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82306-5  
No. 60868-1-1

COURT OF APPEALS,  
DIVISION I,  
OF THE STATE OF WASHINGTON

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ROGER L. SKINNER

Appellant,

v.

CITY OF MEDINA and CIVIL SERVICE COMMISSION  
OF THE CITY OF MEDINA,

Respondents.

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RESPONSE BRIEF OF CITY OF MEDINA

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A. **ASSIGNMENTS OF ERROR**

*Assignments of Error*

The Appellant “Skinner” appeals an Order Granting Respondent’s Motion for Summary Judgment. CP 243-245. The Order dismissed Skinner’s appeal of the September 1, 2006 Order of the Medina Civil Service Commission upholding Skinner’s termination of employment from the Medina Police Department. CP 1-18.

Skinner assigns error to the trial court’s finding/conclusion that “The Petitioner failed to serve and file his appeal of the September 1, 2006 Order of the Medina Civil Service Commission within 30 days of its entry as required by RCW 41.12.090.”<sup>1</sup> Skinner does not assign specific error to the trial court’s conclusion that there are no material issues of fact.

*Issues Pertaining to Assignments of Error*

1. Whether Skinner timely served and filed a timely appeal of the Commission’s September 1, 2006 Order denying his appeal?

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<sup>1</sup> In his Opening Brief (at page 1) Skinner states his assignment of error in the form of an argumentative statement assigning error to decisions that may be inherent in the trial court’s decision to grant the City’s Motion for Summary Judgment, but are not specific decisions set forth in the Order Granting Respondent’s Motion For Summary Judgment.

- a. Whether or not the 30-day time period allowed by RCW 41.12.090 for filing and service of a Notice of Appeal commenced on September 1, 2006, with the entry of the Commission's Findings and Order or on September 18, 2006, with the entry of the Commission's Order denying Skinner's Motion for Reconsideration?
2. Whether Skinner served the Commission with his Notice of Appeal?
  - a. Whether or not service of a copy of the Notice of Appeal on the Medina City Clerk satisfies the requirement of service "on the commission" required by RCW 41.12.090?

**B. 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 of the Revised Code of Washington. *See* Declaration of Mark Weinberg, the Medina City Manager at CP 89-93 and Appendix A 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 at Appendix B hereto. On September 12, 2006 Mr. Skinner filed a motion

for reconsideration of its decision with the Commission.<sup>2</sup> 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 C. 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 B.

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 Wedlund at Appendix B. 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. To date, neither the secretary/chief-examiner of the Commission, nor any

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<sup>2</sup> 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.

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.

C. ARGUMENT

1. RCW 42.12.090 strictly limits the jurisdiction of the superior court for review of a local police civil service commission order affirming the discharge of a classified employee to appeals taken by serving the commission within thirty days after the entry of such order.

RCW 41.12.090 requires that the Commission conduct an investigation and then issue an order at the completion of its investigation either affirming, modifying or reversing the employer's order terminating the employee. The Order of the Commission is immediately appealable upon entry. **The statute makes no provision for reconsideration by the Commission of its Order.** A notice of appeal must be timely served on the Commission with thirty (30) days.

RCW 41.12.090 provides as follows (pertinent portions are in bold type for ease of reference):

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.

Under RCW 41.12.090, the thirty-day (30) appeal period began to immediately run with the entry of the September 1, 2006 Order.

A City has authority to create by ordinance a local civil service system that substantially complies with Chapter 41.12 RCW. RCW 41.12.010 and *Police Officers Guild v. City of Seattle*, 151 Wn.2d 823, 826, 92 P.3d 343 (2004). Arguably the City could have authorized the commission to consider a motion for reconsideration of its Orders and to stay the commencement of the thirty-day appeal period until a motion for reconsideration was decided. However, since the Medina City Council did not include such provisions in the ordinance establishing the police civil service commission (Appendix A), the commission lacks any authority to accept motions for reconsideration or to stay the commencement of the thirty-day appeal period after entry of its order following the completion of its investigation. *See* subsection 2. below.

RCW 41.12.090 requires that in order for an appeal to be taken, the accused must serve “the commission” within thirty days after entry of the

order of the commission. There is no qualification nor exception to this requirement stated in the statute.

Since Skinner neither attempted service on the commission within thirty days after entry of the commission's order affirming Skinner's termination by the employer, nor ever effected service upon the commission, the superior court had no choice under the statute, but to grant the employer's motion for summary judgment and dismiss the appeal.

2. The Commission did not have authority following entry of its September 1, 2006 order to either reconsider its decision or to stay of the commencement of the thirty day appeal period.

In *State v. Brown*, 126 Wash. 175, 218 Pac. 9 (1923), the court held that the City of Seattle's civil service commission<sup>3</sup> 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 annul its own order sustaining the discharge of a civil service employee. This statement of common law was presumably known to the state

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<sup>3</sup> The City of Seattle is a Charter City and its Civil Service Commission was established by the City Charter.

legislature when it enacted the civil service system we see today in Chapter 41.12 RCW.

*State v. Brown, supra*, preceded adoption by the state legislature in 1937 of legislation establishing the current civil service system in Washington State for the employees of local police and fire departments. In adopting the 1937 legislation, since amended in 1987, 1993, and 2002,<sup>4</sup> the legislature “established a ‘prototype’ civil service system for city police departments and also authorized cities to enact civil service systems provided that the systems ‘substantially accomplish the purpose’ of Chapter 41.12 RCW. RCW 41.12.010.” *Police Officers Guild v. City of Seattle, supra* at 832-834.

RCW 41.12.090 specifically provides for a period of 30 days from date of entry of an Order by a local commission affirming a discharge, for the employee to perfect their appeal to superior court. Neither a motion for reconsideration, nor a stay of commencement of the 30-day appeal period were included by the legislature in the statute. By remaining silent on the issue and not specifically authorizing motions for reconsideration, the legislature “silently acquiesces” to the interpretation given in *State v.*

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<sup>4</sup> See Laws of 1987, ch. 339, sec. 2; Laws of 1993, ch. 47, sec. 5; Laws of 1993, ch. 189, sec. 1; Laws of 2002, ch. 143, sec.1.

*Brown*. See *Police Officers Guild v. City of Seattle*, *supra* at 835 (footnote 13).

In addition, the Medina police civil service system, created by Ordinance and codified in Chapter 2.20 MMC (Appendix A), neither created a system that allowed for motions for reconsideration of orders entered by the commission nor authorized the commission by rule to provide for motions for reconsideration or for the stay of the commencement of the thirty-day appeal period. Instead, **Medina simply adopted by reference RCW 41.12.090**. MMC 2.20.010. Appendix A. The Commission's local rule 18.31, relied upon by Appellant, is not authorized by statute or by ordinance. Even were the court to determine that the City had authority to authorize the Commission to adopt rules allowing for motions for reconsideration and for the stay of the commencement of the running of the 30-day appeal period, the City chose not to exercise such authority.

RCW 41.12.090 sets forth the procedure under which a party may appeal a decision of the Civil Service Commission. An appeal from a decision of an administrative tribunal invokes the appellate, rather than the general jurisdiction of the superior court. *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). “Acting in its appellate capacity, the superior court is of limited statutory jurisdiction, and all statutory requirements must be met before jurisdiction is properly invoked.” *Fay*, 115 Wn.2d at 197, 796 P.2d 412 (quoting *Spokane Cy. v. Utilities & Transp. Comm'n*, 47 Wn. App. 827, 830, 737 P.2d 1022 (1987)).

3. State v. Brown still stands for the proposition that a local civil service commission has no authority to reconsider its signed decisions and is unaffected by the Administrative Procedures Act, RCW 34.04.

Petitioner attempts to criticize *State v. Brown* on the basis of its age and the enactment of the Administrative Procedures Act. See page 12 of the Opening Brief. *State v. Brown* holds that a statutorily created agency has no authority to reconsider a decision it makes after entering its decision. Since the Administrative Procedures Act has no application to the proceedings of a local civil service commission,<sup>5</sup> its subsequent enactment has no impact what-so-ever. *State v. Brown* has neither been criticized nor overruled in any subsequent reported decision. *State v*

*Brown* was not cited in *Hall v. Seattle School District*, 66 Wn. App. 308, 831 P.2d 1128 (1992), a case relied upon by Skinner,<sup>6</sup> because *Hall* was a case of a different color. ***Hall* was an appeal from the decision of a Hearings Officer given judicial powers not delegated to a Civil Service Commission.** See *Hall* at 314-315. The court of appeals in *Hall* cited *Simmonson v. Veit*, 37 Wn. App. 761, 683 P.2d 611, review denied, 102 Wn.2d 1013 (1984) and cited RAP 5.2(e) and the Administrative Procedures Act because of their applicability to the facts of the case before them. Again, in *Hall*, the appeal was from a Hearings Officer with statutory authority akin to a judge, rather than an appeal from a local Civil Service Commission. *State v. Brown* applies to civil service commissions and other bodies of limited jurisdiction acting in a quasi-judicial capacity. Rules passed by the Commission for which they have no statutory authority are invalid. *State v. Brown*.

4. The provisions of the state Administrative Procedures Act, providing for the making of a motion for reconsideration to a state agency and for the stay of commencement of the

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<sup>5</sup> See subsection 4 beginning on page 12 of this brief and subsection 9 beginning on page 17.

<sup>6</sup> Opening Brief at 8,9,14.

thirty day appeal period, do not apply to a city police civil service commission.

Skinner argues (Opening Brief at pages 6-8) that the provisions of RCW 34.04, the Administrative Procedures Act, provide the statutory authority for the Medina Civil Service Commission to consider a motion for reconsideration and for the stay of the commencement of the 30-day appeal period until the motion for reconsideration is resolved. *See* RCW 34.04.470. This argument fails because the Administrative Procedures Act does not apply to a local civil service commission. **The act is limited to “state agencies” and a local civil service commission is not a state agency.** *Dumage v. Seattle*, 19 Wn. App. 932, 935, 578 P.2d 875 (1978); RCW 34.04.010(1).

Skinner’s argues (Opening Brief at 7) that because the City could request a hearing before an ALJ to resolve an employee whistleblower complaint under Chapter 42.41 RCW, the provisions of the ADA in Chapter 34.05 RCW apply to a local civil service commission. This argument has no merit. Skinner ignores the holding in *Dumage v. Seattle, supra*. Moreover, Skinner is not a whistleblower. Skinner did not bring a whistleblower complaint. Chapter 42.12 RCW has no application to this

case. The Medina Police Civil Service Commission has no authority to hear employee whistleblower complaints.

Inclusion by the State Legislature in the Administrative Procedures Act of provisions allowing for motions for reconsideration and for the stay of the commencement of the running of the time for an appeal until after the motion for reconsideration is resolved simply demonstrates that if the state legislature intended to provide for motions for reconsideration in the civil service system, it would have done so by including express language in RCW 41.12.090. Due to *State v. Brown, supra*, the legislature was aware of the need for statutory authority for the exercise of a motion for reconsideration by an administrative tribunal. The absence of such authority in Chapter 41.12 RCW is a clear statement by the legislature that judicial appeals from Orders entered by civil service commissions are not to be delayed by motions for reconsideration or by a stay of the statutory 30 days for service of a notice of appeal.

5. Neither a mistaken belief, nor substantial compliance, can mitigate non-compliance with a jurisdictional requirement.

Roger Skinner cannot credibly argue that he was misled or duped into waiting past the end of the 30-day appeal period to attempt service of notice of his appeal by the Commission. There is no mention of a stay of

the thirty-day appeal period in the Commission's rules or September 1, 2006 Order, should a motion for reconsideration be filed.

Apparently Roger Skinner's counsel mistakenly believed the provisions of the administrative procedures act in RCW 34.04.470 applied.<sup>7</sup> Mistake is not grounds for non-compliance with a jurisdictional requirement. There is no such thing as *substantial compliance* with a jurisdictional statute of limitations for an appeal. See *Employees Ass'n v. Pub. Employment Relations Comm'n*, 105 Wn. App. 434, 438, 20 P.3d 472 (2001); *Fay v. Northwest Airlines, Inc.*, *supra*. The issue here is not one of whether or not the right person was served within the 30-day time period. *Hall v. Seattle School District* cited by the Appellant and other cases finding substantial compliance for reasons other than the failure to meet a jurisdictional requirement have no application to the facts before this court on this motion for summary judgment. Service of the Notice of Appeal (CP 262-265) was not even attempted on the commission within the 30-day time period. The facts in *Hall v. Seattle School District*, *supra*, are substantially different from the facts before this court, as described in subsections 7 and 8 below.

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<sup>7</sup> See Appellant's briefing in response to the Motion on the Pleadings.

6. The commission has not been served as required by RCW 41.12.090.

It is uncontested that the Commission was not served with the Notice of Appeal as required by RCW 41.12.090. The Declarations of the Commissioners and the Commission's Secretary/Chief Examiner clearly establish that no service of the appeal has been perfected on the Commission. CP 94-101.

7. The Petitioner has failed to bring forward any facts, by Declaration or Affidavit, to demonstrate that the Petitioner ever even attempted to serve the Commission as required by RCW 41.12.090.

This court has no factual declarations before it detailing the effort, if any, made by the Petitioner to serve the Commission unlike the court in *Hall v. Seattle School Board, supra*, relied upon by Skinner at pages 8-9 of its Opening Brief. The Declarations submitted by the Commission secretary/examiner and by the Commission members (CP 94-101) stating that they have never been served with the required notice are un-rebutted. The Declaration of Service signed by Skinner's Attorney states only that he left a copy of the Notice of Appeal with a person who identified themselves as the city clerk. CP 51-52.

8. *Nitardy v. Snohomish County*, not *Hall v. Seattle School District*, is the case on point.

In *Hall* at 312 it was necessary that the court factually distinguished *Nitardy v. Snohomish County*, 105 Wn.2d 133, 712 P.2d 296 (1986). In *Nitardy*, the applicable statute required service on the county auditor and the plaintiff served the secretary of the county executive. These facts are equivalent to the facts of this case where the applicable statute requires service on the “commission” and the appellant served the city clerk. In *Nitardy*, the court held service was insufficient. In *Hall* at 314 the court noted that “the facts in *Nitardy* would be equivalent to service on the secretary to the superintendent of schools rather than on the secretary to the proper party, as in our case.” In *Hall* the appellant served the secretary to the School Board Chairman instead of the Chairman.

Here, the facts are more akin the facts in *Nitardy* than in *Hall*. Skinner served only the City Clerk. Skinner made no attempt to serve a commissioner or the commission’s designated secretary/examiner. RCW 41.12.090 requires that he serve the Commission. Petitioner made no effort to serve the Commission or its secretary/chief examiner. The city clerk has no identified relationship to the Commission. Local Civil Service Rule 18.15 cited by Skinner at page 12 of his Opening Brief has

no application to the “*service*” of a Notice of Appeal on the Commission. That rule has application only to papers to be “*filed*” with the commission relating to a pending proceeding before the commission. Skinner knew that Carol Wedlund was the designated secretary/chief examiner for the Medina Civil Service Commission. Skinner had previously filed pleadings with Ms. Wedlund, including his motion for reconsideration. CP 1-18. Here as in *Nitardy* there was no service at all upon the proper party. The service was not just insufficient; there was no service at all upon the Commission. Medina Civil Service Rule 3.07g. clearly states that the Secretary of the Commission performs all other functions necessary for the proper carrying out of these rules and the provisions of law relating to the Civil Service system. No effort was made to serve the Secretary of the Commission.

9. Substantial Compliance does not apply when compliance with statutory time requirements to file an appeal is the issue.

*Hall v. Seattle School District, supra* at 311-312, relied upon *In Re Saltis*, 94 Wn.2d 889, 621 P.2d 716 (1980). *In Re Saltis* has been limited by decisions subsequent to *Hall*. The failure to comply with a statutorily set time limitation cannot be considered “substantial compliance with the

statute." *See San Juan Fidalgo v. Skagit County*, 87 Wn. App. 703, 943 P.2d 341 (1997); *Medina v. Utility District No. 1*, 147 Wn.2d 303, 53 P.3d 993 (2002); and *Diehl v. Growth Board*, 118 Wn. App. 212, 75 P.3d 975 (2003).

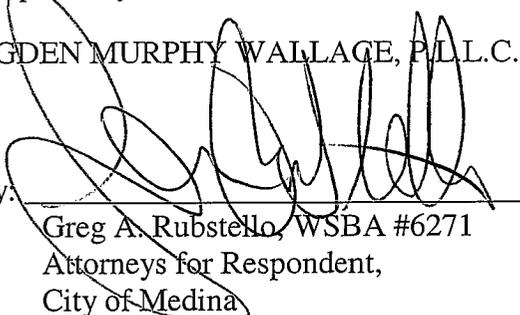
**D. CONCLUSION**

Since there are no genuine issues of material fact and the court is without jurisdiction to consider the appeal, an order should be entered dismissing the appeal.

RESPECTFULLY SUBMITTED this 3rd day of April, 2008.

Respectfully submitted,

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

By: 

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

# Appendix A

# Appendix A

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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.

COPY

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

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

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

10           Mark E. Weinberg  
11           Medina City Manager  
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**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)

# Appendix B

# Appendix B

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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,

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 Carol P Wedlund  
17 Carol P. Wedlund  
18 Secretary/Chief-Examiner, Medina Civil  
19 Service Commission  
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# Appendix C

# Appendix C

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.

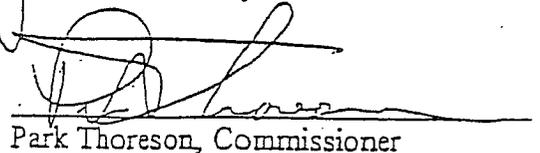
Approved this 22nd day of November, 1994.



Paul B. Demetriades, Chairperson



John Dern-Palmer, Commissioner



Park Thoreson, Commissioner