STATE OF WISCONSIN PERSONNEL COMMISSION

TIMOTHY M. RUPIPER,
Complainant,

v.

Secretary, DEPARTMENT OF CORRECTIONS,
Respondent.

Case No. 98-0155-PC-ER

RULING ON MOTION TO DISMISS AND FINAL DECISION AND ORDER

NATURE OF THE CASE

This matter is before the Commission on respondent's motion to dismiss filed on February 15, 1999. Both parties have submitted arguments on the motion. The following findings are based on documents in the file that reflect the procedural history of this case, and appear to be undisputed.

FINDINGS OF FACT

1. Complainant has appeared without counsel throughout this proceeding.

2. At a prehearing conference held on October 27, 1998, this case was scheduled for a hearing on February 16-19, 1999. (Conference report dated October 28, 1998).

3. The conference report included, among other things, the following admonition:

> All discovery must be completed at least 30 days before the commencement of the hearing. This means that discovery must be timed so that no answers to interrogatories, requests for production and inspection, etc., are due after January 15, 1999. . . . (Conference report, p. 2)
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> The parties are reminded that pursuant to s. PC 4.02 and PC 6.02(2), Wis. Admin. Code, copies of exhibits must be exchanged at least 3 working days before the day established for hearing, or will be subject to exclusion. **This means the information must be exchanged at or before 4:30 p.m. on February 11, 1999.** A timely exchange occurs if the Commission and opposing party each receive said information by the stated deadline . . . (Conference report, p.3)

> As provided in s. PC 5.02, Wis. Adm. Code, a request to postpone a date for hearing will be granted only upon a showing of good cause. Postponement requests should be in writing, if possible, and the party making the request should indicate the reason for the request and whether the opposing party agrees with the request. Generally speaking, the following reasons are not considered as good cause for granting a hearing postponement: a) waiting an unreasonable amount of time to request postponement after knowing that a reason exists to request the same, b) being unprepared for hearing, and waiting until too close to the hearing date to initiate settlement negotiations or to seek representation. *Id.*

4. This conference report also reflects that complainant was sent a copy of an informational document prepared by the Commission entitled: "Instructions for Unrepresented Parties."

5. The aforesaid document includes, among other things, the following:

> Discovery: Commission rules provide at s. PC4.03, Wis. Adm. Code, that parties have the right to conduct prehearing discovery in the same manner as is done in judicial proceedings under Ch. 804, Wis. Stats. . . . Discovery must be conducted well in advance of hearing to allow the opposing party a period of 30 days to reply.

6. On February 15, 1999, the day before the hearing was supposed to start, the examiner conducted a conference call. The examiner summarized this conference in a letter dated February 15, 1999, which includes the following:

> Mr. Rupiper advised that he had been operating under the assumption that he did not need to submit under §PC 4.02, Wis. Adm. Code, copies of any documents that previously had been submitted to the Commission. He states that when he received Mr. Van de Grift's witness list and copies of exhibits on February 12, 1999, he contacted the Commission. The Commission file reflects that he spoke to Mr. Stege of the Commission on February 12, 1999, (the undersigned having been conducting a hearing out of town) at about 3:15 p. m. Mr. Stege's note summarizing this call is as follows:
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> > Per call from complainant, he received respondent's exhibit submission and called because he had not done something similar, citing the 3 day exchange requirement. I suggested that he speak with T. Van de Grift [respondent's attorney] to try to resolve issue and if he had ques-

> tions on Monday to call [the assigned hearing examiner]. He said he would send off some materials tonight.

Mr. Rupiper then called Mr. Van de Grift who had advised he objected to any material Mr. Rupiper might try to use in evidence that had not been submitted in a timely manner pursuant to §PC 4.02, with the exception of materials that he (Mr. Van de Grift) had submitted on February 10, 1999.

Mr. Rupiper stated that he thought he would comply with §PC 4.02 if he were to use documents previously submitted even though he had not submitted notice of his intent to use these as evidence at the hearing. I stated that this did not constitute compliance with the rule, but that he would be allowed to use any document submitted by Mr. Van de Grift, as well as the documents attached to Mr. Rupiper's letter dated January 26, 1999. As to the use of other documents, I referred to §PC 4.02 and the criteria it sets forth with respect to whether documents not submitted in a timely manner could nevertheless be used in evidence. I stated that I did not think Mr. Rupiper had acted in bad faith or willfully in connection with his failure to have complied with the rule, but this was only one of the criteria, and I could not evaluate the other criteria (prejudice; surprise, etc.) without seeing the documents and allowing Mr. Van de Grift an opportunity to be heard in this regard. In response to my question, Mr. Rupiper stated that he had about 14 pages of other documents he intended to use in addition to the documents submitted by Mr. Van de Grift and the documents attached to Mr. Rupiper's letter dated January 26, 1999.[1] I stated he should fax those documents today, and I would make a determination at the hearing tomorrow about whether complainant could use those documents in evidence.

Mr. Rupiper then raised the issue of Mr. Van de Grift's failure to have produced the original videotape of the chemical exposure incident in question, and his failure to have responded to Mr. Rupiper's discovery request dated December 28, 1998. Mr. Van de Grift stated that under the circumstances, he objected to providing complainant the original of the tape, and that he had not responded to the December 28, 1998, discovery request because he was not required to since complainant's request was too late under the deadline for discovery in the October 28, 1998, conference report ("All discovery must be completed at least 30 days before the commencement of the hearing. This means that discovery must be timed so that no answers to interrogatories, requests for

[1] This letter had several documents attached to it.

production and inspection, etc., are due after January 15, 1999."). Mr. Rupiper stated that he wanted the original tape so that he could have it examined by an expert for indications of erasure, alteration, etc., and that he had interpreted the above-quoted language from the conference report as establishing a deadline of January 15, 1999, for respondent to respond to any discovery requests that might be outstanding at that time.

The undersigned advised that since Mr. Rupiper wanted the original tape so that it could be examined by an expert witness for signs of erasure, alteration, etc., this matter would be taken up at the hearing so that this could be done with appropriate assurances of security for the tape. As far as the other discovery was concerned, I advised that Mr. Van de Grift's objection was well-taken, because he had 30 days to respond to the discovery requests, and that would mean the response to a December 28, 1998, discovery request would be due after January, 15, 1999.

Mr. Rupiper then said he could not effectively present his case without the response to the discovery request, and moved for a postponement of the hearing, to which Mr. Van de Grift objected. I denied the motion on the basis of the foregoing, the length of time this case has been scheduled, the number of witnesses identified, and the eleventh hour nature of the motion. Mr. Rupiper then stated that under the circumstances, he could not proceed with the hearing and that he would retain counsel to argue for a new hearing. I stated that the hearing would be canceled and that the Commission would have to decide on the ultimate disposition of this case.

CONCLUSIONS OF LAW

1. Complainant is the party with the burden of proof and the burden of proceeding in this case.

2. Complainant has failed to prosecute his complaint, and it must be dismissed.

OPINION

In cases of this nature, the complainant has the burden of proof and the burden of proceeding. *See, e. g., Krenzke-Morack v. DOC,* 91-0020-PC-ER, 3/22/96. In this case, Mr. Rupiper declined to proceed with the scheduled hearing after the hearing examiner made the rulings set forth in Finding #5, above, including the denial of his request for a postponement of the hearing, and this brought on respondent's motion to

dismiss for lack of prosecution. The decision whether to dismiss a claim for lack of prosecution is discretionary with the Commission. *See, e. g., Johnson v. Allis Chalmers Corp.,* 161 Wis. 2d 261, 273, 470 N. W. 2d 859 (1991). However, a case should not be dismissed for failure of prosecution unless the conduct of the party is "egregious," and the party does not have a "clear and justifiable excuse" for its course of action. *Id.,* 162 Wis. 2d at 276-75.

In this case, it appears that Mr. Rupiper's decision to decline to proceed with the scheduled hearing was precipitated at least in part by the examiner's decision to, in effect, deny his December 28, 1998, discovery request, and the closely related decision to deny his request for a postponement of the hearing. A decision whether to allow a departure from a deadline set forth in a conference report—here, the deadline for completion of discovery—is discretionary and does not require findings that there has been egregious conduct and no clear and justifiable excuse for noncompliance. *See Schulte v. Frazin,* 168 Wis. 2d 709, 722, *484 N. W. 2d 573 (Ct. App. 1992).* However, there are cases which fall somewhere between these two situations (a decision to dismiss a case for lack of prosecution and a decision to deny discovery because of violation of a scheduling order):

> [W]hen denial of a motion to amend a scheduling order has "the severe effect of causing the ultimate dismissal of the [party's] case . . . [appellate courts] must further evaluate the [trial] court's actions under the standards [the supreme court] set forth in *Johnson* governing the dismissal of an action as a sanction for a party's failure to comply with court orders." These "established standards" are a reasonable basis showing that "the noncomplying party's conduct was egregious *and* there was no 'clear and justifiable excuse' for the party's noncompliance." . . .
>
> [O]ur supreme court has stated that "a circuit court's discretion to dismiss a case should not be restricted by the establishment of a prejudice requirement" and has declined to "enumerate a list of relevant factors that the circuit court must review on the record in each case." Thus the circuit court will be required to use its discretion to properly place the actions of [the party] on a spectrum that ranges from "nominal" violations of court orders to "egregious conduct" by "focusing on the degree to which the party's conduct offends the standards of trial practice." *Id.,* 168 Wis. 2d at 722-23 (citations omitted)

See also Modica v. Verhulst, 195 Wis. 2d 633, 650, 536 N. W. 2d 466 (Ct. App. 1995):

> When a scheduling order is violated, trial courts may make such orders as are just . . . A finding of egregious conduct is not required for the imposition of expenses.[2] *C. f. Johnson v. Allis Chalmers Corp.,* 162 Wis. 2d 261, 275, 470 N. W. 2d 859, 864 (1991) (because of harshness of dismissal as a sanction for failing to obey scheduling orders, there must be a showing of egregious conduct).

Returning to the case before this Commission, at the status conference held the day before the date scheduled for the commencement of the hearing, set forth above at Finding #6, a number of procedural issues were discussed, primarily related to complainant's failure to have complied with §PC 4.02, Wis. Adm. Code, which requires the submission of exhibits at least three working days before the beginning of the hearing. The hearing examiner ruled that complainant could use in evidence all of the exhibits that had been submitted by respondent and all of the documents complainant had submitted with his January 26, 1999, letter proposing amendment of his complaint. As to any other documents complainant intended to offer, the examiner ruled that he could not evaluate all the criteria set forth in §§4.02(1)-(5) (prejudice, surprise, etc.) until he saw the documents and heard from respondent's counsel in this regard, and that this ruling would be made at the hearing the next day. The examiner also ruled that respondent was to produce at the hearing the original[3] of a videotape of which complainant had requested production, and at that time the matter of its examination by an expert would be addressed. At this point in the conference, although rulings on some of complainant's intended exhibits had been deferred to the hearing the following day, none of his intended exhibits had been ruled inadmissible.

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[2] The same principle would apply to other orders short of dismissal. The Commission does not address any questions concerning either its authority to impose attorney's fees and costs under the circumstances present here, or the appropriateness of the imposition of such costs and fees in this particular case.

[3] Respondent had earlier produced a copy of that videotape.

The next matter to be taken up was complainant's requests for records, interrogatories, etc., set forth in his letter dated December 28, 1998. The examiner determined that this discovery request would be denied as untimely, because according to the October 28, 1998, conference report, all discovery was to have been completed at least 30 days before the hearing, or, as specifically stated in the conference report, "discovery must be timed so that no answers to interrogatories, requests for production and inspection, etc., are due after January 15, 1999."[4] The complainant then advised he could not effectively present his case without the information sought in his discovery request, and requested a postponement of the hearing, which was denied. Complainant then stated that he would not proceed with the hearing, and it was canceled. Shortly after this, respondent filed its motion to dismiss which is now before the Commission.

The Commission must decide what standard to apply in examining the hearing examiner's decision. Based on the authority discussed above, if the examiner's decision is considered merely the resolution of a discovery dispute,[5] the question before the Commission would be whether the Commission agrees with the examiner's exercise of discretion. On the other hand, if the examiner's decision is considered tantamount to a dismissal of complainant's case for lack of prosecution, the Commission must consider whether complainant's actions were egregious, and whether there was a clear and justifiable excuse for them. The cases discussed above indicate that the determination of how to categorize the examiner's underlying handling of the discovery dispute depends on whether the decision was the functional equivalent of a dismissal of complainant's

[4] The earliest possible date that respondent's response to this discovery request would have been due under the 30 day time limit would have been January 27, 1999.

[5] The underlying question before the examiner was whether the complainant could proceed with a discovery request despite having missed the deadline for completion of discovery set forth in the prehearing conference report, and having missed the deadline set forth at §PC4 02, Wis. Adm. Code, for the submission of exhibits before the hearing

case because of lack of prosecution, and this is reinforced by *Schneller v. St. Mary's Hospital,* 162 Wis. 2d 296, 306, 470 N. W. 2d 873 (1991). In that case, the supreme court concluded that the trial court effectively dismissed the plaintiffs' case by denying the plaintiffs' motion to enlarge the time for naming experts and proceeded with a two-part analysis of the trial court's decision:

> We hold that the circuit court did not abuse its discretion by denying the Schnellers' motion to enlarge time to name experts. The court had a rational basis for concluding that the Schnellers had not shown cause[6] for their failure to have named experts in accordance with the scheduling order. We also hold that it was within the circuit court's discretion to effectively dismiss the Schnellers' case because there was a rational basis for the court's implicit determination that the conduct of the Schnellers was egregious and without a clear and justifiable excuse. Consequently, it was within the circuit court's discretion to deny the motion to enlarge time even though the effect of that order was the dismissal of their case.

In *Schneller* it was clear that the trial court's order would have the effect of dismissing the plaintiffs' case, because it was a medical malpractice claim that obviously could not succeed without expert testimony on behalf of the plaintiffs. In the case now before the Commission, the situation is not so straightforward. It can not be clearly inferred from the nature of the case and the nature of the discovery denied that the ruling denying complainant's discovery request as untimely had the effect of dismissing complainant's claim, although complainant asserted at the prehearing conference that this was the case. This leads to the question of whether under *Schneller* it is necessary to engage in making this kind of determination at this juncture in this case. The court had no need to address this question in *Schneller* because there could be no question under the cir-

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[6] The supreme court derived this standard from the statutes governing pretrial calendar orders, and more specifically §802.10, Stats However, this standard is equally applicable to this case in light of the Commission's rule on discovery, §PC 4.03, Wis. Adm. Code:

> All parties to a case before the commission may obtain discovery and preserve testimony as provided by ch. 804, Stats. For good cause shown, the commission or the hearing examiner may allow a shorter or longer time for discovery or for preserving testimony than is allowed by ch 804, Stats. For good cause, the commission or the hearing examiner may issue orders to protect persons or parties from annoyance, embarassment, oppression or undue burden or expense, or to compel discovery.

cumstances that the trial court's order would have this effect. If the Commission were to conclude that it must make the determination of whether the examiner's order had that effect, it might well require some sort of ancillary proceeding, and possibly an evidentiary hearing on the effect of the order. However, the Commission does not believe it is required to engage in that pursuit, for two reasons.

First, as noted above, it might require an extensive proceeding amounting to a trial within a trial to determine the extent the complainant's case may have been prejudiced by the ruling in question. For example, since it is not known on this record what evidence the complainant's discovery request would have unearthed, it might well be necessary to require respondent to respond to the discovery request, and then go through an evaluation of how significant this evidence would be if this case proceeded to a hearing on the merits. It seems unlikely on policy grounds that this kind of unwieldy proceeding would be required before the determination could be made as to which standard would be used to review a hearing examiner's resolution of a discovery dispute. Second, and more importantly, it would make examiner's rulings of this nature turn on the significance of the evidence sought. If a piece of evidence sought to be elicited or offered in evidence in violation of a prior disclosure requirement turned out to be pivotal, it could not be excluded unless the delinquent party had acted egregiously and without a clear and justifiable excuse. If the evidence turned out to be significant but not necessarily dispositive of the party's case, it could be excluded merely on the ground that the party had not shown good cause for its noncompliance. This result would lead to untoward results, because the ultimate decision of discovery questions like the one involved in this case could be determined on the basis of an arbitrary factor concerning how significant the evidence sought turned out to have been. In the Commission's opinion, these reasons lead to the conclusion that the Supreme Court holding in *Schneller* was meant to apply only to cases where, as in *Schneller,* the circumstances lead ineluctably to the conclusion that the initial decision on the question of relief from a scheduling order is functionally equivalent to the decision of a motion to dismiss for lack of prosecution. This result is consistent with *Schwab v. Baribeau Implement Co.,*

Inc., 163 Wis.2d 208, 216, 471 N. W. 2d 244 (Ct. App. 1991). In that case, the trial court denied a motion for a postponement of trial the plaintiff had requested because of an ongoing dispute over discovery, and because the attorney who had represented the plaintiff during earlier pretrial proceedings wanted to have the case principally tried by another lawyer who was a specialist in the field of law involved, but who was unavailable during the period the case was scheduled to be tried. The plaintiff decided to seek review of the denial of the motion for a continuance, and not to proceed with the trial. The trial court then dismissed the case for lack of prosecution. The court of appeals reviewed the denial of the motion for postponement utilizing an abuse of discretion standard.

In the case now before the Commission, there were a number of procedural/evidentiary issues addressed at the February 15, 1999, prehearing conference. The ruling on the untimely discovery request turned out to have, in the complainant's opinion, a fatal effect on his claim, but there is nothing inherent in the circumstances that made this ruling equivalent to a ruling on a motion to dismiss. Therefore, the examiner's decision will be evaluated under the exercise of discretion standard.

In the Commission's opinion, the examiner's denial of complainant's December 28, 1998, discovery request was correct. During the February 15, 1999, conference complainant contended that he had interpreted the above-quoted language from the conference report "as establishing a deadline of January 15, 1999, for respondent to respond to any discovery requests that might be outstanding at the time." Due allowance must be made for the fact that complainant was proceeding without counsel. However, in addition to the admonition contained in the conference report[7], the "Instructions for Unrepresented Parties" which were sent to complainant with the conference report explicitly state: "Discovery must be conducted well in advance of hearing to allow the opposing party a period of 30 days to reply." Given these explicit instructions, com-

[7] "All discovery must be completed at least 30 days before the commencement of the hearing. This means that discovery must be timed so that no answers to interrogatories, requests for production and inspection, etc., are due after January 15, 1999." Conference report dated October 28, 1998, p. 2.

plainant's unrepresented status is insufficient to provide good cause for his failure to have complied with the time limit for conducting discovery. Also, to the extent complainant relied on January 15th as the cutoff date for responding to outstanding discovery requests, he never brought up the matter of respondent's non-compliance with that date until the eve of the hearing (i. e., February 15, 1999), 31 days after he understood the response was due.

Once the ruling had been made that the complainant's December 28, 1998, discovery request would be denied as untimely, complainant stated that he could not effectively pursue his case without the evidence he sought through discovery, and asked for a postponement of the hearing. The examiner denied this request "on the basis of the foregoing [discussion], the length of time this case has been scheduled, the number of witnesses identified, and the eleventh hour nature of this motion." (February 15, 1999, letter from hearing examiner, pp. 2-3) For the same reasons as stated by the examiner, the Commission agrees with the examiner's exercise of discretion on this ruling.

After the foregoing ruling, the complainant stated that under the circumstances he could not proceed with the hearing, and the examiner canceled the hearing, precipitating respondent's present motion to dismiss. Based on *Schneller* and related authority, the Commission must decide whether complainant's failure to have pursued his case at this point in the proceeding was egregious and without a clear and justifiable excuse. Based on the preceding discussion, the Commission concludes that complainant did not have a clear and justifiable excuse for failing to pursue his case and that his action amounted to egregious conduct.

"Egregious" means "'flagrant' or 'conspicuous for bad quality.'" *State v. Copening,* 100 Wis. 2d 700, 713, 303 N. W. 2d 821 (1981) (citations omitted). "'It is well established that a party's simple negligence or other action grounded in misunderstanding of a discovery order does not justify the 'use of the Draconian remedy of dismissal.'" *Dyson v. Hempe,* 140 Wis. 2d 792, 800-01, 413 N. W. 2d 379 (Ct. App. 1987) (citations omitted). In this case, the Commission must scrutinize complainant's handling of this case at the point in time he stated that he would not proceed with the

hearing. His failure to have complied with the discovery deadline was negligent but not "egregious." However, once his discovery request had been denied, he decided that he could not prevail without the information he had sought through discovery, and elected not to proceed with the hearing. Under the circumstances, this action was akin to an abandonment of his claim or a failure to appear at a hearing. That is, the denial of complainant's discovery request turned out to have been (at least in complainant's mind), effectively dispositive of his complaint. Once his request for a postponement of the hearing had been denied, complainant then made the tactical decision not to proceed with the hearing. When reviewing this sequence of events, once the Commission reaches the conclusion, as it has, that the examiner's decision denying complainant's discovery was proper, it must be concluded that it was the complainant's negligence that led him (complainant) to realize that he could not succeed with his claim, and to effectively abandon it. Complainant cannot successfully oppose a motion to dismiss for failure of prosecution when he has declined to pursue his claim because of his negligence in failing to comply with a discovery deadline, and it must be concluded that his posture on this matter at this point is egregious and without a clear and justifiable excuse. This conclusion is reinforced by *Schwab v. Baribeau Implement Co., Inc.*, 163 Wis.2d 208, 471 N. W. 2d 244 (Ct. App. 1991), where the trial court denied a motion for continuance, the plaintiff "informed the trial court that she had decided not to proceed with trial, but to seek an appeal instead to obtain the desired discovery," 163 Wis. 2d at 214, and the trial court dismissed her case for failure of prosecution. The court of appeals held that dismissal for failure to prosecute is appropriate in cases of egregious conduct by a claimant, and upheld the dismissal:

> Where the record shows that the trial court in fact exercised discretion and we can perceive a reasonable basis for the decision, we will not reverse a discretionary determination. The trial court's decision to dismiss for failure to prosecute was based on the facts appearing in the record and in reliance on applicable law. Accordingly, we uphold it.
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> Schwab argues that the trial court abused its discretion by failing to grant her motions for continuance where Case repeatedly failed to provide necessary and requested discovery. Apparently Schwab is arguing that

> her "clear and justifiable" excuse for the delay in prosecution is that she was prejudiced by the trial court's denial of her continuance and therefore could not proceed with the trial as scheduled. Accordingly, we will review the trial court's denial of Schwab's motions for a continuance.
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> We review the decision to deny a motion for a continuance under an abuse of discretion standard. . . .
>
> The trial court was well within its discretion in denying Schwab's motions for a continuance. . . .
>
> Because Schwab did not agree with the court's denials of her motions for continuance, she chose not to show up for trial and instead requested the trial court to dismiss the case for want of prosecution. Schwab has not shown a "clear and justifiable excuse" for delay in prosecution, thus we uphold the trial court's dismissal of her case for failure to prosecute. *Id.* at 215-17 (citations and footnotes omitted).

In this way the court of appeals reached the trial court's denial of the plaintiff's motion to dismiss in an appeal of a dismissal for lack of prosecution precipitated by the plaintiff's decision not to proceed with the trial of her claim, and in so doing the court utilized an abuse of discretion standard.

ORDER

This complaint of discrimination is dismissed for failure of prosecution.

Dated: April 7, 1999.

STATE PERSONNEL COMMISSION

LAURIE R. McCALLUM, Chairperson

DONALD R. MURPHY, Commissioner

JUDY M. ROGERS, Commissioner

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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 re-

view 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