

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

**RECEIVED**

AUG 21 2009

PUBLIC SAFETY CIVIL  
SERVICE COMMISSION

**CITY OF SEATTLE  
PUBLIC SAFETY CIVIL SERVICE COMMISSION**

IN RE THE APPEAL OF:

JAMES ARATA,

Appellant,

vs.

SEATTLE POLICE DEPARTMENT,  
CITY OF SEATTLE

Respondent.

No. 08-007

ORDER GRANTING SEATTLE POLICE  
DEPARTMENT'S MOTION TO DISMISS

**I. BACKGROUND**

On June 26, 2008, Sergeant James Arata, through his attorney, Sue R. Sampson, filed an appeal in a letter alleging violation of Civil Service rules regarding being passed over for promotion to Lieutenant. A Pre-Hearing Conference was held April 17, 2009 at which time Commissioner Joel Nark recused himself from hearing this appeal. Zahraa Wilkinson, Assistant City Attorney appeared representing Seattle Police Department and Sue Sampson appeared representing Appellant. An Order for Schedule was entered on May 12, 2009 setting forth the briefing schedule for Respondent's Motion to Dismiss to be heard with Commissioners Carroll and Johnson and their appointed Commissioner *Pro Tem*. The Schedule for Hearing was set for September 21-24, 2009 as well as the discovery schedule. Commissioners Carroll and Johnson

1 selected Chris Mathews to sit as a Commissioner *Pro Tem* in the Arata appeals.

## 2 3 **II. DECISION**

4 The Department moves to dismiss Appellant Arata's appeal in its entirety. A motion to  
5 dismiss should be granted if the appeal on its face establishes that the non-moving party cannot  
6 prevail as a matter of law. The Commission has considered the Motion, Appellant's Opposition,  
7 The Department's Reply, the record on this case, and applicable law, reaches the following  
8 decision.

### 9 **1. The 2005 Suspension.**

10 On June 26, 2008 Appellant filed a notice of appeal of his 2005 suspension. SMC  
11 Section 4.08.100(A) and PSCSC Rule 6.03 clearly state that a written notice of an appeal be filed  
12 within 10 days of the action that is the subject of the appeal.

13 Appellant argues that his untimely filing is excused because he had entered into an oral  
14 agreement with the Department, that the Department subsequently breached that agreement, and  
15 that he should therefore be allowed to file in 2008 an appeal of his 2005 suspension.

16 The Commission concludes that even if there is there was such an agreement, the  
17 Commission is not as a matter of law the appropriate forum to litigate that issue. The 2008  
18 Notice of Appeal regarding the 2005 suspension is therefore untimely as a matter of law.

### 19 **2. 2008 Refusal to Promote.**

20 Appellant also seeks to appeal his non-promotion in 2008. Under the Commission  
21 enabling statute SMC Section 4.08.070(G), the Commission certifies to the appointing authority  
22 a list of eligibles for promotion. When there is one promotional opening, the Commission  
23 certifies five names as eligible for the promotion. The appointing authority can pick among the  
24 five names certified as eligible for that promotion (the "Rule of Five").

25 In *Seattle Police Officer Guild vs. City of Seattle*, 151 Wn.2d 823 (2004) the Washington  
26 Supreme Court held that Seattle's Rule of Five is consistent with civil service principles, that  
27 each of the five certified eligibles are qualified for the promotion, and that the appointing  
28 authority's discretion to select any of the five eligibles is consistent with the merit principles  
29 contained in civil service. Appellant Arata has not alleged that the individual promoted was not

1 a certified eligible under the Rule of Five. The Commission therefore concludes that Appellant  
2 Arata cannot as a matter of law prevail in this appeal before the Commission.

3 **3. The 2009 Refusal to Promote.**

4 Appellant has also filed a new appeal, PSCSC # 09-007, appealing notice that he was  
5 being "passed over for promotion" in 2009. While that appeal appears to have been timely filed,  
6 it is also subject to a motion to dismiss, given the Commission's conclusions regarding the Rule  
7 of Five, unless the Appellant alleges that the individual selected for the promotion was not  
8 eligible for the promotion under the "Rule of 5".

9 **ORDER**

- 10 1. The 2008 appeal of James Arata v. Seattle Police Department, Appeal No. 08-007, is  
11 hereby dismissed.  
12 2. The Motion to compel depositions in Appeal No. 08-007 is also dismissed as moot  
13 since that appeal has been dismissed.

14 Dated this 21<sup>st</sup> day of August, 2009.

15 **PUBLIC SAFETY CIVIL SERVICE COMMISSION**  
16 **OF THE CITY OF SEATTLE**

17   
18 Commissioner Herbert V. Johnson

19 8-21-09  
20 Date

21   
22 Commissioner Terry Carroll

23 8-21-09  
Date

  
Commissioner Pro Tem Chris Matthews

8-21-09  
Date

1                                   **BEFORE THE PUBLIC SAFETY CIVIL SERVICE COMMISSION**  
2                                   **OF THE CITY OF SEATTLE**

3                                   **JAMES ARATA,**  
4                                   Appellant,

5                                   vs.

6                                   **SEATTLE POLICE DEPARTMENT**

7                                   CITY OF SEATTLE  
8                                   Respondent

**DECLARATION OF SERVICE**

PSCSC No. **08-007**

9                                   1. I, Mary E. Effertz, under penalty of perjury under the laws of the State of  
10                                   Washington, declare as follows:

11                                   2. I am over the age of 18 years and am not a party to the above-entitled action.  
12                                   I am employed by the City of Seattle Public Safety Civil Service Commission and make this  
13                                   declaration based on my personal knowledge and belief.

14                                   3. On August 21, 2009 and in the manner indicated below, I caused a copy of the  
15                                   **Order Granting Seattle Police Department's Motion to Dismiss** and this **Declaration**  
16                                   **of Service** to be served on the Appellant at the following address:

17                                   James Arata c/o Jean Jorgensen [Jean@singletonjorgenson.com](mailto:Jean@singletonjorgenson.com)

18                                   Singleton & Jorgensen, Inc., PS  
19                                   337 Park Ave. North  
20                                   Renton, WA 98057

21                                   [ ] By U.S. Mail, certified   [ X ] By U.S. Mail, first class [ X ] via email

22                                   AND copies of same via interdepartmental mail and email to:

23                                   [zahraa.wilkinson@seattle.gov](mailto:zahraa.wilkinson@seattle.gov)

24                                   Assistant City Attorney  
                                 Mailstop: CH-04-01

DATED this 21<sup>st</sup> day of August, 2009, at Seattle, Washington.



Mary E. Effertz  
Executive Director