ASM Student Judiciary
Bloom v. SSFC appeal
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Appeal of 1998 ASM SJ 12
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Before Morgan, C.J., Commons, Geske, Huston, Lafer, Stein, and Westbrook, S.JJ
THE CHIEF JUSTICE delivered the Opinion of the Judiciary.

MORGAN, CJ. Bloom filed a complaint calling for the reinstatement of Mr. Gathing onto the Student Services Finance Committee (SSFC). The original panel determined that Mr. Gathing should be reinstated onto SSFC to fill an otherwise vacant seat on SSFC until his elected term ends. SSFC and SSFC members affected by the outcome of the case appealed alleging four things. First, the SJ does not have the power to "reappoint" Gathing to another seat. Second Gathing had as a matter of law resigned from SSFC. Third the panel misinterpreted the non-ASM member exception in Amendola v. Brakken, 1998 ASM SJ 7, to allow for Gathing's reinstatement. Fourth, the reliance the panel found to satisfy the requirements of Amendola was insufficient to qualify for the exception, even if it was available. Because we conclude that (1) the email resignation was a valid resignation, and (2) a fair application of the Amendola decision does not require or allow Gathing's reinstatement, the original panel decision must be withdrawn. Accordingly, Mr. Gathing is no longer a valid member of SSFC as of the date of this opinion.

I. Factual Background and Issues
The facts as found by the panel and clearly in the record are fairly straightforward, and undisputed. Mr. Gathing, submitted a resignation to the SSFC Chair, Ted Robles via email on 9 September 1998, at 7:17 p.m. Gathing then sent an email to the ASM Chair, Eric Brakken via the ASM email listserver at 7:22 p.m. At 11:01 p.m., that evening, the SJ Chair sent an email to the listserver stating that resignations must be in writing, signed, and delivered to the ASM Chair (emphasis added). At SSFC's meeting on 14 September 1998, Mr. Gathing reaffirmed to the members of SSFC that he was in fact resigning.

A panel of the SJ decided Amendola v. Brakken on 28 September 1998. Nevertheless, the SEC placed Gathing's seat up for election on the fall ballot, and Britton Videbeck was duly elected to the seat. The panel concluded that since Mr. Gathing had not really "resigned" relying upon the SJ Chair's email to require a "signed" resignation, and that Mr. Gathing was included in the Amendola exception to ASM membership for officers and appointees, he must be allowed to continue to serve. The panel exercised its equitable powers to provide Videbeck with a fair outcome and enable both to complete the terms they were elected to.

II. What is an official resignation?
Part I, Article Three of the ASM bylaws specify the requirements for a resignation.

Section Five: Resignations of Officers and Appointees. Officers and appointees shall submit written notice of resignation to the Chair of the SC. If the notice does not specify an effective date, the resignation shall take effect immediately.
The basic requirements of a resignation are intent to resign and an "act of relinquishment". See BLACK'S LAW DICTIONARY (6th ed.) 1310. The bylaws definition then specifies the normal requirements of a resignation. The issues in this case are (1) whether email qualifies, (2) is a signing requirement necessary, and (3) what must the resignation say?

First, email clearly must qualify. Students are using email in record numbers and is clearly a "writing" in that it can be reproduced, saved, and has an independent existence outside the memories of those who may have seen the writing. Second, there is no requirement for a signature in the bylaws, and thus no signature is required. A signature is only helpful in determining whether the requisite intent to resign exists. Accordingly, the best practice is (and will always be) a signed resignation placed in the ASM Chair's mailbox in the ASM office; however, it is not a requirement, and we will not add to the requirements. Third, a resignation need only express the requisite intent of leaving office. A resignation is sufficient if it merely states the name of the resigning official and the statement of resignation in the present tense (or if the resignation expresses an effective date a present tense verb combined with a date). Thus the statement "I, Peter Ira Grinch, resign." via email sent to the ASM Chair is sufficient.

Bloom alleges that Gathing did not have the requisite intent to resign. This is simply unsupported by the record. The email resignations were sent before the SJ Chair's email specifying a signature requirement, making any attempt to rely upon that email impossible. He subsequently verified his intent at a formal SSFC meeting. While he stated he sent the emails, he denies having the requisite intent. The test for intent here must be an objective state (what a reasonable person would think) of intent, and not subjective (what Gathing thinks he was doing). Only if the person allegedly resigning alleges a fraudulent notice is subjective intent relevant. However, even if we applied a subjective test, Gathing’s statements to SSFC on 14 September clearly specify that he had the requisite intent to resign, and once that intent existed combined with the act of sending the resignation he was no longer on SSFC on the effective date.

III. What is the effect of Amendola?

11 September 1998 was the last day to register without a Dean's permission for the Fall 1998 semester. As the Court held in Amendola, there was absolutely no doubt that that date was the date where ASM members lose their membership rights absent current enrollment. See, Amendola v. Brakken, 1998 ASM SJ 7, at ¶ 2. Thus Gathing was not an ASM member on the next class day, 14 September 1998. ASM Constitution Art. V § 2.

But, as the case in Amendola, Bloom alleges that the interpretation that ASM membership is required throughout the term, was a new rule and could only be made prospective and Gathing should be treated similarly to Amendola. Bloom simply misses the standard for when a prospective relief is available. The person requesting prospective application of the rule must show (1) that the rule is clearly ambiguous, (2) that the party requesting its application shows reasonable reliance upon a reasonable interpretation of the ambiguous rule, and (3) overriding policy concerns do not exist to cause unintended harm by applying the decision prospectively.

The Constitutional provision in question here is not ambiguous. Unlike Amendola who
relied upon Article VI, Bloom must show that the Article VIII language is ambiguous and attempts to cite Amendola for this purpose. Bloom's problem in citing Amendola for the proposition that the language in Article VIII is ambiguous is that the court in Amendola specifically held that the Article VIII language was not ambiguous as part of its rationale to interpret the language in Article VI to require continuous ASM membership. See Amendola, at ¶ 4.

A closer look at the language does not help Bloom's case. The key is interpreting what "elected at" versus "elected in" modifies. In Article VI, the "at" modifies members. It is clearly possible to interpret this as allowing members to be members merely "at" time of election. However, since it is also possible to interpret this as requiring continuous membership ("Shall be ASM members"), the Amendola panel reviewed the founder's likely intent and determined that that interpretation is better. In Article VIII, however, "in" modifies "at large" not members. This is part of the reason the original panel gave the Article VI provision the meaning it did, so as not to distinguish between "at" and "in". Since it modifies "at large", this provision clearly specifies the timing of the elections, and does not affect the membership requirement.

Even if we were to assume that the language is ambiguous, Bloom still must show that Gathing and the electorate relied upon the language. Here we have the greatest difference. In Amendola's academic unit, everyone knew that Amendola would graduate because you must graduate from the law school once you reach the requisite number of credits. This finding of potential reliance was strengthened by the fact that since no defendant appeared at Amendola's hearing, the court was forced to take all factual inferences in the light most favorable to Amendola. See Id., at 1, n.1 Bloom must show reliance at the time Gathing was elected. Since that election was in February 1997, she needs to show Gathing's plan to take time off from the UW at this time and that the public knew it (at least potentially). Gathing's email to Robles on 9 September simply suggests that it was a decision made in the present and not in the past. Given that this is the only evidence on the issue in the record, as a matter of law the panel erred when it found Gathing had relied upon that interpretation of the Article VIII.

Finally even if we were to assume Gathing had relied upon this language, countervailing policy suggests the door should be closed once and for all on the Amendola decision. It is not very often a Court can admit that it should have done a better job, but this is one of those times. When the defendants in Amendola failed to appear the court should have rescheduled the hearing or granted a default judgement for Amendola. By attempting to resolve the dispute without the defendants, the court was deprived of the policy analysis surrounding whether non-ASM members should be allowed to serve in policy-making roles in the Student Government. While the principles underlying the analysis where fine, the factual predicate they were applied to is wholly inadequate as a foundation for good judicial decision-making.

When this Court received the full benefit of that analysis, it was crystal clear that student government, like all good governments, must be government by the students, for the students and of the students. Without that bedrock principal, nothing makes sense. Thus, while we do not know of a way to reach back and close the door for Amendola, we can insure that the door is permanently closed. It is thus the opinion of the full SJ that
Amendola is better understood as an explanation for why a default judgement was within the realm of possibility, rather than a finding that Amendola's reliance was sufficient to allowed continued service in a policy-making role.

Bloom attempts to argue that full and democratic representation weighs heavily in her favor, especially when combined by the fact that no one is harmed by Gathing's continued service. First, Mr. Videbeck's potential harm is substantial, and it is only because we conclude that Gathing may not continue to serve that the Court need not consider whether the SJ has the power to rearrange who holds which SSFC seats. Second, the Panel's original decision allowing Gathing to serve, and the time the Court has considered this appeal has enabled increased representation by Gathing through the most critical period of SSFC's work, and the seat will be vacant only until the end of February. Third, the resignation and Gathing's decision not to take classes suggest that it is Gathing's decision and not the SJ's that will create any vacancy in full and democratic representation.

**IV. Conclusion.**

To make it clear, first, the requirements for a resignation are (1) a writing expressing an objective intent to resign and (2) an act of sending it out to the ASM Chair. Second, a person must have continuous membership in the ASM to continue holding office in the ASM, regardless of how much reliance they may have had in the ambiguous Constitutional provision, in order to protect the ASM as a government of the students.

*By the Court—it is so ordered.*

Jennifer Commons, S.J.

Eric Huston, S.J.

Robert Geske, V.C.

Sharon Lafer, S.J.

J.P. Morgan, C.J.

Adam Stein, S.J.
Bloom raises the issue that SSFC never authorized the appeal of the original decision. The appellate rules specify that "any party materially affected by the outcome of the decision" may appeal. Part IV ASM Bylaws Art IV, § 4(a). The SJ granted both SSFC's request and the individual member's request for appeal, in its order granting the appeal. As Bloom does not challenge whether the decision materially affected appellants, it makes no difference to the outcome who is appealing, and therefore we discard the issue. However, if we were considering the issue, the SJ could take judicial notice of the fact that at the meeting that SSFC set for the purpose of deciding this question, the minutes reflect that had Gathing been present a quorum to decide the issue would have been present.

Mr. Robles admitted at the hearing that he had checked Mr. Gathing's student status before that date. While we do not need to address the issue, a holder of an ASM office student status generally needs to be checked only when nominated/appointed and on the critical date, "the first class day after the late enrollment deadline without permission of the dean," absent some information of a change in status. The SC would be well advised to draft a bylaw to specify this procedure, but until then, the SJ will review all cases brought to its attention.

The validity of this remedy is severely in doubt. The SJ in Lee v. Diner, 1996 ASM SJ 3, held that even though the SJ placed the seat on the ballot in good faith, without a valid resignation, the election of a person to hold the vacancy was void, regardless of the equities that the outgoing person had encouraged the process. While the facts in that case may not have allowed the SJ to have another available vacancy, it does cast a great deal of doubt, as SSFC suggests, of the capacity of the SJ to grant that remedy.

Because we determine that a signature is not required, it is unnecessary to consider if an email can be signed.

Without an objective standard the ASM Chair and SEC Chair would have an impossible task to tell when to begin attempting to fill the seat. It is unfair to make these officials have to read more minds.

The Court takes no stand on the ability of the SJ to grant only prospective relief on election issues where the SJ's powers are plenary, unlike internal complaints which are limited to "cases and controversies." See ASM Constitution Art. IX § 3(a), (b). ("(a) The [SJ] shall oversee all ASM elections. … (c) The [SJ] shall have jurisdiction over all cases and controversies arising under the ASM Constitution, Bylaws, Rules or laws of the ASM.")

Here are the relevant sections of the Constitution.

**Article VI: Student Council**, Section 1: Composition. … Of these, all except the Freshman Representatives shall be ASM members elected at the Spring elections. Freshman Representatives shall be ASM members who are freshmen, elected at the Fall elections. …

**Article VIII: Student Services Finance Committee**, Section 1: Composition. … (a) four shall be ASM members elected at large in the Spring election to serve a term of two years beginning May 1st.

This definition is further exacerbated by the presence of the Freshman Representative clause. That language is crystal clear that Freshman status is only required at time of election, which enhances the ambiguity of the "elected at" provision, as similar language near ambiguous language should be interpreted consistently.

The Panel's opinion suggests that Gathing's reliance was on the SJ Chair's interpretation of the bylaws, and not upon the interpretation of the Constitution. As shown above, the SJ Chair's email was sent after Gathing's resignation, and thus could not have been relied upon. Furthermore, under the analysis suggested by the panel, Gathing would need to rely upon both the SJ Chair's email and the Constitutional provision, because without reliance upon the constitutional provision, he is ineligible to hold the office in order to resign from it. Since Bloom cannot show reliance upon either, it is not worth discussing further.

As was noted above in footnote 2, the SC should draft bylaws on when student status should be checked beyond checking at time of nomination/appointment, and at the critical date. However, absent such a rule the SJ must act any time it is presented with credible evidence of a change of student status, a fact not at issue in this case.