

**KAREN COTHRINE,**  
*Complainant,*

v.

**Superintendent, DEPARTMENT OF  
PUBLIC INSTRUCTION,**  
*Respondent.*

AMENDED  
RULING ON MOTION  
TO DISMISS

Case No. 00-0092-PC-ER

The Commission issued a ruling dated September 20, 2000, which is being amended here to correct the statutory citation in the following paragraph.

This is a complaint of race discrimination under the Fair Employment Act (FEA), and retaliation for engaging in protected conduct relating to a residential care facility pursuant to §50.07(1), Stats. On August 1, 2000, respondent filed a motion to dismiss this case for untimely filing, but only presented argument relating to the race discrimination charge. The parties were permitted to brief this motion and complainant's brief was scheduled to be filed on or before September 5, 2000. Complainant, however, did not file a brief. The following findings are based on information provided by the parties, appear to be undisputed, and are made solely for the purpose of deciding this motion.

#### FINDINGS OF FACT

1. Complainant filed this complaint on July 12, 2000. On her complaint form, when asked to specify "the most recent date you believe the respondent acted illegally against you," complainant indicated Wednesday, June 30, 1999, 10:50 a.m.

2. The actions which form the basis for complainant's charge are her probationary termination, and allegedly unfavorable references respondent provided to prospective employers after her termination.

3. Complainant received notice of her probationary termination September 10, 1999.

4. Complainant alleges in her complaint that respondent provided an unfavorable reference to the University of Wisconsin-Madison Dean of Students' Office some time between February 28 and May 30, 2000; to the UW-Madison Physical Plant some time between March 23 and 30, 2000; and to the Dane County Jail some time between April 11 and May 24, 2000.

#### OPINION

Section 111.39(1), Stats., requires that complaints of discrimination under the Fair Employment Act, such as complainant's race discrimination charge here, be filed within 300 days of the date the alleged discrimination occurred. Here, this actionable period would commence September 16, 1999, i.e., the complaint would be untimely filed as to actions occurring before September 16, 1999.

Since it is undisputed that complainant received notice of her probationary termination on September 10, 1999, more than 300 days prior to the date she filed this complaint, it must be concluded that this complaint is untimely filed as it relates to complainant's allegation of race discrimination in regard to her probationary termination.

The remaining allegation relates to allegedly unfavorable employment references respondent provided on or after February 28, 2000. These references were provided during the actionable 300-day period and it is concluded as a result that the race discrimination complaint was timely filed as to them. It should also be noted that there is authority for the Commission's exercise of jurisdiction over certain actions occurring after a complainant separates from employment with a respondent. *See, Hollinger v. UW-Milwaukee*, 84-0061-PC-ER, 11/21/85, citing *Bilka v. Pepe's, Inc.*, 38 FEP Cases 1655 (1985); *Kamath v. UW-Madison*, 95-0104-PC-ER, 11/20/97, citing *Veprinsky v. Fluor Daniel, Inc.*, 67 F.3d 881 (7<sup>th</sup> Cir 1996).

Respondent argues that, since complainant indicated on the complaint form that June 30, 1999, was the last date on which respondent had discriminated against her, her entire claim should fail. However, in view of the detail which complainant included in her complaint narrative, the fact that she is not represented by counsel, and the requirement that the Commission view the facts under consideration in a motion such as this one in the light most favorable to complainant (*See, e.g., Tafelski v. UW, 95-0127-PC-ER, 6/4/97*), the Commission does not adopt respondent's rationale in this regard but instead relies on all the information complainant has provided to date.

It should also be noted that respondent's motion does not mention complainant's retaliation charge which, as a result, is still before the Commission.

#### CONCLUSIONS OF LAW


1. Complainant has the burden to show that the FEA charge of race discrimination was timely filed.
2. Complainant has sustained this burden in regard to the race discrimination charge as it relates to the allegedly negative employment references provided by respondent on or after February 28, 2000.
3. Complainant has failed to sustain this burden in regard to the race discrimination charge as it relates to her probationary termination.

ORDER

Respondent's motion to dismiss is granted in part and denied in part consistent with the above discussion.

Dated: Oct. 9, 2000

STATE PERSONNEL COMMISSION



LAURIE R. McCALLUM, Chairperson

LRM:000092Cru1am



JUDY M. ROGERS, Commissioner

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