

Issue: Group III Written Notice with 3-day suspension and transfer (engaging in conduct which undermines agency's effectiveness); Hearing Date: 03/04/04; Decision Issued: 03/16/04; Agency: VSP; AHO: David J. Latham, Esq.; Case No. 563



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

DIVISION OF HEARINGS

DECISION OF HEARING OFFICER

In re:

Case No: 563

Hearing Date: March 4, 2004
Decision Issued: March 16, 2004

PROCEDURAL ISSUES

Grievant requested eight forms of relief in his grievance, only five of which a hearing officer has the authority to grant. A hearing officer does not have authority to: transfer an employee¹; reimburse grievant for costs and attorney fees² or; direct the agency to revise a performance evaluation or merit rating.³

APPEARANCES

Grievant
Attorney for Grievant
Seven witnesses for Grievant
Division Commander

¹ § 5.9(b)2, Department of Employment Dispute Resolution (EDR) *Grievance Procedure Manual*, effective July 1, 2001.

² § 5.9(b)1, *Ibid.*

³ § 5.9(b)4, 6 & 7, *Ibid.*

Representative for Agency
Four witnesses for Agency
Observer for EDR

ISSUES

Did grievant's conduct warrant disciplinary action under the 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 appeal from a Group III Written Notice issued for engaging in conduct that undermines the effectiveness of the Department's activities.⁴ As part of the disciplinary action, grievant was suspended for three days and transferred to a different division in another location. Following failure of the parties to resolve the grievance at the third resolution step, the agency head qualified the grievance for a hearing.⁵ The Virginia State Police (VSP) (Hereinafter referred to as "agency") has employed grievant for 17 years; he is a special agent.

The agency participates in several task forces throughout the Commonwealth for various purposes. In March 2003, grievant was assigned to a regional narcotics enforcement task force composed of representatives from three adjacent city police forces, the area commonwealth's attorney's organization, and the Virginia State Police. The total number of people on the task force varied from five to seven, depending on availability from the two largest city police forces. The five agency heads jointly signed a Memorandum of Understanding (MOU) detailing the purpose and operational aspects of the task force.⁶ The task force is governed by a Command Group consisting of the police chiefs and the VSP's Special Agent in Charge of Criminal Investigation and Drug Enforcement. The task force is supervised by an Advisory Committee (appointed by Command Group members) that establishes operational policies. The MOU specifies that the task force member from the largest of the three participating cities shall be the Task Force Coordinator. The Coordinator is "responsible for day-to-day operation of the task force and *supervision of the task force investigators.*"⁷ (Italics added)

When the previous VSP representative left the task force, grievant was assigned to replace him beginning on March 25, 2003. The existing Task Force Coordinator knew of grievant, had heard that his work ethic was not favorable, and would have preferred that grievant not be assigned to the task force. He told

⁴ Exhibit 2. Written Notice, issued November 24, 2003.

⁵ Exhibit 1. Grievance Form A, filed December 16, 2003.

⁶ Exhibit 4. Regional Narcotics Enforcement Task Force *Memorandum of Understanding*, FY 00/01

⁷ Exhibit 4. Section III.C, *Ibid.*

grievant on his first day at the task force that he did not think grievant “would work out.” He nevertheless approached grievant’s assignment to the task force with an open mind and attempted to work with him.

As a special agent, grievant had often performed “undercover” work, dressing to blend in with those he contacted. During warmer months, grievant liked to wear shorts to work. On his first day in the office, the Coordinator advised grievant that task force policy permitted investigators to wear clothes that facilitate blending in, but that shorts were not allowed at any time. Grievant wore shorts on multiple occasions during June 2003 when he was working in the office.

In mid-April 2003, grievant was directed to attend a training class at the agency’s training academy in Richmond. Grievant knew that the class was scheduled to last until 4:00 p.m. on April 15, 2003.⁸ The training instructor gave the class a 15-minute break beginning around 2:15 p.m. Grievant and another agent who had driven to the class together left the academy at the start of this break and drove back to their home area; they did not attend the last session of the day. The training was scheduled to end at 4:00 p.m. but actually ended at about 4:45 p.m. because of the quantity of training material. Grievant left early because his wife was out of town and grievant had to pick up his children from school. Grievant did not advise the instructor or training coordinator sergeant that he wanted to leave early. Grievant acknowledged during the hearing that he knew he was leaving the training class before it had ended.

On the day grievant began work at the task force office, the Coordinator directed him to attend a training conference from May 5-9, 2003.⁹ When first directed to attend, grievant advised the Coordinator that he had been to this conference on previous occasions and felt there was no benefit to attending again. Grievant told his first sergeant (his VSP direct supervisor) the same thing; the sergeant told grievant that he must follow the Coordinator’s instructions. The Coordinator told grievant that some of the material was new and that grievant should attend. Grievant advised the Coordinator that he could not attend the session on Friday, May 9, 2003 because he was required to be in court on that day. Grievant attended the conference on the first two days but left early each day; he did not attend the last three days of the conference.

Task force expenses (including cellular telephone service) are funded by contributions from each of the participating agencies.¹⁰ The cellular plan covering task force telephones provides for up to 400 free airtime minutes per month. The task force’s policy is that an investigator may make personal calls on the cellular telephone as long as total monthly usage does not exceed the

⁸ Exhibit 3, p. 46. Memorandum re: *Training, April 15, 2003*. January 13, 2003.

⁹ Exhibit 3, p. 29. Memorandum from Coordinator to VSP lieutenant, July 9, 2003.

¹⁰ Exhibit 4. Section VIII.C, Regional Narcotics Enforcement Task Force *Memorandum of Understanding*, FY 00/01.

monthly airtime limit.¹¹ If an investigator exceeds the limit, he must reimburse all personal calls made on the cellular telephone.¹² Officers who reimburse calls are not disciplined. During the April-May billing month, grievant used 445 minutes of airtime; during the May-June billing month, he used 522 minutes.¹³ As part of his responsibility, the Coordinator reviewed monthly telephone bills. It was grievant's excessive usage of airtime that prompted the Coordinator to review when and where the calls had been made. In doing this, he realized that grievant had been making telephone calls from locations significantly removed from the training and conference sites in April and May.

On July 9, 2003, the Coordinator wrote a memorandum to the VSP lieutenant in charge of criminal investigations in grievant's area (grievant's second level VSP supervisor), expressing concerns about the issues discussed above.¹⁴ Because of the number of concerns the Coordinator had, he elected to have the VSP deal with the situation rather than request grievant to reimburse the personal telephone call expense. After consideration and investigation by supervision, grievant's first sergeant advised him in person on July 28, 2003 that disciplinary action was under consideration for abuse of state time and abuse of cellular telephone usage.¹⁵ Grievant was upset and told the first sergeant that he was going to immediately confront the Coordinator and work it out with him. After grievant left the first sergeant's office at about 4:20 p.m., the first sergeant conferred with the lieutenant, who directed that grievant be ordered not to contact the Coordinator. The first sergeant called and spoke with grievant 35 minutes later and specifically told him not to contact the Coordinator.¹⁶

On the following day, July 29, 2003, grievant went to the Coordinator's office, bringing with him one of the other investigators. He confronted the Coordinator about the charges. Grievant told the Coordinator that he wanted "to come across that desk and rip your fucking head off." He repeatedly called the Coordinator "spineless" and told him, "I don't know how you can sleep at night." There was no physical interaction. After the lieutenant learned about this incident, he directed the first sergeant to immediately remove grievant from the task force.

On August 1, 2003, the first sergeant advised grievant that two additional allegations were being added to the previous charges. First, grievant was charged with violation of agency policy on telephones and violation of task force

¹¹ Exhibit 3, pp 38-39. Memorandum from Coordinator to grievant (and others), April 3, 2003.

¹² NOTE: The task force cellular telephone policy permits personal calls up to the 400-minute-per-month limit. However, the VSP policy for personal long distance calls on agency-owned telephones is more restrictive. It prohibits personal calls except in the event of an emergency. See Exhibit 6. Section 1.c & 2.a, General Order No. 63, *Telephones*, revised April 1, 2003.

¹³ Exhibit 7. Cellular telephone airtime charges for grievant's telephone for the billing periods of April 20 - May 19, 2003, and May 20 - June 19, 2003.

¹⁴ Exhibit 3, pp 29-35. Memorandum from Coordinator to lieutenant, July 9, 2003.

¹⁵ Exhibit 3, pp 36-37. Memorandum to grievant from first sergeant, July 28, 2003.

¹⁶ Exhibit 3, p 10, Memorandum from first sergeant to division commander, August 19, 2003.

policy for telephone use.¹⁷ Second, grievant was charged with speaking discourteously and disparagingly to the Coordinator in front of another employee, being confrontational and verbally threatening, and discussing an investigation after being directly ordered not to talk with anyone about it.¹⁸

APPLICABLE LAW AND OPINION

The General Assembly enacted the 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 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.¹⁹

To establish procedures on Standards of Conduct and Performance for employees of the Commonwealth of Virginia and pursuant to Va. Code § 2.2-1201, the Department of Human Resource Management promulgated Standards of Conduct Policy No. 1.60 effective September 16, 1993. The Standards of Conduct 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

¹⁷ Exhibit 3, pp 66-67. Memorandum to grievant from first sergeant, August 1, 2003.

¹⁸ Exhibit 3, pp 69-70. Memorandum to grievant from first sergeant, August 1, 2003.

¹⁹ § 5.8 Department of Employment Dispute Resolution (EDR), *Grievance Procedure Manual*, effective July 1, 2001.

action. The Department of State Police has promulgated its own Standards of Conduct patterned on the state Standards, but tailored to the unique needs of the Department.²⁰ Section 14 of the policy provides that Group III offenses include engaging in conduct that undermines effectiveness of departmental activities and, disclosure of confidential information to unauthorized persons.²¹

The agency cited six incidents or violations in support of the umbrella offense of engaging in conduct that undermines departmental effectiveness; each is addressed separately below:

Abuse of state time

The agency's Standards of Conduct provides examples of what constitutes abuse of state time. One example is unauthorized time away from the work area. When the first sergeant interviewed grievant on July 28, 2003, grievant stated that he had stayed for the entire April 15, 2003 training class and "thought the class was over."²² However, during the hearing grievant admitted under oath that he left the April 15, 2003 training session with knowledge that the training session had not ended. He also admitted that he did not seek authorization to leave early. Thus, by his own admission grievant committed the Group I offense of abuse of state time. Moreover, grievant's recanting of his earlier statement taints the credibility of his testimony in this case.²³

Grievant was directed to attend a conference from May 5-9, 2003; however, the Coordinator excused grievant from attending the May 9th session because grievant had a mandatory court appearance. Grievant failed to attend the sessions on May 7th and 8th, and attended only part of the sessions on May 5th and 6th. Grievant contends that the Coordinator told him to attend only the sessions he "needed to." The Coordinator maintains that no such exception was mentioned. There is no independent corroboration on this allegation. However, grievant had resisted going to this conference from the beginning and even asked his first sergeant to intercede on his behalf. The first sergeant directed grievant to comply with the Coordinator's instructions. In weighing all of the testimony, it appears more likely than not that grievant was expected to attend the first four days of the session but instead decided on his own to attend only portions of two days of the conference. Grievant's un rebutted testimony is that he performed work relating to investigations when he was not at the conference.

²⁰ Exhibit 4. General Order No. 19, *Separation from the Service and Disciplinary Measures*, Revised October 1, 2002.

²¹ Exhibit 4. Section 14.b. *Ibid.* Group III offenses include, but are not limited to: (20) Engaging in conduct, whether on or off the job, that undermines the effectiveness or efficiency of the Department's activities. This includes actions which might impair the Department's reputation as well as the reputation or performance of its employees.

²² Exhibit 3, p.8. Memorandum from first sergeant to division commander, August 19, 2003.

²³ See also Exhibit 3, p.73. Memorandum from grievant to division commander, August 1, 2003, in which grievant recounts a third variation stating that the instructor said that the class would not end earlier if the class opted for a break.

Accordingly, the agency has not shown that grievant abused state time by not attending the entire conference.

Leaving the work site without permission during working hours.

As indicated in the preceding section, grievant committed this offense on April 15, 2003 when he failed to obtain permission to leave training early in order to attend to personal business – a Group II offense. It is more likely than not that grievant similarly failed to obtain permission to be absent for the majority of conference sessions from May 5-8, 2003.

Unauthorized use or misuse of state property, including the making of personal phone calls as prohibited by General Order 63

Grievant received the task force policy on cellular telephone use in early April 2003. His cellular telephone airtime exceeded the 400-minute-per-month limit during the subsequent two billing periods.

The agency's basis for discipline is General Order (G.O.) 63, which prohibits personal calls from *department-owned* cellular telephones except when an emergency exists. Grievant's un rebutted testimony established that he had never used his agency-issued cellular telephone for long-distance personal telephone calls.²⁴ If task force telephones are considered to be department-owned, then grievant violated G.O. 63. The MOU governing task force operations provides that the VSP contributes a portion of task force operating expenses, which includes purchase of cellular telephones. The agreement further provides that in the event the task force is discontinued, the remaining funds will be returned to the participating agencies according to the same formula by which funds were contributed.²⁵ Thus, to the extent of its contribution and any eventual residual proceeds, the VSP may be considered to own at least a pro rata share of the task force cellular telephones.

However, grievant's assignment to the task force required that he abide by the policies and rules promulgated by the task force Coordinator. Just as grievant was expected to comply with the Coordinator's instruction not to wear shorts while on duty, grievant was obligated to comply with the April 3, 2003 task force guidelines for cellular telephone usage. Those guidelines allow investigators to make personal calls with the stipulation that calls would have to be reimbursed if the monthly airtime allocation was exceeded.²⁶ When the

²⁴ Grievant was counseled on one occasion when his business use of his department-owned cellular telephone had exceeded the average expense. At the same time, he was reminded not to make personal calls on the telephone. See Exhibit 3, p.72. Memorandum regarding cellular telephone use, August 24, 2000.

²⁵ Exhibit 4. Section VI, Task Force *Memorandum of Understanding*, Ibid.

²⁶ Exhibit 3, pp 38-39. Sections (3) and (7), *Guidelines for Cellular Telephone Use*, April 3, 2003, note that *lengthy* personal calls are considered inappropriate but that the only penalty for making

agency assigned grievant to this temporary task force assignment, it did not instruct grievant to follow VSP policy whenever it was more restrictive than task force policy. Rather, it advised grievant that he was to follow the operational instructions of the task force Coordinator.

Task force *Guidelines* clearly permit investigators to make personal calls providing they are brief, and providing they reimburse any monthly airtime overage. As the agency had not told grievant to ignore the task force guidelines, grievant used his task force telephone in accordance with the written instructions he received. Grievant expressed his willingness to reimburse the task force for the airtime overage but the Coordinator elected to turn the matter over to the agency for whatever action the agency deemed appropriate. Based on all of the circumstances herein, it cannot be concluded that grievant acted inappropriately in using the task force cellular telephone for personal calls.²⁷

Failure to follow a supervisor's instructions

The first sergeant told grievant on July 28, 2003 not to discuss the charges and investigation with anyone. After their meeting, grievant contends that the first sergeant called him not on July 28th, but on July 29th, after he had already confronted the Coordinator. The first sergeant was carefully examined and cross-examined on this point. He testified credibly, and with certainty, that he called the grievant on the afternoon of July 28th. In any case, grievant signed the memorandum of complaint which plainly advised him "not to discuss or release any information regarding this investigation."²⁸ Thus, grievant knew that he had been directed not to discuss the matter but he did so anyway.

Grievant received an unambiguous written instruction not to discuss the investigation of allegations against him. Despite this, and despite a verbal instruction by telephone a short time later, grievant nevertheless confronted the Coordinator the following day to discuss the allegations. Therefore, grievant failed to follow a supervisor's instructions – a Group II offense.

Engaging in conduct that undermines the effectiveness or efficiency of the Department's activities

The agency's basis for this charge is that grievant involved another police officer in the confrontation between grievant and the Coordinator. When he went to confront the Coordinator, grievant brought another police officer with him. Grievant's stated reason for doing so was to have a buffer available between he

personal calls is the requirement to reimburse the expense if it exceeds the monthly airtime allocation.

²⁷ If at the time of grievant's assignment to the task force, the agency had directed grievant to ignore the task force cellular telephone guidelines and instead use his cellular telephone in accordance with G.O. 63, grievant's personal calls would properly be considered an offense subject to discipline.

²⁸ Exhibit 3, pp 36-37. Memorandum from first sergeant to grievant, July 28, 2003.

and the Coordinator. The police officer is a tall, large individual who presumably could have stepped between the two had a physical altercation appeared imminent. When grievant first entered the Coordinator's office he told the Coordinator that he would like to come across the desk and rip his head off. Grievant may have been attempting to bait the Coordinator, or he may just have been expressing anger. In any case, the grievant went on to confront the Coordinator about the charges he had made, and called him "spineless" several times.

By doing so, grievant involved the other police officer in a situation about which he had little or no knowledge, and in which he had no business being involved. Thus, grievant exposed another police department to a dispute that it did not need to know about. Moreover, since the other police officer was not under any mandate not to discuss the matter, he could have subsequently discussed the confrontation with other task force investigators. Accordingly, grievant opened up to others what should have been only a two-person disagreement. This action may have adversely affected the agency's reputation and thereby reduced its effectiveness.

Moreover, because of this confrontation, the agency found it necessary to remove grievant from the task force on July 29, 2003. Leaving the task force without a VSP investigator plainly undermined the agency's effectiveness in the task force until such time as a replacement was found. This constituted a Group III offense.

Threatening or coercing employees, supervisors, or the public

When grievant confronted the task force Coordinator, he told him that he "would like to come across the desk and rip your fucking head off." Even if grievant did not actually intend to attack the Coordinator, he was visibly angry when he entered the office.²⁹ Moreover, the Coordinator had already surmised that the purpose of grievant's visit was to confront him about the allegations the Coordinator had made. The making of such an inflammatory statement under these circumstances would certainly give a reasonable person cause to feel threatened. Both the Coordinator and the other investigator considered grievant's remark to be threatening.³⁰ Accordingly, the evidence reflects that grievant did speak discourteously, disparagingly, and in a verbally threatening manner to the Coordinator.

Grievant makes the self-serving and specious argument that the Coordinator was not his supervisor. When one's direct supervisor (first sergeant) directs an employee to follow the instructions of another person, that person becomes grievant's supervisor for all purposes designated by the direct supervisor. In any case, the clear intent of the rule is to prohibit state employees

²⁹ Exhibit 3, p. 65. Memorandum from Coordinator to VSP lieutenant, July 31, 2003.

³⁰ Exhibit 3, p. 25. Memorandum from first sergeant to division commander, August 19, 2003.

from threatening *anyone*. Therefore, grievant's actions constituted a Group III offense.

Grievant's defenses

Grievant contended that the disciplinary action violated federal law, state law, the United States Constitution, and the state constitution. However, grievant offered no evidence or testimony and failed to cite any specific statutes, regulations, rules, policies or procedures in support of his contention. He also argued that the discipline was arbitrary, capricious, and discriminatory but provided no evidence to support these assertions. Grievant also maintains that the agency had no authority to discipline him, that he was the ranking member of the task force, and that the task force had no authority over him.³¹ Grievant's argument is both unpersuasive and illogical. Grievant is a classified employee of the VSP and, therefore, the agency has the authority to discipline grievant at any time. Grievant's temporary assignment to a task force does not make him immune from the agency's authority. Moreover, grievant's argument that the task force had no authority over him is contrary to his argument that he should not be disciplined for personal phone call abuse because task force policy permits such use. Grievant is willing to use the shield of task force policy when it benefits him, but not when it works to his disadvantage.

Grievant argues that his First Amendment rights supercede the written instruction not to discuss an ongoing investigation. It is axiomatic that ongoing investigations must be kept under wraps until the investigator has had an opportunity to complete the investigation without undue influence being exerted by the subject of the investigation. The courts have many times pointed out that the freedom of speech guaranteed by the First Amendment is not unlimited. The government has great leeway in limiting where and when people speak. Grievant was not told to limit *what* he wanted to say, but was directed not to express it until such time as the investigation was complete. This restriction is entirely within the authority delegated to the agency by the legislature.

Grievant suggests that the Coordinator was unhappy with him because grievant had suggested that someone in the Coordinator's city police department may have been leaking information to drug dealers. Grievant failed to provide any evidence to support his speculation on this point. However, even if the Coordinator was displeased with this suggestion, the evidence elicited in this case amply supports the allegations made by the Coordinator. Thus, it was grievant's own actions – not the Coordinator's dislike of grievant – that justified the disciplinary action against grievant.

Summary

³¹ Exhibit 1. Attachment to Grievance Form A., filed December 16, 2003.

It is apparent from the testimony of grievant, the Coordinator, and others that the Coordinator did not want grievant on the task force, and that grievant disagreed with a number of the Coordinator's policies and methods of supervising the task force. Nonetheless, grievant was obligated to comply with the Coordinator's policies and instructions during his assignment to the task force. However, grievant's actions reflect his determination to do things his own way. Leaving the April 15th training class early to take care of personal matters without telling anyone, failing to attend the majority of a five-day conference without permission, disobeying the direct instructions of his first sergeant, and verbally threatening a supervisor are all evidence that grievant felt he was answerable to no one but himself. Grievant himself corroborates this with the assertion that the agency had no authority to discipline him, and that the task force had no authority over him.

The sum total of the supported offenses justifies the disciplinary action taken by the agency. An aggravating circumstance in this case is the fact that, prior to the incidents precipitating this discipline, grievant had demonstrated a "pattern of non-compliance with regard to policy issues and supervisory instructions."³² This conclusion is corroborated by the lieutenant's recounting of grievant's recent work history.³³ He notes that grievant had to be removed from a previous task force assignment due to inadequate performance and conflicts with coworkers.

DECISION

The decision of the agency is hereby affirmed.

The Group III Written Notice issued on November 24, 2003, three-day suspension, and transfer to another division/location are UPHeld. The disciplinary action shall remain active for the period specified in Section 15 of General Order No 19.

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.

³² Exhibit 3, p 2. Memorandum from division commander to lieutenant colonel, September 29, 2003.

³³ Exhibit 3, p. 80. Lieutenant's Endorsement, August 25, 2003.

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. Address your request to:

Director
Department of Human Resource Management
101 N 14th St, 12th floor
Richmond, VA 23219

3. If you believe 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. Address your request to:

Director
Department of Employment Dispute Resolution
830 E Main St, Suite 400
Richmond, VA 23219

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]

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).

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

David J. Latham, Esq.
Hearing Officer