

1 UNITED STATES COURT OF APPEALS

2 FOR THE SECOND CIRCUIT

3 - - - - -

4 August Term, 2005

5 (Argued: April 27, 2006

Decided: November 29, 2006)

6
7 Docket No. 05-1858-cv

8
9 FEMI BOGLE-ASSEGAI,

10 Plaintiff-Appellant,

11 - v. -

12 STATE OF CONNECTICUT, CONNECTICUT COMMISSION ON HUMAN
13 RIGHTS AND OPPORTUNITIES; and CYNTHIA WATTS-ELDER, in
14 her official capacity as Executive Director,
15 Connecticut Commission on Human Rights and
16 Opportunities, ("CHRO") and LEANNE APPLETON, in her
17 individual and official capacity as Director of Finance
18 of CHRO; and DONALD NEWTON, in his individual and
19 official capacity as CHRO Chief of Field Operations,

20 Defendants-Appellees.

21
22 Before: KEARSE, McLAUGHLIN, and SACK, Circuit Judges.

23 Appeal from a judgment of the United States District Court
24 for the District of Connecticut, Holly B. Fitzsimmons, Magistrate
25 Judge, dismissing employment discrimination claims, see 42 U.S.C.
26 §§ 1981, 1983; Title VII of the Civil Rights Act of 1964, 42 U.S.C.
27 § 2000e et seq., on grounds of lack of service of process, Eleventh
28 Amendment immunity, and untimeliness.

29 Affirmed.

30 JOSEPHINE SMALLS MILLER, Danbury,
31 Connecticut (Cynthia R. Jennings, The
32 Barrister Law Group, Hartford,
33 Connecticut, on the brief), for Plaintiff-
34 Appellant.

1 JOSEPH A. JORDANO, Assistant Attorney
2 General, Hartford, Connecticut (Richard
3 Blumenthal, Attorney General of the State
4 of Connecticut, Hartford, Connecticut, on
5 the brief), for Defendants-Appellees.

6 KEARSE, Circuit Judge:

7 Plaintiff Femi Bogle-Assegai, a former employee of
8 defendant Connecticut Commission on Human Rights and Opportunities
9 ("CHRO"), appeals from a judgment of the United States District
10 Court for the District of Connecticut, Holly B. Fitzsimmons,
11 Magistrate Judge, dismissing her complaint alleging principally that
12 CHRO and various of its officials discriminated against her and
13 terminated her employment in violation of her rights under 42 U.S.C.
14 § 1981, as enforced through 42 U.S.C. § 1983; Title VII of the Civil
15 Rights Act of 1964, 42 U.S.C. § 2000e et seq.; and state law. The
16 district court granted defendants' motions to dismiss Bogle-
17 Assegai's §§ 1981 and 1983 claims and her state-law claims on the
18 grounds that (a) defendants State of Connecticut (the "State"),
19 CHRO, and CHRO employees in their official capacities had Eleventh
20 Amendment immunity against such claims, and (b) the individual
21 defendants had not been served with process in their individual
22 capacities. The court granted summary judgment dismissing Bogle-
23 Assegai's Title VII claims on the ground that they were time-barred
24 because she had not asserted them in an administrative complaint
25 within 180 days of the allegedly unlawful employment actions. On
26 appeal, Bogle-Assegai contends principally (1) that her Title VII
27 claims are not time-barred, and (2) that she should have been given
28 an opportunity to remedy the flaws in the service of process. For

1 the reasons that follow, we affirm.

2 I. BACKGROUND

3 Except as indicated below, the facts, as asserted in
4 defendants' motion for summary judgment and admitted by Bogle-
5 Assegai in response to that motion, include the following.

6 A. The Parties and the Course of Bogle-Assegai's Employment

7 Bogle-Assegai, an African-American of Jamaican descent,
8 was first employed by CHRO in the early 1990s as an investigator,
9 initially in a provisional position and thereafter in a permanent
10 position. In 1995, she was promoted to be regional manager of
11 CHRO's office in Bridgeport; in 1997, she became regional manager of
12 its Waterbury office.

13 Defendant Cynthia Watts-Elder was executive director of
14 CHRO from March 1999 until August 2003. Defendant Leanne Appleton
15 was CHRO's fiscal administrative supervisor from January 1994 until
16 2004.

17 Defendant Donald Newton, a CHRO employee for more than 30
18 years, began serving as its chief of field operations in 1999. In
19 that capacity, he supervised CHRO's regional managers. He
20 continually reminded all regional managers, including Bogle-Assegai,
21 that they were expected to be at work every day in accordance with
22 their approved schedules.

23 Bogle-Assegai, in her two positions as manager of CHRO
24 regional offices, was responsible for supervising the staffs and

1 operations of those offices. Her scheduled working hours were
2 8 a.m. to 5 p.m. In early 2001, Newton questioned Bogle-Assegai
3 about a time sheet representing that she had worked eight hours on
4 January 26, 2001, a day on which Newton had telephoned her office at
5 10 a.m. and been informed that she was not in. Bogle-Assegai
6 responded that she had in fact been in the office when Newton
7 called, because she had arrived at work that day at 9:30 a.m. (not
8 by 8 a.m. as her schedule required). Newton sought additional
9 information to shed light on the discrepancy between Bogle-Assegai's
10 insistence that she had been in her office by 9:30 a.m. and the
11 staff member's statement that Bogle-Assegai had not arrived by 10
12 a.m.

13 As Bogle-Assegai had an official parking space in a garage
14 with an electronic swipe-card access system, Newton asked Appleton
15 to obtain the access-card records for January 26, 2001, from the
16 garage operator. She did so, and the records for that date showed
17 that Bogle-Assegai had arrived in the garage at 10:30 a.m. Further,
18 other access-card records, whose accuracy Bogle-Assegai does not
19 concede, showed numerous occasions when Bogle-Assegai arrived
20 several hours late for work, occasions when she left work before the
21 scheduled end of the day, and occasions when she both arrived late
22 and left early. For example, for the period November 13, 2000,
23 through February 22, 2001--which encompassed 68 non-holiday
24 weekdays--the access-card records showed that Bogle-Assegai arrived
25 more than one hour late 34 times, including 15 days on which she
26 arrived more than two hours late. After a review of these records,
27 Watts-Elder requested an audit of all CHRO employee time sheets.

1 Examination of Bogle-Assegai's time sheets revealed numerous hours
2 claimed as work time that were contradicted by the garage access-
3 card records of her times of arrival and departure.

4 On March 1, 2001, Watts-Elder informed Bogle-Assegai in
5 writing that an investigation of her time records had been conducted
6 and that, based on that investigation, CHRO was considering formal
7 discipline, including dismissal. CHRO held a formal hearing on
8 March 12; Bogle-Assegai attended, but she refused to participate or
9 answer questions. She requested and was granted an opportunity to
10 provide a written response; but her response provided no information
11 addressing the discrepancies between her time sheets and the garage
12 access-card data.

13 On March 29, 2001, Bogle-Assegai received a letter from
14 Watts-Elder, stating that Bogle-Assegai's employment with CHRO would
15 be terminated effective April 12, 2001. (See Letter from Watts-
16 Elder to Bogle-Assegai dated March 29, 2001 ("Termination Letter").)
17 The Termination Letter also informed Bogle-Assegai that "[a]lthough
18 your dismissal will be effective April 12, 2001, and you will be
19 paid through that date, from this day forward, you will neither be
20 expected (nor authorized) to report to work." (Id. at 1.) The
21 letter stated that Bogle-Assegai was being dismissed for the good of
22 CHRO, "as a result of [her] fraudulent use of state time." (Id.)

23 On October 1, 2001, Bogle-Assegai filed an administrative
24 complaint with the United States Equal Employment Opportunity
25 Commission ("EEOC"). She thereafter received a right-to-sue letter.

26 B. The Present Action and the Motions To Dismiss

1 Bogle-Assegai commenced the present action in December
2 2002 against the State and CHRO, against Watts-Elder in her official
3 capacity, and against Appleton and Newton in their official and
4 individual capacities, alleging that Bogle-Assegai had been the
5 victim of discrimination on the basis of race, color, and national
6 origin. The complaint alleged that the State and CHRO had subjected
7 her to a hostile work environment and terminated her employment in
8 violation of Title VII. Invoking 42 U.S.C. § 1983, it alleged that
9 defendants had discriminated against Bogle-Assegai on the basis of
10 race, color, and national origin in violation of 42 U.S.C. § 1981
11 and her right to equal protection. The complaint also alleged that
12 defendants' conduct violated the Connecticut Fair Employment
13 Practices Act ("CFEPA"), Conn. Gen. Stat. §§ 46a-70, 46a-71. The
14 parties consented to have the case assigned to a magistrate judge
15 for all purposes.

16 Following discovery, defendants moved to dismiss Bogle-
17 Assegai's claims on various grounds. Appleton and Newton, who in
18 their amended answer to the complaint had alleged insufficiency of
19 service of process, sought dismissal pursuant to Fed. R. Civ. P.
20 12(b)(5) of the claims asserted against them in their individual
21 capacities, arguing that they had not been served personally. They
22 submitted affidavits stating that they had been served only through
23 the office of the State Attorney General and that they had not
24 authorized that office to accept service on their behalf.

25 In addition, all defendants moved pursuant to Fed. R. Civ.
26 P. 56 for summary judgment dismissing Bogle-Assegai's §§ 1981 and
27 1983 claims against the State, CHRO, and the individual defendants

1 in their official capacities on the ground that those claims were
2 barred by the Eleventh Amendment. Defendants contended that the
3 Eleventh Amendment also barred Bogle-Assegai's pursuit of her state-
4 law claims in federal court, as "the Connecticut legislature only
5 authorized suit in the Connecticut Superior Court" on such claims,
6 "not in the federal court." (Defendants' Memorandum in Support of
7 Their Motion for Summary Judgment ("Defendants' Summary Judgment
8 Memorandum") at 39 (emphasis in original).)

9 Defendants sought summary judgment dismissing Bogle-
10 Assegai's Title VII claims on the ground that they were time-barred
11 because she had not filed her administrative charge with the EEOC
12 within the 180-day period specified by 42 U.S.C. § 2000e-5(e)(1) for
13 filings with the EEOC. Defendants noted that the period for Bogle-
14 Assegai to file an administrative claim of discriminatory discharge
15 began on the date on which she received notification that her
16 employment would thereafter be terminated (see Defendants' Summary
17 Judgment Memorandum at 23 (citing Delaware State College v. Ricks,
18 449 U.S. 250 (1980)); that Bogle-Assegai had received formal notice
19 of termination on March 29, 2001; and that she had filed her charge
20 with the EEOC on October 1, 2001, more than 180 days later.
21 Defendants observed that § 2000e-5(e)(1) provides that the filing
22 period is 300 days rather than 180 days where a claimant has filed
23 her claims with a state or local agency, but they pointed out that
24 Bogle-Assegai

25 did not institute proceedings with a state or local
26 agency (i.e. CHRO) with authority to grant relief in
27 compliance with 42 [U.]S.C. § 2000e-5(e), nor did
28 the EEOC defer the Complainant's charge to the state
29 agency . . . in Connecticut for an investigation.

1 Therefore, the appropriate limitations period is 180
2 days from March 29, 2001. . . .

3 Since there was no dual filing with both CHRO
4 and EEOC (it was filed only with EEOC), the
5 plaintiff is not entitled to 300 days and her Title
6 VII claim is untimely and must be dismissed for this
7 reason [among others]. National RR Passenger Corp.
8 v. Morgan, 536 U.S. 101 . . . (2002).

9 (Defendants' Summary Judgment Memorandum at 24 (emphases in
10 original).)

11 Defendants also argued that Bogle-Assegai could not
12 present a prima facie case of prohibited discrimination, asserting,
13 inter alia, that her fraudulent reporting of time worked had been
14 the sole reason for her dismissal. (See id. at 25-31; see also
15 Defendants' Rule 56(a)1 Statement of Facts ¶ 97 ("Plaintiff was
16 terminated for falsifying her time records and the theft of state
17 time."); Plaintiff's Rule 56(B)1 Statement of Facts ¶ 97
18 ("Admit.").)

19 Bogle-Assegai opposed defendants' motions to dismiss,
20 arguing principally that she could present a prima facie case of
21 discrimination. As to the motions of Appleton and Newton to dismiss
22 the individual-capacity claims asserted against them, however,
23 Bogle-Assegai admitted that those defendants had not been personally
24 served and that they had not authorized anyone to accept personal
25 service on their behalf (see Defendants' Rule 56(a)1 Statement of
26 Facts ¶¶ 5, 7; Plaintiff's Rule 56(B)1 Statement of Facts ¶¶ 5, 7),
27 and she did not offer any argument as to why the individual-capacity
28 claims against them should not be dismissed for lack of service of
29 process. Nor did Bogle-Assegai offer any argument as to why the
30 State, CHRO, and the individual defendants in their official

1 capacities did not have Eleventh Amendment immunity with respect to
2 her §§ 1981 and 1983 claims or her state-law claims as asserted in
3 this action.

4 With respect to defendants' contention that her Title VII
5 claims were time-barred, Bogle-Assegai argued as follows:

6 The defendants argue that the statute began to
7 run on March 29, 2001, when Mrs. Bogle-Assegai was
8 informed that she would be terminated. Mrs. Bogle-
9 Assegai suggests that the court should not use the
10 date that the defendant indicates she "would" be
11 terminated; but rather the date that she was in fact
12 terminated. Mrs. Bogle-Assegai was effectively
13 terminated April 12, 2001. Further, the question
14 whether a court may, for purposes of determining
15 liability, review all such conduct, including those
16 acts that occur outside the filing period, turns on
17 the statutory requirement that a charge be filed
18 within a certain number of days "after the alleged
19 unlawful employment practice occurred." Because
20 such a claim is composed of a series of separate
21 acts that collectively constitute one "unlawful
22 employment practice," it does not matter that some
23 of the component acts fall outside the statutory
24 time period. Provided that an act contributing to
25 the claim occurs within the filing period, the
26 entire time period of the hostile environment may be
27 considered for the purposes of determining
28 liability. National Railroad Passenger Corporation
29 v. Morgan, 536 U.S. 101 (2002).

30 (Plaintiff's Memorandum in Opposition to Defendants' Motion for
31 Summary Judgment ("Bogle-Assegai Memorandum Opposing Summary
32 Judgment") at 5-6.)

33 C. The Decision of the District Court

34 In a Ruling on Motion for Summary Judgment, dated March
35 10, 2005 ("District Court Opinion"), the district court granted
36 defendants' motions and dismissed the complaint. The court first
37 granted the motion to dismiss the claims asserted against Appleton

1 and Newton in their individual capacities, noting that it was
2 undisputed that process had been served on them only by service on
3 the Office of the Attorney General. See District Court Opinion at
4 5, 7. The court held that, as those defendants had not authorized
5 anyone to accept service of process for them in their individual
6 capacities, service on a State office was insufficient to constitute
7 personal service on them for claims against them in their individual
8 capacities.

9 The district court next concluded that the Eleventh
10 Amendment barred Bogle-Assegai's claims under §§ 1981 and 1983
11 against the State, CHRO, and the individual defendants in their
12 official capacities, holding that the State had not waived its
13 sovereign immunity and that "Congress's enactment of § 1981 and
14 § 1983 did not override the immunity that the states and their
15 agencies enjoy under the Eleventh Amendment." Id. at 9. The court
16 ruled that the Eleventh Amendment also required the dismissal of
17 Bogle-Assegai's state-law claims. The court noted that the State
18 had "waived its immunity to suit in state court for CFE[P]A claims.
19 But it has not clearly expressed a waiver to suit in federal court."
20 Id. (internal quotation marks omitted).

21 Finally, the district court concluded that Bogle-Assegai's
22 Title VII claims were untimely. The court stated that Title VII
23 requires a plaintiff to file an administrative complaint with the
24 EEOC "within one hundred and eighty days after the alleged unlawful
25 employment practice occurred," 42 U.S.C. § 2000e-5(e); and that a
26 claim of discriminatory termination of employment "accrues on the
27 date the termination decision is made and communicated to the

1 employee," District Court Opinion at 10-11 (citing Delaware State
2 College v. Ricks, 449 U.S. at 258). The court found that

3 [i]n this case, plaintiff received her formal
4 notice of termination on March 29, 2001. . . . The
5 termination notice stated that she was no longer
6 authorized to report to work after March 29,
7 2001. . . . Her administrative charge was filed on
8 October 1, 2001, 186 days following her formal
9 notice of termination. . . . Plaintiff's contention
10 that the limitations period begins to run as of the
11 effective date of her termination, April 12, 2001,
12 is unsupported by the case law.

13 District Court Opinion at 11.

14 The district court noted that "[u]nder certain
15 circumstances, the [180-day] filing period is extended to three
16 hundred (300) days," i.e., where "the person aggrieved has initially
17 instituted proceedings with a State or local agency with authority
18 to grant or seek relief from" the alleged "unlawful employment
19 practice," id. at 10 n.7, but that "[h]ere, plaintiff only filed a
20 claim with the EEOC; thus the 180 day limitations period applies,"
21 id. The court found that there was no evidence of a "continuing
22 violation" that could extend the 180-day filing period.

23 Judgment was entered dismissing the complaint, and this
24 appeal followed.

25 II. DISCUSSION

26 On appeal, Bogle-Assegai contends principally that the
27 district court erred in dismissing her Title VII claims as time-
28 barred, arguing that they were subject to the 300-day, rather than
29 the 180-day, filing period. She also contends, inter alia, that the

1 court should not have dismissed her claims against Appleton and
2 Newton in their individual capacities but, at worst, should have
3 given her an extension of time to effect personal service on them.
4 We are unpersuaded.

5 A. The Filing Period Applicable to the Title VII Claims

6 Bogle-Assegai contends that the district court erred in
7 dismissing her Title VII claims as untimely, arguing principally
8 that the applicable period for the filing of her administrative
9 charge, which she filed 186 days after she received the Termination
10 Letter, was not 180 days but 300 days. She argues that the State
11 has a work-sharing agreement with the EEOC, and that under such
12 agreements the filing of an administrative charge with either the
13 EEOC or the State agency (here CHRO) is deemed a filing with each
14 agency--a dual filing--and is timely if made within 300 days. We
15 reject this contention because it was not raised in the district
16 court and because Bogle-Assegai has failed to present any reasonable
17 ground for its consideration by this Court.

18 "[I]t is a well-established general rule that an appellate
19 court will not consider an issue raised for the first time on
20 appeal." Greene v. United States, 13 F.3d 577, 586 (2d Cir. 1994).
21 "However, because th[is] rule is prudential, not jurisdictional, we
22 have discretion to consider waived arguments," Sniado v. Bank
23 Austria AG, 378 F.3d 210, 213 (2d Cir.), vacated on other grounds,
24 542 U.S. 917 (2004), and "[w]e have exercised this discretion where
25 necessary to avoid a manifest injustice or where the argument
26 presents a question of law and there is no need for additional fact-

1 finding," Allianz Insurance Co. v. Lerner, 416 F.3d 109, 114 (2d
2 Cir. 2005) (internal quotation marks omitted). Nonetheless, the
3 circumstances normally "do not militate in favor of an exercise of
4 discretion to address . . . new arguments on appeal" where those
5 arguments were "available to the [parties] below" and they "proffer
6 no reason for their failure to raise the arguments below." Id.

7 It is clear that Bogle-Assegai did not make her present
8 argument to the district court, although she had ample incentive to
9 do so. Defendants' motion for summary judgment asserted that "there
10 was no dual filing with both CHRO and EEOC (it was filed only with
11 EEOC)," and thus that "plaintiff is not entitled to 300 days and her
12 Title VII claim is untimely and must be dismissed"
13 (Defendants' Summary Judgment Memorandum at 24 (emphases in
14 original)). As described in Part I.B. above, Bogle-Assegai's
15 response to this untimeliness contention made no reference to a
16 work-sharing agreement, or to the concept of dual filing, or to any
17 possibility that the applicable period was 300 days. Her memorandum
18 argued only that defendants had used the wrong starting date for
19 calculating the 180-day period and that the 180-day deadline had
20 been met. (See Bogle-Assegai Memorandum Opposing Summary Judgment
21 at 5 ("the court should not use the [March 29] date that the
22 defendant indicates she 'would' be terminated; but rather the date
23 that she was in fact effectively terminated[,] April 12").)

24 At oral argument of this appeal, we asked counsel to
25 review the record and inform this Court whether Bogle-Assegai had in
26 fact argued in the district court that the 300-day filing period
27 applied to her claims. In response, Bogle-Assegai's counsel

1 submitted a letter stating that "counsel for Plaintiff-Appellant has
2 made a diligent search of the record below and finds that with
3 regard to the 300-day filing rule, Plaintiff-Appellant did not
4 specifically argue the 300-day rule." (Letter from Bogle-Assegai's
5 attorney Josephine Smalls Miller to this Court dated April 28, 2006
6 ("Miller Letter").)

7 Bogle-Assegai's counsel argued, however, that the
8 complaint's citation of 42 U.S.C. § 2000e-5, which "provides for the
9 180-day filing period and the 300-day filing period in deferral
10 states was sufficient to raise the issue for all subsequent
11 purposes." (Miller Letter.) We disagree. The mere citation to a
12 statute that provides alternative filing periods, the applicability
13 of each turning on whether the EEOC has or does not have a work-
14 sharing agreement with the state agency, does not constitute an
15 assertion that there in fact existed such an agreement at the
16 pertinent time and that the longer period applies. We see nothing
17 in the record to indicate that Bogle-Assegai raised the issue of the
18 existence of a work-sharing agreement before the district court or
19 that she in any way suggested to that court that the filing period
20 applicable to her was 300 days.

21 Bogle-Assegai urges us nonetheless to entertain her
22 present 300-day contention, arguing that we should take judicial
23 notice that the EEOC regularly enters into such work-sharing
24 agreements, that the existence of such an agreement presents an
25 issue that is purely legal, and that CHRO should not be allowed to
26 deny the existence of a work-sharing agreement on which she relied.
27 These arguments are meritless.

1 Bogle-Assegai's contention that "[t]his court may take
2 judicial notice of the fact that the [EEOC] regularly enters into
3 work-sharing agreements with state fair employment practices [sic]"
4 (Bogle-Assegai reply brief on appeal at 2 (emphasis added)) is not
5 a sound basis for consideration of her new argument. Even if we
6 were to take judicial notice of that practice in general, it would
7 not ineluctably follow that there existed such an agreement between
8 the EEOC and CHRO on October 1, 2001, in particular.

9 Further, despite Bogle-Assegai's assertion that "the issue
10 is purely legal and there is no need for additional fact-finding"
11 (id. at 1 (internal quotation marks omitted)), the question of
12 whether there existed a work-sharing agreement between the EEOC and
13 CHRO on October 1, 2001, is a question of fact, not a question of
14 law. Defendants state that no such agreement was in effect on that
15 date (see Defendants' brief on appeal at 9 n.2); and if Bogle-
16 Assegai had proffered any evidence that such an agreement did in
17 fact exist on that date, there plainly would be a need for
18 factfinding.

19 Moreover, Bogle-Assegai has not given this Court any
20 indication that she would be able to offer evidence that in fact
21 such an agreement existed at the time she filed her administrative
22 charge. Her brief repeatedly refers to and purports to quote "the
23 work-sharing agreement" (emphasis added) between the EEOC and CHRO,
24 as if the existence of such an agreement at the pertinent time were
25 established (see, e.g., Bogle-Assegai brief on appeal at 15 ("In the
26 instant case, the relevant portions of the work-sharing agreement
27 between the EEOC and CHRO state[]")); see also id. at 17 n.2,

1 19, 29; Bogle-Assegai reply brief on appeal at 1, 3, 5). But not
2 one of these quotes or references is accompanied by a citation to an
3 agreement or to any evidence.

4 Bogle-Assegai calls our attention to the decision in Lewis
5 v. Connecticut Department of Corrections, 355 F.Supp.2d 607 (D.
6 Conn. 2005) ("Lewis"), as an indication that there existed a work-
7 sharing agreement between the EEOC and CHRO. That case does not,
8 however, show that such an agreement existed at the time pertinent
9 to Bogle-Assegai. The Lewis court noted that the work-sharing
10 agreement that had been submitted to that court by that plaintiff
11 stated:

12 Charges that are received by the [CHRO],
13 whether in person or by mail, and
14 jurisdictional with the EEOC and timely filed
15 by the charging party or his/her representative
16 will be automatically dual-filed with the EEOC
17 and vice versa. . . .

18 FY 2001 EEOC/FEPA Worksharing Agreement Between
19 Connecticut Commission on Human Rights and
20 Opportunities and Equal Employment Opportunity
21 Commission, Pl.'s Index of Evidence in Supp. of
22 Objection to Summ. J. . . .

23 355 F.Supp.2d at 615 n.4 (emphasis omitted). As cited, however, the
24 document quoted by the Lewis district court was a "FY 2001" work-
25 sharing agreement, and regardless of whether "FY 2001" referred to
26 the fiscal year of Connecticut or to that of the federal government,
27 it did not encompass October 1, 2001, the date on which Bogle-
28 Assegai's administrative charge was filed. Fiscal years of
29 Connecticut end on June 30 of each calendar year, see Conn. Gen.
30 Stat. § 4-35 (2006); fiscal years of the United States end on
31 September 30 of each calendar year, see Bill Heniff Jr., Cong.

1 Research Serv., The Federal Fiscal Year 1 (2003), available at
2 http://www.rules.house.gov/archives/crs_reports.htm; and "[e]ach
3 fiscal year is identified by the calendar year in which it ends and
4 commonly is referred to as 'FY.' For example, [federal] FY2003
5 began October 1, 2002, and ends September 30, 2003," id. (emphasis
6 added); see also Memorandum from the Comptroller of the State of
7 Connecticut on Fiscal Year 2006 Year-End Instructions (2006),
8 available at [http://www.osc.state.ct.us/2006memos/](http://www.osc.state.ct.us/2006memos/fiscalyearend/fyeinstructions.htm)
9 [fiscalyearend/fyeinstructions.htm](http://www.osc.state.ct.us/2006memos/fiscalyearend/fyeinstructions.htm) (describing monies deposited prior
10 to July 1, 2006 as "Fiscal Year 2006" receipts). Thus, the
11 Connecticut FY 2001 ran from July 1, 2000, through June 30, 2001;
12 the United States FY 2001 ran from October 1, 2000, through
13 September 30, 2001; and whichever government's "FY 2001" was
14 referred to in the title of the work-sharing agreement quoted in
15 Lewis, that FY ended before the filing of Bogle-Assegai's
16 administrative charge with the EEOC on October 1, 2001.

17 Finally, Bogle-Assegai's argument that "CHRO should not be
18 permitted to work an injustice upon claimants, such as Plaintiff-
19 Appellant, who relied upon the existent [sic] of the charge
20 processing agreement" (Bogle-Assegai reply brief on appeal at 4-5
21 (emphasis added)) fails for lack of any evidence whatever to support
22 its factual premise. Bogle-Assegai, in filing her administrative
23 charge 186 days after her receipt of the Termination Letter, cannot
24 be found to have relied on the existence of a work-sharing
25 agreement. Had she so relied, she would have argued the existence
26 of such an agreement in the district court. Instead, she argued
27 that the 180 days began to run on the effective date of termination

1 rather than on the earlier date of notice of termination. And even
2 after the district court granted summary judgment dismissing the
3 Title VII claims, stating that "the 180 day limitations period
4 applies," District Court Opinion at 10 n.7, Bogle-Assegai did not
5 move for reargument on the ground that the applicable period was 300
6 days or that there was a work-sharing agreement. Bogle-Assegai did
7 move in November 2005 to reopen the judgment pursuant to Fed. R.
8 Civ. P. 60(b), but she did so on entirely different grounds.

9 In sum, faced with a summary judgment motion expressly
10 asserting that her charge had not been dually filed with the state
11 agency and that the 300-day filing period therefore did not apply to
12 her claims, Bogle-Assegai had every incentive and opportunity to
13 contest that argument. She made no argument to the district court
14 in opposition. And in arguing to this Court that the 300-day period
15 is applicable, she has proffered no reason for her failure to make
16 that argument in the district court and has pointed to no evidence
17 that would support her factual premises. In the circumstances,
18 appellate consideration of her unpreserved argument is unwarranted.
19 We affirm the district court's dismissal of Bogle-Assegai's Title
20 VII claims on the ground that her administrative charge was not
21 timely filed.

22 B. The Dismissals for Improper Service of Process

23 Bogle-Assegai contends that the district court erred in
24 dismissing her claims against Appleton and Newton in their
25 individual capacities for improper service of process, arguing that
26 those defendants had actual notice of her claims and did not show

1 that the improper service caused them prejudice. She also contends
2 that the district court should have given her additional time
3 pursuant to Fed. R. Civ. P. 4(m) to effect service on them
4 personally. Her contentions lack merit.

5 Rule 4(e) of the Federal Rules of Civil Procedure states
6 in pertinent part that

7 [u]nless otherwise provided by federal law, service
8 upon an individual from whom a waiver has not been
9 obtained and filed . . . may be effected in any
10 judicial district of the United States:

11 (1) pursuant to the law of the state in
12 which the district court is located, or in
13 which service is effected, for the service of a
14 summons upon the defendant in an action brought
15 in the courts of general jurisdiction of the
16 State; or

17 (2) by delivering a copy of the summons
18 and of the complaint to the individual
19 personally or by leaving copies thereof at the
20 individual's dwelling house or usual place of
21 abode with some person of suitable age and
22 discretion then residing therein or by
23 delivering a copy of the summons and of the
24 complaint to an agent authorized by appointment
25 or by law to receive service of process.

26 Fed. R. Civ. P. 4(e). In the present case, Bogle-Assegai conceded
27 that Appleton and Newton had not been served personally and that
28 they had not authorized anyone to accept personal service on their
29 behalf. Hence Bogle-Assegai did not meet the requirements of Rule
30 4(e) (2) and would have been able to show that service was proper
31 only if Connecticut law permitted service on a defendant in his or
32 her individual capacity by serving the Attorney General.

33 Connecticut law, however, provides that delivery to the
34 Attorney General constitutes service on an individual state officer

1 or employee "as" an officer or employee:

2 Service of civil process in any civil action or
3 proceeding maintainable against . . . the state or
4 . . . any officer, servant, agent or employee of the
5 state or of any such institution, board, commission,
6 department or administrative tribunal, as such, may
7 be made by leaving a true and attested copy of the
8 process, including the declaration or complaint,
9 with the Attorney General or at his office in
10 Hartford.

11 Conn. Gen. Stat. § 52-64 (2005) (emphases added). This provision on
12 its face does not authorize service through the Attorney General's
13 office on an individual State employee in his or her individual
14 capacity.

15 With respect to an individual who is an officer or
16 employee of the State but is not sued as such, Connecticut law
17 requires that service be made by "leaving [the summons and
18 complaint] with the defendant[] or at his usual place of abode,"
19 Conn. Gen. Stat. § 52-57(a) (emphasis added). See, e.g., Banerjee
20 v. Roberts, 641 F. Supp. 1093, 1099 (D. Conn. 1986) (service
21 "through the Connecticut Attorney General" sufficed to serve the
22 "defendants in their official capacities" but was "not" a "method[]
23 authorized" for "serv[ing them] with process in their individual
24 capacities"); cf. Armstrong v. Sears, 33 F.3d 182, 186-87 (2d Cir.
25 1994) ("in a Bivens case, personal service should be made upon the
26 individual defendant in accordance with Rule 4(e) instead of upon
27 that individual as a government officer in accordance with Rule
28 4(i)(2)" (emphasis in original)). Accordingly, service on Appleton
29 and Newton was not properly effected on them in their individual
30 capacities.

31 Bogle-Assegai contends, however, that the district court

1 should simply have given her additional time pursuant to Rule 4(m)
2 to effect service on Appleton and Newton personally. That Rule
3 provides, in pertinent part, as follows:

4 If service of the summons and complaint is not made
5 upon a defendant within 120 days after the filing of
6 the complaint, the court, upon motion or on its own
7 initiative after notice to the plaintiff, shall
8 dismiss the action without prejudice as to that
9 defendant or direct that service be effected within
10 a specified time; provided that if the plaintiff
11 shows good cause for the failure, the court shall
12 extend the time for service for an appropriate
13 period.

14 Fed. R. Civ. P. 4(m) (emphases added); see, e.g., Romandette v.
15 Weetabix Co., 807 F.2d 309, 311 (2d Cir. 1986) ("By the explicit
16 terms of Rule 4(j) [predecessor to the present Rule 4(m), see Fed.
17 R. Civ. P. 4 Advisory Committee Note (1993)], the court can
18 disregard a failure to meet the 120-day limit if the plaintiff can
19 show 'good cause why such service was not made.'").

20 Rule 4(m) provides little relief for Bogle-Assegai.
21 Appleton and Newton raised the matter of improper service in their
22 amended answer to the complaint in July 2003, and they requested
23 dismissal on that ground in September 2004. In response to the
24 motion to dismiss, Bogle-Assegai conceded that those defendants had
25 not been properly served in their individual capacities; but she
26 offered no excuse whatever for the defective service. Further,
27 despite having been informed that Appleton and Newton objected to
28 the improper service at least as early as July 2003, and despite the
29 continued pendency of the lawsuit until March 2005, Bogle-Assegai
30 never attempted to remedy the defect by asking the district court to
31 extend her time to effect personal service. It is plain therefore

1 that Bogle-Assegai did not make the showing of good cause that could
2 have allowed the district court, in accordance with Rule 4(m), to
3 extend her time to effect proper service.

4 Although Bogle-Assegai (a) relies on Romandette v.
5 Weetabix Co. for the proposition that defective service must be
6 excused where the defendant has received actual notice and has shown
7 no prejudice, and (b) suggests that she was not required to show
8 good cause in order to be given an extension of time to make proper
9 service, her reliance is misplaced and her suggestion is unsupported
10 by any authority of this Court. In Romandette, in which process had
11 been mailed to the defendant rather than served personally,
12 Romandette was an incarcerated pro se litigant who was "entitled to
13 rely on service by the U.S. Marshals," 807 F.2d at 311. He had
14 "timely requested that the Marshals effect personal service," and
15 the Marshals Service "had indicated that it would personally serve"
16 the defendant. Id. at 310. Clearly, "Romandette had done
17 everything in his power to effect personal service through the
18 Marshal[']s Service," and we concluded that he "plainly exhibited
19 good cause," id. at 311. Bogle-Assegai has not called to our
20 attention any case in which this Court has ruled that the good-cause
21 requirement specified in Rule 4(m) may be disregarded, and we are
22 aware of no such case.

23 In any event, Bogle-Assegai, who was neither a pro se
24 litigant nor incarcerated, made no showing whatever as to any effort
25 on her part to effect personal service on Appleton and Newton. And
26 given that she also made no effort to show good cause for her
27 failure and never requested an extension of time during the 600-odd

1 days when the case was pending after she first learned of the
2 Appleton/Newton objections to service, we hardly think an extension
3 of the 120-day period, in lieu of dismissal, could have been an
4 extension for "an appropriate period." Accordingly, we see no error
5 or abuse of discretion in the district court's decision to dismiss.

6 C. Other Contentions

7 Bogle-Assegai makes other arguments in her brief on appeal
8 that do not require extended discussion. She contends, inter alia,
9 that the district court erred in dismissing her §§ 1981 and 1983
10 claims, arguing that they were "timely filed" (Bogle-Assegai brief
11 on appeal at 24) as they do not require pre-suit administrative
12 proceedings and are governed by a three-year statute of limitations
13 (see id. at 24-25). The district court did not, however, dismiss
14 those claims on the ground that they were time-barred. The §§ 1981
15 and 1983 claims were dismissed on the ground that as to those claims
16 the State, CHRO, and the individual defendants in their official
17 capacities were entitled to Eleventh Amendment immunity. Bogle-
18 Assegai has presented no argument disputing that immunity, either in
19 the district court or on this appeal.

20 Bogle-Assegai also argues that the State, CHRO, and the
21 individual defendants in their official capacities are not entitled
22 to Eleventh Amendment immunity with respect to her claims under
23 Title VII. However, the district court did not dismiss Bogle-
24 Assegai's Title VII claims on the ground of Eleventh Amendment
25 immunity but rather, as discussed in Parts I.C. and II.A. above, on
26 the ground that Bogle-Assegai's filing of her administrative

1 complaint with the EEOC was untimely.

2 Bogle-Assegai's arguments going to the merits of her
3 claims of discriminatory and disparate treatment are moot in light
4 of the dismissals on the grounds of improper service, sovereign
5 immunity, and untimeliness.

6 Finally, we note that Bogle-Assegai's briefs on appeal do
7 not challenge the dismissal of her state-law claims in any respect.
8 Thus, the dismissal of those claims stands as well.

9
10 CONCLUSION

11 We have considered all of Bogle-Assegai's arguments on
12 this appeal to the extent that they are properly before us, and we
13 have found them to be without merit. The judgment of the district
14 court is affirmed.