Issue: Group II Written Notice (failure to follow policy); Hearing Date: 11/23/10; Decision Issued: 12/06/10; Agency: VSP; AHO: Ternon Galloway Lee, Esq.; Case No. 9448; Outcome: No Relief – Agency Upheld; **Administrative Review: DHRM Ruling Request received 12/08/10; Outcome pending.**

DIVISION OF HEARINGS

DECISION OF HEARING OFFICER

In the matter of

Case Number 9448

Hearing Date: November 23, 2010
Decision Issued: December 6, 2010

PROCEDURAL HISTORY

On July 28, 2010, Grievant was issued a Group II Written Notice of disciplinary action, for violating Standards of Conduct on June 2 and 14, 2010.

On August 23, the Grievant timely filed a grievance to challenge the Agency's action. The Grievant was dissatisfied with the Third Resolution Step's outcome and requested a hearing. On November 2, 2010, the Department of Employment Dispute Resolution ("EDR") assigned a hearing officer to this appeal. The Hearing Officer held a pre-hearing conference on November 11, 2010, and soon afterwards issued a scheduling order which is incorporated by reference. The Hearing Officer scheduled the hearing to take place on November 23, 2010, the first date available between the parties and the Hearing Officer. The grievance hearing was held as scheduled, at the Agency's office.

The Grievant submitted two exhibits which the Hearing Officer admitted as evidence without objection. The Agency submitted 13 exhibits. The Hearing Officer admitted the Agency's exhibits 1 through 3 and 5 through 13 without objection. The Grievant objected to the Agency's exhibit 4. After hearing arguments on the objection, the Hearing Officer deferred her ruling on it, but allowed the parties to put on evidence regarding that exhibit subject to the Hearing Officer excluding that evidence if she sustained the Grievant's objection to the exhibit. For reasons stated in this decision, the Hearing Officer has admitted Agency exhibit 4 and notes the Grievant's objection to it. The Hearing Officer also admitted Hearing Officer exhibits 1 through 15 without objection.

APPEARANCES

Those appearing at the hearing are noted below:

Grievant (also the one witness for the Grievant)

Grievant's Counsel (two attorneys)

Agency Representative

Two witnesses for the Agency (Investigating Supervisor B ("Investigator B") and the Supervisor of the Investigating Supervisor ("B's Supervisor")

ISSUES

1. Should the June 14, 2010 telephone call have been used
   (i) to show what occurred during the June 2, 2010, telephone call and
   (ii) as a basis of the second complaint;

2. Should the agency have used any unfounded complaints and a founded complaint that occurred at least seven years ago to determine the Grievant's discipline; and

3. Should the Group II Written Notice be mitigated?

BURDEN OF PROOF

In disciplinary actions, the burden of proof is on the Agency to show by a preponderance of the evidence that its disciplinary action against the Grievant was warranted and appropriate under the circumstances. Grievance Procedure Manual ("GPM") Section 5.8. A preponderance of the evidence is evidence which shows that what is sought to be proved is more probable than not. GPM Section 9.

FINDINGS OF FACT

After reviewing the evidence presented and observing the demeanor of each witness, the Hearing Officer makes the following findings of fact:

The Grievant has been an employee with the Virginia State Police for 12 years. Since on or about March 2010, the Grievant has been employed with the Agency as a Special Agent.

During the Grievant's tenure with the Agency, he has received approximately 25 complaints, with 13 allegations involving rude and discourteous comments. The majority of the complaints were not sustained. "Not sustained" means insufficient facts exist to either prove or disprove the complaint.

One of the founded complaints was sustained on September 8, 2003, after a determination was made that the grievant made demeaning comments to a citizen. For this complaint, the Grievant received a written counseling letter from his supervisor which informed him that making comments outside the scope of an investigation either to or about someone was inappropriate. Further, the counseling letter instructed the

Grievant to, in the future, comply with all Agency rules and regulations and be courteous, patient, respectful, and impartial in the discharge of his duties. The Grievant was also warned that any future violations of this type would be handled under the Standards of Conduct

The Grievant is not qualified to provide relationship or marriage counseling and his job description does not authorize him to provide this counseling.

On June 2, 2010, a citizen telephoned the Grievant to report what she believed was criminal activity of her estranged husband. The initial telephone call was inadvertently interrupted so the citizen telephoned the Grievant again that day to discuss the suspected criminal activity.

The citizen believed that during this conversation the Grievant made unwelcome comments about her marital and sex life and inquired about matters that were "none of his business." Later that same day the citizen lodged a complaint with the Agency. Before June 2, 2010, the Grievant did not know the complainant and had not spoken to her by telephone. From June 2, 2010, to June 14, 2010, the complainant telephoned the Grievant four to five times.

Investigator B was assigned to investigate the complaint. During his initial inquiry, he interviewed the complainant, but did not inform the Grievant that he was conducting an inquiry because this disclosure would have been detrimental to the case. Because there were no independent witnesses to the conversation between the complainant and the Grievant, Investigator B obtained permission from his supervisor to secretly record and monitor a telephone conversation between the Grievant and the complainant. The purpose of the recording would be to assist Investigator B in determining if the citizen's allegations were substantiated. On June 3, 2010, unbeknownst to the Grievant, Investigator B recorded and monitored a telephone conversation between the Grievant and the complainant. The complainant consented in writing to the recording and monitoring of the telephone conversation.

After listening to the conversation, Investigator B concluded the Grievant had not made inappropriate comments during the June 3, 2010 conversation. Neither did this conversation confirm the June 2, 2010 complaint.

However, Investigator B found the complainant's allegations regarding the June 2, 2010 conversation credible Thus, he requested and received permission again from his supervisor to secretly record and monitor another telephone conversation between the

Grievant and the complainant. Investigator B made the second recording that was unknown by the Grievant on June 14, 2010, after acquiring written permission from the complainant to monitor and record the telephone conversation. The June 14, 2010 telephone conversation confirmed the Grievant engaged in a telephone conversation with the complainant on June 2, 2010, and the Grievant made comments during the June 2, 2010 conversation about the complainant's marital life and of a sexual nature. During the

course of the investigation, the Grievant admitted he had made the majority of the comments the complainant asserted he made.

After listening to the June 14, 2010, telephone conversation, Investigator B concluded the Grievant made unprofessional comments during the June 14, 2010 telephone conversation also. Therefore, he lodged a second complaint against the Grievant. Investigator B also determined the conversation on June 14, 2010, supported the complainant's allegations made regarding the June 2, 2010 telephone conversation.

Upon completing his investigation on both complaints, Investigator B recommended sustaining both complaints as he concluded the Grievant violated on both June 2 and 14, 2010, each of the Agency policies/standards of conduct listed below:

i. General Order ADM 11.00, Paragraph 11. This policy requires, among other things, that an employee be courteous, patient, and respectful in dealing with the public. Under General Order ADM 12.02, Paragraph 12a a repeat violation of an offense can be a Group II Offense.

ii. General Order ADM 12.02, Paragraph 12b (1). This policy makes failure to follow a supervisor‘s instructions a Group II Offense.

iii General Order ADM 12.02, Paragraph 13b (20). This policy makes an employee's engagement in conduct that undermines the effectiveness or efficiency of the Agency policy a Group III Offense.

Investigator B then considered mitigating factors and then recommended concluding the matter by issuing the Grievant one Group III Written Notice and requiring the Grievant to complete a remedial course in Public or Interpersonal Relations.

Investigator B's supervisor reduced the Group III Written Notice and after agency approval, he issued the Grievant a Group II Written Notice and required the Grievant to successfully complete the Police Professionalism Course.

The Grievant has successfully completed the Police Professionalism Course.

DETERMINATIONS AND OPINION

1. Should the June 14, 2010 telephone call have been used (i) to show what occurred during the June 2, 2010 telephone call and (ii) as a basis of the second complaint?

a. Should the June 14, 2010 telephone call have been used to show what occurred on June 2, 2010?

The Agency's policy mandates that it investigate any complaint made about the job-related conduct of an employee if the alleged conduct is in violation of the Standards of Conduct. The pertinent policy, General Order ADM 12.00, Paragraph 3 of the Agency's manual, provides the following:

> Any complaint alleging improper action or improper conduct by an employee, if job-related and in violation of Standards of Conduct, shall be the subject of an administrative investigation to determine the true facts relating to the allegations, and to make a record of the incident for purposes of defending against any civil suit or administrative litigation related to the complaint.

General Order ADM 12.00, Paragraph 3

Also, the Agency's Standards of Conduct require, among other things, that its employees be courteous and respectful to the public. The pertinent policy, General Order ADM 11.00, paragraph 11, provides the following:

> Employees will at all time be courteous, patient, and respectful in dealing with the public, and by an impartial discharge of their official duties earnestly strive to win the approval of all law-abiding citizens.

General Order ADM 11.00, paragraph 11.

An administrative investigation under General Order ADM 12.00, Paragraph 3 was triggered on June 2, 2010, when a citizen lodged a complaint. The complainant reported that the Grievant made inappropriate comments to her during a telephone conversation that occurred earlier that day when she telephoned the Grievant to report what she believed was criminal activity of her estranged husband. According to the complainant after explaining the specifics of the offense, the Grievant indicated there was nothing he could do. But the Grievant proceeded to ask the complainant personal questions regarding her marital relationship and offered advice on how she could improve her marriage. Further the complainant contends the Grievant told her that her boyfriend was probably seeing other women and asked her if she was having sex with her boyfriend. The complainant stated the Grievant's comments about her marriage and sex

were inappropriate and unwelcome. The complainant reported she continued to talk to the Grievant because he was a law enforcement officer and she was afraid to get off the telephone.

After receiving the complaint, the Agency initiated an administrative investigation under General Order ADM 12.00, Paragraph 3. The uniform procedure for how and why the investigation is to be carried out is addressed in part by General Order ADM 12.00, Paragraph 1 which states the following:

> It is the policy of the Department of State Police to conduct timely, thorough, and impartial administrative investigation in order to uphold the integrity and reputation of the Department and to ensure that the public trust is maintained. In order to fulfill our mission of providing high quality law enforcement services, it is critical that the public views the Department as an agency that holds its employees accountable and takes appropriate administrative action when policies and/or procedures are violated.

General Order ADM 12.00, Paragraph 1

The Agency assigned Investigator B to investigate the matter. During the initial inquiry stage of the investigation, he interviewed the complainant, found her credible, and determined the alleged conduct of the Grievant was job related and in violation of the Agency's Standards of Conduct. Investigator B did not inform the Grievant that he was conducting an inquiry because he opined doing so would be harmful to the case. Also, because there were no independent witnesses to the June 2, 2010 telephone conversation where it is alleged the Grievant made inappropriate comments, Investigator B requested and obtained permission from his supervisor and the complainant to secretly record and monitor a telephone conversation between the Grievant and the complainant. The secretly recorded telephone conversation occurred on June 3, 2010. Although it did not corroborate the complaint or show the grievant made any improper comments during the June 3, 2010 conversation, Investigator B continued to find the complainant's allegations credible and policy obligated him to continue the investigation.

Thus, consistent with his duty to conduct a thorough investigation and determine the true facts, Investigator B again obtained permission from his supervisor and the complainant to secretly tape and monitor another conversation between the Grievant and complainant. The second recorded conversation took place on June 14, 2010, during the Grievant's work day and while the Grievant used his office telephone. No script was provided to the complainant for the conversation.

As the conversation occurred, the Grievant made comments that were of a sexual nature, rude, and discourteous. For instance, when the complainant told the Grievant that she had gone to visit her boyfriend the past weekend, the Grievant asked, "You didn't do anything did you"? When the complainant replied, "No, but he was pushing me, he was pushing me." The Grievant responded, "I told you, didn't I tell you, I told you." The Grievant continued with, "You know the funny thing is, I don't know you but I'm just telling you that guy's intentions was to get in your pants and that's it. He doesn't care about you or anything else." When the complainant told the Grievant that her boyfriend was getting messages and telephone calls the entire time she was with him, the Grievant responded, "Yeah, you know why, he was playing you and waiting for you to either put up or get out so he could move on to the next one." The Grievant went on to say the boyfriend was playing more than one girl "like a friggin fiddle." The Grievant then stated "Basically, he was trying to do whatever he can to get in your pants and didn't care about

what you think." At one point during the conversation, the Grievant made a sexual slur and stated "he's smacking others."[1] Also, during a segment of the conversation in a female mimicking voice the Grievant stated, "But he's so faithful, ahh."

Having monitored the June 14, 2010 telephone conversation, Investigator B found some comments made by the Grievant were inappropriate as they were disrespectful. Also he determined some comments related to the June 2, 2010, telephone conversation between the Grievant and complainant and showed the Grievant did make inappropriate comments about the complainant's marital and sex life on June 2, 2010.

The Hearing Officer finds the usage of the June 14, 2010 telephone conversation is appropriate for several reasons. Investigator B was obligated to conduct a thorough investigation of the complaint to determine the true facts. He found the complainant credible. No witnesses existed to verify the allegations. Using reasonable judgment he sought and received permission from his superior to secretly record and monitor the conversations between the complainant and the Grievant. Although the initial secret recording failed to show the Grievant engaged in any misconduct on June 2 or 3, 2010, Investigator B continued to believe the complainant's accusations. Again, in an effort to thoroughly investigate the case and determine the truth, he again obtained permission to secretly record and monitor a conversation between the Grievant and the complainant. During the second recording, the Grievant made rude, disrespectful, and inappropriate comments. The evidence shows that some of them related to the June 2, 2010 telephone conversation the Grievant had with the complainant and substantiated the Grievant's complaint. Thus, the Hearing Officer finds the Agency could use the June 14, 2010 conversation to corroborate the June 2, 2010 complaint.

The Grievant argues otherwise for several reasons. The Grievant contends the Agency's Superintendent did not agree to any secret recordings and therefore the June 14, 2010 secret recording is not admissible. The Hearing Officer notes General Order ADM 11.00, Paragraph 27 which indicates that the policy precluding employees of the agency from recording conversations with others without the knowledge of the other person or persons is inapplicable to, among other investigations, official investigations permitted by law. The Hearing Officer finds that secret recording of conversations is permitted in official investigations such as the administrative investigation conducted in this case.

Next, the Grievant argues that the June 14, 2010 telephone conversation should not have been used to substantiate the June 2, 2010 conversation because the secret recording is prohibited by Va. Code Sections 19.2-61 and/or 19.2-61. The Hearing Officer has reviewed the cited law and does not find it supports the Grievant's position. Moreover, the Hearing Officer notes that the Grievant provided no authority in favor of his argument. Further, the Hearing Officer is mindful of the fact that the citizen lodging the complaint on June 2, 2010, consented to both recordings and she was a participant in both conversations. Accordingly, the Hearing Officer is not persuaded by this argument either. Further, the Grievant argues he was "set up." This argument is not convincing because the Grievant could have refrained from discussing personal matters with the

[1] The evidence shows that "smacking" is a reference to having sex with others.

complainant during the June 14, 2010. He failed to do so.

The Hearing Officer also notes that the Grievant objected to the admission of Agency Exhibit 4 - the June 3, 2010, and June 14, 2010 secret recordings of the telephone conversations between the Grievant and citizen complainant. For the reasons previously discussed, I find neither state law nor Agency policy precluded the recordings. Accordingly, I have overruled the Grievant's objection and have admitted Agency Exhibit 4.

The Grievant also argues the investigation was flawed because Investigator B failed to inform the Grievant that an inquiry was being conducted regarding the June 2, 2010 complaint. General Order ADM 12.00, Paragraph 13 authorizes the investigating supervisor to not notify the employee that an inquiry is being conducted if to do so would be harmful to the case. The evidence shows that informing the Grievant would have been detrimental to the case. Thus, I find the non-notification of the Grievant did not blemish the investigation. Also, the Grievant suggest the investigation was untimely. I find nothing in the evidence to substantiate this claim.

For the reasons stated herein, the Agency did not err by using the June 14, 2010 telephone conversation to substantiate the June 2, 2010 complaint.

b. Should the June 14, 2010 telephone call have been used to lodge a second complaint?

The Grievant argues the second complaint, particularly the second complaint, is "overkill."

Under Agency policy, improper conduct of an employee may be brought to the attention of the Agency not only by citizen complaints, but also by direct observation by supervisors.[2] Investigator B, supervising officer with the Agency, was present at the home of the complainant and personally monitored the June 14, 2010 telephone conversation between the Grievant and the complainant as it unfolded. Investigator B believed the comments of the Grievant during that conversation were of a sexual nature, rude and discourteous and in serious violation of the Standards of Conduct. Thus, on June 14, 2010, he brought a complaint.

The Hearing Officer does not find excessive action by the Agency to discipline the Grievant as alleged by the Grievant. The investigating supervisor uncovered additional misconduct during his investigation of a prior complaint. He then lodged a second complaint as policy required.

Moreover, for the sake of argument, the Hearing Officer notes that prior to the Agency disciplining the Grievant, it merged the two complaints and issued only one group notice. Thus, the Greivant's "overkill" argument is void.

[2] General Order ADM 12.00, Paragraph 9.

2 Should the agency have used any unfounded complaints and a founded complaint that occurred at least seven years ago to determine the Grievant's discipline?

After investigations substantiated the June 2, 2010, and June 14, 2010 complaints, the Grievant was issued a Group II Written Notice of disciplinary action.

First, in the process of deciding the Grievant's punishment, the Agency concluded that the Grievant had violated on both June 2, 2010, and June 14, 2010, three Standards of Conduct/Policies:

(i) General Order ADM 11.00, Paragraph 11 requiring the Grievant to be courteous, patient, and respectful in dealing with the public (The hearing officer notes that the Grievant's violation of this policy established, among other things, a repeated misconduct and thus a Group II Offense);

(ii) General Order ADM 12.02, Paragraph 12b(1) requiring the Grievant to follow a supervisor's instruction, perform assigned work or otherwise comply with applicable established written policy (The Grievant's violation of this policy established a Group II Offense); and

(iii) General Order ADM 12.02, Paragraph 13b(20) requiring the Grievant to refrain from conduct that undermines the effectiveness or efficiency of the Agency's activities which includes actions that might impair the Agency's reputation as well as the reputation or performance of its employees. (The Grievant's violation of this policy established a Group III offense).

Next, before imposing discipline, the Agency considered and assessed mitigating and aggravating circumstances. It noted the Grievant's employment with the Agency for 12 years, an award he received from the U.S. Attorney's Office for outstanding investigatory work, and his satisfactory work performance since 2003. Further, the Agency considered the Grievant's Concise History which showed that during the Grievant's 12 year employment he had received 25 complaints and over half of them involved allegations of "rude or discourteous verbal behavior." To that end, the Agency noted its concern that while the majority of the complaints were "not sustained" because they could neither be proven nor disproved, they caused concern because they indicated a pattern of behavior by the Grievant that attracted citizen complaints. Moreover, the Agency noted that one of the past complaints sustained against the Grievant was for similar misconduct. Further, the Agency noted that the Grievant to some degree denied wrongdoing and did not take responsibility.

The Agency's above-noted consideration and assessment of mitigating and aggravating circumstances were permissible. For the *Standards of Conduct* allows

agencies to consider mitigating and aggravating circumstances and to reduce discipline if mitigating circumstances dictate lessening the punishment is warranted. Further, a hearing officer must give deference to the Agency's consideration and assessment of any mitigating and aggravating circumstances.[3]

As noted above, the evidence shows that the Grievant committed a total of four Group II Offenses and two Group III Offenses on June 2 and 14, 2010. Had the Agency issued multiple Written Notices for those offenses, the Grievant likely would have been suspended, demoted, or terminated. Instead, the Agency combined the two complaints and issued one Group II Written Notice for violating General Order ADM 12.02, Paragraph 12,b(1), "Failure to follow a supervisor's instructions, perform assigned work or otherwise comply with applicable established written policy." The Hearing Officer finds the Agency appropriately determined the Grievant's discipline by considering and assessing the mitigating and aggravating circumstances noted above.

The Hearing Officer notes that the Grievant contends when the Agency promoted him in 2010, the Grievant was told his slate would be wiped clean. Further, the Grievant argues in effect that the Agency should not have considered any of the past complaints because they were either unfounded or if founded, inactive. The Hearing Officer is not persuaded by the Grievant's argument. For reasons previously discussed, the Agency has the authority to consider mitigating and aggravating circumstances to determine whether to lessen an employee's punishment. The Agency did so in this case and mitigated the punishment as it deemed appropriate. The Hearing Officer also finds the Agency's Policy only assigns an active live to Group Notices.

Moreover, the Hearing Officer notes that General Order ADM 12.02, Paragraph 14(c) allows the Agency to consider even an inactive group notice to determine appropriate discipline if the subject of the current disciplinary proceeding involves repeated misconduct. The substantiated complaints in this case involved repeated misconduct by the Grievant; that is, making comments outside the scope of an investigation or being discourteous to the public. By analogy the Hearing Officer finds that as the Agency can consider an inactive group notice to determine discipline when the conduct is a repeated one, the Agency can consider a counseling letter or founded complaint that shows the current misconduct is repeated.

Thus, the Hearing Officer finds the evidence shows that the Agency properly considered, among other things, the Grievant's concise history to determine his discipline.

3 Should the Group II Written Notice be mitigated?

Under statute, hearing officers have the power and duty to "receive and consider evidence in mitigation or aggravation of any offense charged by an agency in accordance with rules established by the Department of Employment Dispute Resolution."[4] EDR's *Rules for Conducting Grievance Hearings* provides that "a hearing officer is not a 'super

[3] *Rules for Conducting Grievance Hearings VI B1*

[4] Va. Code Section 2.2-3005(C)(6)

personnel officer'" therefore, "in providing any remedy, the hearing officer should give the appropriate level of deference to actions by agency management that are found to be consistent with law and policy."[5]

More specifically, the *Rules* provide that in disciplinary grievance, if the hearing officer finds that:

(i) the employee engaged in the behavior described in the Written Notice;
(ii) the behavior constituted misconduct, and

(iii) the agency's discipline was consistent with law and policy, the agency's discipline must be upheld and may not be mitigated, unless under the record evidence, the discipline exceeds the limits of reasonableness.[6]

The evidence of record shows by a preponderance of the evidence that the Grievant engaged in the behavior described in the Written Notice as evidenced by the Grievant's own admissions, a prior instruction given to the Grievant by a supervisor, and the administrative investigation of Investigator B.

The behavior violated Standards of Conduct set forth in the Agency's Manual and identified as follows:

i. General Order ADM 11.00, Paragraph 11 (a Group II Offense);

ii. General Order ADM 12.02, Paragraph 12b (1) (a Group II Offense); and

iii General Order ADM 12.02, Paragraph 13b (20) (a Group III Offense)

The Hearing Officer previously set forth the specific provisions of theses polices.

The evidence shows the Agency's discipline was consistent with law and policy and does not exceed the limits of reasonableness. As previously mentioned, the Hearing Officer does note the Grievant's argument that lodging two complaints against him was overkill. The Hearing Officer has found no "overkill." Nor does the Hearing Officer find evidence to support the Grievant's claim that Investigator B was out to get him.[7] Further, the Hearing Officer finds the agency's discipline was reasonable. The Hearing Officer notes the Grievant contends he is not eligible for promotion for three years if the Group II is not mitigated. The Hearing Officer finds the lack of promotion is a consequence of the Grievant's conduct, not discipline imposed by the Agency.

[5] *Rules for Conducting Grievance Hearings* VI(A)
[6] *Id at VI(B)*11
[7] The Hearing Officer notes Investigator B's presentation of the Grievant's award and submitting an article on Grievant's award for the Trooper Newsletter are actions contrary to the claim that the investigator was out to get the Grievant.

After considering all the evidence, to include the reference to the reported death of the Grievance's father, the Hearing Officer finds no reason to mitigate the Grievant's discipline beyond the mitigation done by the Agency. Thus, the Group II Notice is affirmed.

DECISION

The Agency has met its burden. For the reasons stated herein, the Agency's issuance to the Grievant of a Group II Written Notice of disciplinary action is upheld.

APPEAL RIGHTS

As the Grievance Procedure Manual sets forth in more detail, this hearing decision is subject to administrative and judicial review. Once the administrative review phase has concluded, the hearing decision becomes final and is subject to judicial review.

Administrative Review: This review is subject to three types of administrative review, depending upon the nature of the alleged defect of the decision.

1. **A request to reconsider a decision or reopen a hearing** is made to the hearing officer. This request must state the basis for such request; generally, newly discovered evidence or evidence of incorrect legal conclusions is the basis for such a request.

2. **A challenge that the hearing decisions is inconsistent with state or agency policy** is made to the Director of the Department of Human Resources Management. This request must cite to a particular mandate in state or agency policy. The Director's authority is limited to ordering the hearing officer to revise the decision to conform it to written policy. Request should be sent to the Director of the Department of Human Resources Management, 101 N. 14th Street, 12th floor Richmond, VA 23219 or faxed to (804) 371-7401.

3. **A challenge that the hearing decision does not comply with grievance procedure** is made to the Director of EDR. This request must state the specific requirement of the grievance procedure with the decision is not in compliance. The Director's authority is limited to ordering the hearing officer to revise the decisions so that it complied with the grievance procedure. Requests should be sent to the EDR Director, Main street centre, 600 East Main, Suite 301, Richmond, VA 23219 or faxed to (804)786-0111.

A party may make more than one type of request for review. All requests for review must be made in writing, and received by the administrative reviewer, within **15 calendar** days of the **date of the original hearing decision.** (Note: the 15-day period, in

which the appeal must occur, begins with the date of **issuance** of the decision, **not receipt** of the decision. However, the date the decision is rendered does not count as one of the 15 days; the day following the issuance of the decision is the first of the 15 days). A copy of each appeal must be provided to the other party.

A hearing officer's original decision becomes a **final hearing decision,** with no further possibility of an administrative review, when:

1. The 15 calendar day period for filing requests for administrative review has expired and neither party has filed such a request; or,
2. All timely requests for administrative review have been decided and, if ordered by EDR or DHRM, the hearing officer has issued a revised decision.

Judicial Review of Final Hearing Decision: Within thirty days of final decisions, a party may appeal on the ground that the determination is contradictory to law by filing a notice of appeal with the clerk of the circuit court in the jurisdiction in which the grievance arose. The agency shall request and receive prior approval of the Directory before filing a notice of appeal.

ENTER: December 7, 2010
/s/_____
Ternon Galloway Lee, Hearing Officer

cc: Counsel for Grievant
Grievant
Agency representative
Human Resource Director for the Agency
Hearings Program Director of EDR