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Al Young et al v. Civil Service Commission – Docket No. 23-0290

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Lt. John Conroy v. Civil Service Commission – Docket No. 23-0289

Order regarding Plaintiffs' Motion for a *Nunc Pro Tunc* Order

The two actions captioned above have been joined by the parties. One hearing was held to address both matters. Plaintiffs moved for a *Nunc Pro Tunc* Order (1) that the action is timely instituted, (2) that the rejected Complaints be docketed in the actions, and (3) that the Complaints be deemed an Amended Complaint. The Defendant opposes the allowance of these Motions and asks that its oppositions be treated as Motions to Dismiss. For the reasons that follow, Plaintiffs' Motions are **DENIED**, and Defendants Cross Motions to dismiss are **ALLOWED**.

On February 24, 2022, the Civil Service Commission ("the Commission") dismissed the Plaintiffs' appeal from the Human Resources Division's decision to deny their request to add two additional points to their scores on a promotional examination under the so-called 25-year promotional preference rule. The Plaintiffs, through counsel, electronically filed a Complaint challenging the Commission's decision on March 28, 2022 at 10:59PM. No Civil Action Cover Sheet was filed with any of the Complaints. A Civil Action Cover Sheet is required by Superior Court Rule 29 and Standing Order 1-83. Due to the failure to file Civil Action Cover Sheets, the Complaint was rejected on March 29, 2022, the next business day.

According to the Declaration of Alan H. Shapiro, Plaintiffs' counsel, he received a notice via e-mail from the e-filing system that the Complaint(s) was rejected on March 29, 2022. Following that, counsel received a voicemail from the Suffolk Superior Court Clerk's Office asking him to call them concerning the Complaint. He contends that he returned the call, but no one picked up, so he left a message but did not receive a return call. (See Docket No. 5). Counsel did not follow-up.

Following this, Plaintiffs made no attempt to address or resolve the issue. No Civil Action Cover Sheets were filed, and the Complaints were not resubmitted. Plaintiffs' counsel stated in his Declaration that he experienced a number of personal and professional problems that distracted him. (See Docket No. 5).

On February 2, 2023, about ten (10) months after the original Complaints were rejected, Plaintiffs filed these actions - now with a Civil Action Cover Sheet. At that time, the Plaintiffs also filed for a *Nunc Pro Tunc* Order (1) that the actions were timely instituted, (2) that the rejected Complaints be docketed in this action, and (3) that the

Complaints be deemed as Amended Complaints. This Courts denied the motions in February, 2023, ordered the Plaintiffs to serve the Motions on the Defendant, and permitted the Defendant to file an opposition and memorandum.¹

A person who contends they have been aggrieved by an administrative decision may seek judicial review by filing a complaint in Superior Court “within thirty days after receipt of notice of the final decision of the agency.” G.L. c. 30A, §14(1), see *Friedman v. Board of Registration in Med.* 414 Mass. 663, 664-665 (1993), G.L. c. 31, §44 (“Any party aggrieved by a final order or decision of the commission following a hearing . . . may institute proceedings for judicial review in the superior court within thirty days after receipt of such order or decision.”). A statutory deadline is “a jurisdictional requirement and not susceptible to extension in limited circumstances as provided in the statute” *Friedman*, 414 Mass. at 666, see *Clemons v. Director of the Div. of Employment Sec.*, 369 Mass. 74, 79 (1975)(failure to file for judicial review of an administrative decision within the time specified in the statute results in the dismissal of the appeal.)

In the instant cases, the Complaints was submitted on the 30th day. The issue, however, is the Civil Action Cover Sheet. “The Clerk-Magistrate [is ordered] not to accept for filing any Complaint or other Pleading (hereinafter “Complaint”) which commences a civil action unless accompanied by a Civil Action Cover Sheet completed and signed by the attorney or pro se party filing such pleading.” Standing Order 1-83, ¶2. That is what occurred in this case.

There is a provision for allowing a sort-of grace period of ten (10) days. “The Clerk-Magistrate, however, is authorized to accept for filing a Complaint without a Civil Action Cover Sheet submitted therewith if the Clerk-Magistrate is satisfied by representation of the offering counsel or pro-se party, by averments, in the Complaint, or otherwise, that the Statute of Limitations will run before the filing of the Civil Action Cover Sheet can be accomplished. In such event, the Civil Action Cover Sheet shall be filed within ten (10) days thereafter.” Standing Order 1-83 ¶3. In the instant cases, however, it was approximately ten (10) months since the Complaints were rejected.

Plaintiffs contend that the Clerk erred in rejecting the Original Complaint and that Standing Order 1-83 ¶3 empowers the Clerk to accept a complaint for filing without an accompanying civil action cover sheet if the Clerk is satisfied “by averments in the Complaint or otherwise, that the State of Limitations will run before the filing of the Civil Action Cover Sheet can be accomplished. Plaintiffs’ counsel only includes part of

¹ The two actions were filed in two different sessions and as such the initial rulings on the Motions for a *Nunc Pro Tunc* order were ruled on by two different Superior Court judges, although the rulings were fundamentally the same. Following the initial decisions, the two actions were joined by the parties.

Standing Order 1-83 ¶3, and fails to include that the Civil Action Cover Sheet shall be filed within ten (10) days.

Plaintiffs point to Rule 77 of the Massachusetts Rules of Civil Procedure which states, in part, “[a]ll motions and applications in the clerk’s office for issuing final process to enforce and execute judgments, for entering or order of the court are grantable of course by the clerk; but his action may be suspended or altered or rescinded by the court upon good cause shown. Mass.R.Civ.P. 77(b). Plaintiffs assert multiple times that the Clerk erred. The Clerk did not err. Plaintiffs’ counsel was advised that the Complaint was rejected. A representative from the Clerk’s Office went so far as to follow it up with a phone call.

Plaintiffs’ counsel erred by failing to file Civil Action Sheets, and unfortunately, this error was compounded by the fact that it took approximately ten (10) months (versus 10 days) to realize that he has erred. Simply placing the blame on the Clerk’s Office is not good cause.

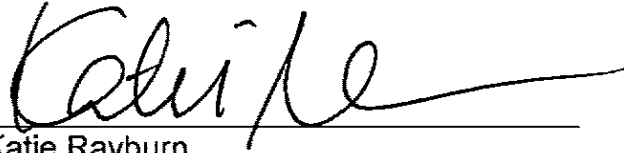
In reviewing similar cases, this court has found that unrepresented pro-se litigants have been held to the applicable filing deadline. While these cases are not binding upon this court, they are instructive. In the matter of *Lewis Stephen Lent, Jr. v. Michael T. Maloney*, Mass. App. Ct., No. 03-P-1052, slip. op. (September 30, 2004) (Rule 1:28 decision), the Plaintiff, prison inmate, sought review in certiorari from an adjudication of guilt in prison disciplinary proceedings, however, his action was dismissed because the filing date exceeded the statute of limitations period applicable to said action. *Id.* The Court upheld the lower court’s ruling. *Id.*

Additionally, in the matter of *John Earley v. Civil Services Commission*, 2021 WL 6236108 at *1 (2021), a pro se plaintiff filed a complaint outside of the thirty-day window. The Plaintiff argued that he attempted to file the complaint electronically two months prior however, “[d]ue to the delays in the Court system caused by Covid-19, the plaintiff waited until February to receive a response,’ or to contact anyone to anyone to determine whether his case had been accepted for filing.” *Id.* The plaintiff argued that the case was not filed earlier “because of [a] technical problem with a vendor hired by the State for filing.” *Id.* The court denied the pro se Plaintiff’s Motion to Extend Time for Filing Notice of Appeal *Nunc Pro Tunc*, due to his two (2) month delay. *Id.* at *3.

In the instant cases, the Plaintiffs were represented by competent counsel, unlike the cases discussed above. Counsel was aware of that Civil Action Cover Sheets were required and not timely filed. Counsel failed to cure the problem or to continue to follow-up with the Clerk’s Office. This Court is unable to order that these actions are timely filed. Further, given that the original Complaints were rejected, this Court is unable to accept

the newly filed Complaints as Amended Complaints because said documents are not amending anything since the original Complaints were rejected.

For the reasons stated herein, the Plaintiffs' Motions are **DENIED** and Defendants' Cross Motions to Dismiss are **ALLOWED**.

A handwritten signature in black ink, appearing to read 'Katie Rayburn', written over a horizontal line.

Katie Rayburn
Associate Justice of the Superior Court

Date: August 2, 2023