

Andrew N. Matthews,
Complainant
v.
Commissioner John Danaher, III, et al.,
Respondents

: Office of Public Hearing
: c/o Connecticut Commission on
: Human Rights and Opportunities
:
: OPH/WBR No. 2007-062
:
: February 8, 2008

Ruling re: the complainant's motion to amend the complaint

On November 23, 2007, the complainant filed a complaint with the chief human rights referee alleging that the respondents had violated General Statutes § 4-61dd by retaliating against him for his protected disclosure of information when, on or about November 1, 2007, they transferred him into a hostile work environment. On December 6, 2007, the respondents filed their answer, affirmative defenses and motion to dismiss the complaint. On January 29, 2008, the complainant filed a motion to amend the complaint (motion), response to the respondents' affirmative defenses, and objection to the motion to dismiss. The respondents filed their objection to the motion (objection) on February 5, 2008. The complainant filed a response to the respondents' objection on February 6, 2008.

The complainant seeks to amend his complaint to add as a retaliatory act the respondents' tenth affirmative defense. In their tenth affirmative defense, the respondents alleged that: "The CHRO Office of Public Hearings lacks subject matter jurisdiction over this matter because Complainant is properly subject to discipline under

Conn. Gen. Stat. § 4-61dd for knowingly and maliciously making false charges of retaliation under subsection (a) thereof.” According to the complainant, the respondents’ defense is “threatening to take a personnel action against the Complainant for exercising his right to make a complaint of retaliation, pursuant to Conn. Gen. Statute § 4-61dd (b).” In their objection, the respondents first argue that the proposed amendment does not allege facts suggesting that the complainant either is currently subject to or has been threatened with future discipline, and that the tenth affirmative defense merely alleges that the complainant’s misconduct has deprived the human rights referees of jurisdiction to adjudicate this matter.

The factors to consider in granting a proposed amendment are whether the amendment would unreasonable delay the hearing on the merits, fairness to the respondents and the negligence, if any, of the complainant in offering the amendment. *Wagner v. Clark Equipment Co.* 259 Conn. 114, 128 (2002). In this case, granting the amendment would not cause a delay in the hearing or be unfair to the respondents. The respondents have adequate time to prepare their defense to the amendment as requests for production of documents are not due to be served until February 28, 2008 and the hearing is not scheduled until August 19-21, 26-28, 2008. Also, the complainant was not negligent in filing his motion as he could not have filed it until after the

respondents had filed their affirmative defense and he filed his motion within the deadline for the filing of his response to the respondent's motion to dismiss.¹

The respondents further argue that the motion should be denied because the "proposed amendment is not sworn to as required by Reg. Conn. Stat. Agen. 46a-54-38a(c)." That regulation, however, is inapplicable to this proceeding. Section 46a-54-38a (c) of the Regulations of Connecticut State Agencies applies to complaints filed with the commission on human rights and opportunities alleging violations of General Statutes §§ 46a-51 et seq. This complaint was not filed with the commission, it was filed with the chief human rights referee; and it does not allege violations of §§ 46a-51 et seq. but violations of § 4-61dd. The commission is not a party to, and has no involvement in the processing of, complaints alleging violations of § 4-61dd; and the statutory authority of the human rights referees to adjudicate violations of § 4-61dd is independent of the authority to adjudicate complaints filed with the commission.

The complainant's motion to amend is granted.

Hon. Jon P. FitzGerald
Presiding Human Rights Referee

c:
Sergeant Andrew N. Matthews
John P. Shea, Esq.

¹ The respondents' arguments in their objection will also be considered as a supplement to their motion to dismiss.