

BEFORE THE MONTANA DEPARTMENT
OF LABOR AND INDUSTRY

IN THE MATTER OF HUMAN RIGHTS BUREAU CASE NOS. 0095013453 & 54:

TRACY MEULI and MARQUIS MONTAGUE,)	Case Nos. 2086 and 2088-2009
)	
Charging Parties,)	
)	
vs.)	ORDER CERTIFYING
)	JUDGMENT AND
BILLINGS POLICE DEPARTMENT,)	NOTICE OF ISSUANCE
)	OF HEARING OFFICER
Respondent.)	DECISION

* * * * *

On February 19, 2010, BPD filed and served its motion for certification of summary judgment against Meuli, under Rule 54(b), M.R.Civ.P., as final. Pursuant to the applicable orders in this proceeding, response briefs in opposition to the motion were due by, at the latest, March 10, 2010. “Order Setting Contested Case Hearing Date and Prehearing Schedule,” (Meuli case) June 26, 2009, and “Rescheduling Order,” August 28, 2009. No such briefs have been timely filed.

In an action involving multiple claims or parties, such as these consolidated cases, summary judgment on some but not all the claims necessarily lacks finality. *Shull v. First Interst. Bank of Great Falls* (1993), 262 Mont. 355, 864 P.2d 1268; *Krusemark v. Hansen* (1979) 182 Mont. 291, 597 P.2d 48, 49. Rule 54(b) of the Mont.R.Civ.P. provides for entry of a final judgment on the claim or claims adjudicated by partial summary judgment without the necessity of awaiting final adjudication of the remaining claims. *Satterlee v. Lumberman’s Mut. Casualty Co.*, ¶15, 2007 MT 325, 340 Mont. 176, 178 P.3d 689; *Jackson v. B.N. Inc.* (1982), 201 Mont. 123, 652 P.2d 223, 224. The rule provides a way to avoid unjust delay in entering judgment on a distinctly separate claim or as to fewer than all of the parties until final adjudication of the entire case. 10 Wright & Miller, Fed. Prac. & Proc. (1973), §2654 *at* 35; *Allis-Chalmers Corp. v. P. E. Co.* (3rd Cir. 1975), 521 F.2d 360.

Rule 54(b) balances the undesirability of piecemeal appeals against the need to make review available when it best serves the needs of the parties. *Roy v. Neibauer*, (1980), 188 Mont. 81, 610 P.2d 1185, 1188. It is within the discretion of the tribunal to grant or deny requests for a Rule 54(b) Certification. *Id.* *Roy* provides guidance for ruling upon a motion for certification of finality. Its teachings are set forth very clearly, in the concluding paragraphs of the decision.

The factors to consider are:

1. The relationship between the adjudicated and unadjudicated claims;
2. The possibility that the need for review might or might not be mooted by future developments in litigation of the unadjudicated claims before the certifying tribunal;
3. The possibility that the appellate review tribunal might end up considering the same issue a second time;
4. Whether a claim or counterclaim exists in the unadjudicated claims that could result in a set off against the judgment sought to be made final; and
5. Whether there are any other factors (delay, economic considerations including solvency, shortening trial time, triviality of competing claims, expense, etc.) bearing upon certification.

Roy at 1189, (setting forth these five factors in a quote from *Singer Housing Co. v. Seven Lakes Venture* (D.Colo. 1979), 466 F.Supp. 369, 378-379).

Obviously, not all of these factors will bear upon the propriety of certification in every case. *Roy* summarized the guiding principles for a Rule 54(b) certification with a quote from *Allis-Chalmers Corp. at 365*:

(1) [T]he burden is on the party seeking final certification to convince the district court that the case is the “infrequent harsh case” meriting a favorable exercise of discretion; (2) the district court must balance the competing factors present in the case to determine if it is in the interest of sound judicial administration and public policy to certify the judgment as final; (3) the district court must marshal and articulate the factors upon which it relied in granting certification so that prompt and effective review can be facilitated.

Roy at 1189.

Although Meuli’s claims are similar in nature and circumstance to those of Montague, their interviews were separate. Their disabilities differ significantly for purposes of application of the legal standards – the difference resulted in summary judgment being granted against Meuli and denied against Montague. Thus, the relationship between their claims supports providing finality for the summary judgment against Meuli.

No matter what may now occur regarding Montague’s claims, it will have no effect upon any review of summary judgment against Meuli.

Because the difference in the scopes of their respective disabilities was pivotal in the differing outcomes of the motion for summary judgment against them both,

the issues in any appeal from a final adjudication of Montague's claims will not be the same as the issues in any appeal from summary judgment against Meuli.

There are no claims or counterclaims in Montague's case and summary judgment against Montague did not result in any award. There is no possibility of any set offs.

There are no other factors that relate to the question of certification.

BPD has convinced the Hearing Officer that this is the "infrequent harsh case" meriting favorable exercise of discretion in certifying summary judgment as final. There are no competing factors justifying delay and it is in the interest of sound quasi-judicial administration and public policy to certify the judgment against Meuli as final.

Therefore, based upon the factors marshaled and articulated in this order, the Hearing Officer now certifies as final the summary judgment against Tracy Meuli on her claims that the Billings Police Department illegally discriminated against her in the provision of public services by interrogating her without an ASL certified or otherwise "qualified" interpreter when, on September 9, 2008, she came to the BPD offices at the request of BPD and was interviewed, without being detained, arrested or otherwise taken into the custody of BPD.

Meuli's complaint is dismissed. Her rights to seek review of this Hearing Officer Decision are set forth in the "Notice of Issuance of Administrative Decision," which follows herein on page 4.

DATED: March 12, 2010.

/s/ TERRY SPEAR

Terry Spear, Hearing Officer

Hearings Bureau, Montana Department of Labor and Industry

* * * * *

NOTICE OF ISSUANCE OF ADMINISTRATIVE DECISION

To: Robert L. Kelleher Jr., attorney for Tracy Meuli, and Harlan Krogh, attorney for Billings Police Department:

The decision of the Hearing Officer, above, which is an administrative decision appealable to the Human Rights Commission, issued today in this contested case.

Unless there is a timely appeal to the Human Rights Commission, the decision of the Hearing Officer becomes final and is not appealable to district court. Mont. Code Ann. § 49-2-505(3)(c)

TO APPEAL, YOU MUST, WITHIN 14 DAYS OF ISSUANCE OF THIS NOTICE, FILE A NOTICE OF APPEAL, WITH 6 COPIES, with:

**Human Rights Commission
c/o Katherine Kountz
Human Rights Bureau
Department of Labor and Industry
P.O. Box 1728
Helena, Montana 59624-1728**

You must serve **ALSO** your notice of appeal, and all subsequent filings, on all other parties of record.

ALL DOCUMENTS FILED WITH THE COMMISSION MUST INCLUDE THE ORIGINAL AND 6 COPIES OF THE ENTIRE SUBMISSION.

The provisions of the Montana Rules of Civil Procedure regarding post decision motions are NOT applicable to this case, because the statutory remedy for a party aggrieved by a decision, timely appeal to the Montana Human Rights Commission pursuant to Mont. Code Ann. § 49-2-505 (4), precludes extending the appeal time for post decision motions seeking relief from the Hearings Bureau, as can be done in district court pursuant to the Rules.

The Commission must hear all appeals within 120 days of receipt of notice of appeal. Mont. Code Ann. § 49-2-505(5).