

**HEARING OFFICER, CAREER SERVICE BOARD
CITY AND COUNTY OF DENVER, COLORADO**
Appeal No. 25-08

DISCOVERY ORDER 5-13-08

IN THE MATTER OF THE APPEAL OF:

BOBBY ROGERS, Appellant,

vs.

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

This Order addresses the following filings: Appellant's "Motion for Leave for Permission to Take Pre-hearing Deposition Pursuant to Rule 19-45 C.S.R." filed 5/8/08; Agency's "Motion for Leave to Take Expert Discovery" filed 5/12/08; "Agency's Response to Appellant's Motion for Leave to Take Deposition" filed 5/12/08; Appellant's "Motion for Leave for Permission to Issue Subpoena for Production for Documents" filed 5/8/08.

1. Appellant's deposition request.

The Appellant filed his motion to take the deposition of Dr. Martin on May 8, 2008. The Agency objected in its response filed May 12. The Career Service Rules (CSR) disfavor extensive discovery. CSR 19-45 A. More specifically, CSR 19-45 D. states depositions are permitted "if it is not feasible" for a subpoenaed witness to appear at hearing. The Appellant states he is unaware if Dr. Martin will be available to attend hearing. [Motion p.2 @ ¶12]. In addition, the pre-hearing order in this case required all discovery motions to be filed on or before May 6, 2008. The Appellant's motion is tardy and he failed to request an extension of time and failed to state good cause why his motion was tardy. For both reasons stated in this paragraph, the Appellant's motion must be DENIED.

2. Appellant's request for a subpoena *duces tecum*.

On May 8, 2008, the Appellant filed his request for a subpoena duces tecum to issue to Dr. Martin for her entire file pertaining to the death of a Denver County Jail inmate. The motion did not specify which inmate, but the context of the request makes it likely the Appellant requests Dr. Martin's file pertaining to the death of inmate Shimondi Gebreselassie. The Agency did not object. It appears the request is relevant to, or may lead to the discovery of relevant information to

this case. Therefore, the Appellant's motion for a subpoena *duces tecum* to issue to Dr. Martin to produce her entire file concerning the death of inmate Shimondi Gebreselassie is GRANTED. The Appellant shall provide sufficient time for Dr. Martin reasonably to comply with the request as required by the Notice of Hearing and Pre-hearing Order. The Appellant shall pay the reasonable costs of reproduction.

3. Agency's "Motion for Discovery" filed 5/12/08.

On May 12, 2008 the Agency filed its motion requesting discovery pertaining to Appellant's expert witness, Dr. Wilkerson. Counsel for the Agency stated he contacted Appellant's attorney who did not object. The request appears reasonably calculated to produce information relevant to this appeal or which may lead to information relevant to this appeal. Moreover, the Agency's request complies with the limited scope of appeal designated by CSR 19-45 A. Accordingly, the Agency's request is GRANTED. The Appellant shall comply with the Agency's "Motion for Leave to Take Expert Discovery" within the time required by the Notice of Hearing and Pre-hearing Order.

DONE May 13, 2008.



Bruce A. Plotkin
Career Service Hearing Officer

I certify that I served a correct copy of this order on May 13, 2008, to the following, in the manner indicated.

Donald Sisson, Esq. dsisson@elkusandsisson.com	(via email);
Mr. Bobby Rogers, 15395 East 7 th Circle, Aurora, CO 80011	(via U.S. mail);
Robert A. Wolf, Assistant City Attorney, dlefilng.litigation@denvergov.org	(via email);


