

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

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

ADRIAN WALLEIGH,
Appellant

CASE NO: C-17-007

v.

**DEPARTMENT OF HOUSING &
COMMUNITY DEVELOPMENT,**
Respondent

Appearance for Appellant:

Pro Se

Appearance for DHCD:

Christopher Groll, Esq.
Department of Housing & Community
Development
100 Cambridge Street
Boston MA 02114

Commissioner:

Paul M. Stein

DECISION

The Appellant, Adrian Walleigh, appealed to the Civil Service Commission (Commission) pursuant to G.L.c.30,§49, from the denial of the Massachusetts Human Resources Division (HRD) of his request for reclassification of his position from Counsel I to Counsel II in the Office of General Counsel (OGC) within the Department of Housing & Community Development (DHCD). A pre-hearing conference was held at the Commission's offices in Boston on January 24, 2017 and a full hearing was held at the same location on March 6, 2017.¹ The hearing was digitally recorded and the parties were provided with a copy of the CD.² Fifteen exhibits were introduced in evidence. DHCD rested on the exhibits and the Appellant called six witnesses and testified on his own behalf.

¹ The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.00, *et seq.*, apply to adjudications before the Commission with and conflicting provisions of G.L. c.30,§49, or Commission rules, taking precedence.

² If there is a judicial appeal of this decision, the plaintiff in the judicial appeal becomes obligated to use the CDs to supply the court with the written transcript of the hearing to the extent that he/she wishes to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion.

FINDINGS OF FACT

Based on the Exhibits entered into evidence and the testimony of the following witnesses:

Called by DHCD:

- None

Called by the Appellant:

- Adrian Walleigh, Esq., Counsel, DHCD/OGC, Appellant
- Jennifer Foley, HR Director, DHCD
- Roberta Rubin, Esq., Chief Counsel, DHCD/OGC
- Christine McClave, Esq., Deputy Chief Counsel, DHCD/OGC
- Michael Malamut, Esq., Senior Counsel, DHCD/OGC
- Alvina Brevard, Director Field Operations, DHCD/DHS
- Ita Mullakey, Associate Director, DHCD/DHS

and taking administrative notice of all matters filed in the case, pertinent law and reasonable inferences from the credible evidence, a preponderance of evidence establishes these facts:

1. The Appellant, Adrian G. Walleigh, currently holds the position of Counsel I in the Office of General Counsel (OGC) of the Department of Housing and Community Development (DHCD). He was appointed to that position in December 2011. (*Exhs. 2, 8 & 16; Testimony of Appellant*)

2. Atty. Walleigh received a B.A. degree from Franklin & Marshall College in 1999. He received a J.D. degree from New England School of Law in 2006 and was admitted as a member of the Massachusetts bar that same year. (*Exhs. 2 & 16; Testimony of Appellant*)

3. Prior to his employment with the DHCD, Atty. Walleigh was employed for approximately five years as a staff attorney with a non-profit, where he represented low income individuals on landlord/tenant and other government benefits (TAFDC, SSI, SSDI and Section 8) and family law cases. (*Exhs. 2 & 16; Testimony of Appellant*)

4. The DHCD's OGC is headed by a Chief Counsel (currently Roberta Rubin), who directly supervises a Deputy Counsel (under whom are a team of four hearings officers, one Counsel I and three other staff). Also reporting directly to Chief Counsel Rubin is a team of staff attorneys,

currently comprised of a Counsel III, four Counsel IIs, and two Counsel Is (including Atty. Walleigh) and a Paralegal. A recently hired Risk Management Specialist also directly reports to Chief Counsel Rubin.. (*Exhs. 7 & 11; Testimony of Appellant*)t

5. When he was hired in 2011, Atty. Walleigh was assigned to assist in providing legal representation to the Emergency Assistance (EA) program. Although technically reporting to the Chief Counsel, Atty. Walleigh received his assignments from, and was supervised on a day-to-day basis by Michael Malamut, a Counsel II and “Primary Program Counsel” for the EA program. Atty. Walleigh’s initial responsibilities were at a “low level”, consistent with an entry level position and he “had to discuss almost everything with Attorney Malamut before answering questions from the field or sending emails and get all of my written work checked by him before going out.” (*Exh. 16; Testimony of Appellant, McClave & Malumut*)

6. Over time, Atty. Walleigh’s work on the EA program changed and he began to work more independently. A second Counsel II was hired and, for a time there were three attorneys working on the EA program. In 2014, after Atty. Malumut transferred to other primary duties and the other Counsel II was terminated during his probation period, Atty. Walleigh became the sole Primary Program Counsel responsible for handling that program, essentially taking over the work previously performed by his former Counsel II mentor, Atty. Malumut.. Atty. Walleigh’s Employee Performance Review Form (EPRS) for FY 2016 and FY 2017 reflect major revisions consistent with this change in duties as well as the diminished need for oversight “appropriate in light of his years of experience”. (*Exhs. 5, 8, 12 through 14 & 16; Testimony of Appellant, McClave, Malumut. Brevard & Mullarkey*)

7. In addition to his expanded duties with the EA program, Mr. Walleigh also began to take on additional assignments, including responsibility for handling other legal matters associated

with the other major programs (HomeBase [HB] and Rental Assistance for Families in Transition [RAFT] under the umbrella of DHCD's Department of Housing Stabilization (DHS)).³ Prior to the hiring of a risk management specialist, Atty. Walleigh was assigned to provide risk management assistance as well, which involved representing DHCD's interest at the "insurer of public housing authorities, monitoring tort cases (slip & falls, etc.) and recommending settlements when the amounts exceeded the public housing authority's deductible. Substantially all of these tasks require particularized expertise regarding DHS programs and are performed independently with minimal or no direct day-to-day task-oriented supervision. He now assigns all EA cases, either to himself or Atty. Malumut. He is training a new Counsel I to whom he will also be assigning EA cases when that new employee is fully trained. (*Exhs. 1, 5, 7 through 9, 12 through 16; Testimony of Appellant, McClave, Malumut, Brevard & Mullarkey*)

8. Atty. Walleigh devotes more than 60% of his time to duties associated with the DHS programs (EA, HB and RAFT), where he serves as the Principal Program Counsel, serving as the lead legal advisor to the DHS, providing legal counsel and advise to the Deputy Undersecretary, Assistant Secretary, Associate Director, Director of Field Operations and all field staff on matters regarding DHS programs. He acts without supervision to explain how rules and regulations apply to individual participant/applicant situations as requested by DHC staff. He is also consulted by senior DHS program staff for assistance in supporting or opposing legislation affecting agency operations, including analysis of budget provisions affecting the agency. He writes Housing Stabilization Notices (HSNs) which are sub-regulatory policy documents, subject to legislative review, containing policy interpretation and guidance for use by the agency. (*Exhs. 8, 9 & 12 through 16; Testimony of Appellant, Malumut, Brevard & Mullarkey*)

³ DHS programs comprise over 60% of all DHCD budget and spending (\$253 Million out of approximately \$30 million). The EA program is the largest program at DHCD and alone accounts for approximately 30% of the agency's budget (\$155 million.) (*Exh. 16*)

9. Atty. Walleigh interacts directly with external state and federal agencies (which has included the Department of Homeland Security, Department of Children & Families and municipal law enforcement) and represents the department in litigation, primarily 30A appeals and civil actions for TROs and injunctive relief against DHCD under the EA program. In performing his duties, Atty. Walleigh travels throughout the Commonwealth to housing and superior courts, where he is required to act independently and make the appropriate legal arguments and recommend settlement of cases for approval by DHS management and staff.⁴ He also works in collaboration with the Governor's Legal Counsel and the Office of the Attorney General in two complex class actions involving the agency. He serves as OGC counsel assigned to an inter-agency "Chapter 55" task force that is crafting a data-sharing agreement that will eventually enable the collection and analysis of data across state agencies for use in addressing the opioid crisis by creating the protocol for converting that data to protect confidentiality of individuals involved who are receiving public assistance from DHS and other state agencies. His assignment to this task force was largely due to his expertise gained as the DHS's Primary Program Counsel and his role as the agency public records officer. (*Exhs.1, 8, 9 & 12 through 16; Testimony of Appellant, McClave, Rubin, Mullarkey*)

10. As public records officer since 2012, Atty. Walleigh is the OGC attorney who is solely responsible to coordinate and respond to public records requests, as well as subpoenas, directed to the department and its staff. He performs this function with little to no supervision. His duties as public records officer involve about 20% of his time, call for careful attention to protection of confidential information that is exempt from the public records law, and require direct and independent interaction with the public. (*Exhs. 8, 9, 15 & 16; Testimony of Appellant*)

⁴ Among his recent tasks, Atty. Walleigh re-wrote the "Settlement Form" that is used by all counsel to document settlements reached in EA appeals. . (*Testimony of Malumut*)

11. On or about June 21, 2016, Atty. Walleigh requested that DHCD reclassify his position from Counsel I to Counsel II. (*Exhs/ 6 & 9; Testimony of Appellant & Foley*)

12. By letter dated November 29, 2016, DHCD's Director of Human Resources, Jennifer L. Foley, informed Atty. Walleigh that, after review of his initial appeal form and addendum and conducting interviews with Atty. Walleigh and the OGC's Chief Counsel and Deputy Counsel, DHCD had determined that he was properly classified as a Counsel I and his request for reclassification was denied. (*Exh. 6; Testimony of Foley*)⁵

13. Atty. Walleigh duly appealed DHCD's denial of his reclassification request to the Massachusetts Human Resources Division (HRD). By letter dated January 3, 2017, HRD Personnel Analyst Latoya Odlum, informed Atty. Walleigh that HRD concurred with DHCD's decision that the "the duties being performed by you do not warrant the reallocation of your position and therefore we must den your appeal." Atty. Walleigh's appeal to the Commission duly ensued. (*Exhs. 3 through 6*)

14. The Counsel Series Class Specification were revised by HRD in August 2013. Among other things, the revision added a new title of Counsel III to the previous two titles in the series – Counsel I and Counsel II – and made significant changes in how the titles were distinguished from one another. The overall description of the Counsel Series (Levels I-III) states:

There are three levels of work in the Counsel series. Incumbents of classifications in this series represent the interests of assigned agencies in dispute resolution and legal proceedings; collect facts and evidence; perform legal research and analysis; prepare and manage cases for review by a tribunal; provide guidance, advice and recommendations to agency staff and others on legal matters; draft administrative and legal documents; and provide customer service and information to the public on agency functions, rules and regulations

The basic purpose of this work is to provide legal representation and support to the agency and to help it fulfill its mission and meet its legal obligations.

(*Exh. 10*)

⁵ DCHD's November 29, 2016 denial letter pre-dates the Commission's decision in Thomson v. Human Resources Div., 28 MCSR (2016). See discussion, pp. infra.

15. The Class Specification for Counsel I provides:

Distinguishing Characteristics:

This is the entry-level professional classification in this series. Incumbents seek guidance and advice from more experienced colleagues and are focused on gaining the experience to perform more independently.

Supervision Received:

Incumbents receive general supervision from employees of higher grade who provide work assignments and review performance through formal and informal verbal and written reports for effectiveness and conformance to laws, regulations and agency policy.

Supervision Exercised:

Incumbents may provide functional direction to interns, students and support staff through advice, guidance and delegation of tasks and may participate in the training and mentoring of new employees.

Functions Performed:

Incumbents may perform the following:

- Advise agency staff on legal matters by interpreting laws, rules, regulations, judicial decisions and opinions related to agency operations. This includes educating staff on the laws, rules and policies governing agency operations; providing legal advice to agency staff when resolving problems and determining appropriate actions; monitoring actions of agency staff to identify legal issues or problems; and reviewing contracts to ensure that all agency activities comply with applicable laws.
- Obtain information needed to represent the agency in dispute resolution by conducting research and analysis of the applicable laws, statutes and regulations, and by reviewing case files, case history, and evidence submitted by opposing parties to understand the facts and issues and to determine the best course of action.
- Mediate or negotiate with opposing parties, when appropriate, to reach resolution, avoid litigation and mitigate damage to the agency.
- Prepare cases and represent the agency in dispute resolution by determining case strategy, conducting discovery, identifying and presenting the most relevant and appropriate evidence and witnesses, responding to evidence and witnesses presented by opposing parties; and instruction parties and witnesses on procedural format to ensure that all testimony and evidence are properly presented.
- Draft administrative, court, and other legal documents (e.g., memos, decisions, contracts, deeds, pleadings, regulations, opinions, comments) to communicate information to interested parties and to record outcomes and decisions, ensuring that such documents are complete, accurate available for future review and in compliance with law.
- Advocate in courts or administrative hearings on behalf of the clients and/or the agency to ensure the consistent application of laws, to represent the interests of the agency, develop legal strategy and effectively and efficiently manage the flow of cases.
- Provide information to the public by answering inquiries regarding agency functions, services, rules, and procedures to accurately represent the agency.
- Manage and monitor individual cases, assignments and projects to ensure timely resolution of cases and to contribute to the achievement of overall agency goals.

Key Accountabilities:

Incumbents at this level have the decision-making authority to:

- Prioritize and manage assigned workload and caseload.
- Make recommendations regarding the course of action for specific cases, including whether a case could be resolved through settlement, mediation or negotiation.
- Develop case strategy once the course of action has been approved.
- Decide what evidence and facts are most relevant and should be presented to support the position of the agency in dispute resolution.
- Issue recommendations for final decision of cases and for some routine or less-complex cases to issue a final resolution without further review.

Relationships with Others:

Key contacts and relationships for incumbents include other agency Counsel (e.g. team members and mentors), agency management and staff, clients and/or consumers, outside attorneys, contractors/vendors; and the general public.

Knowledge, Education & Experience:

Incumbents must have a Juris Doctor (JD) degree, admission to the Massachusetts Bar and some experience in legal research, legal writing and legal procedures and processes.

(Exh.10)

16. The Class Specification for Counsel II provides:

Distinguishing Characteristics:

This is the experienced professional level classification in this series, and in some work environments can also be the first level of supervision. Incumbents typically possess greater experience and may have specialized expertise in a specific area of the law (e.g., administrative, family, finance, labor and employment, litigation) or general knowledge of other areas or broad knowledge of multiple areas. While incumbents may seek guidance and advice from more senior colleagues on complex issues and situations, they have thorough knowledge of laws, legal principles and practices and have the ability to handle most cases independently. At this level, incumbents are expected to perform the duties described for Level I. but generally will have more experience and expertise, handle more complex cases and collaborate and interact with others outside of the agency more often. At this level, incumbents may receive less supervision than incumbents at Level I and may also exercise greater independence in decision making.

Supervision Received:

Incumbents receive general supervision from employees of higher grade who provide guidance, work assignments and review performance through formal and informal verbal and written reports for effectiveness and conformance to laws, regulations and agency policy.

Supervision Exercised:

Incumbents may provide functional direction to interns, students, support staff and other personnel through guidance, instruction and delegation of tasks and participate in the training and mentoring of new employees.

Incumbents may exercise direct supervision over, assign work to, and review the performance of interns, support staff or other personnel. Incumbents may also participate in the interviewing process or may make recommendations for new hires.

Additional Functions Performed:

Incumbents may perform the following:

- Communicate with representatives of other agencies, including the Legislature and collaborate with cross-functional or cross-agency teams and stakeholders to share information, resolve issues and develop or implement new programs..
- Draft new policies and regulations or amendments to existing polices and regulations, based on legal research and agency needs, to streamline agency practices, support operational efficiencies and ensure agency compliance with laws.
- Present memoranda supporting or opposing legislation affecting agency operations.

Key Accountabilities:

Incumbents at this level have the decision-making authority to:

- Allocate cases and assignments to supervisees most appropriately.
- Prioritize and mange personal assigned workloads and caseloads as well as the workloads and caseloads of direct reports.
- Issue recommendations for final decision of cases and for some cases, to issue a final resolution without further review.

Relationships with Others:

In addition to the contacts listed for the Counsel Level I, key contacts and relationships for Counsel Level II incumbents include additional external contacts, including stakeholders.

Knowledge, Education & Experience:

Incumbents must have a Juris Doctor (JD) degree, admission to the Massachusetts Bar and (A) [sic] at least three years of full-time, or equivalent part-time, professional experience in the practice of law.

(Exh.10)

APPLICABLE CIVIL SERVICE LAW

G.L.c.30, §49 provides:

Any manager or employee of the commonwealth objecting to any provision of the classification affecting his office or position may appeal in writing to the personnel administrator. . . Any manager or employee or group of employees further aggrieved after appeal to the personnel administrator may appeal to the civil service commission. Said commission shall hear all appeals as if said appeals were originally entered before it. If said commission finds that the office or position of the person appealing warrants a different position reallocation . . . it shall be effective as of the date of appeal . . .

“The determining factor of a reclassification is the distribution of time that an individual spends performing the function of a job classification.” Roscoe v. Department of Environmental Protection, 15 MCSR 47 (2002). As a general rule, an employee must establish that she is performing duties encompassed within the higher level position the majority (i.e., at least 50% or

more) of the time. See, e.g., Pellegrino v. Department of State Police, 18 MCSR 261 (2005) (at least 51%); Morawski v. Department of Revenue, 14 MCSR 188 (2001) (more than 50%); Madison v. Department of Public Health, 12 MCSR 49 (1999) (at least 50%); Kennedy v. Holyoke Community College, 11 MCSR 302 (1998) (at least 50%).

Because of its unique structure as compared with other civil service class specifications, however, the Commission has used a somewhat different approach to requests for reclassification of attorneys under the 2013 revision of the Counsel Series Class Specifications. In Thomson v. Division of Insurance, 29 MCSR 585 (2016), the first appeal to come before the Commission under the 2013 Class Specifications, the Commission approved reclassification of that Appellant, a Counsel II, to the newly-created position of Counsel III. The Commission's Decision summarized the rationale for applying a different approach to Counsel Series appeals:

Clearly, a considerable amount of time, effort and thought was devoted to the development of the new Counsel Series Specifications. The Commission acknowledges that the process was especially complicated because it presented challenges to craft a specification that would be effective to distinguish, by level of expertise, the work performed by skilled legal counsel employed in a wide variety of diverse jobs across state government. By definition, all legal counsel employed by the Commonwealth hold a post-graduate doctorate-level degree and have attained some level of accomplishment in the law. Many come into state government with prior, often extensive experience in a particular field within the practice of law. In addition, unlike many other job specifications that provide a clear civil service "career ladder" from entry level into management roles, the new Counsel Specifications were not intended to be used to provide such a path; indeed, the original drafts were expressly rejected because they overlapped with management positions in the legal area.

Given these factors, the new Counsel Specifications, understandably, depart from the typical job and class specifications that have been the focus of prior Commission reclassification appeals. In addition, the degree of overlap from one Counsel job title to another . . . is much more pronounced than found in most other class specifications.

Accordingly, the Commission reviewed this reclassification appeal under a slightly modified paradigm tailored to resolve the ambiguities in the unique terminology used and to fit that terminology into a workable means to differentiate the work performed by each of the three Counsel job titles. In brief, the Commission has applied a three-prong test to distinguish the job performed by a Counsel III: (a) the Counsel III must have the "Knowledge Education and Experience" as well as the additional requirements described for a Counsel III in the section of the specification entitled "Incumbents are required to

have the following at the time of hire”; (b) a Counsel III must have the “distinguishing characteristic” as THE most expert and experienced attorney in the agency in a specific area of expertise essential to a core mission of the agency; and (c) the Counsel III must perform, in the aggregate, at least a majority of the time, duties listed in the Counsel III class specifications under “Supervision Exercised”, “Additional Functions Performed”, “Additional Key Accountabilities” and “Relationships with Others”, with the “Supervision Received” by a Counsel III.

In applying the “distinguishing characteristic” criterion, the Commission will consider the significance of the area of expertise to the core mission of the agency and the degree of specialization involved. Generalized expertise, such as knowledge of administrative law or trial practice, would be less likely to meet the “distinguishing characteristic” criterion than, say, a subject-specific expertise, such as the automobile insurance market expertise held by the Appellant in this case. In addition, the Commission would consider the frequency with which the agency (or a person outside the agency) relies on that expertise, i.e., is it sporadic or regular and sustained and is it current. Although some regular level of work above de minimus would be expected in the area of expertise, the Commission does not construe the Counsel III specification to require that the employee must be working in the area of expertise more than 50% of the time; that threshold can be met so long as the aggregate duties performed a majority of the time involve any combination of the duties covered by the Counsel III job description as noted herein. Finally, in view of the unusual level of overlap between Counsel II and Counsel III, and the ambiguity in the language used in the specification that purports to “distinguish” those duties, the fact that some of the duties may describe work that can be done by either a Counsel II or Counsel III, the Commission will not exclude from the calculation of the over 50% paradigm work solely because it fits both categories, but will consider all of the facts presented on a case-by-case basis.

Since the Thompson Decision, the Commission has decided four other Counsel Series reclassification appeals.

- In Rubin v. HRD, 30 MCSR 8 (2017) the Commission allowed the Appellant’s appeal for reclassification to a Counsel III, finding that she was the Division of Insurance “go to” expert in several areas of insurance law and performed those duties, along with others, at the Counsel III level a majority of her time.
- In Phelan v. Division of Insurance, 30 MCSR 45 (2017), the Commission upheld the denial of those Appellants’ appeals for reclassification of their positions from Counsel II to Counsel III, finding that they did not meet the Commission’s modified test for reclassification to the newly created Counsel III position.

- In Tannenbaum v. Department of Revenue, 30 MCSR 167 (2017), the Commission upheld the denial of a request for reclassification from Counsel I to Counsel II. Although the Appellant had over ten years of experience as a Counsel I, her duties had not expanded to include any Counsel II-specific tasks, she was not handling cases of particularly more complexity than others, she had one of the largest backlogs on the staff, and did not possess any specialized expertise in any core area of practice.
- In Duvall-Paprocki v. Department of Revenue, 29 MCSR 188 (2017), the Commission denied an appeal for reclassification from Counsel I to Counsel II. Although the Appellant had seven years' experience as a Counsel I and performed with greater efficiency, and productivity her duties had not changed or become particularly more specialized or complex and still required supervision over non-routine matters. In addition, she lacked supervisory responsibility which, for the particular unit to which she was assigned, DOR had consistently specified was a required duty for all Counsel IIs.

ANALYSIS

Atty. Walleigh has proved that his work has evolved from an entry-level Counsel I position into a Counsel II level job. After five years with the DHCD's OGC, he has assumed the responsibility as the primary, lead attorney for the DHS, one of the key parts of the DHCD, a function that he mostly inherited from the Counsel II who had trained and mentored him since he began his employment with OGC. Atty. Walleigh has developed into the "go to" attorney for virtually all DHS legal matters, which now includes the EA program that was his original area of responsibility and which is the largest program from a budgetary viewpoint within the DHCD, as well as the HB and RAFT programs, along with other ancillary duties as the DHCD public information officer and responsibility to handle or monitor DHCD litigation across the

Commonwealth in his area of expertise. In performing these duties, Atty. Walleigh must regularly apply his expertise in the exercise of his considerable discretion in decision-making. He generally acts independently with respect to most of his duties, and receives only minimal supervision from OGC Chief Counsel in performing these core functions of his job..

Thus, under the facts of his case, Mr. Walleigh meets the Commission’s modified test for reclassification under the Counsel Series Class Specification: (1) he possesses the minimum Counsel II entry requirements – a JD degree, three years of experience and membership in the Massachusetts Bar; (2) his specialized expertise as the “go to” legal advisor to the DHS satisfies the requirements of the “Distinguishing Characteristics” of a Counsel II for a higher and broader level of knowledge related to a core agency mission, something that is neither expected of, or within the capability of the entry-level Counsel I; and (3) the reliance by DHS senior staff on his specialized expertise as the lead counsel in handling EA, HB, RAFT, along with providing expert advice and drafting of other legal documents regarding the law, regulations, policy, proposed legislation and other issues affecting DHS, which alone, involves more than 60% of his time, plus his specific tasks relating to handling confidential information as the OGC public records officer and as the OGC member of the “Chapter 55” task force (another 20% of his time), shows that, in the aggregate, every one of the Counsel II-specific duties (save for not performing as a formal, direct supervisor, which is an optional duty under the revised Counsel II specifications and in the OGC) are an integral and major part of his job.

Indeed, in comparing the duties of a Counsel I and Counsel II, I find it significant that the Counsel Series Class Specifications “Distinguishing Characteristics” expressly provide that the all of the duties of a Counsel I are also duties at the Counsel II level, which only reinforces the conclusion that, if anything, “overlapping duties” are to be less critical to an assessment of

whether an attorney is performing at Counsel I or Counsel II that it would be in making the comparison of Counsel II to Counsel III. Rather, in meeting the “50+%” threshold for distinguishing between Counsel I and Counsel II, the time spent on the specific “additional” duties, while relevant, is not necessarily determinative, so long as the attorney can establish that, in the aggregate (a) the need for his/her specialized agency-specific expertise, (b) more frequent handling of complex issues and increased collaboration and interaction with those outside the OGC, per se, and (c) the lower level of oversight received, are brought to bear in at least a majority of all of the work he/she performs. This view seems to be the most rational way to apply the new Counsel II specification in a manner consistent with what appears to be its intent:

At [the Counsel II] level, incumbents are expected to perform the duties described for Level I, but generally will have more experience and expertise, handle more complex cases and collaborate and interact with others outside of the agency more often. At this level, incumbents may receive less supervision than incumbents at Level I and may also exercise greater independence in decision making. (Exh. 10, emphasis added)

Finally, it bears notice that most of the duties that Atty. Walleigh now performs were inherited from his former mentor, a Counsel II and that attorney, as well as virtually every other OGC witness who testified before the Commission uniformly, confirmed that Atty. Walleigh had the agency-specific expertise and the experience and independence that characterized the work of a Counsel II in the DHCD’s OGC. .

Thus, this is not a case in which Atty. Walleigh simply “mastered the job of a Counsel I”, which was the scenario in those cases in which Commission found that reclassification from Counsel I to a Counsel II was not warranted. See Duvall-Paprocki v. Department of Revenue, 30 MCSR 188 (2017) Tannenbaum v. Department of Revenue, 30 MCSR 167 (2017). Rather, here, Atty. Walleigh clearly grew from an entry-level Counsel I and stepped directly into the shoes of the Counsel II from whom he gained the specialized expertise needed to achieve that objective.

In sum, by a preponderance of evidence, Atty. Walleigh has demonstrated that he meets the Commission's standards for reclassification of his position from Counsel I to Counsel II.

CONCLUSION

Accordingly, for the reasons stated above, the appeal of the Appellant, Adrian Walleigh under Docket No. C-17-007, is *allowed*.

Civil Service Commission
/s/ Paul M. Stein
Paul M. Stein, Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman [ABSENT], Tivnan & Stein, Commissioners) on December 21, 2017.

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 a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 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. 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:
Adrian Walleigh, Esq. (Appellant)
Christopher Groll, Esq. (for Respondent)
John Marra, Esq. (HRD)