HEARING OFFICER, CAREER SERVICE BOARD
CITY AND COUNTY OF DENVER, COLORADO

Appeal No. 90-06

DECISION

IN THE MATTER OF THE APPEAL OF:

MARY SALERNO,
Appellant,

vs.

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

The hearing in this appeal was held on Jan. 8, 2007 before Hearing Officer Valerie McNaughton. Appellant was present and represented by Dolores Atencio, Esq. The Agency was represented by Assistant City Attorney Robert A. Wolf. The Agency's advisory witness was William Heaney. Having considered the evidence and arguments of the parties, the following findings of fact and conclusions of law are entered herein.

I. INTRODUCTION

Appellant was a Court Technical Clerk for the Denver County Court until her termination on Oct. 17, 2006. The appeal alleged jurisdiction as a direct appeal of the termination under Career Service Rule (CSR) § 19-10 A.1., and discrimination and grievance appeals under CSR § 19-10 B. 1. and 2. Before hearing, Appellant withdrew her discrimination appeal, and the grievance appeal was dismissed as abandoned. The matter went to hearing solely as a direct appeal of the termination. The parties stipulated to the admissibility of Agency Exhibits 1 – 16, and Appellant's Exhibits A – Q.

II. ISSUES

The issues in this appeal are as follows:

1) Did the Agency establish by a preponderance of the evidence that Appellant's conduct justified discipline under the Career Service Rules, and

2) Did the Agency establish that termination was within the range of penalties that could be imposed by a reasonable administrator in compliance with the Career Service disciplinary rules?

III. FINDINGS OF FACT

In Oct. 2000, Appellant was hired by the Denver County Court in the City and County Building, and assigned to the Traffic Division. Appellant started in the Clerk's Office doing data entry and customer service for traffic citations, and was promoted in Jan. 2004 to act as bailiff in the courtroom of County Judge Barajas in the Criminal Division. Employees of the County Court are governed by the policies and procedures contained in its employee handbook. The handbook prohibits an employee who is a party to a matter before the County Court from performing any function related to the case, and requires employees to inform their supervisor or the court administrator immediately when they learn they will be a party to a Denver County Court matter. [Exh. 14-13.] The handbook also bans the removal of any court-related information or property from the premises by an employee. [Exh. 14-14.] Appellant received a copy of the employee handbook when hired. She signed an acknowledgement that she was familiar with the policies included therein on an annual basis; most recently on Aug. 9, 2006. [Exh. 13.]

On August 14, 2006, Appellant received a speeding ticket from Officer James Pelloni, which was assigned Case Number B353209. [Exh. 5.] A few days later, Appellant met co-worker Diane Hermosillo in a basement stairwell in the courthouse. Appellant began by stating she'd never asked her for anything, but said she had just received a speeding ticket. She told Ms. Hermosillo that she could lose her license for a year because she already had a conviction for DWAI (driving while alcohol-impaired). Appellant asked Ms. Hermosillo if she could help her find the ticket. Ms. Hermosillo refused. Appellant told her she understood, and that she would find someone else to do it.

The court copies of traffic tickets usually arrive at the courthouse in a locked box three to five days after they are issued by a police officer. Once the box is unlocked, the tickets are placed in a bin accessible to all employees in the Clerk's Office, Room 109, to await their entry into the computer by a part-time on-call employee. Tickets can sit in the bin awaiting entry for up to four weeks, depending on staffing levels. The tickets issued by Officer Pelloni just before and just after Appellant's ticket were entered into the court computer system on August 18th and 22nd, and both were set for arraignment on Oct. 10, 2006. [Exhs. 9 - 12.] Based on this evidence and Mr. Heaney's testimony of office operation, it is determined that Appellant's ticket arrived at the courthouse some time between Aug. 17th and Aug. 23rd, and that it was removed before it was entered into the County Court computer system as an open case. [Exh. 8.]

On the weekend of Sept. 9th and 10th, Appellant painted the office of

Darline Clark which is located in Room 109. Four witnesses testified that they saw her for periods of time from ten minutes to three hours while she was painting the office with her two small children.

Shortly after 6 pm on Sept. 12th, Ms. Hermosillo found a note that had been slid under the door of the Clerk's office. The note said, "[w]e were all wondering how Mary Salerno could steal her own traffic ticket and still have a job." [Exh. 4.] At 8 pm, co-worker Lee Morris found a copy of the same note on her desk, and told Ms. Hermosillo about it. Ms. Hermosillo realized that Appellant must have removed the court copy of her ticket from the courthouse to prevent it from being entered as an open case, and that other employees had learned of this.

Ms. Hermosillo obtained Appellant's home phone number from another co-worker, and called Appellant that night. Ms. Hermosillo asked Appellant where her ticket was. Appellant at first responded that she did not know what Ms. Hermosillo was talking about. Ms. Hermosillo then read Appellant the note she had received, and said others had gotten a copy of the same note. Appellant told her she had the ticket with her, but that maybe it wasn't too late for her to return the ticket to court and have one of the clerks enter it. Ms. Hermosillo told her she wouldn't touch the ticket, and advised Appellant to "come clean" to one of the managers about what she had done. Appellant assured her she had done nothing wrong, and that she had until October 10th to turn in the ticket.

Appellant then asked her to look up the name of the officer whose badge number was 01074 to see if he was a p.m. court officer. Ms. Hermosillo looked it up on the computer, and informed Appellant that it was Officer Pelloni, but that they no longer have p.m. court officers. Appellant said she thought the officer may have called to check up on the ticket in order to make certain nothing happened to it, because Appellant had told him she worked at the County Court. Appellant also said the ticket was set for Oct. 15th at 4:30 p.m. Ms. Hermosillo encouraged Appellant to return the ticket. Appellant told her everything would be all right. The next day, Appellant left a voice message on Ms. Hermosillo's cell phone, stating, "[d]on't worry, you didn't do anything wrong, it will be all right. Call me back." [Exhs. 6, I-37 and I-60.]

On Sept. 13th, Court Technical Clerk Connie Schellinger informed Traffic Division Manager Bill Heaney that she had received an anonymous note, which was identical to that received by Ms. Hermosillo and Ms. Morris. Mr. Heaney interviewed the three recipients of the note, and learned from Ms. Hermosillo that Appellant asked her to pull her ticket to prevent it from being entered into the computer system and set for arraignment. Based on that information, Mr. Heaney searched the work areas in various offices and courtrooms for the court's copy of any ticket issued to Appellant. After the search turned up no ticket, the MAC computer records were audited to determine if Appellant changed any traffic computer record in 2006. The audit showed that Appellant had not altered

any computer record. During Mr. Heaney's second conversation with Ms. Hermosillo, she gave him the officer's badge number and informed him that Appellant told her she had the original citation in her possession. [Exh. 7-1, 7-2.] Mr. Heaney then interviewed the night shift employees, and asked the police department for a copy of the activity log for tickets written by Officer Pelloni during the period in question.

On Sept. 14th, Appellant was placed on investigative leave. Before leaving the building, Appellant went to speak to Judge Barajas privately. Judge Barajas asked her if she had a copy of the ticket. Appellant told him that she did, and that she would bring it in. [Testimony of Appellant.] Based on that statement, Judge Barajas informed Mr. Trujillo in Appellant's presence that she would bring the ticket in to Mr. Trujillo.

Human Resources Manager Suzanne Razook, Deputy Court Administrator Terri Cook and Mr. Heaney formed an interview panel to complete the investigation into this matter. During their Sept. 15th interview with Appellant, she admitted she received a speeding ticket after a DWAI left four points on her license before her driving privileges would be suspended. Appellant said she told Ms. Hermosillo that she received a speeding ticket, and said, "I'm not asking you to pull it, but how long does it take to hit the system?" Appellant told them Ms. Hermosillo said tickets were received within two to seven days. [Exhs. 15; 1-39 to I-41, and I-51 to I-55.] Appellant testified she asked that question because her attorney wanted her to find out if her speeding ticket would be posted before or after her Aug. 31st hearing at the Department of Motor Vehicles (DMV) on her application for a restricted license. The ticket was not disclosed to the DMV, and Appellant was granted a restricted license on Oct. 20th.

Appellant told the panel she did not know where the court's copy of the ticket was, but she had thrown her own copy away just before Labor Day. [Exhs. I-39 and I-51.] She informed them that when Ms. Hermosillo read her the anonymous note and asked her, "[w]here's the ticket, damn it?", she told her, "I have until October 10th for the ticket to be turned in." [Exh. I-41.] In her written statement, Appellant said, "The yellow copy that was given to me by the officer was in my kitchen for about 2 weeks before I got rid of it." [Exh. 15.] At hearing, Appellant stated that she thought she still had her copy of the ticket as of Sept. 12th, and later could not find it. Appellant testified that she told Judge Barajas on Sept. 14th that she had a copy of the ticket, and would bring it in.

On Sept. 15th during her interview with the panel, Appellant said she did not recall the name of the officer, but thought his name began with a P or an R. [Exh. I-52.] At the Oct. 11th pre-disciplinary meeting, Appellant denied knowing the name of the officer. [Exh. I-30.] Appellant testified that Ms. Hermosillo told her on Sept. 12th that the officer's last name was Pelloni.

When asked by the panel, Appellant said the officer wrote 4:30 p.m. as the

time for her first appearance, but that Appellant knew they no longer held 4:30 court. Nonetheless, Appellant threw out her copy of the ticket and did not look up the correct time for her first appearance.

Appellant told the panel she did not recall the badge number of the officer who issued the ticket. Appellant testified she answered that way because she thought the question related to whether she knew the officer or his badge number at the time of the traffic stop. At the pre-disciplinary meeting, Appellant said she gave Ms. Hermosillo the badge number, and Ms. Hermosillo found his name in the computer with that information. [Exh. I-29.] At hearing, Appellant stated she asked Ms. Hermosillo to look up the officer's name by the first three numbers in the badge number, which were 107, and that Ms. Hermosillo read out the names of the officers from her computer screen. When she reached 1074, Officer Pelloni, Appellant said, "[t]hat's the one." Appellant later testified that shortly after getting the ticket, she wrote the badge number and the court date of Oct. 10th on a post-it note, using her yellow copy of the ticket located on her kitchen counter. She carried the note in her purse so she could determine if the officer with that badge number was scheduled to appear in her courtroom for a jury trial. In contrast, Ms. Hermosillo's testimony and previous statements were consistent: on Sept. 12th, Appellant recited the entire badge number, and asked her to look up the officer's name. [Exhs. 6-1, 7-2, and I-60.]

Appellant admitted both during the investigative interview and at hearing that she did not report the ticket to her supervisor Vivian Duran in accordance with Agency policies. Appellant testified that she wanted to see Ms. Duran in person to report it, but that Ms. Duran was not in her cubicle when Appellant came by. Appellant admitted she did report her DWAI conviction four months earlier under the same employee policy. Appellant told the interview panel that she knew the procedure for reporting traffic citations to her supervisor, but that it slipped her mind. [Exh. I-54.]

On Oct. 11th, Appellant submitted a statement that on Oct. 10th, the date set for arraignment in the speeding citation, she called Human Resources Manager Suzanne Razook to see if it was necessary for her to appear. Ms. Razook advised that it was not. Appellant asked if the citation could be reconstructed from information she could provided, and was told that it could not be. The statement was intended to "document that I tried to comply and resolve the traffic citation that was issued to me August 14, 2006." [Exh. E.]

The pre-disciplinary meeting was held on Oct. 11, 2006. Appellant stated that she stood by the written statement she gave to the investigatory panel. After consideration of Appellant's statements and prior work history, which was consistently rated as excellent or exceeds expectations, Ms. Razook found that Appellant's actions damaged public trust in the integrity of the judicial system, and therefore termination was justified by the seriousness of the violations. Appellant filed this appeal on Oct. 26, 2006.

IV. ANALYSIS

1. Career Service Rules

Jurisdiction is proper under CSR § 19-10 A. 1. I. In this de novo hearing on the appropriateness of the discipline, the Agency bears the burden of proof to show by a preponderance of the evidence both that Appellant violated the disciplinary rules as alleged, and that termination was within the range of discipline that can be imposed under the circumstances. Turner v. Rossmiller, 535 P.2d 751 (Colo. App. 1975.); In re Gustern, CSA 128-02, 20 (12/23/02).

A. CSR § 16-60 C: Theft or destruction of City property

The Agency charges that Appellant removed the official court copy of her traffic citation from City premises, and thereby either stole or destroyed City property in violation of this rule. Appellant has contended throughout the disciplinary and appeal proceedings that she did not take the court copy of her ticket, and that she does not know who if anyone caused its removal from the courthouse.

The employee handbook defines Denver County Court property as "documents, files, records . . . or similar materials." [Exh. 14-14.] The handbook provides notice to employees of the nature of the property protected by CSR § 16-60 C. Appellant does not deny that court copies of traffic citations are the property of the Denver County Court. Official records are indisputably the property of the Agency whose work it is to maintain and process them. There was no evidence that Appellant destroyed the ticket. The only issue here is whether the Agency proved that Appellant caused the theft of the ticket.

The Colorado criminal law indicates that "a person commits theft when he knowingly obtains or exercises control over anything of value of another without authorization, or by threat or deception, and . . . (b) knowingly uses, conceals, or abandons the thing of value in such manner as to deprive the other person permanently of its use or benefit." CRS § 18-4-401(1). This statute has been cited in a Career Service decision in determining whether an employee violated the predecessor rule, which is identical in all relevant respects to the rule at issue here. CSR § 16-50 A. 2); In re Schultz, CSA 156-04, 6 (6/20/05). Our rules provide no other definition of theft. Therefore, in order to establish theft in this context, the Agency must prove that Appellant knowingly exercised control over the official court copy of the traffic citation with the intent to prevent the Denver County Court from processing the citation.

The Agency presented the testimony of Ms. Hermosillo that Appellant asked her as a favor to intercept the court's copy of the ticket so she would not lose her license for a year. Appellant testified that she instead said, "I'm not asking you to pull it, but how long does it take to hit the system?" Appellant said

her attorney asked her to obtain that information to determine whether the ticket would be entered at the time of her Aug. 31st DMV hearing for a restricted license. Appellant testified she did not disclose the speeding ticket to the DMV, and she was granted a restricted license. Appellant's testimony demonstrates that she had a strong motive to avoid the consequences of the speeding ticket.

On Sept. 12th, Ms. Hermosillo told Appellant of the accusation against her in anonymous notes which surfaced at work. Appellant admitted she had the ticket with her, but that she believed she could still "turn it in", and the clerks could log it into the system. That response makes no sense unless the two were speaking of the official court copy of the ticket. Appellant's subsequent voice message, "don't worry, you didn't do anything wrong", also acknowledges that it is the official document that is under discussion, not Appellant's copy of the ticket.

Ms. Hermosillo's statements and testimony were all consistent with the first statement she gave to Mr. Heaney. The context of the conversations with Ms. Hermosillo and the judge made it clear that the ticket under discussion was the court's copy of the ticket. In addition, given the importance of the ticket and its effect on her license, it would appear reasonable that Appellant would recall whether she intentionally or inadvertently threw out her copy, or whether she still had it.

Appellant admitted at hearing that she told Judge Barajas she had a copy of the ticket, and that she would bring it in. She explained this statement by saying she hoped she still had her copy of the ticket, and did not want to tell her employer "no" when he asked if she had the ticket. That explanation is not credible. Appellant understood the seriousness of the question asked: her admission was a confession to stealing a court document, and assured that she would incur receive serious discipline. Moreover, it is not believable that Appellant answered the question as if it was an inquiry into the whereabouts of her own yellow copy of the ticket. There would be no reason for the private in-chambers conversation to discuss the location of a defendant's yellow ticket. It is the official record that begins the legal proceedings, not a defendant's copy of the same document. Appellant's testimony attempted to create confusion about just which copy of the ticket was at issue. I find that there could have been no such confusion in the judge's chambers. Appellant at that time admitted that she had the court's copy of the ticket.

Appellant's statements and testimony were not corroborated by any other evidence, and were internally inconsistent with regard to the issue of the officer's badge number. Appellant admitted at hearing that she carried the note with the badge number in her purse, and that she told Ms. Hermosillo a partial badge number on Sept. 12th, from which Ms. Hermosillo gave her the complete number. Nonetheless, Appellant told the interview panel on Sept. 14th that she did not know the badge number. Appellant's attempted justification that she answered

the question as if it related to her knowledge at the time of the traffic stop is not credible, since the issue before the panel was the identity of the officer, not whether Appellant was previously acquainted with him.

The circumstantial evidence also supports the conclusion that Appellant removed the ticket from the bin in order to avoid its legal consequences and its effect on her driving privileges. Appellant learned on Aug. 16th that the court's copy of her speeding ticket would arrive between Aug. 18th and 22nd. She told Ms. Hermosillo that she was in danger of losing her license, and asked her to get the ticket for her. When Ms. Hermosillo refused, Appellant said she would find someone else to do it. Appellant carried in her purse a note with the name and badge number of the officer so that she could identify the officer if he came to her courtroom. Appellant never informed her supervisor of the existence of the ticket. Appellant lost or destroyed her own yellow copy of the ticket. The official ticket never surfaced for entry into the court's computer system, and was therefore never scheduled for arraignment on the date set by the police officer. As a result, Appellant received a restricted license allowing her to continue driving to designated destinations. The evidence that Appellant knowingly removed the official ticket from city premises is convincing. Appellant's denial that she removed the ticket was inconsistent with both her actions and her previous statements, and was thus not reliable.

In addition, Appellant had daily access to the open bin in the Clerk's Office in which new tickets awaited entry into the system by part-time employees. Appellant was the only employee with such access who had a powerful motive to avoid having the ticket processed, as shown by her upcoming administrative hearing to request a restricted license. Her willingness to confide private facts to a co-worker with whom she admitted she had a previous tense relationship indicates the strength of her need to avoid the legal consequences of the speeding ticket.

Finally, I find that Ms. Hermosillo's testimony is worthy of belief. Despite the lack of friendship between herself and Appellant, Ms. Hermosillo tried to advise Appellant not to pull her own ticket, and later to turn it back in. Ms. Hermosillo did not report her conversations with Appellant to a supervisor until she was approached by Mr. Heaney, who had already been told of the anonymous notes by another employee. Ms. Hermosillo nervously telephoned Appellant at home to attempt to warn her about the notes, at considerable personal risk. Ms. Hermosillo's testimony was consistent with her statements in every respect, and her demeanor displayed no intent to harm Appellant. Appellant's speculation that Ms. Hermosillo was envious of the attention given Appellant after the latter painted a supervisor's office the previous weekend was not corroborated by any other evidence, and was convincingly rebutted by Ms. Hermosillo's actions after the surfacing of the anonymous notes.

Based on the above, I find that Appellant violated CSR § 16-60 C. by means of her theft of City property.

B. CSR § 16-60 E: Dishonesty

Dishonesty is proven by any type of deception related to an employee's service with the city, including knowing communication of a false statement within the employment relationship. In re Roberts, CSA 179-04, 4 (6/29/05). Here, the Agency alleges that Appellant's statements during the investigation established a violation of this rule.

It cannot be disputed that investigations into employee misconduct are an important agency function, and that false statements made in an investigation can cause real harm to an agency, the city, and sometimes to other employees. An agency has a right to require employees to avoid knowing falsehoods in any communication, especially those that may lead to discipline or other adverse actions. All persons will see events from their own perspective, and this rule does not encourage agencies to discipline an employee who is merely in error or who expresses a subjective point of view. Nonetheless, the rule is an essential tool to enforce honesty by employees within the employment relationship. An important corollary to this rule is that false statements must be about matters of some significance, rather than on subjects of only minor or trivial concern to the employer.

This hearing revealed that Appellant made several objectively untrue statements with the intention to deceive the Denver County Court and obstruct the investigation. Appellant first denied to the panel that she knew the officer's badge number. She admitted at hearing that she knew the badge number at the time of her interview, but explained that she interpreted the question in a different way. I find the explanation is inherently incredible given the stated and obvious purpose of the investigation, and the importance that the badge number had for Appellant in avoiding the consequences of the ticket. I also find that the untruth delayed the Agency's investigation into the theft of its record, and that the Agency was harmed thereby.

Appellant next denied that she had a copy of the ticket, and purposely caused confusion about whether she was referring to her own or the court's copy of the ticket. When informed of the note by Ms. Hermosillo, Appellant admitted having the official ticket, but stated she still had time to avoid adverse action by simply returning it to the court and having a clerk process it. Appellant admitted to Judge Barajas that she had the ticket. One day later, Appellant told the panel that she did not have it, and did not know who did. The next day, after the officer had been identified and no further advantage could be had by her denial, Appellant admitted she knew three out of four numbers in the badge number. [Exh. 15-2.] I conclude that Appellant made knowingly false and material

statements during an official investigation, and that she thereby lied to superiors with respect to disciplinary actions, in violation of § 16-60 E. 3.

C. CSR § 16-60 F: Using official position or authority for personal advantage

This rule prohibits an employee from abusing her position or authority to obtain personal profit or advantage. Its predecessor rule, former CSR § 16-50 A. 3), has been interpreted to require proof that an employee took some action not justified by her position with an intention to secure something of value. See In re Schultz, CSA 156-04, 7 (6/20/05). The charge requires proof that an employee claimed the status or authority of a public employee for profit or advantage to which she was not otherwise entitled. In re Mergl, CSA 131-05, 4 (3/13/06.)

Here, the Agency proved only that Appellant entered an area open to all employees and removed her own ticket from the bin in which they were kept. The Agency did not prove that Appellant made a claim to possess the ticket based on her position as an employee of the County Court, or that she asserted her position or authority to remove the ticket. The Agency therefore failed to prove that Appellant abused her position or authority in removing the ticket from City premises.

D. CSR § 16-60 L: Failure to observe departmental policies

This rule requires proof of a departmental regulation, notice to the employee of that regulation, and an act which violates that regulation. In re Mitchell, CSA 05-05, 6 (6/27/05).

The Agency asserts that Appellant violated four separate provisions of the Employee Code of Conduct within the employee handbook. The first such policy states, "[e]mployees must not use or attempt to use their official positions to secure special privileges for themselves or any other person." The acceptance of gifts is specifically prohibited. [Exh. 14-12.] This Agency rule is broader than CSR § 16-60 F. in that it bars even an attempted use of a position to obtain privileges. However, the only act relevant to this charge that is apparent from the evidence is Appellant's request that Ms. Hermosillo pull her ticket from processing in order to prevent it from being presented to the County Court. This cannot be deemed a special privilege in any ordinary sense of that phrase. The obvious intent of the policy is to prohibit employees from soliciting favors as a result of their positions with the County Court. In contrast, Appellant's request asks another employee to commit an illegal act on her behalf. The Agency therefore did not establish that Appellant violated this rule.

The second policy requires an employee to advise his supervisor in writing if he "holds a second job, owns a business, or has a direct interest in a venture with the city that has no connection to the employee's job." [Exh. 14-13.] The

Agency has presented no evidence relevant to the allegation that Appellant violated this rule, and therefore I find the Agency has no met its burden to establish that it was violated.

The third policy cited in support of the charge under CSR § 16-60 L. bans an employee from "performing any job functions of a court employee" regarding a matter before the County Court when he is a party or witness to that matter. The policy also requires that an employee who learns he will be a party to a County Court matter "must inform either the supervisor or the court administrator immediately." [Exh. 14-13.]

Appellant admitted at hearing that she did not inform her supervisor she had received a ticket that would be heard before the Denver County Court. The evidence was undisputed that Appellant had frequent notice of this important rule meant to ensure the integrity of the judicial system, and had in fact notified her supervisor of a DWAI under this policy four months earlier. It is also undisputed that Appellant failed to disclose to the Agency the existence of the ticket as required by this policy. Appellant claimed that she forgot to notify her supervisor after having made some attempts to see Ms. Duran in person about the matter. It is not believable that her obligations regarding this ticket, with its harsh personal consequences, would have been overlooked. In any event, the policy does not excuse compliance under such circumstances. I find that Appellant failed to comply with the policy to notify her supervisor regarding the speeding ticket.

The last court policy at issue forbids an employee from removing any information or property related to the Denver County Court from its premises. For the reasons set forth above regarding the allegation of theft, I conclude that Appellant removed the court copy of her speeding ticket from court premises, and that this removal was not in the ordinary course of her duties on behalf of the Denver County Court. Appellant therefore violated this provision of the employee handbook.

E. CSR § 16-60 0: Failure to maintain satisfactory work relationships

This rule requires that an employee take some action directed at a co-worker which causes an inability to work together. In re Katros, CSA 129-04 (3/16/05.)

The Agency proved that Appellant made an inappropriate request of her co-worker Ms. Hermosillo to pull her traffic ticket from the flow of processing within the Clerk's Office. There was no evidence that Ms. Hermosillo was unable to work with Appellant thereafter, and in fact the evidence showed Ms. Hermosillo took extraordinary action thereafter to warn Appellant about the accusation contained in the anonymous note. The evidence failed to

demonstrate that Appellant's actions caused an unsatisfactory work relationship between Appellant and Ms. Hermosillo.

F. CSR § 16-60 Y: Conduct violating City Charter

The Agency has also charged Appellant with violation of the City Charter's intent that employees "adhere to high levels of ethical conduct so that the public will have confidence that persons in positions of public responsibility are acting for the benefit of the public." D.R.M.C. § 1.2.1.

An ethical violation is equated within the city's Code of Ethics with a breach of the public trust and the use of public office for private gain. D.R.M.C. § 2-51. The Code specifically prohibits employment of family members, the receipt of gifts by an employee in a position to take direct official action with regard to the donor, taking direct official action on behalf of a former employer or in a matter in which the employee has a substantial interest, or using a public position for private gain.

The Agency has not identified the factual basis for its claim that Appellant committed unethical conduct. The Agency's evidence proved that Appellant, a Court Technical Clerk for the Denver County Court, used her access to court files to remove her own traffic ticket from processing by the court, and was therefore able to avoid prosecution for a traffic infraction which would have subjected her to a fine and costs, and adversely affected her driving privileges. The Agency did not show that Appellant used her position to gain that advantage, as required to prove that a public employee took official action for private rather than the public good. Therefore, the allegation that Appellant violated the City Charter has not been established.

G. CSR § 16-60 Z: Conduct prejudicial to the good order of agency

This rule prohibits conduct that is by its nature prejudicial to the effectiveness of the Agency, or that brings disrepute on or compromises the integrity of the City.

The mission of the Denver County Court is to provide a fair and impartial judicial system to parties who have civil or criminal matters before it. Theft of a traffic ticket by a court employee not only prejudices the court's effectiveness in that prosecution, but also brings into question the impartiality and integrity of the entire court system. Knowledge of such an incident would result in public cynicism about a system that in large part depends on citizens' belief in the fairness of justice to engender respect for the laws enforced by the court. The Agency established that Appellant's conduct was by its very nature prejudicial to the effectiveness and mission of the Denver County Court, and that it compromises the integrity of the City.

2. Penalty

Appellant contends that her termination was not justified by the evidence, the nature of the conduct asserted, or her past favorable disciplinary record. The Agency argues that the seriousness of the misconduct required termination despite the lack of prior discipline.

The Agency established that Appellant solicited another employee to steal her traffic ticket before it was entered into the court computer system. When that failed, Appellant removed the ticket herself, destroyed it, and failed to report her receipt of the ticket to her supervisor. When three unsigned notes revealed her actions to the Agency, Appellant was untruthful during the investigation into her conduct.

The Career Service disciplinary rules seek to match the severity of discipline to the seriousness of the misconduct, and attempt to predict the level of discipline that would be effective to correct the behavior. In a de novo review of the penalty imposed by an agency, it must be determined whether the discipline was within the range of reasonable alternatives available to a reasonable, prudent administrator. In re Garcia, CSA 175-04, 8 (7/12/05.)

After consideration of the facts and Appellant's employment and disciplinary history, the Denver County Court determined that the dishonesty inherent in the misconduct justified only one result: termination. Human Resources Manager Suzanne Razook concluded that Appellant's solicitation of another employee to take her ticket, when combined with her conflicting statements during the investigation and her failure to follow agency policies required termination given the mission of the Agency to maintain the integrity of the judicial process.

I have found that Appellant was dishonest in her actions and failures to act regarding the traffic ticket, and in her false statements during the subsequent investigation. Appellant pursued a course of intentionally dishonest conduct to avoid the consequences of her speeding ticket from August 15th, the date it should have been reported, until the date of her pre-disciplinary meeting in October. Appellant did not express to the Agency or at hearing any understanding that she was at fault in any of those actions, even those she admitted. Under these circumstances, the Agency was reasonable in concluding that the misconduct was serious enough to justify termination, and that no lesser discipline would have achieved compliance with the Agency's rules. Despite the lack of previous discipline and consistently excellent performance reviews, termination was within the range of discipline that could be imposed based on the proven misconduct.

ORDER

Based on the foregoing findings, it is hereby ordered that the Agency's termination action dated October 17, 2006 is affirmed.

Dated this 27th day of February, 2007

Valerie McNaughton
Career Service Hearing Officer

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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:

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

BY PERSONAL DELIVERY:

Career Service Board
c/o Career Service Hearing Office
201 W. Colfax Avenue, First Floor
Denver CO 80202

BY FAX:

(720) 913-5995

Fax transmissions of more than ten pages will not be accepted.