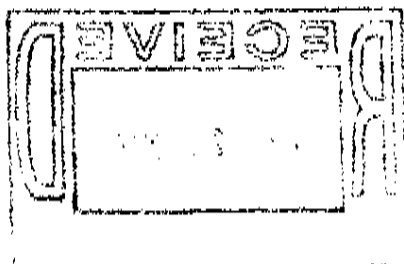
ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and exact copy of the foregoing has been furnished by U.S. Mail on this 18th day of May, 2006, to: Thomas M. Gonzalez, Esquire and Erin G. Jackson, Esquire, Thompson, Sizemore and Gonzalez, P.A., 201 North Franklin Street, Suite 1600, Tampa, Florida 33602-5246.



Anthony D. Demma



**IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327**

May 26, 2006

CASE NO.: 2D06-1464

L.T. No. : CRC04-07191CFANO

Mark Fronczak

v.

School Board of
Pinellas County

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

Petitioner's petition for writ of mandamus is granted. Within twenty days respondent shall either deny petitioner's request for a hearing to determine his entitlement to attorney's fees or shall set a specific date within a reasonable amount of time, on which the requested hearing shall be held and serve notice of such on this court.

Respondent's "motion to stay or in the alternative motion to hold in abeyance the petition for writ of mandamus" is denied.

DAVIS, CANADY, and WALLACE, JJ., Concur.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

Deborah Beaty, Admn. Asst.
Thomas M. Gonzalez, Esq.

Anthony D. Demma, Esq.
Ken Burke, Clerk

Thomas W. Brooks, Esq.

dm


James Birkhold
Clerk



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