

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

THERESA M. REEL,
Complainant

v.

JUDICIAL CONDUCT BOARD OF
PENNSYLVANIA,
Respondent

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PHRC CASE NO. 201400111
EEOC CHARGE NO. 17F201560165

RECOMMENDATION OF MOTIONS EXAMINER

AND NOW, this 5th day of February, 2015, upon consideration of *Respondent, The Judicial Conduct Board of Pennsylvania's Preliminary Objections to Complainant's Charge of Discrimination*, it is hereby

RECOMMENDED

to the full Pennsylvania Human Relations Commission, pursuant to 16 Pa. Code §42.131(c)(1), that *Respondent, The Judicial Conduct Board of Pennsylvania's Preliminary Objections to Complainant's Charge of Discrimination* be granted. The PHRC Harrisburg regional office has elected not to file a response to the Motion.

Generally, the Respondent argues that by application of the separation of powers doctrine, the PHRC lacks jurisdiction over the Judicial Conduct Board of Pennsylvania. More specifically, the Respondent submits that the Judicial Conduct Board of Pennsylvania is an independent board of the judicial branch of the state. Pa.Const.Art. 5 §18(a). The Respondent offers the Pa. Supreme Court precedent in the case of *First Judicial Dist. v. PHRC*, 556 Pa. 258, 727 A.2d 110, 1112 (Pa. 1999), in support of the jurisdictional argument.

In the *First Judicial Dist.* case, a sexual harassment complaint was filed with the PHRC against the Adult Probation Department of the First Judicial District. Generally, the

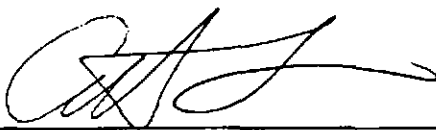
allegation was that a co-worker had sexually harassed another employee of the Adult Probation Department and the purportedly harassed employee sought policy changes in the department. The Court held that the PHRC was without power to direct a policy change because such a remedy would interfere with the operation of a court and therefore was prohibited by the separation of powers doctrine. Under the separation of powers doctrine, the PHRC does not have jurisdiction over cases involving the authority to select, discharge and supervise court employees.

In the present case, the Complainant alleged a sex-based refusal to hire. Clearly, when the question is the selection of employees by a board closely attached to the judicial branch of the state, the PHRC is without jurisdiction.

In the present circumstance, the question is clear. However, in order for a Complainant to retain their right to go into the courts of common pleas to pursue a claim of this nature, there must first be filed a PHRC claim. In the case of *Court of Common Pleas of Erie County, Pennsylvania (6th Judicial District), Juvenile Probation Department v. PHRC*, 682 A.2d. 1246, 1249 (Pa. 1996), the Pa. Supreme Court noted that court employees who are discriminated against are not without recourse. After the PHRC dismisses their claims for lack of jurisdiction such employees may file an action in the courts of common pleas based on the rights granted by the PHRA.

Because the Complainant's allegation implicates the separation of powers doctrine, the PHRC is without jurisdiction over the Complainant's complaint. Accordingly, this case should be dismissed.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

By: 

Carl H. Summerson
Motions Examiner

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Respondent

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ORDER

AND NOW, this 24th day of February, 2015, upon
consideration of the Recommendation of the Motions Examiner in the above captioned
case, it is hereby,

ORDERED

that the aforementioned Recommendation be and is hereby approved by the full
Pennsylvania Human Relations Commission. Accordingly, since the separation of powers
doctrine prohibits the PHRC from exercising jurisdiction over the Complainant's complaint,
the PHRC lacks jurisdiction. Accordingly, this matter is hereby dismissed.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

By: _____

Gerald S. Robinson
Vice Chairman

Attest

Rev. Dr. James Garmon, Sr.
Secretary