

ORDER ON DISCOVERY REQUESTS AND PROPOSED WITNESSES

IN THE MATTER OF THE APPEAL OF:

BERNIE MAEZ, JR., Appellant,

vs.

DEPARTMENT OF AVIATION,

and the City and County of Denver, a municipal corporation, Agency.

On July 7, 2011, Appellant moved for discovery and subpoenas for testimony and certain documents. Appellant also seeks to interview Agency witnesses. Appellant is represented by Ben Maez, a paralegal and investigator. The Agency objects to the discovery requests as untimely, overbroad and burdensome.

Procedural Background

This is an appeal of the April 14, 2011 dismissal of Appellant Bernie Maez, Jr. from his position as Director of Fleet Maintenance based on the results of an investigation of his conduct, statements and relationships with his employees and co-workers. The parties' pre-hearing statements identify witnesses and summarize the issues and evidence. Appellant's prehearing statement admits making four of the statements asserted in the termination letter. As a result, evidence proving those statements is unnecessary.

Subpoena Requests

Discovery in this expedited administrative forum is limited in scope by the rules, and must be filed and completed within the deadlines set in the pre-hearing order. CSR § 19-45. Discovery requests in this appeal were to be filed by May 23, and the deadline for completion of discovery was July 7, 2011. As a result, the discovery request filed on July 7 is untimely.

Appellant has listed eleven will-call witnesses in addition to himself. Ken Greene is already a will-call witness for the Agency, and so his attendance at hearing is already required, making a separate subpoena by Appellant unnecessary. Appellant has not identified the specific testimony to be presented by proposed witnesses Diana Smith, Kim Nielson, Victor Lovato, Rayna Brannon, Brad Plate or David Bougsty, and the pleadings and exhibits do not indicate these individuals have information directly relevant to the issues in this appeal. Therefore, Appellant may not call those witnesses.

Appellant also lists six may-call witnesses on the same subjects: Appellant's character and the witnesses' working relationship with him. Since Appellant's character is not at issue, and he has already listed Shaun Spade to testify about his working relationship with Appellant, the may-call witnesses are duplicative and unnecessary to the issues raised in this appeal.

Request to Interview Witnesses

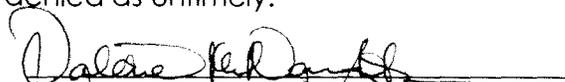
Appellant also requests contact information for the Agency's endorsed witnesses so his representative can conduct interviews prior to hearing. The rules are silent as to whether Agency witnesses may be interviewed prior to trial. However, the request for this discovery was not timely filed.

ORDER

Based on the foregoing, it is ordered that:

1. Diana Smith, Kim Nielson, Victor Lovato, Rayna Brannon, Brad Plate and David Bougsty are stricken from Appellant's list of will-call witnesses.
2. Richard LaFrancois, David Trujillo, Tony Kotris, Isaac Phillips, Mike Anderson and Dan Miller are stricken from Appellant's list of may-call witnesses.
3. Subpoenas will be issued for Tiffany Dietz, Shaun Spade and Gabriela Banks, and will be ready for pickup at the hearing office or as an email attachment by 9:30 am Tuesday July 12, 2011.
4. Appellant's request for subpoenas for documents is denied as untimely.
5. Appellant's discovery requests are denied as untimely.
6. Appellant's request to interview witnesses is denied as untimely.

DONE July 11, 2011.


Valerie McNaughton
Career Service Hearing Officer

I certify that on July 11, 2011, I delivered a correct copy of this Order via email to the following:

Bernie Maez, Jr., b.maez@comcast.net
Ben Maez, bmaezy@yahoo.com
City Attorney's Office at Dlefilling.litigation@denvergov.org
HR Services, HRServices@denvergov.org

