

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



LA TRINA WOODS,

Charging Party,

v.

LOS ANGELES SUPERIOR COURT,

Respondent.

Case No. LA-CE-40-C

PERB Decision No. 2301-C

December 21, 2012

Appearance: La Trina Woods, on her own behalf.

Before Martinez, Chair; Dowdin Calvillo and Huguenin, Members.

DECISION

DOWDIN CALVILLO, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by La Trina Woods (Woods) from the dismissal of an unfair practice charge. The Office of the General Counsel dismissed the charge on the ground that Woods failed to provide proof of service of the charge as required by PERB Regulation 32140.¹

The Board has reviewed the entire record in this case, including the unfair practice charge, the Notice of Deficient Filing (Notice) and dismissal letters issued by the Board agent, and Woods's appeal from dismissal. Based upon that review, the Board affirms the dismissal of the charge for the reasons set forth below.

FACTUAL SUMMARY

On September 6, 2011, Woods filed an unfair practice charge alleging that her employer, the Los Angeles Superior Court (Court) violated the Trial Court Employment

¹ PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

Protection and Governance Act (Trial Court Act)² by issuing her a notice of suspension on March 3, 2011. On September 21, 2011, a PERB Board agent issued the Notice informing Woods that the charge could not be investigated because she did not include a proof of service with her filing as required by PERB Regulation 32140.³ The Notice informed Woods of the requirement in PERB Regulation 32615(c)⁴ that an unfair practice charge be served on the respondent and that proof of service be filed with PERB, and set forth the requirements for service on a trial court pursuant to PERB Regulation 32142(c)(6).⁵ The Notice further stated

² The Trial Court Act is codified at Government Code section 71600 et seq.

³ Regulation 32140 provides, in relevant part:

(a) . . . All documents required to be served shall include a “proof of service” declaration signed under penalty of perjury which contains the following information: (1) The name of the declarant; (2) the county and state in which the declarant is employed or resides; (3) a statement that the declarant is over the age of 18 years and not a party to the case; (4) the address of the declarant; (5) a description of the documents served; (6) the method of service and a statement that any postage or other costs were prepaid; (7) the name(s), address(es) and, if applicable, fax number(s) used for service on the party(ies); and (8) the date of service.

(b) Whenever “service” is required by these regulations, service shall be on all parties to the proceeding and shall be concurrent with the filing in question.

⁴ Regulation 32615(c) provides: “Service and proof of service on the respondent pursuant to Section 32140 are required.”

⁵ Regulation 32142(c)(6) provides, in relevant part:

Whenever a document is required to be “filed” or “served” with any of the below listed entities, the proper recipient shall be:

(c) An employer

(6) in the case of a trial court employer as defined in Government Code section 71601(k) or 71801(k): the individual designated to receive service or the executive officer.

that PERB staff had called Woods on September 14 and 20, 2011, informed her of the problems with her filing, and advised her that her filing could not be processed until she provided a copy of a proper proof of service. The Notice states that Woods did not return the calls or inform PERB that a proof of service would be submitted. The Notice concluded by informing Woods that the charge would be dismissed unless she corrected the deficiencies before September 27, 2011.

On October 3, 2011, the Board agent sent Woods another letter stating that, on September 27, 2011, the Board agent had left a telephone message on Woods's home phone to verify that she received the Notice, but that, as of the date of the letter, the Board agent had not received either a return telephone call or a proper proof of service. Therefore, the letter stated that the charge was dismissed for the reasons set forth in the Notice.

Woods filed an appeal from dismissal on November 28, 2011. Also included with the appeal is a copy of a letter dated October 21, 2011, signed by Cher Mason (Mason), requesting an extension of time to appeal the dismissal.⁶ The letter asserts that Mason faxed the PERB documents with a proof of service to PERB's Glendale office on September 2, 2011, and that a PERB employee had confirmed that the documents were filed on September 6, 2011. Attached to the letter is copy of a proof of service, signed by Eleanor Verner, that states that the charge was personally served on Michael Lampert of the Court.⁷ The letter from Mason is not signed under penalty of perjury.

⁶ PERB's file indicates that, on October 25, 2011, the PERB Appeals Assistant granted an extension of time until November 23, 2011, for Woods to file her appeal. Pursuant to PERB Regulation 32130(c), the appeal filed November 28, 2011, was deemed timely. The Court did not file a response to the appeal.

⁷ Also attached to the appeal is a copy of the charge with a signed proof of service that fails to identify the parties served.

DISCUSSION

PERB Regulation 32615(c) requires that an unfair practice charge be served on the respondent and that proof of service be filed with PERB. Regulation 32142(c)(6) further requires that service on a trial court employer be made on the individual designated to receive service or the executive officer. The purpose of the service requirement is to protect a respondent from stale claims or to prevent prejudice because the respondent was unable to defend itself due to late service. (*Fontana Unified School District* (2003) PERB Order No. Ad-324 (*Fontana*)). “These requirements are not merely ritualistic. They are basic to providing due process to the involved parties.” (*Los Angeles Community College District* (1984) PERB Decision No. 395.)

The record before us indicates that the Board agent who conducted the investigation of the charge made several attempts to contact Woods concerning her failure to provide a valid proof of service. Having received no response, the Board agent issued the September 21, 2011 Notice providing Woods with formal notice that her charge would be dismissed unless she filed a valid proof of service. Having received no response to that Notice, and despite attempting to contact Woods again by telephone, the Board agent dismissed the charge.

In her appeal, Woods provides no explanation for her failure to respond to the Board agent’s repeated inquiries prior to dismissal of the charge. Although she appears to assert on appeal that she provided a proof of service with the filing of the charge, she failed to make that assertion to the Board agent prior to dismissal. Moreover, the documents submitted by Woods in support of her appeal appear to contain two different versions of a proof of service that Woods claims was submitted to PERB on September 2, 2011, with one identifying a person purportedly served and the other blank. Woods provided no information to explain this discrepancy. While the Board may excuse defective service in some circumstances (*Fontana, supra*, PERB Order

No. Ad-324), there is no showing that Woods ever provided the Board agent with any proof of service prior to dismissal of the charge. Therefore, given the lack of any explanation for Woods's complete failure to respond to the Board agent's repeated inquiries and in the absence of clear evidence of a valid proof of service, we conclude that Woods has failed to establish sufficient grounds for overturning the Board agent's dismissal of the charge for failure to comply with PERB regulations governing proof of service.⁸

ORDER

The unfair practice charge in Case No. LA-CE-40-C is hereby DISMISSED WITH PREJUDICE.

Chair Martinez and Member Huguenin joined in this decision.

⁸ Given our conclusion that the charge was properly dismissed for failure to provide proof of service, we need not decide whether the proof of service attached to the October 21, 2011 letter from Mason would have satisfied the requirements of PERB Regulation 32142(c)(6).