STATE OF WISCONSIN PERSONNEL COMMISSION

SANDRA A. MCCALLUM
Complainant,

v.

Secretary, DEPARTMENT OF CORRECTIONS
Respondent.

Case No. 01-0046-PC-ER

RULING ON MOTIONS AND ON RECUSAL REQUEST

Respondent filed a motion to dismiss the above captioned case on January 4, 2002. Respondent contends the present complaint is identical to the complaint filed by complainant and dismissed on June 29, 2001, pursuant to a settlement agreement. In a letter dated April 15, 2002, complainant also objected to the participation of Commissioner Kelli Thompson in the proceedings in her case.

The facts below are made solely to resolve the present motion. They are undisputed unless specifically noted to the contrary.

FINDINGS OF FACT

1. A complaint was filed with the Commission on December 9, 1998. The case was given Case No. 98-0218-PC-ER.

2. On December 10, 1998, the same complaint was also filed with the U.S. Equal Employment Opportunity Commission (EEOC) and given Charge No. 26H990027.

3. The complaint form filed in Case No. 98-0218-PC-ER had several boxes checked regarding discrimination and retaliation. Under the heading of "Discrimination," complainant marked the box next to disability; under the heading "Retaliation," complainant checked the box next to activities protected by the FEA; and under the heading, "The acts of discrimination/retaliation", complainant checked the boxes next to discipline and harassment.

4. A summary of the allegations included in the complaint were:

   A. Harassment: Verbal and Written Threats

B. Discipline: Unjust Cause

C. Harassment: Derogatory Jokes

D. Discrimination: Union Affiliation

E. Practicing Medicine without a License

F. Discrimination: Handicap

Attached to the complaint were several exhibits including an Attending Physician's Statement, Certification by Physician or Practitioner for Family or Medical Leave, Leave Without Pay Request/Authorization, and Grievance Letters.

5. An investigation was conducted by the Commission and an initial determination was completed by a member of the Commission's staff on July 28, 2000. The result of the investigation was a finding of both "probable cause" and "no probable cause."

6. On March 19, 2001, complainant filed a second complaint, Charge No. 260A10656, with the EEOC.

7. On March 27, 2001, the complaint, Charge Number 260A10656, was sent to the Commission. The complaint was given Case No. 01-0046-PC-ER. On April 25, 2001, complainant perfected this complaint.

8. In summary, complainant alleged respondent had not accommodated her disability, had harassed her, and had taken adverse action against her in retaliation for a prior charge of discrimination filed with the Commission. For example, complainant alleged respondent failed to provide her with timely transportation; complainant was denied a request to attend a conference, and then was told she would not be reimbursed for a separate conference she was approved to attend; complainant's employment status was changed from 100% to 50%; and complainant was not given 8 hours of back pay she felt she was due.

9. On July 6, 2001, respondent filed a memo with the Personnel Commission, along with a copy of a document titled "Settlement Agreement and Release" The cover memo referenced *McCallum v. DOC,* Case Number 98-0218-PC-ER. The first paragraph stated:

> Enclosed for filing is a copy of the Settlement Agreement and Release which was reached in McCallum v. DOC, EEOC Charge No. 260-A1-0656. Under the terms of paragraph 8J of the agreement, Ms. McCallum has agreed to withdraw her complaint pending before the Personnel Commission, referenced above.

10. The attached *Settlement Agreement and Release*, signed on June 29, 2001, provides in pertinent part:

> ¶6 The parties agree that the EEOC is authorized to investigate compliance with this agreement and that this agreement may be specifically enforced in court by the EEOC or the parties may be used as evidence in a subsequent proceeding in which a breach of this agreement is alleged.
>
> ¶8 As evidence of a good faith effort to resolve the above-referenced EEOC Charge, Respondent offers and Charging Party accepts the following proposal:
>
> A. The Department's record will designate December 21 and 22, 2000, as workdays for which Sandy McCallum will be compensated a total of 8 hours. This payment constitutes wages and is subject to appropriate employment taxes and withholding. Payment will be authorized within 30 days of the full execution of this agreement.
>
> E. The Department will instruct supervisors and patrol staff to make special efforts to arrange that at least one car be available within the compound for employee transport, absent overriding concerns.
>
> F. If Sandy McCallum's attendance at a conference is anticipated to extend beyond her permanent work restriction of four hours, Ms. McCallum will submit in advance of the conference a physician's authorization for conference participation in excess of four hours.
>
> G. Sandy McCallum agrees to report to the Superintendent unreasonable delays in transportation she experiences when attempting to leave the institution at the end of her work day. Upon receipt of such a report, management will (a) review documentation showing the time Ms. McCallum punched out on the time clock, (b) ask Ms. McCallum for any additional information which might be available, and (c) review events that were going on in the institution at the time in question. If the Superintendent is unable to identify reasons for delays in transporting Ms. McCallum, he will instruct patrol supervisors to create a log showing the time of her calls for pick-up at the end of each work day for a 30-day period and corresponding time she is picked up. If the log showing times of calls and pick-ups reveals a problem for Ms. McCallum's pick-up times, the Superintendent will take action to correct the problem immediately.
>
> I. The Department agrees to pay Sandy McCallum a sum of Seven Hundred and Fifty Dollars ($750.00) for costs associated with litigating the above referenced charge and Personnel Commission complaint number 98-

0218-PC-ER. Payment shall be made within 30 days of the full execution of this agreement. This sum is above and beyond payment described in paragraph A above. The Department of Administration will provide a Miscellaneous Tax Form 1099 to Ms. McCallum.

J. In return for considerations received from the institution, Sandy McCallum agrees to withdraw her complaint, McCallum v. DOC, number 98-0218-PC-ER, which is pending before the Wisconsin Personnel Commission.

K. All items related to the Personnel Commission complaint no. 98-0218-PC-ER and EEOC charge 260-A1-0656, except the letter of apology referred to in paragraph H. above, will be removed from the Department of Corrections files, except as maintained by the Department of Corrections Office of Legal Counsel.

¶9. In consideration for the actions of Respondent which are described in paragraphs 2, 4 ,6, and 8 (A through M) above, Ms. McCallum agrees for herself, her heirs, and assigns to release and discharge Respondent, including its officers, employees and agents, and its successors and assigns, from any and all claims, charges, demands, damages, actions, or causes of action she has asserted, which she may have asserted, or which she could have asserted which relate in any manner to the actions of Respondent which formed the bases of her charge before the EEOC (charge number 260-A1-0656) and her complaint before the Wisconsin Personnel Commission (complaint number 98-218-PC-ER), whether or not based on a state or federal law, and whether or not said claim, charge, demand, damages, action, or cause of action now exists or may hereafter accrue, is known or unknown, or is anticipated or unanticipated. Said release and discharge extend to and include, without limitation because of enumeration, any claims, charges, demands, damages, actions or causes of action based on the Wisconsin Fair Employment Act, ss. 111.31-111.395, Wis. Stats., Wisconsin Employe Protection Act, ss. 230.80-230.89, Wis. Stats., Title VII of the Civil Rights Act of 1964, 42 U.S.C. sec. 1982; Americans with Disabilities Act, 42 U.S.C. sec. 12101-17, 12201-13, or other matter in Title 42 of the United States code; and also including any entitlement to attorney's fees.

6. On July 2, 2001, the Commission signed an order dismissing Case No. 98-0218-PC-ER, "[b]ased upon a settlement agreement reached between the parties."

7. On December 18, 2001, the Commission received a copy of a letter from the EEOC, dated August 8, 2001, that referenced EEOC Charge No. 260-A1-0656. The letter stated, in part:

> In view of the settlement reached in the above-captioned case through the EEOC's Mediation Program, the EEOC will discontinue processing EEOC Charge No. 260-A1-0656.

8. By letter dated December 26, 2001, a member of the Commission's staff requested a copy of the settlement agreement so the present case (01-0046-PC-ER) could be dismissed.

9. On January 4, 2002, the Commission received a memo from respondent, that referenced both the present case and EEOC Charge No. 260A10656, and included the following language:

> Enclosed is a copy of the Settlement Agreement and Release for the above captioned EEOC charge. Personnel Commission complaint number 98-218-PC-ER and EEOC charge number 2600A10656 were specifically identified as cases subject to dismissal under the agreement. However, Personnel Commission complaint number 01-0046-PC-ER and EEOC charge number 160A10656 are identical complaints. Thus, complaint number 01-0046-PC-ER should also be dismissed.

10. A review of the Commission's files on case number 98-0218-PC-ER and 01-0046-PC-ER, indicates the complaint filed in 01-0046-PC-ER, is identical to the complaint filed with the EEOC, Charge No. 260-A1-0656.

11. On April 8, 2002, the Commission sent a letter to the parties explaining that Kelli Thompson had been appointed to the Commission. In addition, the letter stated:

> The above-referenced pending case is awaiting a decision by the Commission. If you have any objection to participation by Commissioner Thompson in the consideration of the pending matter, you are directed to file a written statement of your objections with the Commission and the opposing party

12. Complainant's letter was filed with the Commission, on April 18, 2002, stating her objections to the participation of Kelli Thompson. The letter stated:

> I submit my objection to the participation of Ms. Kelly S. Thompson for the following reasons: 1) My complaint has been in the process for 4 years and it is critical that a new person who is unfamiliar with the issues not come in at this position to make the final decision; and 2) The political appointment of a politically identified supporter of the Governor does not ensure an objective deliberation of this case free of strong, pre-ordained political leanings.

CONCLUSIONS

1. The Commission has jurisdiction over this complaint pursuant to §§230.45(1)(b), and 111.375 (2), Stats.

2. This complaint is barred by the settlement agreement and release executed June 29, 2001, and must be dismissed.

OPINION

I. Settlement Agreement and Release

A review of the Commission's files on case number 98-0218-PC-ER and 01-0046-PC-ER, indicates the complaint filed in 01-0046-PC-ER, is identical to the complaint filed with the EEOC, case no. 260-A1-0656.

The Settlement Agreement and Release is captioned with the EEOC case no 260-A1-0656 and identifies both the EEOC case 260-A1-0656 and the Commission's complaint, 98-0218-PC-ER, within the body of the agreement.

A review of the *Settlement Agreement and Release* indicates the Settlement Agreement also pertains to the allegations set forth in complaint 01-0046-PC-ER, even though the case no. 01-0046-PC-ER is not specifically mentioned in the Settlement Agreement.

In the Settlement Agreement and Release, paragraph 8, subsections A, E, F, and G, all directly relate to the allegations stated in complaint 01-0046-PC-ER.

Complainant filed the perfected complaint for case 01-0046-PC-ER on April 25, 2001, during the litigation of 98-0218-PC-ER, prior to when the Settlement Agreement was signed and executed.

There is no question, that the Settlement Agreement pertains to both the Commission's cases, 98-0218-PC-ER and 01-0046-PC-ER, and therefore, 01-0046-PC-ER should have been identified in the Settlement Agreement and Release.

The question that is left before the Commission is whether the "Settlement Agreement and Release" set forth in Finding #8 operates as a bar to this proceeding. The complainant has not argued that the agreement that was reached by the parties should be voided because of fraud, mistake, duress, etc. *Bartell v. DHSS*, 84-0038-PC-ER, 9/13/85. Instead, complainant is objecting to the dismissal of the complaint in question based on what she has characterized

as continuing discrimination and harassment and Respondent's failure to abide by the terms of the Agreement.

The Commission must determine not whether there is a continuing violation, but whether, in the context of the settlement agreement language referring to claims "*based on or arising out of* events occurring prior to the execution of this document," it can be said complainant's allegation that respondent's conduct has continued after the execution of the settlement agreement constitutes a separate act of employment discrimination not covered by the terms of the Settlement Agreement. *Bartell v. DHSS*, 84-0038-PC-ER, 9/13/85.

By definition, allegations in a case filed before the settlement agreement was signed are not events after the Agreement.

The key language in the Settlement Agreement is paragraph 9, which states:

> In consideration for the actions of Respondent which are described in paragraphs 2, 4, 6, and 8 (A through M) above, Ms. McCallum agrees for herself, her heirs, and assigns to release and discharge Respondent, including its officers, employees and agents, and its successors and assigns, from any and all claims, charges, demands, damages, actions, or causes of actions she has asserted which relate in any manner to the actions of Respondent which formed the bases of her charge before the EEOC (charge number 260-A12-0656) and her complaint before the Wisconsin Personnel Commission (complaint number 98-218-PC-ER), whether or not based on a state or federal law, and *whether or not said claim, charge, demand, damages, action, or cause of action now exists or may hereafter accrue, is known or unknown, or is anticipated or unanticipated.* Said release and discharge extend to and include, without limitation because of enumeration, any claims, charges, demands, damages, actions or causes of action based on the Wisconsin Fair Employment Act, ss. 111.31-111.395, Wis. Stats., Wisconsin Employe Protection Act, ss. 230.80-230.89, Wis. Stats., Title VII of the Civil Rights Act of 1964, 42 U.S.C. sec. 1982; American with Disabilities Act, 42 U.S.C. sec. 12101-17, 12201-13, or other matter in Title 42 of the United States code; an d also including any entitlement to attorney's fees. (Emphasis Added)

Complainant chose to sign the Settlement Agreement on June 29, 2001, thereby agreeing to forego claims regarding events occurring in the course of her employment through that date. The Settlement Agreement made specific reference to the pending cases filed by complainant. The complainant may not now reject the Agreement reached in Case No. 98-0218-PC-ER and 01-0046-PC-ER. *Langford v. SPD*, 99-0013-PC-ER, 6/30/99.

The Commission has determined in previous decisions that, regardless of what enforcement authority exists in other forums, the Commission does not have the express or implied authority to enforce such agreements. *Janowski/Conrady v. DER*, Case Nos. 860125-PC and 86-0126-PC, 10/29/86; *See also Haule v. UW-Milwaukee*, 85-0166-PC-ER, 8/26/87.

The Settlement Agreement included procedures by which the Agreement could be enforced as well as a procedure for investigating compliance.[1] The Agreement does not purport to give authority in either area to the Personnel Commission. Therefore, the Commission makes no determination regarding the allegations that respondent has not followed through on the Settlement Agreement.

II. Request to recuse commissioner

Early in 2002, and after the complaint was filed with the Commission, two of three sitting Commissioners resigned and one new Commissioner, Kelli S. Thompson, was appointed. By letter dated April 8, 2002, the Commission provided the parties an opportunity to object to participation by the new Commissioner.

In a response dated April 15, 2002, complainant wrote:

> This letter is in response to your recent notice of a new appointment to the Commission.
>
> I submit my objection to the participation of Ms. Kelly S. Thompson for the following reasons: 1) My complaint has been in the process for 4 years and it is critical that a new person who is unfamiliar with the issues not come in at this point to make the final decision; and 2) The political appointment of a politically identified supporter of the Governor does not ensure an objective deliberation of this case free of strong, pre-ordained political leanings.

The Commission has recently addressed the standards to be applied when considering a motion to recuse a Commissioner from participation in a case. In *Balele v. DHFS et al.*, 00-0133-PC-ER, 8/15/01, the Commission denied a motion to recuse Commissioner Laurie

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1. Pursuant to the paragraph #6 of the Agreement:

> The parties agree that the *EEOC* is authorized to investigate compliance with this agreement and that this agreement may be specifically enforced *in court* by the EEOC or the parties and may be used as evidence in a subsequent proceeding in which a breach of this agreement is alleged. (Emphasis added)

McCallum, where the motion was based on the fact that Commissioner McCallum's husband was then serving as the Governor of Wisconsin. The Commission's analysis included the following language:

> This analysis begins with the principle that constitutional due process of law requires that an administrative adjudicative body such as this Commission be a fair and impartial decision-maker. *Guthrie v. LIRC,* 111 Wis. 2d 447, 454, 331 N. W 2d 331 (1983); *State ex rel. DeLuca v. Common Council,* 72 Wis. 2d 672, 682, 242 N. W 2d 689 (1976). Due process can be violated not only "when there is bias or unfairness in fact. There can also be a denial of due process when the risk of bias is impermissibly high our system of law has always endeavored to prevent the probability of unfairness." *Guthrie, id. See also, e.g., Baldwin v. LIRC,* 228 Wis. 2d 601, 599 N. W 2d 8 (Ct. App. 1999).
>
> A number of cases provide some guidance on the question of the degree of risk of bias that is necessary to amount to a violation of due process. In *DeLuca,* the Court addressed the possibility of bias arising out of the combination of investigatory and adjudicative functions. While the case currently before the Commission does not involve a question relating to a combining of functions (e.g., investigative and adjudicative) such as in *DeLuca,* the court's discussion of the manner of analyzing the degree of risk of bias is useful:
>
> > The Court[1] nevertheless went on to say that not only is a biased decisionmaker constitutionally unacceptable, but, in addition, that the system of due process must endeavor to prevent the probability of unfairness. Circumstances which lead to a *high probability* of bias, even though no actual bias is revealed in the record, may be sufficient to give the proceedings an unacceptable constitutional taint.
> >
> > The Court pointed out that, even where the investigative and adjudicative functions are combined, the objector must assume the *heavy burden* of showing that this combination of functions create an unconstitutional risk of unfairness:
> >
> > > "[The objector] must overcome the presumption of honesty and integrity in those serving as adjudicators; and it must convince that under a *realistic appraisal of psychological tendencies and human weakness,* conferring investigative and adjudicative powers on the same individuals poses such a risk of actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented."

> [A]lthough there is no *per se* disqualification because of the combining of the investigatory and the adjudicatory functions, special facts and circumstances may in a proper case impel a court to conclude that the risk of unfairness is intolerably high. 72 Wis. 2d at 672, 684-85 (citation omitted) (emphasis added).

This holding indicates that the party seeking recusal or disqualification has a high burden to carry in order [to] overcome the presumption of honesty and integrity in administrative adjudicators.

Marris v. City of Cedarburg, 176 Wis. 2d 14, 498 N. W 2d 838 (1993), involved an issue of impartiality concerning the Chairperson of the Board of Zoning Appeals for the City of Cedarburg. The Court held that comments by the Chairperson[2] "indicated that he had prejudged Marris's case and created an impermissibly high risk of bias. Under these circumstances he should have recused himself in order that Marris have a fair hearing." 176 Wis. 2d at 20. In determining whether the Chairperson's comments "created an impermissibly high risk of bias," *id.*, the Court's analysis included the following:

> A *clear* statement "suggesting that a decision has already been reached, or prejudged, should suffice to invalidate a decision." 176 Wis. 2d at 26 (emphasis added; citation omitted).
>
> [S]ome of the chairperson's comments *clearly* indicated that he has prejudged Marris's case, thus creating an impermissibly high risk of bias. Therefore, we conclude that the chairperson erred when he refused to recuse himself and that he deprived Marris of her right to common law due process. 176 Wis. 2d at 31 (emphasis added)

This emphasis on a clear showing of risk of bias is consistent with the holding in *DeLuca* that the objector to an official's participation in a case carries a "heavy burden," 72 Wis. 2d at 684, to overcome the presumption of honesty and integrity in administrative adjudicative officials, *Id.* *See also LeBow v. Optometry Examining Board*, 52 Wis. 2d 569, 574, 191 N.W 2d 47 (1971):

> An administrative officer exercising judicial or quasi-judicial power is disqualified or incompetent to sit in a proceeding in which he has a personal or pecuniary interest, [or] where he is related to an interested person within the degree prohibited by statute. [A]n interest to disqualify an administrative officer acting in a judicial capacity may be small, but it must be an interest direct, definite, capable of demonstration, not remote, uncertain, contingent, unsubstantial, or

merely speculative or theoretical. (citation and internal quotation marks omitted)

[1]This is a reference to *Withrow v. Larkin,* 421 U. S. 35, 95 S. Ct. 1456, 43 L. Ed. 2d 712 (1975).
[2]The chairperson's comments included a reference to Marris's legal position as a "'loophole' in need of 'closing,'" 176 Wis. 2d at 29; a suggestion to the other board members that "they should try to 'get her [Marris] on the Leona Helmsley rule'", 176 Wis. 2d at 27; and a statement questioning "how the board, in analyzing expenditures, could know whether Marris 'bought a door for that building or for another building she built.'" 176 Wis. 2d at 28.

Courts have analyzed the issue of recusal or disqualification of judges presiding over criminal cases, when the judges in question had previously been employed by the District Attorney's office. In *Tennessee v. Ellis*, No. W2000-02242-CCA-R3-CD, 2001 Tenn. Crim. App. LEXIS 579, the court held a judge does not need to disqualify himself or herself from hearing a criminal matter which was pending at the time when he or she served as an assistant district attorney in the same judicial district, if the judge neither reviewed, personally prosecuted, nor had any direct involvement in the case. In *Tennessee v. McNeal*, No. W2001-01058-CCA-R3-CD, 2002 Tenn. Crim. App. LEXIS 254, the trial judge refused to recuse himself from hearing a probation revocation case because he had not been the prosecutor on defendant's case during his employment with the district attorney's office and because the location of his office did not provide him access to defendant's file. The judge stated that he had not spoken with the prosecution regarding the *McNeal* case and had no prior knowledge of defendant's case, and therefore, did not see a conflict with his decision to preside over the case. *Id.* at 2. The appellate court upheld its previous ruling in *Tennessee v. Ellis*, No. W2000-02242-CCA-R3-CD, 2001 Tenn. Crim. App. LEXIS 579, reiterating that "a judge need not disqualify himself from hearing a criminal matter which was pending at the time when he served as an assistant district attorney in the same judicial district, if the judge neither reviewed, personally prosecuted, nor had any direct involvement in the case." *Id.* at 4.

In *State v. Santana*, 220 Wis. 2d. 674, 584 N.W 2d 151 (Ct. App. 1998), the defendant argued the judge should have recused himself because he had sentenced the defendant during a recall effort, which was based on the allegation the judge was too lenient

in his sentencing. The court analyzed the case in the context of whether the judge should have recused himself from the sentencing because of the danger of bias or prejudice.

> There is a presumption that a judge is free of bias and prejudice. In order to overcome this presumption, the party asserting judicial bias must show by a preponderance of the evidence that the judge is biased or prejudiced.
>
> In determining whether Judge Kennedy's decision not to recuse himself resulted in bias or prejudice to Santana, we must evaluate the existence of bias in both a subjective and an objective light. The subjective component is based on the judge's own determination of whether he will be able to act impartially. In determining whether this component is satisfied, it is only necessary to examine Judge Kennedy's decision not to recuse himself. If he had subjectively believed that he could not act impartially, he would have been required to disqualify himself from the case. Because he did not, we may presume that Judge Kennedy believed himself capable of acting in an impartial manner, and our inquiry into this factor is at an end.
>
> Under the objective test, we must determine whether there are objective facts demonstrating that judge Kennedy was actually biased. Under this test, Santana is required to show that the judge "in fact treated him unfairly." Wisconsin law is clear that "merely showing that there was an appearance of partiality or that the circumstances might lead one to speculate that the judge was partial is not sufficient." 220 Wis. 2d 674, 684-85 (citations omitted)

The courts have observed that that standard for a conflict of interest for judges is more stringent than the standard for administrative adjudicative officials. *See Clisham v. Board of Police Commissioners*, 223 Conn. 354, 361-62, 613 A. 3d 254 (1992):

> The applicable due process standards for disqualification of administrative adjudicators do not rise to the heights of those prescribed for judicial disqualification. The mere appearance of bias that might disqualify a judge will not disqualify an arbitrator. Moreover, there is a presumption the administrative board members acting in an adjudicative capacity are not biased. To overcome the presumption, the plaintiff . must demonstrate actual bias, rather than mere potential bias, of the board members challenged, unless the circumstances indicate a probability of such bias too high to be constitutionally tolerated. (internal quotation marks and citations omitted)

Even if we were to review Commissioner Thompson's familial ties in the context of judicial conflicts of interest, the Commission does not believe the complainant's objection to her participation has merit. The Commission does not find that complainant's objection meets the other standards as laid out in *Balele v. DHFS, DER & DMRS*, 00-0133-PC-ER,

8/15/01, which include the "reasonable person" test articulated in *Debaker v. Shah*, 194 Wis. 2d 104, 116-17, 533 N.W 2d 464 (1995) and the standard for "evident impartiality" standard as set forth in *In re Mason*, 916 F. 2d 384, 385-86 (7th Cir. 1990).

At the time the complaint in this case was filed (March 27, 2001), Commissioner Thompson's father was no longer governor. While he was governor prior to the date of the filing of Case No. 98-0218-PC-ER (December 8, 1998), that case does not involve either allegations against the governor's office or allegations that would implicate in any way the political fortunes of the former Thompson administration. Any potential financial impact from Case NO. 01-0046-PC-ER would be de minimus, and in any event would impact the state financial situation under the current (McCallum) administration.

Complainant also states that because her complaint has been in the process for 4 years, it is critical not to have someone new making the final decision. Complainant filed an unperfected complaint in Case No. 01-0046-PC-ER, on March 27, 2001, and a perfected complaint on April 25, 2001. This case has been pending approximately 17 months, not four years. Cases can be pending before the Commission for varying lengths of time before a final decision is made. This does not provide a reasonable basis to request the removal of one of the Commissioner's in making a decision in the case.

Respondent has not put forth any contentions that Commissioner Thompson had any prior information or pre-determined ideas about the present case.

Therefore, complainant's request for the recusal of Commissioner Thompson from participating in this matter is denied.

ORDER

Complainant's request for recusal is denied, respondent's motion to dismiss granted and the complaint is dismissed.

Dated: August 21, 2002.

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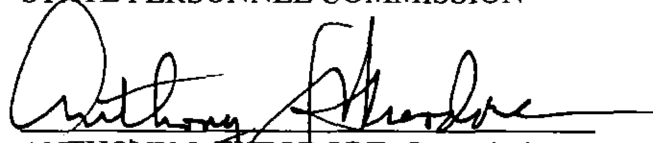
STATE PERSONNEL COMMISSION



ANTHONY J. THEODORE, Commissioner

KELLI S. THOMPSON, Commissioner

Parties:

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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