

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss.

**CIVIL SERVICE COMMISSION**  
One Ashburton Place, Room 503  
Boston, MA 02108  
(617) 979-1900

FRANCIS J. BILLS,  
Appellant

v.

D-18-021

BROCKTON FIRE DEPARTMENT,  
Respondent

Appearance for Appellant:

David C. Farrell, Esq.  
Cohen Law Group  
400 Commercial Street, Suite 4R  
Boston, MA 02109

Appearance for Respondent:

Karen A. Fisher, Esq.  
Assistant City Solicitor  
City of Brockton  
45 School Street  
Brockton, MA 02301

Commissioner:

Cynthia A. Ittleman

**DECISION**

On January 23, 2018, the Brockton Fire Department (BFD) suspended the Appellant for two days without pay for three reasons: “[d]isobeying orders of a superior officer; [c]onduct prejudicial to good order; [and c]owardice or shirking duty at a fire.” (Exhibit 14) On February 5, 2018, the Appellant filed an appeal with the Civil Service Commission (Commission), pursuant to G.L. c. 31, § 42 (“Section 42 appeal”), alleging that the BFD failed to follow procedural requirements in suspending him. On March 6, 2018, a pre-hearing conference was held at the offices of the Commission, at which the Appellant filed an appeal, pursuant to G.L. c. 31, § 43

(“Section 43 appeal”), alleging that the BFD had not suspended him for just cause. (Stipulations of Facts, Procedural Order)

On March 30, 2018, the Appellant moved for summary decision on his Section 42 appeal, alleging that he had been deprived of a just cause hearing within five days of requesting one. On April 2, 2018, BFD opposed the Appellant’s motion for summary decision, and cross-moved for summary decision. BFD argued that the Appellant’s just cause hearing had been delayed by two factors: settlement negotiations that, although ultimately unsuccessful, had been promising enough that a hearing had not been scheduled; and after a hearing was scheduled, BFD’s lawyer became ill, requiring a continuance. On April 8, 2018, the Commission denied the Appellant’s summary judgment motion, citing BFD’s reasons, and stated that the denial would be incorporated into this decision. The Commission did not rule on BFD’s cross-motion for summary judgment and need not do so now in light of this decision.

The Appellant requested subpoenas for many witnesses, some of which I allowed and some of which I denied. I allowed subpoenas to issue to Maureen Cruise, who conducted the Appellant’s hearing pursuant to G.L. c. 31, § 41 (“Section 41”), and Deputy Chief Scott Albanese. BFD objected to the issuance of these two subpoenas.

A full hearing was held at the offices of the Commission on June 4, 2018. The hearing was public at the written request of the Appellant. The hearing was both transcribed by a stenographer and recorded; the stenographer’s transcript is the hearing’s official record, by agreement of the parties.

The witnesses were sequestered. The Appellant did not testify or call witnesses. I admitted 30 exhibits into evidence, Exhibits 1 through 27 and 29 through 31. The BFD submitted Exhibits 1 through 16. The Appellant submitted Exhibits 17 through 29. I struck Exhibit 28 and

returned it to the Appellant. The BFD later submitted Exhibits 30 and 31 at my request. I agreed to the Appellant's request that these last two exhibits be redacted. The Appellant objected that BFD did not do so. I now rule that Exhibits 30 and 31 need not have been redacted. I admitted de bene Exhibit 25, which are handwritten notes of an unidentified person investigating the Appellant's conduct. Because the author of Exhibit 25 was never identified (Testimony of Albanese 254), I now exclude Exhibit 25.

Among the Appellant's requests for subpoenas that I denied was one to subpoena Paul Hynes, a lawyer for the Brockton Firefighters Union. The Appellant contended that Hynes had held himself out as the Appellant's lawyer and entered into an attorney-client relationship with the Appellant. At the hearing, the Appellant proposed entering into evidence an offer of proof of what Hynes would have testified to. (Transcript 62-68) The offer of proof was the Appellant's proposed Exhibit 28 that I struck and returned to him. On June 5, 2018, the day after the hearing, the Appellant submitted the offer of proof again and asked that I reconsider my decision. The offer of proof is in the record, but I have not relied upon it in this decision.

Following the close of the hearing, the Appellant submitted a proposed decision on June 4, 2018; the BFD did so on July 19, 2018. The Appellant's proposed decision included Exhibits A through Q, which had not been admitted at the June 4, 2018 hearing. BFD objected to these exhibits and then moved to strike the Appellant's proposed decision under 810 CMR 1.01(7)(c), noting that 810 CMR 1.01(10)(j) authorizes the submission of post-hearing briefs that include "arguments on the evidence." I allow in part BFD's motion as it pertains to Exhibits A through Q, finding that their submission violates 810 CMR 1.01(10)(j) and that they are "impertinent" under 810 CMR 1.01(7)(c), and striking them. I deny that portion of BFD's motion that pertains to the body of brief, which may or may not be supported by evidence that was admitted. I deny

the requests contained in the Appellant's opposition to BFD's motion to strike, including his request for attorney's fees.

## **FINDINGS OF FACT**

Based upon the documents admitted into evidence and the testimony of:

*Called by the BFD:*

- Captain Jeffrey Marchetti;
- Firefighter Edward Churchill;
- Firefighter Francis Madden;
- Deputy Chief Scott Albanese;
- Chief Michael Williams,

I make the following findings of fact:

1. The Appellant has been a Brockton firefighter since 2004 and a captain since 2016.

(Stipulated Facts)

2. An active fire scene begins with a telephone report of a fire to the BFD's dispatch center.

When the BFD personnel arrive at the scene and discover an active fire, a person designated as the Incident Commander will establish command. An active fire scene ends when the Incident Commander terminates command. (Testimony of Marchetti 77-78)

3. An Incident Command Technician (ICT) is assigned to the Incident Commander. An ICT acts as the Incident Commander's eyes and ears – the Incident Commander's deputy. If an ICT gives an order, it is assumed that the order is from the Incident Commander. An ICT is also known as an Acting Deputy Aide. (Testimony of Marchetti 82-83, testimony of Churchill 165)

4. It is common knowledge who the ICT is at a fire. The ICT is assigned at the beginning of a shift, drives the Incident Commander, and wears a helmet indicating status as the ICT.

(Testimony of Marchetti 84)

5. In the early morning of December 31, 2017, Captain Marchetti, who was the Acting Deputy Chief of the Brockton Fire Department (BFD), was the Incident Commander of an active fire scene at 12 Johnson Court, Brockton. (Exhibit 1, Testimony of Marchetti 77-78, 80)
6. Chief Williams was present at the active fire scene but did not assume command over it. (Testimony of Marchetti 80, Testimony of Williams 275)
7. Captain Marchetti communicated that he was the Incident Commander in two ways. He arrived at the fire scene in Car 56, which is for the Incident Commander and says "Shift Commander" on it. He also used the BFD radio to call in an initial report, provide the address, and establish command. (Testimony of Marchetti 81)
8. The initial response to the fire entailed certain personnel and vehicles. Captain Marchetti called for additional personnel and vehicles. (Testimony of Marchetti 86-87)
9. Engine Company 5 and Ladder 4 responded to Captain Marchetti's second call for personnel and vehicles. Captain Marchetti gave instructions to Engine Company 5 and Ladder 4 when they were en route to the fire, identifying himself as the Incident Commander. (Testimony of Marchetti 87-88)
10. The Appellant was in charge of Ladder 4. Two firefighters arrived with the Appellant, Firefighters Madden and James Miceli. (Testimony of Marchetti 87)
11. It is important that an Incident Commander knows where fire personnel and equipment are located. Fire personnel need to remain accountable to superior officers. One reason is that a building on fire is a building that has been weakened and that could collapse. If a building collapses, the Incident Commander needs to know whether to send a crew into the collapsed building to rescue trapped firefighters. An Incident Commander also needs to know which

fire crews are available for work. (Testimony of Marchetti 90, 98, testimony of Albanese 233-34)

12. After firefighters had knocked down the fire, they were allowed to rehab. (Testimony of Marchetti 104, 142-45).
13. Rehabbing is a process that occurs after a fire has been knocked down and all firefighters have left the building that was burning. It includes firefighters drinking water, taking off their fire coats and Scott packs (portable air supply packs), changing air bottles, and resting. (Testimony of Marchetti 88-89, 104, 143, Testimony of Albanese 236)
14. Also after firefighters had knocked down the fire, Ladder 4 and its personnel were assigned to assist Engines 4 and 5 in a task called pickup. When that task was completed, Engines 4 and 5 reported for their next assignment. Ladder 4 did not return for its next assignment. (Exhibit 1)
15. Captain Marchetti noticed that Ladder 4 was unaccounted for. He did not know where it was located. He assigned Firefighter Churchill, the ICT, to find Ladder 4. (Testimony of Marchetti 90-91)
16. The ICT found Ladder 4 and its personnel parked on North Main Street. The personnel were drinking coffee. (Exhibits 1 and 2, Testimony of Marchetti 92, 98, 148, Testimony of Churchill 169)
17. The ICT told the Appellant that Captain Marchetti was looking for him. The Appellant responded that his crew was cold and tired and that he was rehabbing them. When the ICT reported this response to Captain Marchetti, Marchetti ordered the ICT to order the Appellant to report to the front of the building that had had the fire. (Testimony of Marchetti 92, 148, Testimony of Churchill 170)

18. An Incident Commander decides when firefighters will rehab, although other supervisors, such as a Safety Officer, sometimes make decisions about additional rehab. (Testimony of Marchetti 100, 104)
19. A captain should not have a crew rehab without getting permission from or informing a superior officer. (Testimony of Albanese 233, 238)
20. For a member of the BFD to act without an order or assignment is considered “freelancing,” which is dangerous and prohibited. (Testimony of Marchetti 101, Exhibit 20)
21. The ICT conveyed Captain Marchetti’s order to the Appellant. The Appellant said “OK” but Ladder 4 did not appear in front of the building. (Testimony of Marchetti 93, Testimony of Churchill 171)
22. The fire had been knocked down but the BFD was still contending with hot spots and investigating the fire. (Testimony of Marchetti 92-93)
23. Captain Marchetti gave Ladder 4 a few minutes to report to the front of the building. When it did not do so, Captain Marchetti called the Appellant on the radio. (Testimony of Marchetti 93-94, 149)
24. The radio call was recorded and went as follows:  

Captain Marchetti: “Command. Call[ing] Ladder 4.”

Appellant: “Ladder 4.”

Captain Marchetti: “Front of the building with your crew.”

Appellant: “Repeat that message.”

Captain Marchetti: “Report to the front of the building with your crew.”

Appellant: “We’ll be there in five. My crew has to use the bathroom.”

Captain Marchetti: “Report to the front of the building with your crew.”

Appellant: “Did you get that last message? We have to use the bathroom.”

(Exhibit 15, Testimony of Marchetti 94-95 (summarizing radio call and identifying the voices))

25. Although the Appellant told Captain Marchetti that “[w]e” had to use the restroom, only the Appellant needed to do so. Firefighter Madden had already used the restroom and Firefighter Miceli did not use the restroom around that time. (Testimony of Madden 205)
26. The Appellant told Firefighter Madden, who was assigned to Ladder 4, of the gist of his conversation with Captain Marchetti. Firefighter Madden offered to report to Captain Marchetti and inform him that the Appellant was using the restroom but the Appellant ordered Firefighters Madden and Miceli to remain with Ladder 4 until he returned from the restroom. (Testimony of Madden 204-05)
27. The Appellant and his crew took 10 to 15 minutes to report to the front of the building. (Exhibit 1, Testimony of Marchetti 97)
28. In the meantime, other fire personnel were working, such as helping fire investigators and collecting firefighting equipment. At the time, it was still an active fire scene even though the fire had been knocked down. (Testimony of Marchetti 97-98)
29. An active fire scene can be dangerous, even fatal, to firefighters, even hours after they have knocked down the initial fire. (Testimony of Marchetti 112)
30. When the Appellant and his crew reported to the front of the building, Captain Marchetti sent the two firefighters other than the Appellant to the front of the building so that he could talk to the Appellant in private. (Testimony of Marchetti 99)
31. The Appellant approached Captain Marchetti aggressively, was angry, and leaned in with a threatening posture and clenched fists, while grinding his teeth. (Testimony of Marchetti 99)



32. During the ensuing conversation, all of the Appellant's responses were disrespectful, sinister, and condescending. (Exhibit 1)
33. Captain Marchetti asked where the Appellant had been. He answered that he had been sitting in his truck and rehabbing his crew. (Testimony of Marchetti 99)
34. Captain Marchetti asked if anyone had given permission for the Appellant and his crew to rehab. The Appellant answered no and that he had given the command order for his crew to rehab because they were cold and tired. (Exhibit 1, Testimony of Marchetti 101)
35. Captain Marchetti said that he was in command, he needed to maintain accountability of fire personnel, he had needed to know where the Appellant was, the Appellant had been unaccounted for, and he had not known where the Appellant had been. (Testimony of Marchetti 101-02)
36. Captain Marchetti asked the Appellant if he were okay. The Appellant, who was clenching his fists and grinding his teeth, asked Captain Marchetti if Marchetti were okay. (Testimony of Marchetti 102)
37. Captain Marchetti then asked the Appellant if he were cold. The Appellant asked something like, "Are you cold? Are you nice and warm in there?" Captain Marchetti was outside and did not understand what the Appellant was referring to. (Testimony of Marchetti 102)
38. Captain Marchetti said something to the Appellant, who was still clenching his fists and grinding his teeth, such as, "You seem upset. Do you want to fight?" (Testimony of Marchetti 102)
39. At one point, Captain Marchetti asked the Appellant if he had a problem. The Appellant asked Captain Marchetti the same question. Captain Marchetti said something such as, "Yes, you. You're not listening." (Testimony of Marchetti 107)

40. Firefighter Madden confirmed that the Appellant had allowed Firefighters Madden and Miceli to rehab. (Testimony of Madden 196-97)
41. All members of the BFD receive its rules and regulations and receive opportunities to become familiar with them, such as during training sessions. (Testimony of Williams 291-92)
42. The BFD expected the Appellant, as a captain, to be familiar with its rules and regulations. (Testimony of Williams 292)
43. Chief Williams determined that the Appellant had violated the BFD's rules and regulations. (Testimony of Williams 290)
44. On January 23, 2018, the BFD suspended the Appellant for two days without pay for three reasons: "Disobeying orders of a superior officer; Conduct prejudicial to good order; Cowardice or shirking duty at a fire." On the same day, the BFD informed the Appellant of his suspension. (Exhibit 14)
45. The language of the suspension letter invoked the BFD's regulations, which refer to "cowardice or shirking," but the Appellant was disciplined for shirking and not cowardice. (Testimony of Williams 291, 317, 320)
46. BFD did not discipline Firefighters Madden and Miceli. (Testimony of Williams)
47. On February 14, 2018, a Section 41 hearing to determine whether the Appellant's two-day suspension was supported by just cause. (Exhibit 16)
48. On February 22, 2018, a hearing officer found just cause for the Appellant's two-day suspension. (Exhibit 16)

*Discipline of Other Personnel*

49. By way of comparison, in September 2015, a firefighter was considered Absent Without Leave (AWOL) for arriving 15 minutes late for roll call. The firefighter received a verbal reprimand. (Exhibit 29)
50. In June 2015, a second firefighter was considered to have neglected duty for leaving a pump testing area without the proper equipment. The firefighter received a written warning. (Exhibit 29)
51. In January 2019, a third firefighter was considered AWOL from roll call. It was his third offense. His discipline was to forfeit a day of vacation. (Testimony of Williams 300)
52. In October 2016, a fourth firefighter was considered Absent Without Leave (AWOL) for arriving 30 minutes late for roll call. The firefighter stated that he had overslept and received a written reprimand. (Exhibit 29)
53. In April 2018, a fifth firefighter was disciplined for conduct prejudicial to good order and conduct unbecoming a member of the BFD. The record does not reveal the firefighter's conduct. The firefighter received verbal and written reprimands. (Exhibit 29)
54. The discipline referenced in Facts 49 through 53 were the only discipline cases in the three years preceding the Appellant's discipline. (Testimony of Williams 298, 299)
55. Of the three AWOL cases above, all entailed firefighters having been absent from or late to roll call. None involved their absence from an active fire scene. (Testimony of Williams 315, 320, 321)
56. In Captain Marchetti's 18 years as a firefighter, he had not observed a firefighter fail to respond to an order as the Appellant did here. (Testimony of Marchetti 111, 112)

57. In Firefighter Churchill's 23 years as a firefighter, he had not observed a firefighter fail to respond to an order as the Appellant did here. (Testimony of Churchill 172, 173).

58. Chief Williams had never heard of a firefighter needing to use a restroom as an excuse not to obey an order. (Testimony of Williams 293)

*Prior Discipline of Appellant*

59. In 2006, the Appellant had agreed to cover another firefighter's shift but failed to do so. His discipline was to lose his substitution privilege for six months. (Exhibit 30, Testimony of Williams 284)

60. In 2007, the Appellant contended that for working a detail at a nursing home, he deserved a higher pay rate, known as the alcohol rate, for establishments that serve alcohol, such as bars. He so contended to the nursing home and BFD because the nursing personnel allowed some residents to keep wine in their rooms to drink. To try to gather information to support his contention, the Appellant went behind a coffee bar at the nursing home and looked for alcohol. He received an oral reprimand for conduct unbecoming a member of the BFD. (Exhibit 31, Testimony of Williams 285)

61. Because of these previous disciplinary actions, the two-day suspension of the Appellant constituted progressive discipline.

*Applicable Civil Service Law*

G.L. c. 31, § 42 states in part:

“Any person who alleges that an appointing authority has failed to follow the requirements of section forty-one in taking action which has affected his employment or compensation may file a complaint with the commission ... If the commission finds that the appointing authority has failed to follow said requirements and that the rights of said person have been prejudiced thereby, the commission shall order the appointing authority to restore said person to his employment immediately without loss of compensation or other rights.”

G.L. c. 31, § 43 provides:

“If the commission by a preponderance of the evidence determines that there was just cause for an action taken against such person it shall affirm the action of the appointing authority, otherwise it shall reverse such action and the person concerned shall be returned to his position without loss of compensation or other rights; provided, however, if the employee by a preponderance of evidence, establishes that said action was based upon harmful error in the application of the appointing authority’s procedure, an error of law, or upon any factor or conduct on the part of the employee not reasonably related to the fitness of the employee to perform in his position, said action shall not be sustained, and the person shall be returned to his position without loss of compensation or other rights. The commission may also modify any penalty imposed by the appointing authority.”

An action is “justified” if it is “done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind; guided by common sense and by correct rules of law”. Commissioners of Civil Service v. Municipal Ct. of Boston, 359 Mass. 211, 214 (1971). *See also* Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 304 (1997); Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (1928). The Commission determines justification for discipline by inquiring, “whether the employee has been guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of public service”. School Comm. v. Civil Service Comm’n, 43 Mass.App.Ct. 486, 488 (1997). *See also* Murray v. Second Dist. Ct., 389 Mass. 508, 514 (1983).

The Appointing Authority’s burden of proof by a preponderance of the evidence is satisfied “if it is made to appear more likely or probable in the sense that actual belief in its truth, derived from the evidence, exists in the mind or minds of the tribunal notwithstanding any doubts that may still linger there.” Tucker v. Pearlstein, 334 Mass. 33, 35-36 (1956).

Under section 43, the Commission is required “to conduct a de novo hearing for the purpose of finding the facts anew”. Falmouth v. Civil Service Comm’n, 447 Mass. 814, 823 (2006) and cases cited. However, “[t]he commission’s task ... is not to be accomplished on a wholly blank slate. After making its de novo findings of fact, the commission does not act without regard to the previous decision of the [appointing authority], but rather decides whether ‘there was

reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the appointing authority made its decision’,” which may include an adverse inference against a complainant who fails to testify at the hearing before the appointing authority. *Id.*, quoting internally from Watertown v. Arria, 16 Mass.App.Ct. 331, 334 (1983) and cases cited.

### *Analysis*

As a preliminary matter, this appeal was filed under both G.L. c. 31, § 42, contesting whether the BFD properly followed the *procedural* requirements to terminate the Appellant, and G.L. c. 31, § 43, contesting whether there was *just cause* to terminate his employment. I briefly address the procedural portion of the appeal. I find that the Appellant’s Section 41 hearing was not unreasonably delayed so as to give rise to a successful Section 42 appeal. If the Appellant had any other ground under Section 42, he neither identified it in pleadings, in testimony, or through counsel.

Based on the findings of fact above, the BFD has shown by a preponderance of the evidence that the Appellant’s conduct on December 31, 2017 constitutes substantial misconduct that adversely affected the public interest. The preponderance of the evidence primarily comprised the testimony of witnesses and a recording (Exhibit 15) that corroborated each other, and was aided by the adverse inference of the Appellant’s declining to testify at either the Section 42 hearing or the hearing before the Commission. (Exhibit 14, Transcript 10-11) The substantial misconduct violated BFD rules regarding disobeying orders of a superior officer, conduct prejudicial to good order, and shirking duty at a fire.

Having determined that the Appellant did engage in misconduct, I must determine whether the level of discipline was warranted.

As stated by the SJC in Falmouth v. Civ. Serv. Comm'n, 447 Mass. 814, 823-825 (2006):

“After making its de novo findings of fact, the commission must pass judgment on the penalty imposed by the appointing authority, a role to which the statute speaks directly. G.L. c. [31], s. § 43 (‘The commission may also modify any penalty imposed by the appointing authority.’) Here the commission does not act without regard to the previous decision of the [appointing authority], but rather decides whether ‘there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the appointing authority made its decision.’ Id. citing Watertown v. Arria, 16 Mass.App.Ct. 331, 334 (1983).

“Such authority to review and amend the penalties of the many disparate appointing authorities subject to its jurisdiction inherently promotes the principle of uniformity and the ‘equitable treatment of similarly situated individuals.’ citing Police Comm'r of Boston v. Civ. Serv. Comm'n, 39 Mass.App.Ct. 594, 600 (1996). However, in promoting these principles, the commission cannot detach itself from the underlying purpose of the civil service system— ‘to guard against political considerations, favoritism and bias in governmental employment decisions.’ Id. (citations omitted).

....

“Unless the commission’s findings of fact differ significantly from those reported by the town or interpret the relevant law in a substantially different way, the absence of political considerations, favoritism or bias would warrant essentially the same penalty. The commission is not free to modify the penalty imposed by the town on the basis of essentially similar fact finding without an adequate explanation.” Id. at 572. (citations omitted).

I find no evidence of political considerations, favoritism, or bias by the BFD. Exact comparisons of discipline are often difficult, particularly when no other firefighter, let alone a captain, has been disciplined for violating an order in an active fire scene. Nonetheless, the Appellant’s two-day suspension is proportionate when compared with the other disciplinary actions that BFD took during the previous three years before the Appellant’s suspension. Further, I considered that the Appellant had engaged in misconduct in the past, thus justifying a two (2)-day suspension.

For all of the above reasons, the Appellant's appeal under Docket No. D-18-021 is hereby *denied*.

Civil Service Commission

/s/ Cynthia A. Ittleman  
Cynthia A. Ittleman  
Commissioner

By a vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan) on March 25, 2021.

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d)

Notice to:  
David C. Farrell, Esq. (for Appellant)  
Karen A. Fisher, Esq. (for Respondent)