

STATE OF WISCONSIN

PERSONNEL COMMISSION

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JEAN GARNER,

Appellant/  
Complainant,

v.

State Public Defender, OFFICE OF  
PUBLIC DEFENDER,

Respondent.

Case Nos. 88-0015-PC &  
88-0183-PC-ER

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DECISION  
AND  
ORDER

On April 23, 1992, respondent filed with the Commission a Motion to Compel and a Motion to Dismiss. In a Decision and Order issued June 26, 1992, the Commission ruled as follows in regard to these motions:

Respondent's Motion to Compel is granted. Those matters which form the subject of the Request for Admission under consideration here are deemed admitted. Appellant/complainant is ordered to comply with the Request for Production of Documents under consideration here within 30 days of the date of this Decision and Order by submitting true, correct, and complete copies of such documents or making them available for respondent's inspection and copying at respondent's place of business. The Commission reserves ruling on the subject Motion to Dismiss pending final resolution of the discovery dispute under consideration here.

This Decision and Order, in Finding of Fact 8, states as follows:

8. The accompanying Request to Admit Facts and Request for Production of Documents stated as follows, in pertinent part:

Defendant, State Public Defender, Office of Public Defender, requests you to admit the following facts are true, pursuant to rule 804.11, Stats., and to produce the following documents, pursuant to rule 804.09, Stats.

### REQUEST TO ADMIT FACTS

You are requested to admit the truth of the following facts pursuant to the procedures set forth in rule 804.11, Stats.:

1. In February 1992, you agreed to settle all claims you then had or might thereafter acquire against the State of Wisconsin in connection with your employment by the State Public Defender other than any claims you had made or might make under ch. 102, Stats., in exchange for your being paid \$3000.
2. On or after February 13, 1992, you signed the original of a document entitled "Release of All Claims Other than Workers' Compensation Claims and Motion to Dismiss," a true and correct copy of which document is attached to these Requests.
3. On or after February 13, 1992, Nola J. Hitchcock Cross signed the original of a document entitled "Release of All Claims Other than Workers' Compensation Claims and Motion to Dismiss," a true and correct copy of which document is attached to these Requests.

### REQUEST FOR PRODUCTION OF DOCUMENTS

You are requested to produce the following documents, within your possession or control, within the time provided by rule 804.09, Stats., by producing those documents at the offices of the attorney for Respondent at 123 West Washington Avenue, Madison, Wisconsin 53707 for inspection and copying or, in lieu thereof, by serving a true, correct and complete copy of the documents:

1. The original of the Release of All Claims Other Than Workers' Compensation Claims and Motion to Dismiss served upon your attorney's offices on February 13, 1992, whether bearing signatures subsequently added to that original or not.
2. Any copies of the Release of All Claims Other than Workers' Compensation Claims and Motion to Dismiss served upon your attorney's offices on February 13, 1992, whether bearing signatures subsequently added to that original or not.

It is undisputed by the parties that complainant has not complied with the Commission's order to produce the requested documents.

Section 804.12 (2), Wis. Stats., states as follows, in pertinent part:

(2) FAILURE TO COMPLY WITH ORDER. (a) If a party . . . fails to obey an order to provide or permit discovery, including an order made under sub (1) . . . , the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

1. An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

2. An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting the disobedient party from introducing designated matters in evidence;

3. An order striking the pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

4. In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination.

(b) In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising the party of both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

Section PC 4.03, Wis. Adm. Code, states as follows, in pertinent part:

PC 4.03 Discovery. All parties to a case before the commission may obtain discovery and preserve testimony as provided by ch. 804, Stats. . . . For good cause, the commission or the hearing examiner may issue orders to protect persons or parties from annoyance, embarrassment, oppression or undue burden or expense, or to compel discovery.

Complainant offers as the basis for her failure to comply with the Commission's order to produce the requested documents an ongoing dispute she is engaged in with the attorney who was representing her in this matter from approximately January 18, 1991, until approximately March 16, 1992. (See Findings of Fact 1 and 9, Commission's Decision and Order issued June 26, 1992). The Commission notes that Finding of Fact 11 in its Decision and Order quotes a letter to complainant from this attorney encouraging complainant to contact her "should you not have copies of anything which we have in our file, although you should have everything."

In accordance with the Commission's June 26, 1992, Decision and Order, it is deemed admitted by complainant that she agreed to settle all claims she

then had or might thereafter acquire against the State of Wisconsin in connection with her employment by the State Public Defender except for her workers compensation claim in exchange for being paid \$3000; and that on February 13, 1992, to effect this settlement, she and her attorney signed the original of a document entitled "Release of All Claims Other than Workers' Compensation Claims and Motion to Dismiss." It is clear from the file in this matter that, had complainant returned this document to respondent, the appropriate agents for respondent would have signed this document and proceeded to effect the settlement by forwarding checks totaling \$3000 to complainant. In fact, the file in this matter shows that a check to complainant and her attorney for \$2000 dated February 25, 1992, and a check for \$1000 dated March 3, 1992, were prepared and approved.

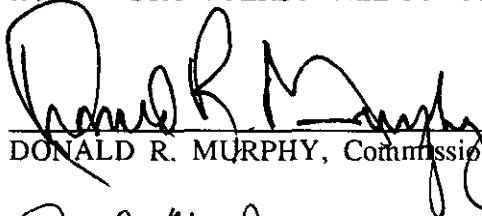
In view of the authority granted the Commission pursuant to §804.12(2), Stats., and §PC 4.03, Wis. Adm. Code, and the history of this matter, the Commission concludes that this case should be dismissed in accordance with the settlement terms to which the parties agreed, inasmuch as the admissions establish that the parties entered into a binding settlement agreement, see, Krueger v. Herman Mutual Insurance Co., 30 Wis. 2d 31, 38, 139 N.W. 2d 592 (1966); Carey v. Daryland Mutual Insurance Co., 41 Wis. 2d 107-116-18, 163 N.W. 2d 200 (1968).


Order

This case is dismissed in accordance with the settlement terms to which the parties agreed as stated in the attached "Release of All Claims Other than Worker's Compensation Claims and Motion to Dismiss," and the parties are directed to comply with the terms of that document.

Dated: August 11, 1993 STATE PERSONNEL COMMISSION

LRM/lrm

  
DONALD R. MURPHY, Commissioner

  
JUDY M. ROGERS, Commissioner

Parties:

Jean Garner  
5025 North 28th St  
Milwaukee WI 53209

Nicholas L Chiarkas  
State Public Defender  
Office of State Public Defender  
131 W Wilson St #100  
P O Box 7923  
Madison WI 53707-7923

NOTICE  
OF RIGHT OF PARTIES TO PETITION FOR REHEARING AND JUDICIAL REVIEW  
OF AN ADVERSE DECISION BY THE PERSONNEL COMMISSION

**Petition for Rehearing.** Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition with the Commission for rehearing. Unless the Commission's order was served personally, service occurred on the date of mailing as set forth in the attached affidavit of mailing. The petition for rehearing must specify the grounds for the relief sought and supporting authorities. Copies shall be served on all parties of record. See §227.49, Wis. Stats., for procedural details regarding petitions for rehearing.

**Petition for Judicial Review.** Any person aggrieved by a decision is entitled to judicial review thereof. The petition for judicial review must be filed in the appropriate circuit court as provided in §227.53(1)(a)3, Wis. Stats., and a copy of the petition must be served on the Commission pursuant to §227.53(1)(a)1, Wis. Stats. The petition must identify the Wisconsin Personnel Commission as respondent. The petition for judicial review must be served and filed within 30 days after the service of the commission's decision except that if a rehearing is requested, any party desiring judicial review must serve and file a petition for review within 30 days after the service of the Commission's order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. Unless the Commission's decision was served personally, service of the decision occurred on the date of mailing as set forth in the attached affidavit of mailing. Not later than 30 days after the petition has been filed in circuit court, the petitioner must also serve a copy of the petition on all parties who appeared in the proceeding before the Commission (who are identified immediately above as "parties") or upon the party's attorney of record. See §227.53, Wis. Stats., for procedural details regarding petitions for judicial review.

It is the responsibility of the petitioning party to arrange for the preparation of the necessary legal documents because neither the commission nor its staff may assist in such preparation.

W. JEAN GARNER,

Appellant,

v.

Case Nos. 88-0015-PC  
88-0183-PC-ER

STATE PUBLIC DEFENDER,  
OFFICE OF PUBLIC DEFENDER,

Respondent.

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RELEASE OF ALL CLAIMS  
OTHER THAN WORKERS' COMPENSATION CLAIMS  
AND MOTION TO DISMISS

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Jean Garner, petitioner, on behalf of herself and her heirs, assigns and legal representatives, for and in consideration of Three Thousand Dollars and No Cents (\$3000.00) from respondent, the receipt and sufficiency of which is hereby acknowledged, and recognizing that respondent is not admitting any liability whatsoever by virtue of the payment of this sum to her, hereby releases and surrenders all claims of any and all nature whatsoever before any and all courts and agencies -- other than worker's compensation claims under ch. 102, Stats. -- she may now have or hereafter acquire against the State of Wisconsin or any of its agencies, agents, officers or employes in connection with her employment at the Office of the Public Defender for the State of

Wisconsin and also hereby moves to dismiss the above-entitled actions with prejudice and with each party to be responsible for their own fees and costs.

Ms. Garner represents that she has read this Release and Motion and understands all of its terms and consequences and has had the full opportunity to consult with her attorney for advice.

Dated this \_\_\_\_\_ day of February, 1992.

\_\_\_\_\_  
Jean Garner

Subscribed and sworn to before me  
this \_\_\_\_\_ day of February, 1992.

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N O T A R Y     P U B L I C

The undersigned represents that she has fully advised Ms. Garner of the consequences of signing this Release and Motion and is satisfied that Ms. Garner is signing it knowingly and voluntarily. In light of this Release of All Claims other than Workers' Compensation Claims and Motion to Dismiss With Prejudice, I hereby move to dismiss the above-entitled actions with prejudice and with each party to be responsible for their own fees and costs.

Dated this \_\_\_\_\_ day of February, 1992.

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Nola Hitchcock Cross  
Attorney for Petitioner