

Issue: Two Group III Written Notices with termination (fraudulent acts, and falsification of records); Hearing Date: 07/08/03; Decision Issued: 07/23/03; Agency: DOC; AHO: David J. Latham, Esq.; Case No. 5737 **Judicial Appeal: Appealed to the Circuit Court in Pulaski County on 08/15/03; Outcome: dismissed [CL03000158 00]**



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

DIVISION OF HEARINGS

DECISION OF HEARING OFFICER

In re:

Case No: 5737

Hearing Date: July 8, 2003
Decision Issued: July 23, 2003

PROCEDURAL ISSUE

Due to the availability of parties and representatives, the hearing could not be docketed until the 46th day following appointment of the hearing officer.¹

APPEARANCES

Grievant
Attorney for Grievant
Five witnesses for Grievant
Observer for Grievant
Regional Director

¹ § 5.1 Department of Employment Dispute Resolution (EDR) *Grievance Procedure Manual*, effective July 1, 2001, requires that a grievance hearing must be held and a written decision issued within 30 calendar days of the hearing officer's appointment unless just cause is shown to extend the time limit.

Two Advocates for Agency
Five witnesses for Agency

ISSUES

Did the grievant's actions warrant disciplinary action under the agency's Standards of Conduct? If so, what was the appropriate level of disciplinary action for the conduct at issue?

FINDINGS OF FACT

The grievant filed a timely grievance from two Written Notices. He received a Group III Written Notice issued for fraudulent acts.² He also received a Group III Written Notice for falsification of records.³ Grievant's employment was terminated as part of the two disciplinary actions. Following failure to resolve the grievance, the agency head qualified the grievance for a hearing.⁴ The Department of Corrections (Hereinafter referred to as agency) has employed grievant for 25 years; he was a superintendent at the time of his dismissal.

During the time period at issue herein, superintendents of corrections facilities were entitled to housing provided by the agency as part of their compensation package.⁵ Grievant had been leasing a 1,000 sq. foot house since November 1, 1994; the contract was due to expire on October 31, 1998. As his three children were growing and needed more privacy, he determined that he needed a larger home. In January 1997, he began looking for available lease properties in the area. In early 1998, grievant located a larger house for sale that he felt would be suitable for his family.

Grievant's mother was aware of his search for new housing. She offered to purchase the house and lease it to the agency for occupancy by grievant. However, grievant's mother lived with grievant approximately four months of each year during the summer months. Grievant knew that policy prohibits leasing property from someone who lives in the residence for a significant part of the year. Grievant then told his sister about the property and suggested that she purchase the house as an investment and lease it to the agency for occupancy by grievant. Because grievant's sister lives out of state and visits grievant infrequently, it appeared to grievant that her ownership of the house would not violate policy. Grievant's sister made an offer for the house that was accepted. She and the sellers signed a purchase contract in March 1998.⁶ Closing and transfer of the property occurred on May 27, 1998.

² Exhibit 1. Written Notice, issued April 9, 2003.

³ Exhibit 1. Written Notice, issued April 9, 2003.

⁴ Exhibit 2. Grievance Form A, filed April 15, 2003.

⁵ Exhibit 9, pp. 103-116. Agency Procedure No. 9-24, *Staff Housing, BOQ's, and Trailers*, May 15, 1996.

⁶ Exhibit 9, pp.8-18. *Residential Contract of Purchase*, signed by grievant's sister, March 27, 1998.

On February 26, 1998, grievant wrote a check to a realtor in the amount of \$500.00 as a deposit on behalf of his sister. During March and April 1998, grievant gave his sister three checks totaling \$33,000.00, and on May 27, 1998, a check for \$2,504.36 for "Real Estate Closing."⁷ The cash payment provided by grievant's sister at settlement was \$35,504.36 – the exact total of the four checks written by grievant between March and May 1998.⁸

In mid-May 1998, grievant wrote to his regional director, informing him of the need for a larger residence and that he had found one that met his needs. He provided details about the house and identified the landlord by name but did not disclose that she was his sister.⁹ An assistant state property manager from the Department of General Services (DGS) notified grievant in early June that he would have to provide strong documentation of the steps he had taken to find the house, justification for the house, and comparable market data to show that the search examined all possibilities.¹⁰ Grievant promptly provided a written response listing five realtors he had contacted about available properties.¹¹ During July and August, DGS satisfied itself that all was in order and negotiated a lease arrangement with grievant's sister on August 20, 1998.¹² The agency and grievant's sister then signed a five-year lease to be effective on November 1, 1998.¹³

During this entire process, grievant's sister was not involved except to the extent of signing paperwork, some telephone calls, and writing checks. Grievant selected the house, determined what rent would be charged to the state, and handled other details relating to the transaction.¹⁴ Grievant's sister never saw the home prior to purchase and relied fully on grievant's representations as to the house, its value, its condition, and the wisdom of making such an investment.

During the period from June through September 1998, grievant personally paid his sister monthly rent checks for the house even though the lease was not effective until November 1, 1998.¹⁵ During September 1998, grievant notified his bank of a new address – the address of the house purchased by his sister.¹⁶ Following grievant's move to the house owned by his sister, he has lived there

⁷ Exhibit 7NN. Check No. 1239, dated March 4, 1998 - \$10,000.00
Check No. 1242, dated March 13, 1998 - \$20,000.00, for "House."
Check No. 1259, dated April 7, 1998 - \$ 3,000.00, for "House."
Check No. 1319, dated May 27, 1998 - \$ 2,504.36, for "Real Estate Closing."

⁸ Exhibit 7OO. Settlement Statement.

⁹ Exhibit 7P. Letter from grievant to regional director, May 13, 1998.

¹⁰ Exhibit 7Q. Memorandum from DGS assistant property manager to grievant, June 9, 1998.

¹¹ Exhibit 7S. Memorandum from grievant to DGS assistant property manager, June 12, 1998.

¹² Exhibit 7U. Memorandum from DGS assistant property manager to grievant, August 20, 1998.

¹³ Exhibit 7L. Deed of Lease, August 28, 1998.

¹⁴ Exhibit 8. Item 4, Proffered testimony of grievant's sister, May 30, 2003.

¹⁵ Exhibit 7NN. Check Nos. 1340, 1353, & 1382.

¹⁶ Exhibit 7MM. Grievant's bank statement, September 1-30, 1998.

continuously since 1998. During the four and one half years until his dismissal, the agency made lease payments to grievant's sister on a monthly basis. Grievant's sister has applied the lease payments to make monthly mortgage payments with any excess being applied to reduce the principal amount of the mortgage.

In July 2002, the agency received an anonymous letter from "A Concerned Tax Payer" who claimed to be a friend of a friend with detailed knowledge of the grievant's personal situation. The letter alleges, among other things, that grievant is the actual, beneficial owner of his sister's house, that he provided the entire down payment, that upon his retirement grievant intends to sell the house and retain any profit from the sale, and that he falsified a document relating to the size of the house. This letter prompted an investigation that ultimately led to grievant's discipline and removal from employment.

Between 1992 and 1998, grievant had a sporadic, intimate affair with a female clerical employee of the corrections unit of which he was superintendent.¹⁷ Both he and the female employee were married during this affair, but not to each other. Grievant claims that he ended the relationship; the female employee contends she broke off the relationship when grievant's wife suddenly disappeared. Although the female employee denies sending the anonymous letter, only she and grievant knew the details contained in the letter.

APPLICABLE LAW AND OPINION

The General Assembly enacted the Virginia Personnel Act, Va. Code § 2.2-2900 et seq., establishing the procedures and policies applicable to employment within the Commonwealth. This comprehensive legislation includes procedures for hiring, promoting, compensating, discharging and training state employees. It also provides for a grievance procedure. The Act balances the need for orderly administration of state employment and personnel practices with the preservation of the employee's ability to protect his rights and to pursue legitimate grievances. These dual goals reflect a valid governmental interest in and responsibility to its employees and workplace. Murray v. Stokes, 237 Va. 653, 656 (1989).

Code § 2.2-3000 sets forth the Commonwealth's grievance procedure and provides, in pertinent part:

It shall be the policy of the Commonwealth, as an employer, to encourage the resolution of employee problems and complaints . . .
To the extent that such concerns cannot be resolved informally, the grievance procedure shall afford an immediate and fair method for

¹⁷ Grievant avers that the affair lasted until 2000. There is no independent evidence to support either grievant's recollection or the recollection of the female.

the resolution of employment disputes which may arise between state agencies and those employees who have access to the procedure under § 2.2-3001.

In disciplinary actions, the agency must show by a preponderance of evidence that the disciplinary action was warranted and appropriate under the circumstances.¹⁸

To establish procedures on Standards of Conduct and Performance for employees of the Commonwealth of Virginia and pursuant to § 2.2-1201 of the Code of Virginia, the Department of Human Resource Management promulgated Standards of Conduct Policy No. 1.60 effective September 16, 1993. The Standards provide a set of rules governing the professional and personal conduct and acceptable standards for work performance of employees. The Standards serve to establish a fair and objective process for correcting or treating unacceptable conduct or work performance, to distinguish between less serious and more serious actions of misconduct and to provide appropriate corrective action. Section V.B.3 defines Group III offenses to include acts and behavior of such a serious nature that a first occurrence should normally warrant removal from employment.¹⁸

The Department of Corrections, pursuant to Va. Code § 53.1-10, has promulgated its own Standards of Conduct and Performance, which is modeled very closely on the DHRM Standards of Conduct. Group III offenses include acts and behavior of such a serious nature that a first occurrence normally should warrant removal from employment. Group III offenses include falsification of any records or other official state documents.¹⁹ The policy also states:

The offenses listed in this procedure are intended to be illustrative, not all-inclusive. Accordingly, an offense that in the judgment of the agency head, although not listed in the procedure, undermines the effectiveness of the agency's activities or the employee's performance, should be treated consistent with the provisions of the procedure.²⁰

Fraudulent acts

The agency alleges that grievant misrepresented his sister as a private property owner and landlord. The evidence does not support this allegation. Grievant represented that he had learned of a person who would be willing to lease a house to the agency. Grievant's sister is, in fact, a private property owner and was willing to become a landlord. Therefore, *outright*

¹⁸ § 5.8, Grievance Procedure Manual, *Rules for the Hearing*, Effective July 1, 2001.

¹⁹ Exhibit 5. Section 5-10.17A & B.2, Department of Corrections Procedure Number 5-10, *Standards of Conduct*, June 15, 2002.

²⁰ Section 5-10.7C *Ibid*.

misrepresentation has not been demonstrated.²¹ The agency points out that grievant's sister did not actually own the house until after grievant referred to her as a landlord.²² This is a minor issue since grievant's sister had been under contract to purchase the house since March 27, 1998. By May 13, the loan had been approved and it was clear that grievant's sister would be the new owner on May 27, 1998. Grievant's appellation of landlord was merely anticipatory and did not misrepresent in any meaningful way.

The agency considers grievant's offenses to be a violation of its Standards of Ethics and Conflict of Interest policy.²³ The policy provides that an employee on behalf of the department may not participate in the sale, lease or exchange of real property if he has a real interest in the property.²⁴ The policy also prohibits employees from having a personal interest in either a contract or transaction with the Department.²⁵ The pivotal term in these prohibitions is "personal interest," which the policy defines to include a liability accruing to an employee by reason of personal liability on behalf of a business entity.²⁶ "Business entity" is not

²¹ However, see p. 7 for discussion of grievant's duty to disclose his sibling relationship. NOTE: No conclusion is drawn as to whether grievant may be guilty of criminal misrepresentation as defined in Va. Code § 18.2-498.3. "Any person, in any commercial dealing in any matter within the jurisdiction of any department or agency of the Commonwealth of Virginia, or any local government within the Commonwealth or any department or agency thereof, who knowingly falsifies, conceals, misleads, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false, fictitious or fraudulent statement or entry, shall be guilty of a Class 6 felony. (1980, c. 472.)" A grand jury has brought fraud charges against grievant but the charges have not yet been adjudicated. *Richmond Times-Dispatch*, June 13, 2003.

²² Grievant referred to his sister as the landlord on May 13, 1998 (Exhibit 7P); transfer of the deed to grievant's sister occurred two weeks later on May 27, 1998.

²³ NOTE: The agency proffered two versions of this policy – DOC Procedure Number 5-4, *Standards of Ethics and Conflict of Interest*. The current version, dated June 1, 2002, superseded the version dated January 11, 1995. Because the offenses occurred in 1998, the 1995 version is applicable in this case; all citations and references to this policy are from the January 11, 1995 version.

²⁴ Exhibit 6. Section 5-4.10, DOC Procedure Number 5-4, *Standards of Ethics and Conflict of Interest*, January 11, 1995, states, "No employee on behalf of the Department may participate in the sale, lease or exchange of real property when the employee has a real interest in the property."

²⁵ Exhibit 6. Section 5-4.8A, *Ibid.*, states, "No employee of the Department shall have a personal interest in a contract with the Department, other than their implied contract of employment." Section 5-4.12A, states, "Employees having a personal interest in any transaction involving the Department shall disqualify themselves from acting on behalf of the Department in such transaction."

²⁶ Exhibit 6. Section 5-4.5, *Ibid.*, defines "personal interest" as "a personal and financial benefit or liability accruing to an officer or employee or to such person's spouse, or any other relative who resides in the same household. Such interest shall exist by reason of (i) ownership in real or personal property, tangible or intangible; (ii) ownership in a corporation, firm, partnership or other business entity; (iii) income from a corporation, firm, partnership or other business entity; or (iv) personal liability on behalf of a corporation, firm, partnership or other business entity; however, unless the ownership interest in an entity exceeds three percent of the total equity of such entity, or the liability on behalf of an entity exceeds three percent of the total assets of such entity, or the annual income and property or use of such property from such entity exceeds \$10,000 or may

defined in the policy but the Code of Virginia provides a definition in Title 2.2. Administration of Government, that makes clear that a business entity includes an individual carrying on a business, whether or not for profit.²⁷

Grievant's sister purchased a residence for the purpose of acting as a landlord and renting the property with the long-term intent to treat the property as an investment. Accordingly, it may reasonably be concluded that grievant's sister is an individual carrying on the business of investing in rental property and, therefore, constitutes a business entity. The remaining question is whether grievant had a personal interest in either the lease transaction or the lease contract. For the following reasons, it is concluded that grievant did have a personal interest in both the transaction and the contract.

It is undisputed that during the spring of 1998, grievant transferred funds to his sister in the amount of \$35,504.36 – the precise amount required to be paid in settlement at the closing for the house on May 27, 1998. Three of the four checks written by grievant include notations that the purpose of the funds was either “House” or “Real Estate Closing.” Thus, by transferring this money to his sister, grievant was forgoing the use of the money and incurred a significant personal liability. Grievant incurred this personal liability on behalf of a business entity (his sister as landlord) and such liability therefore constitutes a personal interest. Based upon the appraised value of the property in May 1998 (\$108,500) minus the amount borrowed against the property (\$65,500), the equity in the property at the time of purchase was \$43,000. Grievant provided 82.5 percent of that amount and therefore incurred a liability on behalf of his sister's business entity substantially exceeding the three-percent threshold necessary to constitute a “personal interest.”

Because grievant has a personal interest in his sister's business entity, which has a contract with the agency, his personal interest constitutes a “personal interest in a contract,” as that term is defined in agency Procedure Number 5-4. For the same reason, grievant had a “personal interest in a transaction” - the transaction of negotiating the lease. Evidence of grievant's involvement in the transaction is found in his May 13, 1998 letter to the regional director (Exhibit 7P), in which he notes that he had discussed a proposed monthly lease payment of \$675 with the landlord (his sister).

Grievant correctly notes that during the entire process in 1998, he never stated that the landlord was not his sister. However, by the same token, grievant never disclosed this fact to the agency or to DGS. Procedure 5-4 requires an employee to disqualify himself from acting on behalf of the agency in any

reasonably be anticipated to exceed \$10,000, such interest shall not constitute a ‘personal interest’ within the meaning of this chapter.”

²⁷ Va. Code § 2.2-3101 states, “‘Business’ means a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, trust or foundation, or any other individual or entity carrying on a business or profession, whether or not for profit.”

transaction in which he has a personal interest. Since grievant had a personal interest in the transaction, he had an affirmative duty and obligation to disqualify himself by notifying the department of the sibling relationship between he and the landlord. Grievant's failure to disqualify himself violated Section 5-4.12 of the policy. As an English jurist once said, "Fraud may consist as well in the suppression of what is true as in the representation of what is false."²⁸

Grievant's deception went beyond merely failing to disclose his consanguine relationship. During the investigation of this matter, grievant denied investing any personal money in the property.²⁹ When investigation revealed that grievant had transferred over \$35,000 to his sister, grievant averred that he was repaying school tuition loans. However, grievant had written on three of the four checks that the purpose was for "house" and "real estate closing." If grievant had simply been repaying a loan, it is reasonable to assume that he would have written "repayment of loan" or similar words.

Moreover, grievant's sister admitted under oath that she had loaned grievant tuition money several years ago but that the amount was only a few thousand dollars, not even close to \$35,000. Grievant has not shown that he borrowed the \$35,000 from a lender in 1998; it must therefore be presumed that he had liquid assets of at least this amount or more. Thus, absent any showing to the contrary, grievant had the wherewithal and ability to have repaid any outstanding tuition loans prior to 1998. From the totality of the evidence, it can reasonably be inferred that grievant transferred \$35,000 to his sister for the sole purpose of facilitating purchase of the house into which grievant moved in the summer of 1998. During the hearing, grievant admitted that he had not been truthful when asked about this during the investigation. He maintained that he was attempting to protect his sister. However, it is more likely than not that grievant's attempt at concealment was motivated by his knowledge that the transaction and contract could not withstand careful scrutiny.

Grievant's former paramour testified that grievant had told her details about the transaction as it developed during 1998. She asked grievant whether his plan was fraudulent and he responded, "Only if you get caught." From the testimony and demeanor of this witness during the hearing, it is apparent that she still harbors strong (albeit mixed) feelings for grievant. Because she had full knowledge about grievant's plan, she could have only have gotten such information from him. Grievant did not deny making the above statement; he testified only that he could not recall whether he made the statement.

From the testimony of both grievant and his sister, it is evident that grievant carefully evaluated Procedure Number 5-4 before he suggested to his sister that she purchase the property. His sister said grievant assured her that he had reviewed the policy and determined that because she would not live in

²⁸ Justice Heath, *Tapp v. Lee* (1803), 3 Bos & Pull, 371.

²⁹ Exhibit 7C. Investigative Interview, November 13, 2002.

the house, and the rental payments would be less than \$10,000 per annum, there was no problem.³⁰ Thus, grievant carefully planned to have his sister purchase the house in order to make it appear that he had merely located a homeowner and referred her to the agency. However, the reality is that grievant selected the house, determined what rent would be charged, and attended to all other details of the transaction. Grievant's sister purchased the house without ever seeing it, did not attend the closing, and acted only as a conduit, signing necessary paperwork and writing checks with money provided by grievant. Moreover, grievant's sister testified that there is a verbal agreement that she will give grievant his capital investment back whenever the house is sold.³¹ Grievant also told her that he wanted the option to buy the home back from her.

Corroboration of grievant's dominant role in arranging for purchase of the house was provided by the sellers of the house. Their realtor had told them that grievant was purchasing the house. The sellers learned that grievant's sister had purchased the house only after they received the deed of purchase.³² They had also observed grievant painting the house's porch in May 1998 prior to closing.

After an investigator interviewed grievant's sister in November 2002, she became concerned and called grievant. Grievant told her that the funds he had sent her in 1998 were "repayment of loans." The sister agreed to back up grievant and in a February 2003 interview, she parroted grievant's cover story to the investigator. Subsequently, grievant's sister has retained a criminal attorney to protect her own interests. In a written proffer of testimony (Exhibit 8) she has recanted the cover story and acknowledges that her brother conceived and implemented the entire plan to have her act as the straw woman in both the transaction and contract. Grievant's sister testified during the hearing and affirmed that the written proffer of testimony is true and accurate. Her written proffer and testimony are consistent with both the testimony of grievant's former lover and the circumstantial evidence (checks).

Accordingly, the agency has demonstrated by a preponderance of evidence that grievant violated Procedure 5-4. However, even if a reviewer were to conclude that grievant did not violate the technical proscriptions of 5-4, the evidence is more than sufficient to conclude that grievant committed an offense that undermines the effectiveness of agency activities. If grievant had truly believed that his plan did not violate agency policy, there was no need for him to conceal the fact that his sister was purchasing the house. More significantly, when the matter came under investigation, there was no need for grievant to encourage his sister to lie about the fact that grievant had funded more than 35 percent of the purchase price. The fact that he acted deceitfully demonstrates that grievant felt that he had to hide the true nature of the transaction.

³⁰ Exhibit 8. Item 4, Proffered testimony of grievant's sister, May 30, 2003.

³¹ Exhibit 8. Item 9, Proffer of Testimony from grievant's sister, May 30, 2002. (Grievant maintains that his sister does not owe him any money.)

³² Exhibit 7F. Interview with seller, September 25, 2002.

The agency characterized grievant's actions as dishonest, unprofessional and poor judgement. The evidence amply supports a finding of dishonesty and unprofessional behavior. However, grievant's judgement was more than poor – it was unacceptable. As the head of a correctional facility, grievant's behavior is expected to set an example for employees at the facility. Grievant already enjoyed the very valuable perquisite of free housing – a benefit afforded to very few state employees. But grievant was not satisfied and attempted to parlay his housing arrangement into something that would eventually result in future financial benefit. The agency reasonably concluded that this undermined the moral tone that a facility superintendent should set. The agency's conclusion that grievant committed a Group III offense is appropriate.

Falsification of records

Black's Law Dictionary defines "falsify" as, "To counterfeit or forge; to make something false; to give a false appearance to anything." The word "falsify" may be used to mean being intentionally or knowingly untrue, made with intent to defraud. *Washer v. Bank of American Nat. Trust & Savings Ass'n*, 21 Cal2d 822, 136 P.2d 297, 301."

The agency contends that grievant falsified his memorandum of June 12, 1998 to headquarters (Exhibit 7S) because one of the five realtors stated that grievant did not contact him during the period from January 1997-August 1998. The available evidence consists of grievant's assertion that he did contact the realtor's agency, and the realtor's statement that he does not recall the grievant contacting him. The realtor's statement was made in September 1998.³³

The agency has not borne the burden of proving that grievant falsified information for the following reasons. First, the realtor, who has been in business for 39 years, admitted that he finds it taxing to recall conversations from the past. Second, the realtor could not recall conversations he had with the DGS assistant state property manager. Third, during his testimony, the realtor appeared to confuse the agency with a different state agency that has no connection to this case. Fourth, the realtor employed at least seven employees during the 1997-1998 period. Thus, grievant may have spoken with some other employee in the office rather than the owner. Fifth, the realtor admitted that he and grievant are not on the best of terms. Accordingly, while it is possible that grievant did not contact the realtor, the testimony of the agency's only witness was insufficient to prove the negative. Moreover, when DGS learned that grievant might not have contacted the realtor, neither DGS nor DOC was concerned enough to further investigate the matter.

³³ Exhibit 7Y. Memorandum from DGS, September 22, 1998.

DECISION

The disciplinary action of the agency is modified.

The Group III Written Notice issued on April 9, 2003 for falsifying records is **RESCINDED**.

The Group III Written Notice issued on April 9, 2003 for fraudulent acts and the removal of grievant from employment are **UPHELD**.

The disciplinary action shall remain active pursuant to the guidelines in Section VII.B.2 of the Standards of Conduct.

APPEAL RIGHTS

You may file an administrative review request within **10 calendar** days from the date the decision was issued, if any of the following apply:

1. If you have new evidence that could not have been discovered before the hearing, or if you believe the decision contains an incorrect legal conclusion, you may request the hearing officer either to reopen the hearing or to reconsider the decision.
2. If you believe the hearing decision is inconsistent with state policy or agency policy, you may request the Director of the Department of Human Resource Management to review the decision. You must state the specific policy and explain why you believe the decision is inconsistent with that policy.
3. If you believe that the hearing decision does not comply with the grievance procedure, you may request the Director of EDR to review the decision. You must state the specific portion of the grievance procedure with which you believe the decision does not comply.

You may request more than one type of review. Your request must be in writing and must be **received** by the reviewer within 10 calendar days of the date the decision was issued. You must give a copy of your appeal to the other party. The hearing officer's **decision becomes final** when the 10-calendar day period has expired, or when administrative requests for review have been decided.

You may request a judicial review if you believe the decision is contradictory to law.³⁴ You must file a notice of appeal with the clerk of the circuit court in the jurisdiction in which the grievance arose within **30 days** of the date when the decision becomes final.³⁵

[See Sections 7.1 through 7.3 of the Grievance Procedure Manual for a more detailed explanation, or call EDR's toll-free Advice Line at 888-232-3842 to learn more about appeal rights from an EDR Consultant]

David J. Latham, Esq.
Hearing Officer

³⁴ An appeal to circuit court may be made only on the basis that the decision was *contradictory to law*, and must identify the specific constitutional provision, statute, regulation or judicial decision that the hearing decision purportedly contradicts. *Virginia Department of State Police v. Barton*, 39 Va. App. 439, 573 S.E.2d 319 (2002). See also *Virginia Department of Agriculture and Consumer Services v. Tatum*, 2003 Va. App LEXIS 356, which holds that Va. Code § 2.2-3004(B) grants a hearing officer the express power to decide de novo whether to mitigate a disciplinary action and to order reinstatement.

³⁵ Agencies must request and receive prior approval from the Director of EDR before filing a notice of appeal.