

**DECISION AND ORDER**

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IN THE MATTER OF THE APPEAL OF:

**PAULA MARTINEZ**, Appellant,

vs.

**DENVER COUNTY COURT**,

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

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The hearing in this appeal was held on February 7, 2011 before Hearing Officer Valerie McNaughton. Appellant was present throughout the hearing and was represented by Michael O'Malley, Esq. The Agency was represented by Assistant City Attorney Joseph Rivera. Operational Supervisor I Bodessa Trotman and Division Manager Ron Trujillo served as the Agency's advisory witnesses. Having considered the evidence and arguments of the parties, the Hearing Officer makes the following findings of fact and conclusions of law, and enters the following order:

I. STATEMENT OF THE APPEAL

Appellant Paula Martinez, a Judicial Assistant III with the Denver County Court (Agency), challenges her three-day suspension imposed on November 24, 2010 for violation of specified Career Service Rules. Agency Exhibits 2 - 15 and Appellant's Exhibit A were admitted without objection.

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 violated Career Service Rules (CSR) §§ 16-60 A, B, J, K and O, and
2. Did the Agency establish that a three-day suspension was within the range of penalties that could be imposed by a reasonable administrator for the violations established by the evidence?

III. FINDINGS OF FACT

Appellant has served as a Judicial Assistant III for the Denver County Court since employed by the city on December 15, 1992. Appellant's primary duties are to

manage the daily activities of her assigned courtroom, 4A, act as a liaison between defendants, court personnel, and judges, share information with other personnel, and maintain working relationships with the public and personnel involved in the work of the court. [Exh. 11.]

On June 10, 2010, Appellant's manager Ron Trujillo and supervisor Bodessa Trotman counseled Appellant about the importance of good customer service and interpersonal skills. Ms. Trotman has frequently met with Appellant to discuss his conduct and emphasize her need to improve her interaction with others. [Appellant, 9:25 am.] On Nov. 24, 2010, the Agency served Appellant with a notice that she would be suspended for three days without pay based on two incidents described below. [Exh. 2.] This is her appeal of that suspension.

### 1. Sept. 28, 2010 Incident with Victim Advocate

A judicial assistant functioning as a courtroom clerk is required to prepare and assist with the court's daily docket. All courtroom clerks on the 4<sup>th</sup> floor also perform reception duty in Room 435, the general reception area for that floor, three or four days a month on a rotating basis. [Exh. A.] A judicial assistant assigned to Room 435 must pull the dockets for the next week, assist the public, answer phones, receive pleadings and faxes, update computer files on THEMIS, the county court's computerized case management system, and retrieve pleading files from the first floor. [Appellant, 10:38 am; Joe Montoya, 2:42 pm; Exh. A.]

ShiAnn Zimmerman is a Victim Advocate for the Denver City Attorney's Office assigned, like Appellant, to Courtroom 4A. A good working relationship between the victim advocate and the judicial assistant is important because of their need to interact frequently to exchange information and documents for court proceedings. As a part of her duties, Ms. Zimmerman obtains the docket for 4A from the reception clerk three days in advance of the court hearings. [Zimmerman, 10:47 am; Appellant; 10:14 am]. The docket, the term used for the stack of case files scheduled for court appearance on a particular day and time, is prepared in advance of the appearance date. [Zimmerman, 11:35 am]. Once assembled by the judicial assistant, the docket is placed on a shelf behind the reception desk and can usually be quickly retrieved by the judicial assistant working in Room 435, unless the assistant is delayed by other immediate tasks such as phone calls. [Appellant; 10:15 am]. It is Ms. Zimmerman's practice to return later if she sees that there are people already waiting at the counter in Room 435, rather than spend time herself waiting in line. [Zimmerman; 10:45 am; 11:47 am; Ginger Sherlock, 12:01 pm].

On Sept. 28, 2010, when Ms. Zimmerman arrived at the reception area to obtain the docket, she saw a note stating that the clerk was not on duty. When she returned 15 minutes later, Appellant was at the reception desk, talking to another employee. Ms. Zimmerman asked her for the courtroom docket. Appellant told Ms. Zimmerman, 'You're just going to have to wait.' Ms. Zimmerman returned several times and looked for the docket on the counter, as Appellant had done in the past. Forty-five minutes later, Ms. Zimmerman again asked Appellant to get her the docket. Appellant rolled her eyes, sighed, and left the counter. She returned five minutes later with the

requested docket. Ms. Zimmerman believed Appellant's actions were "punishment for asking again." [Exh. 5; Zimmerman, 10:45 am.]

On another occasion a few weeks earlier, Ms. Zimmerman went to the reception desk to obtain the docket so that she could add a defendant's criminal history. Appellant was behind the reception desk, and no one was at the counter awaiting assistance. Ms. Zimmerman requested the docket. Appellant abruptly told Ms. Zimmerman she would have to wait. Ms. Zimmerman left, returned later and asked again for the docket. Appellant said she forgot to get it for her, and that Ms. Zimmerman would have to come back for it. Later in the courtroom, Ms. Zimmerman asked Appellant's co-clerk to get the docket for her. The co-clerk retrieved the docket and gave it to Ms. Zimmerman. When Appellant witnessed this, she asked her co-clerk why he was there. He informed her he was getting the docket for Ms. Zimmerman. "She rudely told him she already let me know she would get it for me." [Exh. 5.] "I felt she just wanted me to wait for it." [Zimmerman, 10:52 - 11:03 am].

On more than ten other occasions, Appellant has told Ms. Zimmerman to come back for the docket under similar circumstances, when no one else was waiting for assistance and Appellant did not appear to be busy. "It's not uncommon for Paula to treat me poorly or speak rudely to me. I've gotten used to it since I've been working with her the past 2 years. However, in the past few weeks there were several issues that interfered with my ability to perform my job duties." [Exh. 5-1.] Ms. Zimmerman testified that when she has to come back to Room 435 and repeatedly request her docket, it prevents her from spending that time assisting victims and attorneys. Ms. Zimmerman informed her supervisor, Ginger Sherlock, about the incident, and submitted a two-page account of the matter at Ms. Sherlock's request. [Zimmerman, 10:46 am; Sherlock, 11:56 am; Exh. 5.] Based on that complaint, Ms. Sherlock herself reported to her manager the Victim Resource Program's consistent and long-term complaints about Appellant's rude and uncooperative treatment toward program staff. [Exh. 4.]

Appellant acknowledged that she frequently worked with Ms. Zimmerman as the Victim Advocate for Courtroom 4-A. Appellant testified she did not recall ever telling Ms. Zimmerman in a hostile manner that she would "just have to wait" for the docket unless she did not have immediate access to the docket or was in the middle of a priority task. Appellant concedes that she may have been rushed on the dates in question and that she has a loud speaking voice, but states she does not believe she was ever rude to Ms. Zimmerman. Appellant denies ever making anyone wait for a docket for 45 minutes. [Appellant, 9:46 am].

## 2. October 12<sup>th</sup> Phone Inquiry from Probation Employee

On October 12, 2010, Appellant received a phone call from Shari Baca, a Judicial Assistant in the Probation Division, whose job it is to create files for pre-sentence investigations. As a part of their jobs, Judicial Assistants in the Probation Department often are required to call court judicial assistants to obtain missing sentencing data or resolve incorrect probation referrals. [Baca, 1:14 pm]. On this occasion, a defendant reported to Probation, but Ms. Baca could locate no sentencing information in the THEMIS case management system. Ms. Baca asked Appellant to check THEMIS to see if

"immediate sentence" was noted for that defendant. Appellant said, "I don't understand, there's nothing in THEMIS." Ms. Baca replied, "I know, that's why I'm calling you." Appellant repeated loudly four times, "There's nothing in THEMIS." Finally, Ms. Baca said, "Paula, I'm done with this conversation", and hung up. As this was the second time this type of exchange occurred in the past four months, Ms. Baca reported the matter to her supervisor, Vivian Duran, who informed Ms. Trotman the next day. [Exh. 6; Baca, 1:23 pm; Duran, 1:36 pm.]

Immediately after this call, Appellant phoned the supervisor in Room 160 to ask whether "immediate sentence" was an option in the THEMIS dropdown menu. He confirmed that it was not. Appellant then asked the supervisor to look in the paper case file in Room 160 so she could understand if and why sentencing information was missing from THEMIS. Appellant's supervisor called her back later and told her the back of the ticket in the file showed the defendant had been fined only, and was not in fact sentenced to a term of probation. Appellant and the supervisor concluded that another 4A clerk must have inadvertently pressed a button triggering probation while he updated the ticket with the fine information. [Appellant, 9:58 am].

Ms. Baca has been employed in the Probation Division as a Judicial Assistant for more than three years and has made hundreds of phone calls to courtroom clerks requesting similar information to update a case file. She testified that other clerks are always willing to help her, often by reviewing the court file to resolve sentencing and probation issues. [Baca, 1:22 pm; Duran, 1:36 pm; Montoya, 2:45 pm]. A courtroom clerk may need to review a file before a sentencing issue can be resolved, and that often requires locating a file on a different floor and calling probation back to report the results of that review. [Montoya, 2:45 pm].

Appellant explained at hearing that "immediate sentence" used to be but is no longer an option in the THEMIS sentencing screen's dropdown menu. [Appellant, 9:55 am]. On October 14, 2010, Ms. Trotman met with Appellant to discuss the incident after Ms. Baca's complaint. Appellant told her supervisor that her inability to assist the probation clerk stemmed from a misunderstanding, but that she could not notify the clerk once she discovered that probation had not been ordered because she did not know the caller's name. [Appellant, 10:00 am]. Appellant told Ms. Trotman that she wanted to apologize to the probation employee. Appellant testified that she informed Ms. Baca's supervisor that it was a misunderstanding, but admitted she never apologized to Ms. Baca after she learned her name. [Appellant, 10:10 am; Baca, 1:28 pm; Duran, 1:38 pm].

Appellant concedes that her position requires her to explain court procedure to people with little or no courtroom experience, and that means she sometimes needs to determine by close questioning what people are asking for or need. Appellant testified she did not help Ms. Baca because the latter did not explain what she needed, and hung up the phone. Appellant stated she did not retrieve the file during the phone call because it was four floors away in Room 160. Appellant admits she did not ask Ms. Baca for her name and number to allow her to research the matter, but explained that she did not do so because she was trying to find the "immediate sentence" option in THEMIS, at Ms. Baca's request. Appellant concedes that she had the training to assist

Ms. Baca, and that after their phone call ended, she was able to investigate and resolve the issue to her own satisfaction. [Appellant, 10:05 am].

A pre-disciplinary meeting was held on Nov. 15, 2010. At that time, Appellant asserted that she did not make Ms. Zimmerman wait, and would do so only if the files were on the judge's bench in the courtroom, and that she was not on duty in Room 435 on Sept. 28<sup>th</sup>. As to the second incident, Appellant stated that she misunderstood the question, but researched the matter thereafter. [Exh. 2-2, 2-3.] Deputy Court Administrator Terrie Cooke made the determination to suspend Appellant without pay for three days, in collaboration with Human Resources and Appellant's supervisors, based on Appellant's previous discipline for similar rude behavior as well as warnings in her annual evaluation to improve her interpersonal relationships. [Cooke, 1:53 pm.]

#### IV. ANALYSIS

The Agency bears the burden to establish violations of the Career Service Rules by a preponderance of the evidence, and to show that the discipline was within the range that can be imposed under the circumstances. In re Gustern, CSA 128-02, 20 (12/23/02); Turner v. Rossmiller, 535 P.2d 751 (Colo. App. 1975).

##### 1. Neglect of Duty under CSR § 16-60 A.

An employee violates this rule where she neglects to perform a job duty she knows she is supposed to perform. In re Campos, CSA 56-08 A., 2 (6/18/09). Appellant concedes that good customer service is one of her important work duties, but denies she failed to provide it on the above occasions. The Agency argues that Appellant failed to assist Ms. Zimmerman and Ms. Baca in accordance with her duties and training in a manner consistent with Agency standards.

The evidence showed that Appellant required Ms. Zimmerman to return several times before she gave her the docket on Sept. 28, 2010. The evidence is undisputed that Appellant eventually did provide Ms. Zimmerman with the docket after a substantial delay. Therefore, Appellant cannot be held to have neglected to perform that duty.

As to the second incident, all witnesses agreed that it is a clerk's duty to assist the Probation Division by researching case and computer files if there are questions about sentencing or other matters affecting probation. Appellant testified that she misunderstood the nature of Ms. Baca's question. The evidence revealed that Appellant chose not to seek clarification about the nature of the issue despite adequate opportunity to do so, contrary to her duties and training. Instead, Appellant simply repeated unhelpfully, "It's not in THEMIS". That response predictably caused Ms. Baca to conclude that further efforts to obtain Appellant's aid would be futile, and she hung up in frustration. Immediately thereafter, Appellant did what she should have offered Ms. Baca: she called a supervisor in the file room and asked him to look at the sentencing information in the case file. The supervisor later informed Appellant that the file showed the defendant had not been sentenced to probation at all. Appellant did not share that information with Ms. Baca, who was required to seek help from another

source to resolve the matter. As a result, the research work was performed twice, the defendant was inconvenienced, and closure of the probation matter was delayed. The undisputed fact that Appellant later resolved the issue of the missing data to her own satisfaction indicates that Appellant knew what to do but did not do it during the actual customer inquiry. For that reason, Appellant's testimony that this was a misunderstanding is not credible. The Agency established that Appellant neglected her duty to provide good customer service to Ms. Baca.

2. Carelessness in performance of duties under CSR § 16-60 B.

This rule is violated when an employee performs an important work duty poorly, resulting in potential or actual significant harm. *In re Mounjim*, CSA 87-07, 5 (7/10/08), *rev'd on other grounds*. It is undisputed that Appellant must provide customer service and demonstrate positive interpersonal skills as part of the duties of her position. [Cooke, 1:52 pm.] The Agency contends that Appellant was careless in her performance of her duty to assist the Victim Advocate on Sept. 28, 2010.

Appellant argues that she was not the clerk assigned to the reception desk on that date, and therefore cannot be disciplined for neglect of duty. However, the duty at issue is customer service, including cooperation with and courteous treatment of a fellow member of the court staff. Victim Advocates must handle the daily docket regardless of whether there is a court employee in the reception room. As the only member of the court staff present in the room, Appellant was obligated to assist Ms. Zimmerman by promptly giving her the docket she needed to do her work, which is prepared by the clerk's office for that purpose.

Appellant did not provide any explanation for making Ms. Zimmerman wait for almost an hour to obtain her docket. Appellant's failure to walk to the shelf and bring the docket to Ms. Zimmerman, a task that would have taken a few seconds, substantially delayed Ms. Zimmerman in assisting crime victims affected by the coming day's cases. The evidence showed that Appellant neglected to provide Ms. Zimmerman good customer service by her abrupt demeanor and an unjustified demand that Ms. Zimmerman wait or come back later. Ms. Zimmerman testified that as a result of this and previous similar incidents, she now avoids interacting with Appellant or asking her for assistance, to the inevitable detriment of inter-office cooperation and efficiency. For these reasons, I find that the Agency established that Appellant carelessly performed her duty to provide good customer service to Ms. Zimmerman.

3. Failing to comply with the lawful orders of a supervisor under CSR § 16-60 J.

An employee violates this rule when a supervisor communicates a reasonable order to a subordinate, and the subordinate acts contrary to the order under circumstances demonstrating willfulness. *In re Sawyer and Sproul*, CSA 33-08, 9 (1/27/09). Ms. Cooke testified that she determined Appellant violated her supervisor's order by ignoring previous counseling in October 2009 and June 2010 to demonstrate good interpersonal skills and that her negativity was not acceptable. [Cooke, 1:56 pm; Exhs. 2-1, 9.]

This rule has been interpreted to require a clear and reasonable order, the violation of which can be enforced through discipline. In re Mounjim, CSA 87-07 (7/10/08), *affirmed* (CSB 1/8/09). A task that is occasionally forgotten or not performed for other reasons does not without more establish an intent to disobey an order, as needed to prove a violation of this rule. In re Dessureau, CSA 59-07, 7 (1/16/08). The fact that both parts of the rule – failure to comply with orders and failure to do assigned work - require proof of intent indicates that it targets a refusal to obey a specific instruction, rather than a failure to comply with a general rule requiring demonstration of a certain attitude or personality trait: here, providing good customer service. I find that Appellant's uncooperative reaction to customer requests on the two occasions in question does not itself establish an intentional refusal to obey a specific instruction from her supervisor within the meaning of this rule.

4. Failing to meet established standards of performance under CSR § 16-60 K.

An employee's failure to meet established standards of performance is proven by evidence of a prior established standard, clear communication of that standard to the employee, and the employee's failure to meet that standard. In re Mounjim, CSA 87-07, 8 (7/10/08). Here, the Agency asserts that Appellant failed to meet the "respect for self and others" standards of performance requiring employees to demonstrate good interpersonal relations with co-workers, work effectively with others, treat people with respect and tact, and exercise sensitivity to others' perspective, personality, work style, and values. [Exh. 2-1.]

The evidence shows that Appellant intentionally delayed assisting Ms. Zimmerman on Sept. 28<sup>th</sup>, and chose not to seek understanding of Ms. Baca's Oct. 12<sup>th</sup> request for information, contrary to her performance standards that she "[ensure] that all paperwork needed by other agencies or probation is delivered accurately, efficiently and timely . . . [maintain] friendly and professional relationship with staff from other agencies and Probation dept, [and keep] lines of communication open between court staff . . . other agencies and Probation dept." [Exh. 12-14, PEPR signed Apr. 14, 2010.] These standards were clearly communicated to Appellant in each performance review since 2008, and reinforced ten days before the first incident by means of a written reprimand for similar misconduct violating the same performance standards. [Exhs. 7, 12-14, 13-13, 14-4.] Based on this evidence, I find Appellant violated § 16-60 K by her failure to meet these qualitative performance standards.

5. Failure to maintain satisfactory working relationships under CSR § 16-60 O.

This rule is violated by conduct that an employee knows or reasonably should know will be harmful to co-workers, other city employees, or the public, or conduct that will have a significant impact of the employee's working relationship with them, measured by a reasonably objective standard. "The conduct must rise to the level on its own facts . . . a single incident of misconduct may be enough to reach this threshold, while the harm to the co-worker or impact on the relationship does not necessarily require a showing that the employee and co-worker would be incapable of working together in the future." In re Burghardt, CSA 81-07, 2 (CSB 8/28/08).

As a result of Appellant's uncooperative conduct toward Ms. Zimmerman over a two-year period, culminating in the Sept. 28<sup>th</sup> incident causing a substantial delay in getting the docket from Appellant, Ms. Zimmerman avoids professional interaction with Appellant, the clerk assigned to her courtroom, by asking other clerks to assist her. This in turn causes delay and inefficiency, to the detriment of Ms. Zimmerman, her victim clients, and the operation of the court itself. Appellant presented no evidence in rebuttal of this evidence. The Agency therefore established that Appellant engaged in conduct that was harmful to a co-worker relationship as measured by a reasonably objective standard, in violation of this rule.

#### 6. Appropriateness of Three-Day Suspension

In evaluating the appropriate degree of discipline, the Career Service Rules require an agency to consider the seriousness of the misconduct and the employee's past disciplinary record, then determine the level of penalty the agency "believes is needed to correct the situation and achieve the desired behavior or performance". CSR § 16-20. The type of discipline imposed is not to be disturbed on de novo review unless it is clearly excessive or based substantially on considerations not supported by the evidence. In re Owens, CSA 69-08, 8 (2/6/09).

It is undisputed that good customer service is an essential duty of Appellant's Judicial Assistant position. [Exhs. 12 – 14.] Both of the incidents giving rise to this discipline involved at their core Appellant's failure to provide other city employees the information, courtesy and cooperation they needed to do their jobs, resulting in work delays, annoyance, and a disinclination to seek help from Appellant in the future.

Appellant was previously disciplined on four occasions in the past 18 months, two of which were for similar incidents of poor customer service or interpersonal skills. [Exhs. 7, 9.] The other two disciplinary actions, a written reprimand and a one-day suspension, were for improper issuance of warrants resulting in false arrests. [Exhs. 8, 10, Cooke, 2:00 pm.] Appellant's performance reviews for the past three years have given her a satisfactory overall rating, but below expectations grades in the areas of customer service or interagency and probation relationships. [Exh. 12-4, 13-15, 14-2.] The reviews describe her approach to the public and internal customers as rude and abrasive, "a barrier for her success", and "a common thread in prior evaluation." [Exhs. 12-16, 13-16, 14-7.] In the 2009 review, she also received a needs improvement rating in assistance to judicial officers. The magistrate in her courtroom reported that Appellant has great work habits "but her attitude seems to overshadow her true abilities." [Cooke, 2:11 pm; Exh. 13-13].

Deputy Court Administrator Terrie Cooke was the decision-maker in this action. She considered Appellant's actions serious given the essential nature of good customer service in getting the business of the court done, creating a working team among co-workers and different divisions, and its effect on how people feel about the courts. Ms. Cooke was familiar with Appellant's performance reviews, disciplinary history, and the counseling she has received on improving her interpersonal skills. Ms. Cooke concluded that three days without pay would focus Appellant's attention on this recurring

problem, and strongly communicate that these are important priorities and that her behavior needs to change. [Cooke, 2:22 pm].

The Agency proved that Appellant neglected her duty, was careless in performing her duties, failed to meet standards of performance and failed to maintain satisfactory work relationships as a result of the cited conduct. The Agency properly considered the severity of the offense, Appellant's past disciplinary record for similar conduct, and the penalty most likely to achieve compliance with the rules, where the Agency employed progressive discipline. I do not find that the penalty is clearly excessive or based substantially on considerations not supported by the evidence of the established violations.

V. ORDER

Based on the foregoing findings of fact and conclusions of law, it is hereby ordered that the Agency's suspension action dated Nov. 24, 2010 is AFFIRMED.

Dated this 24th day of March, 2011.

  
Valerie McNaughton  
Career Service Hearing Officer

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. The Career Service Rules are available as a link at [www.denvergov.org/csa](http://www.denvergov.org/csa).

**All petitions for review must be filed with the:**

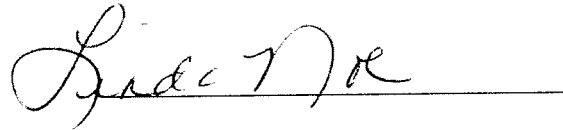
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EMAIL: [CSAHearings@denvergov.org](mailto:CSAHearings@denvergov.org).

I certify that on March 24, 2011, I delivered a correct copy of this Order to the following in the manner indicated:

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