

ORDER RE APPELLANT'S MOTION TO ADD AN ADDITIONAL HEARING DAY,
ORDER RE APPELLANT'S DISCOVERY MOTION AND
ADDITIONAL ORDERS SUA SPONTE

IN THE MATTER OF THE APPEAL OF:

MATHEWS CAROTHERS, Appellant,

vs.

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

1. Appellant's motion for additional hearing day.

On March 29, 2011, and again on April 5, 2011, Appellant filed motions requesting an additional hearing date. The Agency did not respond. No ruling was made at this time, pending the filing of the parties' pre-hearing statements, in which the parties list prospective exhibits and witnesses. See "Order re Appellant's Unopposed Motion to Continue and Motion for Additional Hearing Date," dated April 4, 2011. The parties have now filed their pre-hearing statements, so the matter is ripe for review.

The Appellant has certified at least 14 witnesses, while the Agency has certified 16. Of those 30 witnesses, 11 are common to both, leaving 19 potential witness. Of the 19 potential witnesses, only six are listed as "will call," while the rest are listed as "may call." At this point, it seems six witnesses should be a manageable number for a one-day hearing. Exhibits do not appear to be voluminous or numerous. Unless the Appellant provides further evidence that an additional day will be necessary for what are now only tentative witnesses, there does not appear to be sufficient cause to enlarge the hearing days. In the absence of good cause to expand the length of an appeal hearing, the Career Service rules presume a one-day hearing is sufficient. C.S.R. 19-42 B. The Appellant's motion to enlarge the hearing in this case to two days is DENIED WITHOUT PREJUDICE.

2. Appellant's motion for discovery.

On April 18, 2011, the Appellant filed a motion for formal discovery. The Agency filed a timely objection. Each discovery request is cited by the number as ascribed by Appellant, and decided as follows.

a. **Interrogatories.**

##1-3. No objection by Agency. Request GRANTED.

#4. "Why did it take approximately sixteen months for the DSD Internal Affairs Bureau to complete the IAB investigation and disciplinary process, as well as place the Appellant on investigatory leave, for the alleged incident that took place on November 20, 2009?" Appellant claims the delay prejudiced and otherwise harmed Appellant. [Appellant pre-hearing statement]. Agency objects as irrelevant. [Agency response]. The Appellant's claim of prejudice through delay, without deciding the merits here, is a relevant inquiry, or is reasonably calculated to lead to relevant evidence. The request is GRANTED.

#5. "Provide the name and circumstances of every deputy who was investigated for an unlawful use of force complaint in the past two years, the circumstances surrounding this complaint, and the final resolution of [each such] case." The Agency objects as irrelevant. While the inquiry is potentially relevant to the reasonableness of the discipline, it is overbroad, as it the Agency's basis for discipline has shifted to a matrix that was not in place until this year, rendering comparison with prior, even if similar discipline, unhelpful. Consequently, this request is GRANTED, but only to the extent of disciplinary actions assessed for alleged excessive force since the Agency shifted to its current matrix-based disciplinary system.

#6. No objection. Request GRANTED.

#7. See below.

##8-10. No objection by Agency. These requests appear to be relevant. Requests GRANTED.

b. **Request for Production of Documents.**

##1-3. Appellant's DSD IAB file, CSA file and DSD personnel file. No objection. Requests GRANTED with the following restrictions. Agency shall make those records available to Appellant to view and copy at a reasonable time and at a reasonable cost.

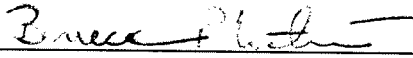
##4-10. No objection except to #7, below. Requests are GRANTED.

#7. "Provide the DSD, order, rule regulation, and/or policy that dictates the timeline within which a DSD IAB investigation and disciplinary procedure must be complete. To the extent Appellant can show the Agency failed to comply with its own procedures in assessing discipline, and that such failure prejudiced the Appellant, the inquiry is relevant. This request is GRANTED.

3. Further Orders.

In addition to the orders above, parties' counsel are ordered to confer before the date of hearing. Counsel shall file with the Hearings Office, either jointly or severally, at least two days prior to hearing, a status notice regarding witnesses, exhibits, and stipulations. The notice shall provide, simply, (1) an updated list of witnesses each side expects to call, (2) a list of exhibits to which the parties stipulate (and eliminating duplicative exhibits), or a brief objection to each remaining exhibit, and (3) a statement of factual stipulations, if any, which may expedite hearing.

DONE April 22, 2011.



Bruce A. Plotkin
Career Service Hearing Office

I certify that, on April 22, 2011, I delivered a correct copy of this Order to the following, in the manner indicated:

Mr. Mathew Carothers, mattcarothers@hotmail.com	(via email);
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