race as well as retaliation for engaging in Fair Employment Act activities and whistle-blower retaliation. In addition to the complaint form, complainant appended a two-page letter that he denominated as "Justification of Amendment 2." The letter included the statement:

> I want the [Commission] to accept Amendment 2, in its entirety. Amendment 2 was submitted to the PC on August 3, 1999. Amendment 2 is composed of the letter labeled dpi98.doc and related exhibits and videotapes.

The only description of specific discriminatory/retaliatory events in the two-page attachment reads as follows:

> Amendment 2 discusses hostile environments, abuse and threats. Here are two specific incidents:
> a. On December 23, 1998, Mike Odden, an Euro-American co-worker, did threaten me,
> b. In January 1999, Chris Selk, my Euro-American supervisor, minimized this incident to the Capitol Police.

Respondent contends that these two allegations fall within the scope of the various allegations raised in Case No. 99-0063-PC-ER. A portion of that complaint, filed on March 29, 1999, reads as follows:

> I consider each and every negative action against me by DPI and my co-workers to be harassment and contributing to the hostile environment because these negative actions are unwarranted. This includes the administrative leaves, and the investigatory hearings, and the suspensions. This includes nearly half of my team not speaking to me. This includes the threat by Mike Odden and the minimization of abuse and threats by DPI management. This includes the sabotage of my reclass project.

The Commission agrees that one effect of the complainant's notarized complaint form filed on September 7th is to clarify the allegation set forth in the above paragraph of Case No. 99-0063-PC-ER. Complainant has provided dates and some specifics regarding both the alleged threat by Mr. Odden and management's alleged "minimization" of that conduct. That information can be viewed as a clarification of his previous allegations, thereby falling within the scope of the Commission's rule on amendments. According to §PC 2.02(3), Wis. Adm. Code:

> A complaint may be amended by the complainant, subject to approval by the commission, to cure technical defects or omissions, or *to clarify* or amplify *allegations made in the complaint* or to set forth additional facts or allegations related to the subject matter of the original charge, and those amendments shall relate back to the original filing date. (Emphasis added.)

Therefore, the Commission will treat the following portions[1] of complainant's September 7th filing as an amendment clarifying the above allegations in Case No. 99-0063-PC-ER:

> a. On December 23, 1998, Mike Odden, an Euro-American co-worker, did threaten me,
> b. In January 1999, Chris Selk, my Euro-American supervisor, minimized this incident to the Capitol Police.

However, the Commission rejects the remaining portions of the complainant's August 4th filing, as explained in his September 7th submission. Those materials include the following, as described by complainant in his August 4th narrative:

> Exhibit 1 is a 27-minute video titled *Sociological Imagination: Religion*, which shows how deeply ingrained values and lifestyles are. . . .
>
> Exhibit 2 is a 40-minute video of an Oprah Show titled *Protect Yourself from Rape*, which aired June 24, 1999. Rape is a long-term devastation, which robs women of power and of self-esteem. And, rape often leads to depression. Reclaiming life after being raped is a focus of the show.
>
> Exhibit 3 is the summary of *Protect Yourself from Rape*, which was on Oprah's website. . . .
>
> Exhibit 4 is an article from the May/June 1999 issue of Psychology Today by Jeff Howe. The article says, "The consequences of discrimination are extensive and well-chronicled; emotional abuse, loss of jobs and opportunities; dreams deferred." . . .
>
> Exhibit 5 is a 26-minute video of a Montel Williams Show titled *Families in Crisis*, which aired July 28, 1999. The story is about a Lisa who was

[1] Exhibit 12 of complainant's August 4th filing is a copy of certain handwritten notes. The notes appear to have been written by a Capitol Police officer and arguably relate to complainant's allegation that Mr. Selk "minimized" the incident to the Capitol Police. This exhibit is an appropriate amendment because it clarifies the complainant's allegations.

> repeatedly raped and beaten by her father from the ages of 14 through 22. She and her sisters told about the abuse but nothing happened. . . .
>
> Exhibit 6 is a 13-minute video of a Dateline show. Jennifer was victimized by the men who attacked her and by the police who refused to believe that she was attacked.
>
> Exhibit 7 is a 4-minute video of a TV news show, which aired July 28, 1999. The show was about Cary Stayner, the man who murdered 3 women in Yosemite National Park and who, a few months later, decapitated another woman. . . .
>
> On July 29, 1999, the newspaper, the Sacramento Bee (Exhibit 8), wrote, "Yosemite suspect known as friendly, conscientious." . . . .
>
> On July 29, 1999, the news magazine, USA Today (Exhibit 9) wrote, "Average neighbor lived with a dark past," as the headline about Mark Barton. Mark Barton is the man, in Atlanta, who killed his family and nine people. . . .
>
> Exhibit 10 is a 60-minute video of an Oprah Show titled *Bullying Bosses,* which aired June 8, 1999. Exhibit 11 is the full text of the show. The video is about owners and managers who abuse employees; and about the effects of bullying on employees.

The complainant seeks to identify a nation-wide atmosphere of discrimination, rather than to point to specific personnel actions taken with respect to him. The Personnel Commission's authority is limited to reviewing personnel actions taken by the State of Wisconsin as an employer. Media reports showing that discrimination exists outside of the employment setting and in other states or seeking to explain the causes of that conduct are not allegations of discrimination by a state agency in its role as an employer.[2] The reports may be interesting and they may be accurate, but the Personnel Commission cannot investigate the conditions they describe. None of these materials constitute separate allegations of discrimination, i.e. "the facts which constitute the alleged unlawful conduct" as referenced in §PC 2.02(1), Wis. Adm. Code. Complainant's request to amend is denied as to all but that portion clarifying the two allegations in Case No. 99-0063-PC-ER.

II. Motion to compel discovery

Complainant's discovery request that is the subject of his motion to compel is dated June 28, 1999. The request included interrogatories, requests for admissions and requests for production of copies of documents. It was single-spaced and totaled 19 pages. Respondent filed its responses on August 13, 1999. Complainant initially filed a motion to compel discovery on August 6th. He resubmitted the motion on August 17th once he had received respondent's response to the discovery request. The parties held a conference with a representative of the Commission on August 18th and there was a lengthy discussion regarding various discovery disputes. As a consequence of the discussion, complainant made certain modifications/clarifications to some of his requests and respondent was given an opportunity to supplement its responses. Respondent filed a supplementation on September 15th and the parties also filed written arguments on complainant's motion to compel.[3]

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[2] The Commission notes that this case is not at the hearing stage and this is not a ruling on relevancy.

[3] To better understand complainant's motion, the Commission has reviewed the various complaints filed by complainant and summarizes his allegations as follows:

A. In Case No. 98-0210-PC-ER, complainant alleges race discrimination as to:

- Failure to reclass complainant's position from MIS 4 to 5 based on assignment to the Production Application System project
- "Constructive failure to promote" i.e. the imposition of medical leave
- February 12, 1998, investigative hearing (re: alleged falsification of records and leave abuse)
- February 27th written reprimand for alleged leave abuse
- February 27th written reprimand for alleged falsification of records
- March 4th investigative hearing (re: alleged failure to submit time sheets as directed)
- March 5th written reprimand for alleged failure to submit time sheets as directed
- March 23rd investigative hearing (re: alleged failure to submit time sheets as directed)
- April 2nd investigative hearing (re: alleged failure to submit time sheets as directed)
- April 15th three-day suspension for alleged failure to submit time sheets as directed

The substance of complainant's motion is set forth in his August 17th submission (dated August 16th) as follows:

> Over 90% of DPI's responses to my discovery were:
> 1. "Objection, irrelevant", and

B. In Case No. 99-0051-PC-ER, complainant alleges whistleblower retaliation as to:

- February 4, 1999 notice of investigative hearing on February 9th (later changed to February 10th)
- February 5th imposition of administrative leave with pay
- February 10th investigative hearing
- February 10th directives to sign a medical release and to attend mental exam on February 15th
- February 15th cancellation of the exam by DPI
- February 17th notice of investigative hearing on February 18th (re: alleged failure to sign respondent's version of medical release)
- Respondent's alleged failure to respond to two documents supplied by complainant at the February 18th hearing
- February 18th directive to attend hearing on February 19th
- February 19th ten-day suspension for alleged failure to sign respondent's version of medical release
- March 9th disciplinary hearing held where complainant was directed to sign the medical release designed by respondent and a 20 day suspension was imposed
- Threat (in March) to terminate complainant's employment on April 8

C. In Case No. 99-0063-PC-ER, complainant alleges race discrimination as to:

- February 5, 1999 imposition of administrative leave with pay (and is required to be available during normal work hours)
- February 10th investigative hearing
- February 10th ten-day suspension
- February 18th [or 19th] investigative hearing (leading to March 9 suspension)
- March 9th twenty-day suspension
- Hostile work environment due to alleged failure of many on complainant's work team to speak with him, alleged threat by Mike Odden on December 23, 1998, Mr. Selk's alleged "minimization" of the incident in January of 1999 during discussions with the Capitol Police and alleged sabotage of reclass project

D. In Case No. 99-0096-PC-ER, complainant alleges race discrimination, Fair Employment Act retaliation and whistleblower retaliation as to:

- April 8, 1999 termination of complainant's employment

> 2. "if the complainant wishes to depose, either orally or in writing, he should do so."
>
> The purpose of discovery is to discover information. The two above responses hide information.
>
> The purposes of my discovery included, but was not limited:
> 1. To show that DPI has a history of racial discrimination,
> 2. To show the disparity of treatment against People-of-Color.
> 3. To show through DPI's own records racial discrimination.

Also, in his September 23rd written argument, complainant argues:

> DPI's systemic discrimination is core to my racial discrimination case against DPI. Since I am suing DPI, the agency, for discrimination, any and all discrimination by a DPI employee or a DPI manager is particularly relevant to my case. The employees and managers of DPI are agents of DPI. Therefore, I am suing DPI not an individual employee or manager.

Respondent takes the position that complainant is "not entitled to discovery over matters that are not relevant to his employment claims currently before the commission." The permissible scope of discovery is established in §804.01(2)(a), Stats:

> Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action. . . . It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears *reasonably calculated to lead to the discovery of admissible evidence*. (Emphasis added.)

While respondent is incorrect in relying on the standard of whether the information sought via discovery is "relevant" to current claims,[4] complainant also clearly is not entitled to unfettered access to respondent's records. Complainant may properly seek information that is "reasonably calculated to lead to the discovery of admissible evi-

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[4] In its October 5th arguments, respondent contends complainant "is not entitled to discovery over matters that are not relevant to his employment claims currently before the commission." To the extent respondent is distinguishing between complainant's existing allegations and potential future claims, this is at least somewhat addressed in the Commission's May 12, 1999, ruling which denied respondent's motion for an order precluding discovery until the complaint was made more definite and certain. In its ruling, the Commission noted that respondent's motion presented a "chicken and egg" problem and that discovery could "impact the nature of the issues to be heard."

dence" regarding his claims of discrimination, which, in turn, must relate to his own employment with the respondent.

Complainant's requests for information about *any* discrimination practiced by *any* DPI employe at *any* time fail to meet the "reasonably calculated" standard. The Commission's previous decision in *Jacques v. DOC*, 94-0124-PC-ER, 3/31/95, is instructive. In *Jacques*, the Commission granted, in part, respondent's request for a protective order where the underlying discovery request was for complaints of gender discrimination or harassment by supervisory officers at a particular correctional institution. The Commission concluded that the request was improper because it was not limited in terms of time or in terms of particular supervisors at the institution. Complainant's requests in the present case for information relating to all discrimination occurring at DPI are much broader than the problematic requests in *Jacques*. Complainant is not entitled to discover information maintained by respondent describing "any and all discrimination by a DPI employee." His motion to compel responses to such questions (Requests for Admission 19 through 21, 23 through 26, 55 through 60, 68 through 75; Interrogatories 50, 51, 53, Document Production Requests 4, 8 through 10, 12 through 14, 18 and 19) is denied. Complainant must tailor his requests so that they seek information tied more closely to his own employment. Complainant's arguments in support of his motion to compel were very general and quite limited, as noted above. He did not address his discovery requests individually. He has not drawn the connection between his requests and his allegations or potential allegations of discrimination and any such connection is not apparent on the face of the request as to Requests for Admission 62, 64 through 67, Interrogatories 31 through 33,. 35 through 43, 45, 46, 55 through 59 and 68, Request for Production of Documents 3. Therefore, his motion to compel is denied as to those requests.

However, one of complainant's discovery requests is, on its face, reasonably related to the conduct that is the subject of his complaints. That discovery request, and respondent's response is:

> Interrogatory 62. Since 1/1/90, give the race and number of DPI employees required to submit to a medical exam, other than a mental exam. RESPONSE: Objection, irrelevant.

Interrogatory 62 seeks information that is reasonably calculated to lead to the discovery of admissible evidence relating to complainant's claim arising from the alleged directive on February 10, 1999, for complainant to attend a mental exam. Interrogatory 62 dovetails with complainant's Interrogatory 61 which asked for the "race and number of DPI employees required to submit to a mental exam" since January 1, 1990. Respondent answered that interrogatory. While respondent's history of imposing medical exams may be *less* relevant to complainant's claim than DPI's history of imposing mental exams, the distinction is not dispositive and the respondent's medical exam practices still could be highly relevant.

The other broad issue raised by complainant's motion to compel relates to respondent's frequent discovery response: "If the complainant wishes to depose, either orally or in writing, he should do so." These responses are to a series of interrogatories directing respondent to ask questions of a certain person. For example, Interrogatory 7 reads:

> 7. Ask Chris Selk if:
> a. She has ever racially discriminated against a DPI staff member? If so, give the full and complete details. . . .
>
> f. Does she know of anyone who threatened a DPI staff member? If so, give the full and complete details.

Interrogatories must be directed to parties, rather than to particular persons who are non-parties. According to 23 Am. Jur. 2d *Depositions and Discovery* §210:

> The party serving interrogatories may not select a particular person and direct that interrogatories be answered by such person, if that person is not a party. For example, he may not select a particular officer or agent of a corporation and direct interrogatories by name to that person. (Citations omitted.)

The sole respondent in this matter is the Department of Public Instruction. Therefore, all of complainant's interrogatories directing respondent to ask a particular employe

certain questions are improper (Interrogatories 1 through 12, 16, 29, 69 through 84) and his motion to compel responses to those interrogatories is denied.[5]

Complainant's motion to compel is denied except as to Interrogatory 62.

III. Motion to extend discovery period

The original discovery deadline, agreed to by the parties during a prehearing conference held on May 25, 1999, was "to complete all of their discovery arising from these complaints by November 24, 1999." Respondent was then to file any preliminary motions by December 23rd.

Complainant asks that the discovery period "continue until DPI finally submits to discovery." Complainant initially made this request by letter dated August 5, 1999. Respondent opposes the request to extend the discovery period and suggests that the 5 month period previously agreed upon should be sufficient.

Complainant's request should be analyzed in terms of a request to withdraw from a stipulation between the parties. In *Novak v. DER*, 83-0104-PC, 2/29/84, and in *Florey v. DOT*, 91-0086-PC-ER, 9/16/93, the Commission addressed requests by a party to revise a previously agreed upon statement of issue. Both rulings cited *Nunnelee v. Knoll*, 75-77, 3/22/76, issued by the Commission's predecessor, the Personnel Board, which included the following language:

> We conclude that a party may be relieved of the obligations of a stipulation in certain circumstances. *See* 73 Am Jur. 2d Stipulations §14:
>
> > It is generally held that relief may be afforded from a stipulation which has been entered into as the result of inadvertence, improvidence, or excusable neglect, provided that the situation has not materially changed to the prejudice of the antagonist and that the one seeking relief has been reasonably diligent in doing so.
>
> *See also Schmidt v. Schmidt,* 40 Wis. 2d 649, 654, 162 N.W.2d 618 (1968):

[5] While the complainant cannot direct a certain person, who is not a party, to answer his interrogatories, "interrogatories are not improper simply because the information sought can be obtained by the use of other discovery procedures." 23 Am Jur. 2d Depositions and Discovery §201.

> The discretion of the trial court to relieve parties from stipulations when improvident or induced by fraud, misunderstanding or mistake, or rendered inequitable by the development of a new situation, is a legal discretion to be exercised in the promotion of justice and equity, and there must be a plain case of fraud, misunderstanding or mistake to justify relief.

> The authorities further distinguish among different types of stipulations, being more ready to relieve a party of the obligations of a stipulation as to procedural matters than stipulations as to settlement: "It has been noted that more liberality in the granting of relief as to procedural matters is evident where no prejudice will result and the best interests and convenience of the parties, and the expedition of the proceedings, will result." 73 Am Jur. 2d Stipulations §15.

In *Florey (supra)*, the complainant's motion to amend the hearing issue to add a claim under the whistleblower law was denied where the motion to amend was filed after the closing date for discovery, the complainant failed to advance any reasons why the whistleblower issue was not raised earlier and a whistleblower claim was not identifiable in the original complaint. In *Novak (supra)*, the appellant was permitted to amend the issue for hearing where the proposed changes were founded upon the appellant's inadvertence or excusable neglect, nothing indicated that respondent had been prejudiced by the delay, and no date for hearing had been scheduled.

The facts of the present case are more closely analogous to those in *Novak* than *Florey*. Complainant, who appears *pro se*, entered into the stipulation as to the discovery period with an expectation (a not unreasonable expectation) that he could complete discovery within a period of 5 months. He obviously did not anticipate the objections raised by respondent to his discovery request or the time it would take to resolve those objections. Respondent has not suggested that it would be prejudiced by an extension of the discovery period and an extension will not require the hearing to be rescheduled. The complainant's request relates to a procedural, rather than substantive, stipulation between the parties and complainant raised the issue promptly.

Therefore, the Commission will grant complainant an extension of the discovery deadline, but declines to establish an indefinite completion date. Instead, the Commis-

sion grants the parties until February 24, 2000, to complete discovery. While the Commission expects the new date to allow sufficient time for the parties to complete their discovery, the Commission is not precluding further extension should the facts warrant it.

Respondent will then have 30 days to file any preliminary motions.[6]

ORDER

Complainant's motion to amend is denied in part and granted in part, as explained more fully above.

Complainant's motion to compel is granted as to Interrogatory 62 and is otherwise denied.

Complainant's request to extend the discovery period is granted to the extent that the new discovery deadline is February 24, 2000.

Dated: November 5, 1999 STATE PERSONNEL COMMISSION

LAURIE R. McCALLUM, Chairperson

KMS:980210Cru13

DONALD R. MURPHY, Commissioner

JUDY M. ROGERS, Commissioner

[6] At the May 25th conference, the parties agreed that respondent would have until December 23rd, or 30 days after the discovery deadline, to file any preliminary motions. If the new discovery deadline is February 24, 2000, the respondent's filing period will end March 27, 2000.