

MARY E. NEWBOLD,
Complainant,

v.

**Public Defender, OFFICE OF THE STATE
PUBLIC DEFENDER,**
Respondent.

**RULING ON
COMPLAINANT'S
REQUEST FOR A FREE
COPY OF TRANSCRIPT**

Case Nos. 96-0053,0095-PC-ER

These files have been closed since February 9, 2000, when the complaints were dismissed in connection with a decision in favor of the respondent following a class 3 contested case hearing which took seven days. No petition for judicial review was filed. Complainant has requested by letter dated November 4, 2000, and filed November 8, 2000, a free copy of the transcript of the hearing.

Section 227.44(8), Stats., provides:

A stenographic, electronic or other record of oral proceedings shall be made in any . . . class 3 proceeding . . . Each agency may establish rules relating to the transcription of the record into a written transcript and the providing of free copies of the written transcript. Rules may require a purpose for transcription which is deemed by the agency to be reasonable, such as appeal, and if this test is met to the satisfaction of the agency, the record shall be transcribed at the agency's expense . . . Rules may require a showing of impecuniousness of financial need as a basis for providing a free copy of the transcript, otherwise a reasonable compensatory fee may be charged. If any agency does not promulgate such rules, then it must transcribe the record and provide free copies of written transcripts upon request.

The Commission's rules provide at §PC 5.03(9), Wis. Adm. Code, as follows:

RECORD OF PROCEEDINGS AND TRANSCRIPTS. A stenographic, electronic or other record of all hearings and such other proceedings as the commission may designate shall be made. Transcription of the record for purposes other than judicial review shall be at the expense of any party who requests the transcription. Copies of tape recordings or

transcripts shall also be furnished at the expense of the party making the request. However, upon a showing of indigency and legal need, a party may be provided a copy of the transcript or tape recording without charge. Where indigency and legal need have been found, the commission shall, in its discretion, determine whether to provide a copy of the transcript or to provide a copy of the tape recording.

In her November 4, 2000, letter, complainant addresses these criteria as follows:

My filing in federal court is based upon the same cause of action, against the same respondent. I filed in forma pauperis. I am proceeding pro se.

I made a request for production of documents to respondent and it objected based upon work product.

I anticipate a summary judgment and I need to prepare as thoroughly as possible to prevent its being granted to respondent. I would hope this pending matter's complexity would meet, or contribute to my meeting, the legal need criteria.

The commission addressed a very similar request in *Pugh v. DNR*, 86-059-PC-ER, 7/13/88, where the complainant wanted a transcript "to provide support for actions in other forums against various individuals and/or agencies." *Id.* p. 2. The Commission held as follows: "the Commission has no responsibility to provide the complainant with a transcript in order to assist him in commencing or pursuing unspecified other legal options that may be available to him before other forums. The reasons advanced by the complainant are quite different from the more typical situation where a transcript (or copy of the recording) is important for adequately preparing a post-hearing brief or for supporting a motion." *Id.* Implicit in the Commission's decision is that "legal need" for a free transcript will not (at least usually) be found where a party's need is premised on pursuit of a claim or cause of action in another forum. This is consistent with the entire administrative procedure act which addresses procedures for pursuing claims before agencies, and judicial review of those proceedings in circuit court, *see, e. g.*, §227.53, Stats. Complainant has not identified any circumstance which would lead to a conclusion that *Pugh* should not control this case.

ORDER

Complainant's request for a free transcript of the hearing held in this case is denied.

Dated: December 13, 2000.

STATE PERSONNEL COMMISSION

Laurie R. McCallum / jrm
LAURIE R. McCALLUM, Chairperson

Donald R. Murphy / jrm
DONALD R. MURPHY, Commissioner

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Judy M. Rogers
JUDY M. ROGERS, 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 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.)

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