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2 **RECEIVED**

3 **MAR 24 2005**

4 **PUBLIC SAFETY CIVIL
SERVICE COMMISSION**

5
6 **BEFORE THE CITY OF SEATTLE PUBLIC SAFETY
CIVIL SERVICE COMMISSION**

7
8 In Re the Appeal of

9 **PETER SUGGES**

10 Appellant

11 v.

12 **SEATTLE FIRE DEPARTMENT**
13 **City of Seattle**

14 Respondent

ORDER

PSCSC Appeal No. 05-001

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18 **ORDER**

19 This matter came on for hearing on March 17, 2005 on the Appellant's motion for
20 reconsideration of the Commission's ORDER OF DISMISSAL WITH PREJUDICE, dated
21 January 27, 2005. Present at the hearing were Appellant Peter Richard Sugges ("Appellant") and
22 Jeffery Slayton, Assistant City Attorney representing the Seattle Fire Department. The
23 Commission heard the sworn testimony of Appellant and the argument of counsel.
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PSCSC APPEAL No. 05-001
ORDER

Public Safety Civil Service Commission
700 5th Avenue, Ste. 1670
PO Box 94729
Seattle, WA 98124-4729

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2 **I. Facts:**

3 On December 16, 2004 Chief Gregory M. Dean of the Seattle Fire Department issued a
4 letter stating that Appellant's employment with the Seattle Fire Department was being terminated
5 and stating the reasons therefor. The letter indicated that Appellant could appeal his termination
6 "to the Public Safety Civil Service Commission, per Section 6, of the PSCSC Rules of Practice
7 and Procedure." The letter was received by the office of the Public Safety Civil Service
8 Commission on December 20, 2004.
9

10 Appellant stated that he received the letter by registered mail on or about December 22,
11 2004. He stated that on that day he was contacted by his attorney, William Malaier, who stated
12 that he had received a copy of the letter beforehand and that he would file a notice of appeal
13 appealing the termination in accordance with Rule 6 of the Commission's rules. Appellant stated
14 that Malaier told him he would file it with Fritz Wollett of the City Attorney's Office. Appellant
15 stated that it was his understanding that the Rule required him to file the notice with the
16 Commission within ten days of his receipt of Chief Dean's letter. According to Appellant,
17 Malaier told him that he could not do that and that if he, Malaier, filed it directly with the
18 Commission he would be "disbarred."
19

20 On that same day, December 22, 2004, Malaier sent a fax to Assistant City Attorney Fritz
21 Wollett, attorney for the Seattle Fire Department. The fax contained a letter indicating that
22 Appellant "formally requests an appeal through the Public Safety Civil Service Commission."
23 Later that same day, Wollett faxed a reply to Malaier informing him that to perfect his appeal he
24 would have to file the notice with the Commission. Wollett included the Commission's mailing
25 address in his fax.

1 Appellant stated that after hearing nothing from the Commission for a few weeks, he
2 contacted the Commission's Executive Director to inquire about his appeal. Thereafter, on
3 January 27, 2005, the Commission issued its Order of Dismissal with Prejudice.

4 On January 28, 2005, Malaier sent a letter to the Commission indicating Appellant's
5 requesting that the Commission reconsider its Order. On February 9, 2005, Malaier sent a letter
6 to the Commission indicating that he no longer was employed at the law firm of McCarthy
7 Causseaux Rourke. On March 4, 2005, the law firm indicated that it no longer represented
8 Appellant.
9

10 **II. Analysis:**

11 Both the Seattle Municipal Code ("SMC") and the Commission's rules require that a
12 written notice of an appeal of an employee's termination be filed with the Commission within
13 ten days of the receipt by the employee of a termination letter issued by the employer and filed
14 with the Commission. SMC § 4.08.100 A states, in pertinent part:

15 Any regular employee may be removed, suspended, demoted, or discharged by
16 the appointing authority only upon the filing with the Commission of a statement
17 in writing of the reasons therefor, a duplicate of which shall be served upon the
18 employee. Any regular employee so removed, suspended, demoted, or discharged
may within ten days from the date of service of such statement, file with the
Commission a written demand for a hearing, whereupon, in due course, the
Commission shall conduct such hearing. (Emphasis added).

19 PSCSC Rule 6.03 states:

20
21 6.03 APPEALS – TIME – FORM. A notice of appeal shall be filed at the
Commission offices within ten (10) days of the action that is the subject of the
appeal. The notice of appeal shall be in writing and include the mailing address
22 and street address where service of process and other papers may be upon the
23 appellant. The notice of appeal shall also contain a brief description of the facts
24 giving rise to the appeal, and a concise statement of the reason for the appeal.
Forms provided by the Commission may be used for such notice, but are not
25 required. (Emphasis added).

1 In this case, Appellant's attorney transmitted written notice of Appellant's intent
2 to appeal his termination to the Assistant City Attorney representing the Seattle Fire
3 Department rather than the Commission. In effect, the notice was served on opposing
4 counsel. Assistant City Attorney Wollett immediately informed Appellant's attorney that
5 to perfect his appeal, the notice must be filed at the office of the Commission, and
6 informed him of the Commission's address. According to Appellant's testimony, he
7 received a copy of Chief Dean's letter on the same day. Appellant's attorney, therefore
8 had at least nine days after receiving Mr. Wollett's fax to correct his error and properly
9 file the appeal at the office of the Commission. Appellant's attorney, however, failed to
10 file written notice of Appellant's intent to appeal within the required ten days. In fact, the
11 first time that the Commission learned of Appellant's desire to appeal was when it
12 received a telephone call from Appellant after the appeal period had expired.

14 It appears that the failure to timely file the Notice of Appeal was not caused by Appellant
15 himself, but rather may have been caused by the actions of his attorney. While the Commission
16 sympathizes with Appellant, the Commission is compelled to strictly construe the ordinance and
17 the rules to which it is bound. The rules are clear. Neither the Seattle Municipal Code, nor the
18 Commission's rules allow a notice of appeal to be filed with the Seattle City Attorney's office.
19 The filing of the notice with the Seattle Fire Department's attorney, Appellant's opposing
20 counsel, does not substantially comply with the requirement to file a notice with the
21 Commission.

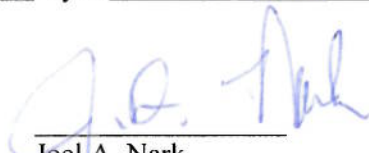
23 To perfect his appeal, Appellant's Notice of Appeal should have been filed "with the
24 Commission" within ten days of December 22, 2004. Since the tenth day fell on January 1,
25 2005, a Saturday, the notice could have been filed as late as Monday, January 3, 2005 at the

1 Commission's office. No communication, either written or oral was received by the
2 Commission until after that date. The Commission, therefore, has no choice but to dismiss
3 Appellant's appeal.

4 Appellant's motion for reconsideration, therefore, is denied.
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7 **FOR THE PUBLIC SAFETY CIVIL SERVICE COMMISSION**

8 Dated this 24 day of MARCH, 2005.

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11 _____
12 Joel A. Nark
13 Commission Chair
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