

ORDER GRANTING APPELLANT'S SUBPOENA AND EXHIBIT REQUESTS

IN THE MATTER OF THE APPEAL OF:

MARCUS RICHARDSON, Appellant,

vs.

DENVER AUDITOR'S OFFICE,

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

On October 10, 2011, Appellant filed a motion requesting leave to supplement his witness and exhibit lists and to subpoena a new witness to testify at hearing. The Agency objected to both of Appellant's requests.

This is the appeal of Marcus Richardson's dismissal from his position as an Internal Audit Supervisor with the Audit Services Division of the Auditor's Office for his alleged violations of Career Service Rule 16-60 B., carelessness in the performance of his duties and 16-60 K., failure to meet established standards of performance, after being placed on a Performance Improvement Plan (PIP). He is also appealing the denial of his grievance of a written reprimand. Hearing was held February 15 – 17, 2011, and the continuation of the hearing is scheduled for October 25 – 28, 2011.

Appellant requests the Hearing Office grant him leave to add an exhibit and a witness, Cindi Stetson, based upon a newly discovered document that was unavailable at the time that discovery closed and all exhibits and witnesses were required to be disclosed. Specifically, Appellant has acquired a proposal from Ms. Stetson, addressed to Kip Memmott, Director of Audit Services, dated September 16, 2011, for providing coaching and support to audit teams conducting high-level, complex performance audits. Ms. Stetson is a Certified Internal Auditor and a Certified Government Auditing Professional, who, according to the document, met with Mr. Memmott and his executive team in September to discuss securing her services for approximately 75 to 125 hours.

The Agency objects that Appellant has not provided good cause for his requests for supplementing the witness and exhibit list to include this document and its author. The Agency asserts that Ms. Stetson's testimony, and her proposal, are not relevant to this appeal, since it is not related to Appellant's performance. The Agency further argues Appellant should be precluded from providing her testimony for the purpose of evaluating Appellant's, or any other Auditor's Office employee's, performance, as an expert witness, as Appellant did not timely seek expert testimony within the permitted


deadlines. Finally, the Agency opposes the admission of Stetson's testimony and proposal for the purposes of any implication that because the Agency solicited her services, training must have been necessary for other Internal Audit Supervisors who were also incompetent in their performance audits, as the Agency alleged about Appellant.

Under the Career Service Rules, subpoenas for the production of documents and to compel the attendance of witnesses may be issued upon the motion of either party where the information sought is relevant to the appeal and the party establishes good cause. CSR § 19-45 B., C. Here, Appellant's motion to supplement his exhibit list to include Ms. Stetson's proposal and to subpoena Ms. Stetson, although untimely, could not have been requested prior to the deadlines, as the document and the Agency's alleged solicitation of her services occurred only recently, after the first three days of hearing. Further, since an issue in the case is the adequacy of Appellant's performance compared with other Internal Audit Supervisors, Appellant has established good cause for the admission of the Stetson proposal into evidence, and for limited testimony by Stetson. Moreover, the Agency has not asserted prejudice and none is found by the addition of the evidence requested. Therefore, while it is irrelevant for Appellant to render an opinion of the adequacy of Agency employee performance, it is relevant for her to disclose statements Mr. Memmott and his executive team about the adequacy of performance by the Agency's audit teams.

ORDER

Appellant's requests are GRANTED with a limiting instruction as follows. Appellant's examination will be limited to the disclosures specified above. Ms. Stetson is not qualified to render an expert opinion regarding Appellant's performance nor that of any other Auditor's Office employee and therefore may not opine whether the performance of any Agency employee meets performance standards.

DONE October 14, 2011.



Bruce A. Plotkin
Career Service Hearing Office

Certificate of Service

I certify that, on October 14, 2011, I delivered a correct copy of this Order to the following, in the manner indicated:

Mr. Marcus Richardson, marcusd450@gmail.com (via email);
Anne Sulton, Esq., annesulton@gmail.com (via email);
Robert A. Wolf, Assistant City Attorney, Dlefilng.litigation@denvergov.org (via email).

