

**ORDER RE PARTIES' "JOINT MOTION TO VACATE HEARING AND TO BRIEF THE MATTER"**

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IN THE MATTER OF THE APPEAL OF:

**MELISSA SIGALA,**

Appellant, vs.

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

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This case involves a four-day suspension assessed by the Agency against the Appellant for failing to report a non-duty vehicle accident. The parties have moved jointly to vacate the December 4, 2012 hearing and submit the appeal only by written briefs, arguing there are no disputed facts and only one legal issue remains to be decided. A review of the pleadings indicate factual issues must be resolved before a decision may issue.

The parties have filed prehearing statements which allege conflicting versions of the facts underlying the discipline. The parties nonetheless argue the facts are undisputed and are sufficient to support factual findings without sworn evidence or stipulations.

The Agency alleges Deputy Martinez made a left turn in front of an oncoming motorcycle. While the vehicles did not collide, the motorcycle slid and flipped, throwing the helmetless rider who suffered a fatal head injury. Martinez pled guilty to a class one misdemeanor traffic offense of careless driving resulting in death. She was sentenced to a 24-month deferred judgment and received 8 points against her driving record. Her license was not suspended. This case arose from the Agency's allegations that she failed to report, or failed to report adequately the true nature of the accident, the charges against her, and her deferred judgment, all as required by Career Service Rules.

Martinez appears to concede the accident occurred and resulted in a fatality. She also agrees she pled guilty to a misdemeanor traffic offense. The timing, nature, and circumstances of her communications about the incident to the Agency are largely in dispute, as is the appropriateness of suspension under the Career Service Rules.

The joint motion alleges there are no factual issues to resolve and the only issue to be decided is "whether the Manager of Safety complied with the dictates of the discipline matrix when determining the discipline, a four-day suspension." The motion then alleged the matter could be settled without hearing, and by briefing alone. The motion concluded the next step is, therefore, to set a briefing schedule.

While I concur in setting a pre-hearing conference, I question whether a reasoned decision may issue without a hearing, i.e., that no material issues of fact remain. It is also

unclear why the Agency's compliance or non-compliance with its disciplinary matrix determines all factual and legal issues. To that end, the parties should be ready to discuss what facts are stipulated more precisely than citing to "the exhibits," since the exhibits contain adverse positions as to underlying facts, circumstances, violation of the cited rules, and the appropriateness of the penalty. For example:

1. Does the Appellant admit to ANY wrongdoing under the Career Service Rules? If the answer is yes, how does the Appellant justify asking for a reversal of the Agency action (as opposed to a modification)? If the Appellant admits to wrongdoing, what wrongdoing does the Appellant admit? To wit:

a. which of the alleged Career Service Rule violations does the Appellant admit?

b. if the Appellant does not admit a particular Career Service Rule violation alleged by the Agency, does the Appellant admit to some of the elements of the violation as alleged by the Agency? Which one(s)?

c. did Sgt. Hitchcock tell Appellant to write a summary of the accident to submit to the Agency or only for her own benefit? If not specifically stated, was an order to submit a written statement to the Agency inferred? Intended?

d. did Appellant operate a vehicle as part of her job per CSR 15-15 A.2., as alleged by the Agency?

2. Even if all material facts are admitted by stipulation, there remain apparent questions of fact to resolve the issue of the degree of discipline assessed by the Agency, pursuant to CSR 16-20, to wit:

a. what was the seriousness of the agreed wrongdoing?

b. what was Appellant's past record?

c. was the degree of discipline selected by the Agency reasonably calculated to achieve compliance with the Career Service Rules? and

d. How should these factors be weighed in assessing whether the Agency's choice of discipline was reasonable?

For these reasons, the parties should be prepared to discuss, at the upcoming pre-hearing conference, stipulations of fact sufficient to resolve the questions above before I decide whether this case may be decided by legal argument alone.

### **ORDER**

1. The hearing previously set for December 4, 2012 is vacated.

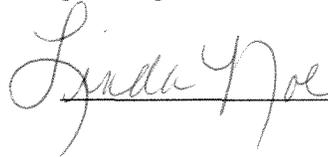
2. A pre-hearing conference will take place December 7, 2012 at 8:30 a.m. The parties' representatives may appear either by phone or in person, ready to discuss stipulations as outlined above.

DONE December 5, 2012.

  
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Bruce A. Plotkin  
Career Service Hearing Officer

I certify that, on December 5, 2012, I delivered a correct copy of this Order to the following in the manner indicated:

Deputy Melissa Sigala, <a href="mailto:Melissa.Sigala@denvergov.org">Melissa.Sigala@denvergov.org</a>	(via email);
Eric James, Esq., <a href="mailto:ejames@elkusandsisson.com">ejames@elkusandsisson.com</a>	(via email);
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