

STATE OF WISCONSIN
BARBARA REINHOLD,
Complainant,

v.

**District Attorney, OFFICE OF THE
COLUMBIA COUNTY DISTRICT
ATTORNEY,**
Respondent.

Case No. 95-0086-PC-ER

PERSONNEL COMMISSION

DECISION AND ORDER

This case is before the Commission as a follow-up to matters conditionally granted in a Commission ruling dated September 16, 1996 (hereafter, Prior Ruling), wherein the Commission noted that certain allegations would be dismissed unless complainant followed a prescribed procedure.

The Prior Ruling addressed respondent's motion to dismiss the complaint as well as deficiencies in the complaint which the Commission treated as requests to amend the complaint. Three such requests were granted on a conditional basis. Specifically, complainant requested permission to amend the complaint to allege that: 1) sex harassment occurred on an ongoing basis; 2) in November 1994, complainant was required to represent herself as a secretary to the court and other members of the Wisconsin bar; and 3) in November 1994, complainant was told by Mr. Bennett that he should never have hired a woman assistant district attorney "to do a man's job." The conditional nature of granting complainant's request to amend the complaint to include these three allegations was noted as follows (p. 8, Prior Ruling):

Respondent contends the allegations of ongoing conduct and the two actions alleged to have been made by Mr. Bennett in November 1994, are defective as amendments because complainant has not sworn or attested to them "in a Complaint or Amended Complaint." The Commission agrees that a technical defect exists in this regard but concludes it is appropriate to provide complainant with an opportunity to cure the defect. Accordingly, complainant has a period of 21 calendar days from the date this ruling was mailed (as recited in the Affidavit of Mailing sent with each party's copy of this ruling), to submit these three allegations in a statement that has been signed, verified and notarized, as required under §PC 2.02(2), Wis. Adm. Code. If she does not submit the required statement by the due date, the Commission will dismiss the allegations.

The need to cure the technical defect was referenced again in the ORDER section of the Prior Ruling (p. 12).

Furthermore, the importance of curing the technical defects was apparent from discussion in the Prior Ruling. Specifically, without even an allegation that a discriminatory/retaliatory act occurred during the Actionable Period, the case would be dismissed for untimely filing.

Complainant has not cured the technical defect as directed by the Commission. Instead of verifying the information herself, her attorney (by letter dated October 3, 1997) once again provided the information under his own signature which is the same defect addressed in the Prior Ruling.¹ Accordingly, the three claims remain defective and are dismissed.

The Prior Ruling discussed the timeliness issue raised by respondent presuming that the defect would be cured. Since it has not, the analysis is discussed below in light of the surviving allegations.

The surviving allegations are shown below using the statement of issues shown on p. 9 of the Prior Ruling but without the three defective allegations:

I. Claim of Sex Harassment: Respondent Bennett by his actions created an intimidating, and hostile environment by engaging in inappropriate conduct, including but not limited to the following:

- a) deferring to Columbia County police officer's judgment on prosecutorial decisions over complainant Reinhold's and her fellow female assistant district attorney's, Rose Yanke, legal judgment.
- b) soliciting police officers' comments on complainant Reinhold's and Ms. Yanke's work performance while refusing to allow complainant Reinhold and Ms. Yanke to respond to said comments, because in the respondent's estimate, it was a waste of time to consider the female viewpoint when respondent had heard the male officer's side of the story.
- c) refusing to address the hostile and discriminatory conduct of certain Columbia County Sheriff's Department deputies toward complainant Reinhold and Ms. Yanke.
- d) questioning complainant's ability to do her job because of her gender.
- e) subjecting complainant to sexually inappropriate and offensive statements including:

¹ The Commission further notes that complainant's attorney had signed the initial complaint filed on June 23, 1995, and was informed that it had to be notarized by his client rather than by counsel. The complaint was later signed and notarized by complainant in the perfected complaint filed on July 6, 1995.

i) in reference to an instance in which complainant object to Mr. Bennett's implication that complainant had sexual relations with some of the police officers, Mr. Bennett threatened complainant saying if she ever "crossed" him, he would have "her tits in a wringer." (Emphasis added.)

ii) in reference to an instance in which complainant asked for the day off because she had worked the entire previous evening, Mr. Bennett refused the request saying in complainant "had the balls" she would be able to handle staying awake all night and working the following day. (Emphasis added.)

f) degrading and humiliating complainant by chastising her work performance in the presence of other employees.

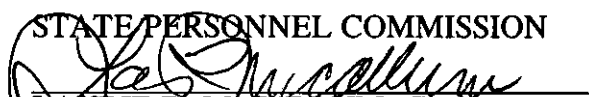

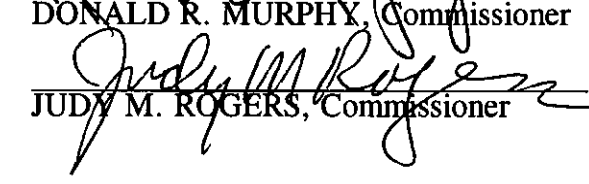
II. Claim of FEA Retaliation: Mr. Bennett threatened to fire complainant in retaliation for her opposition to respondent's conduct.

The above-noted claims do not contain any allegation of sex harassment or of FEA retaliation during the 300 day period prior to the date the complaint was filed and, accordingly, all allegations are dismissed as untimely filed for reasons previously detailed in the Prior Ruling.

ORDER

That, this case be dismissed as untimely filed.

Dated: November 7, 1997.

STATE PERSONNEL COMMISSION

LAURIE R. McCALLUM, Chairperson

DONALD R. MURPHY, Commissioner

JUDY M. ROGERS, Commissioner

JMR
950086Cru14.doc

Parties:
Barbara Reinhold
6673 Traveler Trail
Windsor, WI 53598

Timothy C. Henney,
District Attorney for Columbia County
400 DeWitt Street
P. O. Box 638
Portage, WI 53901-0638

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