

[Cite as *Poole v. Office of Disciplinary Counsel*, 2017-Ohio-8079.]

STACEY POOLE

Plaintiff

v.

OFFICE OF DISCIPLINARY COUNSEL

Defendant

Case No. 2017-00372-AD

Clerk Mark H. Reed

MEMORANDUM DECISION

{¶1} Plaintiff Stacey Poole’s (hereinafter “Plaintiff”) April 24, 2017 complaint seeks recovery from Defendant Office of Disciplinary Counsel (hereinafter “Defendant”) based upon Defendant’s decision against further investigation or prosecution of an attorney against whom Plaintiff made a disciplinary complaint. Plaintiff asserts that she received a letter from Defendant “dismissing my case” and that she “cannot get the monies I have lost from the Lawyer’s Fund for Client Protection.”

{¶2} The language in the Court of Claims Act at R.C. 2743.02 which provides “‘the state’ shall ‘have its liability determined * * * in accordance with the same rules of law applicable to suits between private parties * * *’ means that the state cannot be sued for its legislative or judicial functions or the exercise of an executive or planning function involving the making of a basic policy decision which is characterized by the exercise of a high degree of official judgment or discretion.” *Reynolds v. State*, 14 Ohio St.3d 68, 70 (1984).

{¶3} After receipt of a complaint such as Plaintiff’s, Defendant’s decision whether to further investigate and pursue misconduct charges is a policy decision involving a high degree of discretion. See *Robinson v. Office of Disciplinary Counsel*, 10th Dist. Franklin No. 98AP-1431, 1999 Ohio App. Lexis 3928 (Aug. 26, 1999); see also *Schweisberger v. Med. Bd. of State of Ohio*, 10th Dist. Franklin No. 92AP-1766, 1993 Ohio App. Lexis 2024 (Apr. 8, 1993). As such, defendant is entitled to discretionary immunity for deciding against further investigation or prosecution related to Plaintiff’s

complaint. *Id.; Ibanez v. Office of Disciplinary Counsel*, Ct. of Cl. No. 2015-00771. Moreover, even if discretionary immunity were not applicable, the state is entitled to immunity for the performance or non-performance of an investigative public duty. *Id.; Wiltz v. Accountancy Bd. of Ohio*, 10th Dist. Franklin No. 14AP-645, 2015-Ohio-2493, ¶ 28; R.C. § 2743.02(A)(3)(a); R.C. § 2743.01(E)(1)(a).

{¶4} For the reasons stated herein, Plaintiff’s April 24, 2017 complaint fails and is hereby DISMISSED.

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ENTRY OF ADMINISTRATIVE DETERMINATION

Having considered all the evidence in the claim file, and for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs shall be absorbed by the Court.

MARK H. REED
Clerk