

Issues: Group III (undermining effectiveness of Agency's activities), Group II (forwarding confidential document to Chief Judge), Group II (failure to follow instructions), Group II (failure to follow instructions), Group II (failure to follow policy), Group II (failure to follow policy), Group II (failure to follow instructions), and Termination; Hearing Date: 09/26/18; Decision Issued: 02/14/19; Agency: DJJ; AHO: Carl Wilson Schmidt, Esq.; Case No. 11223; Outcome: Partial Relief; **Administrative Review Ruling Request received 03/01/19; EDR Ruling No. 2019-4878 issued 04/02/19; Outcome: Remanded to AHO; Remand Decision issued 04/23/19; Outcome: Fifth Written Notice reinstated.**



COMMONWEALTH of VIRGINIA

Department of Human Resource Management

OFFICE OF EQUAL EMPLOYMENT AND DISPUTE RESOLUTION

DECISION OF HEARING OFFICER

In re:

Case Number: 11223

Hearing Date: September 26, 2018¹
Decision Issued: February 14, 2019

PROCEDURAL HISTORY

(First Notice) On May 25, 2018, Grievant was issued a Group III Written Notice of disciplinary action for undermining the effectiveness of the Agency's activities. (Second Notice) On May 25, 2018, Grievant was issued a Group II Written Notice of disciplinary action for forwarding a confidential document relating to MR. J to the Chief Judge. (Third Notice) On May 23, 2018, Grievant was issued a Group II Written Notice of disciplinary action for failure to follow instructions. (Fourth Notice) On May 23, 2018, Grievant was issued a Group II Written Notice of disciplinary action for failure to follow instructions. (Fifth Notice) On May 25, 2018, Grievant was issued a Group II Written Notice of disciplinary action for failure to follow written policy. (Sixth Notice) On May 25, 2018, Grievant was issued a Group II Written Notice of disciplinary action for failure to follow policy. (Seventh Notice) On May 25, 2018, Grievant was issued a Group II Written Notice of disciplinary action for failure to follow instructions. Grievant was removed from employment.

On June 4, 2018, Grievant timely filed a grievance to challenge the Agency's actions. The matter proceeded to hearing. On June 18, 2018, the Office of Equal Employment and Dispute Resolution assigned this appeal to the Hearing Officer.

¹ The hearing began on August 7, 2018 and was continued to September 25, 2018 and September 26, 2018.

APPEARANCES

Grievant
Grievant's Counsel
Agency Party Designee
Agency's Counsel
Witnesses

ISSUES

1. Whether Grievant engaged in the behavior described in the Written Notices?
2. Whether the behavior constituted misconduct?
3. Whether the Agency's discipline was consistent with law (e.g., free of unlawful discrimination) and policy (e.g., properly characterized as a Group I, II, or III offense)?
4. Whether there were mitigating circumstances justifying a reduction or removal of the disciplinary action, and if so, whether aggravating circumstances existed that would overcome the mitigating circumstances?

BURDEN OF PROOF

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. The employee has the burden of raising and establishing any affirmative defenses to discipline and any evidence of mitigating circumstances related to discipline. Grievance Procedure Manual ("GPM") § 5.8. A preponderance of the evidence is evidence which shows that what is sought to be proved is more probable than not. GPM § 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 Department of Juvenile Justice employed Grievant as a Juvenile Court Service Unit (JCSU) Director at one of its locations.

Grievant's Position Objective was:

Provides leadership to and manages the operations of the court service unit, manages human and capital resources, and insurance the proper application of all pertinent policies and procedures according to departmental, state, local, and judicial requirements. Collaborates with local stakeholders, community partners, and the judiciary.²

Grievant began working for the Agency in 2001. He began working as a Court Service Unit Director in 2006 at one of the Agency's Units.

Grievant had a prior active Group II Written Notice. The Agency issued Grievant a Group II Written Notice which Grievant appealed. The First Hearing Officer heard testimony from the parties and did not uphold the Group II Written Notice. On remand from EEDR, a Second Hearing Officer who did not hear the evidence upheld the Group II Written Notice on December 4, 2018.

The Hearing Officer issued a Witness Order to the Judge to compel her attendance at the hearing. She declined to appear and testify. During the Agency's investigation, the investigator did not attempt to interview the Judge.

The Agency and the local County entered into a Memorandum of Understanding in May 1997 governing the interaction of the Agency and County employees. They agreed that the Unit Director would be a State employee with administrative and supervisory responsibility and authority over both State and County employees in the Unit.

Va. Code § 16.1-236.1 provides:

- A. State-operated court services units. A court services unit director shall be designated for each state-operated court services unit. The judge or judges of the juvenile and domestic relations district court shall, from a list of eligible persons submitted by the Director appoint one court services unit director for the state-operated court services unit serving that district court. The list of eligible persons shall be developed in accordance with state personnel laws and regulations, and Department policies and procedures. If any list of eligible persons submitted by the Director is unsatisfactory to the judge or judges, the judge or judges may request the Director to submit a new list containing the names of additional eligible persons. Upon such request by the judge or judges, the Director shall develop and submit a new list of eligible persons in accordance with state personnel laws and regulations, and Department policies and procedures. ***

² Agency Exhibit J.

When the Units Director's position became vacant³, the Agency solicited applications for employment. Grievant applied for the position. Grievant was interviewed by three Agency employees including the Regional Program Manager (RPM). In accordance with Va. Code § 16.1-236.1, the Agency presented the Court Judges with a list of eligible applicants. Both Judges interviewed Grievant twice and appointed Grievant as the Unit Director. During one of Grievant's interviews, the Judge said that probation officers were lying to the Court and that Grievant could stop it. The Agency completed the hiring process and determined Grievant's salary.

Grievant began working at the Unit effective December 25, 2016. He was hired by the Court's two judges.⁴ Grievant received a supplement from the County equaling approximately 25% of his salary. Approximately half of the Unit's employees were County employees. The County's Human Resource Department reported to the Deputy County Administrator. During Grievant's "onboarding" he was given a copy of the County's human resource policies.

When Grievant began as the Unit supervisor in December 2016, the Unit was in disarray. Grievant had four supervisors reporting to him. When he began working for the Unit, one of the supervisors refused to meet with Grievant. Another supervisor had applied for Grievant's position and was not selected. Initially that supervisor was bitter about Grievant being selected as Director. Four or five probation officers in the Unit presented immediate problems for Grievant to manage. Grievant attempted to "reintroduce policy" to Unit employees. Several County employees refused to comply because they were County and not DJJ employees.

Grievant reported to the Regional Program Manager (RPM) who worked for DJJ.⁵ She performed his evaluations and could provide direct supervision as necessary. The RPM reported to the Deputy Director. The Judge did not like the RPM and sometimes tried to avoid the Deputy Director.

Grievant had a "dotted line" reporting relationship with the Judge, a local Juvenile and Domestic Relations Court Judge.⁶ Grievant had been told by the Agency Head to keep the judges happy meaning to ensure the needs of the judges were satisfied and that he had a good relationship with the judges. DJJ Managers knew Grievant worked

³ The RPM served as the Unit's interim director until Grievant was hired.

⁴ The RPM testified Grievant was hired by the judges.

⁵ The Regional Program Manager was responsible for supervising 20 court services units. She began working for the Agency in January 2014.

⁶ The phrase "dotted line" refers to how a reporting relationship would be drawn on an organizational chart. If an employee reported directly to a supervisor and that supervisor performed duties such as conducting the employee's evaluations, the relationship would be a direct or "solid line" reporting relationship. If the employee also reported to another supervisor with respect to some job duties or tasks, then the employee's relationship with the second supervisor would be drawn on an organizational chart with a dotted line.

closely with the Judges and they expected him to comply with the Judge's instructions. Grievant was expected to collaborate with the judges.⁷ Grievant was obligated by law to obey the Judge's orders.⁸ The Judge sometimes asked questions about Grievant's personnel decisions and offered her opinion on what course of action Grievant should take. For example, the Judge asked Grievant if an employee was being terminated. She influenced Grievant's decision to reassign an employee. The Judge sometimes referred to the Unit as "her" court service unit.

The Judge sometimes took interested in Grievant's management of the Unit. On occasion, the Judge would walk to Grievant's office and ask him the status of certain employees. She would ask why Grievant had not "written up" certain employees. Grievant felt obligated to respond to the Judge's inquiries.

Probation Officers routinely appeared in court and were expected to be truthful at all times. Their performance was often measured and defined based on how the court judges perceived each probation officer's performance. Grievant was dedicating to making sure that probation officers were truthful to court judges and ensuring judges were satisfied with the quality of the services rendered by his Unit.⁹

In order to determine how well Probation Officers were performing in court and to ensure that Grievant was keeping the judges happy, Grievant had to have constant communication with the Judge. Both the Judge and Grievant held the other's opinion in high regard and considered constant communication to be an asset furthering the Unit's performance.

County employees had access to the County's grievance system to challenge disciplinary action. They were not employees of the court judges but had to abide by any judge's orders.

Mr. J was a Probation Officer employed by the County. He was a difficult employee to supervise. When his work performance was criticized, he often responded by falsely accusing others of racism or workplace harassment.

In March 2017, Mr. J "went off" in Supervisor H's office. Mr. J met with Supervisor H to discuss Mr. J's work hours. Mr. J was disrespectful to Supervisor H. Mr. J used the "N word" and said Supervisor H was a "plantation owner." Supervisor H was insulted by Mr. J's racist comments. Supervisor H asked Mr. J to leave Supervisor H's office. Mr. J left. As he left, Mr. J said "ni—er do this, ni—ger do that" as he mocked Supervisor H for being a "plantation owner." Supervisor H believed Mr. J could harm Supervisor H, himself, or others.

⁷ See Grievant's Exhibit p. 7.

⁸ The Agency asserted that some of Grievant's comments to the Judge were untrue. For many of these assertions, it is not possible to determine whether Grievant or the Agency managers are telling the truth.

⁹ A Former Unit Director S had little contact with the judges.

Supervisor H went to Grievant's office. Supervisor H was shaking, sweaty, upset, and fearful. Grievant asked where was Mr. J. Supervisor H said he was unsure. No one else in the office knew where Mr. J went. Grievant was concerned about the safety of Unit employees. Grievant disabled Mr. J's entry card to prevent him from entering the office suite in case Mr. J went to his car to get a weapon.

The Unit sometimes took juveniles in a nearby Shelter. Grievant was informed that Mr. J was at the Shelter. Grievant spoke with Ms. C who worked in the County's human resource department. She said Grievant could suspend Mr. J for ten days under County policy to find out what happened. She said Grievant should serve Mr. J with the notice of suspension. Grievant obtained the paperwork from Ms. C. He contacted the local Sheriff's office and asked to have a Deputy Sheriff sent to the Shelter. Grievant was concerned about his safety.

Grievant went to the Shelter to meet with Mr. J. Grievant had asked the Deputy Sheriffs to be "discrete". Grievant asked Mr. J to come out of the Shelter to meet. Grievant told Mr. J he needed to leave. Mr. J asked why. Grievant said because of Mr. J's behavior at the office a few hours earlier. Mr. J responded he did not know what Grievant was talking about. Grievant handed Mr. J the paperwork. Mr. J said Grievant could not make him go. Grievant responded that there was no scenario in which Mr. J goes back into the Shelter and to act like nothing happened. Mr. J walked to a van and got into the van with another employee. Mr. J then left the van and went to his vehicle. Grievant got into his vehicle and left the area.

On March 13, 2017, Grievant, the Regional Program Manager and Deputy Director met. They discussed Mr. J. In a follow up memorandum, the RPM wrote:

Upon meeting with his supervisor to discuss new EWP, employee became very disrespectful and made seriously inappropriate comments to his supervisor. The supervisor felt uncomfortable with the employee's comments, tone and physical response, so he asked him to leave his office. As employee left the office he continued to make inappropriate comments. Supervisor came to [Grievant] with concern and looking fearful. [Grievant] immediately notified court security, judges, [the RPM] and county staff; believing the employee may present a threat. He then called county HR and obtained process and paperwork to place the employee on administrative leave. He went to the employee's offsite workplace with county police to inform him of administrative leave and delivered the paperwork. Employee was resistant to leaving and police had to tell him several times he must leave. [Grievant] is working with the local HR to return employee back to position. Local HR shared concern with [Grievant] regarding his response; especially taking the police to suspend the employee.

Feedback provided by [Deputy Director] and [RPM] – Concerned about calling the police and letting entire court know without there ever being an

actual threat made. Discussed the possibility of actually contacting employee to determine for himself the employee's state of mind and also talking through the situation with [RPM], [local supervisor] and/or HR before utilizing the police to carry out administrative leave notification; as well as notification to judges and court staff.¹⁰

The Deputy Director believed that Grievant had "over reached" by calling a Deputy Sheriff to respond to Mr. J's behavior.¹¹

On March 30, 2017, the RPM and Grievant met to discuss numerous items. During the discussion, the RPM told Grievant about her meeting with six employees who discussed their concerns. Several employees complained about Grievant making them fearful for their jobs. As a result of the meeting, Grievant agreed:

[Grievant] will endure he is knowledgeable of both state and local HR policies and processes. He will work with both entities to deal with issues. We also agreed that the MOU should probably be updated and we will discuss [others.]¹²

On July 21, 2017, the RPM gave Grievant an Interim Evaluation stating, in part:

Of immediate importance and priority is [Grievant's] continued work with both local and state Human Resource offices to assist with employee related issues, build a strong management team, and create a healthy work environment. [Grievant] will work cooperatively with any consultants provided to his agency in an effort to accomplish these goals.¹³

On July 18, 2017, Grievant sent the Judge a text:

"Yup, I'm confident I'm good. I don't trust DJJ."

On September 27, 2018, Grievant sent the Judge a text:

¹⁰ Agency Exhibit PP.

¹¹ The County's and DJJ Manager's response to Grievant's actions was neither reasonable nor rational. Grievant knew from Supervisor H that Mr. J may have presented a danger to himself or others including Grievant. Grievant was obligated to suspend Mr. J to prevent him from returning to the workplace and possibly hurt other employees. Grievant's rational fear and caution enabled him to correctly seek the assistance of the local Sheriff's Office. The Agency did not discipline Grievant for deciding to call the Sheriff's Office for assistance. This example shows Grievant's frustration with supervising Mr. J and the County's and Agency's disconnect regarding the extent of disruption caused by Mr. J to the Unit.

¹² Agency Exhibit QQ.

¹³ Agency Exhibit SS.

and I absolutely don't trust DJJ. And thank you and [Second Judge] for hiring me.¹⁴

The Judge replied:

Please, thank you for being on the same page with me. I have been waiting for 12 years to have a DJJ Director who wants to work with me and not against me. 12 yrs is a LONG time!¹⁵

On October 5, 2017, the Regional Program Manager presented Grievant with a Counseling Letter to address the findings of the Agency's report of its investigation of Grievant's decision to remove Probation Officer Mr. L from his responsibilities as Diversion Manager. The Counseling Letter provided, in part:

The report also concludes that on several occasions you failed to demonstrate respect towards agency subordinates, as documented in emails and management meeting notes, a requirement of both DHRM and DJJ policy. ***

To address the findings of the report and facilitate improvement in the work environment of the [Unit], the following expectations are being implemented effective immediately:

Threatening employees with disciplinary action or the loss of their jobs is never appropriate under any circumstances. Direct, indirect, or implied threats of this nature are to cease immediately. If you believe that disciplinary action is warranted for an individual employee, you are to submit your evidence and documentation to me for review and discussion prior to taking any action. All performance and/or disciplinary actions will be handled through the appropriate DJJ or [County] Human Resource policy and procedures.

All verbal and written communications with staff are to remain respectful and professional. Being spoken to disrespectfully by members of your staff does not entitle you to respond in a similar manner. Disrespectful conduct by your staff can and should be addressed through the issuance of appropriate counseling memorandums, and/or through appropriate performance documentation. All individual performance concerns are to be reviewed with your supervisor prior to taking any action.

Significant changes in the job duties or work locations of [County] personnel must be reviewed and approved by [County] administration.

¹⁴ Agency Exhibit G.

¹⁵ Agency Exhibit G.

Written justifications for such actions must be submitted to me for review prior to submitting the request and justification to [County] administrators.

Cooperate with consultants, mentors, and/or coaches provided to you and your unit as an effort to create a healthy and functional work environment for all. ***

I am always available to discuss any employment actions or operational changes that the business needs of the unit may require.¹⁶

On October 5, 2017 at 4:34 p.m., Grievant sent the Judge a text:

[RPM] reamed me cause you issued that order.

The Judge responded:

I'm sorry you got reamed for that. She shouldn't have done that – she clearly doesn't understand the level of dysfunction we have in the unit and that the order was directed at [supervisors] and [Probation Officers], not you.

Grievant wrote:

She was here to sanction me with factless issues. I'm going to grieve it. One or two emails when I was at my wits end doesn't define who I am or define me as an administrator.

The Judge wrote:

When we meet can I see the counseling memo?¹⁷

When Grievant met with the Judge, the Judge said for Grievant not to worry about the counseling memorandum and that she would take care of the RPM and the Department.

On October 30, 2017, the County Administrator sent Grievant a memorandum that “outlines your authority as a department director under County policy.” The County Administrator attached a copy of the County's Human Resource Handbook. The County administrator informed Grievant of other County policies including policies

¹⁶ Agency Exhibit H.

¹⁷ Grievant Exhibit p. 73.

relating to Accounting, Budget, Communications, Facilities, Finance, and Information Technology.¹⁸

On December 12, 2017, Grievant received an annual performance evaluation with an overall rating of Contributor.

On December 13, 2017 at 3:39 p.m., the Judge sent Grievant an email complaining about Mr. J submitting social histories that were not signed by him or reviewed by a supervisor contrary to policy. Mr. J did not have an acceptable explanation for his behavior. The Judge wrote:

During the entire time [Mr. J] was in my courtroom, he was smirking and smiling and acting very disrespectful. It is very obvious to this judge that he does not take the process seriously and that he was attempting to push my buttons in an attempt to get me to hold him in contempt of court. I told him as much and that I was not going to give him that privilege. *** I sincerely hope that the County ... Will take steps to ensure that their employee does not engage in such disrespectful and **dishonest** behavior to the Court in the future, and the County ... will ensure that their employee in the future meets ALL job expectations. To do otherwise, is to do a huge disservice to the children and families that we serve, and I, as a judge of the [Court] find that completely unacceptable.¹⁹ (Emphasis added).

The Judge spoke with Grievant and told Grievant that Mr. J lied to her in court. The Judge was emotional as she expressed her concern to Grievant.

On December 19, 2017 at 11:52 a.m., Grievant sent an email to the County Employee Relations Manager describing Mr. J's inappropriate behavior and stating:

As a result of [Mr. J's] behavior, his unwillingness to problem solve these issues and his continued defiance in court, I have made the decision to suspend [Mr. J's] appearances in [Judge's] courtroom to protect both [Mr. J] from being charged with contempt and to not expose [Judge] to [Mr. J] as I cannot safely predict how or if [Mr. J] will behave appropriately.

Grievant did not tell the RPM that he intended to suspend Mr. J from the Judge's courtroom.

On December 19, 2017 at 2:01 p.m., Mr. A sent Mr. J an email informing him of a meeting with Grievant that Mr. A scheduled on December 20, 2017 at 10 a.m. to discuss concerns that the judges had raised regarding Mr. J's appearance in court on

¹⁸ Agency Exhibit K.

¹⁹ Agency Exhibit T.

December 13, 2017. Mr. J responded to Mr. A with copies to other managers and supervisors by expressing concern with meeting Grievant in his office. Mr. J attached a copy of the workplace violence policy to his email. In other words, Mr. J falsely suggested he was concerned about meeting with Grievant.

On December 19, 2017 at 2:37 p.m., Grievant sent an email to the County Employee Relations Manager indicating that the situation appeared to be getting out of control with Mr. J because the more Grievant worked to hold Mr. J accountable, the more active Mr. J became in working to discredit Grievant. Grievant added, "Lately, he's been exhibiting behavior that would be considered inappropriate both in Court and in the office." Grievant sent a copy of his email to the Judge.

On December 20, 2017 at 11:06 a.m., the Assistant County Administrator replied to Grievant's email:

We can certainly discuss your concerns when you return to work; however, please understand that this is a County personnel issue. As such, this matter and/or communication should be limited to county and state personnel that have disciplinary oversight.²⁰

The Assistant County Administrator did not send a copy of her email to the Judge.

On December 20, 2017 at 4:44 p.m., Grievant sent the Assistant County Administrator an email indicating he had spoken with the County Employee Relations Manager who instructed him to investigate the complaint by interviewing those involved. Grievant added:

As this occurred in the Judge's Courtroom, it is appropriate, as a courtesy, to request permission to speak to her ... before speaking to them. As the Judges complaint includes one of my officers not being truthful in Court, I needed to evaluate if the relationship with the Court was irreparable and to what extent the judiciary had lost its confidence in the PO as the PO still had active cases on the docket. ***

Request: The way the system is now, line staff are permitted to bypass their immediate chain of command leaving operational problem solving at the executive/central office level. On a good day in any system, this is a chaotic and ineffective way to manage issues. Quite often all it does is create chaos as it is doing now. I can do busy, I struggle with chaos. That said, this is the system we have so we'll try to make it work.²¹

Grievant did not send the Judge a copy of this email.

²⁰ Agency Exhibit M.

²¹ Agency Exhibit M.

On December 20, 2017 at 5:30 p.m., the Assistant County Administrator sent Grievant an email:

Again, when you return to the office, I will be more than willing to meet with you to address your concerns; however, please refer to the memorandum dated October 30, 2017 from [name] County Administrator, relative to your responsibility as a department director under County policy – specifically as it related to the County’s Department of Human Resources.

Additionally, the County employees within the JCSU fall under my purview. As such, you will need to include me in your correspondence with HR – particularly if you are seeking to suspend or terminate a county employee.²²

On December 20, 2017, Mr. J wrote a statement regarding what happened on December 13, 2017 and sent it to a county manager. Mr. J described how the Judge asked a white probation officer to give his assessment of the social history since it appeared the white probation officer “was the only one who knew how to do his job.” Mr. J wrote that the Judge exhibited hostility towards Mr. J and insinuated it was because of Mr. J’s race.²³

Grievant received a copy of Mr. J’s statement on December 20, 2017 from a county manager and provide the Judge with copy of the statement. Grievant did not obtain Mr. J’s permission to disclose the statement to the Judge. The Judge interpreted Mr. J’s statement to mean he was falsely accusing her of complaining about his poor work performance because of his race.

On December 20, 2017 at 4:54 p.m., Grievant sent the County Employee Relations Manager an email stating:

Good evening. You have the Judges email/complaint. This is [Mr. J’s] account of the day in question. Please read this statement. After receiving this and his allegations of the Judge being racially biased towards him and receiving the Judge’s complaint where she believes [Mr. J] was not truthful in Court, I cannot put him back in Court in the foreseeable future. I started the investigation as you asked by collecting this statement.²⁴

²² Agency Exhibit M.

²³ Upon receipt of Mr. J’s statement, the County should have immediately removed Mr. J from the Judge’s courtroom to prevent further racial discrimination in the event Mr. J’s allegations turned out to be true.

²⁴ Agency Exhibit O.

On December 20, 2017 at 5:21 p.m., the County Employee Relations Manager replied:

I will be in touch with you on Thursday regarding our recommendation.²⁵

On December 21, 2017 at 4:15 p.m., Grievant sent the Judge a text:

Judge, based on your email and based on Mr. J's response, it's my opinion that the Court has lost faith in Mr. J's ability to be truthful in court and he has a hostile opinion of the Court. That said, I can't put him back in a courtroom. Would you agree? I'm saying this to the county right now and I'm getting minimized and pushed back. I need to know your position so I can move forward. I don't think this is something that can be overlooked.

The Judge replied:

I was ok with him coming back until HR dealt with it UNTIL he accused me of being a racist. Now if I hold him accountable I am opening myself up to further false allegations of racism. So no, I don't want him back in my Courtroom.²⁶

On December 20, 2017 at 8:01 p.m., Grievant sent Mr. J an email stating:

I received your response today concerning the events that occurred in Courtroom [number] on or about December 13, 2017. After reading both accounts from you and [the Judge], I've decided that until further notice it is best that we get another Probation Officer to present your cases in Court. I'm going to ask that you avoid appearing in Court altogether until further notice.

[County] Human Resources has been notified and they are reviewing the incident. Until I hear from [County Employee Relations Manager], I'm going to ask that you report daily from 8:30 a.m. to 5:00 p.m., Monday through Friday, to the location designated by your supervisor, [name]. Please do what your supervisor asks of you. You will be in this status until we hear something definitive from [County] Human Resources.²⁷

On December 23, 2017 at 12:14 p.m., Grievant sent the Judge a text:

²⁵ Agency Exhibit O.

²⁶ Agency Exhibit G.

²⁷ Agency Exhibit P.

I am looking into other issues of PO deliberately lying to the Court. I'm in a dialogue with the county that my PO's are sworn officers. Not just sworn if the Judge swears them in for a hearing. They are sworn officers of the Court and I cannot tolerate them lying. I asked for [Mr. L] to be terminated and the only saving grace for him was his certification. [Mr. B] is a fluke and should have been terminated immediately.

On December 22, 2017, Grievant sent a memorandum to the County Employee Relations Manager stating, in part:

Because of this event, [Mr. J] will not be able to return to the Courtroom in [County]. That said, because [Mr. J] chose not to be truthful in his character is now in question, he cannot do the duties of a Juvenile Probation Officer. There is an unreal expectation that [Mr. J] can work with children and require them to respect the law and the Judge if he himself obviously has little respect. Our reputation is everything. It is my practice as a Court Service Unit Director to recommend termination on all employees who have shown to be less than honest in the execution of their official duties. When we choose to violate that trust, one automatically disqualify [himself] from working in this capacity. We cannot be known in the community as legal professionals who cannot be honest in all aspects of our work. *** I respectfully request that he be transferred to another department where he will be able to thrive.²⁸

The RPM did not know Grievant had sent the December 22, 2017 memorandum to the County Employee Relations Manager requesting MR. J's transfer.

On December 23, 2017 at 10:45 a.m., the Judge sent Grievant a text message:

Sorry to bother you on a holiday weekend but I wanted to share a thought before I forgot. If the county won't terminate [Mr. J], what about moving him to Intake? You said a concern is that he comes and goes when he wants and doesn't work full days. That would be easier to monitor if he was in a job that didn't require him to be out of the office.²⁹

On January 5, 2018, the Judge sent Grievant an email:

I have taken a couple of weeks to think about the incident that occurred in Court with [Mr. J] in December, as well as the email from [Mr. J] to you in which he falsely accuses me of being angry at him and treating him the way I did because of his race rather than because of his failure to properly file the two social histories in question and for his disrespect to me in court

²⁸ Agency Exhibit S.

²⁹ Agency Exhibit G p. 100.

that day. I have reflected upon the statement to me by [name] that in that December hearing [Mr. J] was not truthful with me in response to one of my questions about the disposition order. Finally, this morning I called the Judicial Inquiry and Review Commission for guidance.

I have come to the conclusion that I have no confidence in the work product that I would receive from [Mr. J]. Because I have been told he was dishonest with me. I would find myself questioning the truthfulness and veracity of anything he told me. I am very angry with [Mr. J] for falsely accusing me of being a racist (and once again assert that my displeasure with [Mr. J] on that day in December and to the present day continues to be based on [Mr. J's] behavior, and the displeasure is completely unrelated to his race). Because of this, it is clear that I have a bias against [Mr. J] that cannot be waived. It would be improper under the Judicial Canons for me to hear cases involving [Mr. J] going forward. Accordingly, I am putting you, as the [Unit] director, on notice that I will not hear any cases involving [Mr. J] effective immediately.³⁰

On January 8, 2018, Grievant sent the Assistant County Administrator an email stating, in part:

I have an issue that will need to be addressed. I have to talk with the Commonwealth Attorney's office for guidance but I do have a duty to notify. I have one employee (state) who is not allowed in Court because it was reported, before my arrival, that he was not truthful in Court. As a result, he is banned from the Court permanently. We have a recent PO who is now in the same boat. I have another with a founded complaint of falsify records and possibly another worker (County) may be in the same boat very soon.

As sworn officers, I have to let the Commonwealth Attorney's office know, and sworn officers, intentionally misleading the Court is a fireable offense. Honesty and integrity is not a preferred qualification, it's a must. This is a significant issue in our world.³¹

On January 8, 2018, the Assistant County Administrator sent Grievant an email stating, in part:

Any concerns with County employees should follow the October 30, 2017 memorandum from [County Administrator].

³⁰ Agency Exhibit P.

³¹ Agency Exhibit L.

County administrators concluded Mr. J should receive a two work day suspension. On January 9, 2018, Grievant was informed of the County's decision and authorized him to issue disciplinary action to Mr. J with a two work day suspension.

On January 9, 2018, Grievant met with the Chief Deputy Commonwealth's Attorney. Grievant told her he had some probation officers in the Unit who were lying. She told him that if a probation officer were lying, it would end the probation officer's career. She told Grievant that lying was a serious charge to make. She initially testified at the hearing that she did not tell Grievant to report to her or the Court the names of the probation officers who were lying. She then testified that she told Grievant if he had "concrete proof" of the probation officers lying then he should let her know. On January 10, 2018, the Chief Deputy Commonwealth's Attorney sent Grievant an email stating:

As a follow up to our conversation yesterday, without any concrete evidence that either [names] have lied in their capacity as probation officers, we will continue to utilize them as witnesses. Should the Judges feel differently, they will take whatever action they feel is appropriate.

Please keep us apprised should you discover any concrete evidence that reflects on the truthfulness or veracity of any probation officers.³²

On January 17, 2018, the County Human Resource Director sent Grievant an email:

At this time, there is no need to follow up with the Commonwealth Attorney' Office or LCSO related to any potential criminal activity or issues of untruthfulness before the Court related to any County employees assigned to JCSU. ***

You will proceed with the proposal to suspend [Mr. J] and develop a written workplan for his duties upon return from suspension. *** HR is recommending that [Mr. J's] cases be adjusted to assign him cases before [Second Judge]. ***

HR will attempt to contact [Mr. R] to give him a final opportunity to provide an explanation for the documentation you provided us which appears to show a misrepresentation to the Court. Once that conversation occurs, HR will circle back with you to discuss discipline, if appropriate, and referral to the Commonwealth Attorney's Office, if appropriate.³³

Grievant replied on January 17, 2018:

³² Agency Exhibit R.

³³ Agency Exhibit X.

I'm confident we're going to have more discussions as to what we can and can't do with those employees who have been found to be inappropriate to work in this environment. *** I believe we are in the investigative stage with [Mr. R] where my office found probable cause to push the issue that he purposefully misled the Court to HR for further investigation. As part of your investigation, you are choosing to interview him within your offices to see what he has to say. As he's under investigation, I need to let the Commonwealth's attorney know that his case is up for review but there has been no finding as of yet. I have [Mr. A] finishing that letter, setting the time and we will meet or asked for something in writing. After 5 days, we can execute the suspension. As per your direction, I'm to return him to casework. We continue to work with him on his performance issues I will notify you if I hear any feedback from [the Judge] and [Second Judge]. As my office considers this issue to be very obvious and straightforward, we will stand by and wait for your findings. Until then we will closely monitor him to ensure his work is accurate.

I do need to say that I feel that individuals who are not motivated to do this work, who have a low threshold for tolerating or are sensitive to differences in others or that struggle with presenting factual information in a Court of law, have no place as Court Officers working with children who are under judicial supervision. I believe it opens us up to future problems that can be avoided by adjusting their work environment now. Thank you for the opportunity to listen to me yesterday.³⁴

On January 19, 2018, the RPM sent Grievant an email reminding him of the October 5, 2017 counseling memorandum requiring Grievant to permit the RPM to review significant changes in job duties or work locations of County personnel.

On January 23, 2018, the Deputy Director sent Grievant an email stating:

As a reminder, [RPM] and I are aware of the many challenges that you inherited and there have been numerous discussions of the concern shared by staff since your appointment. Our goal, as discussed, is to ensure the concerns are dressed in a fair, equitable and professional manner. [RPM's] role, in addition to supervising you, is to support you and the CSU as you collaborate with the County and our HR department through resolution of the human resource issues. Additionally, she is expected to communicate and collaborate with the judges (as needed) on programmatic and operational issues that relate to support for the court. *** In the meantime, please copy me on any concerns you have about your communication with [RPM]. I want to ensure that your concerns are dressed in a fair, equitable and professional manner, as well. I noticed that you copied [Judge] on your email and I remind you that it is not

³⁴ Agency Exhibit X.

appropriate to copy others on human resource matters. Please keep those messages within your chain of command and the respective human resource office (DJJ or County) as necessary. We are happy to meet with the judges on operational matters as previously offered.³⁵

Mr. B filed a grievance on December 21, 2017 challenging Grievant's action towards him. Mr. B met with the RPM on December 29, 2017. On January 23, 2018, the RPM provided Mr. B with her Third Step Response to his grievance. She concluded that Grievant's action against Mr. B was not retaliatory and was not a demotion. She discussed Grievant's rationale for placing Mr. B in the new position. The RPM concluded that Grievant did not define the position enough to be able to inform the employee of his duties or work hours. She said:

The lack of communication and planning regarding the new position is concerning. *** [Grievant] did not have definite description of the duties and has not completed the procedure regarding the Supervised Release Program. It is concerning that an employee is expected to be out during nighttime hours alone making surveillance visits to probationer's homes. At this juncture, it is unreasonable to change this or any employee's position to the intended SRP position until it is better defined.³⁶

On January 23, 2018 at 4:39 p.m., the RPM sent Grievant a copy of her Third Step Response to Mr. B.

On January 24, 2018 at 4:47 p.m., Grievant sent the RPM's Third Step Response to Mr. B to the Judge. Grievant told the Judge that this was, "another example of what should be a simple, methodical and legal response turns into another opportunity to insult and criticize let alone send the clear message to my subordinates that she has clear issues with me. *** It's unprofessional and uncalled for and just not right. *** I've contacted [Deputy Director] and told her this relationship isn't working. She's working on something."³⁷ Grievant did not advise the RPM that he was sending her Third Step Response to the Judge.

On January 25, 2018, Grievant sent the Judge an email with a quarterly update and progress report. Grievant included in the email:

Unnamed PO – I found incident number two where a PO did not accurately report compliance on a case. Looks intentional. If the investigation turns up to be accurate, I'm requesting he be put in the same status as [Mr. J].³⁸

³⁵ Agency Exhibit U.

³⁶ Agency Exhibit GG.

³⁷ Agency Exhibit GG.

³⁸ Agency Exhibit V.

On January 25, 2018 at 6:55 p.m., Grievant sent the Judge a text message identifying the unnamed PO and added, "Gave [Mr. J] his suspension papers today."³⁹

On February 7, 2018, Grievant sent the Judge a letter regarding Mr. R. Grievant wrote:

I have become aware of at least two incidents that one of my probation officers may have deliberately misled the Court. Both cases involve juveniles failing to comply with Court ORDERED requirements. ***

[County] Human Resources was notified and they encouraged us to speak with [Mr. R] to get his side of the story. A copy of my memo was presented to him. His response was to rip up the memo and exit the JSCU office. He came back later, made some random comments, and was asked again to explain this family's prior probation experience. He reportedly directed his supervisors to "let the file speak for itself". All of the evidence was compiled and delivered to [County] Human Resources. During one of our meetings, [County] Human Resources stated that they were going to try and speak with [Mr. R] for clarification.⁴⁰

Grievant did not inform the RPM he intended to send the letter to the Judge.

On February 8, 2018, the Agency issued Grievant a Group II Written Notice for failure to follow a supervisor's instructions and insubordination. The Group II Written Notice was later upheld on appeal.

On February 12, 2018, the County Human Resource Director sent Grievant an email:

My staff informed me today of a communication you forwarded to County HR from [the Judge] to you. In her communication, [the Judge] states that you informed her in a letter dated 2/7/18 "that one of your probation officers, specifically, [Mr. R] has been dishonest with this court and has apparently blatantly ignored orders from this Court." [The Judge] concludes her email to you by informing you that effective immediately the Court refuses to hear any cases involving [Mr. R].

As you are aware (see your email below dated 1/17/18), the matter of [Mr. R's] alleged untruthfulness is currently under investigation by Human Resources at your request. Human Resources has not concluded that

³⁹ Agency Exhibit G, p. 105.

⁴⁰ Agency Exhibit BB.

investigation, no investigative report has been completed and no investigative findings have been issued.

I am extremely concerned that a representation has been made to the court that [Mr. R] has in fact been untruthful to the court when this matter is still under investigation by County Human Resources and no such finding has been made.

Until this matter is resolved, please temporarily reassign [Mr. R] to duties that will not involve him going into the Court and immediately advise HR of what his temporary duties will be. Human Resources will advise when our investigation into this matter has been completed.⁴¹

On February 12, 2018, the Assistant County Administrator sent the RPM an email:

I am extremely disturbed by the email below. [Grievant] sent correspondence to [Judge] dated February 7, 2018, stating that one of his probation officers – specifically a County Employee – has been dishonest with the Court. As such [Judge] – effective immediately – refuses to hear any cases involving this employee. This is troubling as the county’s HR Department is currently investigating this allegation at [Grievant’s] request. This investigation is ongoing and no investigation report has completed and no investigation findings have been issued. Any representation by [Grievant] that this employee has been untruthful is – at best – premature.

What is equally concerning or troubling is that this is not the first time [Grievant] has given information to the Judges about a County Employee that has resulted in them being “banned” from the courtroom. This action has been taken without giving the employees an opportunity to defend themselves.⁴²

On February 12, 2018, Grievant sent the Judge a text:

If I’m truly a department head, I have every right to but I haven’t been treated like a department head since I’ve been here so they’re just a little pissy that I told you because I’ve been told before to keep things from the judiciary. Everything all under the label of it’s an HR issue.⁴³

⁴¹ Agency Exhibit X.

⁴² Agency Exhibit BB.

⁴³ Agency Exhibit G, p. 109.

The Judge responded: Any reaction from [Mr. R] or staff to him and [Mr. J] being banned? *** Word will get out and hopefully message will be sent and received that lying to the court will not be tolerated.⁴⁴

On February 21, 2018, the RPM sent Grievant an email:

I was made aware by [County] that based on a letter you sent to the Judge, another employee has been banned from the courtroom. Please provide me the letter you sent to the Judge. Also, please let me know why you did not make me aware of the situation?⁴⁵

Grievant replied:

I asked that two copies be walked down to the clerk's office and the other copy be taken down to [Human Resources] based on the seriousness of the event. As far as I can tell, it's a simple oversight as it was a routine task (making copies, file appropriately, etc.) As I don't usually ask that documents be hand delivered, I can see the potential mixup. Attached is the letter I believe was delivered to both the Judge and [County Human Resources]. The Judge and [County Human Resources] has an original signed copy. My copy of the original is locked up in [name] office. She will be back Monday. Thank you, [Grievant].⁴⁶

On February 14, 2018 at 6:06 p.m., Grievant sent the Judge several text messages regarding Mr. R and other matters. The Judge wrote, "How did [Mr. R] react to the letter?"

Grievant replied:

In front of other PO's [Supervisor] said to him "let's talk". [Mr. R] said no. Three times.

The Judge wrote:
Insubordination.

The Judge wrote:
Any indication HR is starting to get it?

Grievant wrote:

⁴⁴ Agency Exhibit G, p. 110.

⁴⁵ Agency Exhibit BB.

⁴⁶ Agency Exhibit BB.

Yes *** what was great was at the end when we're talking about [Mr. R] they said well we thought you were waiting for us to do our investigation? I shared that I was the director of the CSU and I did my investigation and that was enough for me they could handle the discipline and I looked at [Ms. C] and I said [Ms. C] I don't know if you guys are getting [it] yet but I work directly for the Judge. She smiled and looked down at the table and said "Oh we're getting it."

The Judge wrote:

Good!⁴⁷

Mr. M was a probation officer employed by the County. Without first notifying Grievant or consulting with Grievant, the County Director sent Mr. M a letter dated February 21, 2018 notifying him:

Effective immediately, you are being placed on administrative leave *** for the purpose of investigating work related complaints and allegations within your department. *** While on paid administrative leave, you are required to make yourself available during working hours ... in the event that I need to contact you. You are prohibited from entering the worksite for any reason while on administrative leave, unless otherwise directed by me.⁴⁸

Mr. M had been assigned at least four client social history reports to complete but was unable to do so while out on administrative leave. Mr. M had interviewed the families but not written the reports. It would have required another probation officer several hours per family to re-interview the families as well as causing the families inconvenience.

Grievant and the County Employee Relations Manager delivered the Director's letter to Mr. M. The County Employee Relations Manager told Mr. M he could not work while on administrative leave.⁴⁹ On March 1, 2018, Grievant sent the Judge an email:

Judge, [Mr. M] was working on a number of reports, 4 due today. I believe Court is on [March 7th]. I'm going to work to get the families in and processed with me and all supervisors knocking out the social histories. We may need to hand in reports late, would you allow that?

The Judge replied:

⁴⁷ Agency Exhibit G.

⁴⁸ Agency Exhibit II.

⁴⁹ Mr. M later resigned from his position.

Given that this is beyond JCSU's control and was arbitrarily imposed on us by the County, I don't see a choice. However, the statute requires that the attorney's have the report a certain number of days before disposition.⁵⁰

Grievant responded, "Thank you, I'm writing socials this weekend."

On March 2, 2018, Grievant realized it would be extremely difficult to repeat the process Mr. M followed to obtain the social histories from the families and meet the court deadline. He decided it would be easier to have Mr. M complete the reports since he had already conducted the interviews. Grievant called Mr. M and asked if he would be willing to complete the reports. Mr. M reluctantly agreed. On March 3, 2018, Grievant went to Mr. M's home and had Mr. M finalize the social histories. Grievant bought lunch for Mr. M and his family.

On February 26, 2018, the Assistant County Administrator sent Grievant an email asking if Mr. R was in the office and if Grievant had given him direction. Grievant replied:

his supervisor is out today and [Mr. R] won't answer his phone. I heard he was here earlier. I have two people checking now. I have not had direct contact with him as I won't meet with him alone and neither will any other supervisors. Friday's contact was a chance encounter. Two of the four supervisors are out today. We were to meet this morning to discuss some issues and one of them is [Mr. R].⁵¹

On February 26, 2018 at 6:18 PM, Grievant sent the Judge the draft of an email he intended to send to the Assistant County Administrator.⁵² The letter discussed "disgruntled employees who have been permitted to act inappropriately for an awful long time with no negative consequences."⁵³ He asked the Judge, "Judge, think this is too much? [Assistant County Administrator] has no idea the depth of the issue. I figured I'd give it a day before I send it."⁵⁴

Grievant's draft email to the Assistant County Administrator read, in part:

⁵⁰ Agency Exhibit JJ.

⁵¹ Agency Exhibit EE.

⁵² The Judge told Grievant that before he sent any more emails to the County, he should let her review and edit them if necessary.

⁵³ Agency Exhibit EE.

⁵⁴ Agency Exhibit EE.

To answer your question, I don't know where [Mr. R] is. It was reported that he was in and out today. I sent someone to look for him as I will not approach him alone. The last time he reported that I, in an open library, called him a "Bastard". That said, I worked with 30 officers and support staff. Most are terrific and hard-working professionals who want to be here. Then there are that small few who run to HR when given direction. Insubordinate, they know that I can do little without the support of HR and my immediate chain of command. They know I don't have it or it doesn't appear that I have it. ***

My supervisors fear approaching this group for fear that they will be targeted by them. When I asked my supervisors to hold their employees accountable, they laugh and then share with me that it looks like when those select staff come after me. Yes WHEN THEY COME AFTER ME. Because they have. In [County], you don't need proof to accuse anyone. You just have to make the accusation and the accused are guilty.

This is the group of people that openly called their chain of command plantation owners and racist in front of the entire staff and got away with it, more than once.

[Mr. R] is one of those employees. [Mr. R] has made false accusations against me and unless I have the clear support of [County Human Resources] or anyone in [County], I cannot begin to correct this problem. I'm working directly with those who wish to be here, are here for the right reasons and take pride in their profession. That's more than one half the staff. My focus is to move forward every day while not getting stung or trapped by these few disgruntled employees who been permitted to act inappropriately for an awful long time with no negative consequences.

This past couple of days have revealed how fearful the staff is of this group. ***⁵⁵

On February 27, 2018, the Judge sent Grievant an email with a revised draft of Grievant's email to the Assistant County Administrator. The Judge wrote, "I have edited your email."⁵⁶ Grievant did not notify the RPM he intended to send this draft email to the Judge for editing.

"The Club" was an organization of current and former employees who worked in the Unit. They met in a restaurant to socialize but also to discuss how to undermine the activities of their Unit supervisors.

⁵⁵ Agency Exhibit EE.

⁵⁶ Agency Exhibit EE.

On February 27, 2018, one of Grievant's employees presented Grievant with a copy of numerous emails written by members of The Club. The employee was cleaning out his email and came across old emails from his peers. He had been invited to join the group but ultimately declined to do so because he did not agree with The Club's philosophy. He continued to receive emails from members of The Club. The emails were from November 2012 to April 2014 and included emails from Mr. R, Mr. B, and Mr. J.

Grievant drafted a memorandum dated February 28, 2018 stating, in part:

The content of these emails is disturbing. It appears this [The Club] is a formal group of disgruntled employees who have collectively used their working hours to advance and execute their agenda. *** These CSU employees would agree to meet to discuss agenda items and discuss recent happenings with those they seem to dislike. It appears there are times when members would be assigned duties or homework or would work together in disrupting the operation of the CSU. *** It's clear the meetings focus[ed] on disrupting the operation of the CSU and had gone as far as targeting those workers who "had to go."

It answers a lot of questions as to why the unit appears to be in constant turmoil for the last couple of years. It explains why those accused often have no viable response and seem defensive and panicky when one of these individuals lodges an empty complaint.

There is absolutely no room for this type of employee in the Juvenile Justice field or in this office. I'm requesting that they be removed immediately. I believe they have worked daily to slander and circumvent me and my management team from the first day I arrived in [County]. I've reported it. I've stated that things don't add up. Now they do.

Although the last email was dated 2014, more than one employee has reported that they've witnessed the exact type of behaviors as recently as today. I being one of them. The feelings of not feeling emotionally and physically safe or the high number of complaints now make a lot of sense.

I'm asking that this matter be taken seriously and addressed immediately.⁵⁷

Grievant made a copy of the email binder and attached a "sticky note" with the writing, "let me know if you want to do something about this." He put the email binder in an envelope and asked a supervisor to deliver them to the RPM. Grievant knew the supervisor would be going to the RPM's location the following morning. Grievant took another email binder with his memorandum and walked to the County office suite. He

⁵⁷ Agency Exhibit OO.

had a key to enter the suite. He entered the suite with the objective of speaking to the Assistant County Administrator but she was not in her office. Grievant spoke with the Deputy County Administrator, gave him the email binder, and said, "If you want to do something about it, let me know."⁵⁸

The RPM received the binder of emails on March 1, 2018. The RPM did not know that Grievant had delivered another binder to the County. Grievant did not consult with the RPM before asking the County to remove certain employees. The RPM was not aware of The Club prior to receiving the email binder.

On March 1, 2018 at 5:11 p.m., the Assistant County Administrator sent the DJJ Agency Head an email:

Attached please find the materials that were delivered to the County Administration by [Grievant]. [Grievant] stopped by [Deputy County Administrator's] office yesterday – unannounced – and provided a cover memorandum and a binder of emails from both former and current state and county staff assigned to the JCSU. [Grievant] initially asserted⁵⁹ that the emails were from the County email accounts of these employees; however, after a brief review, we determined that the emails were, in fact, from the personal accounts of employees.⁶⁰

Instead of addressing the contents of the emails, the County removed the stipend the County paid to Grievant. The County's stipend paid to other DJJ employees was not removed.

The Deputy Director met with Unit staff and indicated she was aware of The Club emails and that any collusion or attempt to sabotage operations in the Unit would not be tolerated.

On March 5, 2018, the Agency suspended Grievant as it began its investigation.

On March 6, 2018 at 4:43 p.m., the Judge sent Grievant a text regarding her telephone call with the Agency Head. The Judge wrote, "I let him know all the problems I have observed. I stressed the judges are supporting you."⁶¹

⁵⁸ The Deputy County Administrator later told the Agency's investigator that "there was nothing for the county to act on. [Deputy County Administrator] stated that the emails were private and several years old." See, Agency Exhibit C.

⁵⁹ Contrary to the Assistant County Administrator's assertion, Grievant's cover memorandum specifically states, "Most replies went to a private email account although two used their county email"

⁶⁰ Agency Exhibit NN.

⁶¹ Grievant Exhibit p. 112.

On March 14, 2018, the Judge sent Grievant a text message indicating that she conveyed that “we want both you and [Mr. M] back ASAP.”⁶² The Judge also wrote, “I told him we want [a] djj only unit.”⁶³

On March 23, 2018, the Employee Relations Manager sent a memorandum to the County Human Resource Director⁶⁴ stating:

there is no conclusive evidence to show that [Mr. R] deliberately misled the court when he informed the court that Female Juvenile A was compliant. ***

[Mr. R] was clearly negligent in the management of this case. He attributes it to the on-going chaos and poor management of the unit. [Mr. R] was negligent in the performance of his duties when he relayed to the court through [name] that Male Juvenile A had complied. He failed to check the records in BADGE or the hard file; however, there is no evidence that he deliberately misled the court.⁶⁵

Prior to removing Grievant, the Agency Head spoke with the Judge on May 3, 2018. The Agency Head sent Second Judge an email on May 4, 2018:

I hope you are doing well. I am just writing to say that I met with [the Judge] yesterday to give her an update, and receive her input, on the [Grievant] case and investigation. I would be happy to speak with you directly if you like. Just let me know if you would like to talk and I am sure we can figure out a time for a call. Thanks so much and hope you have a nice weekend.⁶⁶

Second Judge replied:

Thank you for reaching out. [The Judge] filled me in yesterday and we are on the same page. No need to speak with me. I appreciate the courtesy.⁶⁷

⁶² Grievant Exhibit p. 40.

⁶³ Grievant Exhibit p. 42.

⁶⁴ Grievant was not provided a copy of the memorandum.

⁶⁵ Agency Exhibit DD.

⁶⁶ Agency Exhibit WWW.

⁶⁷ Agency Exhibit WWW.

CONCLUSIONS OF POLICY

Unacceptable behavior is divided into three types of offenses, according to their severity. Group I offenses “include acts of minor misconduct that require formal disciplinary action.”⁶⁸ Group II offenses “include acts of misconduct of a more serious and/or repeat nature that require formal disciplinary action.” Group III offenses “include acts of misconduct of such a severe nature that a first occurrence normally should warrant termination.”

“[F]ailure to follow [a] supervisor’s instructions” is a Group II offense.⁶⁹

Grievant had a duty to disclose immediately to the Court his knowledge of any probation officer lying in Court. Probations officers were “sworn” employees who appeared in court and were obligated to tell the truth at all times. When Grievant was appointed by the judges, he was informed of their expectation to address untruthful probation officers. Grievant believed he was obligated to inform the judges immediately if he became aware of a probation officer who was untruthful. If Grievant waited until he obtained approval of the RPM, he could create circumstances where the Judges made decisions based on information from an untruthful probation officer. Grievant’s obligation was consistent with Agency Policy 1-1.2-01 which governed Standards of Conduct. This policy required:

All individual subject to this Procedure shall practice honesty and integrity in every aspect of dealing with supervisors, fellow employees, juvenile, juvenile’s immediate and extended family members, the public, vendors, and other government authorities.⁷⁰

Grievant was not obligated to disclose immediately to the Judge information about probation officers that did not involve lying.

First Written Notice

The Agency issued Grievant a Group III Written Notice:

During the above period (March 2017 to April 2018), you sent numerous text messages to the Chief Judge of the ... Court that serve to greatly undermine the effectiveness of agency activities, and cause significant harm to its reputation and relationship with the judiciary. Your actions include, but are not limited to, characterizing DJJ leadership as “liars”, stating that DJJ was “dirty”, and openly criticizing your supervisor’s

⁶⁸ The Department of Human Resource Management (“DHRM”) has issued its Policies and Procedures Manual setting forth Standards of Conduct for State employees.

⁶⁹ See, Attachment A, DHRM Policy 1.60.

⁷⁰ Agency Exhibit CCC.

qualifications and motives before the Chief Judge. You have demonstrated through various communications a lack of respect for this organization and its leadership, and a hostility towards agency strategies for improving [Unit] operations and management of its personnel.

No credible and persuasive evidence was presented to show that Grievant “undermined the effectiveness of agency activities.” Grievant developed a close working relationship with the Judge and text messages show the Judge was supportive of Grievant and approved many of his decisions and actions. The Judge supported Grievant’s personnel decisions regarding problem probation officers. She formed positive and negative opinions of the Agency and its employees based on her own observations. The Court Judges did not complain about Grievant. It appears that the Judge opposed Grievant’s removal because she considered him an asset to the Unit.

No credible or persuasive evidence was presented to show that Grievant “caused significant harm to its reputation and relationship with the judiciary.” Indeed, it appears that Grievant’s presence in the Unit gave the Judge confidence that the Unit was improving. The Judge wanted to move Unit positions from the County’s control to the Agency’s control because of her confidence in Grievant’s ability to manage the Unit. The Judge sent Grievant a text message stating that she had waited 12 years to have a Director who worked with her instead of against her.

The Agency’s failure to attempt to interview an obvious witness, the Judge, greatly undermines the persuasiveness of the Agency’s assertions.

The Agency objected to Grievant referring to Agency leadership as “liars.” Grievant’s statement reflected his opinion of Agency leadership. The Agency did not show that his opinion was incorrect; the Agency only showed it did not like having its leadership referred to as liars. Grievant was expressing his opinion to someone he perceived as a supervisor. The Judge was capable of forming her own opinions of Agency leadership regardless of Grievant’s statements.⁷¹

The Agency asserted that Grievant sometimes lied to the Judge. Although Grievant may have had different opinions from the opinions of the RPM and Deputy Director, the Hearing Officer does not believe Grievant was untruthful in his statements to the Judge.

The RPM asserted that Grievant sent the Judge text messages complaining about her and that Grievant’s messages were untrue. For example, Grievant sent a text message to the Judge indicating the RPM opposed a diagnostic unit. The Agency did not establish that Grievant actually knew at the time he sent the text that the RPM was in favor of the diagnostic unit. This dispute, like many others, appears to be a matter of

⁷¹ For example, on January 24, 2018, Grievant sent the Judge a text message indicating he had not read an email from an Agency manager. He described her as a “liar.” The Judge replied, “I don’t trust her.”

opinion. Simply because the Agency does not like Grievant's opinion, it does not form a basis for disciplinary action.

The First Written Notice must be reversed.

Second Written Notice

The Agency issued Grievant a Group II Written Notice:

During the period above (December 20, 2017 to January 5, 2018), you engaged in various communications with the Chief Judge of the ... Court regarding Probation Officer Mr. J, an employee of ... County who was under investigation by County HR. You obtained a copy of a written statement by Mr. J submitted in response to the allegations and in which Mr. J alleged disparate treatment by the Chief Judge based upon race. You subsequently forwarded this confidential HR-related document to the Chief Judge prior to the conclusion of the investigation, and without discussing with your supervisor. This resulted in Mr. J being permanently banned from the courtroom by the Chief Judge. This is a direct violation of DHRM Policy 6.05 Personnel Records Disclosure which prohibits the disclosure of records concerning grievances, complaints or investigations to third parties without the written consent of the employee. It is also a violation of my October 5, 2017 counseling memo requiring that you discuss possible disciplinary actions with me in advance, and that such issues be referred and coordinated with HR.

On October 5, 2017, the Regional Program Manager presented Grievant with a Counseling Letter providing:

If you believe that disciplinary action is warranted for an individual employee, you are to submit your evidence and documentation to me for review and discussion prior to taking any action. All performance and/or disciplinary actions will be handled through the appropriate DJJ or [County] Human Resource policy and procedures.

All individual performance concerns are to be reviewed with your supervisor prior to taking any action.

Significant changes in the job duties or work locations of (County) personnel must be reviewed and approved by [County] administration. Written justifications for such actions must be submitted to me for review prior to submitting the request and justification to [County] administrators.

Grievant received a copy of Mr. J's statement on December 20, 2017 from a county manager and provide the Judge with copy of the statement. Grievant did not obtain Mr. J's permission to disclose the statement to the Judge.

In Mr. J's statement, he falsely accused the Judge of discriminating against him because of his race. His false accusation was an individual performance concern. Grievant did not have the RPM review Grievant's performance concern about Mr. J before sending Mr. J's statement to the Judge. Grievant knew or should have known that the Judge would not like being falsely accused of racial discrimination and would question whether Mr. J should remain her courtroom. Based on Grievant's disclosure of Mr. J's statement, the Judge removed Mr. J from her courtroom which amounted to a significant change in the Mr. J's duties.

Grievant did not have a duty to disclose to the Judge that Mr. J perceived her as discriminating against him because of his race. The Agency has presented sufficient evidence to support the issuance of the Second Written Notice, a Group II Written Notice.

Third Written Notice

The Agency issued Grievant a Group II Written Notice:

On January 17, 2018, you were informed by the ... County HR Director that they were investigating Probation Officer Mr. R for allegedly being untruthful in the Court and that they would forward the case to the Commonwealth's Attorney if warranted. Prior to the conclusion of the investigation and without review by the CA, you delivered a letter to the JD&R Judges alleging that Mr. R had lied to the Court, and seeking to have him removed from the court for "dishonesty". Following the Judges' removal of Mr. R from the Court, ... County HR determined that there was no evidence that Mr. R "deliberately mislead" the Court. This is a direct violation of advice received from the CA's office and my October 5, 2017 counseling memo requiring that you discuss possible disciplinary actions with me in advance and that such issues be referred to and coordinated with Human Resources.

The Agency did not establish that Grievant's action was contrary to the advice of the Commonwealth Attorney. The Commonwealth's Attorney did not advise Grievant to withhold information from the Court. Grievant was not obligated to obtain approval of the Commonwealth's Attorney to inform the Court of an untruthful probation officer. On January 10, 2018, the Chief Deputy Commonwealth's Attorney informed Grievant:

Should the Judges feel differently, they will take whatever action they feel is appropriate.

On October 5, 2017, the Regional Program Manager presented Grievant with a Counseling Letter providing:

If you believe that disciplinary action is warranted for an individual employee, you are to submit your evidence and documentation to me for review and discussion prior to taking any action. All performance and/or disciplinary actions will be handled through the appropriate DJJ or [County] Human Resource policy and procedures.

All individual performance concerns are to be reviewed with your supervisor prior to taking any action.

Significant changes in the job duties or work locations of (County) personnel must be reviewed and approved by [County] administration. Written justifications for such actions must be submitted to me for review prior to submitting the request and justification to [County] administrators.

On February 7, 2018, Grievant sent the Judge a letter advising her that, "I have become aware of at least two incidents that one of my probation officers may have deliberately mislead the Court." He identified Mr. R as the probation officer. Although Grievant completed his investigation, he did not allow the County to complete its investigation. He did not allow the RPM to review his performance concern about Mr. R before taking the action of informing the Judge.

Grievant had a duty to immediately inform the Judge of untruthfulness by a probation officer testifying in Court. The Agency was not free to impede that duty by imposing review or reporting restrictions. The Third Written Notice must be reversed.

Fourth Written Notice

The Agency issued Grievant a Group II Written Notice:

On the above date (February 26, 2018) you forwarded a draft email to the Chief J&DR Judge which contained sensitive HR related information regarding subordinates on your staff. DJJ Deputy Director ... instructed you in a January 23, 2018 email to limit discussion of HR related matters to your chain of command and the appropriate Human Resources contact, and to refrain from sharing such matters with members of the judiciary.

On January 23, 2018, the Deputy Director sent Grievant an email stating:

I noticed that you copied [Judge] on your email and I remind you that it is not appropriate to copy others on human resource matters. Please keep those messages within your chain of command and the respective human

resource office (DJJ or County) as necessary. We are happy to meet with the judges on operational matters as previously offered.⁷²

On February 26, 2018, Grievant sent the Judge an email asking her if “this is too much?” Grievant’s draft email addressed human resource matters. For example, Grievant discussed being called a name by a probation officer, staff insubordination, employees who run to HR, supervisors’ fear of being targeted by certain staff, racist comments by staff, and false accusations by staff. Grievant shared his draft with the Judge. None of those items dealt with probation officer appearing in court and making false statements to the Judge. By sending his draft email to the Judge, Grievant acted contrary to the Deputy Director’s January 23, 2018 instruction. The Agency has presented sufficient evidence to support the issuance of the Fourth Written Notice for failure to follow instructions.

Fifth Written Notice

The Agency issued Grievant a Group II Written Notice:

On the above date (January 24, 2018), you transmitted a confidential personnel record to the Chief Judge of the ... County J&DR Court. Specifically, you provided the Judge with a copy of a third-step grievance response issued by your supervisor to Probation Officer [Mr. B]. This is a violation of Deputy Director’s January 23, 2018 email to limit the distribution of HR related matters to your chain of command and the appropriate Human Resources contact.

On January 23, 2018, the Deputy Director sent Grievant an email stating:

I noticed that you copied [Judge] on your email and I remind you that it is not appropriate to copy others on human resource matters. Please keep those messages within your chain of command and the respective human resource office (DJJ or County) as necessary. We are happy to meet with the judges on operational matters as previously offered.⁷³

The RPM replied to a grievance filed by Mr. B. She described Grievant’s lack of communication and planning as concerning. She viewed Grievant’s decision as unreasonable. On January 24, 2018 at 4:47 p.m., Grievant sent the Judge the RPM’s Third Step Response to Mr. B. Grievant told the Judge that this was, “another example of what should be a simple, methodical and legal response turns into another opportunity to insult and criticize let alone send the clear message to my subordinates that she has clear issues with me. *** It’s unprofessional and uncalled for and just not right.

⁷² Agency Exhibit U.

⁷³ Agency Exhibit U.

The RPM's response to Mr. B was not simply a human resource matter relating to Mr. B. The RPM's response was a detailed and specific criticism of Grievant. The RPM could have avoided specific references to Grievant in her response to Mr. B in which case would have kept the matter as one only relating to Mr. B. By expanding her discussion with such detail and specifically identifying her belief of errors made by Grievant, the RPM converted the response to a matter relating to Grievant. Grievant was free to disclose to a "dotted line" supervisor Grievant's concerns about another manager's criticism of Grievant's work performance.

The Agency argued the Grievant acted contrary to DHRM Policy 6.05, Personnel Records Disclosure. The Purpose of this policy is:

It is the Commonwealth's objective to ensure compliance with the Government Data Collection and Dissemination Practices Act and the Freedom of Information Acts. This policy establishes guidelines for access to and release of personal information on employees which is maintained by state agencies.

"Personal Information" includes "employment records". Third Parties are defined as:

Individuals other than the subjects of the records, including other state agencies, **who request information** from the records maintained by agencies. (Emphasis added.)

The policy prohibits disclosure of certain "personal information [that] may not be disclosed to third parties without the written consent of the subject employee." This information includes, but may not be limited to:

performance evaluations; *** records of suspension or removal including disciplinary actions under the Standards of Conduct, Policy 1.60; *** records concerning grievances or complaints;

Grievant disclosed the Third Step Response of the RPM to the Judge. The Judge did not request the information from Grievant. Third parties are defined as individuals who request information. Because the Judge did not request the RPM's Third Step Response, Grievant did not disclose information to a Third Party and did not act contrary to the wording and the purpose of DHRM Policy 6.05.⁷⁴

⁷⁴ The Agency disciplined Grievant for violating DHRM Policy 6.05. The Agency had its own records policy. In that policy, it did not define Third Party.

The Agency has not presented sufficient evidence to support the issuance of the Fifth Written Notice, a Group II Written Notice. The Group II Written Notice must be reversed.

Sixth Written Notice

The Agency issued Grievant a Group II Written Notice:

Due to the administrative suspension of ... County Probation Officer [Mr. M], you informed the Chief Judge that you would have several families come to the CSU so that social histories could be completed because [Mr. M] would be unable to complete them by the due date. Instead of implementing this plan, you delivered the paperwork to [Mr. M's] home and directed him to complete the work. This was done despite being told by ... County Human Resources that [Mr. M] could not perform any work while on suspension. Your actions serve to mislead the Court and violated the County's instruction/policy on employee suspensions.

Grievant informed the Court that he would repeat collecting family histories to comply with the Court's order. When Grievant realized that doing so would not be feasible, he decided to have Mr. M complete the work. The County placed Mr. M on administrative leave for an unspecified reason⁷⁵. While Mr. M was on administrative leave, he remained one of Grievant's subordinates. Grievant had managerial discretion regarding the County's policies governing administrative leave. None of them applied to him or governed how he operated the Unit. Grievant was not obligated to comply with the instructions of the County Employee Relations Manager because he did not report to her. Grievant retained supervisory discretion to determine what work Mr. M performed including when Mr. M was on administrative leave. Grievant did not compel or instruct Mr. M to perform the work -- Mr. M elected to do so. Grievant exercised his discretion in furtherance of his objective of completing work required by the Court. There is no basis to issue disciplinary action for this issue. The Sixth Written Notice must be reversed.

Seventh Written Notice

On the above date (February 28, 2018) you delivered a collection of private/work emails to the Deputy County Administrator's office along with a memo requesting that certain County CSU employees be "removed immediately". This is a direct violation of my October 5, 2017 counseling memo requiring that you discuss possible disciplinary actions with me in advance and that such issues be referred to and coordinated with the appropriate Human Resource office.

⁷⁵ The reason may or may not have involved a human resource matter. In addition, MP was told the County was conducting an investigation but was not told whether the investigation was of him or someone else.

On October 5, 2017, the Regional Program Manager presented Grievant with a Counseling Letter providing:

If you believe that disciplinary action is warranted for an individual employee, you are to submit your evidence and documentation to me for review and discussion prior to taking any action. All performance and/or disciplinary actions will be handled through the appropriate DJJ or [County] Human Resource policy and procedures.

All individual performance concerns are to be reviewed with your supervisor prior to taking any action.

Significant changes in the job duties or work locations of (County) personnel must be reviewed and approved by [County] administration. Written justifications for such actions must be submitted to [Supervisor] for review prior to submitting the request and justification to [County] administrators. ***

On February 28, 2018, Grievant met with the Deputy County Administrator and presented him with a binder of emails from several disgruntled employees working in the Unit. In his cover memorandum, Grievant wrote, "I'm requesting that they be removed immediately."

Disgruntled employees undermining the operation of the Unit was a performance concern. Grievant was obligated to have performance concerns reviewed by the RPM before Grievant took any action. "Any action" included disseminating the binder of emails to the Deputy County Administrator. Grievant did not have the RPM review his performance concern before taking any action.

Removal of the employees would be pursuant to disciplinary action. Grievant believed the employees should receive disciplinary action requiring their removal. Grievant was obligated to, "submit your evidence and documentation to me [the RPM] for review and discussion prior to taking any action." Grievant knew or should have known that "any action" would include disseminating the email binder and requesting removal of employees.

Grievant submitted to the RPM a copy of the emails and his memorandum. He did not do so prior to taking "any action". In other words, to comply with the RPM's instruction, Grievant was obligated to present the emails and his recommendation to the RPM for review and discussion before giving the email binder and memorandum to County managers. Grievant did not comply with the RPM's instruction thereby justifying the issuance of the Seventh Written Notice, a Group II Written Notice.

Accumulation of Disciplinary Action

Upon the accumulation of two active Group II Written Notices, an agency may remove an employee. Grievant had a prior active Group II Written Notice. He has now received three additional Group II Written Notices.

Va. Code § 16.1-236.1(A) provides:

The transfer, demotion, or separation of a court services unit director, appointed pursuant to this subsection shall be under the authority of the Director and shall be only for good cause shown, after consulting with the judge or judges of that juvenile and domestic relations district court, and in accordance with the Virginia Personnel Act (§ 2.2-2900 et seq.)

The Agency Head consulted with the Judges of the Juvenile and Domestic Relations Court. The statute does not require the agreement of the judges to remove a court service unit director. In this case, it appears that the Agency Head decided to remove Grievant contrary to the wishes of the judges. Good cause shown includes receiving disciplinary written notices. Accordingly, the Agency's decision to remove Grievant must be upheld.

Mitigation

Va. Code § 2.2-3005.1 authorizes Hearing Officers to order appropriate remedies including "mitigation or reduction of the agency disciplinary action." Mitigation must be "in accordance with rules established by the Department of Human Resource Management"⁷⁶ Under the *Rules for Conducting Grievance Hearings*, "[a] hearing officer must give deference to the agency's consideration and assessment of any mitigating and aggravating circumstances. Thus, a hearing officer may mitigate the agency's discipline only if, under the record evidence, the agency's discipline exceeds the limits of reasonableness. If the hearing officer mitigates the agency's discipline, the hearing officer shall state in the hearing decision the basis for mitigation." A non-exclusive list of examples includes whether (1) the employee received adequate notice of the existence of the rule that the employee is accused of violating, (2) the agency has consistently applied disciplinary action among similarly situated employees, and (3) the disciplinary action was free of improper motive.

Grievant argued that he was under the influence of the Judge. Grievant perceived the Judge has having the ability to hire and fire him. Grievant stated to others that he was working for the Judge and he informed the Judge of his statement on February 14, 2018. The Judge did not reject or correct Grievant's statement that he was working for her. Instead she replied, "Good!"

It appears that Grievant's behavior was influenced by several factors. First, Grievant was at all times dedicated to improving a Unit with several poorly performing employees. The County's perception of those employees' work performance was

⁷⁶ Va. Code § 2.2-3005.

dramatically different from Grievant's perception which frustrated Grievant. For example, Mr. J created a racially hostile work environment for Supervisor H and engaged in workplace violence (if the State policies had applied), yet the County and the Agency criticized Grievant for seeking assistance from local law enforcement when dealing with an employee who "went off" in the work place. Second, Grievant believed he reported to the Judge because he was hired by the Judge and he knew the Judge could have him fired if she wished. Upon becoming aware of Grievant's perception of his reporting relationship with the Judge, the Judge did not correct his perception or dissuade him from believing she was primary supervisor. Third, Grievant's relationship with the Judge is best described as an association of like-minded professionals dedicated to improving the operation and reputation of the Unit. The number and frequency of text message communication between Grievant and the Judge confirmed Grievant's understanding that he was to "keep the judges happy" as instructed by the Agency Head.

When these factors are considered, Grievant's perception that he was under the influence of the Judge is reasonable.⁷⁷ The question becomes what would Grievant have done differently if he had not been under the influence of the Judge and, if so, would this conclusion make the discipline exceeds the limits of reasonableness.

The Judge's influence was most pronounced with respect to Grievant's obligation to disclose untruthfulness to the Court. These Written Notices have been reversed by the Hearing Officer.

The Second Written Notice regards Grievant's decision to inform the Judge of false allegations of racial discrimination. Grievant's decision to inform the Judge appears to have been influence by his relationship with the Judge. The Fourth Written Notice regards a draft email containing human resource matters. Grievant's decision to send the Judge a draft email was at the Judge's request and is consistent with Grievant's assertion he was under the Judge's influence. The Seventh Written Notice regards delivering a collection of private emails to a County Manager. Grievant's decision to distribute an email binder to a County Manager was not influenced by the Judge.

Even if the Hearing Officer were to conclude the Second and Fourth Written Notices should be mitigated, there would remain a sufficient number of written notices to justify the Agency's decision to remove Grievant. In light of the standard set forth in the Rules, the Hearing Officer finds no mitigating circumstances exist to reduce the disciplinary action.

⁷⁷ The Agency's assertion that Grievant was not under the influence of the Judge may have been clarified if the Agency had attempted to interview the Judge during its investigation and the Judge elected to cooperate with the investigation.

DECISION

For the reasons stated herein, the Agency's issuance to the Grievant of the First Written Notice, a Group III Written Notice is **rescinded**.

The Agency's issuance to the Grievant of the Second Written Notice, a Group II Written Notice is **upheld**.

The Agency's issuance to the Grievant of a Third Written Notice, a Group II Written Notice is **rescinded**.

The Agency's issuance to the Grievant of a Fourth Written Notice, a Group II Written Notice is **upheld**.

The Agency's issuance to the Grievant of a Fifth Written Notice, a Group II Written Notice is **rescinded**.

The Agency's issuance to the Grievant of a Sixth Written Notice, a Group II Written Notice is **rescinded**.

The Agency's issuance to the Grievant of a Seventh Written Notice, a Group II Written Notice is **upheld**.

The Agency's decision to remove Grievant based on the accumulation of disciplinary action is **upheld**.

APPEAL RIGHTS

You may request an administrative review by EEDR within **15 calendar** days from the date the decision was issued. Your request must be in writing and must be **received** by EEDR within 15 calendar days of the date the decision was issued.

Please address your request to:

Office of Equal Employment and Dispute Resolution
Department of Human Resource Management
101 North 14th St., 12th Floor
Richmond, VA 23219

or, send by e-mail to EDR@dhrm.virginia.gov, or by fax to (804) 786-1606.

You must also provide a copy of your appeal to the other party and the hearing officer. The hearing officer's **decision becomes final** when the 15-calendar day period has expired, or when requests for administrative review have been decided.

A challenge that the hearing decision is inconsistent with state or agency policy must refer to a particular mandate in state or agency policy with which the hearing decision is not in compliance. A challenge that the hearing decision is not in compliance with the grievance procedure, or a request to present newly discovered evidence, must refer to a specific requirement of the grievance procedure with which the hearing decision is not in compliance.

You may request a judicial review if you believe the decision is contradictory to law. 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.^[1]

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

/s/ Carl Wilson Schmidt

Carl Wilson Schmidt, Esq.
Hearing Officer

^[1] Agencies must request and receive prior approval from EEDR before filing a notice of appeal.



COMMONWEALTH of VIRGINIA
Office of Employment Dispute Resolution

DECISION OF HEARING OFFICER

In re:

Case No: 11223-R

Reconsideration Decision Issued: April 23, 2019

RECONSIDERATION DECISION

In Ruling 2019-4878, EDR re-wrote the policy in a manner to remove certain conditional language. EDR wrote:

To the extent the hearing officer's determination as to the Fifth Written Notice was entirely based on the finding that the Chief Judge was not a "third party" under the hearing officer's interpretation of the definitional language, that portion of the decision must be revised. Accordingly, EDR remands the case to the hearing officer for reconsideration of this matter. The hearing officer is directed to reapply the policy consistent with DHRM's interpretation above. This ruling makes no findings as to whether the grievant's conduct was nevertheless permissible under the policy on another basis or whether the Written Notice is otherwise supported by the record.

Based on that interpretation, Grievant acted contrary to State Policy thereby justifying the issuance of a Group II Written Notice. Accordingly, the Fifth Written Notice must be upheld.

APPEAL RIGHTS

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 DHRM, the hearing officer has issued a revised decision.

Judicial Review of Final Hearing Decision

Within thirty days of a final decision, a party may appeal on the grounds 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 Director before filing a notice of appeal.

/s/ Carl Wilson Schmidt

Carl Wilson Schmidt, Esq.
Hearing Officer