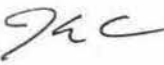


Date December 1, 2000

To: Commissioners
Maine Human Rights Commission

From: John E. Carnes 
Commission Counsel
Maine Human Rights Commission

RE: Validity of Complaints Amended After the ~~Six Month~~ Deadline to Meet the Verification Requirement

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At the October Commission Meeting an attorney for a Respondent argued that a complaint filed within the ~~six month~~ filing period under the Complainant's attorney's signature was untimely because the complaint was not amended to provide the Complainant's verification under oath until five days after the time period had expired. Some Commissioners expressed concern about the issue. I would like to attempt to address this concern.

The Maine Human Rights Act, 5 M R S A §4611, states that a complaint is to be filed "under oath...stating the facts concerning the alleged discrimination" and "must be filed...not more than ~~six months~~ after the alleged act of unlawful discrimination." Title VII of the federal Civil Rights Act of 1964 states that a complaint "shall be in writing under oath" and "filed within ~~six months~~ ~~eighty~~ ~~days~~ after the alleged unlawful employment practice." 42 U.S.C. §2000e-5 (b) and (e).

EEOC's long-standing procedural rule, 29 C.F.R. §1601.12 (b), provides that "a charge may be amended to cure technical defects or omissions, including failure to verify the charge...such amendments...will relate back to the date the charge was first received."

In 1999, the Maine Human Rights Commission, after public hearing, amended its Procedural Regulations to codify its long-standing practice of allowing amendments of complaints to "cure technical defects or omissions, including failure to swear to the complaint under oath before a Notary Public." There were no written or oral objections presented during the public hearing process, probably because the Commission language is almost identical to the federal language.

I think the difference between "filing" a complaint and "perfecting" a complaint should be kept in mind. If nothing had been filed prior to the ~~deadline~~ deadline, the attempt to file five days later would have been unsuccessful. But in this instance the Commission received before the deadline a three-page, typed charge identifying the parties and setting forth in detail the alleged acts of discrimination. The defect of not having the sworn verification of Complainant was corrected five days later.

Federal Courts in the Third, Fifth, Seventh and Tenth Circuits have held that the EEOC rule is a proper interpretation of Title VII requirements, calculated to advance the remedial purposes behind enactment of the Civil Rights Act. For example, see: Price v. Southwestern Bell Tel. Co., 29 FEP 1584 (5th Cir. 1982); Weeks v. Southern Bell Tel. & Telegraph Co., 1 FEP 656 (5th Cir. 1969); Philbin v. General Elec. Capitol Auto Lease, Inc., 55 FEP 867 (7th Cir. 1991); Peterson v. Wichita, 51 FEP 525 (10th Cir. 1989) cert. denied, 52 FEP 1648 (1990). The Fourth Circuit recently reversed its own earlier position held since 1975, and ruled that such amendments are not allowed by Title VII. Edelman v. Lynchburg College, 83 FEP 1708 (4th Cir. 2000). The Fourth Circuit is now out-of-step with all other courts.

At some point the U. S. Supreme Court may provide clarification. In the meantime I recommend that the Commission follow its own duly promulgated Rule 2.02 F and allow amendments to correct the omission of formal verification in a previously filed charge. Please remember that the amendment relates back to the filing of the original document. The amendment does not expand the ~~time~~ period. The actionable time period remains ~~30~~ months from the date of the alleged act of discrimination.

If you have questions, please do not hesitate to call me, or raise them at the next Commission Meeting.

cc: Patricia E. Ryan, Executive Director