STATE OF WISCONSIN PERSONNEL COMMISSION

CHARISSE KENDRICKS,
Complainant,

v.

District Attorney, OFFICE OF THE DANE COUNTY DISTRICT ATTORNEY,
Respondent.

Case No. 99-0105-PC-ER

DECISION
AND
ORDER

This matter is before the Commission after a hearing on a complaint of age and race discrimination arising from various selection decisions. The issue for hearing was as follows:

> Whether respondent discriminated against complainant on the basis of race and/or age with respect to the decisions not to select her for the vacant Assistant District Attorney positions filled by Jason Hanson in spring 1999, Karie Cattanach in May 1999, and Matthew Moeser in May 1999.[1]

The parties filed post-hearing briefs.

FINDINGS OF FACT

1. Complainant is African American and was born in 1954.

2. Diane Nicks was appointed to the position of Dane County District Attorney in November of 1997 and was elected to that position in 1998. Ms. Nicks was the hiring authority for all of the positions that are the subject of this complaint.

3. During the period in question, the respondent did not have written, formal procedures or benchmarks for hiring Assistant District Attorneys (ADA). However, it was respondent's practice for Ms. Nicks, Jill Karofsky, a Deputy District Attorney, and Judy Schwamle, also a Deputy Distict Attorney, to interview one or more

[1] During the course of the hearing, the complainant withdrew an additional claim arising from the decision not to select her for another Assistant District Attorney vacancy that was filled by Sandy Nowack early in 1999.

candidates who had expressed recent interest in an ADA position and to check the references of the top candidates before making an offer

4. Ms. Nicks, Ms. Karofsky and Ms. Schwamle are non-minorities and were 53, 32 and 49, respectively, at the time of the hiring decisions that are the subject of this complaint.

5. Ms. Nicks wanted her new hires for ADA vacancies to: 1) have a strong interest in prosecution, to the extent that the candidate felt prosecution was their "calling"; 2) be efficient in terms of a producing a lot of work; 3) be persuasive and articulate; 4) have strong interpersonal skills; 5) be driven and persistent; 6) handle high stress levels; 7) have good judgment and strong ethics; and 8) have a record of outstanding achievement in law school with an orientation towards litigation.

6. Respondent periodically received unsolicited resumes and letters of interest from persons who wished to be considered for any vacant ADA positions. Respondent's policy was to not retain resumes from an applicant for more than 6 months, although an applicant was free to resubmit materials.

7 When it became apparent there would be an ADA vacancy in the office, respondent would review the application materials on file and schedule interviews for those persons with the stronger resumes. Sometimes, if an intern in the office was performing quite well, the intern would be offered a vacant ADA job without considering other applicants.

8. Respondent made periodic contact with the representatives of the University of Wisconsin Law School to ask if any minority students involved in the school's internship programs would be capable candidates for vacant ADA positions. Respondent also asked that notice of those vacancies be posted in such a location as to attract minority applicants.

9. Complainant first sent her resume and a letter of interest to respondent in March of 1998. Shortly thereafter, respondent reviewed the written materials from current applicants for the purpose of filling an ADA position that became vacant upon the departure of Amy Smith.

10. Complainant's resume indicated she was scheduled to graduate from the University of Wisconsin Law School in May of 1998. It showed that she had participated in three different clinical programs while in law school: State Public Defender's Office in Milwaukee, Legal Assistance to Institutionalized Persons, and Volunteer Lawyers Project. Complainant's resume also reflected that complainant had completed internships in the Madison City Attorney's Office, with a private law firm, and with the Milwaukee County District Attorney's Office.

11. Respondent concluded that complainant's written materials were sufficiently strong to warrant an interview for the vacancy. Certain other candidates did not advance to the interview stage.

12. Complainant was one of approximately 10 persons interviewed on May 27 and 28, 1998, for the vacant position.

13. Ms. Karofsky prepared the interview questions and they were provided to the candidates in advance of the interviews. While there were no scoring criteria, all three interviewers took notes. Part of the goal of the interview was to analyze the candidates in terms of how they would perform in the role of a prosecutor.

14. Respondent hired Ishmael Ozanne (African American, approximate age of 25) for the vacant ADA position.[2] Mr. Ozanne had been an intern in the Office of the Dane County District Attorney where he had performed well. Others within the office spoke highly of his work. He showed great confidence during the interview and was very personable and thoughtful. He was assertive, talkative,[3] articulate and showed he was involved and interested in the community. The panelists considered it to be a bonus that Mr Ozanne was African American.

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[2] The position filled by Mr. Ozanne in 1998 is not one of the ADA vacancies that is the subject of this complaint of discrimination. However, respondent asserts that its decision not to hire complainant for any of the three vacancies in 1999 was based on complainant's performance during her interview in 1998.

[3] The Commission has modified this finding in the proposed decision by replacing "loquacious" with "talkative" to more accurately reflect the nature of the testimony that underlies this finding.

15. Complainant did not perform well during her interview. Complainant's answers were brief and factual. She lacked confidence and failed to show intellectual rigor or depth. She exhibited little expression or excitement about the position or the work of a prosecutor She was not persuasive or articulate during the interview. The only spark she showed was when she spoke about working with the elderly. After the interview, the panelists caucused and effectively ruled out the complainant from further consideration and considered her to be unqualified, i.e. that she would not be a good assistant district attorney. As a consequence, respondent never checked complainant's references.

16. Complainant knew the first assistant public defender in Racine, Jennifer Bias, from when complainant had worked as a secretary in Racine County. At some point during complainant's last semester in law school, Ms. Bias and complainant spoke and Ms. Bias asked complainant if she would like to work in Racine. Complainant responded that she did not want to leave Madison. Complainant never indicated to respondent's interview panel that she had a job offer.

17. After the interviews but before making a selection decision, respondent spoke with candidate JS, who was over the age of 40, to see if he would accept the maximum salary that respondent could offer. JS indicated he was not interested at that salary level, so respondent did not continue discussions and did not offer JS the position.

18. Ms. Nicks chose to use the same form letter as her predecessor District Attorney to inform unsuccessful candidates of the hiring decision. The letter (Comp. Exh. 14, all pages) reads, in relevant part:

> Thank you for your participation in the employment interview for the Assistant District Attorney position. Although we have made our hiring decision in favor of another candidate, I did want to let you know that you have the kind of qualifications that we are interested in for this type of position. I will keep your resume and written materials on file for use in the event of further endeavors.

Ms. Nicks modified this letter if respondent had been unable to offer a higher starting salary that was demanded by a candidate, or if respondent expected to hire the candidate in the event of a future vacancy.

19. Respondent sent complainant the standard rejection letter, i.e. a letter with the same language as set forth in Finding 18, to inform her that she had not been selected for the initial vacancy. (Comp. Exh. 13, Resp. Exh. 102)

20. Complainant interpreted the language of the rejection letter as an indication that she would probably be hired by respondent if she continued to apply. Over the course of the next several months, she resubmitted her resume on several occasions and called Ms. Nicks between 8 and 10 times about getting a job. Ms. Nicks typically did not return complainant's calls, just as she did not for other applicants in the same position as complainant.

21. Christine Genda (non-minority, approximate age of 25) was one of the other unsuccessful applicants for the vacant ADA position that was filled by Mr Ozanne. However, Ms. Genda performed well during her interview. She had received a job offer from the La Crosse District Attorney's office and was working as a law clerk for two Dane County judges, both of whom highly recommended her to respondent. While Ms. Genda also received a rejection letter when Mr. Ozanne was hired to fill the initial vacancy, Ms. Genda's letter (Comp. Exh. 14), dated June 5, 1998, included the following language:

> We considered you a top candidate. In the event we are able to obtain any additional staff, we will contact you. Would you be willing to consider a full or part-time prosecutor position similar to that which you hold with the judges? If so, give us a call.

22. Shortly thereafter, respondent had a second ADA vacancy. Rather than conducting a second set of interviews, respondent relied upon the results of the May interviews and offered the position to Ms. Genda who accepted.[4]

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[4] The position filled by Ms. Genda in 1998 is also not one of the ADA vacancies that is the subject of this complaint.

23. Although complainant was scheduled to graduate from the University of Wisconsin Law School in May of 1998, she did not satisfactorily complete one of her exams during the May exam period. As a consequence, she had to retake the course during the summer of 1998. Complainant ended up graduating in August/September of 1998. After graduation, she was unable to find employment as a lawyer She worked as a secretary for several months in 1998. She began a solo practice in September 1998 but collected unemployment compensation in 1999. While in private practice, complainant was referred several cases by the State Public Defender, but worked fewer than 40 hours on those cases from the time she began her solo practice until the end of 1999.

Vacancy #1 (Jason Hanson selected)

24. In January of 1999, respondent had another ADA vacancy.

25. Jason Hanson (non-minority, approximate age of 25) had been an intern with respondent in its "T team" or misdemeanor/traffic subunit over the summer of 1998 and had performed extremely well in that capacity. Jill Karofsky had been his supervisor. The vacancy in question was with the T team. Ms. Nicks was interested in having someone in the office who was willing to handle election cases, public records issues and government issues. Mr. Hanson, who had run for public office and had made his own public records requests in the past, was very comfortable with these topics. Mr. Hanson was on the Dean's list in law school and had been highly productive in his capacity as an intern. Mr. Hanson also had a very strong computer background which addressed Ms. Nick's concern that some of the assistant district attorneys in the office were not computer literate and would need someone to be able to explain the computer system to them. He had received another job offer as an administrative law judge. Mr Hanson worked as a law student clerk for a Dane County judge who had high praise for Mr. Hanson's work.

26. Mr. Hanson was the only person considered/interviewed for this vacancy. By letter (Comp. Exh. 21) dated January 22, 1999, respondent selected him for the vacancy, effective February 1, 1999.

Vacancies #2 and #3 (Matthew Moeser and Karie Cattenach selected)

27 In approximately the spring of 1999, respondent learned it would have two additional ADA vacancies.

28. Respondent reviewed the applications/resumes it had accumulated over the previous 6 months. Matthew Moeser, Karie Cattenach and the complainant were among those persons who had submitted resumes during that period. (Resp. Exh. 117, Resp. Exh. 123)

29. Ms. Nicks, Ms. Karofsky and Ms. Schwamle discussed the possibility of re-interviewing the complainant, but all three indicated they were not interested in doing so because of the complainant's poor performance during her May 1998 interview and because of time constraints.

30. The 3 panelists conducted interviews in early April of 1999. Complainant was not interviewed.

31. The consensus top candidate after the interviews was MW, a male in his late 30s or early 40s who had at least 10 years of experience as a lawyer. He declined the job offer

32. Matthew Moeser (non-minority, approximate age of 25) showed empathy during the interview as well as strong analytical skills and a commitment to criminal prosecution. He was self-deprecating, had a good sense of humor and exhibited intelligence as well as a quick mind. Mr Moeser was in the top 20% of his law school class and on the Dean's list all 6 semesters. He had a job offer from a large litigation firm in Madison and had clerked for a federal judge who gave Mr. Moeser an excellent reference. The panelists were aware that Mr. Moeser was the son of a Dane County judge but decided it would be inappropriate not to hire him for that reason.

33. In a letter (Comp. Exh. 20) dated May 6, 1999, respondent selected Mr. Moeser for one of the positions, effective June 7, 1999.

34. Karie Cattanach (non-minority, approximate age of 25) was very confident during her interview. She communicated well and responded comfortably to the

unexpected. Ms. Cattanach made it very clear that her interest was in criminal litigation, and she showed a commitment to volunteer community activities while in college and law school. She played varsity basketball for the University of Wisconsin as an undergraduate as well as during her first year of law school, and she was named to the academic all-Big Ten team. She had a very strong academic record and a job offer from another district attorney. All four of Ms. Cattenach's references, including two from former Dane County District Attorneys, were very positive and Ms. Cattenach emerged as the preferred candidate for the final vacancy after her references had been received.

35. In a letter (Comp. Exh. 20) dated May 6, 1999, respondent selected Ms. Cattenach for one of the positions, effective June 8, 1999.

36. In addition to JS and MW who were both over 40 or nearly 40, Ms. Nicks, during her tenure as district attorney, filled one limited duration attorney position with an individual (Sandy Novak) over the age of 40 and also sought to hire JR who was of comparable age.

37 The vast majority of the applicants for positions as assistant district attorneys with respondent were from either current law school students or recent graduates and the majority of applicants had also gone straight from college to law school, rather than making law school a second career.

38. During this same general period, respondent also made a job offer to RM, an Hispanic male who was an intern with respondent. RM was not a "traditional" applicant in the sense that law was his second career and he was a single father of several children including one who was approximately 13. RM also had a job offer from another district attorney. Respondent ultimately withdrew the offer to hire him because of performance problems during his last semester. Respondent checked on his academic performance and learned he was not on schedule to graduate.

39. Respondent would have offered a job to another minority law student, but he already had another job in Chicago.

40. The panelists did not discuss or consider the age or race of any candidate other than in the context that respondent desired to have more diversity in its office.

CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to §230.45(1)(b), Stats.

2. Complainant has the burden to establish that she was discriminated against based on her race or age when she was not selected for any of three ADA positions in 1999.

3. Complainant has failed to sustain her burden.

4. Respondent did not discriminate against the complainant on the basis of race and/or age with respect to the decisions not to select her for any of the three ADA positions that are at issue.

OPINION

In a case of this nature, the initial burden of proceeding is on the complainant to show a prima facie case of discrimination. If the complainant meets this burden, the employer then has the burden of articulating a legitimate, nondiscriminatory reason for the action taken which the complainant then attempts to show was a pretext for discrimination. The complainant has the ultimate burden of proof. *See Puetz Motor Sales Inc. v. LIRC*, 126 Wis. 2d 168, 172-73, 376 N.W.2d 372 (Ct. App. 1985).

In a failure to hire case such as this, the complainant may establish a prima facie case by showing: (1) she is a member of a group protected by the Wisconsin Fair Employment Act, (2) she applied for and was qualified for a job which the employer was seeking to fill, (3) despite her qualifications she was rejected, and (4) the employer continued with its attempt to fill the position. *See, e.g., McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 36 L. Ed. 2d. 668, 93 S. Ct. 1917, 5 FEP Cases 965 (1973). Here, complainant is African American and was 44 at the time of the decisions in question. She applied and was interviewed by a screening panel for prior ADA vacancies

that were filled in 1998. Complainant was not hired at that time, but she periodically informed respondent that she was interested in future vacancies if they occurred. Three vacancies did arise in 1999, but respondent chose to hire other candidates.

The record supports a finding that complainant was at least minimally qualified for the 1999 positions because respondent had found complainant's 1998 application materials to be sufficiently strong to justify an interview, and those application materials had not changed significantly since 1998. In any event, since complainant clearly has established the other elements of a prima facie case of race discrimination, and because this case was heard fully on the merits, the Commission can proceed directly to the issue of pretext. *See, e.g., United States Postal Service Board of Governors v. Aikens*, 460 U.S. 711, 715, 75 L. Ed. 2d. 403, 103 S. Ct. 1478 (1983).

Respondent followed its standard procedures when it filled the three positions. It was a common practice to consider, and hire, graduating students who had successfully served as interns in ODCDA. That is precisely what occurred when respondent chose to hire Jason Hanson to fill the first vacancy.

Mr. Hanson was a highly regarded intern. He had a strong academic record, was interested in election law and public records issues and had extensive experience with computers. Another employer had already offered him a job and respondent viewed such offers as verifying the quality of a candidate. A Dane County judge strongly recommended Mr. Hanson to respondent based on the work he had performed while serving as a clerk.

Before filling the other two vacancies, the interview panelists reviewed the pending applications to develop an interview schedule. The three panelists reached a consensus that it would not be worthwhile to re-interview the complainant or to consider her further for either vacancy. This decision was based on both the complainant's inadequate performance during the 1998 interview and the fact that respondent did not have an unlimited amount of time to devote to the hiring process.

Respondent had hired, or sought to hire, other persons in complainant's protected categories of age and race. Respondent hired Ishmael Ozanne, an African

American, in 1998, and considered his race to be a "plus." Respondent offered a job to RM, an Hispanic male, but later had to withdraw it when RM encountered problems during his last year in law school. Two of the three panelists were older than complainant. Respondent hired Sandy Novak, who was over 40, for a limited duration position. Respondent also sought to hire JS, who was over 40, and both MW and JR, who were in their late 30's or early 40's, to other vacancies. This conduct is inconsistent with complainant's contention that respondent discriminated based on age and race.

There is no evidence that the panelists' decision not to consider the complainant further was based on either complainant's age or her race.

Respondent went on to consider other candidates for these two vacancies and hired persons who had stronger qualifications than complainant.

The two successful candidates, Matthew Moeser and Karie Cattenach were interviewed along with the others who had made it past the screening of resumes. All of the interviewees were asked substantially similar questions which were also somewhat similar to the questions that had been asked in 1998. Both successful candidates expressed themselves well during their interview and their performances suggested that both would be poised, articulate and convincing in the courtroom. They both had strong academic backgrounds and another employment offer. When respondent checked their references, they were uniformly excellent.

Complainant unsuccessfully attempted to show that she was better qualified than the successful candidates. It is undeniable that complainant's path from a single mother working as a secretary in the Racine Courthouse through college and law school is a compelling one. She certainly deserves credit for persevering through the academic requirements associated with college and law school while still providing for her children. But those qualities do not translate into a conclusion that she was better qualified than Jason Hanson, Matthew Moeser or Karie Cattanach for any of the vacant ADA positions.

All three of the successful candidates had other job offers and respondent's witnesses established that they looked at an outside job offer as validation of their own

positive analysis of a candidate. Complainant never suggested to respondent that she had a job offer from another employer and there is no credible evidence that she had such an offer.[5]

Complainant also failed to convince the Commission that she performed well during her 1998 interview Complainant's testimony at hearing was labored. The fact that she failed to present her testimony articulately or persuasively tended to affirm the three panelists' very credible descriptions of complainant's 1998 interview. The panelists reasonably concluded that complainant would not be a successful district attorney because she did not have strong oral advocacy skills. The Commission agrees that complainant's marginal performance during her interview was the reason that respondent failed to consider her further and that complainant's age and race were not factors in that decision. The language in complainant's 1998 rejection letter was such that complainant felt she stood a good chance of being hired if she continued to apply. However, respondent had merely sent complainant its standard rejection letter, the same one that practically all of the other unsuccessful candidates received.

Evidentiary dispute

Shortly before the conclusion of the hearing, respondent objected to certain testimony by the complainant, arguing that the testimony was inconsistent with complainant's answer to an interrogatory. The examiner deferred ruling on the objection and gave the parties an opportunity to file additional written arguments as part of their post-hearing briefs.

The interrogatory (Resp. Exh. 131, page 3) that serves as the basis for respondent's objection reads as follows:

> INTERROGATORY NO. 6: Identify by year all amounts and sources of earned income (gross and net), unemployment compensation, and

[5] As noted in Finding 16, the first assistant public defender in Racine, Jennifer Bias, asked complainant if she would like to work in Racine. Complainant responded that she did not want to leave Madison. Complainant testified that Ms. Bias' question constituted a "job offer." The Commission disagrees with complainant's characterization of Ms. Bias' question. In any event, the complainant never advised respondent that she had any job offer.

worker's compensation, from January 1, 1998 to the present. With respect to each source:

a) identify the source by name and address
b) identify the amount of income provided from the source; and
c) explain the nature of the work performed, if any, to earn the income received.

Complainant's response to the interrogatory, dated February 11, 2002, was a list with 2 entries for 1998, 2 for 1999 and 3 for 2000. There were no entries for either 2001 or 2002. This list reflected earned income in 1998 from a law school scholarship and from working as a secretary for a Madison business (Drake and Company). Complainant listed earned income in 1999 from unemployment compensation as well as $1523 for referred cases from the State Public Defender. She did not list any other sources of earned income, unemployment compensation or workers' compensation for 1998 or 1999, and complainant never filed a supplement to her interrogatory response.

Complainant, who had the burden of proof in this matter, was her own final witness. During its cross examination, respondent asked complainant several questions that built on the information that the only income complainant had from her solo legal practice in 1998 and 1999 was $1523 from the State Public Defender. In response to respondent's questions, complainant stated that the $1523 represented billings at $40/hour, for a total of approximately 40 hours. Complainant stated that she had listed all of the income she had made.[6]

Complainant sought to rehabilitate her testimony on redirect:

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[6] The tape recording of complainant's testimony on cross examination reflects the following exchange:

Q I think you said earlier that you had been to a pretrial where you saw Judy Gunderson. Do you remember anything about that case?
A Yeah. That was my friend's son. His name is Justin Wang.
Q So that wasn't a public defender referral case?
A No.
Q And you seek no compensation for that case?
A Yes, I did.
Q You did. But you didn't report it here [in response to Interrogatory 6]?
A I'm not sure why it's not there, but I'm I reported all the income that I made.

> Q In terms of earned income, are those figures listed there [in the answer to the interrogatory] complete as to all of your earnings?
> A No, no it's not. When I filed taxes, I filed income I made from Drake and Co. and a scholarship. I also had filed a schedule for self-employment income. And when I did this I didn't have my W-2s or my tax forms or anything, so I did have income from self-employment income.
> Q And that's not listed there?
> A No.
> Q So the information was complete given the records you had at the time when you completed the interrogatories?
> A Yes.
> Q But you didn't have all the information at that time?
> A I didn't have I know I didn't provide my tax forms, I don't think, to have all the tax schedules and that that I would have filed.
> Q In fact since then, just before the hearing in this matter, you did provide me with some additional tax information.
> A Yes.

At that point, respondent raised its objection to the testimony, contending that it was based upon a violation of complainant's discovery responsibilities. Complainant acknowledged she did not have a copy of her tax return materials with her when she answered the interrogatory or with her at hearing, but her attorney said he had a copy "somewhere."[7]

The relevant statutory language regarding respondent's objection is found in §804.01(5), Stats.

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[7] The same discovery request that included Interrogatory 6 also included various requests for production of documents. One such request, along with complainant's response, is also part of Resp. Exh. 131, and reads:

> Request No. 5: Produce an excised copy of your completed tax returns for calendar years 1998 to the most current year completed, showing all sources of income, including copies of W-2 of [sic] other wage statements.
> Answer: Copies of all such documents currently in complainant's possession or control are provided with this response.

Resp. Exh. 131 does not include any attachments. While someone reading complainant's response might assume that complainant's tax returns were attached to her response, there is nothing elsewhere in the record to suggest that that was the case.

> A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement the response to include information thereafter acquired, except as follows:
> (a) A party is under a duty seasonably to supplement the party's response with respect to any question directly addressed to all of the following:
> 1. The identity and location of persons having knowledge of discoverable matters.
> 2. The identity of each person expected to be called as an expert witness at trial.
> (b) A party is under a duty seasonably to amend a prior response if the party obtains information upon the basis of which 1. the party knows that the response was incorrect when made, or 2. the party knows that the though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.
> (c) A duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

Although the complainant stated that her interrogatory answer was "complete when made," the Commission cannot agree with that characterization. Complainant answered the interrogatories on February 11, 2002. She was asked to list "all amounts and sources of earned income from January 1, 1998 to the present." She provided a list without any statement to the effect that the list was incomplete.[8] She reaffirmed the completeness of her answer during her testimony on cross-examination.[9] It wasn't until her testimony on re-direct that complainant sought to effectively add income, in an unspecified amount. The interrogatory answer was not "complete" in February of 2002. If the complainant had additional income that was reflected on tax return schedules or other documents that were not readily available to her at the time she was answering the interrogatories, she had a responsibility to advise respondent of that fact. She did not and she effectively concealed that information from respondent. She only sought to correct her answer when she stood to benefit from the supplementation.

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[8] Complainant would have an incentive to under-report her income if the information found in the answer to the interrogatory was the basis for determining income lost by not having been selected to one of the ADA positions at issue.
[9] See footnote 5.

Respondent's objection to this testimony was proper Respondent was prejudiced by the proposed testimony, and its timing, and had no reasonable opportunity to cure the prejudice. While the testimony was not particularly important in the overall context of the case, if allowed in the record, the complainant would have been rewarded for having failed to fulfill her discovery obligation. At a minimum, the complainant's interrogatory response was sloppy. It could also be interpreted as a deliberate misstatement of fact. Complainant is an attorney and had every reason to be aware of the importance of responding to the interrogatory both truthfully and completely. She failed to do so and it would be an unfair result to allow her to amend her answer while she testified on re-direct as the final witness in a hearing that covered three days. Therefore, respondent's objection to a portion of complainant's testimony on re-direct is sustained and that testimony has not been considered by the Commission in deciding the merits of complainant's claim.

ORDER

This matter is dismissed.

Dated: Nov 14, 2002 STATE PERSONNEL COMMISSION

ANTHONY J. THEODORE, Commissioner

KMS:990105Cdec1

KELLI S. THOMPSON, 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 review within 30 days after the service of the Commission's order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. Unless the Commission's decision was served personally, service of the decision occurred on the date of mailing as set forth in the attached affidavit of mailing. Not later than 30 days after the petition has been filed in circuit court, the petitioner must also serve a copy of the petition on all parties who appeared in the proceeding before the Commission (who are identified immediately above as "parties") or upon the party's attorney of record. See §227.53, Wis. Stats., for procedural details regarding petitions for judicial review.

It is the responsibility of the petitioning party to arrange for the preparation of the necessary legal documents because neither the commission nor its staff may assist in such preparation.

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

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

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

2/3/95