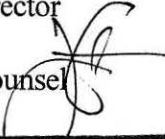


MAINE HUMAN RIGHTS COMMISSION

Memo


Date: December 29, 2008

To: Patricia E. Ryan, Executive Director

From: John P. Gause, Commission Counsel 

Re: E07-0026, 

I think that the supplemental charge of discrimination in this case should not be administratively dismissed.

The supplemental charge, received December 19, 2008, alleges retaliation for filing a complaint of discrimination with the Commission on November 1, 2007. The dates of alleged retaliation are December 11, 2007 (when Respondent received the MHRC complaint and initiated a misconduct investigation against Complainant) and February 27, 2008 (when Respondent terminated Complainant as a result of the misconduct investigation). Our Procedural Rule states, in relevant part, that "amendments alleging additional acts which constitute unlawful practices related to or growing out of the subject matter of the original complaint will relate back to the date the complaint was first received." Procedural Rule § 2.02(F). An allegation of retaliation for filing an administrative complaint of discrimination is one that "grow[s] out of the subject matter of the original complaint" within the meaning of § 2.02(F). *Cf. Clockedile v. New Hampshire Dept. of Corrections*, 245 F.3d 1, 6 (1st Cir. 2001) ("retaliation claims are preserved so long as the retaliation is reasonably related to and grows out of the discrimination complained of to the agency- e.g., the retaliation is for filing the agency complaint itself") (deciding that it is unnecessary to administratively exhaust this type of retaliation complaint). Therefore, a complaint alleging retaliation for filing a MHRC complaint will be timely with us even if it is filed more than  from the date of alleged retaliation. All such amendments will relate back to the date that the original complaint was filed, which will necessarily precede the date of the alleged retaliation.

Cc: Barbara Lelli, Chief Investigator