

STATE OF NORTH CAROLINA

FILED

File No.

10 CVS 7283

GUILFORD

County

JUN 14 PM 1:36

In The General Court Of Justice

District  Superior Court Division

Name And Address Of Plaintiff 1

RONALD E. ROGERS  
POST OFFICE BOX 1315  
DURHAM, NORTH CAROLINA 27702

GUILFORD CO., C.S.C.

GENERAL

CIVIL ACTION COVER SHEET

INITIAL FILING  SUBSEQUENT FILING

Name And Address Of Plaintiff 2

Rule 5(b), Rules of Practice For Superior and District Courts

Name And Address Of Attorney Or Party, If Not Represented (complete for initial appearance or change of address)

Thomas F. Loflin III  
P.O. Box 1315  
Durham, North Carolina 27702

VERSUS

Name Of Defendant 1

CITY OF GREENSBORO, North Carolina  
300 West Washington Street  
Greensboro, North Carolina 27401

Telephone No.

919-682-0383

Cell Telephone No.

NC Attorney Bar No.

2771

Attorney E-Mail Address

loflin.law@verizon.net

Summons Submitted

Yes  No

Initial Appearance in Case

Change of Address

Name Of Defendant 2

RASHAD M. YOUNG, City Manager, City of Greensboro  
300 West Washington Street  
Greensboro, North Carolina 27401

Name Of Firm

Law Offices of Thomas F. Loflin III

FAX No.

919-682-0385

Summons Submitted

Yes  No

Counsel for

All Plaintiffs  All Defendants  Only (List party(ies) represented)

Jury Demanded In Pleading

Complex Litigation

Amount in controversy does not exceed \$15,000

Stipulate to arbitration

TYPE OF PLEADING

CLAIMS FOR RELIEF FOR:

(check all that apply)

- Amended Answer/Reply (AMND-Response)
- Amended Complaint (AMND)
- Answer/Reply (ANSW-Response)
- Complaint (COMP)
- Confession of Judgment (CNFJ)
- Counterclaim vs. (CTCL)
  - All Plaintiffs  Only (List on back)
- Crossclaim vs. (List on back) (CRSS)
- Extend Statute of Limitations, Rule 9 (ESOL)
- Extend Time For Answer (MEOT-Response)
- Extend Time For Complaint (EXCO)
- Rule 12 Motion In Lieu Of Answer (MDLA)
- Third Party Complaint (List Third Party Defendants on Back) (TPCL)
- Other: (specify)  
  
Petitioner for Writ of Certiorari

(check all that apply)

- Administrative Appeal (ADMA)
- Appointment of Receiver (APRC)
- Attachment/Garnishment (ATTC)
- Claim and Delivery (CLMD)
- Collection on Account (ACCT)
- Condemnation (CNDM)
- Contract (CNTR)
- Discovery Scheduling Order (DSCH)
- Injunction (INJU)
- Medical Malpractice (MDML)
- Minor Settlement (MSTL)
- Money Owed (MNYO)
- Negligence - Motor Vehicle (MVNG)
- Negligence - Other (NEGO)
- Motor Vehicle Lien G.S. 44A (MVLN)
- Limited Driving Privilege - Out-of-State Convictions (PLDP)
- Possession of Personal Property (POPP)
- Product Liability (PROD)
- Real Property (RLPR)
- Specific Performance (SPPR)
- Other: (specify)

NOTE: Small claims are exempt from cover sheets.

Date

June 14, 2010

Signature Of Attorney/Party

*[Handwritten Signature]*

NOTE: The initial filing in civil actions shall include as the first page of the filing a cover sheet summarizing the critical elements of the filing in a format prescribed by the Administrative Office of the Courts, and the Clerk of Superior Court shall require a party to refile a filing which does not include the required cover sheet. For subsequent filings in civil actions, the filing party must either include a cover sheet or the filing must comply with G.S. 7A-34.1.

NORTH CAROLINA  
GUILFORD COUNTY

FILED IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

GUILFORD COUNTY, C.S.

File No. 10-CVS-

7283

KR

RONALD E. ROGERS, )  
Petitioner, )  
v. )  
CITY OF GREENSBORO, )  
North Carolina, and )  
RASHAD M. YOUNG, City )  
Manager, Greensboro, N.C., )  
Respondents. )

PETITION FOR WRIT OF  
CERTIORARI

(APPEAL FROM QUASI-JUDICIAL)  
DECISION OF THE CITY MANAGER)  
OF THE CITY OF GREENSBORO)

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The Petitioner, Ronald E. Rogers, respectfully shows unto this Court:

1. Petitioner is a citizen and resident of Guilford County, North Carolina, and is employed by the Respondent City of Greensboro, North Carolina, as Assistant Chief of Police, with the rank of Captain.

2. Respondent City of Greensboro (hereinafter referred to as the City) is a municipal corporation and a public body authorized and organized under the laws of North Carolina, including N.C.G.S. 160A-1, the charter for the City of Greensboro, and/or other similar and related statutes, laws, charters, articles of incorporation and amendments thereto.

3. On or about February 11, 2010, Respondent Rashad M. Young, City Manager of the Respondent City of Greensboro (hereinafter "City Manager") in a meeting in his office with Petitioner delivered to Petitioner a disciplinary decision and action he had taken against Petitioner, effective February 15, 2010-March 7,

2010, said action being to suspend the Petitioner without pay for fifteen (15) working days.

4. Said City Manager informed Petitioner that he was suspending Petitioner for 21 days for behavior allegedly unacceptable as defined by the City's Disciplinary Action Policy H-1 and that Petitioner's conduct reflected adversely upon the Greensboro Police Department in violation of Department Directive 1.5.

5. The alleged "conduct" involved Petitioner's communication with an officer in the Greensboro Police Department, Latania Marrow, who had filed an allegation of sexual harassment by Petitioner; the City Manager informed Petitioner that the allegation of sexual harassment, tendered by the said Latania Marrow, was investigated and found to be untruthful and unsubstantiated against Petitioner.

6. Said City Manager nevertheless concluded that Petitioner, as an Assistant Chief of the Greensboro Police Department, was held to a more "exacting standard" than other employees.

7. Petitioner was informed by said City Manager further that he had a right to appeal this decision within ten days of February 11, 2010, to him, and that said appeal, if any, should be forwarded directly to him. A true copy of the letter that the City Manager read to the Petitioner imposing the above-described discipline is attached to this Petition as Exhibit A, and is incorporated by reference the same as if fully set forth herein.

8. Petitioner gave timely Notice of Appeal on February 19, 2010. A true copy of Petitioner's written Notice of Appeal is attached to this Petition as Exhibit B, and is incorporated by

reference in its entirety as if fully set forth herein.

9. Pursuant to the written Notice of Appeal, Exhibit B, the Respondent City Manager held a quasi-judicial hearing on the afternoon of March 12, 2010. The Petitioner was represented by counsel at said hearing. Witnesses were first called by the Respondent City and exhibits introduced on behalf of the Respondent City at the hearing; thereafter, the Petitioner presented witnesses and evidence on his behalf. The witnesses who testified for the Respondent City were cross-examined by counsel for the Petitioner. The Petitioner's witnesses were cross-examined. The Petitioner presented testimony on his own behalf, and was cross-examined; most of the cross-examination was done by the Respondent City Manager.

10. The aforesaid hearing was recorded verbatim in audio form by a City employee (except for a small portion where the audio recording device malfunctioned), and the audio tape transcribed by one or more City employees.

11. By a written letter decision dated May 14, 2010, and delivered to Petitioner's counsel on May 17, 2010, via certified mail, the Respondent City Manager upheld the discipline, but reduced the penalty to suspension for five (5) duty days. A true copy of the aforesaid letter decision after the quasi-judicial appeal hearing is attached to this Petition as Exhibit C and incorporated by reference the same as if fully set forth herein.

REASONS WHY THE WRIT SHOULD ISSUE &  
THE PETITIONER BE AFFORDED RELIEF ON JUDICIAL REVIEW

12. This Court has the jurisdiction to review the final decision of the City Manager in this case because it is a quasi-

judicial decision made after a quasi-judicial hearing. See G.S. 1-269. See also Cole v. Faulkner, 155 N.C.App. 592, 573 S.E.2d 614 (2002). In Cole the Court noted:

It is well settled in this jurisdiction that certiorari is the appropriate process to review the proceedings of inferior courts and of bodies and officers exercising judicial or quasi-judicial functions in cases where no appeal is provided by law.

155 N.C.App. at 596, 573 S.E.2d at 617 (emphasis added), quoting Davis v. Hiatt, 326 N.C. 462, 465, 390 S.E.2d 338, 340 (1990), which in turn quoted Russ v. Board of Education of Brunswick County, 232 N.C. 128, 130, 59 S.E.2d 589, 591 (1950).

In Bratcher v. Winters, 269 N.C. 636, 153 S.E.2d 375 (1967), our Supreme Court dealt with a case where the chief of police for the City of New Bern demoted the petitioner in that case and then almost a month later suspended him from the police department. The action suspending him was subjected to quasi-judicial hearing, which upheld what was labeled a discharge. The petitioner in that case then sought judicial review of both actions against him--his demotion and later suspension or discharge. The Supreme Court agreed with the Superior Court of Craven County that the demotion was not subject to judicial review on certiorari because it was an executive action not subject to administrative appeal, but also agreed that the Superior Court had jurisdiction on certiorari to review and reverse the decision on administrative appeal to uphold the discharge. The question of whether a city's decision in a matter of employee discipline is or is not reviewable on appeal turns on whether the city provides a formal quasi-judicial review

process. If it does not, the decision is not judicially reviewable. If it does--as the City has provided Asst. Chief Rogers--then the Superior Courts have power under their certiorari jurisdiction to judicially review and reverse the decision. Stated our Supreme Court in Bratcher: "The general rule is that if the act of removal is executive, it is not reviewable on certiorari, but if it is on hearing and formal finding, it is reviewable." 269 N.C. 636 at 642, 153 S.E.2d 375 at 378 (emphasis added). In the case at bar, the final decision about Asst. Chief Rogers' suspension was made after quasi-judicial formal hearing of evidence, and the hearing officer (the City Manager) issued a letter of formal findings, albeit ones not supported by the portion of the hearing record to which he cites. His upholding disciplinary action suspending Asst. Chief Rogers thus is reviewable by this Court on certiorari.

13. In reviewing quasi-judicial decisions by city boards or officials which are made following a quasi-judicial hearing, the Superior Court's task is as follows:

- (1) reviewing the record for errors in law;
- (2) insuring the procedures specified are followed;
- (3) insuring that appropriate due process rights of a petitioner are protected including the right to offer evidence, cross-examine witnesses, and inspect documents;
- (4) insuring the decision is supported by competent, material and substantial evidence in the whole record, and
- (5) insuring that the decision is not arbitrary and capricious.

Town & Country Civic Organization v. Winston-Salem Zoning Board of Adjustment, 83 N.C.App. 516, 350 S.E.2d 893, 894, disc. review den. 319 N.C. 410, 354 S.E.2d 729 (1987). As to scope of judicial review, see also Coastal Ready-Mix, etc. v. Bd. of Com'rs, etc., 299 N.C. 620, 626, 265 S.E.2d 379, 383, reh'g den., 300 N.C. 562, 270 S.E.2d 106 (1980).

14. In the case at bar, the Respondent City's Respondent City Manager's decision of May 14, 2010, and his procedure for making the decision, were legally erroneous, did not afford Petitioner constitutional due process and equal protection of the laws, were arbitrary and capricious, and were not supported by competent, material and substantial evidence in that:

A. The quasi-judicial hearing officer, City Manager Young, refused to recuse upon the request that he do so and objection to his hearing Petitioner's administrative appeal made by the Petitioner in writing in his attached, incorporated Notice of Appeal (Exhibit B), and upon the motion of his counsel and objection by his counsel made verbally on the record prior to the testimony of any witness at the March 12, 2010, quasi-judicial hearing. The Petitioner's rights to due process under the Fifth and Fourteenth Amendments to the U.S. Constitution and Art. I, §19 of the N.C. Constitution were violated by the refusal of the City Manager to recuse. Recusal was constitutionally required because the City Manager made the initial decision of discipline--to suspend the Petitioner without pay--and then required the Petitioner to appeal the City Manager's decision to the City Manager! Thus, constitutional due process under both the state and

federal constitutions were not afforded the Petitioner because the Petitioner was denied a fair and neutral hearing official to decide his appeal.

B. It is black-letter law that an essential element of a fair hearing for constitutional purposes under the due process clauses is an impartial decision-maker. This is the law for quasi-judicial hearings, just as it is for judicial court proceedings. See Goldberg v. Kelly, 397 U.S. 254, 90 S.Ct. 1011, 25 L.E.2d 287 (1970). Goldberg involved the adequacy of administrative quasi-judicial decision-making within a state welfare agency and thus was reviewed under the due process clause of the 14th Amendment. The Court said:

And, of course, an impartial decision maker is essential. [citations omitted] We agree with the District Court that prior involvement in some aspects of a case will not necessarily bar a welfare official from acting as a decision maker. He should not, however, have participated in making the determination under review.

397 U.S. at 270-71, 90 S.Ct. at 1022, 25 L.Ed.2d 287 (emphasis added). Here, City Manager Young made the determination initially that he then reviewed in a quasi-judicial decision. Manifestly, this procedure did not comport with constitutional due process under the above-quoted language from Goldberg. The Petitioner is, therefore, entitled to relief from this Court on certiorari.

C. As noted by our Supreme Court in North Carolina Mutual Bank v. Gillespie, 291 N.C. 303, 311, 230 S.E.2d 375, 380 (1976), involving an issue of judge recusal, due process requires that a judge must not only be impartial in fact, but that he or she

appear to be impartial. Our Supreme Court quoted with approval this language from Kentucky Journal Publishing Co. v. Gaines, 139 Ky. 747, 110 S.W. 268:

"[I]t is of the utmost importance that every man should have a fair and impartial trial of his case, and that to secure this great boon two things are absolutely essential: an impartial jury and an unbiased judge. But we go further, and say that it is also important that every man should know that he has had a fair and impartial trial, or, at least, that he should have no just ground for the suspicion that he has not had such a trial."

The law-of-the-land clause of the North Carolina Constitution, Art. I, §19, which provides North Carolina citizens with full due process protections, is applicable to quasi-judicial proceedings and thus compels a fair decision-maker at such a proceeding. McNeill v. Harnett County, 327 N.C. 552, 398 S.E.2d 475 (1990) (law-of-the-land clause language synonymous with U.S. Constitution's due process clauses).

D. In its last term, in a case involving whether an appellate judge who took campaign contributions from one of the litigants should have pursued, the U.S. Supreme Court stated the due process test as follows:

The Court asks not whether the judge is actually, subjectively biased, but whether the average judge in his position is "likely" to be neutral, or whether there is an unconstitutional "potential for bias."

Caperton v. A.T. Massey Coal Co., Inc., \_\_\_ U.S. \_\_\_, 129 S.Ct. 2252 at 2262, 173 L.Ed.2d 1208 (2009). In the case at bar, the City Manager fails both tests, although if he fails either one, Asst. Chief Rogers has been unconstitutionally denied due process.

No reasonable person would conclude that a quasi-judicial "judge" (or a quasi-judicial decision-maker) reviewing at a hearing a decision that he had already made would likely be neutral. Moreover, in Capt. Rogers' case, there was a very high unconstitutional potential for bias measured on an objective standard. Certainly when an official makes a deliberate, calculated decision and then acts as the appellate authority over the decision, there is an unconstitutional potential for bias concerning the decision he has already made. The U.S. Supreme Court recognized in Goldberg, supra, some 40 years ago that an administrative official who made a decision is not likely to be neutral in deciding an appeal from that decision, and that there is an unconstitutional potential for bias if he does so. As the Court noted in Caperton, 129 S.Ct. at 2259:

As new problems have emerged that were not discussed at common law, however, the Court has identified additional instances which, as an objective matter, require recusal. These are circumstances "in which experience teaches that the probability of actual bias on the part of the judge or decision-maker is too high to be constitutionally tolerable." Withrow, ...95 S.Ct. 1456.

The instant case of Asst. Chief Rogers is one of those circumstances: There is an unconstitutional probability of actual bias--as well as clear legal bias--when a person entertains an appeal from his own decision.

E. Certainly, Asst. Chief Rogers did not feel that he could receive fair hearing from the City Manager; he did not feel that he would have a fair hearing where the hearing officer conducted a hearing challenging his own original decision. In the words of the Supreme Court of Kentucky quoted in N.C. National

Bank, supra, Asst. Chief Rogers has "just ground for the suspicion" that he has not had a fair and impartial hearing because the hearing official unconstitutionally refused to recuse.

F. For all of the foregoing reasons, the decision of the City Manager in his letter of May 14, 2010, must be vacated.

G. The City illegally and improperly deviated from its own written regulations, rules, and standard procedures in Petitioner's case. Indeed, had the City properly followed them, recusal would not have been an issue because the City Manager would have been exposed to the case only as the final administrative appellate authority.

H. In his written administrative Notice of Appeal (Exhibit B to this Petition), the Petitioner lays out in great detail the violation of City policies in his case. As Exhibit B has been incorporated by reference into this Petition in toto, the details will not be repeated herein to avoid needless repetition. As can be seen from a reading of Exhibit B, the City Manager was not Petitioner's immediate supervisor; the Chief of Police was. Had any discipline been imposed by the Chief, then the Petitioner could have appealed that decision to Michael Speedlings, the Assistant City Manager for Public Safety, for a due process hearing, and then, if he was dissatisfied with the assistant city manager's decision following such hearing, on to the City Manager, who would have acted as appellate authority and finally decided the appeal on the record made before the assistant city manager. Thus, had the City followed its own procedures in this case, the City Manager would not have been hearing an appeal from his own

decision, and thus required by due process considerations to recuse. But, instead, in contravention of the City's own established procedures, the City Manager made the decision in the first instance that was not his to make--a decision whether or not to suspend Asst. Chief Rogers was initially for the Chief of Police--and did so without first hearing Asst. Chief Rogers' side of the story. As the City Manager outranks the Chief of Police and the assistant city manager, he determined any "appeal" of his one-sided decision would go only to him--the initial decision maker--and that he would conduct the quasi-judicial hearing that should have, under standard City policy, been conducted by the Assistant City Manager in the first instance. This is what Asst. Chief Rogers was referring to when he complained in his administrative Notice of Appeal (Exhibit B) that "by receiving the discipline directly from the City Manager two steps in the disciplinary process [of the City] were eliminated." (unnumbered Par. 4, third full unnumbered paragraph of Exhibit B).

I. The refusal of the City Manager to follow the City's own rules, policies, regulations, customs, and procedures as above-outlined in the handling of Asst. Chief Rogers' discipline was arbitrary and capricious--and also a denial of equal protection; hence, this was another violation of the Petitioner's due process and law-of-the-land rights and his rights to equal protection guaranteed him by both the Fifth and Fourteenth Amendments to the U.S. Constitution and by At. I, §19 of the N.C. Constitution. Incorporated Exhibit B to this Petition sets this out in more detail. The Petitioner is an African-American and is a Plaintiff

in a pending civil suit in the U.S. District Court for the Middle District of North Carolina alleging a pervasive pattern of racial discrimination by the Respondent City against African-American members of the City's Police Department.

J. The Respondent City failed and refused--despite specific requests from Petitioner and his legal counsel prior to the quasi-judicial hearing--to give adequate notice of the conduct of Petitioner which the City Manager had determined violated the vaguely worded policies and directives of the City so that Petitioner could prepare any defenses he could have presented at the quasi-judicial hearing, and decide what witnesses he needed to call on the merits. While the Petitioner did call two witnesses other than himself, these other witnesses were primarily utilized in an effort to establish the procedures followed in Petitioner's case differed from those used in similar cases involving other officers. The City never notified the Petitioner of specific facts it contended established the essential elements of the way(s) in which the Petitioner allegedly violated City policies and directives, nor even of the specific ways that he was accused of doing so.

K. The letter decision of May 14, 2010, makes findings of fact not only not supported by the record, but contradicted by the record, including, but not necessarily limited to, the following:

(1) The Petitioner did not testify at the hearing that he had an "inappropriate relationship" with Officer Marrow, as found at page 1, second full unnumbered paragraph, of said letter

(which is Exhibit C to this Petition). To the contrary, on both his direct and cross-examination at the hearing, Asst. Chief Rogers steadfastly DENIED any "inappropriate relationship" with Officer Marrow and denied violating any directives of the City Police Department in any interactions that he had with Officer Marrow.

(2) The Petitioner did not in his sworn testimony at the quasi-judicial hearing admit that he was intoxicated when talking with Officer Marrow or engaged in sexual banter with Officer Marrow. The Petitioner's testimony on this issue was to the effect that on one occasion during a Carolina basketball game which both were watching (in different locations) on television while off duty, they discussed the game on the telephone and that Officer Marrow was pulling for the University of North Carolina while Asst. Chief Rogers was pulling against U.N.C. The Petitioner only said that he consumed some alcohol while watching the game while off duty, or words to that effect. There are no rules or policies of the City barring police officers from drinking a beer (or other alcoholic beverage) while off duty, and none precluding officers from socializing while off duty while drinking alcohol, such as occurred during the incident specified by the City Manager.

(3) The Petitioner, when testifying at his quasi-judicial hearing, did not testify about sexual conversations with Officer Marrow that he initiated. His testimony was to the effect that he mentored Officer Marrow--and many other lower-ranking officers--and that Officer Marrow would come to him for advice about how to handle off-duty relationships and how to overcome

problems with her husband who was also a police officer. The Chief of Police when testifying confirmed that mentoring did not violate Police Department policies and was appropriate for senior ranking officer to do.

(4) The City Manager in cross-examining the Petitioner at the hearing specifically asked the Petitioner whether he had engaged in "sexual banter" with Officer Marrow, which the City Manager defined as talking about sex acts with each other. The Petitioner flatly denied engaging in such "sexual banter" with Officer Marrow.

L. The Petitioner was denied his state and federal constitutional due process rights to call the City Manager as a witness at the quasi-judicial hearing. The City Manager refused to allow himself to be called. He stated when one of Petitioner's counsel called him to testify that he would not because he was the hearing officer and not a witness. Since the City Manager had imposed the discipline that was on appeal, it was necessary and proper to call him if the Petitioner chose to do so. This points up again why the City Manager was constitutionally compelled to recuse. When counsel for Petitioner before the testimony began at the quasi-judicial hearing moved for the City Manager to recuse, they expressly informed him that they would call him to testify if the City did not, and informed him this was one basis on which they asked him to recuse.

15. The City Manager's findings of fact and conclusions based thereon as set forth in his letter of May 14, 2010 (Exhibit C) are all expressly objected to by the Petitioner in that none of the

findings are supported by lawful, competent, material, and substantial factual evidence, such findings are subjective in nature, and such findings are arbitrary and capricious when compared against the testimony given at the hearing.

WHEREFORE, Petitioner prays that this Court:

I. Issue a Writ of Certiorari or other appropriate writ or Order to Respondent City of Greensboro requiring it to certify and deliver to this Court and to Petitioner the original or a certified copy of the entire record of this matter as heard by the Respondent City Manager;

II. After a review of the record and the submissions of briefs by Petitioner and Respondent, and after hearing oral argument by counsel for Petitioner and Respondent, issue an Order reversing the decision of the Respondent City Manager and remanding this matter to the Respondent City with instructions to reverse the ruling or decision of the City Manager of the Respondent City of Greensboro; and

III. Grant such other and further relief as this Court may deem just and proper.

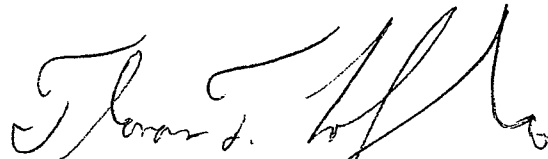
ATTACHMENTS

A. Letter of discipline dated February 8, 2010, from City Manager to Petitioner, contents of which were delivered February 11, 2010

B. Notice of Appeal dated February 19, 2010

C. Letter of decision dated May 14, 2010, and delivered May 17, 2010, from City Manager to Petitioner

This 14th day of June, 2010.



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THOMAS F. LOFLIN III  
Attorney for Petitioner

P.O. Box 1315  
Durham, N.C. 27702  
919/682-0383

NORTH CAROLINA

DURHAM COUNTY

VERIFICATION

The undersigned, being first duly sworn, deposes and says that he is the Petitioner herein; that he has read the foregoing Petition and knows the contents therein, and that the facts set out therein are true to the best of his knowledge, information, and belief.

Ronald E. Rogers  
RONALD E. ROGERS  
Petitioner

Subscribed and sworn to before me  
this the 14th day of June, 2010.

William G. Goldston  
NOTARY PUBLIC

My commission expires 11/6/11.  
SEAL:

WILLIAM G. GOLDSTON  
NOTARY PUBLIC  
DURHAM CO., NC  
MY COMMISSION EXPIRES 11/6/11

Office of the City Manager  
City of Greensboro



February 8, 2010

**TO:** Ronald E. Rogers, Assistant Chief of Police  
**FROM:** Rashad M. Young, City Manager *RMY*  
**SUBJECT:** Complaint Filed Against Chief R. Rogers

As you know the City of Greensboro received a complaint from Latania Marrow alleging that you sexually harassed her. I have reviewed a summary of the facts uncovered by the City's investigation. In addition, I have considered your response to the allegations against you. The investigation did not substantiate Ms. Marrow's allegations of sexual harassment. However, I have determined that your behavior was unacceptable as defined by the City's Disciplinary Action Policy, H-1. Moreover, your conduct reflected adversely upon the Greensboro Police Department in violation of Departmental Directive 1.5.

As an Assistant Chief of the Greensboro Police Department you are held to a more exacting standard than non-supervisory employees. Your behavior has placed the City of Greensboro at risk of a sexual harassment charge and other associated claims. Based on the foregoing, I am suspending you for a period of three (3) full work weeks or twenty-one (21) days. Upon your return to work I am requiring that you receive training concerning appropriate workplace behaviors. Upon your return to work, Human Resources representatives will contact you to schedule the appropriate training. Please be advised that any additional instances of unacceptable behavior or performance will subject you to additional discipline, up to and including dismissal from employment.

You have the right to appeal this decision. You must submit your written appeal to me within ten (10) consecutive calendar days of today's date. I will hold a hearing to consider your appeal. You will have the right to question witnesses against you, present oral arguments and to have legal or other representation present.

RMY/mm

cc: Chief Tim Bellamy  
Connie Hammond  
Michael J. Speedling

Exhibit B



Police Department  
City of Greensboro

February 19, 2010

**TO:** Rashad M. Young, City Manager  
**FROM:** R. E. Rogers, Assistant Chief, Investigative Bureau  
**SUBJECT:** Notice of Appeal

I hereby give notice of appeal of the disciplinary decision and action issued by City Manager Rashad Young (hereinafter "City Manager") and delivered to me on February 11, 2010, and effective February 15, 2010-March 7, 2010. In support thereof, I show the following:

On February 11, 2010, I was advised by the City Manager that an allegation of sexual harassment, tendered by Latania Marrow at her termination hearing, was investigated and found to be untruthful and unsubstantiated against me. However the City Manager, in his discretion, was suspending me for 21 days, for behavior unacceptable as defined by the City's Disciplinary Action Policy H-1 and that my conduct reflected adversely upon the Greensboro Police Department in violation of Department Directive 1.5. The City Manager also concluded that as an Assistant Chief of the Greensboro Police Department I was held to a more "exacting standard" than a non-supervisory employee. The City Manager further stated that I have a right to appeal his decision within ten days of February 11, 2010, and that said appeal, if any, should be forwarded directly to him.

I am appealing the City Manager's decision based upon the specific procedures in the City Personnel Manual that pertains to H-1 Disciplinary Action, 4.5 Progressive Discipline, 5.0 Organizational Rules, 5.1 General Disciplinary Action Rules, 6.0 Procedures, 6.1 Disciplinary Procedure, and 6.3 Disciplinary Action Appeal Process. The City Manager's decision is in direct conflict with the specific procedures outlined in the City Personnel Manual.

The City of Greensboro required me to be present at a meeting on February 11, 2010, reference an unspecified personnel issue. Once I arrived at the meeting called by the City Manager, it became apparent to me that the sole purpose of the meeting was to relay his (City Manager) disciplinary action to me for an investigated, yet unsubstantiated, allegation. The manner in which the "disciplinary hearing" was held was without any formal notice to me as required by policy and procedure of the City of Greensboro and more specifically, the Greensboro Police

Department. The specific procedures set forth in Section 6.0 Procedures and 6.1 Disciplinary Procedures were not applied.

North Carolina courts have held that procedural due process requires notice sufficient to inform the recipient in advance of a hearing of the bases for the proceedings against him or her so that the individual will have a meaningful opportunity to respond. In order to pass constitutional critical examination, the person against whom sanctions are to be imposed must be advised in advance of the charges against him.

The Manual for Personnel Administration sets the parameter for all city actions and carves out areas of individual liberties that cannot be infringed. In 2007, the Human Resource Department completed a comprehensive revision of the Personnel Manual. There were several new policies added and some changes to existing ones, but all changes were based on our commitment to equal employment opportunity, State and Federal Laws, public accountability, and the City's core values. The introduction page of the manual reads as follows: "the addition of specific procedures for employees and supervisors to follow". There are no listed revisions to these policies after the 2007 comprehensive revision of the manual.

The City's Manual for Personnel Administration cites three levels of disciplinary actions under section 4.5 Progressive Discipline, 4.6 Administrative Leave, and 4.7 Suspension.

- Policy 5.1, "states the City supports the use of progressive discipline whenever possible and expects supervisors to use the process except in cases where the severity of the behavior or performance causes concern for safety or security or for other serious reason." The actions taken fail to correctly and orderly follow the specific procedures set forth by the City of Greensboro which are observed as security for employee's rights with the City.
- Section 6.1 Disciplinary Procedure was designed for all employees regardless of their position within the organization. There is no policy in the City's Manual for Personnel Administration for "Classification" which allows local governments to implement disciplines on certain ranks or positions within the organization but not on others. The specific procedures set out in Policy 6.1 Disciplinary Procedures were not applied in my case.
- The City's Manual for Personnel Administration section 6.1, provides the protocol for disciplinary procedures. Sub-topic (A) states that the employee's supervisor will meet with the employee and discuss how the employee has failed the expectations of the job and/or why his behavior is inappropriate. (B) The supervisor will ask for and listen to the employee's response to the supervisor. (C) After hearing the employee's response, the supervisor will decide the appropriate action (if any). Normally the progressive discipline will begin with a verbal warning or a written warning although if the behavior or performance is serious enough, the supervisor may take more severe action. I was suspended because of my rank (Assistant Chief), but not by my

Department's supervisor, who is the Chief of Police. Instead, I was suspended without notice by the City Manager. The disciplinary actions taken against me do not follow policies of the City. The specific procedures were not applied in accordance with Section 6.1 Disciplinary Procedures.

- The City of Greensboro failed to present me with any specific allegations of unacceptable behavior or actions on which my suspension from active duty with the Greensboro Police Department was based. The information that I received referred to a chapter title in the City of Greensboro's Manual for Personnel Administration and a chapter title in the Greensboro Police Directives Manual, but not to any facts. Ambiguous disciplinary actions threaten the integrity of the City of Greensboro and the Greensboro Police Department. Actions and sanctions should not be a direct subversion of an individual's fundamental rights. Policies must have standards narrowly drawn and related to the job. When conduct that does not relate to job performance or delivery of police services is punished, the courts may find the policy unconstitutional. But I do not know the alleged conduct on which my suspension was based. The terms articulated by the City Manager as "unacceptable behavior and actions adversely affecting the Police Department" are broad vague terms and not specific in nature. Such articulation does not comport with procedural due process.

On February 11, 2010, I received a 21 day suspension from the City Manager which reads

"The investigation did not substantiate Ms Marrow's allegations of sexual harassment. However, I have determined that your behavior was unacceptable as defined the City's Disciplinary Action Policy, H-1. Moreover, your conduct reflected adversely upon the Greensboro Police Department in violation of Departmental Directive 1.5.

As an Assistant Chief of the Greensboro Police Department you are held to a more exacting standard than non-supervisory employees. Your behavior has placed the City of Greensboro at risk of a sexual harassment charge and other associated claims. Based on the foregoing, I am suspending you for a period of three (3) full weeks or twenty-one (21) days... You have a right to appeal this decision. You must submit your written appeal to me within ten (10) consecutive calendar days of today's date. I will hold a hearing to consider your appeal. You will have the right to question witnesses against you, present oral arguments and to have legal or other representation present."

North Carolina General Statute § 160A-148 grants the City Manager of Greensboro, North Carolina with the authority to "appoint and suspend or remove all city officers and employees not elected by the people, and whose appointment or removal is not otherwise provided for by the law, except the city attorney, in accordance with such general personnel rules, regulations, policies, or ordinances as the council may adopt." The City Manager failed to follow the City of Greensboro and Greensboro Police Department general personnel rules, regulations and policies or ordinances with regard to disciplinary action taken. The Fourteenth Amendment of the United States Constitution requires that "In the exercise of this

power regard must be paid to the fundamental principles of civil liberty, and to processes that are adapted to preserve and secure civil rights; persons cannot arbitrarily be deprived of equal protection of the laws, or of life, liberty, or property, because the State purports to be exercising the police power.”

Specifically, the non-sustained investigation was not transferred back to the Greensboro Police Department for follow-up, which has been the standard operating procedure of the City of Greensboro and the Greensboro Police Department. As a result, I was not afforded equal protection of the law as similar individuals in similar circumstances have been. The follow-up was completed in the City Manager’s office, with the City Manager rendering the disciplinary action and then any subsequent appeal is to be heard and decided by the City Manager. In other words, the City Manager purported to be both the initial decision-maker, with the "appeal" of his decision to be decided by him. The arbitrary and capricious way the City Manager deviated from the Manual and from customary procedures in handling my case denied to me due process as well as equal protection, as does the decision-maker on appeal being the initial decision-maker whose decision I desire to appeal.

The City of Greensboro’s Manual for Personnel Administration 6.3 Disciplinary Action Appeal Process that each employee of the city must follow states:

“The steps of the procedure are determined by your rank or position in the organization. The higher you are positioned in the organization determines the number of steps of appeals you are entitled to. These procedures provide due process for a check and balance system which has long been a part of our system of government.”

The Manual for Personnel Administration, 6.3 Disciplinary Action Appeal Process, was violated. The City Manager is not my immediate supervisor. The City of Greensboro’s Personnel Manual allows three steps of appeal for my position within the Greensboro Police Department. This process is in place to ensure that all employees receive a fair and impartial decision in disciplinary actions. Fairness is jeopardized when discipline is to be appealed to the same person who rendered the initial disciplinary action. In my instance, by receiving the discipline directly from the City Manager two steps in the disciplinary process were eliminated. Policy and procedure as set forth above was not followed.

City Manager stated that because of my position within the organization, I should be held to a higher standard than non-supervisory personnel. I am unable to locate any such policy within the City’s Manual for Personnel Administration that would support the City Manager’s standard; which leads me therefore, to question does the City of Greensboro have a classification policy for issuing discipline? And if so, how is the classification derived?

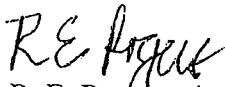
The denial of my rights as outlined above by the City Manager continues the City’s pattern, practice, and custom in place since at least 1997 of discriminating against African-Americans. The City Manager is biased in fact against me, as evidenced by his statement to

me on February 11, 2010, when he delivered his decision to suspend me, and that he really preferred to fire me.

**Because of the patent unfairness in appealing to the very person who decided my case in the first instance, or any person subordinate to him, and because the City Manager is biased in fact against me, I respectfully request that my appeal be heard by a person with the legal authority to hear same who is not the City Manager or any person subordinate to the City Manager.**

I intend to exercise my right to be represented by counsel at the hearing on my appeal and to confront and cross-examine witnesses against me through them. I, therefore, request a list of the witnesses who will or may testify against me. I will be represented by Attorneys Thomas F. Loflin III and Karen Bethea-Shields of Durham, N.C. Their office address is 123 Orange Street, Durham, N.C., 27701. Their telephone number is 919-682-0383. Their fax number is 919-682-0385. Mr. Loflin's e-mail address is [loflin.law@verizon.net](mailto:loflin.law@verizon.net). I request that the person who will hear my appeal contact my attorneys to arrange a date and time in the next twenty (20) days convenient to them to conduct the appeal hearing, since I do not know their court schedules.

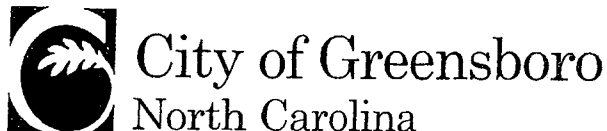
I respectfully request that my attorneys and I be given immediately a list of the specific facts on which the decision to suspend me was based so that my legal counsel and I will know and be able to confront the exact charges against me.



R. E. Rogers, Assistant Chief

Greensboro Police Department

RECEIVED MAY 17 2010



Office of the City Manager

May 14, 2010

Via Certified Mail  
Assistant Chief Ronald Rogers  
Loflin & Loflin  
C/O: Thomas Loflin  
123 Orange Street  
Durham, NC 27701-1316

Loflin & Loflin  
C/O: Karen Bethea-Shields  
PO Box 1315  
Durham, NC 27702

Dear Chief Rogers:

On Friday, March 12, 2010 I heard your appeal of the fifteen work day suspension imposed on you for violation of the City's Disciplinary Action Policy and Greensboro Police Department Departmental Directives. The appeal hearing was held after proper notice. All witnesses testified under oath. In reviewing this matter, I relied on the written transcript from the appeal hearing, City and GPD policy, as well as like and similar cases of misconduct or policy infractions. I also gave weight and consideration to the specific arguments of process and procedure articulated by your counsel during the hearing.

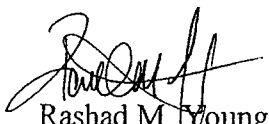
My conclusion is that there remains clear and convincing evidence that City policy and GPD directives were violated. Upon review of the transcript, your testimony corroborated the essential elements of the complaint charges against you. During your appellate hearing you admitted, under oath, that you had an inappropriate relationship with former police officer Morrow. While both police officer Morrow and a police corporal were being investigated for allegations of sexual misconduct, you had contact with both of them regarding the case. Your contact with police officer Morrow at some point included discussions of both her marriage and her sexual activity. This has particular significance in that police officer Morrow was married to a fellow Greensboro police officer while you were engaging in these sexual conversations. The nature of these conversations was such that you, admitted, during the appellate hearing, that your wife, also a fellow Greensboro officer, would be offended by their content. You also admitted, under oath, that you had conversations with Ms. Morrow after having been drinking.

Accordingly, the evidence supports and sustains a finding that you failed to maintain your personal affairs to the standards required by the City of Greensboro and that you engaged in conduct unbecoming of a Greensboro police officer. Your actions not only reflect poorly on you and the GPD but also directly impacts the lives of four of your fellow officers. As a high ranking

official in the GPD, you exhibited, at best, poor judgment in managing your relationship with Officer Morrow.

Finally, I acknowledge the issues raised with regard to the documentation of investigatory findings in this matter. In light of the foregoing, consistent with like and similar discipline, I am reducing your suspension from fifteen duty days to five duty days. Please be advised that there are no additional appeals available in this case.

Sincerely,



Rashad M. Young  
City Manager

RMY/rmy

cc: Timothy Bellamy, Chief of Police  
Personnel File of Asst. Chief Rogers