



TO: Members of Troy City Council
FROM: Lori Grigg Bluhm, City Attorney *LGB*
DATE: May 8, 2012
SUBJECT: TPOA v. City of Troy and Act 78 Civil Service Commission

Enclosed please find a copy of a lawsuit that was filed by the Troy Police Officers Association against the City of Troy and the Act 78 Civil Service Commission. This is a lawsuit seeking injunctive relief, and not necessarily damages against the City. Specifically, through the complaint, there is a request for a hearing before the Act 78 Civil Service Commission, and also an order requiring amendments to the Act 78 Civil Service Commission Rules.

A resolution authorizing our office to defend the City's interest and the interest of the Act 78 Civil Service Commission is proposed for your consideration. The interests of the City and the Act 78 Civil Service Commission appear to be aligned at this point, so joint representation is allowed. If you have any questions, please let me know.

Law Offices

PIERCE, DUKE, FARRELL & TAFELSKI PLC
2525 S. TELEGRAPH
SUITE 100
BLOOMFIELD HILLS, MI 48302

MARK C. PIERCE
EDWARD E. DUKE II
M. CATHERINE FARRELL
PAUL TAFELSKI

April 11, 2012

Craig Lange
Kirk Huth and Lange
19500 Hall Road Ste 100
Clinton Township, Mi 48038

Re: TPOA v City of Troy and Act 78 Civil Service Commission

Dear Mr. Lange:

Pursuant to our conversation in which you agreed to accept service on behalf of your clients, enclosed please find the lawsuit filed on behalf of my client the TPOA. Please let me know if you have any questions.

Sincerely,



Pierce, Duke, Farrell & Tafelski P.L.C.
By: M. Catherine Farrell

Approved, SCAO

Original - Court
1st copy - Defendant

2nd copy - Plaintiff
3rd copy - Return

STATE OF MICHIGAN JUDICIAL DISTRICT 6th JUDICIAL CIRCUIT COUNTY PROBATE	SUMMONS AND COMPLAINT
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JUDGE MARTHA D. ANDERSON
TROY POLICE O v TROY CITY

no.

Court address

1200 Telegraph Road Pontiac Michigan

Plaintiff's name(s), address(es), and telephone no(s).
 Troy Police Officers Association (TPOA)
 35 Vermont Drive
 Troy, Mi 48083
 586 924 8861

v

Defendant's name(s), address(es), and telephone no(s).
 City of Troy and Troy Act 78 Civil Service Commission
 500 W. Big Beaver Road
 Troy, Mi 48084
 248 524 3316

Plaintiff's attorney, bar no., address, and telephone no.
 M Catherine Farrell P35248
 Pierce, Duke, Farrell & Tafelski P.L.C.
 2525 S. Telegraph Rd Ste 100
 Bloomfield Hills, Mi 48302
 248 852 1365

SUMMONS NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons to **file a written answer with the court** and serve a copy on the other party **or take other lawful action with the court** (28 days if you were served by mail or you were served outside this state). (MCR 2.111(C))
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.

Issued MAR 30 2012	This summons expires JUN 29 2012	Court clerk BILL BULLARD JR.
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*This summons is invalid unless served on or before its expiration date.

This document must be sealed by the seal of the court.

COMPLAINT *Instruction: The following is information that is required to be in the caption of every complaint and is to be completed by the plaintiff. Actual allegations and the claim for relief must be stated on additional complaint pages and attached to this form.*

Family Division Cases

- There is no other pending or resolved action within the jurisdiction of the family division of circuit court involving the family or family members of the parties.
- An action within the jurisdiction of the family division of the circuit court involving the family or family members of the parties has been previously filed in _____ Court.
- The action remains is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.
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General Civil Cases

- There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
- A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in _____ Court.
- The action remains is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.
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VENUE

Plaintiff(s) residence (include city, township, or village) 35 Vermont Dr Troy Mi 48083	Defendant(s) residence (include city, township, or village) 500 W. Big Beaver Rd Troy Michigan 48084
Place where action arose or business conducted 500 W Big Beaver Rd Troy, Mi 48084	

03/30/2012

Date

M. Catherine Farrell
 Signature of attorney/plaintiff

If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

STATE OF MICHIGAN
OAKLAND COUNTY CIRCUIT COURT

TROY POLICE OFFICERS
ASSOCIATION (TPOA),

PLAINTIFF

v.

CITY OF TROY and the
CITY OF TROY ACT 78
CIVIL SERVICE COMMISSION,

DEFENDANTS

M. Catherine Farrell (P35248)
Attorney for Plaintiff
Pierce, Duke, Farrell & Tafelski P.L.C.
2525 S. Telegraph Ste 100
Bloomfield Hills, Mi 48302
(248) 852-1365
Catherine@farrellesq.com

Case No 201:
Hon:

OAKLAND COUNTY 12-125981-CL

JUDGE MARTHA D. ANDERSON
TROY POLICE O v TROY CITY

2012 MAR 30 P 2:39

**COMPLAINT FOR MANDAMUS AND
FOR REVIEW OF ADMINISTRATIVE DECISION**

PARTIES

1. The Plaintiff, Troy Police Officers Association (“TPOA”), is a labor organization representing the sworn police officers below the rank of sergeant employed by the City of Troy, in Oakland County, Michigan.
2. Officer Todd Michael is, and has been at all relevant times, a member of the TPOA and is, and has been at all relevant times, employed by Defendant City of Troy as a sworn police officer below the rank of sergeant.
3. The Defendant City of Troy is the employer of Officer Todd Michael.

4. Defendant City of Troy Act 78 Civil Service Commission (“Commission”) is the civil service commission for the City of Troy, appointed in accordance with Act 78 of 1935, commonly known as the Police and Fire Civil Service Act, MCL 38.501 et seq. (the “Act”)

JURISDICTION

5. The Act grants to employees such as Officer Michael the right to a public hearing before the Commission in all cases where the employee has been removed, discharged, reduced in rank or pay, suspended, or otherwise punished. MCL 38.514 (1)

6. The Act also provides in section 38.514 (1) that decisions of the Commission adverse to the employee are appealable to Circuit Court in the county in which the city is located.

7. The City of Troy is located in Oakland County.

8. Michigan Court Rule 3.305 provides that an action for mandamus, other than an action against a state officer, must be brought in the circuit court unless a statute or rule requires or allows the action to be brought in another court.

9. The Commission is located in Oakland County.

FACTS

10. Officer Todd Michael was hired as a police officer in 1987 by Defendant City of Troy.

11. Officer Todd Michael was treated for certain medical conditions in 2000, 2001 and again in 2009.

12. During his recent 2009 treatment he received short term disability through Standard Insurance, the insurer carrier for such coverage provided by Defendant City of Troy.

13. In July 2009, Officer Michael received a return to work document from the physician who had treated all three of Officer Michael’s medical conditions. The physician cleared Officer Michael to return to work.

14. Notwithstanding the fact that his physician had cleared him to return to work, the Defendant City of Troy Police Department refused to permit Officer Michael to return to work.
15. Instead, the City of Troy required Officer Michael to submit to a fitness for duty examination by another medical professional.
16. Following that evaluation, the City of Troy did not return Officer Michael to work. There was no indication in the report that Officer Michael would be incapable of performing desk duties, but the City of Troy did not make such work available to him.
17. Pursuant to the collective bargaining agreement (CBA) between Defendant City of Troy and Plaintiff TPOA, the City of Troy selected another medical professional for a review of the prior records.
18. Following that review, the City of Troy did not return Officer Michael to work.
19. The City of Troy also determined that it would not give Office Michael an opportunity to work for the police department in any other capacity, such as performing desk duty.
20. Officer Michael was on paid administrative leave from the time of his 2009 surgery through January 2010. But for over two years since that time, he has not been paid by the City of Troy.
21. Despite the findings referred to above, the long term disability insurance carrier, Standard Insurance, made its own decision that Officer Michael was not disabled and could return to work as a police officer. The carrier denied him any long-term disability benefits.
22. The City of Troy Police Department has adopted Administrative Rules and Regulations which prohibit a police officer from engaging in off-duty employment unless the officer has obtained prior approval from the Chief of Police.

23. Following the City of Troy's denial of Officer Michael's right to return to work, and the refusal to give him desk duty, Officer Michael thrice asked the Chief of Police to approve his request to engage in outside employment.

24. Those requests were denied by the Defendant

25. As a result of the foregoing, Officer Michael finds himself still an employee of the City of Troy, yet not permitted to return to work and earn a paycheck as a police officer or as an employee of the police department. He is receiving no long-term disability benefits because the carrier has decided that he is capable of returning to work and should be employed by the City as a police officer. Finally, his requests to be permitted to obtain outside employment have been thrice denied by the Defendant City.

26. As a result, the only way that Officer Michael can legitimately earn a paycheck is to resign his position. Because he has been so effectively prevented from earning a living unless he quits the police force, Officer Michael has been constructively discharged.

PROCEDURAL BACKGROUND

27. As provided in the collective bargaining agreement, and pursuant to the request of Officer Michael, Plaintiff TPOA timely requested a Act 78 Civil Service Commission hearing on the issue of his constructive discharge and denial of reinstatement under the terms of the collective bargaining agreement.

28. MCL 38.515(1) states that, "If the person sought to be removed or reduced demands it, the civil service commission shall grant him or her a public hearing..." (emphasis added).

29. On October 25, 2011, the human resources Director for the City of Troy sent a letter to the Commission alleging that the Commission did not have jurisdiction to hear the case.

30. In a meeting on December 8, held at a time when the Commission consisted of only two members, rather than the three required by the Act (meaning that, although the Commission could meet, it could not make legally binding decisions), Officer Michael's case was brought before the Commission and Plaintiff's request for an Act 78 hearing was tentatively denied, based solely on the alleged lack of jurisdiction to hear the matter. The minutes of that meeting are attached as Exhibit 1.

31. Thereafter, on January 19, 2012, after a third member had been appointed to the Commission, the full Commission adopted a resolution denying Officer Michael's hearing request based solely on the alleged lack of jurisdiction, and directing the City Clerk to send a letter to Catherine Farrell, Counsel for the Troy Police Officers' Association, indicating that the request for hearing is denied without prejudice. The Resolution is attached as Exhibit 2.

32. Based upon the minutes of the December 8, 2011 meeting, and upon the language of the Resolution, it appears that the basis for the claim of lack of jurisdiction is that officer Michael had not been discharged, disciplined or demoted. The Commission did not believe that it had jurisdiction over the matter unless one of those actions had occurred.

COUNT I PETITION FOR REVIEW

33. Plaintiff restates the allegations of paragraphs 1 through 32 as if fully set forth herein.

34. Plaintiff appeals the decision of the Commission to this Honorable Court pursuant to the appellate rights granted under MCL 38.514(1) and requests that this Honorable Court reverse the decision of the Commission not to hear this case, for at least three reasons.

35. First, as noted above, the City of Troy will neither permit Officer Michael to work for the City nor permit him to obtain outside employment, so that the only way he can work is to resign

his position, meaning that he has been or is being constructively discharged. Since he has been constructively discharged, his case falls within the jurisdiction of the Commission, which extends to cases of discharge. Neither the Act nor the rules of the Commission preclude the Commission from hearing cases of constructive discharge.

36. Second, the Commission errs when it limits its jurisdiction to cases where an officer has been discharged, disciplined or demoted. The jurisdiction of the commission is governed by the Act, which uses much more extensive language, and grants jurisdiction in cases where the officer has been “removed, discharged, reduced in rank or pay, suspended, or otherwise punished.” MCL 38.514(1). It was improper for the Commission to impose such narrow limits on the types of cases it would hear, contrary to the explicit terms of the Act.

37. Since the actions of the City of Troy have caused Officer Michaels to be reduced in pay as well as suspended from his position, the Commission has jurisdiction over this case and its decision to refuse to hear it should be reversed.

38. Third, the Commission refused to hear the case based upon allegations contained in a letter received from the City of Troy and a responsive letter received from Ms. Farrell. The Act does not permit such summary disposition of a matter, but instead explicitly requires the Commission to conduct a hearing.

39. Act 78 authorizes civil service commissions to “prescribe, amend and enforce rules and regulations for carrying into effect the provisions of this act.” MCL 38.509. Defendant Commission has adopted such Hearing Rules.

40. The Hearing Rules set forth specific procedures for the conduct of hearings, including the obligation to inquire into all issues, and to make a record, as well as the right of the parties to call

witnesses and present other evidence. The relevant section of the Hearing Rules as published by the Commission are attached as Exhibit 3.

41. The Commission's decision not to grant the required hearing, even to make a record as to the nature of the claim, or a record sufficient for this Court to determine whether claim fell within the Commission's jurisdiction, was improper under the Commission's own Hearing Rules, denied Officer Michael the due process to which he was entitled, and should be reversed.

WHEREFORE Plaintiff respectfully requests that this Honorable Court review and reverse the decision of the Commission and remand this matter for a hearing before the Commission in accordance with the Act and the Hearing Rules (except to the extent that the Hearing Rules are in conflict with the Act, as set forth below), and that this Honorable Court further award such costs and reasonable attorney fees as may be appropriate.

**COUNT II
COMPLAINT FOR MANDAMUS – TO COMPEL A HEARING**

42. Plaintiff restates the allegations of paragraphs 1 through 41 as if fully set forth herein.

43. By refusing to hear the appeal of Officer Michael, the Commission has failed to fulfill its statutory duty.

WHEREFORE Plaintiff respectfully requests that this Honorable Court enter an Order of Mandamus compelling the Commission to fulfill its statutory to hear the case, and that this Honorable Court further award such costs and reasonable attorney fees as may be appropriate.

**COUNT III
COMPLAINT FOR MANDAMUS – TO AMEND HEARING RULES**

44. Plaintiff restates the allegations of paragraphs 1 through 43 as if fully set forth herein.

45. The Hearing Rules promulgated by the Defendant Commission fail to carry into effect the provisions of the Act, in that they improperly purport to prohibit the Commission from hearing cases which the Act requires the Commission to hear.

46. The Hearing Rules, Article X, Section 1, only permit employees to appeal certain matters, specifically:

B. ... violations concerning the application of the Merit Principle to the Civil Service Commission...

[and]

C. ... disciplinary actions resulting in discharge, suspension or demotion...

47. However, Act 78 governs a larger range of matters, and provides that:

a member of any fire or police department encompassed by this act shall not be removed, discharged, reduced in rank or pay, suspended, or otherwise punished except for cause. MCL 38.514.

48. The Act prohibits discharge except for cause. The Rules permit an appeal only when the discharge is for disciplinary reasons.

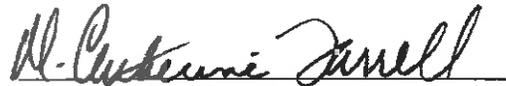
49. The Act explicitly applies to reductions in pay. The Hearing Rules do not permit the Commission to hear appeals when an employee suffers a reduction in pay.

50. The Act applies to all cases where an employee is "otherwise punished." The Hearing Rules do not permit the Commission to hear appeals unless the punishment results in discharge, suspension or demotion.

51. The Hearing Rules thus fail to carry into effect all of the applicable provision of Act 78, are therefore defective, and are not permitted by the Act.

52. In this case, the narrower rules led directly to the Commission's failure to fulfill its statutory duty to Officer Michael. The Commission should be instructed to amend the Rules to comply with the Act or, at a minimum, to ignore those provisions which are contrary to the Act and to perform its statutory duty in accordance with the Act.

WHEREFORE Plaintiff respectfully requests that this Honorable Court enter an Order of Mandamus compelling the Commission to amend or set aside its rules to the extent that they are inconsistent with the Act, or, alternatively, to ignore those provisions which are contrary to the Act and to perform its statutory duty in accordance with the Act, and that this Honorable Court further award such costs and reasonable attorney fees as may be appropriate.



M. Catherine Farrell (P35248)
Pierce, Duke Farrell & Tafelski P.L.C.
Attorney for Plaintiff
2525 S. Telegraph Ste 100
Bloomfield Hills, Mi 48302
(248) 852-1365

Dated: March 30, 2012

A Meeting of the Civil Service Commission (Act 78) was held Thursday, December 8, 2011, at Troy City Hall, 500 W. Big Beaver Road in the Lower Level Conference Room. Chairman/President McGinnis called the meeting to order at 7:34 AM.

A. ROLL CALL:

PRESENT: Chairman/President Donald E. McGinnis, Jr.
Commissioner David Cannon

ALSO PRESENT: Lori Grigg Bluhm, City Attorney
Peggy Sears, Human Resources Director
M. Aileen Bittner, City Clerk
Gary Mayer, Police Chief
Gerard Scherlinck, Police Captain
Keith Frye, Police Captain
George Zielinski, Police Sergeant
Robert Wolfe, Police Sergeant/TCOA President
Michael Geise, Police Officer/TPOA President
Jeanette Menig, Human Resources Specialist
John J. Higgins, President – EMPCO
Tony Haddad

B. APPROVAL OF MINUTES:

1. Approval of Minutes of Thursday, September 22, 2011

Resolution #CSC-2011-12-003
Moved by Cannon
Seconded by McGinnis

RESOLVED, That the Troy Civil Service Commission (Act 78) hereby **APPROVES** the Minutes of the Thursday, September 22, 2011 meeting as presented.

Yes: Cannon, McGinnis
No: None

MOTION CARRIED

C. PETITIONS AND COMMUNICATIONS:

D. REPORTS:

The Commission received an attorney’s letter requesting a hearing on behalf of Police Officer Todd Michael. Human Resource Director Sears promptly responded to this letter, highlighting the limited jurisdiction of the Act 78 Civil Service Commission. Under Article X of the Rules and Regulations of the Troy Civil Service Commission, jurisdiction is limited to the application of the merit principle or disciplinary actions resulting in discharge, suspension or

demotion, as set forth in Article X of the Rules and Regulations of the Troy Civil Service Commission. Although Officer Michael's attorney did not respond to Ms. Sears' letter or otherwise challenge the fact that the Act 78 Civil Service Commission did not have jurisdiction over the requested appeal, the information was included in the agenda packet to document the receipt of the correspondence. The report was NOTED AND FILED.

1. Letter to Civil Service Commission from Human Resources Director Sears Regarding Request for Appeal Hearing of Grievance Involving Officer Todd Michael

Noted and Filed

E. OLD BUSINESS: None

F. NEW BUSINESS:

In the agenda packet, the Act 78 Civil Service Commission received a letter from Sergeant Joseph Haddad, requesting a disqualification of EMPCO for the proposed Police Sergeant and Lieutenant evaluation process. Mr. Tony Haddad was present in the audience, as a representative of Troy Sergeant Joseph Haddad, who was out of the State. Prior to taking any action on this item, Chairman McGinnis inquired about a past guarantee from EMPCO that none of the evaluators would be associated or affiliated with the City of Troy or any of the candidates. EMPCO President John Higgins confirmed that any EMPCO evaluator would have "no previous prejudicial contact with any of the candidates from the Police Department." He explained that he could not guarantee that there was never any contact between evaluators and the candidates, since the law enforcement community is small, but that the evaluators would be independent and impartial. The Commission then invited Mr. Tony Haddad to speak on this item, on behalf of his son and also as a resident of the City. Mr. Haddad was concerned that the evaluators would not be impartial, based on past complaints made by his son against one of his former supervisors who also served as an evaluator for EMPCO. Mr. Haddad was also concerned about EMPCO being hired by the City. Mr. Haddad based this concern on his previous contact with the President of EMPCO, which was made in response to a letter that Mr. Haddad sent to several area police chiefs criticizing EMPCO for hiring this former Troy supervisor as an evaluator. Member Cannon disclosed prior military service with Sergeant Joseph Haddad, Mr. Tony Haddad's son, and asked all present if there were any objections to his voting on items F-1 and F-2. There were no objections to Member Cannon's participation on this item.

Member Cannon then stated his position that the concerns brought forward at this meeting did not disqualify EMPCO from completing the assessment process. Under the Rules, there is an avenue for redress if a candidate feels that there was bias in the evaluation process, and this happens only after the assessment has been done. Chairman McGinnis agreed, and added that the assurances EMPCO has offered for non-biased testing are sufficient.

Mr. Higgins of EMPCO also offered to meet with Mr. Haddad privately after the meeting adjourned to discuss his concerns.

1. **Approval of Qualifications, Posting and Test Battery for Police Sergeant and Police Lieutenant**

Resolution #CSC-2011-12-004

Moved by Cannon

Seconded by McGinnis

RESOLVED, That the Civil Service Commission (Act 78) hereby **APPROVES** the job qualifications, the posting, and the test battery for the recruitment of Police Sergeant and Police Lieutenant as **PRESENTED**.

Yes: McGinnis, Cannon

No: None

MOTION CARRIED

2. Appointment of Civil Service Commission (Act 78) Member

Member Cannon nominated John Steele for the neutral position currently vacant on the Commission. Member Cannon applauded Mr. Steele's non-political community involvement, and believed that he was an impartial candidate that had no prior affiliation or prejudice. Chairman McGinnis seconded the nomination and reiterated that Mr. Steele fits all the criteria for the neutral position. The Commission members also concluded that all other requirements, including diverse membership in political parties, was also satisfied.

Resolution #CSC-2011-12-005

Moved by Cannon

Seconded by McGinnis

RESOLVED, That the Troy Civil Service Commission (Act 78) hereby **APPOINTS John Steele** to complete the unexpired term of the Civil Service Commission (Act 78) member ending on April 30, 2014.

Yes: Cannon, McGinnis

No: None

MOTION CARRIED

PUBLIC COMMENT:

Mr. Tony Haddad thanked the Commission for their service and for hearing his concerns.

Chief Mayer thanked the Commission for moving forward with the approval of the two items on the Agenda so the Police Department can begin rebuilding its command staff that was recently reduced. Chief Mayer applauded the past work done by EMPCO and praised Mr. Higgins for his work on behalf of the City of Troy.

G. ADJOURNMENT:

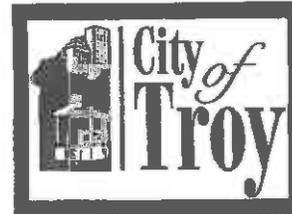
The Civil Service Commission (Act 78) meeting **ADJOURNED** at 8:10 AM.

Donald E. McGinnis, Jr., Chairman

Aileen Bittner, City Clerk

500 W. Big Beaver
Troy, MI 48084
(248) 524-3300

The City of Tomorrow...



...Today

**CITY OF TROY
CIVIL SERVICE COMMISSION (Act 78)
OAKLAND COUNTY, MICHIGAN
RESOLUTION**

At a meeting of the Troy Civil Service Commission (Act 78) held on Thursday, January 19, 2012, the following Resolution was passed:

Resolution to Direct the City Clerk to Send a Letter to Catherine Farrell Regarding Denial of Request for Hearing

Resolution #CSC-2012-01-002
Moved by McGinnis
Seconded by Cannon

RESOLVED, That the Troy Civil Service Commission (Act 78) hereby **DENIES** the appeal hearing request filed on behalf Officer Todd Michael based on the lack of jurisdiction and **DIRECTS** the City Clerk to send a letter to Catherine Farrell, Counsel for the Troy Police Officers' Association, indicating the request for hearing is denied without prejudice.

BE IT FURTHER RESOLVED, That the Civil Service Commission will **HOLD** the requested appeal hearing concerning Officer Todd Michaels **UPON THE RECEIPT OF** a Court Order declaring that Officer Michael has been discharged, suspended or demoted, or an order that otherwise provides the Commission with the authority to hear the case.

Yes: All-3
No: None

MOTION CARRIED

I, M. Aileen Bittner, duly appointed City Clerk of the City of Troy; do hereby certify that the foregoing constitutes a true and complete copy of a resolution adopted by the Troy Civil Service Commission (Act 78) at a Meeting duly called and held on Thursday, the 19th day of January, 2012.


M. Aileen Bittner, CMC
City Clerk

CITY OF TROY - CIVIL SERVICE COMMISSION RULES (Act 78)

ARTICLE X APPEAL HEARINGS
Section 1. General

- A. The following rules are enacted pursuant to Public Act 78 of 1935, Section 9 to facilitate the orderly and fair disposition of required hearings.
- B. Any employee of or applicant for appointment to the Police and Fire Department of the City may appeal violations concerning the application of the Merit Principle to the Civil Service Commission.
- C. Employees may appeal disciplinary actions resulting in discharge, suspension or demotion to the Civil Service Commission.

Section 2. Appeal Procedure

- A. Requests for an appeal hearing before the Civil Service Commission must be filed with the Clerk within 5 calendar days following the employee's notification of the action which is being appealed. The request for a hearing must contain reasons for the appeal and state the remedial action requested.
(06/28/89)
- B. Any interested party may file briefs or other written statements within the time specified by the Commission.
 - 1. Any brief or written statement must be concise.
 - 2. Four copies of all documents shall be filed with the Commission and one copy served on each of the other parties.
 - 3. Briefs or written statements of more than 10 pages shall be indexed.
- C. The Commission may consolidate or sever any pending cases.
- D. The Civil Service Commission shall hear the appeal within the time prescribed by these rules, and either affirm, modify or revoke the action that caused the appeal.
- E. If the employee fails to appear in person or by representative at the hearing, after proper notice, the employee waives the right to be heard.
- F. The Civil Service Commission may proceed in the absence of any party, who, after proper notice, fails to be present or obtain a postponement. A determination shall not be made solely on the default of a party. The Commission shall require the party that is present to submit evidence necessary for a determination.
- G. The employee may withdraw a request for a hearing, provided it is done in writing and filed with the Commission. Once the request is withdrawn, it may not be reinstated.
- H. The determination of the Commission is final and shall be certified to the parties.

Section 3. Postponement of Hearings

- A. Appeal hearings may be postponed only by the Civil Service Commission.
- B. In seeking a postponement of the hearing, a party must:
 - 1. Submit the request in writing to the Clerk at least one calendar day before the hearing.
 - 2. State reasons for the request.
 - 3. Suggest alternative dates for rescheduling the hearing.
 - 4. State whether all parties agree to the request.
 - 5. Serve a copy of the request on each of the parties.
- C. The Commission may require the parties to present their positions on the postponement before ruling upon the request.

Section 4. Conduct of Hearing

- A. All meetings called for the purpose of conducting business within the jurisdiction of the Civil Service Commission shall be public except that the Commission may meet in closed session to consider the dismissal, suspension or demotion of an employee when that employee requests a closed session. The Commission may also meet in closed session to consider matters relating to specific examinations.
- B. The Commission shall inquire fully into all issues and obtain a record upon which the Commission's decision is made.
- C. Any party to the proceeding has the right to appear at the hearing in person or by representative, and to call, examine, cross-examine and rebut witnesses and introduce evidence on the issues.
- D. The Commission has the right to have its legal advisor present throughout the hearing, and may briefly recess the hearing to consult with the legal advisor on any legal question that may arise.
- E. The Chairperson shall preside at the hearing. In his or her absence, the Vice Chairman shall preside.

Section 5. Subpoenas

- A. Upon application by a party, and upon a showing of general relevancy, the Clerk shall authorize subpoenas requiring the attendance and testimony of witnesses and the production of evidence. Persons requesting subpoenas shall prepare the subpoenas specifying the names and addresses of witnesses and the evidence sought and shall include the names and addresses of persons from whom the evidence may be obtained.
- B. Witnesses summoned before the Civil Service Commission shall be paid the same fee and mileage by the summoning party that are paid witnesses in Oakland County Circuit Court. Witnesses whose depositions are taken and the person taking the deposition shall be paid the same fees paid for like services in Oakland County Circuit Court by the deposing party.
- C. If any person refuses to obey a subpoena, refuses to be sworn or to testify, or if any person is guilty of contempt at any hearing, the

Commission may apply to Oakland County Circuit Court for an appropriate order of compliance.

Section 6. Presentation of Evidence

- A. Before taking testimony, the parties shall state the names of proposed witnesses, and if requested by the Commission, shall state the nature of the testimony to be given by each witness. The Commission may refuse to take testimony of witnesses where the testimony is not relevant.
- B. Witnesses may be sequestered by the Commission.
- C. Witness(es) may be allowed to testify in narrative form.
- D. Witnesses shall be examined orally under oath. The Commission may permit the testimony to be taken by deposition under oath.
- E. The rules of evidence prevailing in courts of law are not controlling. Hearsay may be admitted.
 - 1. Objections to the introduction of testimony or documentary evidence shall be ruled upon by the Chairperson.
 - 2. Objections to offers of evidence may be made and shall be noted in the record.
 - 3. The Commission shall decide objections of a party immediately or after a brief recess. The objections and their disposition shall be made a matter of record.
- F. On a motion of any commission member, the Chairperson may terminate questioning of a witness when the testimony becomes irrelevant, immaterial or unduly repetitious.
- G. The Commission may provide for submission of all or part of the evidence in written form.

Section 7. Depositions

- A. The Clerk may authorize the deposition of any witness including those out of state, upon the request of a party if:
 - 1. The witness is unable to attend the hearing because of illness, infirmity or hardship; or
 - 2. The witness cannot be compelled to attend the hearing by subpoena; or
 - 3. All parties agree to the deposition; or
 - 4. The witness is an expert witness.
- B. The request of a part to take a witness's testimony by deposition shall be made at least 7 days before the time scheduled for hearing. The application shall be made to the Clerk and shall state the identity of the witness, the materiality of the proposed testimony, and the reasons for requesting that the testimony be presented by deposition. This application shall be served upon the adverse party, who shall specify any objections to the Clerk within 5 business days of his receipt of the request.
- C. Either party may appeal the decision of the Clerk to the Commission.
- D. Conduct of deposition:

1. The deposition shall be taken before a person authorized to administer oaths by the state of Michigan or by the state in which the deposition is taken.
2. The deposition may be stenographically recorded, may be taken by videotape machines, or may be taken by other electronic means.
3. The original copy of the transcription of stenographic depositions or the original recording of the deposition taken by other means, shall be furnished to the Clerk. The parties may request a copy of the transcript or recording of the deposition.
4. All rules governing the presentation of evidence before the Commission shall apply to examination and cross-examination upon deposition. All objections made during the course of the deposition shall be made at the time of questioning the witness. The answer shall be given over the objection, and the substance of the objection ruled upon by the Commission upon presentation of the deposition into the record.

Section 8.

Order of Hearing

- A. The charging party shall present and substantiate the charges and explain the basis for the penalty imposed. The charged party may present evidence and give testimony to refute the charges or challenge the penalty.
- B. The order of the hearing shall be:
 1. Introduction of the disputed case by the Chairperson.
 2. Presentation of an outline of hearing rules (by Chairperson or Clerk) may be waived if parties agree.
 - a. The jurisdiction of the Commission shall be limited to that granted by state law and collective bargaining contracts.
 - b. The parties may represent themselves or be represented.
 - c. The Chairperson, Clerk or stenographer shall swear witnesses and label evidence and exhibits.
 - d. There shall be a record made of the hearing.
 - e. While the case is pending or the hearing is being conducted, neither party or their representative shall communicate with Commission members other than on official hearing procedure or in matters pertaining to the scheduling of the case.
 3. Charging Party's opening statement.
 4. Charged Party's opening statement. May be waived or reserved.

5. Presentation of Charging Party's witnesses, evidence and exhibits:
 - a. Cross-examination of each by Charged Party.
 - b. Redirect testimony of each.
 - c. Recross examination of each by Charged Party.
 - d. Examination of each by Commissioners.
6. Presentation of Charged Party's witnesses, evidence and exhibits.
 - a. Cross-examination of each by Charging Party.
 - b. Redirect testimony of each.
 - c. Recross examination of each by Charging Party.
 - d. Examination of each by Commissioners.
7. Charging Party's closing statement.
8. Charged Party's closing statement.
9. Charging Party's rebuttal.
10. Closing of all testimony and argument.
11. Deliberations by Commission:
 - a. Commission members shall deliberate after hearing the entire case. A Commissioner who has been absent from any of the proceedings may deliberate only after reviewing that portion of the record from the proceeding missed.
 - b. A majority vote of Commissioners participating shall be required for a Commission decision.
 - c. The decision of the Commissioners shall be in writing, signed by the Commissioners and forwarded to the interested parties within 30 days after completion of the hearing.
 - d. A Commissioner who disagrees with the majority decision may submit a dissenting opinion which shall be filed with the Commission.

Section 9.

Decision of the Commission

- A. Following the hearing and upon completion of the record, the Commission shall issue a decision containing its finding of fact and conclusions of law. The decision shall be based upon the record as a whole, and supported by competent, material and substantial evidence.
- B. The decision of the Commission shall be part of the record and a copy shall be served upon the parties by regular mail.

NOTICE OF MANDATORY EFILE

OAKLAND
COUNTY

12-125981-CL



JUDGE MARTHA D. ANDERSON
TROY POLICE O v TROY CITY

- Your case has been assigned to the mandatory efile pilot project, based on the judge assignment for this case [Administrative Order (AO) 2007-3 and AO 2010-3 – www.oakgov.com/clerkrod/efiling]
- Plaintiff is responsible for serving a copy of this notice with the Summons and Complaint on all opposing parties.
- All future filings must be made through the Tyler Odyssey File & Serve (formerly known as Wiznet) application. You may access efile at www.oakgov.com/clerkrod/efiling.
- Before you may efile a document with the Court, you must register a firm and user, through Tyler Odyssey File and Serve.
- Trainings on Odyssey File & Serve are offered at the Oakland County Courthouse, as well as online. Times and dates of in-person trainings are located at www.oakgov.com/clerkrod/efiling. To obtain on-line or teleconference training or for technical support, please contact Tyler at 800 297-5377 or support@wiznet.com. If you have further questions regarding efile, contact the Clerk's Office at (248) 452-8643.
- Judges issue opinions and orders electronically. All filers must register as a Service Contact through Odyssey File and Serve. If you fail to register, you will not receive copies of orders issued by the Court. Neither the Court nor the County Clerk provide free copies of opinions, orders, or other electronically filed documents to an attorney or party who fails to properly register with the Odyssey File & Serve application. An attorney or party who fails to properly register for efile may obtain copies of documents from the County Clerk at a cost of \$1.00 per page.

eFiling Quick Tips

- It is important that you are registered with Tyler Odyssey File & Serve (formerly known as Wiznet) and that you add yourself as a service contact as soon as you receive this notice at www.wiznet.com/oaklandmi. If you are not listed as a service contact you will not receive copies of documents that are issued by the court and will result in a fee for a copy of the document afterwards.
- A credit card is required to use the Odyssey File & Serve e-filing system.
- To prevent e-mails containing the service of documents going into your spam/junk folder we recommend that you register ccservice@wiznet.com with your e-mail provider, or add them to your white list.
- All pleadings are required to be signed with either an ink (wet/scanned) signature or the electronic signature which must read as follows: /s/name.
- Training is offered at the Oakland County Circuit Court. Training is not required before using Odyssey File & Serve, but is highly recommended. You can obtain the training times and location on our website at www.oakgov.com/clerkrod/efiling. Online training and eFiling manuals are also available at the Oakland County Odyssey File & Serve log-in page at www.wiznet.com/oaklandmi.
- It is important that you review your documents before submitting them. Make sure that your document is legible, that it is scanned at 8 ½ by 11 scale size and it is facing the right direction. We recommend that you do not submit your documents in color. Please scan your documents in black and white and at 200 DPI.
- Anytime a document is rejected, the filer will receive an e-mail explaining the reason for the rejection. However e-mails are not sent when a document is accepted. You must check your e-file queue for status of your document and to obtain a copy of the time stamped document.
- No fee is taken if your document is rejected. Fees are only applied at the time that the Oakland County Clerk's Office accepts your document.
- Documents that are related to each other can be submitted together as one document. For example: Motion for Summary Disposition/Brief/Notice of Hearing/Proof of Service. Documents that are not related to each other must be submitted as their own document. If you have any questions regarding the filing of related documents please call the Oakland County Clerk's Office at (248) 452-8643.
- Praecipes must be submitted through the e-praepice system in order for your court date to be scheduled. You can find the e-praepice link on our website at <http://courts.oakgov.com/epraepice>. If you have any questions regarding the e-praepice system, please contact the case management office at (248)858-0352.
- You can find the Local Administrative Order regarding the E-File Program on our website at www.oakgov.com/clerkrod/efiling.