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Court of Appeals Case No. 60868-1-1

SUPREME COURT
OF THE STATE OF WASHINGTON

THE CITY OF MEDINA, a municipal corporation,
Petitioner (Respondent in Court of Appeals),

v.

ROGER L. SKINNER,
Respondent (Appellant in Court of Appeals).

PETITION FOR DISCRETIONARY REVIEW
BY SUPREME COURT

Greg A. Rubstello, WSBA #6271
Attorney for Petitioner
OGDEN MURPHY WALLACE, P.L.L.C.
1601 Fifth Avenue, Suite 2100
Seattle, Washington 98101-1686
Tel: 206.447.7000/Fax: 206.447.0215

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A. IDENTITY OF PETITIONER

Petitioner is the City of Medina, Washington, the Respondent before the Court of Appeals.

B. COURT OF APPEALS DECISION

Skinner v. Civil Service Commission, 188 P.3d 550, Wn. App. Div. 1, July 28, 2008 (No. 60868-1-1). The decision is in the Appendix at section A-1. An order denying a motion for reconsideration was entered on September 11, 2008.

C. ISSUES PRESENTED FOR REVIEW

1. Whether or not *substantial compliance* with the jurisdictional requirements of RCW 41.12.090 for the service of a notice of appeal upon a local police Civil Service Commission was sufficient to invoke the appellate jurisdiction of the superior court; and

2. Whether or not a local Civil Service Commission, operating under Chapter 41.12 RCW as a quasi-judicial body, has the inherent power, irrespective of statute, to reconsider the findings and decision it entered on September 1, 2006, and cause the statutory 30-day statute of limitations to toll until a decision on the motion for reconsideration was entered by the Commission.

D. STATEMENT OF THE CASE

The City of Medina is a political subdivision of the State of Washington, organized as an optional municipal code city under Title 35A RCW. *See* Declaration of Mark Weinberg, the Medina City Manager at CP 89-93 and Appendix at A-3 hereto. The City of Medina has provided by ordinance for a Police Department. The ordinance is codified in Chapter 2.16 of the Medina Municipal Code ("MMC"). *Id.* The City of Medina has also provided by ordinance for a Civil Service System authorized by Chapter 41.12 RCW. The ordinance is codified in Chapter 2.20 MMC. *Id.* The ordinance adopted a civil service system consisting of Chapter 41.12 RCW. Several exceptions from the statutes are listed but are unrelated to the subject matter of this appeal. RCW 41.12.090, the statute providing for the jurisdiction of the superior court to hear an appeal of a judgment or order of a civil service commission, was adopted by the City by reference and without any exceptions. *Id.*

On September 1, 2006, after investigation and hearing, the Medina Civil Service Commission entered its Findings, Conclusions of Law and Order denying the appeal filed by Roger L. Skinner (the Petitioner herein) of his termination of employment from the Medina Police Department. The Findings, Conclusions, and Order were signed by the commissioners

and given to the Secretary/Chief Examiner for the commission's records and for the giving of notice of the commission's determination to Mr. Skinner and to the City. *See* Declaration of Carol Wedlund, the Secretary/Chief Examiner for the Commission at CP.94-95 and Appendix at A-4. On September 12, 2006, Mr. Skinner filed a Motion for Reconsideration of its decision with the Commission.¹ The Commission entered an Order on September 18, 2006, denying Mr. Skinner's motion for reconsideration. *Id.* The rules adopted by the Medina Civil Service Commission do not include any provision for a stay of the commencement of the time to perfect an appeal for judicial review. Appendix at A-5. Neither Mr. Skinner nor anyone else on his behalf contacted the Commission requesting clarification as to whether or not the motion for reconsideration had stayed the time for perfecting an appeal of the Commission's September 1 Order. Appendix at A-4.

After entry of the Commission's order denying the motion for reconsideration, twelve (12) days still remained before expiration of the 30 days from the date of entry by the Commission of its Findings, Conclusions and Order of September 1, 2006. *See* Declaration of Carol

¹ Rules adopted by the Medina Civil Service Commission include Rule 18.31 which on its face allows for a motion for reconsideration only on the basis of fraud, mistake, or misconception of facts.

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Wedlund at Appendix at A-4. On October 17, 2006, 46 days after the September 1, 2006 Order was entered by the Commission, Roger L. Skinner served and filed with this court his Notice of Appeal and Petition For Writ of Review on the City of Medina. *See* Declaration of Mark Weinberg at Appendix A-3. To date, neither the secretary/chief-examiner of the Commission nor any member of the Commission has been served with the Notice of the Appeal as specifically required by RCW 41.12.090. *See* Declarations of Carol Wedlund, Mary Odermat, John Dern-Palmer, and Peter E. Jorgensen.

The City of Medina filed a motion on the pleadings to dismiss the Notice of Appeal and Petition for Writ of Review. CP 21-45. The motion argued that the pleadings commencing this proceeding sufficiently demonstrated that the court lacked jurisdiction to consider the Petition. The City's motion on the pleadings was denied without explanation on November 30, 2006, by written order of Judge Dean S. Lum. Judge Lum's written order does not disclose any reasons for his determination to deny the motion. CP 75. There are no findings of fact or conclusions of law in Judge Lum's order. *Id.*

Subsequently, after obtaining declarations from witnesses, the City filed a motion for summary judgment challenging the jurisdiction of the

superior court due to the untimely appeal and failure to serve the Commission as required by RCW 41.12.090. CP 78-86. The summary judgment motion was granted. CP 243-245.

Skinner filed a Notice of Appeal of the trial court's summary judgment order on November 19, 2007. CP 262-265. The Court of Appeals, Division 1, filed its opinion on July 28, 2008, reversing the summary judgment order and holding generally that (1) substantial compliance with the jurisdictional requirements of RCW 41.12.090 for the service of a notice of appeal upon the Commission was sufficient since the Commissioners here are not full-time employees of the City; and (2) that the Commission had the inherent power, irrespective of statute, to reconsider the findings and decision it entered on September 1, 2006, and cause the statutory 30-day statute of limitations to toll until a decision on the motion for reconsideration was entered by the Commission.

The City timely moved for reconsideration of the decision by the Court of Appeals. The City's motion was denied by an order entered on September 11, 2008.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

This petition for review should be accepted by the Supreme Court under the criteria of RAP 13.4(b) because the decision of the Court of

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Appeals presents significant questions of law and the petition involves issues of substantial public interest that should be determined by the Supreme Court. The decision by the Court of Appeals is also in conflict with the 1923 decision of the Supreme Court in *State v. Brown*, 126 Wash. 175, 218 Pac. 9 (1923) where the court held that the City of Seattle's civil service commission being a body of limited jurisdiction when acting in a quasi-judicial capacity had no inherent power, irrespective of statute, to grant a rehearing or review or to annul its own order sustaining the discharge of a civil service employee. In addition, the decision of the Court of Appeals is in conflict with the more recent decisions of the Washington Supreme Court holding that the doctrine of substantial compliance does not apply to a jurisdictional requirement to invoke the appellate jurisdiction of the superior court. *See San Juan Fidalgo Holding Co. v. Skagit County*, 87 Wn. App. 793, 943 P.2d 341 (1997). *See also, Skagit Surveyors and Eng'rs, LLC v. Friends of Skagit County*, 135 Wn.2d 542, 554, 958 P.2d 962 (1998).

1. The Court of Appeals decision is in conflict with the explicit language of RCW 41.12.090 prohibiting the tolling of the 30-day statute of limitations once the written findings of the civil service commission are entered.
 - a. Superior court's appellate jurisdiction is limited by statutory requirement of RCW 41.12.090.

It is well established law in Washington State that an appeal from an administrative tribunal invokes the appellate, rather than the general, jurisdiction of the superior court. When acting in its appellate capacity, the Superior Court is of limited statutory jurisdiction, and all statutory procedural and jurisdictional requirements must be met before jurisdiction is properly invoked. *Union Bay Preservation Coalition v. Cosmos Dev. & Admin. Corp.*, 127 Wn.2d 614, 617, 902 P.2d 1247 (1995); *Fay v. Northwest Airlines, Inc.*, 115 Wn.2d 194, 197, 796 P.2d 412 (1990); *Clymer v. Employment Sec. Dep't*, 82 Wn. App. 25, 27, 917 P.2d 1091 (1996); *Skagit Surveyors and Eng'rs, LLC v. Friends of Skagit County*, 135 Wn.2d 542, 554, 958 P.2d 962 (1998); *Overhulse Neighborhood Ass'n v. Thurston County*, 94 Wn. App. 593 597, 972 P.2d 470 (1999).

- b. RCW 41.12.090 mandates a 30-day statute of limitations commencing the date of entry of the Commission's written findings.

RCW 41.12.090 unambiguously mandates that a discharged employee may pursue an appeal of the Commission's written findings only on the condition that the discharged employee serves a written notice of appeal on the Commission within 30 days of entry of the written findings. The clear statutory language of RCW 41.12.090 provides for nothing less than a 30-day statute of limitations on the taking of an appeal

of a written order of a Police Civil Service Commission containing investigative findings and affirming the termination of a civil service employee. There is no language authorizing the tolling of the 30-day statute of limitations after the written findings of the Commission are entered:²

... After such investigation the commission may affirm the removal, ... the findings of the commission shall be certified, in writing to the appointing power, and shall be forthwith enforced by such officer.

... If such judgment or order be concurred in by the commission or a majority thereof, the accused may appeal therefrom to the court of original and unlimited jurisdiction in civil suits of the county wherein he or she resides. Such appeal shall be taken by serving the commission, within thirty days after the entry of such judgment or order, a written notice of appeal, stating the grounds thereof, and demanding that a certified transcript of the record and of all papers on file in the office of the commission affecting or relating to such judgment or order, be filed by the commission with such court. The commission shall, within ten days after the filing of such notice, make, certify and file such transcript with such court. The court of original and unlimited jurisdiction in civil suits shall thereupon proceed to hear and determine such appeal in a summary manner: ...

² RCW 41.12.090 is quoted in its entirety in Appendix A hereto.
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The superior court has no jurisdiction to proceed to hear an appeal authorized by RCW 41.12.090 unless this statutory mandate is satisfied. Absent language in the statute authorizing the specified 30-day statute of limitations to be tolled, neither a motion for reconsideration nor any other action can toll the running of the specified statute of limitations. The determination by the Court of Appeals that *[A] motion for reconsideration tolls the 30-day statute of limitations on appealing a final order*³ directly conflicts with the statutory requirement for appellate jurisdiction by the Superior Court.

- c. An appellate court may not rewrite the statutory requirement for superior court appellate jurisdiction.

The Civil Service Commission had no authority to authorize an appeal that does not comply with the jurisdictional requirement of RCW 41.12.090. Whether or not the Commission had authority to consider a motion for reconsideration may be a pertinent issue, but here it is not the decisive issue. The decisive issue is whether the Superior Court had appellate jurisdiction to hear an appeal filed more than 30 days after entry of the commission's decision to affirm the decision of the appointing authority.

³ Page 1 of this court's published opinion.
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- d. Legislative history of RCW 41.12.090 demonstrates legislative intention that the 30-day statute of limitations not be tolled by a motion for reconsideration.

When last amended in 2007,⁴ the legislature did not include language allowing for the tolling of the 30-day statute of limitations due to a motion for reconsideration or other cause. Had the legislature desired to allow a motion for reconsideration to toll the statute of limitation as it did in the Administrative Procedures Act (APA), it would have done so. Moreover the legislature expressly excluded local civil service commissions from coverage under the APA. There may be a good argument for allowing a motion for reconsideration of the findings of a Police Civil Service Commission to toll the 30-day statute of limitations, but the decision to do so is for the legislature and not for the Medina Civil Service Commission⁵ or for the courts. This court's holding is contrary to the legislative scheme and must be reconsidered.

⁴ RCW 41.12.090 was enacted in 1937 and updated but once in 2007 only by the substitution of gender-neutral terms for gender-specific terms.

⁵ The Medina Civil Service Commission does not provide for the tolling of the statute of limitations in its rules. See Exhibit B to Declaration of Murphy CP 53-65. The September 1, 2006 decision by the Commission although stating that "if a motion for reconsideration is not filed the appellant must comply with RCW 41.12.090," does not state that the 30-day statute of limitations in RCW 41.12.090 would be tolled if a motion for reconsideration is filed. Neither does the September 18, 2006 Order denying the motion for reconsideration state anything about the time for filing a timely appeal. See CP 1-18.

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2. Unlike the statutes at issue in *Hall*⁶ and *In re Saltis*⁷, the two primary cases relied upon by the court in its published opinion, RCW 41.12.090 uniquely requires that the notice of appeal be served upon the Commission rather than filed with the superior court.

The unique requirement for service of the notice of appeal upon the Commission in RCW 41.12.090 does not serve merely to provide notice to the Commission of the filing of the notice of appeal with the superior court. Unlike the statutes at issue in *Hall* and *In re Saltis*,⁸ RCW 41.12.090 has no specific requirement for the Appellant to serve or file any pleadings or notice of appeal with the Superior Court. The single jurisdictional requirement for an appeal required by RCW 41.12.090 is service of a notice of appeal upon the Commission:

... Such appeal shall be taken by serving the commission, within thirty days after entry of such judgment or order, a notice of appeal, stating the grounds thereof, and demanding that a certified transcript of the record and of all papers on file in the office of the commission affecting or relating to such

⁶ See *Hall v. Seattle School District 1*, 66 Wn. App. 308, 311, 831 P.2d 1128 (1992) where the statute at issue was former RCW 28A.58.460 which provides: "Any teacher ... desiring to appeal from any action or failure to act upon the part of a school board ... may serve upon the chairman of the school board **and file with the clerk of the superior court ... a notice of appeal.** ... (Emphasis added.)

⁷ See *In Re Saltis*, 94 Wn.2d 889, 893-894, 621 P.2d 716 (1980) where the statute at issue was RCW 51.52.110 which provides as follows: "[A] worker, beneficiary, employer or other person aggrieved by the decision and order of the board may appeal to the superior court. ... **Such appeal shall be perfected by filing with the clerk of the court a notice of appeal and by serving a copy thereof by mail, or personally, on the director and on the board.** ... (emphasis added)

⁸ See footnotes 5. and 6. above.
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judgment or order, be filed by the commission with such court. The court of original and unlimited jurisdiction in civil suits shall thereupon proceed to hear and determine such appeal in a summary manner: ...

RCW 41.12.090.

Instead of following this clear statutory requirement, the Appellant Skinner filed on the 46th day following the entry of such judgment⁹ a Petition for Writ of Review with the Superior Court. CP 1-18. Two copies of the pleadings filed with the Superior Court were left with the City Clerk by Appellant's attorney with no instructions for delivery to the Commission staff, Commission Chair, or the Commissioners. *See Exhibit B to Declaration of Murphy at CP 53-65.*

Since the statutory requirement was not followed, the jurisdictional requirement was not met. The Superior Court did not have appellate jurisdiction. Its decision to dismiss the appeal was mandated by statute and should be affirmed. The Published Opinion of this court should be withdrawn and revised consistent with RCW 41.12.090.

3. The statement in the published opinion that the Commission received actual notice of the appeal to the

⁹ "Such judgment or order" refers to the September 1, 2006 written order with findings affirming the discharge of the Appellant.
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Superior Court within 30 days of the denial of the motion for reconsideration is not supported by the record.¹⁰

The record fails to substantiate the Court's conclusion that the Commission had actual notice of the appeal in a timely manner and that there is no prejudice.¹¹ The record in fact demonstrates that the Commission was not timely served. No one associated with the Commission was ever served.¹² The attorney for the Commission did not enter a Notice of Appearance until October 23, 2006, thirty-five (35) days following the entry of the Commission's Order Denying the Motion for Reconsideration.¹³ There is no demonstration in the evidence that the Commission had notice within 30 days of entry of the Commission's order denying the motion for reconsideration. Unlike the District in *In re Saltis* and the School Board in *Hall*, the Medina Police Civil Service Commission did not timely receive actual notice.

¹⁰ At page 7 of the Court's Opinion it is stated: "The record reveals that the Commission had actual notice of the appeal in a timely manner and thus there is no prejudice." This statement is made without citation to the record.

¹¹ See page 7 of the Opinion.

¹² See the Declarations of the Commissioners and the Commission's Secretary/Chief Examiner at CP _____.

¹³ The Notice of Appearance by Counsel for the Commission is of record with the Superior Court but is not part of the clerks papers. It is dated October 23, 2006, and is attached as Appendix B hereto.

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4. The Notice of Appeal, left with the City Clerk, and without instructions for delivery to the Commission, was not served in a manner reasonably calculated to give notice to the Director.

No one closely associated with the Commission¹⁴ was served or given notice of the appeal. The Commission is a separate administrative agency from the City¹⁵ and the City Clerk is not part of the Commission Staff even if the Commission Secretary/Examiner utilizes some office space in the same building. There is no evidence that service on the City Clerk was calculated to give notice to the Commission. It cannot be said here that service on the City Clerk achieved the same result as if Carol Wedlund the Secretary/Examiner, the City Manager, or the Commission Chair, had been served personally within 30 days of the Order denying the motion for reconsideration.¹⁶

This Court should follow the reasoning and rationale expressed by Division II of the Court of Appeals in *Reeves v. Department of Gen. Admin.*, 35 Wn. App. 533, 667 P.2d 1133, *review denied*, 100 Wn. 2d 1030 (1983); and *Jones v. Department of Corrections*, 46 Wn. App. 275,

¹⁴ In *Hall* the Board Chairman was required to be served and appellant served the Chairman's secretary. In *In re Saltis*, the director

¹⁵ See Order Denying Motion for Reconsideration at CP 1-18 and is attached hereto as Appendix C.

¹⁶ In *Hall at 313*, the court reasoned that "Service on the chair's secretary was calculated to give notice to her and to the District. Undoubtedly, service on the secretary achieved the same result as if Ms. Smith, the chair, had been in her office and served personally."
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278, 730 P.2d 112 (1986) in interpreting RCW 41.64.130. In *Jones*, Division II held that service of a notice of appeal on the Attorney General who signed an acceptance of service on behalf of the Department of Corrections, State of Washington, did not comply with the statutory mandate requiring that a copy of the notice of appeal be served *on the employing agency, all within the time stated*.

Service upon the Attorney General is neither service upon the statutorily designated administrative head of an administrative agency nor upon the statutorily designated agency itself.

Jones at 278.

Here, service upon the City Clerk is not service upon the Commission.

5. Substantial Compliance with the service requirements of RCW 41.12.090 is not sufficient to invoke the appellate, or subject matter, jurisdiction of the superior court.

Service within thirty days is a jurisdictional requirement for which the substantial compliance standard does not apply. The doctrine of substantial compliance does not apply to service and filing requirements to invoke the appellate jurisdiction of the superior court. *Keep Watson Cutoff Rural*, No. 26202-2-III (June 5, 2008), citing 14 KARL B. TEGLAND, WASHINGTON PRACTICE: SERVICE OF PROCESS §

8.2 (2206) and *San Juan Fidalgo Holding Co. v. Skagit County*, 87 Wn. App. 793, 943 P.2d 341 (1997). See also, *Skagit Surveyors and Eng'rs, LLC v. Friends of Skagit County*, 135 Wn.2d 542, 554, 958 P.2d 962 (1998).

F. CONCLUSION

RCW 41.12.090 provides a unique process for appeal of the September 1, 2006 decision of the Commission. Since the Commission was not served as mandated by the statute, the Superior Court did not have appellate jurisdiction and its decision to dismiss should have been affirmed. No attempt at timely service was made upon the Commission of the required Notice of Appeal.

Service upon the Commission within 30 days is a jurisdictional requirement that cannot be satisfied by the substantial compliance doctrine. Moreover, service of the Notice of Appeal upon the Commission was not even attempted in any meaningful way.

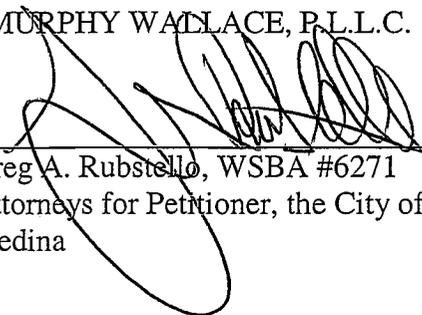
The Supreme Court should accept review.

RESPECTFULLY SUBMITTED this 10th day of October, 2008.

Respectfully submitted,

OGDEN MURPHY WALLACE, P.L.L.C.

By



Greg A. Rubstello, WSBA #6271
Attorneys for Petitioner, the City of
Medina

APPENDIX

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

ROGER L. SKINNER,

Appellant,

v.

CIVIL SERVICE COMMISSION of the
City of Medina, THE CITY OF MEDINA,
a municipal corporation, MEDINA
POLICE DEPARTMENT,

Respondents.

No. 60868-1-I

DIVISION ONE

PUBLISHED OPINION

FILED: July 28, 2008

GROSSE, J. – Where an order of a quasi-judicial body provides a timeline within which a party may file a motion for reconsideration of its order, and a motion for reconsideration is filed and denied, the time for an appeal runs from the date of the denial of reconsideration and not from the date of the initial order. A motion for reconsideration tolls the 30-day statute of limitations on appealing a final order. Here, it is undisputed that Roger Skinner appealed within 30 days of the court’s denial of his motion for reconsideration. Thus, we reverse and remand.

FACTS

Roger Skinner appealed his dismissal from the City of Medina police force to the Medina Civil Service Commission (Commission). By order, dated September 1, 2006, the Commission upheld his dismissal. On September 18, 2006, the Commission denied Skinner’s motion for reconsideration. On October 17, 2006, Skinner filed a writ of review in King County Superior Court of both the

Commission's September 1 order and the September 18 order denying reconsideration. The trial court granted the City summary judgment dismissal, holding that Skinner had failed to timely serve and file his appeal of the September 1, 2006 order within 30 days of its entry as required by statute.¹ Skinner appeals.

ANALYSIS

Paragraph 7.3 of the Commission's September 1 order states as follows:

Further Proceedings. Under Commission Rule 18.31 a party may move for reconsideration within 10 days of the date of this decision. In the absence of a motion for reconsideration, any appeal from this decision to King County Superior Court shall comply with Chapter 41.12 RCW.^[2]

City of Medina Civil Service Rule (MCSR) 18.31 provides:

RECONSIDERATION. A party may move for reconsideration by the Commission only on the basis of fraud, mistake, or misconception of facts. Such motion must be filed with the Commission within ten (10) days of the decision of the Commission. Such motion for reconsideration shall be decided on affidavits, absent special showing that testimony is necessary.

RCW 41.12.090 provides in pertinent part:

If such judgment or order be concurred in by the commission or a majority thereof, the accused may appeal therefrom to the court of original and unlimited jurisdiction in civil suits of the county wherein he or she resides. Such appeal shall be taken by serving the commission, within thirty days after the entry of such judgment or order, a written notice of appeal, stating the grounds thereof, and demanding that a certified transcript of the record and of all papers on file in the office of the commission affecting or relating to such judgment or order, be filed by the commission with such court.^[3]

¹ See RCW 41.12.090.

² (Emphasis added.)

³ (Emphasis added.)

The City argues that Skinner is barred from pursuing this appeal because he served and filed it 46 days after the entry of the September 1 order. Relying on State ex rel. Worsham v. Brown,⁴ the City contends the Commission lacked authority to reconsider its order and therefore the 30 days started running on the date of its initial order. Brown held that a civil service commission has limited jurisdiction and when acting in its quasi-judicial capacity, it has no inherent power, irrespective of statute, to grant a rehearing or to review or annul its own order. But the facts in Brown are markedly different than those here.

In Brown, the Seattle Civil Service Commission sustained the removal of a Seattle police officer on May 23, 1922. Approximately five months later, the officer sought a new trial before the commission. By that time, one of the commission's members had been replaced. On appeal, the commission's decision to reconsider its order was overturned. More recent case law implies that administrative agencies retain jurisdiction to reverse their orders/decisions until jurisdiction is lost by appeal or until a reasonable time has run that is coextensive with the time required by statute for review.⁵

More importantly, however, here, the Commission's own rules provide for a party to move for reconsideration within 10 days after entry of its decisions. In addition, the Commission's September 1 order expressly stated that the rules of chapter 41.12 RCW (allowing 30 days to appeal) applied only absent a motion for reconsideration.

⁴ 126 Wash. 175, 218 P. 9 (1923).

⁵ Hall v. Seattle Sch. Dist. No. 1, 66 Wn. App. 308, 314, 831 P.2d 1128 (1992).

In Hall v. Seattle School District No. 1,⁶ the pertinent statute, like the one here, neither authorized nor prohibited reconsideration. The Hall court held that absent a statute or rule prohibiting reconsideration, the Seattle Civil Service Commission had limited inherent power to reconsider its decisions. In holding that the time for appeal runs from the entry date of the ruling on reconsideration and not that of the initial decision, this court stated in Hall:

[Previously], this court followed the general federal rule in holding that under the Rules of Appellate Procedure, when a timely motion for reconsideration has been made, the time for notice of appeal does not run until the lower court has entered an order on the motion. RAP 5.2(e) specifically provides that a notice of appeal may be filed within 30 days of entry of the order denying the motion for reconsideration. The Administrative Procedure Act likewise provides that the time for filing a petition for judicial review commences when the petition for reconsideration is decided.

Contrary to Hall's contention, there is no firmly established common law rule that a motion for reconsideration does not toll the time for appeal from the original decision.⁷

Thus, although the Administrative Procedure Act⁸ and its timelines do not directly apply to the Commission, they are instructive.

Here, as in Hall, there are compelling policy reasons to hold that the Commission has the authority to reconsider its decision. Filing an appeal before awaiting an order on a motion for reconsideration subjects parties to potential costs that may prove to be unnecessary. Further, reconsideration may remove the need for the superior court to address the issue. Because both the order and the Commission's own rules allow a party to seek reconsideration, such

⁶ 66 Wn. App. 308.

⁷ Hall, 66 Wn. App. at 315-16 (internal citations omitted; emphasis added).

⁸ Chapter 41.12 RCW.

reconsideration was proper here and the 30 days did not begin to run until entry of the Commission's September 18 order denying reconsideration.

Adequate Notice

The City argues that Skinner failed to serve the Commission with the notice of appeal as required by RCW 41.12.090 which provides that the appealing party serve the Commission within 30 days after entry of the decision. In the superior court, the Commission appeared and joined in the City's motion to dismiss the action on the basis that Skinner did not serve either the Commission members or its secretary.⁹ He did, however, serve the Medina City Clerk and argues that such service is sufficient. We agree.

Interestingly, procedures for serving an appeal with the Commission are not articulated by statute. RCW 41.12.090 provides in pertinent part:

All investigations made by the commission pursuant to the provisions of this section shall be had by public hearing, after reasonable notice to the accused of the time and place of such hearing, at which hearing the accused shall be afforded an opportunity of appearing in person and by counsel, and presenting his or her defense. If such judgment or order be concurred in by the commission or a majority thereof, the accused may appeal therefrom to the court of original and unlimited jurisdiction in civil suits of the county wherein he or she resides. Such appeal shall be taken by serving the commission, within thirty days after the entry of such judgment or order, a written notice of appeal, stating the grounds thereof, and demanding that a certified transcript of the record and of all papers on file in the office of the commission affecting or relating to such judgment or order, be filed by the commission with such court. The commission shall, within ten days after the filing of such notice, make, certify and file such transcript with such court. The court of original and unlimited jurisdiction in

⁹ The Commission did not file a brief in this court and noted that it remained a party of record for purposes of receipt of notice and pleadings. Because the issue is before this court, we do not deem the Commission's failure to brief the issue precludes our considering the merits.

civil suits shall thereupon proceed to hear and determine such appeal in a summary manner.

Skinner relies upon MCSR 18.15(d), which provides:

Papers required to be filed with the Commission shall be deemed filed upon actual receipt of the papers by the Commission staff at the Commission office.

Skinner asserts that because the Commission actually received his appeal, it is precluded from arguing that it did not receive proper notice. Further, Skinner notes that the Commission's address is stated in its rules and it is the same as the City's.¹⁰ That same rule designates regular hours of work for the Commission Secretary. MCSR 3.01 designates Medina's City Manager as the Commission's Secretary.¹¹

For its position, the City relies on Nitardy v. Snohomish County.¹² There a disgruntled Snohomish County employee sued the County but served the wrong government agent (serving the secretary of the county executive when the statute specifically required service on the county auditor). Unlike the Snohomish County Auditor, the Commissioners here are not full-time employees of the City and substantial compliance is sufficient under these circumstances.

In Hall, this court held notice to the full-time employee at the same address was sufficient where the person required to be served (the chairman of a school board) was in a part-time, unpaid position. The Hall court based its

¹⁰ MCSR 2.13.

¹¹ MCSR 3.01.

¹² 105 Wn.2d 133, 712 P.2d 296 (1986).

decision in part on In re Saltis,¹³ which involved service of a notice of appeal under the Industrial Insurance Act,¹⁴ stating:

As in Saltis, the District in the case at bar timely received actual notice, so there is no prejudice. Service on the chair's secretary was calculated to give notice to her and to the District. Undoubtedly, service on the secretary achieved the same result as if Ms. Smith, the chair, had been in her office and served personally. The defect in service is purely formal, without practical importance, and not a proper basis to deny Hall's access to the courts.^[15]

We do not believe the part-time status of the chair in Hall is a sufficient distinction to obviate application of the policy and rationale of Hall here. The record reveals that the Commission had actual notice of the appeal in a timely manner and thus there is no prejudice.

We reverse and remand.

Grosse, J.

WE CONCUR:

Cox, J.

Becker, J.

¹³ 94 Wn.2d 889, 621 P.2d 716 (1980).

¹⁴ Chapter 51.52 RCW.

¹⁵ Hall, 66 Wn. App. at 313.

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West's RCWA 41.12.090

C

West's Revised Code of Washington Annotated Currentness

Title 41. Public Employment, Civil Service, and Pensions (Refs & Annos)

Chapter 41.12. Civil Service for City Police (Refs & Annos)

→ 41.12.090. Procedure for removal, suspension, demotion or discharge-- Investigation--Hearing--Appeal

No person in the classified civil service who shall have been permanently appointed or inducted into civil service under provisions of this chapter, shall be removed, suspended, demoted or discharged except for cause, and only upon written accusation of the appointing power, or any citizen or taxpayer; a written statement of which accusation, in general terms, shall be served upon the accused, and a duplicate filed with the commission. Any person so removed, suspended, demoted or discharged may within ten days from the time of his or her removal, suspension, demotion or discharge, file with the commission a written demand for an investigation, whereupon the commission shall conduct such investigation. The investigation shall be confined to the determination of the question of whether such removal, suspension, demotion or discharge was or was not made for political or religious reasons and was or was not made in good faith for cause. After such investigation the commission may affirm the removal, or if it shall find that the removal, suspension, or demotion was made for political or religious reasons, or was not made in good faith for cause, shall order the immediate reinstatement or reemployment of such person in the office, place, position or employment from which such person was removed, suspended, demoted or discharged, which reinstatement shall, if the commission so provides in its discretion, be retroactive, and entitle such person to pay or compensation from the time of such removal, suspension, demotion or discharge. The commission upon such investigation, in lieu of affirming the removal, suspension, demotion or discharge may modify the order of removal, suspension, demotion or discharge by directing a suspension, without pay, for a given period, and subsequent restoration to duty, or demotion in classification, grade, or pay; the findings of the commission shall be certified, in writing to the appointing power, and shall be forthwith enforced by such officer.

All investigations made by the commission pursuant to the provisions of this section shall be had by public hearing, after reasonable notice to the accused of the time and place of such hearing, at which hearing the accused shall be afforded an opportunity of appearing in person and by counsel, and presenting his or her defense. If such judgment or order be concurred in by the commission or a majority thereof, the accused may appeal therefrom to the court of original and unlimited jurisdiction in civil suits of the county wherein he or she resides. Such appeal shall be taken by serving the commission, within thirty days after the entry of such judgment or order, a written notice of appeal, stating the grounds thereof, and demanding that a certified transcript of the record and of all papers on file in the office of the commission affecting or relating to such judgment or order, be filed by the commission with such court. The commission shall, within ten days after the filing of such notice, make, certify and file such transcript with such court. The court of original and unlimited jurisdiction in civil suits shall thereupon proceed to hear and determine such appeal in a summary manner: PROVIDED, HOWEVER, That such hearing shall be confined to the determination of whether the judgment or order of removal, discharge, demotion or suspension made by the commission, was or was not made in good faith for cause, and no appeal to such court shall be taken except upon such ground or grounds.

CREDIT(S)

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR BEFORE THE MEDINA CIVIL SERVICE COMMISSION COUNTY

In re the appeal of,

ROGER SKINNER,

Appellant,

- and -

THE CITY OF MEDINA, WA, and THE
MEDINA POLICE DEPARTMENT,

Respondents.

NO. 06-33267-9

DECLARATION OF MARK F. WEINBERG,
MEDINA CITY MANAGER

I, Mark F. Weinberg , declare as follows:

- 1. I am the appointed City Manager for the City of Medina, Washington.
- 2. Medina is organized as a City under Title 35A., the Optional Municipal Code, of the

Revised Code of Washington.

3. Medina has provided for a police department under Chapter 2.16 of the Medina
Municipal Code ("MMC"). A copy is attached hereto and incorporated herein by this reference.

4. Medina has provided for a Police Civil Service Commission under Chapter 2.20 of the
MMC. A copy is attached hereto and incorporated herein by this reference.



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5. City records show that the City of Medina was served with a Notice of Appeal of the September 1, 2006 Order of the Medina Civil Service Commission on October 17, 2006.

I declare under penalty of perjury of the laws of the State of Washington that he foregoing is true and correct.

Signed this 4 day of June, 2007, at Medina, Washington.

By 
Mark W. Weinberg
Medina City Manager

Chapter 2.06

COUNCILMEMBERS

(Repealed by Ord. 713)

Chapter 2.08

MUNICIPAL JUDICIAL SYSTEM

(Repealed by Ord. 664)

Chapter 2.16

POLICE DEPARTMENT

Sections:

2.16.010 Created.

2.16.020 Organization.

2.16.030 Duties of the police chief.

2.16.010 Created.

The creation of a city police department of the city government is hereby memorialized, said department to be under the general supervision and control of the head of the executive branch of the city, the city manager. (Ord. 722 § 1, 2001; Ord. 254 § 1, 1970)

2.16.020 Organization.

The commissioned staff of the department shall consist of a chief of police and a sufficient number of command, supervisory, investigative and patrol officers to effectively and efficiently discharge the responsibilities of the department. A commissioned officer of the department shall be a full-time employee and certified as a law enforcement officer by the Washington State Criminal Justice Training Commission. The noncommissioned staff of the department shall consist of a records manager and a sufficient number of clerical support personnel as may be required to effectively and efficiently discharge the responsibilities of the department. (Ord. 722 § 1, 2001; Ord. 477 § 3, 1988; Ord. 254 § 2, 1970)

2.16.030 Duties of the police chief.

The chief of police shall be chief executive officer of the department, responsible for the effectiveness thereof, enforcement of state and local laws and general protection of the safety and welfare of the community, its residents and the general public. The chief of police shall be appointed by and under the general supervision and control of the city manager, reporting to the city manager or to the council as the city manager directs. The chief of police shall be assisted by a staff as set forth in MMC 2.16.020, who shall have such duties and responsibilities as the chief shall assign. The chief of police shall meet all requirements of the Washington State Criminal Justice Training Commission related to certification of law enforcement officers.

In addition to the duties provided by law, the chief of police shall be responsible for coordination of fire and marine protective services, emergency

medical services and other related functions and duties, unless the city manager contracts for such services or otherwise assigns these duties to other city employees. (Ord. 722 § 1, 2001; Ord. 477 § 4, 1988; Ord. 254 § 3, 1970)

Chapter 2.20

CIVIL SERVICE SYSTEM

Sections:

- 2.20.010 Civil service system adopted.
- 2.20.020 Appointment of civil service commissioners.
- 2.20.030 Filling of vacancies in police department.
- 2.20.040 Chief of police exempt.
- 2.20.050 Appointment of secretary and chief examiner.
- 2.20.060 Probationary periods.

2.20.010 Civil service system adopted.

Pursuant to the authorization of RCW 41.12.010, a civil service system for the city of Medina is hereby adopted. The civil service system shall consist of Chapter 41.12 RCW as previously adopted by the city, amended as explicitly set forth in this chapter. Three copies of Chapter 41.12 RCW were attached to Ordinance No. 183 when the original system was adopted in 1966. (Ord. 794 § 1, 2006; Ord. 183 § 1, 1966)

2.20.020 Appointment of civil service commissioners.

Members of the civil service commission of the city shall be appointed by the city manager with the approval of the city council. If the city manager has recommended three persons for appointment to a particular position, none of whom have been approved by the city council, then he may select the appointee from among the number so recommended for appointment. (Ord. 183 § 2, 1966)

2.20.030 Filling of vacancies in police department.

A. In addition to any opportunity afforded the appointing authority to exercise a choice in the filling of a vacancy in the police department by the terms of Chapter 41.12 RCW, as amended, and as adopted by the city as set out in MMC 2.20.010 and 2.20.020, whenever requisition is made upon the civil service commission for the names of persons eligible for appointment to any vacancy, including both original appointments and promotions, the commission, instead of furnishing the name of the one person highest on the eligibility list, shall certify to the appointing authority the names of the three persons highest on such eligibility list for each vacancy, if there are three such persons available, and shall indicate the grade received by any

such person in a civil service examination. If more than one vacancy is to be filled, an additional name shall be certified for each additional vacancy. The appointing authority shall then appoint one of the certified persons to such vacant position.

B. Any rule or regulation of the civil service commission which might otherwise limit the certification of less than three applicants shall be construed and applied so as to allow and provide for the certification of three or more applicants as provided in this section. (Ord. 356 §§ 1, 2, 1979)

2.20.040 Chief of police exempt.

Pursuant to RCW 41.12.050, the chief of police shall be excluded from the civil service, and consistent with MMC 2.16.030 shall be appointed by the city manager. (Ord. 477 § 6, 1988)

2.20.050 Appointment of secretary and chief examiner.

The secretary and chief examiner shall be appointed as a result of competitive examination, which examination may either be original and open to all properly qualified members of the public or promotional, and limited to persons already in the service of the city. The secretary and chief examiner need not be a citizen of the city. (Ord. 578 § 1, 1993)

2.20.060 Probationary periods.

The probationary period authorized by RCW 41.12.100 shall be 12 months of full-time service from the date of graduation from the Washington State Criminal Justice Training Commission Academy. Minor absences due to vacations, annual military leave, illness and similar causes shall not be construed as interrupting the probationary period. If an absence or absences are considered to be excessive the city may apply for and the secretary will approve for good cause shown a departmental request for interruption of the probationary period to a total probationary period not to exceed 18 months in length dating from the date of graduation from the academy. (Ord. 794 § 2, 2006)

Chapter 2.24

BOARDS AND COMMISSIONS

Sections:

2.24.010 Election of chairpersons and vice-chairpersons.

2.24.020 *Repealed.*

2.24.010 Election of chairpersons and vice-chairpersons.

Commencing at its regularly scheduled meeting for the month of January, 1987, the members of the planning commission and park board shall select from among their members by a majority vote, a chairperson and a vice-chairperson to serve for a one-year term. Previous service of nominees shall not affect their ability to serve. (Ord. 710 § 1, 2001; Ord. 436 § 1, 1986)

2.24.020 Limitations on reappointment.

Repealed by Ord. 713. (Ord. 710 § 1, 2001; Ord. 408 § 3, 1985)

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SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

ROGER SKINNER,

Petitioner,

v.

CIVIL SERVICE COMMISSION of the City
of Medina, THE CITY OF MEDINA, a
municipal corporation, MEDINA POLICE
DEPARTMENT,

Respondents.

No. 06-2-33267-9 SEA

DECLARATION OF CAROLL
WEDLUND, SECRETARY/CHIEF
EXAMINER

I, Caroll Wedlund, declare as follows:

1. I am the appointed Secretary/Chief-Examiner of the Police Civil Service Commission for the City of Medina, Washington, and have been at all times material hereto.
2. I have not, to date, been personally served with a Notice of Appeal of either 1) the Commission's Findings, Conclusions, and Order ("Order") of September 1, 2006 affirming the discharge of Roger L. Skinner from the City of Medina Police Department; or 2) the September 18, 2006 Order denying reconsideration of the September 1, 2006 Order. I learned of the appeal from the City administrative staff.
3. The Order was retained by me for Commission records and for distribution to the appellant Roger Skinner and to the City of Medina, the employer.
4. On September 12, 2006 Roger L. Skinner filed a Motion for Reconsideration of the Commission's Order with the Commission. The Commission at its meeting of September 18,

DECLARATION OF CAROLL WEDLUND - 1

COPY

OGDEN MURPHY WALLACE P.L.L.C.
1601 FIFTH AVENUE, SUITE 2100
SEATTLE, WASHINGTON 98101-1686
TEL: 206.447.7000/FAX: 206.447.0215

1 2006 voted to deny the motion and each member signed an Order to deny the motion for
2 consideration on that date. The Order denying the Motion for Reconsideration was retained by
3 me for the Commission records and for distribution to Roger L. Skinner and to the City of
4 Medina.

5 5. The rules adopted by the Commission do not provide for a delay or stay of the
6 time for filing an appeal to the superior court in the event a motion for reconsideration is filed
7 under rule 18.31.

8 6. I was not contacted by Roger L. Skinner or anyone on his behalf with regard to
9 whether or not the motion for reconsideration stayed or delayed the time to file an appeal of the
10 Commission's September 1, 2006 Order.

11 I declare under penalty of perjury under the laws of the State of Washington that the
12 foregoing is true and correct.

13
14 Signed this 18 day of May, 2007, at Medina, Washington.

15
16 By Caroll P Wedlund
17 Caroll P. Wedlund
18 Secretary/Chief-Examiner, Medina Civil
19 Service Commission
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1. GENERAL PROVISIONS

- 1.01 **AUTHORITY AND APPLICATION.** These rules are promulgated pursuant to the authority granted by Chapter 41.12 RCW, Civil Service for City Police. These rules are applicable to proceedings before the Civil Service Commission and should be read in conjunction with the specific provisions of RCW 41.12.
- 1.03 **SCOPE AND PURPOSE.** These rules govern the continuing administration of the Civil Service System of the City of Medina. The purpose of these rules is to assure that the Civil Service System in the City of Medina is administered in accordance with the ordinances of the City of Medina and that all proceedings before the Commission are conducted in an orderly, fair and timely manner
- 1.05 **PRESUMPTION OF VALIDITY.** The Civil Service System implemented by these rules substantially accomplishes the purpose of RCW 41.12. These rules are presumed to be valid and shall be upheld unless in direct conflict with RCW 41.12.
- 1.07 **SEVERABILITY.** If any provision of these rules or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of these rules which can be in effect without the invalid provision or applications, and to this end, any section or word is declared to be severable.

by the party unless, in the exercise of reasonable diligence, a basis for challenge is unknown to a party prior to commencement of a hearing.

2.11 COMMISSIONERS—CHALLENGE-NECESSITY. If, as a result of disqualification(s) pursuant to Rule 2.07, there is no longer a lawfully constituted quorum available, the Mayor shall appoint a Commissioner pro tem to the Commission.

2.13 OFFICE—HOURS. The office address of the Civil Service Commission is 501 Evergreen Point Rd. (P.O. Box 144), Medina, WA 98039. The regular hours of the Commission Secretary shall be 8:30 AM to 5:00 PM.

2.15 PUBLIC RECORDS. Public records of the Commission shall be available for inspection and copying during the regular office hours of the City of Medina. No fee will be charged for inspection of public records. Inspection will be during office hours in a space provided by the Commission staff, and under its supervision, and must be accomplished without excessive interference with the essential functions of the Commission. Copies will be made available at actual cost or as provided by ordinance. These rules shall be printed for free public distribution.

2.17 RECORDS OF PROCEEDINGS. The Commission shall keep a record of its proceedings. The record of the Commission shall not include a written verbatim report of proceedings unless ordered. The Commission may retain a court reporter to record all or part of a proceeding. In addition, a party to a proceeding, at his/her own expense, may have a court reporter record all or part of a proceeding. On appeal or review, costs of transcription may be recovered by the Commission. Upon appeal or review, transcription and certification of a record of proceedings shall be arranged by the Secretary and Chief Examiner.

2.19 REPORTS—APPLICANTS, ELIGIBLES, EMPLOYEES.
a. Each applicant, eligible and employee shall keep the Commission informed, by written notice to the Secretary, of current address and telephone number, and shall report any change of name through marriage or otherwise.

b. Each eligible shall keep the Secretary informed, in writing, regarding availability and any refusal to accept appointment or promotion and the reasons therefore.

2.21 REPORTS—DEPARTMENT HEADS. A department head shall immediately report to the Secretary and Commission in such detail and on such forms as the Secretary may prescribe:

3. SECRETARY AND CHIEF EXAMINER

3.01 SECRETARY AND CHIEF EXAMINER—APPOINTMENT. The City Manager of the City of Medina, or his/her designee, shall be the Secretary and Chief Examiner.

3.05 SECRETARY—DISCIPLINE. The Commission shall notify the City Council and request an investigation of the Secretary concerning misconduct.

3.07 SECRETARY—AUTHORITY. In addition to acting as Secretary of the Commission, the Secretary shall:

- a. Delegate duties where necessary and supervise the preparation, conduct, and scoring of examinations, and maintenance of the classification plan;
- b. Report to the Commission from time to time as directed.
- c. Prepare the budget for the Commission, approve accounts, and administer generally the expenditure of funds appropriated for the operation of the Commission;
- d. Classify all civil service positions in the classified service, maintain a schematic list of all such classes in the classification plan, and prepare and maintain specifications for each class;
- e. Assist the Commission in determining which examinations shall be conducted, the minimum qualifications of applicants, the subjects to be covered in each examination, methods of testing, and the relative weights to be given to the various parts of the examination;
- f. Supervise the conduct of the examinations, appointing such experts, special examiners, and other persons he/she may deem necessary; decide all questions relating to the eligibility of applicants to the examinations, extension of time and all questions arising during the course of an examination; prepare and submit a report prior to and after each examination to the Commission, together with a report on all appeals from rulings or appeals from any part of the examination; and (Note: See Rule 8.01 "Ordering Examinations.").
- g. Perform all other functions necessary for the proper carrying out of these rules and the provisions of law relating to the Civil Service system and such additional duties as may be assigned to him/her from time to time by the Commission.

forth the basis of the dismissal. In the case of an action that is not final, the appeal shall be stayed until such action becomes final. Such orders may be appealed to the Commission.

18.11 APPEALS—NOTICE OF HEARING. Upon receipt of a notice of appeal, the Commission staff shall forward a copy of the notice to other affected parties. As soon as possible thereafter, but in any event within ten (10) days, a date of hearing before the Commission shall be set, with each party to be afforded not less than twenty (20) days notice of such hearing. Subsequent hearings on the same appeal shall have one week's notice unless waived by the parties. All parties may agree to waive the notice provisions and time limits provided by this section.

18.13 APPEALS—AUTHORITY OF DEPARTMENT. The exercise of jurisdiction by the Commission over a matter does not preclude the applicant from withdrawing, modifying or otherwise compromising the matter prior to the matter going to hearing. Upon resolution of a matter prior to hearing, any candidate may request the dismissal of the matter. A stipulation signed by the applicant should be submitted to the Commission prior to such dismissal.

18.15 SERVICE OF PROCESS—PAPERS

- a. The Commission staff shall cause to be served all orders, notices, and other papers issued by the Commission, together with any other papers that the Commission is required by these rules to serve. Every other paper shall be served by the party filing the notice, document or paper.
- b. All notices, documents or papers served by either the Commission or a party shall be served upon all counsel of record at the time of such filing and upon parties not represented by counsel. Service of appeals shall be by personal service, by registered or certified mail, or by regular mail with written acknowledgment of such mailing attached to the papers so served. Written acknowledgment shall be by affidavit of the person who mailed the papers, or by certificate of any attorney or Secretary and Chief Examiner.
- c. Service upon parties shall be regarded as complete when personal service has been accomplished; or by mail (U.S. or inter-city), upon deposit in the mail properly stamped and addressed
- d. ~~Papers required to be filed with the Commission shall be deemed filed upon actual receipt of the papers by the Commission staff at the Commission office.~~ All appeals except the

days in advance of the hearing, barring unusual circumstances. The party of whom the request is made shall respond no later than one (1) day prior to the hearing.

- 18.25 DELIBERATION. Deliberations by the Commission shall be subject to Chapter 42.30 RCW. No person other than the Secretary and Chief Examiner and legal counsel to the Commission shall be present during deliberation. No person shall attempt to convey any matter on appeal, other than in open hearing.
- 18.27 DECISION. In any appeal, the Commission shall issue a decision, including findings of fact, conclusions of law, and an order, to the appellant or counsel of record for the appellant. A decision shall be issued within thirty (30) days of the close of the hearing of an appeal or other proceeding heard only by the Commission. Absent the consent of an appellant to an extension of time, failure to issue a decision within the time prescribed shall result in an appeal being sustained.
- 18.29 REMEDIES. The Commission may issue such remedial orders as deemed appropriate.
- 18.31 RECONSIDERATION. A party may move for reconsideration by the Commission only on the basis of fraud, mistake, or misconception of facts. Such motion must be filed with the Commission within ten (10) days of the decision of the Commission. Such motion for reconsideration shall be decided on affidavits, absent special showing that testimony is necessary.
- 18.33 WAIVER. Upon stipulation of all parties to a proceeding, and upon a showing that the purposes of the rules or ordinances of the City of Medina would be better served, the Commission may waive the requirements of any of these rules.

20. MISCELLANEOUS

20.01 REPEALS AND SAVINGS. All matters shall be subject to these rules, and to that extent, all previous Civil Service rules are hereby repealed.

20.03 COMPUTATION OF TIME

- a. In computing any period of time prescribed or allowed by these rules or by any applicable statute, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a City of Medina legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, a Sunday nor a City of Medina legal holiday. When the period of time prescribed or allowed is ten (10) days or less, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.
- b. Any period of time except for the stated period of time set forth in Rule-18.11 may be extended by the Secretary and Chief Examiner for no more than fourteen (14) days upon written notice to the Commission and a showing of good cause. The motion for extension of time must be filed with the Commission offices prior to the running of the applicable time period.
- c. The date of notice for purpose of these rules shall be the date on which notice of an action is posted in the Commission's office or is mailed to a party to a proceeding.

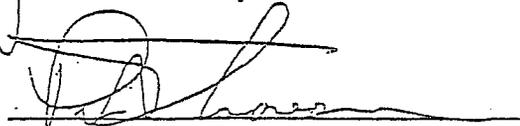
Approved this 22nd day of November, 1994.



Paul B. Demetriades, Chairperson



John Dem-Palmer, Commissioner



Park Thoreson, Commissioner