HEARING OFFICER, CAREER SERVICE BOARD
CITY AND COUNTY OF DENVER, COLORADO
Appeal No. 31-16

DECISION AND ORDER

SONYA LEYBA, Appellant,

v.

DEPARTMENT OF SAFETY, DENVER SHERIFF'S DEPARTMENT,
and the City and County of Denver, a municipal corporation, Agency.

The hearing in this appeal was held on July 13, 2016 before Hearing Officer Valerie McNaughton. Appellant was represented by Steven T. Mandelaris, Esq., for Elkus & Sisson, P.C. Assistant City Attorney Richard Stubbs appeared for the Agency in the appeal, and Captain Deric Wynn served as its advisory witness. The Agency called Deric Wynn and Shannon Elwell, and Appellant testified on her own behalf.

I. STATEMENT OF THE APPEAL

Deputy Sheriff Sonya Leyba appealed her three-day suspension dated May 24, 2016, which was based on her conduct as Court Deputy during a morning session of court held on Jan. 8, 2015. Agency Exhibits 1 – 11 were admitted in evidence. The Denver Sheriff Department Discipline Handbook effective July 8, 2013, was admitted into evidence under the doctrine of administrative notice. C.R.E. Rule 201.

II. FINDINGS OF FACT

Appellant Sonya Leyba has been a Deputy Sheriff for the past ten years. Leyba was assigned to the medical infirmary at the Downtown Detention Center (DDC) for the first few years. She was then assigned to the Court Services Division for eight years, where she served as a Courtroom Deputy in Courtrooms 3H and 4C, as well as occasional shifts in the courtroom located in the DDC.

On January 8, 2015, Appellant was assigned to District Courtroom 5C to cover a very busy criminal court docket, including many sentencing hearings. To accommodate the extra workload, District Judge Martin Egelhoff set the court session to begin at 8 am instead of 8:30, the usual start time. That morning, the judge took the bench at 8 am and waited for twenty minutes for a deputy to report for duty in the courtroom. At 8:20 am, he became annoyed and left the bench.

After Appellant arrived and the first case was called, defense and district attorneys positioned themselves at counsel tables in front of the bench. Defendants awaiting their hearings and other observers sat behind the bar. Video from a camera

above the bench shows a nearly full gallery of spectators, and others sitting in the jury box. There was frequent movement, arrivals and departures during the morning session. Appellant stood on the right side by the door leading to the holding cell used for in-custody defendants.

On several occasions, Appellant either left the courtroom or had her attention diverted by others. At 9:14 she entered the prisoner chute and closed the door behind her for about a minute. At 9:15, she stepped out and permitted a person later identified as a defense attorney to go into the chute for a minute-long meeting with an inmate. During that time, Appellant left the door slightly open and kept her head forward to observe the courtroom, while keeping an eye on the attorney and inmate in the chute. At 11:57, Appellant allowed the same attorney to go into the chute, leaving the door open a crack, as before. Appellant's view of inmates was obstructed by other people four times between 8:36 and 9:43, the latter for about 30 seconds. At 9:55, Appellant opened the chute door, and allowed a three-way conversation among an inmate, attorney and interpreter while her back was against the wall and another inmate stood to her left inside the chute. Appellant was unable to observe events in the courtroom during this 30-second conversation. [Exhs. 5 - 7.]

At 10:18 am, Appellant walked behind the counsel tables and approached the clerk sitting on the left side of the judge's bench. She spoke briefly to the clerk and left the courtroom for five minutes. Four minutes after Appellant's return, the court took a fifteen-minute recess. At 11:22 am, the judge addressed Appellant directly while she was speaking quietly with an attorney, and advised her to take custody of a defendant he had just sentenced to incarceration.

Shortly thereafter, Judge Egelhoff called and emailed Appellant's supervisor to complain about Appellant's performance. [Exh. 8.] In response to the complaint, Appellant was transferred from 5D before she completed her shift. The matter was referred to the Internal Affairs Bureau (IAB) for investigation.

Appellant was interviewed by Internal Affairs on Feb. 10, 2015, a month after the incident. She recalled that it was a heavy docket, with around 25 in-custody prisoners set for hearings. Appellant explained that she had not served as security for District Court for two and a half years, and that her usual assignment was in the less formal setting of Courtroom 3H, which handles a mental health and court-to-community docket.

Appellant admitted she left the courtroom during a sentencing hearing, but said she would not have done so if she had known the judge was going to order the defendant to immediate imprisonment. She told the clerk where she was going, and the clerk replied "okay". Appellant testified that she allowed the public defender into the prisoner chute because the attorney visit room was full. She believed this accommodation would expedite the proceedings and was not a safety hazard. In response to the interviewer's questions about why she was responding to the public defender during the court session, Appellant replied, "I'm not going to ignore her". [Exh. 4.]

During the contemplation of discipline meeting, Appellant responded in detail to the allegation that she was late for her courtroom assignment that day. The Agency later confirmed that Appellant's information on that issue was correct, and it withdrew that charge. [Elwell, 2:01 pm.] Appellant addressed the allegation that her weapon was exposed to inmates by stating that her holster is triple tension, making it harder to remove by an inmate, especially since this inmate was "several feet away from me standing with his attorney." She added that there was "no way that I could open up the door [to the prisoner chute] without the inmate at least passing by my gun side." [Exh. 3.] She explained that she left for the bathroom because "no inmates had been called in for a long time." She repeated her statement from the IAB interview that she was unaware the judge was going to sentence the defendant at the podium to imprisonment, and would not have left if she had known. Appellant recalled that she had provided security for Judge Egelhoff at the old building during a trial, and knew that judges work in different ways. She told the investigator she takes pride in her work and wanted to "personally apologize to Judge Egelhoff that he felt unsafe and uncomfortable."

After reviewing the entire IAB file and the material presented in the pre-disciplinary meeting, Civilian Review Administrator Shannon Elwell found that Appellant's performance violated CSR §§ 16-60A, B, L and Z, and departmental rules RR-200.19 (performance of duties), and RR-300.11.16 (conduct prejudicial). Elwell based those conclusions on her findings that Appellant was not paying attention to either court proceedings or inmates on several occasions, allowing her conversations with attorneys to distract her. The judge was required to remind Appellant to take custody of a defendant he had just sentenced, creating a "safety and security risk." Elwell also found that Appellant twice permitted an attorney to enter and remain in the chute without supervision, left the court without security for five minutes during the sentencing of a large and potentially dangerous inmate, and carelessly placed herself between two inmates with her weapon exposed. As a result of these actions, the judge became alarmed about courtroom security. He complained to the Agency's Division Chief, and asked that Appellant be removed from his courtroom. The Agency was therefore required to quickly find another deputy for the afternoon docket. [Exh. 1-9.]

Elwell then considered the matter of the penalty appropriate to the violations. Under the DSD disciplinary matrix, both RR-200.18 and RR 300.11.6 may be assigned to any Conduct Category; A being the least serious and F the most serious. Elwell assigned a Category C to both rule violations based on her conclusion that Appellant's actions had "a pronounced negative impact on the operations or professional image" of the Agency and its relationships with the court and attorneys who witnessed the behavior. [Exh. 9-89.] She found that there were both mitigating and aggravating factors. In mitigation, she found that Appellant's performance during her ten years of service has been good, and that her discipline relatively minor. [Exh. 1-5.] In addition, Appellant had expressed her apologies to the judge for her conduct, indicating she understood the problems her conduct caused and increasing the likelihood that she would improve her performance. In aggravation, Elwell found that Appellant's courtroom behavior "created significant safety and security concerns" that presented legal and financial risks to the city. In balancing mitigation and aggravation, Elwell decided that the presumptive penalty of a three-day suspension was most appropriate

under all the circumstances. Appellant contests these findings and challenges the penalty as too severe given all of the circumstances.

III. ANALYSIS

The Agency bears the burden of proving the asserted rule violations, and that the three-day suspension was within the range of discipline that could be meted out by a reasonable decision-maker under the applicable Career Service Rules. In re Economakos, 28-13A (CSB 3/24/14).

1. Neglect of duty, CSR § 16-60 A.[1]

An employee violates this rule by failure to perform a known work duty. In re Compos, et al, CSB 56-08 (CSB 6/18/09). The Agency claims that Appellant failed to adequately perform her security duties when she left the courtroom for five minutes, did not pay attention to the proceedings, and failed to take custody of a defendant after he had been sentenced to immediate imprisonment.

The duties of a courtroom deputy are described in the Agency-issued Lindsey-Flanigan Courthouse General Duty Officer Post Order dated Sept. 17, 2014. It states that the officer is responsible for "maintaining order and decorum during daily operations", and "taking court ordered remands into custody", among other duties. An officer "shall remain alert to the orders and the comments of the Judge", but must also communicate and cooperate with court staff and attorneys "to ensure a smooth workflow." [Exh. 10-3.] Thus, a court deputy must balance numerous responsibilities, foremost among them maintaining a safe courtroom.

Appellant admits that she left the courtroom for five minutes while court was in session, but disputes that she thereby neglected her duties, since she informed the clerk that she was leaving. In her former courtroom, she had been permitted to leave for breaks if there were no more in-custody matters to hear, or if the judge was typing an order. On occasion judges would ask her to call for relief before she left, and she would do so. Appellant was aware that Judge Egelhoff maintained stricter rules in his courtroom. She testified that on this date she may have called for back-up and received no response. [Appellant, 3:20 pm.] In any event, Appellant did not wait for backup before she left the courtroom without security during a criminal sentencing hearing.

The Commander of Court Services testified that the Post Order requires court deputies to obtain relief from another officer before leaving an active court session. [Wynn, 3:57 pm; Exh. 10.] After six years of service as a courtroom deputy in a variety of settings, Appellant was on notice that leaving a courtroom without any security is neglect of her duty to ensure a safe environment, even if she perceives no threat in the matter then before the court. Appellant showed that she understood that duty by her

[1] CSR 16 was amended on Feb. 12, 2016. The former version of Rule 16 is applicable in this appeal, since the conduct on which it is based occurred on Jan. 8, 2015, prior to that amendment. Am. Comp. Ins. Co. v. McBride, 107 P.3d 973, 977 (Colo.App.2004.)

statement to the investigator that she would not have left if she had known the judge was about to impose a jail sentence on the defendant. While she was aware that judges' practices vary and that Judge Egelhoff's security rules were stricter, she performed her duties in his courtroom based on the protocols used by judges with more lenient rules. Appellant neglected her duty to provide court security by absenting herself for five minutes during a sentencing hearing.

As to the allegation that Appellant failed to pay attention to court proceedings, she argues that she was performing her duties, one of which was to communicate with attorneys in order to expedite the calling of inmates into the courtroom for their hearings. The video shows that Appellant's view of defendants was sometimes blocked by attorneys with whom she was speaking. A momentary or even minute-long obstruction of a specific line of sight does not alone constitute neglect of her duty to maintain order. During those times, Appellant was engaged in her other duties by communicating with attorneys and reviewing the docket and trip sheets in order to expedite the flow of cases. The evidence did not demonstrate that Appellant was neglecting her security duties when she occasionally focused on an attorney rather than defendants at the podium, none of whom were displaying unusual behavior requiring Appellant's attention. In contrast to the 11:22 incident, the judge was not issuing a remand order, which would have taken precedence over her non-security duties.

The Agency proved, and Appellant conceded, that the Judge had to remind her at 11:22 am to take custody of a defendant after remand. The Post Order requires a courtroom deputy to "remain alert to the orders and the comments of the Judge … pertaining to the inmate." [Exh. 10-5.] The video shows that Appellant had been speaking with an attorney for about five minutes, and failed to remain alert to the judge's sentencing order. Those types of orders are the triggers for one of the most important duties of a court deputy: securing defendants sentenced to immediate incarceration. The fact that she was engaged in another duty – here, reviewing the docket with an attorney – does not excuse neglect of her primary duty to provide courtroom security. Appellant did not explain why it was instead necessary for her to spend five minutes during a criminal sentencing to review the court docket with a public defender presumably familiar with criminal proceedings.

The evidence established that Appellant neglected her duty to provide courtroom security when she left the courtroom unattended for five minutes, and failed to take custody of a defendant under sentence until reminded to do so by the judge.

2. Carelessness in the performance of duties, CSR § 16-60 B.

Carelessness is proven when an employee fails to exercise ordinary care in the performance of an assigned duty. In re Koehler, CSA 113-09, 17 (4/29/10). The Agency claims that Appellant carelessly allowed herself to be partially surrounded by inmates with her weapon exposed. Deputies are trained to keep their guns sideways, and told that a weapon is considered exposed if within another's reach, even if it is in a closed holster. [Wynn, 3:54 pm.] That same conduct was also charged as a violation of § 16-60 L, failure to observe departmental regulations, and DSD Regulation RR-200.19, which

mandates that deputies "use sound judgment and discretion in the performance of duties."

The video shows that Appellant opened the chute door at 9:55 am, and allowed herself to be surrounded on three sides by two inmates, an attorney and an interpreter, all of whom were within arm's reach of each other during the short conversation. Appellant was the only security officer in the courtroom. She was positioned in a manner that did not allow her to either observe or respond to dangers coming from the courtroom full of defendants and spectators. Since her back was against the door, she was unable to extract herself without forcing her way through the circle of four people around her.

Appellant claims she was neither careless nor imprudent in permitting the attorney to enter the chute, since she left the door open and kept one eye on the open chute on both occasions. Appellant believed the alternative would have meant that prisoners would need to be transported to another floor to meet with their attorneys, delaying proceedings. [Leyba, 3:20 pm.] She testified that she allows attorneys into the chute on an occasional basis. [Exh. 4.] The Post Order has a clear and firm policy against that practice. "Chute areas between courtroom shall not be used as … a visitation room for attorneys. Civilian personnel shall not be granted access into the chute area. Visitation can be arranged and conducted in the non-contact visit room located in each detention area." [Exh. 10-4.] Appellant failed to use sound judgment and discretion in permitting the chute to be used for in-custody client visits.

Appellant also claims she was not careless or imprudent in allowing the interpreter and attorney to meet in the chute. In performing her duty to cooperate with court staff to expedite the calling of cases ready for hearing, Appellant considered that the visitor conference room was already full. She decided to follow her usual practice from another courtroom – one which handles less serious criminal matters - and permit the attorney for the next case on the docket to go into the prisoner area. She argues that her gun was not exposed because her holster has security features requiring three actions before the gun is released. Appellant felt comfortable that this operation did not place anyone in danger because she was watching both the podium and the chute door, which she kept open.

However, the Agency defines an exposed weapon as a holstered gun within reach of another, a definition clearly met in this instance. Capt. Wynn testified in rebuttal that her response time would be lengthened by the split in her attention, posing an unnecessary risk for those in the courtroom as well as the attorney in the prisoner chute. Most importantly, Appellant did not have the discretion to make this accommodation by virtue of the Post Order's prohibition against civilians in the chute area. Her decision to permit these circumstances constitutes carelessness in the performance of her duties.

In light of the extremely busy docket of criminal sentencings being handled that morning, the totality of the evidence establishes that the above actions by Appellant were careless, in violation of both 16-60 B and RR- 200.19.

3. Failure to observe departmental regulation RR-300.11.6, Conduct Prejudicial

This departmental rule is violated when a deputy engages in conduct prejudicial to the good order and effectiveness of the department, or that harms the integrity of the city or department. The rule does not require any proof of harm to establish a violation of the first clause. In re Redacted, CSA 31-12, 5 (CSB 10/3/13).

The Agency argues that Appellant's conduct violated the first part of this rule by creating a security risk in a very busy courtroom, thus causing the District Judge to become "genuinely alarmed" about the security of the courtroom. The Judge asked that Appellant be removed as court deputy for the remainder of her shift. The Agency was then required to respond immediately, and find another deputy that could serve for the afternoon session. In addition, the Agency transferred Appellant from the Court Services Division, losing her many years of experience in that unit.

Appellant's neglect and carelessness caused prejudice to the department by harming its reputation with the District Judge, who immediately communicated that he was "genuinely alarmed … by the dangerous situation" created by Appellant in his packed criminal courtroom. [Exh. 8-2.] In these unique circumstances, I find that Appellant's conduct was prejudicial to both the good order and the effectiveness of the department, and thereby also violated CSR § 16-60 L.

4. Conduct Prejudicial, CSR 16-60 Z

This violation requires proof that Appellant's misconduct caused actual harm to the Agency or the reputation of the City. In re Jones, CSB 88-09, 2 (9/29/10). The Agency presented the same evidence in support of this rule as presented under its own conduct prejudicial rule. RR 300.11.6. As noted above, Z requires proof of actual harm to the City or its reputation stemming from the safety or security risks created by Appellant's conduct. While Judge Egelhoff found her conduct to be serious enough to warrant a complaint and replacement of Appellant as his deputy, there was no evidence that it impacted his opinion of the Agency as a whole, or harmed the reputation of the City with the public. Accordingly, no violation was established under CSR 16-60 Z.

5. Penalty decision

Civilian Review Administrator Shannon Elwell determined that Appellant had violated CSR § 16-60 A, B, L and Z by virtue of her performance in Courtroom 5C on January 8, 2015. Elwell then assigned a Category C based on her conclusion that it had a pronounced negative impact on the operations or image of the department with the court affected by her conduct. She was influenced in that finding by the impact of the conduct on the Agency's mission to provide a safe environment in city courtrooms, as well as the damage done to its professional image by the judge's well-founded

complaint. While she noted that no one took advantage of Appellant's lapses to breach the peace in the courtroom, Elwell determined that Appellant's neglect and carelessness opened the way to both legal and financial liability for the city.

Elwell then considered the factors relevant to whether a mitigated, presumptive or aggravated penalty should be imposed. Appellant's good employment and disciplinary history were weighed as mitigating factors. She credited Appellant's statement that she was trying to do her job and her apology to the judge. She also noted this judge's reputation for enforcing stringent rules in his court. On the other hand, Elwell viewed Appellant's inattention and lack of judgment as especially dangerous on that day, where a crowded courtroom, special management inmates and emotional sentencing matters combined to cause alarm in a seasoned District Judge. Elwell decided that the presumptive penalty of a three-day suspension was most appropriate under all of the circumstances, after balancing mitigating and aggravating factors consistent with both the matrix and the Career Service Rules. I find the penalty analysis of the Civilian Administrator well-reasoned, consistent with the purposes of discipline under the Career Service Rules, and well within the discretion accorded an Agency decision-maker.

IV. ORDER

Based on the above findings of fact and law, it is hereby determined that the Agency's disciplinary action dated May 24, 2016 is AFFIRMED.

DONE this 29th day of August, 2016.

Valerie McNaughton
Career Service Hearing Officer

NOTICE OF RIGHT TO FILE PETITION FOR REVIEW

A party may petition the Career Service Board for review of this decision in accordance with the requirements of CSR § 19-60 et seq. within fifteen calendar days after the date of mailing of the Hearing Officer's decision, as stated in the certificate of mailing below. The Career Service Rules are available at www.denvergov.org/csa/career service rules.

All petitions for review must be filed by mail, hand delivery, or fax as follows:

BY MAIL OR PERSONAL DELIVERY:

Career Service Board
c/o Employee Relations
201 W. Colfax Avenue, Dept. 412
Denver CO 80202

BY FAX: (720) 913-5720