

STATE OF WISCONSIN

PERSONNEL COMMISSION

FERNANDO DELGADILLO,
Complainant,

v.

**Chancellor, UNIVERSITY OF
WISCONSIN-MADISON,**
Respondent.

**RULING
ON PETITION
FOR REHEARING**

Case No. 99-0005-PC-ER

This matter is before the Commission on the complainant's petition for rehearing. The parties had an opportunity to file written arguments and the following facts are undisputed. The complainant has also objected to any participation by Commissioner Kelli Thompson in the consideration of this matter.

FINDINGS OF FACT

1. Complainant filed a discrimination complaint with the Equal Employment Opportunity Commission (EEOC) and cross-filed the complaint with the Personnel Commission (Commission) on January 6, 1999. The Commission assigned the complaint Case No. 99-0005-PC-ER and deferred investigation of the complaint to the EEOC.

2. In April of 1999, the complainant informed the Commission that he intended to commence an action in federal court.

3. By letter dated August 13, 1999, the Commission received notice that complainant was being represented by Attorney Robert Sutton and that complainant had commenced a proceeding in Milwaukee County Circuit Court. As a consequence, the Commission placed Case No. 99-0005-PC-ER in abeyance pending the outcome of the circuit court proceeding.

4. The action in Milwaukee County Circuit Court was removed to federal court.

5. By letter dated September 5, 2002, Attorney Sutton provided the Commission with a copy of an order issued on August 7, 2002, by the United States District Court for the Eastern District of Wisconsin. The Court ordered the federal action dismissed after granting defendants' motion to dismiss in part and denying it in part and granting defendants' motion for summary judgment. The federal action arose from complainant's claim of race discrimination relating to one or more employment actions. In his letter, Mr. Sutton wrote: "Under the circumstances the matter has been concluded and you may close your file."

6. Pursuant to Attorney Sutton's letter, the Commission dismissed Case No. 99-0005-PC-ER on September 25, 2002, "[a]t the request of the complainant."

7 By letter dated September 29, 2002, Mr. Delgadillo informed the Commission:

I did not request that this case be dismissed. (99-005-PC-ER) Please correct this obvious error

8. In a letter dated October 13, 2002, Mr. Delgadillo confirmed that he did not wish to have the case dismissed and indicated that Attorney Sutton was no longer representing his interests:

It has come to my attention that the State Personnel Commission has the option of reviewing this case regardless of the opinions of any attorneys or judges involved. I am requesting that you review my case. I would like to emphasize the fact that Mr Sutton never consulted with me prior to sending the letter to you in which he states, "the matter has been concluded and you *may* close your file." Do not use that letter as a basis for your action.

I am essentially representing myself. You may, for purposes of protocol, consider this letter as a petition for a [re]hearing.

9. By letter dated October 16, 2002, the Commission wrote Mr Sutton as follows:

In light of Mr Delgadillo's letter, the Commission assumes that you are no longer serving as his representative in this matter. If the Commission's assumption is incorrect, you must notify the Commission in writing and by October 25, 2002.

10. Mr Sutton did not notify the Commission as provided in the October 16th letter.

OPINION

Pursuant to §227.49(3)(b), Stats., rehearing may be granted on the basis of “some material error of fact.” Complainant has established that the Commission’s dismissal order dated September 25, 2002, was premised on a material error of fact because the complainant did not wish to have his case dismissed. Therefore, his petition for rehearing must be granted.

By letter dated November 6, 2002, complainant objected to participation by Commissioner Kelli Thompson in the consideration of his case. Complainant described the basis for his objection as follows:

I was not aware that the ex-governor’s daughter would [be] making judgment on this issue involving the University of Wisconsin-Medical School. To avoid possible conflicts of interest and in the interest of objectivity and fairness, I ask that Kelli S. Thompson not participate in resolving this issue.

The Commission has recently issued two rulings that have addressed requests to recuse Commissioner Thompson, and has denied the requests in both instances. *McCallum v. DOC*, 01-0046-PC-ER, 8/21/02; *Pillsbury v. DOC*, 99-0069-PC-ER, 7/17/02. The current case is more analogous to *McCallum*. In that case, the Commission explained the underlying method of analysis, citing *Balele v. DHFS et al.*, 00-0133-PC-ER, 8/15/01, and concluded that even though Commissioner Thompson’s father had been governor at the time of some of the relevant conduct in *McCallum*,

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 would be *de minimus* and in any event would impact the state financial situation under the current . administration.

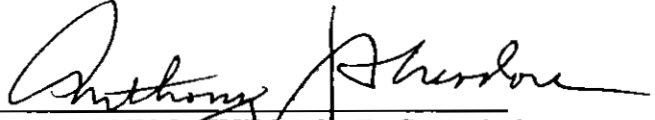
In the present case, it should also be noted that the Board of Regents serves as an extra layer of separation between the employment actions that underlie the complaint and Commissioner Thompson's father, the former governor.

ORDER

Complainant's objection to participation by Commissioner Thompson is denied. Complainant's petition for rehearing is granted. The Commission will schedule a status conference.

Dated: November 8, 2002

STATE PERSONNEL COMMISSION


ANTHONY J. THEODORE, Commissioner

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KELLI S. THOMPSON, Commissioner