**HEARING OFFICER, CAREER SERVICE BOARD**
**CITY AND COUNTY OF DENVER, COLORADO**
Appeal No. 08-17

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**DECISION MODIFYING TERMINATION OF EMPLOYMENT TO A FIVE-DAY SUSPENSION**

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**JERILYN SCHOFIELD**, Appellant,

v.

**DENVER DISTRICT ATTORNEY,**
and the City and County of Denver, a municipal corporation, Agency.

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## I. INTRODUCTION

Appellant contests the termination of her employment from the Denver District Attorney's Office for alleged violations of specified Career Service Rules. A hearing concerning this appeal was conducted by Bruce A. Plotkin, Hearing Officer, on June 2, 5, 21, and 26, 2017. The Agency was represented by John Sauer and Richard Stubbs, Assistant City Attorneys, while the Appellant was represented by David Goddard, Esq. Agency exhibits 1 – 16, 17 – 19, and 23 – 31 were admitted. Appellant exhibits A – J, M – N, P – R, and T - BB were admitted. The following witnesses testified for the Agency: Brenda Benedict, Anita Drasan, Beth McCann, Jeff Carroll, Danielle Robinson, Danielle Sexton, Bonnie Benedetti, Lindsay Eaton, Albert Buchman, Christen Knudsen and Lamar Sims. The Appellant testified on her own behalf during their case-in-chief, and presented the following additional witnesses: David Neil, Todd Shepherd, Tracey Stanley, Frank Rocha and Chris Penny.

## II. ISSUES

The following issues were presented for appeal:

A. whether the Appellant violated any of the following Career Service Rules (CSRs): 16-29 A; 16-29 F.; 16-29 G, 16-29 I.; or 16-29 T.;

B. whether Appellant disclosed official misconduct pursuant to Denver's Whistleblower Ordinance and, if so, whether such disclosure was a substantial or motivating factor in her termination from employment;

C. whether the Agency's decision to terminate Appellant's employment conformed to the purposes of discipline under CSR 16-41.

## III. FINDINGS

### A. Findings Regarding Agency's Disciplinary Claims.

Jerilyn Schofield was a senior investigator in the Agency for four years, beginning in 2012. At times pertinent to this appeal, she was assigned to Denver District Courtroom 4G. Senior Investigators assist the deputy and senior district attorneys in their assigned courtroom. [Exh. 29]. Her duties included pre-trial investigation such as locating witnesses timely; conducting or assisting in witness interviews; trial and hearing preparation, including serving subpoenas, procuring and securing evidence to maintain a proper chain of custody; and following the rules, policies and procedures of the DA's office, including respecting co-workers, helping to maintain a positive work environment, and treating others in a professional, courteous, and positive manner. She was also responsible for performing other duties as assigned or requested [Exhs. 4; 29; 18 – 19]. Her direct supervisor was Chris Penny.

In 2013 Schofield received a written reprimand for challenging, in front of the Lt. Matthew Murray, Chief of Staff for the Denver Police Department, her then-supervisor Maggie Conboy over the need for her (Schofield's) presence. The reprimand charged Schofield with inappropriate, unprofessional and disrespectful behavior, and required her to be respectful at all times in the future. Schofield acknowledged she was out of line, apologized, and accepted the discipline. Her supervisor recognized her contrition and noted a substantial improvement in Schofield's manners. "Jerilyn has made great improvements in dealing with...conflicts" [Exh. C]. The following year, however, her supervisor noted "there has not been any improvement in this [personality conflict with co-workers] area." [Exh. D].

Schofield transferred into Courtroom 4G in late December of 2015. Deputy District Attorney Danielle Sexton wrote a generalized complaint about Schofield on May 16, 2016, expressing concerns about Schofield's unresponsiveness to a request to obtain Facebook and phone records for an ongoing case. [Sexton testimony, Exh. 15]. At Willis' request, several co-workers documented their negative interactions with Appellant. Deputy District Attorney Anita Drasan, wrote a memorandum to Willis. She also wrote to Senior Chief Deputy District Attorney Doug Jackson on October 4, 2016, expressing additional concerns about Schofield's behavior. [Drasan testimony, Exh. 7]. Drasan's concerns were echoed by Deputy District Attorney Bonnie Benedetti in another e-mail memorandum sent to District Attorney Mitch Morrissey and Senior Chief Deputy District Attorney Lamar Sims on October 21, 2016. [Benedetti testimony, Exh. 5]. Legal Secretary Lindsay Eaton also documented a negative incident with Appellant on October 6, 2016. [Exh. 6]. None of Schofield's supervisors sought a response from Schofield to any of the complaints.

Unaware of any of the complaints sought by and received by Willis, Schofield's direct supervisor, Chris Penny, sought feedback from several of Schofield's co-workers for her annual review on November 22, 2016. [Penny testimony, Exh. X]. Deputy D.A. Al Buchman replied he did not have enough experience yet with Appellant to give feedback. On December 6, 2016, Penny met with Brenda Benedict, to talk about Schofield and Benedict shared her complaints. [Exh. 12]. In an e-mail to Willis, Penny relayed Benedict's complaints. The next day, Schofield was placed on administrative leave on December 7 by then-DA Morrissey through his delegee Lamar Simms. [Exh. N].

The Agency served Schofield with a letter in contemplation of discipline on December 12, 2016, then convened a pre-disciplinary meeting on December 22, 2016. Schofield attended with legal counsel, and provided a written statement. [Exh. 2, Exh. U.]. On January 19, 2017, the Agency terminated Schofield's employment. [Exh. 4]. This appeal followed timely on February 3, 2017.

Morrissey and Sims left the DA's office shortly after ordering investigatory leave, but before discipline issued. The new District Attorney, Beth McCann, was sworn in less than one week before the disciplinary decision issued. Although McCann could have delegated disciplinary responsibility under the Career Service Rules, she co-signed the notice of discipline with Willis, and relied heavily on Willis's recommendation.

**B. Findings Regarding Schofield's Whistleblower Claim.**

Joe Lucas was an administrative assistant in the DA's office. He took five months off in early 2016 to acquire a Peace Officer Standards Training (POST) certification, which is required of all DA investigators. [Exh. Q]. Lucas then applied to be a Senior Criminal Investigator, through a "department only" listing. Morrissey made the final decision to hire Lucas. [Exh 32].

When Schofield learned Lucas was selected, she began asking questions of her co-workers about his qualifications. [Appellant testimony; Rocha testimony; Neil testimony]. Schofield discussed the matter in more detail with her fellow investigator Frank Rocha on July 8, 2016. [Exh. T]. Rocha told Willis about the conversation, and Willis asked him to submit a memorandum about it. [Id.]

On August 15, 2016, Schofield conferred with Todd Shepherd, an investigative reporter, regarding her concern that Lucas was hired only because of his relationship to the District Attorney. Shepard then engaged in a series of exchanges with the spokesperson for the DA's office, Lynn Kimbrough. Shepard published an article on the subject December 4, 2016. [Exh. T, J, T, P, Z, AA, BB]. Three days later, on December 7, the Agency placed Schofield on investigatory leave. Two weeks later, it held a contemplation of discipline meeting, and then terminated her employment on January 19, 2017. [Exh. 2, Exh. 4, Exh. U, Exh. N].

## IV. ANALYSIS

A. Jurisdiction and Review

Jurisdiction is proper as the direct appeal of a dismissal and as a claim of retaliation for whistleblower activity. [CSR §19-10 A.1.a; 19-10 A.1.f,]. I am required to conduct a *de novo* review, meaning to consider all the evidence as though no previous action had been taken. Turner v. Rossmiller, 532 P.2d 751 (Colo. App. 1975).

B. Burden and Standard of Proof

This case contains a mixed burden of proof. The Agency retained the burden of persuasion, throughout the appeal hearing, to prove Schofield violated one or more cited sections of the Career Service Rules, and to prove its decision to terminate her employment complied with CSR 16-41. Schofield retained the burden of persuasion to prove the Agency

engaged in unlawful retaliation by firing her for her whistleblowing. A preponderance of evidence standard applies to each party's claim.

C. Career Service Rule Violations

The Agency's notice of discipline supplied a list of Career Service Rules allegedly-violated by Schofield, then listed a multitude of instances it deemed to be unacceptable conduct by Schofield. It was not at all apparent what conduct violated which rule. Testimony by the Agency's witnesses, including the decision-makers, did little to connect the dots. When directed at hearing to explain how each paragraph in the Agency's notice of discipline related to the Career Service Rules, Liza Willis[1] explained in conclusory fashion that the conduct described in each paragraph violated every, or nearly every Career Service Rule cited in the notice of discipline, without identifying a single link between a rule and any particular conduct.

It is incumbent on an agency at least nominally to connect the dots between its factual allegations and its citation to each Career Service Rule violation. [*See* In re Gutierrez, CSA 65-11, p. 6 (8/28/12); *aff'd* In re Gutierrez, CSB 65-11 (4/4/13); *see also* In re Owens-Manis & Pettway, CSA 73-09 & 75-09 (3/11/10)]. The Agency's failure to do so constitutes a failure of proof for every violation that was not otherwise evident, as detailed below. To the extent the Agency's allegations could have constituted colorable claims had it linked particular conduct with a particular rule, I address each alleged rule violation in the order presented in the Agency's notice of discipline. [Exh. 4].

1. **16-29 A. Neglect of duty or carelessness in performance of duties and responsibilities**

To prove wrongdoing under CSR 16-29 A., the Agency was obligated to prove the Agency provided notice of a specific duty or duties to Schofield, outside those defined under other rule violations. At hearing, Willis stated the duties violated by Schofield were derived from her PEP [Exh. 29], the same basis as duties violated under CSR 16-29 G. 1., (failing to meet established standards of performance). [Willis testimony]. Since the duties, conduct, and proof, under this rule, replicate those under CSR 16-29 G.1., below, no doubling of violations, may be established under this rule. [*See* In re Gale, CSA 2-15, 5 (11/23/15); *see also* In re Mitchell, CSB 57-13A, 3 (11/7/14).

2. **16-29 F. Failing to comply with the lawful orders of an authorized supervisor** or failing to do assigned work which the employee is capable of performing

The first part of this rule requires the Agency to prove an authorized supervisor gave a lawful order to Schofield, and Schofield failed to comply. Deputy DAs were not Schofield's PEPR supervisors but were authorized to assign work to her as the investigator assigned to their courtroom. [Exh. 29].

Agency witnesses uniformly referred to Schofield's "pushback" in response to their requests. [Testimony of Sexton; Eaton; Benedict; Drasan; Willis; Robinson; Buchman]. Many of the complaints that potentially fell under this part of the rule were too vague to establish an identifiable order or failure to perform it. It is insufficient to state an employee generally failed

[1] The Notice of Dismissal was signed by both Beth McCann and Liza Willis. McCann testified she was the ultimate decision-maker, but relied on advice from Willis, as she was familiar with the underlying events.

to comply with directives without identifying either a directive or the failure to accomplish it. To the extent the Agency's evidence included specific complaints that might have been encompassed by this rule, I find as follows.

Sexton was the lead attorney in a three-defendant case. She emailed Schofield and Schofield's supervisor, Chris Penny, on March 17, 2016, stressing it was urgent to obtain a search warrant for a witness's Facebook page. "We need to get those records ASAP!!!... we need to get a search warrant done before she closes it [her Facebook page] again." [Exh. 16-2]. On May 16, 2016, Sexton emailed Penny to express her frustration at not having received any response from Schofield or Detective Lopez, in response to her earlier request for them to secure a warrant for phone records relevant in the case. Sexton wrote "it's been 2 months since this request," and "[w]e also still do not have the call detail records for Ellis' first phone, which I have been requesting [presumably from Schofield and Lopez] since February 3. "[Exh. 15-1].

Schofield replied there was "discussion and disagreement" among the investigators and prosecutors in this case as to whether this Facebook warrant was necessary. [Exh. U-4]. Nonetheless, she replied that she completed a timely preservation letter for the records, ensuring they would be available in the event they became necessary. [Exh. U]. She also replied another, more immediately-pending case demanded her attention. Finally, she explained another DA took over the case and did not request a warrant.

Sexton, as the trial deputy, was an authorized supervisor as defined by this rule.[2], She was entitled to require Schofield to obtain a search warrant. Whether Schofield disagreed with the necessity for that warrant is largely irrelevant. If the request was unreasonable, Schofield was obligated to discuss it with Sexton and, if failing to obtain a satisfactory resolution, approach her supervisor, rather than to decide unilaterally the warrant was unnecessary. Regarding Schofield's claim that another more pressing case took priority, that personal priority did not excuse her lack of communication regarding her decision to re-prioritize Sexton's triple-exclamation-point request. Notwithstanding the foregoing, Schofield completed a preservation letter, which addressed Sexton's concern that the records would become unavailable if needed. The preservation letter, however, applies to mitigation of penalty and not to whether Schofield violated the directive.

Finally, the fact that Sexton asked both Schofield and Lopez to obtain a warrant, did not excuse Schofield's obligation under this rule even if Lopez took care of the warrant [Sexton testimony; Schofield testimony], since Sexton specifically tasked her with the responsibility. [See Exh. 15-1]. In consequence of these factors, even though the Agency failed to connect these facts to the above rule, the pre-hearing filings - if not the notice of discipline - provided sufficient notice of the conduct and rule implicated to provide Schofield with notice of the allegation. For reasons stated immediately above, Schofield failed to comply with the order of an authorized supervisor, as contemplated by, and in violation of, CSR 16-29 F. The evidence was sufficiently evident to justify the Agency's conclusion.

Sexton also complained Schofield was never available before 8:30 or after 3:30, [Exh. 14-2]. However, she acknowledged she did not set Schofield's hours and was unaware of her work schedule. Sexton never approached Schofield about this concern. [Sexton cross-exam].

[2] [Exh. 29-1 "Other Duties as Assigned/Requested"].

To the extent the Agency claimed Deputy District Attorney Al Buchman's memorandum established Schofield's violation of CSR 16-29 F., it did not identify any particular directive or refusal. [Exh. 13]. He vaguely recollected that Schofield "denies simple requests and has standoffish body language." Moreover, Buchman acknowledged Schofield became "more engaged with my requests…" [Id.]. No violation of 16-29 F. would have been established by Buchman's complaint. Buchman also acknowledged he never addressed his concerns with Schofield.

On December 8, 2016, in response to Penny's request for "Jerilyn feedback," Sexton wrote Schofield was "not a team player;" "I never saw her before 8:30 or after about 3:45;" "I often had to go to other investigators for help because I couldn't find her;" "she was unavailable;" "I often got pushback;" and "I don't know that she ever read the [unspecified] file." [Exh. 14-2]. These accusations fail to provide sufficient notice of an order for an employee to respond meaningfully, and therefore fail to establish a violation of this, or any other, Career Service Rule. Asked by Willis to specify, Sexton wrote her general recollection of one case, but concluded "I don't remember the details." [Exh. 14-1].

Benedict had several complaints about Schofield's lack of cooperation, [Benedict testimony; Exh. 8], however she was not an authorized supervisor as contemplated by this rule. Thus, even if Schofield failed to cooperate with Benedict, such refusal would not fall under this rule.

Benedetti's written complaint also stated some unidentified person at an unidentified time asked Schofield to take a copy of a transcript to defense counsel, and Schofield replied she was not an errand boy. [Exh. 5-1]. At hearing, Benedetti and Drasan specified this request occurred in the week before a murder trial in which Drasan had only recently taken over as lead counsel and there was enormous pressure to prepare, including the delivery of this transcript. Benedetti recalled Drasan repeated Schofield's "I'm not an errand boy" response when she emerged from Schofield's office. Yet Benedetti acknowledged she did not hear any of the conversation first hand. [*See also* Exh. 7-2]. That kind of "filling in the blanks" only at hearing requires an employee to engage in guessing at what incident to defend and fails to comply with the CSR requirement to disclose evidence before hearing.[3]

In addition, Schofield disputed this claim at hearing. She stated she did not refuse to deliver the transcript, acknowledging it was her job to deliver such documents, [Schofield testimony], but merely asked if Drasan knew the address of the defense attorney, and it was Drasan who became rude and hostile, replying "look it up yourself!" then threw the papers on Schofield's desk as she stormed out. Another investigator, who arrived shortly after the encounter, told Schofield he was going to that attorney's office anyway and volunteered to deliver the transcript. [Neil testimony]. It would be an impermissibly literal interpretation of the "failing to do assigned work" prohibition in 6-29 J., to require Schofield to deliver the transcript herself as opposed to permitting another investigator to deliver it, and the Agency did not appear to have an issue with this result.

Under the circumstances, it is not possible to determine whose version was correct. It was evident at hearing that Drasan and Schofield did not see eye to eye and both readily attributed the worst interpretation of the other's words and actions. In addition, Drasan

[3] "Evidence that was not disclosed by a party in any of their pre-hearing statements shall not be introduced at hearing absent a showing of good cause." CSR 19-44 C.

acknowledged she was under enormous pressure in that week before the murder trial, making it equally plausible that she had no time for any hesitation by Schofield as it was that Schofield asked a simple question that was misinterpreted by Drasan. The other investigator who witnessed the interaction was not called as a witness to break the tie. To the extent the Agency claimed this "refusal/failure to deliver" was a violation of CSR 16-29 F., there is insufficient evidence to prove Schofield refused an order to deliver a transcript.

Benedetti and Drasan's complaints also referred to Drasan's wanting to re-interview a jailed witness in the same murder trial, and Schofield responding she was unavailable. [Exh 5-1; 7-2, 7-3]. Schofield replied Drasan approached her about accompanying her to that Saturday interview at the end of the day on Thursday as she (Schofield) was leaving for the day. Schofield told Drasan she could not go because she had previous commitments on Saturday [9/10/16], her day off.

Penny testified it was "not great" that Schofield made no arrangements for a substitute to accompany Drasan since it was a mere two business days before trial; however, he also stated he understood Schofield's perspective in not wanting to come in on her day off, and stated it would have been more reasonable for Drasan to have asked Schofield two or three days beforehand. Finally, Penny stated Schofield's suggestion to Drasan, that the interview could have been conducted by telephone, (thereby avoiding the face-to-face-interview altogether), was reasonable, as was Drasan's desire to conduct a live interview. Penny's non-committal testimony failed to endorse this Agency claim and leaves it unproven by a preponderance of the evidence.

3. 16-29 F. Failing to comply with the lawful orders of an authorized supervisor or **failing to do assigned work which the employee is capable of performing**

In the second part of CSR 16-29 F., the Agency made no connection between any of its allegations and this rule. To the extent a connection could be discerned by the evidence, the connection would likely derive from Schofield's PEP standards and her job description.

Benedetti reported Schofield looked for a potential witness and did not locate her, but another investigator, Jeff Carroll found the witness within 15 minutes. Benedetti also complained Schofield failed to contact Carroll about his contact with the witness. [Exh. 5]. Locating witnesses is a core function for investigators, [Exh. 18-2], and therefore falls within the ambit of Schofield's work duties.

Schofield countered, without rebuttal, that she made substantial ("multiple") inquiries into locating the witness, but Carroll's search serendipitously followed a new contact with the witness by a law enforcement agency, enabling him to locate her in the same database that Schofield searched shortly before. Even assuming Carroll's search was more dedicated than that of Schofield, this claim, to the extent it was or could have been a claim, did not establish that Schofield failed to perform work assigned to her under this rule. This rule cannot require success, only the application of reasonable or best efforts. Moreover, Schofield stated, without rebuttal, that when she found out Benedetti asked Carroll to locate the same witness, she asked Carroll what steps he'd taken and asked to retake the search, but Carroll declined, stating he had the search well in hand. [Exh. U-6].

To the extent the Agency claimed Benedetti's complaint was evidence of Schofield's violation of the second portion of CSR 16-29 F., the Agency failed to establish Schofield's search for a witness was a failure to do work in violation of CSR 16-29 F.

Benedict also complained Schofield failed to deliver a Memorandum of Information to defense counsel in the Awad-Awad case. [Benedict, Exh. 8]. This incident was not mentioned in the Notice of Discipline, nor in any pre-hearing statement, nor did Drasan's complaint contain any reference to it. This claim, to the extent it was intended as a violation of the second part of CSR 16-29 F. is dismissed as the belated claim violates the requirement to disclose evidence before hearing. CSR 19-44 C. [*See* n. 3 above].

Another common complaint was that, during trial, Schofield did not check in or assist in the courtroom as often as she should. [Drasan; Benedict; Willis; Benedetti]. However, none of the evidence indicated Schofield had notice of an expectation to assist, and there appeared to be no requirement or even expectation that she check in during trial, just an informal and unstated (to Schofield) conclusion that she was not a "team player." [Drasan; Benedict; Willis; Benedetti]. Also, as is pertinent here, a former supervisor noted "there is nothing in this [PEPR] section that requires investigators to volunteer to assist [when] others and her chiefs never specifically requested that she cover in specific circumstances, [nonetheless] it is disappointing that Jerilyn did not volunteer… when help is needed…" Her supervisor rated Schofield's performance in this area "successful." Those same concerns became unacceptable to Schofield's current team members without notice to her.

This last comment sums up much of the criticism against Schofield. She did not so much defy authority or fail to perform a duty as fail to volunteer what was not required. While her failure to volunteer created difficulty for her team, it is not a disciplinary matter, and, as noted directly above, may not even be a performance requirement. Certainly, policies are not required to be in writing, and the Agency spoke frequently of the "expectation" that team members must be "all hands on deck" when trial is imminent, but that "expectation" was not shown to violate any rule, regulation or policy. [Penny testimony; Drasan testimony, Willis testimony, Sexton testimony; Benedetti testimony]. Moreover, Schofield's supervisors acknowledged her right to take planned time off, and her right not to volunteer. [Penny testimony, Willis testimony]. In addition, Schofield never refused to check in when required. [Benedetti; Schofield]. To the extent the Agency claimed or could have claimed that Schofield's failure to check in during trials violated the second part of CSR 16-29 F., the Agency failed to prove such claim.

**4. <u>16-29 G. 1. Failing to meet established standards of performance including either qualitative or quantitative standards as outlined in your PEP.</u>**

In order to prove an employee violated this rule, the agency must prove 1) it established a standard; 2) it clearly communicated the standard; and 3) the employee failed to meet that standard. <u>In re Rodriguez</u>, CSA 12-10, pp. 9-10 (10/22/10), *citing* <u>In re Mounjim</u>, CSA 87-07, p. 8 (7/10/08); <u>In re Diaz</u>, CSA 45-05, p. 7 (9/7/05); *affirmed* <u>In re Mounjim</u>, CSB 87-07, pp. 3-5 (1/8/09). The Agency listed the following four PEP standards without tying any particular conduct to any of them.

a. ***<u>Case Investigation</u>: (1) Locate witnesses in a timely and professional manner; (2) Conduct or Assist trial deputies in interviews of witnesses, victims and suspects; (3) Prepare investigative reports; (4) When preparing and/or executing warrants, Interstate Renditions, etc., ensures that all documents comply with Federal and State Constitutional requirements and applicable state statutes; (5) Assess safety risks and makes appropriate referrals to Witness Protection investigator; (6) Work with other law enforcement entities as required; (7) Train new staff members as requested; (8) Ensures performance of duties conform with part 3 of the Crime Victim Compensation and Victim and Witness Rights legislation (VRA).***

1. **<u>Locate witnesses in timely and professional manner;</u>**

The same evidence that may have applied above may have also applied here. Benedetti and Drasan complained that Schofield failed to find a witness in timely fashion. [Exh. 5; Exh. 7-3]. The same response and conclusion would also apply here. Schofield countered, without rebuttal, that she attempted to find SM, and stated success sometime depends on luck and timing. Investigator Carroll supported Schofield's response in acknowledging he found the witness by searching a database that had just been updated due to the witness's recent contact with police. No violation of subpart (1) would have been established here.

2. **<u>Conduct or assist trial deputies in interviews of witnesses, victims and suspects</u>;**

To the extent a claim was or could have been made under this subsection, two complaints accused Schofield of not paying attention during witness interviews. [Exh. 7; Exh 14]. Anita Drasan was the lead attorney in the Fuhs murder trial. In her complaint on October 4, 2016, Drasan stated that, during an interview shortly before trial, she asked Schofield to look at pictures she and Penny were showing to a witness, and Schofield refused. Drasan stated she had to remind Schofield what information needed to be written in a report, and even then, Schofield made the witness repeat himself, became frustrated with the witness, and mixed up names.

Schofield denied these allegations. [Schofield testimony; Exhibit U]. Penny was present at the Fuhs trial prep meeting cited above. He did not recall seeing Schofield seeming uninvested during the interview, and saw her take notes as directed. Moreover, Penny testified one of Schofield's strengths was her rapport with witnesses and victims. [Penny testimony]. Penny also stated his experience with Schofield, including during preparation for the above-stated Fuhs trial, was always positive. Penny's testimony was not rebutted, and contravened Drasan's claim. To the extent the Agency claimed or could have claimed Schofield failed to pay attention in violation of her PEP standard to assist trial attorneys during interviews, that claim did not prove, by a preponderance of the evidence, a violation of CSR 16-29 G. 1. as it pertains to subsection (2) above.

Drasan complained Schofield dozed off and doodled in two witness meetings held in Broomfield in June 2016 and August 2016. [Drasan testimony; Exh 7]. Schofield denied dozing off during any witness meetings, and countered that her doodling is an active listening technique she uses during meetings. [Schofield]. However, Schofield acknowledged she wasn't feeling well that day, and struggled to stay alert. [Id.] Penny, who was present during

the meetings, denied having seen Schofield dozing off. [Penny testimony]. As above, Penny's testimony tends to rebut Drasan's claim and leaves this potential agency claim without proof by a preponderance of the evidence.

Benedict also complained about Schofield's conduct during a witness meeting for the "Hernandez" case, in which Schofield allegedly texted on her cell phone and on Facebook. [Benedict; Exh. 8]. Schofield responded that she only texts in the event there is a family emergency, that the meeting was likely when her daughter went into premature labor, and that she uses Facebook for her investigative work. [Schofield testimony]. While perhaps a violation of some other rule or obligation as lacking professionalism, Benedict is not a trial deputy under this rule and her accusation fails to prove Schofield failed to conduct or assist the trial deputy in the witness interview. Had it been claimed, no violation would have been established here.

Drasan and Benedetti also complained Schofield failed to find coverage when she called in sick on Friday, September 9, 2016, the last weekday before trial. [Benedetti, Exh. 5; Drasan, Exh. 7]. Schofield responded that she e-mailed them at 7:19 a.m. that she was sick and wouldn't be in that day [Schofield; Exh. 10]. Schofield said was not aware of the witness meetings occurring that day, and thus didn't know she needed to get coverage. [Schofield testimony]. It remained unclear to what extent Schofield was required to find her own coverage and how it related to the above PEP requirement. This claim, to the extent made, was not proven by preponderant evidence.

Drasan and Benedetti complained that Schofield refused to accompany Drasan to Broomfield for a witness meeting on Saturday, September 10, 2016, shortly before the case was to go to trial the following Monday. [Benedetti, Exh. 5; Drasan, Exh. 7]. Schofield replied that she had pre-existing plans on Saturday, and Drasan only asked her at the end of the day on Thursday, September 8, 2016, shortly before Drasan stormed off instead of letting Schofield explain or offer to get her the information Drasan would need or secure coverage. [Schofield; Exh. U]. As it was unclear to what extent Schofield was required to find coverage when given a last-minute directive to give up her day off, this claim - to the extent it purported to violate the above-referenced PEP standard - was not proven.

3. **Prepare investigative reports;**

Without making a connection between an investigative report under this rule and a Memorandum of Information (MOI), the Agency's evidence included Drasan's claim that Schofield's MOI for the first Fuhs interview in June 2016 was incorrect, and the second MOI in August of 2016 was submitted to defense counsel before allowing her (Drasan) to approve it. Those duties may have fallen under the scope of Schofield's "Case Investigation PEP responsibilities, although the Agency did not make that connection. [Exh. 29-2]. Brenda Benedict, who was also present at the interview, backed Drasan's claims in her testimony at hearing, but did not refer to the incident in her written statement. [Benedict testimony; Exh. 12]. According to Benedict, at one point during the Awad-Awad case, Drasan asked Schofield to write an MOI for her meeting with a witness, and deliver that MOI to defense counsel prior to the next court date. [Benedict testimony, Exh. 8].

Schofield replied she had difficulty following the Spanish-speaking interpreter during one of the meetings, and because she was unclear, she asked Drasan if she

remembered the witness's statement in order to create an accurate MOI. [Schofield testimony; Exh. U-3]. She also stated she does not feel it is inappropriate for an investigator to consult with her attorney in order to ensure report accuracy.

When questioned about her claim that Schofield did not timely provide her MOI to defense counsel, Benedict stated she was not sure if Appellant delivered it or not, but Appellant testified credibly that she provided it the day of trial. [Benedict testimony; Appellant testimony]. Finally, Schofield complained the issue was never brought up to her as a concern. If the Agency intended a claim on the basis of Schofield's failure to make or complete an MOI, the evidence presented was too vague to connect them.

**4. When preparing and/or executing warrants, Interstate Renditions, etc., ensures that all documents comply with Federal and State Constitutional requirements and applicable state statutes;**

The Agency asserted no evidence which might have stated a claim under this subsection.

***5.* Assess safety risks and makes appropriate referrals to Witness Protection investigator;**

The Agency asserted no evidence which might have stated a claim under this subsection.

***6.* Work with other law enforcement entities as required;**

The Agency asserted no evidence which might have stated a claim under this subsection.

***7.* Train new staff members as requested;**

The Agency asserted no evidence which might have stated a claim under this subsection.

**8. Ensures performance of duties conform with part 3 of the Crime Victim Compensation and Victim and Witness Rights legislation (VRA).**

The Agency asserted no evidence which might have stated a claim under this subsection. The next PEP section listed in the Agency's notice of discipline states:

> ***b. Trial/Hearing Prep: Serve subpoenas; Photograph, film or otherwise document crime scene as required; Obtain necessary documentation including but not limited to medical records and transcripts; Prepare diagrams and other exhibits; Withdraw evidence from DPD Property Bureau, returning it in a timely manner, handling evidence with care, keeping it secured appropriately and maintaining a proper chain of custody; Present evidence in court, appearing and testifying in a professional manner.***

To the extent the Agency linked Schofield's conduct to a violation under this PEP standard, there was only one subpart which could have been implicated.

> ***Withdraw evidence from DPD Property Bureau, returning it in a timely manner, handling evidence with care, keeping it secured appropriately and maintaining a proper chain of custody;***

The "keeping it secured appropriately and maintaining a proper chain of custody" portion of this subpart is implicated by the evidence. Drasan claimed to have directed Schofield to store weapons in a locked room but found Schofield kept the weapons in her own, unlocked office in direct violation of the requirement to secure them. [Exh. 7-2]. Schofield replied Drasan did not instruct her to place the evidence in a locked room, and she did put the weapons in her office in a file cabinet drawer out of plain view, and in a secured area with monitored access which is not accessible to the public. [Schofield testimony; Exh. U]. She also claimed her actions were consistent with her understanding of practice in the DA's office, and other deputies and investigators routinely keep evidence in their offices in advance of trial. [Schofield; Exh. U].

The above PEP standard clearly requires senior investigators to keep evidence "secured appropriately and maintaining a proper chain of custody…" Investigator Carroll testified he usually locks evidence in his own small locked cabinet, but has difficulty with the common locked closet because only Willis has a key. [Carroll testimony]. Investigator David Neil confirmed the difficulty of going through Willis to lock evidence, and for that reason usually locks evidence in a cabinet in his office. [Neil testimony]. Despite their frustration with having to find Willis in order to secure evidence, neither of these witnesses provided a justification to avoid locking evidence in compliance with the above-stated standard.

Even if Drasan did not directly order Schofield to lock the weapons, it seems evident weapons which are evidence for an upcoming trial must be locked for the dual reasons of safety and maintaining chain-of-custody, particularly in view of the above-referenced standard. Schofield's failure to lock weapons was an evident violation of this PEP standard, which, in turn, constitutes a violation of CSR 16-29 G.1.

**c.** ***Conduct, Policies, Procedures and Rules: (1) Maintains the integrity of the Denver District Attorney's Office and strictly adheres to Denver District Attorney's Office policies and rules, Career Service Rules and the Crime Victim Compensation and Victim and Witness Rights legislation (VRA). (2) Respects co-workers and helps to maintain a positive work environment: refrains from gossiping or spreading rumors about co-workers or other City employees, treats all people with whom you come in contact while at work in a professional and courteous manner including subordinates, peers, supervisors, and the public, works within his/her scope of influence to honor, respect, and value the diversity of the workforce and interacts with others in a positive manner, engaging in unique views and opinions and building on each individual's strengths.***

The Agency did not specify which portion or portions of this standard applied to its assessment that Schofield violated CSR 16-29 G. 1. Under subsection (1) the

Agency asserted no evidence which might have stated a claim under this subsection. Multiple allegations that Schofield mistreated co-workers or witnesses and had a negative working relationship with them, however, implicated the second subsection "respects co-workers…" within the Agency's broadly-brushed canvas of evidence. [Benedetti, Exh. 5; Eaton, Exh. 6; Drasan, Exh. 7; Benedict, Exh. 8 & 12].

**16-29 l., Failure to maintain satisfactory relationships**, shares many of the same attributes as the above-referenced PEP standard, including mistreatment of or damage to working relationships. Conduct violates CSR 16-29 l. if it would cause another person standing in the employee's place to believe it would be harmful to others, or have a significant impact on their working relationship. In re Perry-Wilborne, CSA 62-13, p. 8 (5/22/14), *citing* In re Williams, CSA 53-08, p. 5 (Order 8/18/08); In re Burghardt, CSB 81-07, p. 2 (8/28/08); *affirmed* In re Williams, CSB 53-08 (5/14/09). The standard for analyzing a violation for this rule is objective and is not defined by the affected individual's subjective feelings and perception of mistreatment. In re Leslie, CSA 10-11, p. 15 (12/5/11). Because the proof is highly similar, I analyze this PEP standard and CSR 16-29 l. together.

Buchman was afraid of Schofield and worked around her. [*See* Exh. 13, Buchman testimony]. He avoided asking her to conduct any investigation, avoided knocking on her door, and felt she was not available when he needed her. Any contact with her became anxiety-provoking, and he worried constantly if would be able to accomplish his case objectives [Buchman testimony]. He stated these reactions resulted from Schofield's complaints, denying simple requests and standoffish body language. [Exh. 13]. At the same time, Buchman acknowledged he never spoke with her about these issues, and never approached his or her supervisor before being asked by Penny on December 8, 2016 to write his impressions of Schofield. Buchman's testimony was credible but was so wanting in specificity it failed to provide notice, failed to establish causation, and therefore fails to establish a violation of 16-29 l. or subsection (2) of the above-referenced PEP standard.

The notice of discipline stated "you expressed anger when a file was left on your desk… [w]hen you took the file to the courtroom secretary, your demeanor was that of fury and hostility…" [Exh. 4-4]. To the extent this claim referred to Schofield's interaction with Lindsay Eaton, the Agency's evidence at hearing included the following.

Eaton is the Legal Secretary for Courtroom 4G, thus a member of the same team on which Schofield was serving. On October 4, 2016, another team member, Victim Advocate Brenda Benedict placed a file on Schofield's desk to take some unspecified action. When Schofield saw the file on her desk, she complained bitterly about Benedict to Eaton, but backed off when Eaton told her it was "not that big of a deal to have a file on your desk." Eaton also stated that, while she felt she previously had a good rapport with Schofield, that in the past month, "she seems increasingly agitated with me and other people. It makes the work dynamics in our courtroom tense, and I have noticed that it has made it difficult for other people to complete their tasks." [Exh. 6].

Schofield testified she was taken aback by Eaton's statement. She believed she spoke in a normal voice and had expressed to everyone on the team, including Eaton, her preference for email communication to request files. Schofield believed she had a good relationship with Eaton. [Schofield testimony].

Eaton was asked to write a statement following her interaction with Schofield on October 5, 2016. She wrote Schofield expressed her anger with Benedict for leaving a file on her desk. When Eaton, trying to help Schofield regain some perspective, replied "it's not that big of a deal to have a file on your desk," Schofield calmed down, left, and e-mailed Eaton later to apologize. Eaton also related that, "[o]ccasionally, Jerilyn will act rude or annoyed with me" and "[f]or the past month or so however, she seems increasingly agitated with me and other people."

It was not apparent from Eaton's written recollection that she felt her own relationship with Schofield was damaged. Her statements that Schofield "will act rude or annoyed with me," and that she "seems increasingly agitated with me and other people" [Exh. 6], alone, are insufficient to establish a violation of CSR 16-29 I or the Agency's conduct policy. At hearing, however, Eaton made it clear that Schofield's intimidation, focus on minutia, and brusque style, made it difficult for Eaton to perform her own duties. [Eaton testimony].

At hearing, Eaton testified to an unspecified occasion when she offered an opinion and Schofield replied brusquely, "I didn't ask for your opinion, Missy." Eaton said her feelings were hurt by this interaction. Schofield responded that "Missy" was her pet name for Eaton, which she used frequently, and she was surprised this upset Eaton, who she felt close to until around September or October of 2016. [Schofield testimony]. Eaton's testimony was credible and her countenance at hearing displayed continuing pain from Schofield's remark. Nonetheless, the above-stated rules are not intended to legislate every potentially hurtful comment between co-workers. [In re Keegan, CSA 69-03, 11 (3/31/04); *see also* In re Day, CSA 12-03, 8 (10/9/03)]. Taken alone, a single instance of calling a colleague "missy," even if in a demeaning way, is insufficient mistreatment of a co-worker or damaging to the working relationship under CSR 16-29 I., or disrespectful treatment under the Agency's conduct PEP standard to constitute a violation of either. [id.]

Sexton's description of Schofield's improprieties during the Ama interview, during which Schofield asked to leave early in front of the witness, were not more convincing than Schofield's denial, and therefore failed to justify a finding that Schofield was rude or otherwise unprofessional or discourteous in violation of her PEP standard as it pertains to CSR 16-29 G.1; nor did this allegation prove Schofield failed to maintain a satisfactory working relationship under CSR 16-29 I. Thus, to the extent the Agency could have alleged Schofield's conduct during the above-referenced interview violated CSR 16-29 G., or I., it failed to prove such violation by a preponderance of the evidence.

Drasan complained Schofield was impatient during witness and victim meetings, but provided no specifics in her complaint. [Exh. 7-3]. This allegation is also too vague to constitute a claim under either standard.

Agency witnesses also alleged with uniform description, that Schofield was "not a team player" [Sexton Exh. 14-2; Benedetti Exh. 5; Drasan Exh. 7]; gave "pushback" when asked to perform tasks [Sexton Exh. 14-2; *see also* Buchman testimony, Exh. 13]; and was largely "unavailable" or "unapproachable" [Benedetti Exh. 5; Drasan Exh. 7; Benedict Exh. 8; Buchman Exh. 13; Sexton Exh. 14]. Benedict complained to Penny that Schofield's attitude was "unpleasant, dismissive, and worse." [Exh. 12]. There were virtually no specifics supporting these broad allegations.

Such indeterminate accusations fail to provide sufficient notice of wrongdoing to defend as a violation of CSR 16-29 I., and are better suited to an internal process such as performance reviews, counselling, written reprimands, grievances, or the like. 16-29 I. The above-referenced PEP standard requires evidence of poor treatment of a particular person or actions in a particular situation, without which it becomes mere conjecture to assess Schofield's behavior and its effect on a reasonable co-worker. To the extent the Agency relied on this evidence, it failed to prove a violation of 16-29 I or the above PEP standard. As indicated above, a post-hearing re-jiggering of evidence to meet specific violations cannot correct a pre-hearing deficiency of notice.

Benedict told Penny she became ill from interactions with Schofield, although she testified at hearing that her stress was largely from others complaining to her about Schofield, and having to work around her. [Benedict, w Exh. 12]. Schofield testified that she had believed her interactions with Benedict were professional, and neither Benedict nor others had approached her about any issues. [Schofield testimony]. This allegation fails to connect any specified conduct which may be objectively judged to violate this rule.

In its notice of discipline, the Agency cited the request by "a deputy DA" to deliver a transcript. The notice of discipline stated Schofield "raised your voice to the attorney, reacted rudely and aggressively, and told her that you refused to deliver the transcript." [Exh. 4-3]. Benedetti's written complaint inferred she was directly aware of Schofield's reaction as stating she was not an errand boy.[4] However, on cross-exam, Benedetti acknowledged she was not in the room at the time, and her knowledge of the incident came from Drasan's recounting the incident later.

Schofield denied the allegation. Her response clarified this claim related to the above-referenced Fuhs trial. She countered that she was not rude, and never refused to deliver the specified documents. She claimed, to the contrary, that Drasan was angry and rude, throwing the papers on her desk and walking out. [Exhibit U; Schofield testimony].

There may have been another investigator in the room whose testimony would have been critical to establishing this claim. [See Exh. U- 4; Schofield testimony].[5] However, that investigator was not identified or called. The remaining offsetting claims did not prove Schofield was rude to a co-worker in violation of CSR 16-29 I. by a preponderance of the evidence.

Drasan complained, as described above, that Schofield refused to perform her assigned duties, and as is pertinent here, did so in a hostile manner. Also, as stated above, the Agency failed to prove, by preponderant evidence that Schofield was hostile, as this claim is too vague to attribute any particular conduct or course of conduct that violates this rule.

[4] Benedetti wrote "[w]hen asked to take a copy of a transcript to defense counsel so that we could complete the necessary redactions, her [Schofield's] response was that she was not an errand boy." [Exh. 5-1].

[5] Schofield testified Investigator Greg Faciane was in her office at the time. He did not testify and apparently provided no statement about the incident.

***d. <u>Other Duties as Assigned</u>: Performs other duties as assigned or requested; Provides coverage and assistance for other staff members as requested by supervisors or as the situation warrants; Fulfills On-call Investigator responsibilities as assigned.***

Other than the Agency's claim that Schofield failed to secure weapons for the Fuhs trial properly, as analyzed above, it was not apparent what other sections of this PEP standard the Agency intended to apply.

**5. 16-29 T. Conduct which is or could foreseeably:**
**1. Be prejudicial to the good order and effectiveness of the department or agency;**
**2. Bring disrepute on or compromise the integrity of the City; or**
**3. Be unbecoming of a City employee.**

Drasan complained Schofield did not pay attention during a witness meeting, and made a witness repeat himself, as well as getting names mixed up and becoming visibly frustrated with the witness. [Drasan Exh. 7]. Schofield countered that this witness meeting included an interpreter, and conversations with interpreters can be confusing because the translation may change or be unclear. [Appellant, Exh. U]. The evidence does not establish the Agency's claim by a preponderance of the evidence.

During a witness meeting for the Hernandez case, Schofield was on her phone texting and on Facebook, which Benedict claimed "made us look bad." [Benedict; Exh 8]. Schofield responded she uses Facebook for her work, and only texts if there is a family emergency, and at the time she thought her daughter might be going into labor. [Appellant, Exh. U]. Schofield did not claim she raised such an emergency with her attorney at the time, nor did she ask for a brief pause or excuse herself. This factual allegation is proven by a preponderance of the evidence, but the assertion "she made us look bad" fails to connect Schofield's conduct to a violation of any component of this rule.

During a witness meeting on September 20, 2016, in the Kelim case, Schofield asked if she could leave, before the meeting was finished. [Sexton; Benedict, Exh 8]. Schofield replied the meeting was over and the only remaining item was for Sexton to explain why they were not prosecuting, an action that did not require an investigator or an MOI. [Appellant, Exh. U]. The Agency's evidence for these claims is insufficient to establish a violation of this rule, since it remains unproven if and to what extent Schofield's presence was required, if that presence was communicated, or if she was excused or not excused when she asked to leave. Moreover, no connection to any part of this rule was stated or evident.

## V. SCHOFIELD'S WHISTLEBLOWER CLAIM

A claim under the whistleblower ordinance is raised by allegations that a supervisor imposed or threatened an adverse employment action on account of an employee's disclosure of information about official misconduct, i.e., a violation of law or other authority, a waste of city resources, or an abuse of official authority. <u>In re Wehmhoefer</u>, CSA 02-08, 4 (2/14/08); D.R.M.C. § 2-106 et. seq. A whistleblower claim is proven by (1) disclosure of official misconduct (2) to an appropriate reporting authority and proof that (3) the whistleblower suffered an adverse employment action (4) on account of that disclosure. Schofield alleged two bases for her claim: the lack of qualifications of a recently-hired investigator, and

nepotism. She alleged recently-hired Senior Investigator Joe Lucas was unqualified for the position and would not have been hired but for the intervention of his uncle, District Attorney Mitch Morrissey.

1. Disclosure of official misconduct. The "disclosure" element immediately poses a problem for Schofield's whistleblower claim. Schofield's alleged disclosures were her conversations with co-workers,[6] and her anonymous report to a news reporter.

Schofield's complaints to other investigators concerning whether Lucas was qualified, fail to assert a "disclosure" as contemplated by the City's Whistleblower Ordinance. Moreover, the preponderance of evidence indicated Lucas was qualified and, according to witnesses, has always performed his duties competently. Finally, evidence during hearing established that no law enforcement experience is prerequisite to applying for the Senior Investigator position. [Willis testimony; Exh. 18]. Schofield did not, therefore disclose official misconduct as required under the ordinance.

2. "… to an appropriate reporting authority." A reporter is not "an officer, board or commission, or other person or other entity vested with legal authority to receive, investigate or act upon reports of official misconduct" under the Ordinance. Her claim further fails under this requirement.

Based on Schofield's failure to make a disclosure and her failure to disclosure to an appropriate reporting authority, she failed to prove her whistleblower claim under the City Ordinance. Moreover, it is questionable whether Morrissey, as a State employee, is subject to the City's Whistleblower ordinance.[7]

In summary, the Agency failed to provide substantive links between its evidence and alleged rule violations. All that remained were two minor violations derived from evidence that was sufficiently self-explanatory so as to constitute notice of particular violations. The two proven violations were Schofield's failure to obey a lawful order by her failure to comply with Sexton's order to secure a search warrant, and her failure to secure evidence pursuant to her PEP standards. Schofield failed to prove her Whistleblower claim.

## VI. DEGREE OF DISCIPLINE

The purpose of discipline is to correct inappropriate behavior if possible. Appointing authorities are directed by CSR 16-41 to consider the severity of the offense, an employee's past record, and the penalty most likely to achieve compliance with the rules. CSR § 16-20. The measure of an agency's choice of the level of discipline is whether it falls within the range

[6] Schofield appears to claim her "disclosure" was her email to the Executive Secretary of District Attorney Mitch Morrisey; however, that document [Exhibit S] was not admitted into evidence, and no other evidence addressed it, leaving Schofield with a weak claim of disclosure-by-gossip and fails for that reason. Even if exhibit S had been admitted, it would not have presented a disclosure as contemplated by the City's Whistleblower Ordinance. Schofield's "disclosure" of wrongdoing to a reporter, if it was intended as such, failed to meet the requirement of disclosure to "an appropriate reporting authority." Denver Revised Municipal Code sec. 2-108 (c).

[7] *See* City Attorney Memorandum "Application of Code of Ethics to various boards and commissions" [advising that employees of the Denver District Attorney's office are not bound by the Code], October 17, 2001; see also Confidential Attorney-Client Memorandum "Non-applicability of the Denver Ethics Code to the Office of the District Attorney" [confidentiality waived by production in Jerry Green ethics opinion and by express consent from the Executive Director of the Board of Ethics], June 2, 2016.

of disciplinary options available to a reasonable and prudent administrator. [In re Ford, CSB 48-14. 4 (12/17/15); *see also* In re Lacombe, CSB 10-14 (7/16/15)].

A. Seriousness of the proven offenses

Both proven violations were minor. While Schofield failed to obey Sexton's directive to secure a search warrant, she did submit a preservation letter to Facebook, which preserved the Agency's right to secure the needed evidence.

Schofield's failure to store evidence pursuant to Agency policy could have jeopardized chain of command proof. However, there was substantial testimony from other witnesses, that indicates the Agency's enforcement of its own storage policy, or how that policy is implemented, is inconsistent.

If Schofield is an unrepentant bully, as claimed by the Agency, its evidence failed to meet its burden to prove it.

B. Prior Record

Schofield's work reviews were rated either successful (2013), or "exceeds expectations" (2012, 2014, 2015). She did not provided a copy of her 2016 PEPR. Regarding the proven violations, one former supervisor found she "maintains safety associated with evidence, such as proper storage of deadly weapons."

Schofield's written reprimand in 2013 was assessed for her lack of civility to a co-worker. While that same allegation appears to be a substantial part of the Agency's claims in the present case, those claims were not proven by a preponderance of the evidence and therefore do not constitute progressive discipline as it relates to that claim, and as required by our Career Service Rules. [CSR 16-41; *see also* In re Ford, CSB 48-14, 8-9 (9/17/15)] (in which the Career Service Board found the concept of progressive discipline should be taken seriously, and also finding when an employee is capable of correcting her conduct, progressive discipline is appropriate).

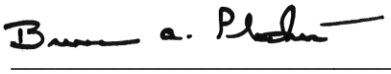
C. Likelihood of Reform

The Agency did not show Schofield would be unlikely to reform her behavior as it relates to the proven violations. Schofield readily acknowledged her wrongdoing following her 2013 written reprimand, and committed to reforming her behavior. Her subsequent record, was and appears to remain spotty in that effort. At the same time, the current proven violations are unrelated to her prior violation. As such, the penalty of termination was not within the range of alternatives available to a reasonable and prudent administrator, is not supported by record evidence, and is clearly erroneous. [*See* In re Kemp, CSB 19-13, p.7 (7/28/14, *citing* In re Economakos, CSB 28-13 (3/24/14)]. A minor suspension should serve to send sufficient notice of Schofield's need to reform in those areas established in the current case while serving the dictates of progressive discipline.

## VI. ORDER

The Agency's termination of the Schofield's employment on January 19, 2017, is MODIFIED to a five-day suspension. Schofield's whistleblower claim is DISMISSED.

DONE October 9, 2017.



Bruce A. Plotkin
Hearing Officer
Career Service Board

NOTICE OF RIGHT TO FILE PETITION FOR REVIEW

You 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 decision's certificate of delivery. See Career Service Rules at www.denvergov.org/csa. **All petitions for review must be filed with the following:**

**Career Service Board**
c/o OHR Executive Director's Office
201 W. Colfax Avenue, Dept. 412, 4th Floor
Denver, CO 80202 FAX: 720-913-5720
EMAIL: CareerServiceBoardAppeals@denvergov.org

**Career Service Hearing Office**
201 W. Colfax, Dept. 412, 1st Floor
Denver, CO 80202
FAX: 720-913-5995
EMAIL: CSAHearings@denvergov.org.

AND opposing parties or their representatives, if any.