

**BARBARA REINHOLD,**  
*Complainant,*

v.

**District Attorney, OFFICE OF THE  
COLUMBIA COUNTY DISTRICT  
ATTORNEY,**  
*Respondent.*

RULING ON  
COMPLAINANT'S  
PETITION FOR  
REHEARING

X

Case No. 95-0086-PC-ER

Complainant<sup>1</sup> filed a petition for rehearing in regard to the Commission's decision and order dated November 7, 1997 (hereafter, "Final Decision"). The parties were granted an opportunity to file written arguments with the final argument due by December 8, 1997.

The present controversy stems from respondent's motion, dated June 16, 1997, which requested dismissal of the case for multiple reasons, including allegations that the complaint was filed untimely. Both parties filed written arguments which were addressed in the Commission's ruling dated September 16, 1997. The Commission observed that complainant advanced newly-alleged discriminatory conduct occurring within the 300 day period prior to the filing of her complaint which (if true) would defeat the timeliness motion. The Commission granted complainant leave to file an amendment to include these newly-raised allegations and discussed the technical defect which related to the amendment; to wit: she had never submitted the allegations in a statement which had been signed, verified and notarized, as required under §PC 2.02(2), Wis. Adm. Code. (Ruling dated 9/16/97, pp. 6-8.) The Commission's statement included the warning that if complainant did not submit the required statement by the due date the Commission would dismiss the newly-raised allegations. The conditional nature of the ruling was emphasized in the ORDER<sup>1</sup> (Ruling dated 9/16/97, p. 12, par. 3), which stated as follows:

Complainant's additional amendment requests regarding her claims of sex harassment and FEA Retaliation are granted on a conditional basis. Specifically, complainant has a period of 21 calendar days to cure the technical defects which exist in regard to these allegations.

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<sup>1</sup> Complainant has been represented by counsel throughout these proceedings.

An amended complaint was filed on complainant's behalf on October 3, 1997, but was signed by complainant's attorney rather than by complainant herself – the exact problem which the Commission already discussed and provided an opportunity to cure in the ruling dated September 16, 1997. The Final Decision dismissed the case on timeliness grounds because without complainant taking advantage of the opportunity already granted to cure the technical defect there was no allegation of discrimination during the 300 day period prior to the filing of her complaint and her complainant, accordingly, was filed untimely.

#### OPINION

Petitions for rehearing are governed by §227.49, Stats., which provides (in pertinent part) as shown below:

- (3) Rehearing will be granted only on the basis of:
  - (a) Some material error of law.
  - (b) Some material error of fact.
  - (c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

Complainant's argument in support of her petition for rehearing is shown below (pp. 2-3, 11/24/97 letter) with the same emphasis as used in the original document:

Complainant asserts that her amended complaint should not have been dismissed. This complaint included three additional allegations which arose out of the same conduct and acts which formed the basis of her original complaint. The original complaint was properly notarized and verified by the Complainant herself.<sup>2</sup> Because the amended complaint "relates back" to this original complaint, it was improper to dismiss the amended complaint on the basis of a technical error that did not exist in the original complaint.

In the alternative, Complainant asserts that the failure to verify the amended complaint constitutes a technical error which she should be allowed to cure. Such an error does not affect the substantial rights of the parties, and the dismissal of her entire case on these grounds is prejudicial against her. Looking at state law for guidance, a court is required to "disregard any error or defect in the pleadings or proceedings which shall not affect the substantial rights of the adverse party". Sec. 805.18, Stats. In this case, the amended complaint

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<sup>2</sup> The Commission notes this statement is not entirely correct. The complaint initially filed was signed by complainant's attorney rather than signed by the complainant and notarized. The Commission brought this defect to the attention of her attorney and, thereafter, a perfected complaint was filed which was signed by complainant and notarized.

contained the corrected factual allegations, and opposing counsel has been advised of those and is fully aware of the Complainant's identity in spite of her lacking signature. See e.g., *Helton v. Wesbar Corporation*, (LIRC 3/19/92) ("The employer clearly knew full well who Helson was . . ."). Simply, the correction of a signature will in no way prejudice the Respondent in this case.

Additionally, pleadings before the Personnel Commission are to be liberally construed, allowing for amendments when needed and when appropriate.

In the Commission's view, parties to personnel appeals should be permitted a good deal of liberality in amending pleadings. **It is a general rule of administrative law that pleadings are liberally construed and are not required to meet the standards applicable to pleadings in a court proceeding.** [emphasis added]

*Oakley v. Bartell*, Case No. 78-66-PC (10/10/78).

The only amendment required in this case is the inclusion of Complainant's notarized signature. Again, this defect can be cured quickly and without any harm to Respondent. Thus, given the liberal construction to be afforded to pleadings, Complainant should be allowed to cure this purely technical error.

The principles recited in complainant's argument were applied when the Commission's ruling dated September 16, 1997, was issued. Specifically, the new allegations raised by complainant were interpreted by the Commission as a request to amend the complainant and such request was granted under the conditions that the amendment be filed within a certain time frame and in a statement signed, verified and notarized by complainant as required under §PC 2.02(2), Wis. Admin. Code. Complainant simply has not preserved her right to go forward because she failed to comply with the opportunity already given to cure the technical defect. The Commission is unaware of any requirement for administrative or court forums to extend more than one fair and full opportunity to cure a technical defect.

Furthermore, as noted by respondent's argument in opposition to the petition for rehearing (12/6/97 letter, pp. 3-5), complainant has not shown entitlement to rehearing under the factors listed in §227.49(3), Stats. The Final Order is not based upon any material error of fact or law within the meaning of §227.49(3)(a) & (b), Stats.; nor has complainant alleged newly discovered evidence within the meaning of §227.49(3)(c), Stats.

ORDER

Complainant's petition for rehearing is denied.

Dated: December 17, 1997.

STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

  
DONALD R. MURPHY, Commissioner

  
JUDY M. ROGERS, Commissioner

JMR  
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Parties:

Barbara Reinhold  
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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 (except an order arising from an arbitration conducted pursuant to §230.44(4)(bm), Wis. Stats.) 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.

Pursuant to 1993 Wis. Act 16, effective August 12, 1993, there are certain additional procedures which apply if the Commission's decision is rendered in an appeal of a classification-related decision made by the Secretary of the Department of Employment Relations (DER) or delegated by DER to another agency. The additional procedures for such decisions are as follows:

1. If the Commission's decision was issued after a contested case hearing, the Commission has 90 days after receipt of notice that a petition for judicial review has been filed in which to issue written findings of fact and conclusions of law. (§3020, 1993 Wis. Act 16, creating §227.47(2), Wis. Stats.)

2. The record of the hearing or arbitration before the Commission is transcribed at the expense of the party petitioning for judicial review. (§3012, 1993 Wis. Act 16, amending §227.44(8), Wis. Stats.)

2/3/95