

SAMPLE TEMPLATE FOR BYPASS DECISIONS
(Visit www.mass.gov/csc to review actual decisions issued by Commission)

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

CIVIL SERVICE COMMISSION

100 Cambridge Street: Suite 200
Boston, MA 02114
(617) 727-2293

<Appellant Name>,
Appellant

v.

G-

<Respondent Name>,
Respondent

Appellant's Attorney:

<Name, Address, Phone, Email>

Respondent's Attorney:

<Name, Address, Phone, Email>

Commissioner:

<Commissioner Name>

DECISION

Pursuant to the provisions of G.L. c. 31, § 2(b), the Appellant, <Appellant Name> (hereafter "<Appellant Name>" or Appellant") seeks review of the Personnel Administrator's decision to accept the reasons of the, <Respondent Name> (hereafter "Appointing Authority", "City" or "BPD"), bypassing him for <original / promotional> appointment to the position of <position>. A full hearing was held on <date of hearing>

at the offices of the Civil Service Commission. <# of tapes> tape(s) was made of the hearing.

FINDINGS OF FACT:

<# of Exhibits> exhibits were entered into evidence at the hearing (Joint Exhibits <#>; Appellant Exhibits <#>; Appointing Authority Exhibits <#>). Based on these exhibits and the testimony of the following witnesses:

For the Appointing Authority:

- <List Appointing Authority Witnesses>;

For the Appellant:

- <List Appellant Witnesses>;

I make the following findings of fact:

EXAMPLES OF FINDINGS OF FACT FOR A BYPASS DECISION

1. The Appellant took an open examination for the position of police officer in 2003.
(Exhibit 7)
2. On June 8, 2005, the Appellant's name appeared on Certification No. <#> for the position of police officer for the <x> Police Department. (Exhibit 7)
3. The <x> Police Department filled 61 police officer positions from Certification <#>. Eleven (11) of the candidates selected for appointment were ranked below the Appellant on the above-referenced Certification. (Exhibit 7; Stipulated)
4. On November 10, 2005, the <x> Police Department notified the state's Human Resources Division (HRD) that it was bypassing the Appellant for appointment for the following reasons: a) xxxxx; b) xxxxxx; and c) xxxxxxxx" (Exhibit 1)
5. xxxx (Exhibit #; Testimony of xxxx)

6. xxxx (Exhibit #; Testimony of xxxx)

7. xxxx (Testimony of xxxx)

CONCLUSION:

<LEGAL CITES; EXAMPLES BELOW FOR BYPASS CASES>

The role of the Civil Service Commission is to determine "whether the Appointing Authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority." City of Cambridge v. Civil Service Commission, 43 Mass. App. Ct. 300, 304 (1997). Reasonable justification means the Appointing Authority's actions were based on adequate reasons supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law. Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928). Commissioners of Civil Service v. Municipal Ct. of the City of Boston, 359 Mass. 214 (1971). G.L. c. 31, s. 2(b) requires that bypass cases be determined by a preponderance of the evidence. A "preponderance of the evidence test requires the Commission to determine whether, on the basis of the evidence before it, the Appointing Authority has established that the reasons assigned for the bypass of an Appellant were more probably than not sound and sufficient." Mayor of Revere v. Civil Service Commission, 31 Mass. App. Ct. 315 (1991). ; G.L. c. 31, § 43.

Appointing Authorities are rightfully granted wide discretion when choosing individuals from a certified list of eligible candidates on a civil service list. The issue for the commission is "not whether it would have acted as the appointing authority had acted, but whether, on the facts found by the commission, 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."

Watertown v. Arria, 16 Mass. App. Ct. 331, 334 (1983). See Commissioners of Civil Serv. v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975) and Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-728 (2003). However, personnel decisions that are marked by political influences or objectives unrelated to merit standards or neutrally applied public policy represent appropriate occasions for the Civil Service Commission to act. City of Cambridge, 43 Mass. App. Ct. at 304.

<PROPOSED CONCLUSION>

This is where the parties should write the conclusion they believe should be adopted by the Commission. To review prior Commission decisions, including the Conclusions section, visit the Commission's website at www.mass.gov/csc and click on "Commission Decisions".

For all of the above reasons, the appeal under Docket No. <x> is hereby <allowed / dismissed>.

Civil Service Commission

<Name of Commissioner>, Commissioner

By vote of the Civil Service Commission (Bowman, Guerin, Taylor and Marquis, Commissioners) on <To be filled in by Commission>.

A true record. Attest:

Commissioner

A motion for reconsideration may be filed by either Party within ten days of the receipt of a Commission order or decision. A motion for reconsideration shall be deemed a motion for rehearing in accordance with M.G.L. c. 30A § 14(1) for the purpose of tolling the time for appeal.

Any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under section 14 of chapter 30A in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the commission's order or decision.

Notice:

<Appellant or Appellant Attorney Name>

<Respondent or Respondent Attorney Name>

<HRD>