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### CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record for Appellee City of Biloxi certifies that the following list of persons have an interest in the outcome of this case. These representations are made in order that the Justices of the Mississippi Supreme Court may evaluate possible disqualifications or recusal:

1. Appellant, Rondell Young;
2. Appellee, the City of Biloxi, Mississippi;
3. Russell S. Gill, Russell S. Gill, P.L.L.C., 638 Howard Avenue, Biloxi, MS 39530; Attorney for Appellant, Rondell Young;
4. Shannon Ladner, Russell S. Gill, P.L.L.C., 638 Howard Avenue, Biloxi, MS 39530; Attorney for Appellant, Rondell Young;
5. Gina Bardwell Tompkins, Page, Mannino, Peresich & McDermott, PLLC, P.O. Drawer 289, Biloxi, MS 39533; Attorney for Appellee City of Biloxi; and,
6. City of Biloxi Civil Service Commission; and
7. Circuit Judge Jerry O. Terry, P.O. Box 1461, Gulfport, MS 39502.

THIS, the 25th day of June, 2009.



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## **STATEMENT OF THE ISSUES**

The City of Biloxi submits that this appeal presents the following issues for review:

- 1.) The Circuit Court properly found that the decision by the Civil Service Commission with regard to Young's discipline was in good faith for cause and not motivated by politics or religion, is supported by substantial evidence and, therefore, was not arbitrary and capricious; and
- 2.) The Circuit Court properly found that the Civil Service Commission fulfilled its statutory duties to Young.

## **STATEMENT OF THE CASE**

### **Nature of the Case and Course of Proceedings Below**

On October 10, 2008, the Circuit Court of Harrison County, Mississippi, Second Judicial District, entered an Order affirming the decision of the Civil Service Commission of the City of Biloxi (the "CSC") sustaining the discipline of Appellant Rondell Young. (R. at 570-74). Young filed his Notice of Appeal of the October 10, 2008, Order on November 10, 2008. (R. at 576).

This is an appeal of the Circuit Court's decision sustaining the City of Biloxi's ("COB") discipline of Appellant Rondell Young. The CSC conducted a full and fair hearing on March 7, 2007, during which testimony was received from seven (7) witnesses and numerous documentary exhibits were introduced by both parties. After duly considering the evidence presented by Young and COB, the CSC sustained COB's discipline of Young and found as follows:

1. . . . [T]he Commission concludes that the City had substantial basis upon which to conclude that Mr. Young's [sic] made the comments and that such comments violated that portion of Civil Service Regulation 10.01(a)2 (sic) that prohibits conduct that is "discourteous treatment of the public or a fellow employee, or any other act of omission or commission tending to injure the public service".

2. The Commission further finds that the City's action in suspending Young for three (3) days was not made for political or religious reasons, but was made in good faith for cause.
3. . . . [T]he Commission affirms the disciplinary action taken.

(R. at 378-79).

Rondell Young is employed by the City of Biloxi in the Community Development Department as a Code Enforcement Administrator (Residential Building Inspector). On November 17, 2006, Young violated departmental and Civil Service Rules regulations governing conduct detrimental to the City or the public. On that day, Young made inappropriate comments which were broadcast over the City radio.

Disciplinary charges were initiated by the Community Development Director, Jerry Creel ("Director Creel") for violations of Departmental Rules as well as Civil Service Regulations Article 10 Section 10.01 (a)(1), 10.01(a)(2), 10.01(a)(3), 10.01(a)(4) and 10.01(a)(6). (COB Exh. "2"<sup>1</sup>; R. at 34-38). Director Creel recommended a three (3) day suspension. (COB Exh. "2" at 3; R. at 35). This recommendation was approved by the Director of Administration, David Staehling, on November 28, 2006, and by Mayor A.J. Holloway on November 29, 2006. (COB Exh. "2" at 4; R. at 37).

Young appealed the suspension to the City of Biloxi Civil Service Commission. The CSC held a hearing of approximately seven (7) hours on March 2, 2007, where testimony of witnesses and documentary exhibits were received. (T. 1, 276<sup>2</sup>; R. at 101, 376). The CSC issued its Findings on

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This citation form is to the numbered exhibit contained in the portion of the Civil Service Commission transcript containing the City of Biloxi's exhibits.

2

This citation is to the page numbers of that portion of the transcript containing the Civil Service Commission hearing.

March 27, 2007, holding that, based upon the substantial evidence before it, Young's disciplinary action was in good faith and for cause. (R. at 378-79). Young appealed the decision of the CSC to the Circuit Court of Harrison County, Second Judicial District.

### **Statement of Facts**

At the time of the hearing, Rondell Young had been employed with the City of Biloxi for approximately thirty-one (31) years. (T. at 69; R. at 169). Mr. Young is currently a Code Enforcement Administrator and performs residential building inspections. (T. at 69; R. at 169). Young's supervisor, Jerry Creel, is the Director of Community Development for the City of Biloxi, as well as the City's Building Official. (T. at 214-15; R. at 314-15). Director Creel's duties and responsibilities as Building Official include managing the Building Department, overseeing inspectors, assisting with conflict resolution and insuring that inspections are performed in a timely manner. (T. at 215; R. at 315).

When a homeowner receives a failed inspection from an inspector, the homeowner can often correct the problem in order to bring the inspected item up to Code. If a homeowner disagrees with an inspector's failure of a particular inspection, the building codes provide the homeowner with a method of appeal. (T. at 224; R. at 324). The homeowner may appeal the failure to the Building Official, in this case, Jerry Creel.<sup>3</sup> (T. at 224; R. at 324). If the Building Official is unable to resolve

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During the hearing, Mr. Young spent a considerable amount of time testifying about the limited instances where homeowners appealed a failure by Mr. Young to Director Creel. Young testified about six (6) incidents where homeowners appealed a failed inspection to Director Creel, who ultimately passed the inspections at issue. (T. at 115; R. at 215). Mr. Young was **unaware** of the steps taken by Director Creel to resolve the inspection issues before approval. (T. at 114-123; R. at 214-223). In response to Young's assertions that Director Creel "overruled" his inspections, Director Creel testified:

the conflict, then the next step of appeal is to the City's Building Board of Adjustments and Appeals. (T. at 224; R. at 324).

On Friday, November 17, 2006, Caryle Draper, a Building Permit Clerk with the Community Development Department, was working alone the Department's permit counter. (T. at 187-88; R. at 287-88). She was helping customers at the counter, as well as answering numerous phone calls. (T. at 188; R. at 288). Ms. Draper received a phone call at approximately 11:00 in the morning from a customer inquiring about a specific requested inspection. (T. at 188; R. at 288). She called Mr. Young over the Department's radio system to ask him if he was going to do the inspection that day. (T. at 188; R. at 288). Ms. Draper stated that:

A: ... [H]e (Rondell) stated that he did not know when he was going to get it because he had just spent an hour and-a-half with Mr. Neseal, who was not happy and had written a letter to the Mayor and he was probably going to write two more letters to the Mayor. So he did not know when the inspection would be done. And I went back to my desk and sat down with the radio and he continued to talk and the phone was ringing and I had a customer at the counter, two gentlemen were standing there and someone was behind them and he was talking about what was going on and like I said I did not catch all

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Q: You heard the testimony today that you have a policy of overruling decisions of your inspectors; do you have such a policy?

A: Well, overruling is a bad word on that, conflict resolution is what it is. Part of the Building Official's position whenever something like this comes up is to listen to what the inspector has to say and listen to what the contractor has to say and make a judgment call based on your knowledge of the code and that is what I have done.

(T. at 222-23; R. at 322-23). Director Creel is well versed in the applicable building codes, and he has the authority to resolve differences between contractors and inspectors. (T. at 114, 223-24; R. at 214, 323-24). Director Creel talked to the homeowners, contractors and made his own inspections in the specific incidents raised by Young, before ultimately passing the inspections. (T. at 225-29; R. at 325-29). Once Director Creel's initials are placed by a passed inspection, he, and only he, is responsible for that decision. (T. at 226; R. at 326).



the information. And he said he did not know when he was going to get to it **and if they did not like it they could kiss his ass.**

Q: Is there any way you misunderstood him saying that?

A: No, ma'am. And the reason that this was brought up is because I had to endure what the customer said to me after the comment was made. And I was more embarrassed by it then anything.

Q: One of the customers made a comment about the statement made by Mr. Young?

A: Yes.

Q: Do you feel comfortable to repeat what the comment was?

MR. GILL: Let me object to that. It calls for hearsay.

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[Objection ruled as hearsay].

Q: The comment that was made was embarrassing to you?

A: Yes, it was.

Q: And it related to the comment made by Mr. Young?

A: That's correct.

Q: And the customer heard that on the radio?

A: Yes, the radio was on loud speaker, it was not on private.

(T. at 189-90; R. at 289-90).<sup>4</sup> (emphasis added.)

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The permit clerks always keep the radios on speaker, unless someone requests them to go private. (T. at 191; R. at 291). The clerks leave the radios on speaker so that they can hear and respond to calls that are made while they are walking around, making copies, etc. (T. at 219; R. at 319).

Ms. Draper reported the incident to William Raymond, who was in charge of the department that day, since Director Creel was out of town. (T. at 191; R. at 291). The following Monday, Mr. Raymond reported the incident to Director Creel. (T. at 216; R. at 316). Director Creel called Ms. Draper into his office to discuss the matter with her, and subsequently requested that Ms. Draper prepare a written statement recounting the incident. (T. at 200, 216, 248; R. at 300, 316, 348). During the time that he has worked with Ms. Draper, Director Creel has never had any reason to doubt anything that she has told him about the department. (T. at 250; R. at 350).<sup>5</sup>

On November 27, 2006, Director Creel called Mr. Young into his office to discuss the matter with him.<sup>6</sup> When Director Creel asked Young about the phone/radio call, Young did not deny making the inappropriate comments. (T. at 216; R. at 316). When questioned about the incident,

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Ms. Draper testified that she had had a good working relationship with Young during the four (4) years that she has been working at the permit counter. (T. at 209; R. at 309). She did not have anything to gain by reporting the matter to her supervisor:

Q: Ms. Draper, why would you want to report this to Mr. Creel; what is in it for you: (sic)

A: Nothing.

Q: Nothing is in it for you?

A: Nothing. It was unethical and wrong. It should have never been said not knowing who was in the office at the time it was said. Like I said, I was embarrassed by what he said more (sic) by the fact there was a customer in the office who had a chance to reply to what he said.

(T. at 202-03; R. at 302-03).

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Director Creel was unable to meet with Mr. Young before November 27, 2006, because Young was on vacation the first three (3) days of the week following the incident, and the office was closed for Thanksgiving holidays for the remainder of the week. (T. at 216; R. at 316).

Young stated that he did not remember. (T. at 216, 250, 265; R. at 316, 350, 365). Director Creel gave Young the opportunity to explain himself before handing him the disciplinary documents:

Q: And then before you decided to suspend Rondell for three days did you bring him in and sit him down and say talk to me about this?

A: We talked about this before I gave him the letter.

Q: You gave him the letter the same day with your –

A: I gave it to him at the end of the meeting.

Q: So you made your mind up already; true?

A: No, when I called him in I asked if it was true. I asked him about both issues; I asked him about taking off and he said he did not remember; and I asked him about making the statement and he said he did not remember.

(T. at 250; R. at 350).

Q: ...[Y]ou didn't give Rondell a chance to explain it, did you?

A: Yes, I did. When I called Rondell in to talk with him at the meeting I asked him questions about whether he did it and what happened. He gave me limited answers. And when I said ask [sic] him did this happen he said, "I don't remember."

(T. at 253-54; R. at 353-54).

Q: Why did you not ask Rondell to come in and talk about this before you suspended him?

A: Talk about what?

Q: These allegations.

A: That is what I did.

Q: But you had the stuff ready to suspend him; you had already made up your mind; isn't that true.

A: Right. Well, if he could have said anything that would have justified I would have stuck that back in the drawer. But when something that blatant happens there is no defense for that.

(T. at 255; R. at 355).

A: **... I gave him the opportunity to give me some reasonable explanation for cussing a citizen on the radio.**

(T. at 270; R. at 370). (emphasis added).

During their meeting, Young never denied making the inappropriate comment. (T. at 250, 253-54; R. at 350, 353-54).

On November 27, 2006, at the end of his meeting with Young, Director Creel gave Young the Notice of Intent to Initiate Disciplinary Action for violating Civil Service Regulations 10.01(a)(1), (2), (3), (4), and (6) and recommended a three (3) day suspension.<sup>7</sup> (COB Exh. "2" at

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At the conclusion of the meeting on November 27, 2006, Young also received a Letter of Reprimand due to a violation of the department's leave policy. After Hurricane Katrina, there was a shortage of inspectors and a large number of inspections, since people were trying to get back into their homes. (T. at 261; R. at 361). In September, 2006, Director Creel held a meeting with the building inspectors, including Mr. Young. At this meeting, Director Creel introduced a policy that would limit the use of leave time to participate in non-City related activities, unless inspections were current. (T. at 43, 58; R. at 143, 158).

After the September, 2006, meeting, Director Creel conditionally approved annual leave requests by Mr. Young to attend the monthly Harrison County Planning and Zoning meetings. (COB Exh. "4" and "5"; R. at 50, 51). On the leave request form, Director Creel noted that the request is "approved if inspections are current." *Id.* Director Creel issued a Letter of Reprimand to Mr. Young for violating the policy which required inspections to be current before taking annual leave to attend a non-City related activity. (COB Exh. "1"; R. at 28).

Two other inspectors for the City of Biloxi, Jerry Rose and Lionel Sentell, testified at the hearing about the leave policy. Both men were present at the September, 2006, meeting and understood the policy. Since the enactment of the policy, Jerry Rose has not requested to take annual leave for non-city related activities. (T. at 49; R. at 149). At the time of the hearing, Lionell Sentell had submitted a slip for permission to take annual leave for a non-City activity, but had not yet received a response. (T. at 59; R. at 159).

The CSC declined to address the Letter of Reprimand because it did not have jurisdiction to consider such matters. (T. at 5; R. at 105).

3; R. at 36).<sup>8</sup> The discipline continued up the chain of command with the ultimate decision being made by Mayor Holloway that Young's misconduct merited a three (3) day suspension. (COB Exh. "2" at 4; R. at 37).

In his testimony, Director Creel stated numerous times that Young was disciplined for using profanity over the radio and such behavior is unacceptable and unprofessional.

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<sup>8</sup> Biloxi's Civil Service Regulation 10.01 provides:

(a) The Appointing Authority shall, pursuant to Section 2.04, administer and maintain good order and discipline for the members and shall impose appropriate discipline for instances of misconduct. Discipline may include, but is not limited to, reprimand, suspension without pay, demotion or reduction in rank, removal or discharge, loss of vacation privileges or other special privileges or any combination thereof. Misconduct authorizing such discipline shall be that enumerated in the Act and these Rules and Regulations, unless they have been declared unconstitutional. Examples of misconduct, which may warrant appropriate discipline, include, but are not limited to, the following:

1. Malfeasance, misfeasance, or nonfeasance in the performance of work or in related activities including incompetency, inefficiency, or inattention of duty.
2. Conduct detrimental to the department or City including dishonesty, intemperance, immoral conduct, insubordination, discourteous treatment of the public or a fellow employee, or any other act of omission or commission tending to injure the public service.
3. Conduct detrimental to, or in prejudice of, good order and discipline.
4. Violation of any rule or regulation of this Code.
5. Violation of work rules and/or rules of conduct including but not limited to the Drug and Alcohol Testing Policy, promulgated, published, and training thereon given by the Appointing Authority.
6. Repeated incidents of carelessness or a pattern of errors, neglect, and/or inattentiveness to job performance which are of a serious nature. Each case of carelessness or neglect will be evaluated and considered on its merits and also considered in conjunction with other such incidents, and will result in appropriate disciplinary action, up to and including discharge of the member.

Q: Is there an official city policy that says you don't use profanity on the radio?

A: I don't know if that is actually listed in the rules and regulations, but when I took the department over two years ago one of the things I emphasized from day one and at every meeting that I've held is customer service; we are public servants, and treat them the way we want to be treated; and be courteous to them and take care of considerations.

Q: And in this case what was – besides the use of language why was it offensive?

A: Why was it offensive?

Q: Yes.

A: I believe that for all the progress that we made whenever we make a statement like this it takes us back several steps in the progress we've made in establishing the customer service atmosphere thus far.

(T. at 217; R. at 317).

Q: Why did you initiate this disciplinary action?

A: I thought I made it clear we are professionals and treat people professionally. And I just can't have any employee talking to a citizen like that.

(T. at 220; R. at 320).

Q: And the reason why this disciplinary action, the three-day suspension was initiated was because you felt that was in line with your idea how the department should be run?

A: Yes. Well this is not something you can categorize as a mistake or error in judgment. **This is what I call blatant disregard.**

(T. at 222; R. at 322). (emphasis added).

Q: As to the three-day suspension, why three days as opposed to one or five or more than that?

A: Again, I thought **it was a blatant disregard for a rule that we had gone over several times** about customer service and treating people with respect and dignity.

Q: The disciplinary action was based on the calls, the –

A: Yes.

Q: – the reason being inappropriate comments?

A: Yes.

(T. at 232; R. at 332). (emphasis added).

Q: ... You could have given him a verbal counseling if you thought he did it or if there was any question he did it you could have verbally counselled him or even given him a Letter of Reprimand which he can't appeal under this Commissions rule.

A: Again, if this had been something I could categorize as a mistake I would have considered a reprimand. I consider this blatant disregard and just unacceptable with a tax paying citizen just trying to get back in their house.

(T. at 253; R. at 353).

A: I suspended him because **he cussed on the radio**, sir.

(T. at 254; R. at 354). (emphasis added).

### **SUMMARY OF THE ARGUMENT**

There is substantial evidence in the record to support the CSC's findings that the City of Biloxi's suspension of Young was in good faith and for cause and was without political or religious motivation. The Order of the Circuit Court should be affirmed.

### **ARGUMENT**

**I. The Circuit Court properly found that the decision of the Civil Service Commission with regard to Young's suspension was in good faith for cause and not motivated by politics or religion, is supported by substantial evidence and, therefore, was not arbitrary and capricious.**

This Court sits as an appellate court in its review of the CSC's decision affirming Young's discipline. City of Gulfport v. Saxton, 437 So.2d 1215, 1217 (Miss. 1983). The CSC reviews the employment decisions of a city when a city has removed, suspended, demoted, or discharged a civil

service employee. Patterson v. City of Biloxi, 965 So.2d 765 (Miss. App. 2007)(citing City of Laurel v. Brewer, 919 So.2d 217, 221 (Miss. App. 2005). In reviewing the CSC's decision, the Court is confined to one issue -- whether the CSC's decision "was or was not made in good faith for cause." Miss. Code Ann. § 21-31-23 (1972). Section 23-31-23 specifically provides that, on appeal, the Circuit Court is confined to the "determination of whether the judgment or order of removal, [or] discharge, . . . made by the commission, was or was not made in good faith for cause, and no appeal to such court shall be taken except upon such ground or grounds." Id. (emphasis added). In City of Jackson v. Froshour, 530 So.2d 1348 (Miss. 1988), the Mississippi Supreme Court stated:

It is thus clear that the scope and review of the circuit court, and of this Court, is limited, and we must ever bear in mind that it is not what the court, had it been a member of the governing authority, might have done in a particular instance, or indeed whether or not the court thinks a mistake may have been made, but instead the criterion is whether or not from an examination of the record there exists credible evidence substantiating the action taken by the city. It is upon this basis that the court determines whether or not the decision was in 'good faith for cause.' Courts are not empowered to supervise the intelligence, wisdom or fairness of the governing authorities, and no resources are available to a court to exercise such a function even if granted .... The task must be left to the governing authorities of the city. It is only when the record makes it clear that there is no 'substantial evidence' supporting the governing authorities' determination that a court can act, and in such case it must.

Froshour, 530 So.2d at 1355.

As stated above, this Court's scope of review of the decision of the CSC is limited, and the criterion is whether or not, from an examination of the record, there exists credible evidence substantiating the Commission's action. It is upon this basis that the Court determines whether the decision was in "good faith for cause." Grant v. City of Columbus, 812 So.2d 976, 978 (Miss. 2002) (citing Froshour, 530 So.2d at 1355). See also, City of Meridian v. Hill, 447 So.2d 641, 643-44 (Miss. 1984); City of Jackson Police Dept. v. Ruddick, 243 So.2d 566, 567 (Miss. 1971). Most importantly, it is incumbent upon this Court to determine whether the order in question was within the power of the Commission to make. Grant, 812 So.2d at 978 (citing City of Meridian v. Johnson,



593 So.2d 35, 37 (Miss.1992)). On review, this Court looks to whether the decision of an administrative agency was unsupported by substantial evidence, was arbitrary and capricious, was beyond the power of the agency to make, or violated some statutory or constitutional right of the complaining party. Martin v City of Vicksburg, 850 So.2d 191, 193 (Miss. App. 2003) (citing Mississippi Comm'n on Env'tl. Quality v. Chickasaw County Bd. of Supervisors, 621 So.2d 1211, 1215 (Miss.1993)).

Appellate review of an agency decision is limited to the record and the agency's findings. Martin, 850 So.2d at 193 (citing Miss. Comm'n on Env'tl. Quality, 621 So.2d at 1216.) The reviewing court cannot substitute its judgment for that of the agency or re-weigh the facts of the case. Sprouse v. Mississippi Employment Sec. Comm'n, 639 So.2d 901, 902 (Miss.1994). The only disciplinary actions which may be reviewed by an appellate court are those which were actually appealed to the CSC. See, City of Vicksburg v. Lane, 2009 WL 1520095 (Miss. App.)(where appellate court had no jurisdiction to review claimant's prior suspension, since claimant's appeal was limited to termination and employer made no mention of suspension in claimant's termination letter).

"Substantial evidence", in the context of this Court's review of the Civil Service Commission's findings, has been defined as:

such evidence 'as a reasonable mind might accept as adequate to support a conclusion. Substantial evidence means evidence which is substantial, that is, affording a substantial basis of fact from which the fact in issue can be reasonably inferred.'

Ladnier v. City of Biloxi, 749 So.2d 139, 147-48 (Miss. 1999) (quoting State Oil & Gas Bd. v. Miss. Mineral & Royalty Owners Assoc., 258 So.2d 767, 779 (Miss. 1971)). It has further been explained that "substantial evidence" is

not an especially large quantum. It may be less than a preponderance but it has to be more than a 'scintilla,' . . . which means a mere trace or minute amount . . . . The evidence must be such that would make any conclusion based on that evidence a reasonable one.

Miss. Dept. of Corrections v. Smith, 883 So.2d 124, 129 (Miss. 2004). It is the employee's burden to show that the CSC acted without substantial evidence. Ladnier, 749 So.2d at 154.

In light of this deferential standard of review, the City submits that there is substantial evidence in the record to support the CSC's findings that this employment action was in good faith and for cause. First, Civil Service Regulation 10.01(a)(2) clearly prohibits employees from engaging conduct that is detrimental to the department or COB including "discourteous treatment of the public or a fellow employee, or any other act of omission or commission tending to injure the public service." The CSC heard testimony from Building Permit Clerk, Caryle Draper, who heard Mr. Young state over the City radio, that if "they did not like it they could kiss his ass". (T. at 189; R. at 289). Ms. Draper was embarrassed by both the comment and the fact that some customers standing at her counter overheard the comment. (T. at 189-90; R. at 289-90). Ms. Draper had no doubts that she heard Mr. Young correctly and she reported the inappropriate conduct to her supervisor on the very day that it occurred. (T. at 189, 191; R. at 289, 291). Ms. Draper had nothing to gain from reporting the conduct. (T. at 203; R. at 303). The comment at issue clearly violated Civil Service Regulation 10.01(a)(2) and the CSC so found.

Second, Mr. Young never denied making the statement over the City radio until the hearing before the Civil Service Commission. On November 27, 2006, Director Creel had a meeting with Mr. Young to discuss the incident. Director Creel gave Young the opportunity to give his side of the story:

... [w]hen I called him in I asked him if it was true. I asked him about both issues; I asked him about taking off and he said he did not remember; and I asked him about making the statement and he said he did not remember.

(T. at 250; R. at 350). Mr. Young did not deny making the statement when he was asked about it, one week after the incident, stating that he "could not remember." At the hearing before the Civil

Service Commission, almost a year and half after the incident, Mr. Young testified that he did not make the statement. Now, Mr. Young does not remember ever having the meeting with Director Creel, where he was given the opportunity to explain himself; however, he does remember that he did not make the statement. Regardless of Mr. Young's memory issues, there was substantial evidence before the CSC that the statement was made. Ms. Draper heard the statement over the radio and reported the incident to her superior that day. (T. at 189; R. at 289). Director Creel met with Ms. Draper about the incident and asked her to write a statement. (T. at 247-48; R. at 347-48). One week later, before initiating any disciplinary action, Director Creel met with Young so that he could hear Young's side of the story. (T. at 250; R. at 350).

Finally, the evidence before the CSC was substantial that Young was disciplined because he clearly violated Civil Service Regulation 10.01(a)(2). To put it simply, Young engaged in inappropriate conduct by cursing over the City's public radio. Young was disciplined for cursing over the radio and there is no evidence that his discipline was for any other reason. In his brief, Young attempts to muddy the waters with a separate and unrelated disciplinary action, which was not considered by the CSC. The letter of reprimand related to taking leave in violation of departmental policies was not within the CSC's jurisdiction to consider. (T. at 5; R. at 105). Like the court in City of Vicksburg v. Lane, this Court does not have jurisdiction to consider the letter of reprimand, since Young did not appeal that disciplinary action. Therefore, the only disciplinary action before this Court is Young's violation of Civil Service Regulation 10.01(a)(2).

The evidence before the CSC was substantial that Young was disciplined, not because of politics or religion but, because on November 17, 2006, he violated the Civil Service Regulation 10.01(a)(2) - the regulation that governs his conduct as a City of Biloxi employee. The evidence clearly established that building inspectors in Biloxi are not allowed to engage in conduct that is

detrimental to the City, including the discourteous treatment of the public or a fellow employee. It was because Young violated this basic regulation by making an inappropriate and offensive comment over the City radio, which was overheard by other customers, that he was disciplined. The City submits that the CSC received substantial, if not overwhelming, evidence during the course of the hearing on which to base its determination that Young's discipline was in good faith for cause, and not due to any political or religious reasons.

The Circuit Court properly found that the decision of the Civil Service Commission was supported by substantial evidence and that the disciplinary action was made in good faith for cause; Therefore, the decision of the Circuit Court should be affirmed by this Court.

**II. The Circuit Court properly found that the Civil Service Commission fulfilled its statutory duties to Young.**

The duties and responsibilities of the CSC to City of Biloxi employees are outlined in Miss. Code Ann. § 21-31-23. Section 21-31-23 requires that the CSC conduct an investigation in response to a timely demand from the disciplined employee. Miss. Code Ann. § 21-31-23. The statute requires that “[t]he investigation shall be confined to the determination of the question of whether such disciplinary action was or was not made for political or religious reasons and was or was not made in good faith for cause.” Id. The CSC is commanded to conduct those investigations “by public hearing, after reasonable written notice to the accused of the time and place of such hearing, at which hearing the accused shall be afforded an opportunity of appearing in person and by counsel, and presenting his defense.” Id. A review of the transcript of the nearly seven (7) hour hearing conducted by the CSC confirms that the CSC fulfilled its statutory duties to Young. (See generally T. 1 - 277; R. at 101-377) The transcript of the CSC hearing establishes that both the City and

Young had the opportunity to call witnesses on all relevant issues.<sup>9</sup> The City submits that any due process rights conferred to Young by the Fourteenth Amendment of the United States Constitution were satisfied by complying with the statutory procedure of Miss. Code Ann. § 21-31-23. Froshour, 530 So.2d at 1354. As in Froshour, no contention is made here that the statutory scheme did not provide an ample opportunity for Young's rights to be protected. The only duty of the CSC was to listen to the evidence and decide the case in a fair and impartial manner. The record establishes without question that the CSC discharged that duty.

As set forth earlier in the City's Brief, in deciding whether the CSC's decision upholding Young's discipline was for good cause, this Court is confined to a review of the record that was made before the CSC. City of Meridian v. Johnson, 593 So.2d at 38; City of Jackson v. Froshour, 530 So.2d at 1354-55; City of Meridian v. Hill, 447 So.2d at 643-44; City of Jackson Police Dept. v. Ruddick, 243 So.2d at 567. Because he is complaining, the burden of proof was on Young to show that the CSC acted in bad faith and without cause. Ladnier v. City of Biloxi, 749 So.2d at 154.

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The City would submit that Young's assertion that he should have been allowed to call Bill Prince is completely incorrect. First, the Appellant failed to comply with the Commission's rules and regulations which require that opposing counsel must be notified of any potential witnesses at least three (3) days before the hearing. Second, it is established law that the

... rules regarding the admission of testimony and evidence before such an administrative body are relaxed and such a body has the authority to admit or refuse evidence as it reasonably sees fit. Riddle v. Mississippi State Bd. of Pharmacy, 592 So.2d 37, 43 (Miss. 1991) (formalities of practice, procedure and evidence as in courtroom proceedings are relaxed in all administrative proceedings).

Ladnier, 749 So. at 154-55.

He has failed to meet his burden, because substantial evidence supports the CSC's decision affirming Young's suspension.

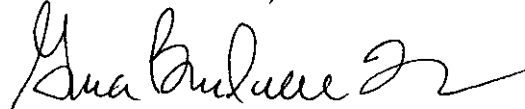
The Circuit Court properly found that the Civil Service Commission fulfilled its statutory duties to Young; therefore, the decision of the Circuit Court should be affirmed.

### CONCLUSION

The CSC conducted its investigation and hearing regarding the propriety of the City's suspension of Young in a just and fair manner. The City submits that the CSC's ruling was reasonable and proper as it was based on an abundance of established facts disclosed before it which conclusively demonstrated that Young's discipline was made in good faith for cause and without political or religious motivation. In sum, there is substantial evidence in the record to support the CSC's findings that the City of Biloxi's suspension of Young was in good faith and for cause and without political or religious motivation. Accordingly, the City of Biloxi requests that this Court affirm the judgment of the Circuit Court. The City prays for such other relief as it may be entitled from this Court.

RESPECTFULLY SUBMITTED, this the 25th day of June, 2009.

**CITY OF BILOXI, MISSISSIPPI**



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**CERTIFICATE OF SERVICE**

I, GINA BARDWELL TOMPKINS of the law firm of PAGE, MANNINO, PERESICH & MCDERMOTT, P.L.L.C., do hereby certify that I have this date mailed, by United States mail, postage prepaid, the original and three copies of the foregoing Brief of Appellee, the City of Biloxi, to the Clerk of the Supreme Court of the State of Mississippi at P.O. Box 249, Jackson, Mississippi, 39205, and one true and correct copy of the same to the following:

Russell Gill, Esquire  
Shannon Ladner, Esquire  
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The Honorable Jerry O. Terry  
Judge of the Circuit Court of Harrison County, Mississippi  
P.O. Box 1461  
Gulfport, MS 39502.

THIS, the 25th day of June, 2009.

  
GINA BARDWELL TOMPKINS

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