

**DECISION**

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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.

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**I. INTRODUCTION**

The Appellant, Robert Strauch, appeals the assessment of a 50-day suspension by his employer, the Denver Sheriff's Department (Agency), for alleged violations of specified Career Service Rules. A two-day hearing concerning this appeal was held on August 23, 2011, and October 21, 2011. Bruce A. Plotkin, Hearing Officer, presided. The Agency was represented by Jennifer Jacobson, Assistant City Attorney. The Appellant was represented by Daniel S. Foster, Esq. and Marcy L. McDermott, Esq., of Foster, Graham, Milstein & Calisher, LLP. Agency exhibits 1-7, 9, 11, 12, and 15-18 were admitted by stipulation prior to hearing, and Appellant's exhibit A was admitted without objection at hearing. The following witnesses testified for the Agency: Adams County Deputy Scott Adams, former Security Officer Ethan Arquette, Sergeant Deric Wynn, Adams District Court Magistrate Simon Mole, the Appellant, Interim Manager of Safety Ashley Kilroy, and Director Gary Wilson. The Appellant, Captain John Romero, and Sergeant Lawrence Austin testified for the Appellant *viva voce*, while Michele Strauch testified by telephone. For reasons which follow, the Agency's decision to suspend the Appellant for 50 days is **AFFIRMED**.

**II. ISSUES**

The following issues were presented at hearing:

Whether the Appellant was in violation of one or more of the following Career Service Rules alleged by the Agency: CSR 16-60 E.3.; L.; Y.; or Z; and

if the Appellant violated one or more of those Rules, whether a 50-day suspension was proper under the purpose of discipline, CSR 16-20.

### III. FINDINGS

Robert Strauch has been a deputy sheriff in the Denver Sheriff's Department for 11 years. Until the incidents leading to his suspension in the current case, Strauch had no negative disciplinary history. His work reviews always exceed expectations. He is highly-regarded by his co-workers and supervisors. [See, e.g. 10/21/11 testimony of Sgt. Austin; 10/21/11 testimony of Captain Romero].

Strauch and his wife, Michelle, divorced in 2007 or 2008. Their relationship has remained cordial. Strauch pays child support, but had difficulty maintaining his lifestyle with the amount originally ordered by the court, so he sought a reduction in the amount of his child support payments. A hearing regarding the child support issue was set for June 23, 2010 in Adams County District Court.

June 23 was a work day for Strauch, so he obtained approval for leave from his supervisor and left directly from work to attend the child support hearing. At 1:00 p.m., Strauch entered the Adams County Court security checkpoint in uniform and armed. Security Officer Ethan Arquette asked Strauch if he was on official<sup>1</sup> business or personal business. Strauch did not answer at first. Arquette asked again, and Strauch replied he was on official business. Arquette then allowed Strauch to enter the courthouse armed, pursuant to Courthouse policy.<sup>2</sup>

Strauch represented himself at the hearing, which was conducted by Magistrate Simon Mole. When Mole noticed Strauch was armed, he intentionally engaged Strauch in conversation while he emailed his clerk to send for security. When Adams County deputies entered the courtroom, Mole instructed Strauch that he was in violation of courthouse policy, and ordered the deputies to remove him from the courtroom, and to disarm him. Adams County Deputy Scott Adams instructed Strauch to step out to the hallway and, once there, informed Strauch he was to put his weapon into storage downstairs in the courthouse. Strauch was apologetic and fully complied with the directive. [N. of Discipline p.3]. He then returned to finish his hearing before Magistrate Mole without incident. After Strauch retrieved his uniform and weapon, Adams directed Arquette to write a report about his contact with Strauch at the security station, which Arquette did the same day. Adams also wrote a report about his interactions with Strauch.

Three days after the incident, Chief District Court Judge Phelps sent a letter to Denver's Director of Corrections/Undersheriff Gary Wilson regarding a "major

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<sup>1</sup> Arquette may have used the word "professional" instead of "official." Contrary to Appellant's claim, the difference is not significant.

<sup>2</sup> Adams County Court procedures allow law enforcement officers from other jurisdictions to enter the courthouse armed and in uniform if on official business. The determination of whether the officer's business is personal or official is based entirely upon the word of the officer. [Arquette testimony].

breach of security.” [Exhibit 4-55]. Phelps believed Strauch knowingly violated the Adams County Courthouse policy regarding firearms. Phelps also expressed concern that Strauch told courthouse security he was present for official business. Phelps placed Strauch on a watch list so that Strauch will not be allowed into the courthouse without a full security check. [Id.]. The Agency placed Strauch on investigatory leave with pay, and undertook an investigation into the allegations. On May 10, 2011, a pre-disciplinary meeting was convened. Strauch was represented by legal counsel. On June 2, 2011, the Agency suspended Strauch for 50 working days. This appeal followed timely on June 17, 2011.

#### **IV. ANALYSIS OF THE ALLEGED CAREER SERVICE RULE VIOLATIONS**

A. CSR 16-60 E.3. Any act of dishonesty which may include, but is not limited to... Lying to superiors or falsifying records with respect to official duties, including work duties, disciplinary actions...

Interim Manager of Safety Ashley Kilroy determined Strauch violated this and the Agency's rule against “departure from the truth” based upon two statements Strauch allegedly made related to wearing his uniform and weapon to Adams County Court on June 23, 2010: responding to security guard Arquette by stating he was entering the courthouse on official or professional business; then, telling Internal Affairs, during the subsequent investigation into that incident that, at the time of the Adams County Court incident, he was unaware of the Agency's written policy against wearing his uniform, including his service weapon, other than for official business.

1. Whether Strauch told Arquette he was entering the courthouse for professional business.

The central dispute of the case is whether Security Guard Arquette asked Strauch the nature of his business upon entering the Adams County Courthouse, on June 23, 2010, and what, if anything, Strauch answered. All the remaining issues flow from this headwater issue. Since the sides disagree, and there was no independent witness to Strauch's interaction with Arquette, the determination of credibility is paramount to the outcome. To that end, the following evidence was material and persuasive.

(a) Testimony by Agency witnesses remained consistent that Adams County has a strictly-enforced policy regarding screening law enforcement personnel who enter the building, and that on June 23, Arquette enforced that policy by querying Strauch as to the nature of his business. On the other hand, Strauch's testimony was ever-evolving. During Strauch's interview with IA investigator Wynn on December 2, 2010, Wynn asked “at any time did they ask you if you were there [in the Adams County Courthouse] for personal business or professional business?” Strauch answered “I believe they did. I'm not 100% sure.

They did before, but I had a lot of stuff on my mind that day, so... it's possible they could have." [Exhibit 5 CD]. Strauch's statement contained two important pieces of information: he believed, or found it possible that, on his June 23 court date, Arquette asked the nature of his visit, personal or professional; and Strauch stated, in definitive language, that he had been asked that question on one or more of his previous court appearances. Later, and after hiring legal counsel, he denied both that Arquette asked the question on June 23, and denied he had ever been asked such a question at any of his previous four<sup>3</sup> Adams Court appearances for which he also appeared armed. Then, at hearing, he explained his words "they did before" referred to security guards asking for his credentials, not the nature of his visit.

Strauch's assertions would require finding that: no security guard who manned the law enforcement entrance to the Adams Courthouse ever followed well-established protocol at any of Strauch's previous Adams Court appearances; Arquette failed to follow protocol on June 23; Arquette then lied because he feared disciplinary action; Arquette conspired with Adams to falsify their reports; Strauch believed Wynn's question about Adams Court security referred to asking for credentials, not the nature of his business.

First, it is evident the primary responsibility of Adams Courthouse security guards who man the law enforcement entrance is to screen outside Agency law enforcement personnel as to the nature of their visit so that they may keep their weapons if they are present for official business, and must secure their weapons if for personal business. Thus, it is improbable, even if Arquette failed to follow protocol with Arquette on June 23, that no security guard asked Strauch the nature of his business previously, when that is the primary duty of securing the law enforcement entrance. If Strauch had been asked the nature of his business on any of his previous four or five visits, he would be on notice of the Adams Courthouse policy against bringing in weapons for personal business. Moreover, it is common sense for law enforcement agents to disarm when entering a courthouse for personal matters, and all the more so for a domestic hearing. It is, therefore, unlikely Strauch was unaware of the Adams Court policy, and unlikely he was never asked the nature of his business upon entering Adams County Court.

Second, both the context surrounding Wynn's question, and the question itself, make it evident Wynn's question referred to whether Arquette asked Strauch the nature of his business, not for his credentials.

(b) Arquette and Adams wrote their reports shortly after their encounters with Strauch, when their memories were fresh. [Exhibit 4-481]. Those reports

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<sup>3</sup> "During the child-support modification matter, Strauch made numerous trips to [Adams County Court] that were all very brief in nature. On the dates that he was on duty he did wear his uniform and weapon." [Exhibit 4-475]. "Every time (four times) I showed up for a court appearance, I entered through the law enforcement entrance in uniform. They just asked me for my credentials." [Exhibit 5 CD].

were consistent in all material respects. Strauch alleged those reports were consistent because Arquette and Adams conspired to make them so. Strauch's evidence of the alleged conspiracy was the possibility that Arquette and Adams could be disciplined for failing to follow protocol when Arquette failed to have Strauch sign out and Adams failed to have Strauch sign for the gun locker when he accompanied Strauch there. However, no evidence was presented that either faced discipline for failing to follow protocol.

(c) Strauch also alleged sign-in protocol at Adams County Court was not always followed, and the evidence indicated he is correct. For example, on June 23, 2010, out of thirty-three law enforcement officers who signed in, up until 3:30 p.m., seven were not made to sign out, including Strauch. [Exhibit 4-59]. In addition, there was no notation made on the sign-in sheet of the gun locker Strauch used to store his gun, although there is a column on the sign in sheet for that purpose. While it is evident the sign-in sheet information is not implemented, the cause is not evident, and, even assuming protocol is not always followed, that fact would not establish that Arquette lied about his interaction with Strauch, or that Strauch was truthful.

(d) Arquette recalled an odd detail, that when he asked Strauch whether he was there for official business, Strauch said nothing and Arquette had to ask a second time before Strauch replied he was on official or professional business. That kind of neutral recollection is some evidence Arquette accurately remembered the exchange.

(e) When Strauch returned to Arquette's security station after his hearing, Arquette recalled that Strauch apologized, while explaining, "I won't walk around in my uniform without my weapon." Strauch made essentially the same comment to Deputy Adams ("Strauch also stated he was not comfortable walking around in uniform without his weapon"), [Exhibit 4-56; Adams' testimony]. Strauch made a similar, but more pointed comment to Magistrate Mole, ("when I'm in uniform I feel like a bulls-eye") [Exhibit 4-23], as well as to IA investigator Wynn, and again, while testifying at hearing. [Strauch testimony]. Strauch's frequent repetition of that sentiment indicates the importance he attached to that belief. The extent of Strauch's belief, that he would be a defenseless target if he were unarmed in the courthouse while wearing his uniform, was highlighted when, at the time he stored his weapon following Magistrate Mole's order, he also removed his uniform shirt, even though Mole did not require it. Strauch's belief presented a powerful motive for Strauch to lie to Arquette: to protect himself from being a "bulls-eye" while in a courthouse and in uniform, while unarmed.

(f) Strauch argued that, due to the long duration of the Agency's case against him, his recollection was not always clear so that he wasn't as clear early in the Agency's investigation as he was after further reflection, and even then, his testimony was always consistent. [Appellant opening, closing

arguments]. As a general matter, time makes memories less accurate, and therefore more likely Strauch's earlier recollection was more accurate.

(g) Two of Strauch's supervisors testified he was always honest with them, "even to a fault" and "always admitted mistakes." [10/21/11 Austin testimony; see also 10/21/11 Romero testimony]. Strauch's previous record of honesty is commendable. It presents a factor in consideration of the degree of discipline imposed, below, but it is not compelling evidence in determining whether he was honest on June 23, 2010. The totality of the evidence indicates Strauch was dishonest when he stated he had never been asked the nature of his business upon entering Adams County Court while armed, and dishonest when he claimed Arquette did not ask him such on June 23, 2010.

## 2. Whether Strauch was aware of the Agency's uniform policy on 6/23/10.

Strauch admitted he violated the Agency's policy against wearing his uniform and weapon to his Adams County Court child support hearing on June 23, 2010. The issue here, however, is whether he lied ("departed from the truth" in Agency parlance) when he told IA he was unaware, on June 23, 2010, of that portion of Agency policy governing the wearing of a uniform/weapon outside of work.

Strauch claimed he became aware of the uniform policy only about one week after his hearing in Adams County. He recalled definitely having a casual conversation with several Agency officers, none of whom he could recall, but one of whom told Strauch about the uniform policy. Wynn contacted every officer who was on duty during the entire week after Strauch's hearing and asked each of them if they recalled a conversation with Strauch. None of them recalled such a conversation. Strauch provided no motive for any of those officers to misrepresent their recollection. To the contrary, it appears Strauch is well-liked by his commanders. Moreover, it makes little sense that Strauch would recollect having a conversation with several deputy sheriffs, recall that they were all officers, and remember that one of them mentioned the uniform policy, but could not recall the name of anyone present.

Strauch's work reviews and his test scores strongly indicate he has always been exceptionally knowledgeable about Agency practice and policy. [Exhibit 18-1; 18-8; 18-22; 18-24; 18-29; 18-37; 18-44; 18-56; 18-64; 18-66; 18-71; 18-74; 18-87; 18-103]. It seems unlikely someone as knowledgeable as Strauch would be completely unaware of an important Agency policy which prohibits uniforms and weapons from being worn other than at work, or while commuting, without permission. All together, the evidence indicates Strauch was aware of the Agency's uniform policy on June 23, 2010. Consequently, the Agency proved, by a preponderance of the evidence, that Strauch was dishonest in representing otherwise, under CSR 16-60 E., and under Agency Rule 200.4, Departure from the truth.

**B. CSR 16-60 L Failure to observe written departmental or agency regulations, policies or rules.**

1. Department Rule 100.7 Uniforms shall not be worn by employees while not on official duty, except in going to and from work or when engaged in authorized part time or volunteer work, where the uniform is required. All other occasions for wearing of the uniform shall require special permission of the Director of Corrections and Undersheriff, Division Chief, or their designee.

Strauch admitted he violated this rule when he wore his uniform and sidearm to his June 23, 2010 Adams County Court appearance.

2. Department Rule 300.2 Deputy Sheriffs and employees shall not display any badge or identify themselves as Denver Sheriff Department (DSD) employees for any purpose, except when necessary for identification purposes in furtherance of an official duty, or in the course of authorized activities, or off-duty employment.

Strauch's admission, above, necessarily constitutes a violation of this rule. If Strauch did not so intend, the evidence makes it clear he was in violation. By appearing in uniform at the law-enforcement entrance to Adams County Court, Strauch identified himself as an Agency deputy. No exception within the rule applies here. He was not on official business, and was not working off duty at the time. Either way, this violation is established.

3. Department Rule 300.19 Deputy Sheriffs and employees shall not violate any lawful rule, duty, procedure or order.

Since other, more specific, violations were established, this catchall rule is moot.

4. Department Rule 300.20 Deputy sheriffs and employees shall not indulge in any conduct which is contrary to Career Service Authority rules and Regulations.

Since other, more specific, Career Service Rule violations were established, this catchall rule is moot.

5. Department Rule 300.21. All employees of the Department shall read and obey all directives and orders issued by the Mayor, the Manger of Safety, Director of Corrections and Undersheriff, command officers or their designees that relate to the Sheriff Department's duties and assignments. Employees shall also read, maintain familiarity with, and carry out all Department Orders, Post Orders and written procedures relating to their specific duty posts and assignments.

Strauch claimed he did not knowingly violate the Agency's uniform rules or policies regarding wearing his uniform to his Adams County Court appearance on June 23, 2010. This strict liability rule applies irrespective of intent. It requires deputies actively to read and maintain familiarity with all Agency orders and procedures. Thus, when Strauch wore his uniform to Adams County Court, and he was not on duty, and was not otherwise authorized to wear his uniform, he violated Agency Rules 100.7, and 300.2, above.

6. Department Order 2700.11 – Uniform Policy ... General Uniform Information. The uniform may be worn only when an officer is in route to the job (includes: on duty and authorized unformed off-duty employment) or returning home from work and when otherwise authorized by the Director of Corrections and Undersheriff or designee.

The same facts that established a violation of Agency Rules 100.7, and 300.2, above, also constitute a violation here. Strauch's argument, that getting a carton of milk on the way home from duty would also violate these rules, is not persuasive.

**C. CSR 16-60 Y. Conduct which violates the Rules, the City Charter, the Denver Revised Municipal Code, Executive Orders or any other applicable legal authority.**

Other, more specific Career Service Rules were established, making application of this catchall rule moot.

**D. CSR 16-60 Z. Conduct prejudicial to the good order and effectiveness of the department or agency, or conduct that brings disrepute on or compromises the integrity of the City.**

This rule requires a showing of actual harm to the Agency's mission, or to the City's reputation or integrity. In re Jones, CSB 88-09A, 3 (9/29/10). The Agency's claim under this Rule was based upon the "major breach of security" letter from Adams County Court Presiding Judge Phelps to the Agency's Director of Corrections. Apparently, the Agency claimed Phelps' letter was evidence of actual harm to the image of the Agency. [Agency closing statement]. I disagree. The Agency's mission is the safe care, custody and control of inmates. No evidence was presented demonstrating how any of those facets of the Agency's mission was affected.

More likely, the Agency was relying on the second phrase, "conduct that brings disrepute on or compromises the integrity of the City." Phelps placed Strauch on a watch list, meaning he will be, henceforth, subject to normal security screening, and lost the privilege of expedited screening at the law enforcement entrance to the Adams County Courthouse. While there is little

doubt Phelps' letter embarrassed Agency, there was no evidence Phelps, or anyone else outside the Agency, believed the incident diminished the reputation or integrity of the City. The effect of Strauch's wrongdoing was limited to sanctions only against him. This claim is, therefore, not proven by a preponderance of the evidence.

## V. DEGREE OF DISCIPLINE

Under the Career Service Rules, an agency is bound to assess discipline in a manner designed to correct inappropriate behavior if possible. CSR 16-20. In that regard, the measures used by an agency to determine the appropriate level of discipline consist of: the severity of the offense; the employee's past record; and the penalty most likely to achieve compliance with the Rules. *Id.*

In reviewing the degree of discipline assessed by the agency, as opposed to the review of whether the agency met its burden to prove one or more rule violations, the standard of review is whether the level of discipline was clearly excessive or based substantially on considerations which were not supported by the preponderance of the evidence. City and County of Denver v. Weeks, No. 10CA1408, 11 (Colo. App. Oct. 13, 2011)(*add'l citation omitted*).

### A. Severity of proven offenses

The Agency proved its principal claims: dishonesty and violation of the Agency's uniform rules and policies. The inherently dangerous condition presented when Strauch wore his service weapon to his own domestic hearing was highlighted by Magistrate Mole, when he answered the question "why is it a problem for a deputy or an officer to have a firearm while in a civil matter?"<sup>4</sup>

Domestic relations cases, in particular, are exceedingly tense, and it's not always obvious. They can start off nice and, for the most part they end that way, but I've got enough experience in the past decade to know that things can get very wild and out of hand, and I don't always see the altercations, but I can hear people arguing in the corridor...even if they have been civilized and respectful of each other in my presence. That's why.

[Mole testimony].

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<sup>4</sup> Although the Agency alleged Strauch had a history of threatening behavior against his ex-wife, that claim was entirely disproven by the testimony of Strauch's ex-wife. She stated, in the strongest terms, that she has never felt threatened or intimidated by Strauch, nor has she ever feared for their children's safety with him. In punctuating her determination that "we get along fine," she even invited Strauch to her grandmother's funeral. [Michelle Strauch testimony]. That being said, there was no reason on June 23, 2010, for anyone in the court, other than Strauch and his wife, to find the situation was anything less than an emergency.

With respect to dishonesty, the Agency has plainly stated that under the current rubric of discipline, any significant departure from the truth should result in termination of employment. [Kilroy testimony].

**B. Past record**

In significant mitigation, Strauch's work ethic, performance, and knowledge of his duties had been exemplary. His disciplinary record is devoid of any issues.

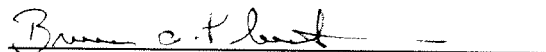
**C. Penalty most likely to achieve compliance.**

The Agency appeared to acknowledge that, even though it seriously considered termination of his employment, Strauch would be able to reform his conduct following a significant suspension. The Agency's consideration of the seriousness of the proven offenses, prior disciplinary history and possible levels of discipline, including termination, was not clearly excessive, nor was it based substantially on considerations unsupported by the preponderance of the evidence.

**VI. ORDER**

The Agency's assessment of a 50-day suspension against the Appellant, beginning June 16, 2011, is AFFIRMED.

DONE December 20, 2011.

  
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Bruce A. Plotkin  
Career Service Hearing Officer

NOTICE OF RIGHT TO FILE PETITION FOR REVIEW

You may petition the Career Service Board to review this DECISION, in accordance with the requirements of CSR 19-60 through 19-80, within fifteen calendar days after the date this order is delivered as stated in the attached certificate of delivery. **NOTE: the 15-day deadline begins from the date sent from the Hearings Office, not the date you receive it.** The Career Service Rules are available at

<http://www.denvergov.org/jobs/PublicNoticesandAnnouncements/CareerServiceAuthorityRuleRevisions/tabid/433593/Default.aspx>

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

Career Service Board  
c/o CSA Personnel Director's Office  
201 W. Colfax Avenue, Dept. 412, 4<sup>th</sup> Floor  
Denver, CO 80202  
EMAIL: [Leon.Duran@denvergov.org](mailto:Leon.Duran@denvergov.org)

AND

Career Service Hearing Office  
201 W. Colfax, 1<sup>st</sup> Floor  
Denver, CO 80202  
FAX: 720-913-5995  
EMAIL: [CSAHearings@denvergov.org](mailto:CSAHearings@denvergov.org).

AND

Opposing parties or their representatives, if any.

**Certificate of Delivery**

I certify that, on December 20, 2011, I delivered a correct copy of this Decision to the following in the manner indicated.

Mr. Robert Strauch, <a href="mailto:piker9860@yahoo.com">piker9860@yahoo.com</a>	(via email);
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