

DISCOVERY ORDER

IN THE MATTER OF THE APPEAL OF:

ROBERT STRAUCH, Appellant,

vs.

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

On July 12, 2011, Appellant moved for formal discovery. The Agency objected to all five interrogatories, and seven out of ten requests for production of documents.

This is an appeal of a fifty-day suspension, assessed against Appellant by the Denver Sheriff's Department for asserted violations of Career Service Rules §§ 16-60 E., L., Y., and Z., for his alleged misconduct in appearing in uniform for his own child support hearing at the Adams County Courthouse, and for his subsequent departure from the truth regarding that incident.

Appellant's discovery requests are cited by the number ascribed by Appellant, and decided as follows:

Interrogatories:

The Agency generally objects to all five interrogatories, on the basis that the Career Service Rules disfavor extensive discovery, and that all information requested in Appellant's interrogatories can be obtained through witness testimony during the hearing. The Agency also specifically objects to the interrogatories, on the bases specified below.

#1. "Describe the specific facts that led to the Agency's conclusion that Appellant departed from the truth or engaged in an act of dishonesty with regard to the alleged incident that took place on June 23, 2010." The Agency has, to the extent required during the pre-hearing stage, provided sufficient information in its pre-hearing statement to apprise Appellant of the facts upon

which the Agency bases its dishonesty claim. Further inquiry may be obtained during hearing. This request is DENIED.

#2. "Describe the specific facts that led to the Agency's conclusion that Appellant violated Departmental Rule and Regulation 300.2 (displaying badge) with regard to the alleged incident that took place on June 23, 2010." The Agency has, to the extent required during the pre-hearing stage, provided sufficient information in its pre-hearing statement to apprise Appellant of the facts upon which the Agency bases its claim. Further inquiry may be obtained during hearing. This request is DENIED.

#3. "Was the nature and severity of the Agency's disciplinary action based on its allegation that appellant departed from the truth or was it based on his alleged violation of the Uniform Policy?" While the Agency objected that the requested information was contained in the Notice of Discipline letter, the Agency nonetheless answered the interrogatory in its Response. The request is moot.

#4. "Explain what aggravating factors, if any, the Agency considered in determining the level and severity of its disciplinary action against Appellant." The Agency objects that this information is protected as the decision maker's deliberative process. The decision maker's deliberative process is not privileged information. Appellant is entitled to notice and a fair hearing, which includes the opportunity to provide a meaningful response, and therefore, this request is GRANTED.

#5. "Explain what mitigating factors, if any, the Agency considered in determining the level and severity of its disciplinary action against Appellant." The Agency also objects that this information is protected as the decision maker's deliberative process. The Agency objects that this information is protected as the decision maker's deliberative process. For the same reasons as stated immediately above, this request is GRANTED.

Requests for Production of Documents:

#1. "Appellant's complete DSD IAB file, including recordings or transcripts of all IAB interviews conducted during the investigation of this case." The Agency represents that it already provided this information to Appellant; thus, the request is moot. Appellant may re-apply for said request if his IAB file, recordings and transcripts were not provided.

#2. "Appellant's complete DSD personnel file." The Agency shall make those records available to Appellant to view and copy at a reasonable time and at a reasonable cost.

#3. "Copy of any statement and/or report prepared by or [sic] Security Officer Arquette regarding the incident that is the subject of Agency's disciplinary action or the investigation thereof." The Agency represents it has provided the Internal Affairs file, but objects to any information not contained in the Internal Affairs file, since the Agency is not Arquette's employer, and is not the custodian of records that his employer may have retained. The request for the IA file is moot. To the extent that Arquette's employer retained any records or statements, the Agency is not the custodian of record, and the Appellant must file a separate subpoena for the production of documents from non-parties. This request is DENIED.

#4. "Contact information for Security Officer Arquette and written permission from the City Attorney to contact and interview Security Officer Arquette regarding the incident that is the subject of Agency's disciplinary action." The Agency objects on the same basis as in #3 above, that the Agency is not Arquette's employer. For reasons stated above, this request is DENIED.

5., 6. The Agency represents it provided the requested information to Appellant; thus, the request is moot. Appellant may re-apply if said information was not provided.

#7. "Copy of the roster that Appellant allegedly signed to 'sign in' at the Adams County Courthouse on June 23, 2010." The Agency represents it has provided the Internal Affairs file, but objects to any information not contained in the Internal Affairs file, since the Agency is not the custodian of records that the Adams County Courthouse may maintain. The request for the IA file is moot. To the extent that Adams County Courthouse retained the roster from June 23, 2010, the Agency is not the custodian of record, and the Appellant must file a separate subpoena for the production of documents from non-parties. This request is DENIED.

#8. "Transcript of the hearing in front of Magistrate Mole, specifically, the portion leading up to and including Magistrate Mole's instructing Adams County Deputy Sheriff(s) to remove Appellant from the courtroom." The Agency represents it has provided the Internal Affairs file, but objects to any recordings or transcripts not contained in the Internal Affairs file, since the Agency is not the custodian of records that the Adams County Courthouse may maintain. The request for the IA file is moot. To the extent that Adams County Courthouse retained the recording and/or transcript from Appellant's hearing in front of Magistrate Mole on June 23, 2010, the Agency is not the custodian of record, and the Appellant must file a separate subpoena for the production of documents from non-parties. This request is DENIED.

#9. "Copies of video from the first floor intake area of the DDC for the following dates: June 25, 2010 through and including July 4, 2010, from the hours of 7:30 am-8:30 pm for each day." The Agency objects to this request on the basis that it does not maintain video for the requested area for more than 30 days, and no longer has this video in its possession. The Agency also objects as irrelevant. I find that this request is relevant, as Appellant contends that he had a conversation regarding the uniform policy in this area between these dates with two to three sergeants and other deputies. Video of this exchange would support Appellant's veracity, and would directly refute the Agency's assertion that Appellant departed from the truth, in violation of Career Service Rules. To the extent the Agency retained this video, the request is GRANTED. Agency's failure to provide said video may result in evidentiary sanctions.

#10. "Provide the name and circumstances of every deputy who was disciplined for violating the Departmental Uniform Policy in 2009 and 2010, the circumstances surrounding this complaint, and the final resolution of their case, including the copies of Disciplinary notifications." The Agency objects as unduly broad, overly burdensome, and irrelevant to the appeal at issue, where there are multiple asserted rule violations. The Agency also objects that disciplinary actions against employees that have not been appealed to this office, are confidential, and should not be disclosed absent the employees' consent. I find this request is overly broad, given the narrow discovery permitted in this forum. CSR § 19-45. This request is DENIED.

DONE July 19, 2011.


Bruce A. Plotkin
Career Service Hearing Office

I certify that, on July 19, 2011, I delivered a correct copy of this Order to the following, in the manner indicated:

Robert Strauch, piker9860@yahoo.com	(via email);
Daniel S. Foster, Danny@fostergraham.com	(via email);
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