

**TIPS FOR CONDUCTING
A CIVIL SERVICE
CONTESTED CASE
DISCIPLINARY HEARING**

Prepared by:

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November 3, 1995

**For the
Foster, Pepper & Shefelman
Civil Service Conference
Wenatchee, Washington**

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November 21, 1991

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Shirley E. Small,
Secretary and Chief Examiner
Mukilteo Civil Service Commission
P.O. Box 178
Mukilteo, WA 98275

RE: Appeal of [REDACTED]

Dear Ms. Small:

Thank you for contacting me to assist the City of Mukilteo in convening a Civil Service hearing of the appeal of [REDACTED]. After reviewing the City's Civil Service Ordinance and Commission Rules regarding disciplinary proceedings, I recommend that you take the following steps for purposes of conducting the hearing:

1. Open a File. Open a file in an 8 and one-half by 14 inch manila file with a clip at the top for holding papers in place would be fine. Keep every piece of correspondence that you receive that concerns the case in this file. The document should be arranged in chronological order, so that the first document you keep in the file would be your copy of the Mayor's letter of discipline to [REDACTED]; the second would be the Sergeant's Notice of Appeal, and the third would be whatever correspondence you receive or send out as it arrives in order. Start numbering the pages as they come in with a handwritten number on the corner of the page, so that you can always go to your file and see that all pages are present and none are missing.

2. Regular Meeting. Call a regular meeting of the Civil Service Commission and give proper advance public notice of the meeting. On the agenda for the meeting, include an item for scheduling the [REDACTED] disciplinary hearing. In open public session at the meeting, have the commissioner check their schedules and see when the hearing can be convened. The hearing must be scheduled for a particular window period under your rules. It must be more than 20 days, but less than 60 days, after Mr. [REDACTED] filed the Notice of Appeal. Since he gave you notice on

November 12, 1991, the hearing must occur sometime between the period of Tuesday, December 3 through Friday, January 11, 1992. (The date can be postponed at Mr. [REDACTED] request, for good reasons). When the date is chosen, the Commission should also discuss the time of day at which the hearing will take place; and the location of the hearing.

3. Schedule a Room. You will need to locate a room in which the hearing can be convened. Usually, a hearing room would be in City Hall, in a vacant City Courtroom, in council chambers that are large enough to accommodate a hearing, in a community center with a large meeting room, or the like. The room should allow for the three commissioners to sit at the head of the room. There should be room also for their legal counsel to sit close to them to assist them during proceedings. Close to the commissioners, there should be room for the secretary/chief examiner to serve as clerk of the Civil Service Proceeding. There should be a table large enough for the City Attorney and a representative from the police department to be present throughout the hearing, and to spread out their papers and exhibits; and there should be a table large enough for the appellant and his legal counsel to remain comfortably throughout the hearing, and to spread out their papers and exhibits. In addition, there should be room for any members of the public to sit in the audience; and there should be room for witnesses who are in line to testify to remain comfortably in the room. Sometimes the parties will ask that witnesses be excluded until the time of their own testimony. If that is the case, the room should have a hallway with chairs or benches or another nearby room where witnesses can wait. The tables mentioned above should be spaced far enough to give a comfortable psychological distance between parties who may be angry with another. In addition, there should be a chair for the witness to sit in, probably at right angles to the Commission, so on the one hand the witness can hear questions coming from the two parties, the City and the Appellant; and on the other hand, can deliver his answers to the Commission. This witness will need to have a microphone or be close enough to both the attorneys and Commissioners so that all questions and all answers can comfortably be heard by all.

4. Sound System. It is tremendously helpful to have the commission hearing convene in a room that is equipped with a sound system so that all parties can hear.

5. Recording of the Hearing. It is important that a reliable recorded record of the hearing be created. You can do this with a good tape recording system if each person who may be speaking has an individual microphone. However, a tape recorder running at large in the room largely will not pick up sound adequately to create a written record of the hearing if that ever

become necessary. The City or the Appellant may chose to have a court reporter present to take a verbatim transcript of the record. The Commission, also, could elect to hire a court reporter to be present throughout the proceeding; and should check its budget for such a stenographer.

6. Notice of the Hearing. As secretary and chief examiner, you are required to prepare a notice of the date, time, and place of the hearing and to send it by certified mail, return receipt requested, at least 10 days before the hearing is due to begin. You should actually sent this notice as soon as possible. You must send certified copies to the appellant, or his attorney or representative if he identifies one to you. For now, you should contact Mr. [REDACTED] at [REDACTED]. In addition, you need to send a copy certified to the "appointing authority," who, in Mukilteo, is the mayor. The notice should contain the name of the case, and the name of the parties and their representatives.

I have prepared a form that is attached that you may wish to use for the Notice of the Hearing. You should use the same format (caption) for any other directions from the Commissions to the parties throughout the course of the proceeding. However, your letters to the parties or about the case, if any, need not follow this "pleading" format.

7. Announcement of the Hearing. In addition to the announcement that goes to the parties, you should give notice of a special meeting of the City of Mukilteo Civil Service Commission (or a regular meeting if the hearing will occur at the Commission's regular meeting). You should prepare an agenda for the special meeting reciting that one agenda item will be a hearing covering the appeal of [REDACTED]. This agenda item can be in addition to any other agenda items that the Commission will consider at the time.

8. Conducting the Hearing. At the time of the hearing, you should arrive in time to assure that the microphones are set up and turned on; that chairs are in place; that doors are unlocked; that heat is turned on in the building; and that you have on hand sufficient blank tapes to make a tape recorded record of the entire hearing.

9. Handling of Exhibits. During the hearing, either party may wish to have the Commission look at documents or objects which they will refer to as "Exhibits." Whenever an "Exhibit" is offered into evidence, the attorney will first offer it to you to be marked. If the City requested the exhibit to be marked, you would write on a corner of the document, "City's Exhibit No. 1," or number 2, 3, or whatever number it is. Similarly, if the

TIME
VARIES
FROM
CITY TO
CITY

defense offers an Exhibit, you should mark it as a defense exhibit, and continue the marking system. For example, the defense exhibits might be numbers 7, 8, and 9. Then, as the attorney offers the Exhibit into evidence, you must listen with all the powers that you have to hear to learn whether the Commission accepts the document or rejects the document as an Exhibit. You need to keep a list of Exhibits offered in running order, noting who offers the exhibit, Plaintiff or Defendant, what is the Exhibit Number, whether 1, 2, 3, . . . or other; and whether the document was admitted into evidence or rejected by the Commission; and a brief description of the exhibit.

I am enclosing a format that you may wish to use to keep a running list of Exhibits. Make sure you have several pages worth of potential exhibit tables to use during the hearing. Some hearings involve more than 100 exhibits and the parties become critically interested in remembering whether or not an Exhibit was actually admitted into evidence before the Commission.

I will be keeping notes of the hearing while it goes on, and make note of the identity of Exhibits and whether they were admitted as well; but we both need to do this carefully to back each other up. Also, the information should be available on tapes if there is any question about what was admitted.

10. Continuing the Hearing Through Several Sessions. If the hearing runs for more than one session, you will need to schedule use of the meeting room, and give proper notice under the open public meeting act of the date, time and place of any continuation of the first session.

11. Giving Notice of Decision. At the end of the hearing, the Commission will deliberate on whether or not the discipline occurred in good faith for cause, not for religious or political reasons. The Commission may or may not permit you to remain present during its deliberations; that is up to the Commission. I anticipate the Commission will use my assistance in preparing its final decision; then you would need to give the decision to all the concerned parties.

12. Swearing of Witnesses. As secretary/chief examiner, you are required to swear witnesses before they testify. As each person takes the witness stand, you need to ask the person to raise his or her right hand and to take an oath or affirmation. An example is the following: "Will you please raise your right hand. Do you swear or affirm to tell the truth, the whole truth, and nothing but the truth, in this proceeding."

Again, during the hearing, I will watch to try to assist you to assure that you remember to see that witnesses are sworn. If

a court reporter is used, often the court reporter will handle the swearing of witnesses.

13. Preserving the Record. At the conclusion of the hearing, you should have assembled a complete set of the exhibits, marked with their exhibit numbers, and hand to the Commission one complete set of admitted exhibits. Exhibits not admitted into evidence would be held aside by you in a separate file for those exhibits that were offered as evidence, but which were rejected by the Commission. At the close of hearing, and at the close of the Commission's deliberations, you will need to assure that you preserve a complete set of Exhibits, in a numerical order, and a complete set of the tapes of the hearing (marked as Tape No. 1, 2, etc.) in a safe place in case further legal proceedings result, and a record has to be made of the hearing.

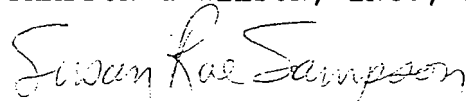
14. Appeals. We need not anticipate an appeal at this moment. But if an appeal were necessary, you would have to be prepared to send to the Superior Court a complete set of the record of the case, starting with the correspondence file, including all notices to the parties, including all admitted Exhibits and all rejected exhibits, and all transcripts prepared from the tapes or this court reporter's report of the hearing. You need to be able to swear to the Superior Court that the record that you present is complete and true, so you will want to take scrupulous care to assure that the record is indeed is complete.

15. Photocopies. It is ideal if parties bring to a disciplinary hearing enough photocopies of every exhibit that each Commissioner, the Secretary/Chief Examiner, the witness, and each attorney, can have a copy. But if anybody comes up with exhibits in inadequate number, it would be very handy to have a photocopy machine available to make additional copies if they become necessary or useful during the course of the hearing.

These are the ideas that come to my mind as I mentally review the conduct of a Civil Service Hearing. I am sure you will have additional questions, and I look forward to covering them with you at the time. In the meantime, please feel welcome to telephone me with any questions that you have so far.

Very truly yours,

SAMPSON & WILSON, INC., P.S.



Susan Rae Sampson

