

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss.

**CIVIL SERVICE COMMISSION**

One Ashburton Place: Room 503  
Boston, MA 02108  
(617) 727-2293

KEVIN FARRELL,  
Appellant

v.

D1-15-165

TOWN OF DANVERS,  
Respondent

Appearance for Appellant:

John M. Collins, Esq.  
Collins & Associates  
47 Memorial Drive  
Shrewsbury, MA 01545-4028

Appearance for Respondent:

Geoffrey P. Wermuth, Esq.  
Murphy, Hesse, Toomey & Lehane  
300 Crown Colony Drive, Suite 410  
Quincy, MA 02169

Commissioner:

Christopher C. Bowman

**DECISION**

On August 3, 2015, the Appellant, Kevin Farrell (Mr. Farrell), acting pursuant to G.L. c. 31, § 43, filed an appeal with the Civil Service Commission (Commission), contesting the decision of the Town of Danvers (Town) to terminate him from his position as Fire Chief in the Town's Fire Department.

On September 8, 2015, I held a pre-hearing conference at the offices of the Commission and a full hearing was held at the same location over two (2) days on

October 30<sup>th</sup> and November 2, 2015.<sup>1</sup> As there was no request by either party for a public hearing, the full hearing was declared private and all of the witnesses, with the exception of Mr. Farrell, were sequestered. CDs were made of the digitally-recording hearing. A copy was retained by the Commission and both parties were provided with copies as well.<sup>2</sup> Subsequent to the hearing, counsel for Mr. Farrell submitted a motion to dismiss the charges against Mr. Farrell (which I have deemed a Motion for Summary Decision). The parties submitted post-hearing briefs in the form of proposed decisions on December 18, 2015 (Mr. Farrell) and December 24, 2015 (Town). With my permission, the Town incorporated its response to Mr. Farrell's motion into its post-hearing brief.

#### **FINDINGS OF FACT:**

Twenty-one (21) exhibits were accepted into evidence. Exhibit 21 is a copy of a 2012 criminal complaint against Mr. Farrell along with a related police officer's report. During the hearing, I requested that the Town provide this document as it related to relevant (and disputed) testimony provided at the hearing by Mr. Farrell and his former spouse. Subsequent to the hearing, Mr. Farrell objected to the admission of this document and the Town did not object to removing the document from the record. I overruled Mr. Farrell's objection, entered the exhibit into evidence, and have given it the weight it is due.

---

<sup>1</sup> The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.00 (formal rules) apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

<sup>2</sup> If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this hearing to the extent that he/she wishes to challenge the decision as unsupported by substantial evidence, arbitrary or capricious, or an abuse of discretion. In such cases, this CD should be used by the plaintiff in the judicial appeal to transcribe the recording into a written transcript.

Based upon the documents entered into evidence, the testimony of:

*Called by the Town<sup>3</sup>:*

- Mr. Farrell's former spouse;
- Stephen Bartha, Town Manager, Town of Danvers;
- Stephen Delaney, Human Resources Director, Town of Danvers;
- Female Town Employee;
- Colleague of Female Town Employee;
- Pat Ambrose, Acting Police Chief, Town of Danvers;
- James McPherson, Provisional Fire Chief, Town of Danvers;

*Called by Mr. Farrell:*

- Kevin Farrell, Appellant;

and taking administrative notice of all matters filed in the case and pertinent statutes, regulations, policies, and reasonable inferences from the credible evidence, I make the following findings of fact:

1. The Town of Danvers has a year-round population of approximately 24,000. It has a Town Manager / Selectmen / Representative Town Meeting form of government.  
  
(Administrative Notice: Department of Housing and Community Development) For all purposes related to this appeal, the Town Manager is the Appointing Authority.  
  
(Undisputed Fact)
2. Mr. Farrell is fifty-two (52) years old. He grew up in Danvers; graduated from Danvers High School; obtained an associate's degree in Fire Science from North Shore Community College and a bachelor's degree from Anna Maria College in 2009. (Testimony of Mr. Farrell)

---

<sup>3</sup> Consistent with the Commission's approach in these matters, the names of certain private citizens involved in this matter is not being included in this decision.

3. Mr. Farrell has been employed by the Town since 1985, when he was first appointed as a civilian dispatcher. He became a firefighter for the Town in 1985 and was promoted to Fire Lieutenant in 1996. He subsequently served as a Provisional Captain and was appointed as the Deputy Fire Chief in 2005. He became the Provisional Fire Chief in April 2010 and was appointed as Permanent Fire Chief on March 28, 2011. (Testimony of Mr. Farrell and Exhibit 3)
4. During his tenure, Mr. Farrell served as one of the first members of the state's Hazardous Material Response Team and as a liaison to the Essex County Technical Rescue Team. For approximately five (5) years, he served as an adjunct professor at North Shore Community College. (Testimony of Mr. Farrell)
5. Mr. Farrell married his former spouse in 1985. They separated in or around 2010 and their divorce became final on April 10, 2014. Mr. Farrell and his former spouse have two (2) sons (ages 28 and 20), one (1) of whom is in college, and one (1) daughter (age 27). (Testimony of Mr. Farrell)
6. For most of their marriage, Mr. Farrell and his former spouse lived in a home in Groveland, MA. (Testimony of Mr. Farrell and Former Spouse) Groveland is located approximately thirty (30) miles northwest of Danvers.
7. The 2014 divorce decree required the sale of the Groveland home, which took place on June 12, 2015. (Testimony of Mr. Farrell and former spouse)
8. From the time of their separation in 2010 up until June 1, 2015, Mr. Farrell's former spouse lived in the home in Groveland. Mr. Farrell was responsible for paying the monthly mortgage payments while his former spouse lived there. (Testimony of former spouse)

9. In April 2008, Mr. Farrell began a romantic relationship with a female Town employee. (Testimony of female Town employee) In or around 2010, Mr. Farrell and the female Town employee began living together “off and on”. (Testimony of Mr. Farrell) In November 2014, Mr. Farrell and the female Town employee stopped living together. (Testimony of female Town employee)
10. In June 2012, Mr. Farrell and his former spouse were attending counseling trying to put their marriage “back together.” As a prerequisite to any reconciliation, Mr. Farrell would be required to end his romantic relationship with the female Town employee. (Testimony of former spouse)
11. On or around June 26, 2012, Mr. Farrell’s former spouse learned that Mr. Farrell had been in contact with the female Town employee. Mr. Farrell’s former spouse then informed Mr. Farrell that reconciliation was no longer an option. (Testimony of former spouse)
12. Shortly thereafter, Mr. Farrell went to the home in Groveland, took the former spouse’s cell phone and left. (Testimony of former spouse)
13. Mr. Farrell arrived at the home in Groveland a second time that night and started “screaming” words to the effect, “I’m not going to be here in the morning.” Both his former spouse and daughter were present at the time. (Testimony of former spouse)
14. Mr. Farrell arrived at the home in Groveland a third time that night and his daughter asked him to leave. Mr. Farrell refused. (Testimony of former spouse) At some point during this third visit to the home, Mr. Farrell pushed the mattress off of a bed upon which his former spouse was laying. (Testimony of Mr. Farrell and former spouse) At this point, Mr. Farrell’s daughter called the police. (Testimony of former spouse)

15. One of the Groveland police officers who was dispatched to the Groveland home that night penned a report that was ultimately included as part of an application for criminal complaint against Mr. Farrell in which he was charged with “A&B Household Member” and “Intimidation of Witness.”<sup>4</sup> (Exhibit 21)
16. According to the police officer’s report, he and another officer were eventually able to locate Mr. Farrell at another residence that night. The police officer’s report states in part:
- “Kevin invited us both inside where he stated that he got into an argument with his wife but ‘never touched her.’ He admitted that he was wrong in flipping the mattress she was sleeping in, but insisted that he did not touch her. At this time, Kevin was placed under arrest for A&B household member. Kevin was read his Miranda rights. Kevin denied all statements of wanting to harm himself. Dispatch was advised to have Trinity respond due to the statements made to his wife and daughter. While waiting for Trinity, Kevin was very upset and getting loud. He continued to state ‘I’m going to loose (sic) my job.’ He then stated that ‘you tricked me’ as he thought that if he went to the hospital, he would not be arrested. I again advised Kevin that he is under arrest for A&B household. He asked if he could use the phone to call work and tell them that he ‘is never coming back’, but was already in handcuffs and not allowed to call at this time. Trinity arrived on scene for an evaluation and transported him to ... hospital.” (Exhibit 21)
17. On other occasions prior to June 2012, Mr. Farrell had acted violently, “smashing” two cell phones that belonged to his former spouse; punching a hole in the wall; and twisting the leg of his former spouse while she sat on the couch. (Testimony of former spouse)
18. Upon his arrest in June 2012, Mr. Farrell was placed on paid administrative leave from his position as Fire Chief and he subsequently used accrued sick time through October 2012. (Testimony of Mr. Farrell)

---

<sup>4</sup> During his testimony at the Commission hearing, I asked Mr. Farrell what specific charges were filed against him. He stated that the charges were “domestic”, and he denied that he was ever charged with A&B.

19. While the criminal charges were pending against Mr. Farrell, his criminal defense attorney met with his former spouse. After speaking with the criminal defense attorney, the former spouse was under the impression that Mr. Farrell would attend a two (2)-month in-patient treatment program. She subsequently exercised her spousal privilege and chose not to testify against Mr. Farrell. (Testimony of former spouse)

The criminal charges against Mr. Farrell were eventually dismissed.

20. On July 9, 2012, Mr. Farrell was admitted to an in-patient, “Uniformed Service Program” in Brattleboro, VT to address his stress, anxiety and separation issues. (Testimony of Mr. Farrell)

21. On July 17, 2012, Mr. Farrell was discharged from the in-patient program. (Testimony of Mr. Farrell)

22. On October 25, 2012, Mr. Farrell, accompanied by counsel, met with former Town Manager Wayne Marquis and the Town’s Human Resources Director, Stephen Delaney. (Testimony of Mr. Farrell)

23. In a letter dated November 7, 2012, former Town Manager Marquis wrote:

“Dear Kevin:

This letter will summarize our October 25 discussion regarding your status.

As I indicated, the Town arranged for an independent medical evaluation to determine your suitability to return to work after an absence of nearly four months. The evaluator, in his written report, recommended that you be considered for return to work subject to your continuing treatment and minimizing the use of alcohol. We provided you with a copy of the Evaluation Report.

You have had two major incidents within the past two years that have had an adverse effect on both the Fire Department and your ability to provide it with effective leadership. As I indicated, your credibility as Fire Chief has been seriously eroded, and it will require a concerted effort on your part to earn it back.

As part of our discussion, I reiterated the Town's policies regarding the use of Town-owned vehicles ("Official Use Only"), including the policy that prohibits the use of Town vehicles after consuming alcohol. We further discussed the importance of maintaining appropriate demeanor in the work place, including at the Fire Station and Town Hall. I stressed to you the importance of exercising mature judgment in your professional and personal life.

I authorized your return to duty as Fire Chief effective October 28 with the condition that you continue active participation in your counseling treatment program and that you minimize the use of alcohol. I also made it clear that, should another incident occur, you will not be able to continue as Danvers' Fire Chief.

Kevin, I am confident that you have the skills and ability to effectively lead the Danvers Fire Department for many years. At this point, it's up to you to demonstrate over time that you have addressed your problems and that you're in a position to fulfill the requirements of the Fire Chief's job." (Exhibit 12)

24. Since 2012, Mr. Farrell has met with a therapist on an almost-weekly basis. Mr.

Farrell describes the purpose of this therapy as helping him learn "techniques to deal with people who know how to press my buttons." (Testimony of Mr. Farrell)

25. In December 2014, Stephen Bartha was appointed as Town Manager after the retirement of long-serving Town Manager Wayne Marquis. (Testimony of Mr. Bartha)

26. Mr. Bartha has a bachelor's degree from Michigan State University and a master's degree in public administration from the University of Connecticut. Prior to his appointment in Danvers, Mr. Bartha served as the Assistant Town Manager in Avon, CT for 4 ½ years. (Testimony of Mr. Bartha)

27. As the Town Manager, Mr. Bartha serves as the Chief Executive Officer for the Town. He has seventeen (17) direct reports including the Fire Chief, for whom he serves as Appointing Authority. (Testimony of Mr. Bartha)

28. Upon assuming his role as Town Manager, Mr. Bartha reviewed the personnel file of Mr. Farrell. The 2012 letter from Mr. Marquis "stood out" to Mr. Bartha, but he did



not see a need to address the now 2-year old incident with Mr. Farrell. (Testimony of Mr. Bartha)

29. Early in 2015, Mr. Bartha considered recommending to the Board of Selectmen that both the Fire Chief and Police Chief positions be removed from civil service.

Believing that there would not be a vacancy in the Fire Chief's position for several years, he ultimately decided to only go forward with the proposal to remove the Police Chief's position from civil service, as there was a pending vacancy.

(Testimony of Mr. Bartha)

30. During the Spring of 2015, Mr. Farrell and the female Town employee still had an ongoing romantic relationship. The female Town employee had become concerned about Mr. Farrell's "obsessive" behavior during their relationship and his inability to "let things go." On one occasion, Mr. Farrell followed the female Town employee into a local package store and began yelling at her in public (Testimony of female Town employee)

31. On a Friday afternoon during the Spring of 2015, Mr. Farrell followed the female employee around in a local Target store and yelled at her in front of her daughter and other customers. Mr. Farrell was in his Fire Department uniform at the time and had driven to Target in his Town-issued Fire Department vehicle. (Testimony of female Town employee)

32. By June 3, 2015, Mr. Farrell was no longer living with the female Town employee. (Testimony of female Town employee)

33. On June 3, 2015, during a phone conversation in the morning hours, the female Town employee asked Mr. Farrell to remove his belongings from her garage and to take

down any photographs of her which she understood were still displayed in his Fire Department office. (Testimony of female Town employee)

34. After receiving up to forty (40) phone calls from Mr. Farrell that day, the female Town employee stopped taking Mr. Farrell's calls. (Testimony of female Town employee)

35. During the afternoon of June 3, 2015, Mr. Farrell, while in uniform, entered the female Town employee's office at Town Hall and a verbal argument ensued that could be overheard by other Town Hall employees. During the verbal argument, the female Town employee twice told Mr. Farrell to "get the fuck out." Mr. Farrell did not heed her demand for him to leave her office. (Testimony of female Town employee and colleague of female Town employee)

36. Concerned for the female Town employee's safety, her colleagues sought the assistance of the Town's Human Resources Director, Stephen Delaney. (Testimony of Mr. Delaney and colleague of female Town employee)

37. Mr. Delaney responded to the request and eventually entered the female Town employee's office. When Mr. Delaney entered the female Town employee's office, she was sobbing and Mr. Farrell appeared tense and upset. (Testimony of Mr. Delaney)

38. Mr. Delaney told Mr. Farrell that he needed to see Mr. Farrell outside and Mr. Farrell responded by saying "in a minute." Mr. Delaney then informed Mr. Farrell that he needed to leave the female Town employee's office "now" at which point Mr. Farrell complied with the directive. (Testimony of Mr. Delaney)

39. After exiting the area of the female Town employee's office, Mr. Delaney told Mr. Farrell words to effect that "this needs to stop" and to "take it outside". When Mr. Farrell told Mr. Delaney that he was going to return to the female Town Hall employee's to say good-bye, Mr. Delaney told Mr. Farrell that he needed to leave Town Hall "now" and stated words to the effect of "we're going to walk out of here together." Mr. Farrell then exited Town Hall. (Testimony of Mr. Delaney)
40. Later that day, the female Town employee received numerous "missed call" messages on her phone from Mr. Farrell. (Testimony of female Town employee)
41. On June 4, 2015, Mr. Bartha (the Town Manager), met with Mr. Farrell regarding the incident in Town Hall the previous day. Mr. Bartha told Mr. Farrell that his behavior was "totally unacceptable" and could not happen again. Mr. Farrell told Mr. Bartha that he understood and that he just had a "bad day." Mr. Bartha told Mr. Farrell that he would give him "the benefit of the doubt." The two (2) men then briefly discussed a training regimen for half-marathons. (Testimony of Mr. Bartha)
42. Approximately fourteen (14) months after their divorce became final, the Farrells' home in Groveland was sold and the closing was scheduled for Monday, June 15, 2015. Both Mr. Farrell and his former spouse needed to remove their belongings from the home before June 15th. (Testimony of Mr. Farrell and his former spouse)
43. During this time period, Mr. Farrell's former spouse was dating a reserve police officer in a nearby community. That reserve police officer allowed Mr. Farrell's former spouse to use his black pick-up truck that week to assist her with removing items from the house in Groveland. (Testimony of Mr. Farrell's former spouse; Exhibit 11 and Testimony of Police Chief Ambrose)

44. Mr. Farrell's former spouse had never told Mr. Farrell the name of her boyfriend.

(Testimony of former spouse)

45. On Friday, June 12, 2015, Mr. Farrell's former spouse, who is a school teacher, took the day off from work in order to remove items from the house in Groveland. (Exhibit 11)

46. At approximately 8:00 A.M. on Friday, June 12th, Mr. Farrell's former spouse arrived at the house in Groveland driving the black pick-up truck loaned to her from her boyfriend. She parked the black pick-up truck in the driveway. Mr. Farrell was not present at the house when she arrived at 8:00 A.M. (Testimony of former spouse)

47. Approximately thirty (30) minutes later, at 8:30 A.M. on Friday, June 12th, Mr. Farrell arrived at the house in Groveland.<sup>5</sup>

48. Throughout the morning on Friday, June 12th, Mr. Farrell and his former spouse worked together "cordially" removing items from the house, including moving some items out on to the sidewalk. At no point did Mr. Farrell ask his former spouse who the black pick-up truck belonged to. (Testimony of former spouse)

49. At or around 12:00 Noon, Mr. Farrell asked his former spouse if she wanted a cup of coffee and his former spouse said no. Around this time, Mr. Farrell's former spouse told Mr. Farrell that she was going to lunch. Both Mr. Farrell and his former spouse then left in their vehicles. (Testimony of Mr. Farrell's former spouse)

---

<sup>5</sup> An important factor relevant to this appeal is whether Mr. Farrell and his former spouse had both been at the Farrells' home in Groveland during the morning of Friday, June 12th and whether, during those morning hours, Mr. Farrell plainly saw that his former spouse had possession of a pick-up truck that she did not own. Mr. Farrell testified that he was not at the house in Groveland during the morning hours of June 12th and, hence, could not have seen that his former spouse had possession of a pick-up truck. Rather, Mr. Farrell testified that he first arrived at the house at or around 2:00 P.M. that afternoon. Mr. Farrell's former spouse testified: that both she and Mr. Farrell were at the house in Groveland from approximately 8:30 A.M. on June 12th; that she left around Noon at which time Mr. Farrell was present. For reasons discussed in the analysis, I have found that Mr. Farrell was at the house in Groveland during the morning hours of June 12th.

50. Mr. Farrell's former spouse then drove to a nearby community and had lunch. She returned to the house in Groveland a few hours later and parked the black pick-up truck in the driveway. (Testimony of former spouse)
51. At approximately 2:45 P.M. on Friday, June 12th, Mr. Farrell called a Danvers police officer on her cell phone. Mr. Farrell asked this Danvers police officer if she was at work. When she said she was at work, Mr. Farrell asked her if she could "run a plate" for him. Mr. Farrell provided the Danvers police officer with the license plate number of the black pick-up truck that his former spouse was using that day. (Testimony of Mr. Farrell)
52. Mr. Farrell has a working relationship with this Danvers police officer as they worked together when she served as a police liaison for issues related to elder affairs. They also know each other personally. He has been invited to her house for social events. At one point, Mr. Farrell did some electrical work at this police officer's house. (Testimony of Mr. Farrell)
53. In response to Mr. Farrell's request, the Danvers police officer provided Mr. Farrell with the year, make and model of the pick-up truck (Testimony of Mr. Farrell) as well as the first and last name of the owner of the pick-up truck.<sup>6</sup>
54. In order to provide Mr. Farrell with this information, the Danvers police officer was required to query the state's Criminal Justice Information System (CJIS). (Exhibit 11;

---

<sup>6</sup> During his testimony at the Commission hearing, Mr. Farrell stated that the Danvers police officer "may have" given him the last name of the driver. Mr. Farrell testified that he couldn't remember whether the last name was provided to him because, once he heard the first name, he knew that the owner of the truck was the boyfriend of his former spouse. According to Mr. Farrell, he already knew the last name of this person. For reasons discussed in the analysis, I have found that the Danvers police officer provided Mr. Farrell with both the first name and last name of the owner of the pick-up truck.

see also Exhibit 16) This CJIS inquiry was made by the Danvers police officer at 2:59 P.M. on Friday, June 12th. (Exhibit 11)

55. As part of the divorce decree, Mr. Farrell was required to pay child support after the sale of the house in Groveland. After the sale of the house, Mr. Farrell's spouse sought assistance from the Department of Revenue's Child Support Enforcement (DOR / CSE) Division to enforce that provision of the divorce decree. (Testimony of former spouse)
56. After filing the application with DOR / CSE, Mr. Farrell's former spouse began receiving telephone messages from Mr. Farrell which she did not return. Sometime in July 2015, she received a text message from Mr. Farrell stating words to the effect, "sure, don't answer the phone, wait until [first name of boyfriend] finds out what you're like." Mr. Farrell's former spouse shared the content of the text message with her boyfriend (a reserve police officer in a nearby community). (Testimony of former spouse)
57. On July 12, 2015, the boyfriend of Mr. Farrell's former spouse contacted the Danvers Police Department to inquire why his license plate number had been run by a Danvers police officer on June 12, 2015. (Testimony of Police Chief Ambrose; Exhibit 11)
58. The inquiry from the former spouse's boyfriend triggered an internal investigation at the Danvers Police Department. Ultimately, the investigation concluded that the police officer, at the request of Mr. Farrell for his own personal reasons unrelated to his official duties, ran the license plate of a vehicle and then told Mr. Farrell the name of the vehicle's registered owner. The Police Chief concluded that, although the police officer assumed at the time that Mr. Farrell was making the inquiry in his

official capacity as Fire Chief, her conduct was improper. That police officer received a two (2)-day suspension for her improper conduct. (Testimony of Police Chief Ambrose; Administrative Notice: CSC Case No. D-15-164 (appeal dismissed by Commission for reasons related to timeliness.))

59. As part of the internal investigation, Police Chief Ambrose spoke directly with Mr. Farrell and his former spouse. (Testimony of Police Chief Ambrose; Exhibit 11)
60. On July 16, 2015, Chief Ambrose spoke with Mr. Farrell's former spouse via telephone. During this conversation, Mr. Farrell's former spouse told Chief Ambrose that both she and Mr. Farrell had been working on cleaning out the house in Groveland during the *morning* of Friday, June 12th; that she was using the black pick-up truck owned by her boyfriend; that she left the house to get lunch; and, that when she returned to the house that afternoon, Mr. Farrell was no longer at the house. (Testimony of Police Chief Ambrose and Exhibit 11)
61. On July 17, 2015, Chief Ambrose spoke with Mr. Farrell. Mr. Farrell acknowledged that he asked the Danvers police officer to run the license plate number of the black pick-up truck. He stated that he made the request after arriving at his house in Groveland and noticing a strange truck parked in the driveway and the door of the house open. (Testimony of Chief Ambrose and Exhibit 11)
62. During their conversation on July 17<sup>th</sup>, Chief Ambrose advised Mr. Farrell not to have any contact with his former spouse's boyfriend. Mr. Farrell assured Chief Ambrose that he had no intention of contacting him (the boyfriend) and that he (Mr. Farrell) could not even remember the boyfriend's last name at that point. (Testimony of Police Chief Ambrose and Exhibit 11)

63. When Town Manager Bartha was briefed on the Police Chief's investigation, he was "deeply troubled" by his findings, including the actions of Mr. Farrell. (Testimony of Mr. Bartha)
64. Based on the Police Chief's report, Mr. Bartha concluded that Mr. Farrell had engaged in misconduct when he asked the Danvers police officer to run the license plate number on June 12th and that Mr. Farrell was being untruthful regarding the circumstances upon which the request was made. Specifically, Mr. Bartha accepted the version of events conveyed by Mr. Farrell's former spouse to the Police Chief (that both Mr. Farrell and his former spouse were working at the house in Groveland during the morning of June 12th and that the borrowed black pick-up truck was in the driveway all morning.) (Testimony of Mr. Bartha)
65. On July 23, 2015, between 8:30 A.M. and 12:26 P.M., Mr. Farrell, via his Town email account, exchanged dozens of emails with the female Town employee. Many of the emails contain messages in which Mr. Farrell asks the female Town employee to call him on the phone and the female Town employee states that she will not be calling Mr. Farrell and asks him to stop contacting her. (Exhibit 20)
66. Later on July 23<sup>rd</sup>, the female Town employee went home for lunch. When she pulled into her driveway, Mr. Farrell, while driving his Town-issued vehicle, pulled in behind her, blocked her car and then stood next to the car blocking her from exiting her vehicle. (Testimony of female Town employee)
67. On Monday, July 27, 2015 at 9:00 A.M., Mr. Bartha, after conferring with the Town's labor counsel and Human Resources Director, met with Mr. Farrell. (Testimony of Mr. Bartha and Mr. Farrell)



68. During the July 27<sup>th</sup> meeting, Mr. Bartha told Mr. Farrell that, based on Chief Ambrose's investigation, Mr. Farrell's version of events conflicted with his former spouse. (Testimony of Mr. Farrell) Mr. Bartha asked Mr. Farrell to resign. When Mr. Farrell refused, Mr. Bartha told him he had 24 hours to reconsider or the Town would move forward with termination proceedings. (Testimony of Mr. Bartha) Mr. Bartha handed Mr. Farrell a two-page letter (hereinafter "charge letter") informing him that he was considering Mr. Farrell's termination and that a hearing would be held on August 3, 2015. (Testimony of Mr. Bartha and Exhibit 1)
69. The charge letter contained four (4) paragraphs outlining the reasons for the contemplated termination. (Exhibit 1)
70. Paragraph 1 of the charge letter referenced the 2012 incident and former Town Manager Wayne Marquis's letter to Mr. Farrell. (Exhibit 1)
71. Paragraph 2 of the charge letter stated in relevant part:
- "You have been counseled several times by the Director of Human Resources and others about maintaining a professional and appropriate demeanor at work, due to concerns raised by employees under your command and supervision. It is also my observation and that of others that morale in the Danvers Fire Department has suffered under your tenure as Chief." (Exhibit 1)
72. Paragraph 3 of the charge letter referenced the June 2015 incident in Town Hall with the female Town employee. (Exhibit 1)
73. Paragraph 4 of the charge letter stated, in its entirety:
- "I have only recently learned that on June 12, 2015, only eight (8) days after you and I had the conversation referenced in #3 above, you asked a Danvers Police Officer to run a license plate for you for your own personal reasons relating to ongoing issues with your former spouse, and she did so. When interviewed by the Danvers Police Chief, you admitted doing so. As a result, that officer was suspended for two days. I have a reasonable basis to believe that such action was both unlawful and in violation of Mass. Conflict of Interest Law by using your official position for personal reasons

in a manner not available to the general public – such action also demonstrates an appalling lack of judgement.” (Exhibit 1)

74. The charge letter concludes with an unnumbered paragraph which states, in its entirety:

“As the Fire Chief in Danvers, you are supposed to be one of the leaders of the community and to set an example for others to aspire to. You are expected to exercise mature, deliberate and lawful judgment and observe appropriate separations between your personal life and your professional life. Moreover, your volatile behavior adversely affects all your relationships in the workplace. As Mr. Marquis wrote in his November 7, 2012 letter, ‘your credibility as Fire Chief has been seriously eroded, and it will require a concerted effort on your part to earn it back.’ Unfortunately, it does not appear to me that this has happened.” (Exhibit 1)

75. At the conclusion of the July 27<sup>th</sup> meeting, Mr. Bartha told Mr. Farrell that we was being placed on paid administrative leave, effective immediately, and that he was to turn over his keys, radio and Town-issued cell phone. (Testimony of Mr. Farrell)

76. Mr. Farrell turned over his radio and keys to Mr. Delaney, but told Mr. Bartha that he left his Town-owned cell phone in Maynard.<sup>7</sup> (Testimony of Mr. Farrell)

77. Prior to the July 27<sup>th</sup> meeting, Mr. Bartha had asked Police Chief Ambrose to be present at Town Hall. At the conclusion of the meeting, Mr. Bartha asked the Police Chief to follow Mr. Farrell to the Fire Department so he could retrieve his belongings and to then follow Mr. Farrell to Maynard so that he could retrieve and turn over his Town-issued cell phone. (Testimony of Police Chief Ambrose)

78. Police Chief Ambrose followed Mr. Farrell to the Fire Department and accompanied him into his office. While standing in Mr. Farrell’s office, Chief Ambrose watched Mr. Farrell log onto his computer and start deleting emails. Chief Ambrose directed Mr. Farrell to stop deleting the email messages. (Testimony of Chief Ambrose)

---

<sup>7</sup> Mr. Farrell testified that he was staying at the home of a female acquaintance in Maynard on July 27<sup>th</sup>.

79. Police Chief Ambrose followed Mr. Farrell as he drove away from his office, believing that Mr. Farrell was headed to Maynard to retrieve the Town-issued cell phone. Instead of driving to Maynard, Mr. Farrell drove to and entered a house in Danvers. (Testimony of Police Chief Ambrose)<sup>8</sup>
80. Mr. Farrell left the house in Danvers approximately thirty (30) minutes later and then drove back to Town Hall, followed by the Police Chief. Mr. Farrell entered Town Hall and visited the retirement office. (Testimony of Police Chief Ambrose)
81. While at Town Hall, Mr. Bartha told the Police Chief that he didn't need to follow Mr. Farrell to Maynard. Police Chief Ambrose told Mr. Farrell that he would not be following him to Maynard, but that Mr. Farrell was to return his Town-issued cell phone to the Town Manager's office by the end of the day. (Testimony of Police Chief Ambrose) Mr. Farrell was at Town Hall until approximately 10:45 A.M. (Testimony of Mr. Farrell)
82. Later that same day (July 27<sup>th</sup>), Mr. Farrell accessed his Town-issued cell phone and deleted messages and pictures that he deemed personal. (Testimony of Mr. Farrell)
83. By the end of the day on July 27<sup>th</sup>, Mr. Farrell's sister returned his Town-issued cell phone to the Town Manager's office. (Exhibit 2)
84. On July 30, 2015, the Town Manager asked the Police Chief to download any data from Mr. Farrell's Town-issued cell phone. Since the Police Chief was unaware of the 4-digit pass code, he was not initially able to download the data and the service provider, Verizon, refused the Town's request to access the data on the cell phone. (Testimony of Police Chief Ambrose) (The Police Chief was eventually able to

---

<sup>8</sup> Mr. Farrell testified that he stopped at the house of a local attorney.

access the cell phone data, but not until two (2) days after the August 3<sup>rd</sup> hearing regarding Mr. Farrell's termination.) (Testimony of Police Chief Ambrose)

85. On August 3, 2015, the Town Manager conducted a local Appointing Authority hearing pursuant to G.L. c. 31, s. 41. The hearing lasted thirty (30) minutes and Mr. Bartha heard from counsel for Mr. Farrell and the Town. No witness testimony was taken. (Testimony of Mr. Bartha)
86. On August 5, 2015, two (2) days after the August 3<sup>rd</sup> hearing, counsel for Mr. Farrell provided the Town with the pass code to Mr. Farrell's Town-issued cell phone. (Exhibit 14) At this time, they discovered that Mr. Farrell had "googled" the name of his former spouse's boyfriend shortly after the boyfriend's plate number was run by a Danvers police officer. (Testimony of Police Chief Ambrose)
87. When Police Chief Ambrose first reviewed the data from Mr. Farrell's Town-issued cell phone, he initially concluded (erroneously) that Mr. Farrell had made three (3) outgoing calls on the cell phone to the female Town employee *between 11:15 A.M. and 11:30 A.M.* on July 27<sup>th</sup>. (Testimony of Police Chief Ambrose) If true, this could contradict Mr. Farrell's statement to the Town Manager that his Town-issued cell phone was in Maynard when they met on the morning of July 27<sup>th</sup>. (The Police Chief would subsequently conclude that the outgoing calls were actually made on July 27<sup>th</sup> between 7:15 A.M. and 7:30 A.M.)
88. At 6:48 A.M. on August 6, 2015, counsel for Mr. Farrell penned an email to counsel for the Town stating: "The Chief [Farrell] had an opportunity to read the police report and found significant errors or omissions, most due to incorrect assertions by his former wife. He prepared that (sic) attached rebuttal. The police can often only

go by what they are told in these cases, so this is not a criticism of their work. Since he had not seen the report before the ‘hearing’ and had no opportunity to present or cross-examine witness (sic) on this matter, he the hopes the Manager will consider his rebuttal in rendering any decision.” (Exhibit 17)

89. Exhibit 11 is the “police report” which Mr. Farrell had read and found “significant errors or omissions, most due to incorrect assertions by his former wife.” This is the report prepared by Police Chief Ambrose regarding the running of the license plate by a Danvers Police Officer. (Exhibit 11)

90. As part of this police report, the Police Chief provides a summary of his conversation with the boyfriend of Chief Farrell’s former spouse. Included in the Police Chief’s summary is a detailed account of the whereabouts of the boyfriend’s black pick-up truck and its driver (Mr. Farrell’s former spouse) on Friday, June 12th. In the context of this conversation about what occurred on June 12th, the boyfriend “implied” that the former spouse at one point got in the truck and left to “get away from [Mr. Farrell].” (Exhibit 11)

91. After reviewing the boyfriend’s allegation regarding what allegedly occurred on Friday, June 12th, Mr. Farrell wrote a rebuttal stating in part: [Boyfriend] also states that [former spouse] implied that she left the house to get away from Kevin. Yet [former spouse]’s statement clearly indicates that she left the house to take a load of items from the house and meet for lunch. [Former spouse] clearly states in her statement that things were civil.” (Exhibit 15)

92. In the police report that was reviewed by Mr. Farrell, Chief Ambrose makes specific reference to a phone conversation with Mr. Farrell’s former spouse in which the

former spouse told Chief Ambrose that: “during the morning of the 12<sup>th</sup> both she and Kevin were at the [address redacted]. Kevin was working in the basement. [Former spouse] left around noon to take a load of things from the home and to meet [redacted] for lunch.” (Exhibit 11)

93. Mr. Farrell’s detailed 2-page and one paragraph rebuttal does not dispute the former spouse’s statement that both she and Mr. Farrell were at the house in Groveland during the morning of Friday, June 12th. (Exhibit 15)

94. In his detailed rebuttal, Mr. Farrell did take issue with various other statements referenced in Chef Ambrose’s report. Among the most relevant statements in the written rebuttal are:

- “First and foremost, I knew [boyfriend]’s first name prior to running the number plate. I knew of [boyfriend] through conversations with my two sons, my ex-sister-in-law as well as my ex-wife as she has mentioned his name to me before in passing.”
- “In regard to Acting Chief Ambrose (sic) statements in this report in both my phone conversation and at our face-to-face meeting, I explained that the only information I was given was the make and color of the truck and the first name. But unfortunately it comes across in the report that Acting Chief Ambrose has written, that I was given the full name of the owner which is simply not true.”
- “... I want to reiterate that in no way was I trying to get any information for personal use. I simply noted a strange vehicle in the driveway of my empty house with the house doors open and no one around. I was concerned since the ‘for sale’ sign was still there that maybe someone was trying to enter the home ...” (Exhibit 15)

95. The concluding paragraph of Mr. Farrell’s rebuttal letter states:

“I ask that you consider all the facts of this incident and please do not let someone who does not have my best interest at heart destroy a career that I have worked so hard for and that she knows is extremely important to me. I will also reiterate that I have moved on with my life and hope for her to do the same.”  
(Exhibit 15)

96. At 7:09 A.M. on August 6<sup>th</sup>, counsel for the Town forwarded Mr. Farrell’s rebuttal to the Town Manager and Human Resources Director stating: “I’ll make a couple of

additions to the draft decision in light of the ‘rebuttal’ and forward later this morning in redline version so you can readily see what the changes are.” (Exhibit 17)

97. At 8:50 A.M. on August 6<sup>th</sup>, counsel for the Town sent the Town Manager and Human Resources Director a revised termination letter with the message: “A redlined revised draft decision re: Farrell, incorporating your review of his rebuttal.” (Exhibit 17)

98. At 10:15 A.M. on August 6<sup>th</sup>, the Town Manager sent a reply message to counsel for the Town stating, in part, that he had just met with the Police Chief and learned that: Mr. Farrell may have deleted information from the Town-issued cell phone before returning it; Mr. Farrell conducted 4-5 web searches of the former spouse’s boyfriend on June 12th; and that Mr. Farrell made three outgoing calls on the Town issued cell phone between 11:10 and 11:17 A.M. on July 27<sup>th</sup>. (Exhibit 17)

99. In regard to the three (3) outgoing calls on July 27<sup>th</sup>, Mr. Bartha wrote:

“On July 27<sup>th</sup>, (the day I put him on leave), Kevin placed three calls to [female Town employee] between 11:10 and 11:17 am. When I asked Kevin for cell phone after the 9am meeting, he told us it was in Maynard, MA (35 miles / 50 minutes west of Danvers). We informed Kevin that Chief Ambrose would escort him home for his cell phone. At approximately 9:30, Chief Ambrose escorted Kevin from Town Hall to the Fire Station to retrieve his personal belongings and then Kevin drove to his attorney’s office on [street in Danvers]. At approximately 10:20, Chief Ambrose escorted Kevin back to Town Hall, at which point Kevin spent time speaking with [Town employee] about his retirement options. Kevin’s sister returned the phone to use between 4pm and 5pm that day .... It appears that Kevin (1) lied about the phone and (2) used the afternoon to selectively delete info that we are (as of yet) unable to access.” (Exhibit 17)

100. In a 4 ½ -page letter dated August 7, 2015, Mr. Bartha notified Mr. Farrell of his decision to terminate Mr. Farrell as the Town’s Fire Chief (hereinafter “termination letter”) (Exhibit 2)

101. The August 7, 2015 termination letter includes thirteen (13) findings and four (4) paragraphs under the heading “conclusion.” (Exhibit 2)
102. Findings 1 – 3 of the termination letter reference the 2012 incident and former Town Manager Wayne Marquis’s letter to Mr. Farrell. (Exhibit 2)
103. Finding 4 of the termination letter references Mr. Farrell’s inability to maintain a professional and appropriate demeanor at work and poor morale at the Fire Department. (Exhibit 2)
104. Findings 5 and 6 of the termination letter reference the June 3, 2015 incident in Town Hall with the female Town employee and the conversation between Mr. Bartha and Mr. Farrell the next day. (Exhibit 3)
105. Findings 7 – 11 of the termination letter reference the running of the plate number of the pick-up truck on June 12th. Specifically, Paragraph 10 of the termination letter states:
- “As part of the Police Chief’s Internal Affairs investigation, your ex-spouse told the Chief a completely different story, indicating that you were familiar with that truck and knew your former spouse was using it to help clean out the house. Your written rebuttal largely consists of offering a different version of events, as well as a series of gratuitous statements regarding your former spouse.<sup>9</sup> I do not think that I have to resolve these contradictions, because they appear to be peripheral to the main issue, which was asking the Police Officer to run the plate, which you do not deny. However, according to the Police Chief’s report, you stated that you did not even remember the last name of the owner of the truck. In your rebuttal, you reiterated that, prior to June 12, you knew the first name, but not the last name of the owner of the truck. However, an initial review of the phone records of your Town cell phone indicates that on the evening of June 12, 2015, you conducted a number of Internet searches using the full name of the owner of the truck. Therefore, I must conclude that you only learned the name of the truck owner after the Police Officer ran the plate for you, and that you then used that information for your own personal reasons by conducting internet searches. I also must conclude that you must have been less than truthful in some of the statements you have made.” (emphasis in original) (Exhibit 2)

---

<sup>9</sup> The rebuttal letter submitted into evidence as Exhibit 15 contains a large paragraph that was redacted by the Town.



106. Finding 12 of the termination letter states:

“After you and I met on July 27, 2015 and I asked you to turn over your Town-issued cell phone, you indicated that it was in Maynard. Your sister turned it in for you later in the day on July 27, and you were in Town Hall most of the morning of that day, at least until about 10:45 A.M. Yet, an initial examination of the phone, which was supposedly in Maynard (35 miles away), indicates that you made several calls on it to a Town employee between 11:10 and 11:17 A.M. This sequence would appear to indicate that the phone was in your possession that day and not in Maynard, as you claimed. It also seems curious to me that you did not have your Town phone with you at our meeting on June 27, and that you would leave it 35 miles away in Maynard, particularly given your statement in your rebuttal that ‘I do not consider my job as a 9 to 5 job, but that I am always on call.’”

Finding 12 also had a footnote which stated:

“Moreover, initial review of that cell phone also indicates that some deletions occurred between the early morning of Monday, June 27, 2015, when we met, and late in the day when your sister turned it in for you. Our investigation into that cell phone will continue.”

(Exhibit 2)

107. Finding 13 of the termination letter stated:

“Whether or not your conduct in this matter violated the state conflict of interest statute or federal laws governing access to motor vehicle license information is an open question. Regardless of the answer, however, I find that your request of a Danvers officer to run plates for you was an effort to use your official position for personal reasons in a manner not available to the general public. I find that such action demonstrates an appalling lack of judgment. You knew, or should have known, that such conduct could bring both the Danvers Fire Department and Danvers Police Department into disrepute. Your defense at the hearing was that any blame should be directed at the Officer and not you, as she was the one who ran the plate, and all you did was ask. I find it incredible that you would so callously attempt to shift your responsibility in this incident to an officer who felt she was acting, at your request, in a matter she honestly believed to be an official Fire Department request. I find your conduct in this regard, and your failure to take responsibility for the full extent and consequences of your own actions, to be both dishonorable and irresponsible.”

(Exhibit 2)

108. At the hearing before the Commission, Mr. Bartha acknowledged that counsel for Mr. Farrell, not Mr. Farrell himself, made the statement regarding the assignment of blame at the local hearing in Danvers. (Testimony of Mr. Bartha)
109. The August 7<sup>th</sup> termination letter contains four (4) paragraphs under the heading “conclusion” which summarize some of the findings and states in part, “In my judgment, based on the findings above, you have engaged in conduct unbecoming of the Fire Chief of the Town of Danvers.”<sup>10</sup> (Exhibit 2)
110. On August 13, 2015, Mr. Farrell filed an appeal with the Civil Service Commission, contesting his termination. (Stipulated Fact)
111. At 1:55 P.M. on August 13<sup>th</sup>, Police Chief Ambrose penned an email to Mr. Bartha stating:
- “Steve,
- In further review of the phone records I discovered the recorded times on the phone are not reported in Eastern Standard Times. They are recorded as Universal Time Cod +0 or UTC+0. To convert these UTC+0 times to Eastern Standard Times you must deduct 4 hours. This changes the time frames and it makes item #2, below, incorrect. The phone calls to [female Town employee] were actually placed at 7:10 – 7:17 am, prior to his meeting with you. No other outgoing calls were attempted until 1:47 pm on 7/27/15. Also, the web search times for [former spouse’s boyfriend] actually begin to start taking place at 3:04 pm, approximately 5 minutes after he receives the listing from Suzanne. Sorry for not catching this earlier.” (Exhibit 16)
112. Two (2) days later, on Saturday, August 15<sup>th</sup>, Mr. Bartha forwarded the Police Chief’s email to counsel for the Town, stating, “... this changes (slightly) several points in the letter. Do we consider a revised letter for the pre-hearing or leave it alone?” (Exhibit 16)

---

<sup>10</sup> The reference to “conducting unbecoming of the Fire Chief of the Town of Danvers”, for which counsel for Mr. Farrell argues there is no such rule, forms the primary basis in support of Mr. Farrell’s Motion to Dismiss, which is addressed as part of the analysis.

113. On September 8, 2015, I held a pre-hearing conference at the offices of the Commission, which was attended by Mr. Farrell, his counsel, counsel for the Town and the Town's Human Resources Director. The Town did not reference the Police Chief's clarification email. (Undisputed Facts)

### *Legal Standard*

G.L. c. 31, § 41 provides in relevant part:

“Except for just cause and except in accordance with the provisions of this paragraph, a tenured employee shall not be discharged, removed, suspended for a period of more than five days, laid off, transferred from his position without his written consent if he has served as a tenured employee since prior to October fourteen, nineteen hundred and sixty-eight, lowered in rank or compensation without his written consent, nor his position be abolished. Before such action is taken, such employee shall be given a written notice by the appointing authority, which shall include the action contemplated, the specific reason or reasons for such action and a copy of sections forty-one through forty-five, and shall be given a full hearing concerning such reason or reasons before the appointing authority or a hearing officer designated by the appointing authority. The appointing authority shall provide such employee a written notice of the time and place of such hearing at least three days prior to the holding thereof, except that if the action contemplated is the separation of such employee from employment because of lack of work, lack of money, or abolition of position the appointing authority shall provide such employee with such notice at least seven days prior to the holding of the hearing and shall also include with such notice a copy of sections thirty-nine and forty. If such hearing is conducted by a hearing officer, his findings shall be reported forthwith to the appointing authority for action. Within seven days after the filing of the report of the hearing officer, or within two days after the completion of the hearing if the appointing authority presided, the appointing authority shall give to such employee a written notice of his decision, which shall state fully and specifically the reasons therefor. Any employee suspended pursuant to this paragraph shall automatically be reinstated at the end of the first period for which he was suspended. In the case of a second or subsequent suspension of such employee for a period of more than five days, reinstatement shall be subject to the approval of the administrator, and the notice of contemplated action given to such employee shall so state. If such approval is withheld or denied, such employee may appeal to the commission as provided in paragraph (b) of section two. (emphasis added)

G.L. c. 31, § 42 provides:

“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. Such complaint must be filed

within ten days, exclusive of Saturdays, Sundays, and legal holidays, after said action has been taken, or after such person first knew or had reason to know of said action, and shall set forth specifically in what manner the appointing authority has failed to follow such requirements. 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.

A person who files a complaint under this section may at the same time request a hearing as to whether there was just cause for the action of the appointing authority in the same manner as if he were a person aggrieved by a decision of an appointing authority made pursuant to all the requirements of section forty-one. In the event the commission determines that the subject matter of such complaint has been previously resolved or litigated with respect to such employee, in accordance with the provisions of section eight of chapter one hundred and fifty E, or is presently being resolved in accordance with said section eight, the commission shall forthwith dismiss such complaint. If said complaint is denied, such hearing shall be conducted and a decision rendered as provided by section forty-three.”

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); 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); 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.*, 823-24, quoting internally from Watertown v. Arria, 16 Mass.App.Ct. 331, 334 (1983) and cases cited.

### *Analysis*

As a preliminary matter, counsel for Mr. Farrell, shortly after the full evidentiary hearing was concluded in this matter, filed a “motion to dismiss the charges”, which I have deemed a Motion for Summary Decision. According to Mr. Farrell’s motion: a) all

of the charges are reliant on the Conclusion listed in the Town Manager's letter to the Chief of August 7, 2015 summarizing all of the Chief's allegedly improper actions as 'conduct unbecoming a Fire Chief'; b) there is no rule specifying conduct unbecoming a Fire Chief in Danvers; and therefore, c) this cannot serve as the basis for the Chief's termination.

While the Town Manager may have opined that, collectively, all of the alleged misconduct by Mr. Farrell constituted "conducting unbecoming a Fire Chief", the Town laid out the specific, underlying reasons for the Fire Chief's termination. It is the Commission's role to determine whether, by a preponderance of the evidence, the Town has proven those specific charges and, if so, whether they constitute substantial misconduct which adversely affects the public interest.

While I am denying Mr. Farrell's Motion for Summary Decision, many of the issues raised in that motion, and the Town's response, directly relate to whether just cause existed for discipline and, specifically, whether the Town wrongly added on additional charges that were not contained in the original charge letter which gave Mr. Farrell notice of the reasons for potential discipline. Specifically, after the Police Chief submitted his report to the Town Manager, the Town Manager handed Mr. Farrell a charge letter specifying the reasons for potential discipline. Setting aside the allegations of *prior* misconduct, which I address below, the Town's July 27, 2015 charge letter effectively listed two (2) *new* charges against Mr. Farrell: 1) poor morale at the Fire Department; and 2) asking a Danvers police officer to run a license plate for his own personal reasons.

*After* the local appointing authority hearing, which was required by Section 41, the Town made *additional* charges against Mr. Farrell, which were not included in the charge

letter. Specifically, the termination notice to Mr. Farrell stated that the Town's decision was based, in part, on a conclusion that Mr. Farrell was untruthful when he told the Town Manager that he didn't have his Town-issued cell phone in his possession on the morning of July 27<sup>th</sup>.

"The [appointing authority] has an opportunity, within statutory and constitutional limits, to collect evidence and develop its case via its internal departmental investigations. Once, however, the decision to seek termination [is] made, [the tenured employee]'s statutory and due process rights attach[]. Constitutional safeguards require 'oral or written notice of the charges against [the tenured employee]'s evidence, and an opportunity to present [the employee]'s side of the story.' (City of Worcester v. Civ. Serv. Comm'n & Dykas, 12-P-1844 (2013), citing Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 546 (1985) and Murray v. Second Dist. Ct. of E. Middlesex, 389 Mass. 508, 516 (1983) ('[D]ecision of the commission is not justified if it is not based on the reasons specified in the charge letter brought by the appointing authority')."

Here, Mr. Farrell was never given notice that a potential reason for discipline was alleged untruthfulness relating to whether he had possession of his Town-issued cell phone on the morning of July 27<sup>th</sup>. Since that was not listed as a reason for potential discipline in the charge letter, and since Mr. Farrell was never given an opportunity to respond to that charge prior to his termination, it cannot be considered in regard to whether there was just cause to impose discipline here.

Even if the issue of alleged untruthfulness regarding the cell phone was properly before me, the Town did not prove this charge by a preponderance of the evidence. Rather, the Town based this charge largely on erroneous information. As stated in the

findings, the Town, prior to Mr. Farrell's termination, incorrectly concluded that Mr. Farrell made outgoing calls on his Town-issued cell phone between 11:15 A.M. and 11:30 A.M. Since Mr. Farrell was in Town Hall that day until at least 10:40 A.M., the Town concluded that his cell phone was not, as Mr. Farrell had stated, in Maynard.

After Mr. Farrell's termination, the Town realized that an error was made and that those outgoing calls were actually made four (4) hours earlier, which would not contradict Mr. Farrell's statement regarding the location of his cell phone at approximately 9:30 A.M. when he concluded his meeting with the Town Manager. I was troubled that the Town failed to correct the record, either via a revised termination letter and/or notifying the Commission at a pre-hearing conference that was held shortly thereafter. The error was, however, forthrightly addressed by the Town Manager and the Town's Police Chief at the full evidentiary hearing.

A closer call here is whether the Town also erred by adding on an additional charge of untruthfulness related to the request made to a Danvers police officer to run a license plate number. While the July 27<sup>th</sup> charge letter states that Mr. Farrell allegedly "asked a Danvers Police Officer to run a license plate for you for your own personal reasons relating to ongoing issues with your former spouse ...", the charge letter does not explicitly allege untruthfulness.

In contrast, the termination letter specifically states that "I also must conclude that you have been less than truthful in some of the statements you have made" [relating to the circumstances around why the request to run the plate was made.] I do not view this as a new charge for which Mr. Farrell was unaware. The charge letter clearly put Mr. Farrell on notice that the Town believed he made the request for personal reasons "relating to



ongoing issues with your former spouse.” When, as part of his defense, Mr. Farrell effectively stated that the request to run the plate was not related to ongoing his issues with his former spouse, and therefore, was not personal, the Town concluded he was being untruthful. I don’t think that charge falls within the same exclusionary parameters addressed in Dykas.

Even if it does, however, this case would still turn on whether Mr. Farrell made a request to run the license plate number for personal reasons; whether that warrants discipline and, if so, what level of discipline is appropriate.

That leads to the *prior* misconduct referenced in the charge letter. Prior to this termination, Mr. Farrell has never been formally disciplined in the form of a termination, suspension, demotion, or punishment duty. He has, however, engaged in prior misconduct for which the Town determined that paid administrative leave, extended sick leave, counseling and written “warnings” were appropriate. The most recent misconduct, prior to the allegations regarding the running of the license plate, involved a disturbing encounter with a female Town employee in Town Hall. For better or worse, the Town Manager, after reviewing that matter, concluded that a short, de-facto verbal counseling session was the appropriate disposition. While, in retrospect, the Town may regret that decision, it cannot now put that incident forth as a *new* charge. Rather, consistent with decades of Commission decisions, that *prior* misconduct can be considered in regard to what level of discipline is warranted if the new charge(s) is/are proven.

Finally, in regard to the reasons listed for termination, it is not reasonable or justified for the Town to rely on statements made by an employee’s counsel to form the basis of discipline. Specifically, while the Town may object to a statement made by counsel for

Mr. Farrell that the blame for running the license plate number should fall squarely on the Danvers Police Officer, adding that to the list of reasons for termination was an error.

For all the reasons discussed above, the primary factual issues to be resolved here are:

- a) whether morale at the Fire Department suffered as a result of Mr. Farrell's actions; and
- b) whether Mr. Farrell engaged in misconduct by asking a Danvers police officer to run a license plate number for allegedly personal reasons.

In regard to the charge related to morale, the July 27<sup>th</sup> charge letter stated: "Between that time [November 7, 2012] and the present, you have been counseled several times by the Director of Human Resources and others about maintaining a professional and appropriate demeanor at work, due to concerns raised by employees under your command and supervision. It is also my observation and others that morale in the Danvers Fire Department has suffered under your tenure as Chief."

There was no evidence presented that Mr. Farrell had been counseled "several times" by the Director of Human Resources and others about his demeanor at work between 2012 and 2015. Rather, the only testimony offered about counseling related to the incident with a female Town employee in Town Hall in June 2015. While the Town Manager referenced concerns raised about morale by now-Provisional Fire Chief McPherson, Chief McPherson testified that he never had any direct conversation with the Town Manager about morale at the Department prior to Mr. Farrell's termination. Mr. McPherson did testify that he overheard Mr. Farrell engage in loud phone conversations, prompting him to close the door of the Fire Chief's office, and that two (2) employees made remarks something to the effect of "here we go again" (which McPherson took to be a reference to the 2012 incident.)

Mr. Farrell testified, and the Town did not dispute, that aside from one (1) minor grievance related to an assessment center examination, no grievances were filed by any member of the Danvers Fire Department during his approximately four (4) year tenure. That does not paint the picture of a Department suffering from low morale. While it is certainly reasonable to conclude that the Fire Chief's recent actions, some of which were widely publicized, could potentially impact the morale of the Fire Department, the evidence simply does not support the sweeping conclusions regarding morale issues as charged by the Town.

The crux of this case centers on what occurred on Friday, June 12, 2015. Mr. Farrell does not dispute that, at approximately 2:45 P.M. that day, he contacted a Danvers police officer and asked her to run the plate number of black pick-up truck. Almost everything else surrounding that call, including the context in which it was made, is disputed.

According to Mr. Farrell's former spouse, Mr. Farrell was aware that she was using the black-up truck to clean out their house in Groveland on Friday, June 12th. Mr. Farrell's spouse testified at the Commission hearing that she parked the black pick-up truck in the driveway at approximately 8:00 A.M. that morning; that Mr. Farrell arrived approximately thirty (30) minutes later; and that the two (2) of them worked cordially throughout the morning to remove items from the house, with Mr. Farrell spending most of his time clearing out items from the basement. According to Mr. Farrell's former spouse, both she and Mr. Farrell brought items out to the curb that morning while the black pick-up truck was parked in the driveway. Mr. Farrell's spouse testified that, sometime around Noon, she told Mr. Farrell that she was leaving and went to lunch, arriving back at the house approximately three (3) hours later the same day.

Mr. Farrell provided a starkly different version of events regarding what occurred on Friday, June 12th during his testimony before the Commission. According to Mr. Farrell, he was not at the house in Groveland during the morning hours of Friday, June 12th. Rather, according to Mr. Farrell, he first arrived at the house in Groveland shortly before 3:00 P.M., at which time he saw a strange truck parked in the driveway and the door of the house open. According to Mr. Farrell, he then walked through the house, saw that nobody was present and then called a Danvers police officer to run the plate number.

The divergent testimony here is important, because, if I accept the testimony of Mr. Farrell's former spouse, it can be reasonably concluded that Mr. Farrell's intent in having the plate number run was to determine who owned the truck that he knew was being driven by his former spouse. If I accept the testimony of Mr. Farrell, it can be reasonably concluded that the request to run the plate was based solely on his concern about a strange truck being parked in his driveway. While either scenario arguably constitutes asking for a plate to be run for "personal reasons", the Town, in making its decision, clearly considered the context in which the request was made in determining whether discipline was warranted here.

I carefully listened (and re-listened) to the testimony of both Mr. Farrell and his former spouse regarding this issue. I also reviewed all relevant exhibits, including the prior statements made by both individuals.

Mr. Farrell's former spouse was a good witness. She listened carefully to the questions posed to her, and provided direct, thoughtful responses. Notwithstanding what she described as "toxic" proceedings regarding their recent divorce, I did not find that her testimony was geared toward portraying Mr. Farrell in a bad light. Rather, she appeared

to take her sworn testimony seriously and was most concerned with providing an accurate account of what occurred. She also credibly testified that it was not in her family's best interest for Mr. Farrell to lose his job, as it may impact his ability to meet the child support obligations contained in the divorce agreement.

In regard to what occurred on Friday, June 12<sup>th</sup>, Mr. Farrell's former spouse appeared to have a clear recollection of what occurred that day, stating without reservation that both she and Mr. Farrell were at the house in Groveland that morning while the black pick-up truck was parked in the driveway. Also, she was able to clearly distinguish between what occurred on Friday, June 12<sup>th</sup> with what occurred on Sunday, July 17<sup>th</sup>, when both she and Mr. Farrell returned to the property one day prior to the closing.

At the Commission hearing, Mr. Farrell adamantly denied that he was ever at the house in Groveland during the morning of Friday, June 12<sup>th</sup> and insisted the first time he saw the black pick-up truck was when he first arrived at the house in the afternoon. Mr. Farrell offered an almost minute-by-minute account of his whereabouts that morning which, if true, would make it impossible for him to have been at the house in Groveland at any point during the morning hours of Friday, June 12<sup>th</sup>.

According to Mr. Farrell:

- He woke up at approximately 8:00 A.M. on June 12<sup>th</sup> at the home of a friend in Maynard and was in "no rush to get out;"
- He called a U-Haul store and told them he needed to extend a trailer rental for one (1) more day;
- He left Maynard at approximately 8:30 A.M. and drove to the Danvers Fire Station;
- Although he had taken that week off from work, he was going to the Fire Station to

pay his bills online because his “credit card (payments) were due that day” and all of his online passwords were at the Fire Station;

- He arrived at the Danvers Fire Station at approximately 9:00 – 9:15 A.M. and stayed there for approximately 45 minutes;
- While at the Fire Station, he had a conversation with a firefighter about where he had rented the trailer on this truck;
- At approximately 10:00 A.M., he arrived at the home of a sibling in Danvers and had coffee and an English muffin;
- He left the sibling’s home at 10:30 A.M. and headed to the transfer station at Georgetown with the trailer, which was loaded with items he had retrieved from the house in Groveland the previous day;
- He drove onto the scale upon entering the transfer station in Georgetown at 11:15 A.M. and drove back onto the scale at 11:45 A.M. upon exiting the transfer station, for which he has a receipt with these times listed;
- He left the transfer station in Georgetown around Noon and drove to a store named “Box Q” on Tenney Street in Georgetown to dispose of a television set which the transfer station would not accept;
- He had trouble finding the store and it took him approximately 30 minutes to find it.
- He went inside the store, unloaded the television and paid \$30, for which he has a receipt;
- He left the Box Q store at approximately 1:00 P.M. and stopped at a café for lunch where he purchased a panini sandwich and 3 Gatorade beverages.
- He left the café at approximately 2:00 P.M. and then, for the first time that day, drove

to the house in Groveland at which point he noticed a strange black pick-up truck in the driveway.

Subsequent to the Commission hearing, counsel for Mr. Farrell provided a receipt from the transfer station in Georgetown showing a weigh-in time of 11:16 A.M. and a weigh-out time of 11:28 A.M. Mr. Farrell also provided a receipt from Box Q Inc. for \$30 dated 6/12/15.

As I listened to Mr. Farrell's micro-detailed recollection of his movements on Friday, June 12<sup>th</sup>, it made me question whether his former spouse may have been mistaken about whether he was present at the house in Groveland that morning. While it is reasonable to question whether anyone could recall, with that level of specificity, what occurred several months prior, Mr. Farrell appeared to have the personality and mindset where having such a detailed recall is possible.

Ultimately, however, after a careful review of the relevant testimony and exhibits, I do not credit Mr. Farrell's testimony that he was not at the house in Groveland during the morning hours of Friday, June 12<sup>th</sup>. First, as referenced above, I found the testimony of Mr. Farrell's spouse, standing alone, to be credible. Second, and just as importantly, Mr. Farrell did not include any of these details regarding his whereabouts on the morning of June 12<sup>th</sup> in his written rebuttal dated August 5<sup>th</sup>.

That written rebuttal, penned by Mr. Farrell on August 5<sup>th</sup>, states, "After reading, in its entirety, the police report submitted by Acting Chief Patrick Ambrose that I received yesterday at my hearing, I would like to take this opportunity to respond in greater detail. There are many false statements were made by [former spouse] and [boyfriend] throughout this report."

The police report that Mr. Farrell reviewed, in its entirety, makes specific reference to a phone conversation that Chief Ambrose had with Mr. Farrell's former spouse in which the former spouse told Chief Ambrose that: "during the morning of the 12<sup>th</sup> both she and Kevin were at the [address redacted]. Kevin was working in the basement. [Former spouse] left around noon to take a load of things from the home and to meet [redacted] for lunch." (Exhibit 11)

Mr. Farrell's detailed 2-page and one paragraph August 5<sup>th</sup> rebuttal does not specifically dispute the former spouse's statement that both she and Mr. Farrell were at the house in Groveland during the morning of Friday, June 12<sup>th</sup> -- and the written rebuttal certainly does not offer any of the detailed itinerary put forth by Mr. Farrell at the conclusion of the Commission hearing. In fact, Mr. Farrell, clearly referencing the events of Friday, June 12<sup>th</sup>, appears to even corroborate the former spouse's testimony when he references the civil nature of their interaction and her leaving for lunch.

I carefully considered the two receipts which were presented after the Commission hearing was concluded. I do not doubt that Mr. Farrell was at the transfer station in Georgetown between 11:16 A.M. and 11:28 A.M. That transfer station, however, is a relatively short distance from neighboring Groveland. Mr. Farrell could have easily left the house in Groveland that morning and returned a short time later. Alternatively, Mr. Farrell's former spouse could have been off by approximately one hour in regard to when she and Mr. Farrell left the house in Groveland (i.e. – 11:00 A.M. instead of 12:00 Noon).<sup>11</sup>

---

<sup>11</sup> At the conclusion of the former spouse's testimony before the Commission, counsel for Mr. Farrell chose not to conduct any cross-examination.



Whether or not Mr. Farrell *returned* to the house in Groveland shortly before 3:00 P.M. on Friday, June 12<sup>th</sup> is immaterial as, for the reasons cited above, I have concluded that he was at the house in Groveland during the morning hours of Friday, June 12<sup>th</sup>. Thus, at the time Mr. Farrell made the call to a Danvers police officer at 2:45 P.M., he was well aware that the black pick-up truck in question was being driven by his former spouse. That is consistent with the Town's conclusion that Mr. Farrell's intent in having the plate number run was to determine who owned the truck that he knew was being driven by his former spouse – as opposed to being concerned about a strange truck in his driveway.

Other factors detracted from Mr. Farrell's credibility. Mr. Farrell's testimony that the Danvers police officer may not have given him the first and last name of the owner of the truck is even less convincing. According to Mr. Farrell, once he heard the first name of the owner of the truck, he knew that it belonged to the boyfriend of his former spouse because, according to Mr. Farrell, he already knew the first and last name of the boyfriend<sup>12</sup>. Therefore, according to Mr. Farrell's testimony before the Commission, while the Danvers police officer "may have" given him the last name, he either didn't hear or remember it. That testimony is, to me, different, than his unequivocal statement in his written rebuttal in which he stated, unequivocally, that "... unfortunately, it comes across in the report that Acting Chief Ambrose has written, that I was given the full name of the owner which is simply not true."

Further, it is undisputed that, only moments after receiving information about the owner of the truck from the Danvers police officer, Mr. Farrell used his Town-issued cell

phone to conduct an Internet search of the boyfriend, pulling up news articles about him and clicking on his “linkedin.com” account. Mr. Farrell had an explanation for that as well. According to Mr. Farrell, since he already knew the last name of the boyfriend, he decided to do an Internet search (at that moment) because he wanted to know about a man who would be spending time with his children (ages 28, 27 and 20, the youngest of whom is in college).

Finally, as stated above, Mr. Farrell, despite stating that he was either not given or did not hear the police officer give him the last name of the former spouse’s boyfriend, testified that he was able to do the Internet search because he recalled being told the last name from others. Yet, on July 17<sup>th</sup>, only weeks later, when Police Chief Ambrose instructed Mr. Farrell not to have any contact with the boyfriend, he told Chief Ambrose he couldn’t even remember the name of the boyfriend.

Taken as a whole, Mr. Farrell’s statements and testimony appeared to be inconsistent, illogical and, at times, contrived. This, to me, only reinforced that his motivation for asking a Danvers police officer to run the plate number that day was solely related to personal reasons.

18 U.S. Code §2721 (b)(1) (the Driver Privacy Protection Act) (DPPA) permits the disclosure of personal information from RMV records “for use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity action on behalf of a Federal, State or local agency in carrying out its functions.” (emphasis added) (Exhibit 16)

---

<sup>12</sup> During his testimony before the Commission, Mr. Farrell stated that his former spouse had, at some point, mentioned the name of her boyfriend to him in passing. I credit the testimony of Mr. Farrell’s former spouse that she did not.

Under the DPPA, personal information can be disclosed ONLY to certain categories of requestors, and for those permitted uses identified in the statute. The definition of personal information in the context of this law has been expanded to include name, address and driver license number ... The DPPA also restricts the re-disclosure of personal information from RMV records. An authorized recipient of personal information may re-disclose information only for another permitted use ... Persons found to have knowingly violated the DPPA may be subject to both criminal penalties and civil liability.” (emphasis added) (Administrative Notice: The Official Website of the Massachusetts Registry of Motor Vehicles; <http://www.massrmv.com/rmv/privacy>)

In summary, Mr. Farrell, while serving as the Danvers Fire Chief, asked a Danvers police officer, unbeknownst to her, to violate federal law by providing him with personal information from RMV records for his own personal reasons. This constitutes substantial misconduct which adversely affects the public interest by impairing the efficiency of public service. For this reason, the Town had just cause to discipline Mr. Farrell.

Having determined that it was appropriate to discipline Mr. Farrell for his misconduct, I must determine if the Town was justified in the level of discipline imposed here – termination.

“The ... power accorded the commission to modify penalties must not be confused with the power to impose penalties ab initio, which is a power accorded the appointing authority.” Falmouth v. Civ. Serv. Comm’n, 61 Mass.App.Ct. 796, 800 (2004) quoting Police Comm’r v. Civ. Serv. Comm’n, 39 Mass.App.Ct. 594, 600 (1996). Unless the Commission’s findings of fact differ significantly from those reported by the appointing authority or interpret the relevant law in a substantially different way, the commission is

not free to “substitute its judgment” for that of the appointing authority, and “cannot modify a penalty on the basis of essentially similar fact finding without an adequate explanation.” E.g., Falmouth v. Civil Service Commn, 447 Mass. 814, 823 (2006).

The Commission is also guided by “the principle of uniformity and the equitable treatment of similarly situated individuals” [both within and across different appointing authorities]” as well as the “underlying purpose of the civil service system ... to guard against political considerations, favoritism and bias in governmental employment decisions.” Falmouth v. Civil Service Commission, 447 Mass. 814, 823 (2006) and cases cited.

Even if there are past instances where other employees received more lenient sanctions for similar misconduct, however, the Commission is not charged with a duty to fine-tune an employee’s discipline to ensure perfect uniformity. See Boston Police Dep’t v. Collins, 48 Mass.App.Ct. 408, 412 (2000).

Some of my findings do differ from those of the Town here. Specifically, I did not find that Mr. Farrell was untruthful regarding the whereabouts of his Town-issued cell phone on July 27<sup>th</sup> and, even, if he did, the Town failed to notify him that this was a potential reason for termination. Further, I did not find, at least by a preponderance of the evidence, that there was a morale problem at the Danvers Fire Department. Notwithstanding these important differences, I did come to the same conclusion as the Town that Mr. Farrell engaged in substantial misconduct when he asked a Danvers police officer to violate federal law by, unbeknownst to her, providing him with personal information from RMV records for his own personal reasons.

After carefully reviewing all of the evidence, however, including the credible testimony of the Town Manager, it is clear to me that, standing alone, the Town considered Mr. Farrell's request to run the license plate number, particularly in the context referenced above, to warrant some disciplinary action.

Had this misconduct been an aberration, or a one-time blemish on a career free of misconduct, one could argue that termination is too harsh of a punishment. That is not the case here. Mr. Farrell, for several years, while serving as the Town's Fire Chief, a position which requires adherence to the highest standards, has engaged in a pattern of egregious misconduct. Most recently, Mr. Farrell, while in uniform and on duty as the Town's Fire Chief, visited the office of a female Town employee; engaged in a loud argument; and refused to leave the employee's office, despite be asked to do so – twice by the female Town employee and once by the Town's Human Resources Director. His decision to then make numerous (unanswered) calls to the female Town employee immediately afterward only reinforces the serious nature of what occurred that day.

Again, the incident at Town Hall was not an aberration. Rather, it was consistent with his decision, earlier that year, while in uniform, to follow the female Town employee around a Target department store and yell at her in front of her young daughter and other customers. Weeks *after* the Town Hall incident, he drove his Town-owned vehicle to the home of the female Town employee, used the vehicle to box in her car, and, while in uniform, physically blocked her from getting out of her vehicle.

In 2012, the Town put Mr. Farrell on notice that this type of behavior would not be tolerated, following his arrest for domestic assault and battery and witness intimidation. Mr. Farrell was allowed to continue in his leadership position as Fire Chief based on

assurances that such behavior would not continue in the future. It did – and the Town was justified to terminate him.

*Conclusion*

Mr. Farrell's appeal under Docket No. D-15-165 is hereby *denied*.

Civil Service Commission

Christopher Bowman

Christopher C. Bowman

Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan) on March 3, 2016.

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:

John M. Collins, Esq. (for Appellant)

Geoffrey P. Wermuth, Esq. (for Respondent)