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

Appeal No. 31-03

FINDINGS AND ORDER

IN THE MATTER OF THE APPEAL OF:

DEBRA RUIZ, Appellant,

Agency: Denver Department of Human Services and the City and County of Denver, a municipal corporation.

Hearing in this matter was held before Michael S. Gallegos, Hearing Officer, on July 14, 2003, in the Career Service Hearings Office, 201 West Colfax, 1st Floor, Denver, Colorado 80202. Appellant, Debra Ruiz, appeared in person and was represented by Cheryl Hutchison, AFSCME. The Agency was represented by Assistant City Attorney, Niels Loechell. Ms. Deborah Arter was the Agency's advisory witness at hearing.

Within these Findings and Order, the Hearing Officer refers to Debra Ruiz as "Appellant"; the Denver Department of Human Services as the "Agency"; the Manager of the Denver Department of Human Services at the time of hearing, Donna Good, as the "Manager" and the Career Service Rules as "Career Service Rules" or "CSR". The Career Service Rules are cited by section number and are those currently in effect unless otherwise indicated.

For the reasons set forth below, the disciplinary action taken by the Agency against Appellant is **AFFIRMED.**

ISSUES FOR HEARING

Whether there is cause for disciplinary action against Appellant and, if so, whether the degree of discipline imposed is reasonably related to the severity of the offense.

BURDEN OF PROOF

The burden of proof is upon the Agency to prove, by a preponderance of the evidence, that there is cause for disciplinary action against Appellant and that

the degree of discipline imposed is reasonably related to the severity of the offense.

PRELIMINARY MATTERS

Appellant's Exhibits A and C were accepted into evidence over the Agency's objection as to relevancy. Appellant's Exhibits B and Z were accepted into evidence without objection from the Agency. The parties stipulated to the acceptance into evidence of Appellant's Exhibits E through Y.

The parties stipulated to the acceptance into evidence of the Agency's Exhibits 1, 8 (Appellant's Exhibit X), 9, 10 and 11. The Agency's Exhibit 2, with the exception of pages 216 through 223, 225 and 226, was accepted into evidence over Appellant's objection as to relevancy. The Agency's Exhibit 4 was accepted into evidence over Appellant's objection as to relevancy. The Agency's Exhibits 5 and 12 were accepted into evidence without objection from Appellant. The Agency's Exhibit 6, with the exception of pages 18, 56-76, 95, 135 and 136, was accepted into evidence over the Appellant's objection as to relevancy.

The names of non-Agency persons, involved in child support enforcement cases relevant to this appeal, were redacted from Exhibits 1, 4, 7, 8 and 11 in order to protect the confidentiality of their participation in such cases. A key to the names has been placed in a sealed envelope and may be opened only upon order of the Hearing Officer or appropriate appellate body.

FINDINGS OF FACT

Based on the evidence presented at hearing, the Hearing Officer finds the following to be fact:

1. Appellant is an employee in career status. She has worked for the Agency for 13 years, beginning as a Typist III in 1990. In 1993 Appellant became a Legal Technician IV. In 1999 her title was changed to Collection Agent. Appellant became a specialist in the establishment of child support enforcement (collection) cases. She worked on the "Establishment Team". Other team specializations included Intake, Investigations, Enforcement, Registration of Foreign Orders/Interstate Enforcement and Auditing.

2. In 2001, Appellant's title was changed to Child Support Enforcement Technician (Tech). Beginning in May 2001, Appellant was assigned child support enforcement cases under the "cradle to grave" concept. Under the cradle-to-grave concept, each Tech was assigned cases that had been established and for which the assigned Tech would then have responsibility from the assignment of the case until the case was closed. Except for the Intake Team and the Audit Team, there were no longer any specialized teams. There

were 8 cradle-to-grave teams, also known as "multi-function teams", and all Techs were required to cross-train in order to be able to handle all phases of a case.

3. Appellant was on Team 25, a cradle-to-grave team. Her supervisor was Alan Herrera (Herrera). Prior to implementation of the cradle-to-grave concept, Herrera was an intake specialist and supervised an Intake Team. Therefore, beginning in 2001, Herrera also had to be cross-trained in all areas of case management, except intake.

4. While Appellant was on Team 25, she often asked Herrera for help in specific areas, other than establishment, for the cases assigned to her. Herrera didn't always know the answer to her questions and often didn't know who to ask. He was himself in training, handling a caseload and supervising a team. Herrera referred Appellant to attorneys and other Techs who had been specialists in specific areas. However, other than referrals to others for answers to her questions, Herrera didn't have time to address Appellant's concerns.

5. The transition from specialty areas to multi-function teams was easier for some Techs, supervisors and teams than for others. Team 25 was made up of a number of specialists and Herrera allowed team members to continue working in their specialty areas, handling each others cases, while they trained.

6. Between May 1, 2001 and September 16, 2001, while carrying a full caseload, Appellant completed 13 training sessions including training in Contempt (Court) Orders, NDI (Non-Disclosure Indicator), administrative review, ACSES (Automated Child Support Enforcement System), interstate enforcement, Equifax (credit bureau) training, basic accounting and "locates" (locating non-custodial parents).

7. From September 2001 through June 2002, all team members were required to attend training in all areas of case management (except intake and auditing) including establishment of cases, ACSES, forms and timelines, state and federal regulations, interstate enforcement, enforcement against unemployed, incarcerated or paroled individuals, court proceedings including registration of foreign (other state's) orders, child support modifications and contempt proceedings. All team members had to learn the specialized "language" or terminology for each area and the protocols or policy and procedure for each area. All team members were required to score 90% or better in each training session. The majority of the training was conducted by an internal training unit and the entire office would shut down during training. Techs also received on-the-job training from supervisors and co-workers with expertise in specific areas and training through the State Department of Human Services.

8. Between September 2001 and the end of June 2002, while carrying a full caseload, Appellant completed an additional 9 training sessions including case management, automated remedies, modifications (to child support), genetic testing and Spanish. Nonetheless, there were specific areas that Appellant was not "picking up". Herrera felt that Appellant needed additional training, but he did not communicate this to anyone.

9. On September 16, 2002, Appellant was advised that she had been reassigned to Team 44, also referred to as "the 4th floor". (Team 25 was disbanded and Herrera was reassigned to an Intake Team.) Appellant began work with Team 44 on September 23, 2002. Appellant's new supervisor was Deborah Arter (Arter). Appellant and another new team member, Christina Scott, began their training at the same time. Each received a training packet that contained information regarding the administrative process including time-frames, forms and best practices.

10. Child Support Enforcement Technicians work in teams, so anytime one Tech is not available to handle a case-specific matter, another Tech on the team can access the information from the computer and assist the client. Teams also included Administrative Support Assistants (ASAs) who completed the "locates", did debt calculations and printed documents for negotiation hearings or Administrative Hearings.

11. When Appellant was transferred to the 4th floor, she was given a desk that was with Team 55, around the corner from her team, Team 44. In order to communicate with her team members or ask for assistance, Appellant had to leave her work area or lean over a partition. Appellant was often inadvertently left out of Team discussions, activities and document distributions.

12. An optimal case load is approximately 300 Child Support Enforcement cases, in order to be able to work on each case at least once per month. As an individual Tech's case load approaches 450, there are more and more cases that cannot be "worked" once per month. That is, when case loads exceed 400, there are some cases that are worked every other month, rather than once a month. Appellant brought 400 cases with her from Team 25 to Team 44. (*See also* paragraphs 18 and 19, below.)

13. A typical day for a Tech begins with "calendar reviews" which means checking the computer to review what needs to be done, and when it needs to be done, on assigned cases. Calendar reviews can be set by any Tech, for themselves or another Tech, or by the answering service. Each Tech has a calendar review Desk Aid (document) to assist them in using the calendar review to manage their cases.

14. In managing their cases, Child Support Enforcement Techs often access a variety of information systems including credit reports, Division of Motor

Vehicle records, Department of Labor and Worker's Compensation filings, federal and state "new hire" lists and federal and state regulations.

15. Each Tech has access to a computer with a document generator for approximately 600 different forms used in managing child support enforcement cases. At training each Tech is given a packet that explains the time frames for using the forms. Each tech is responsible for data entry to complete the form(s) needed on a case-by-case basis. Additionally, each Tech assists in document preparation for the Court Liaison Unit.

16. Techs meet, in person, with both custodial and non-custodial parents to gather information, complete paperwork and sign documents. These meetings are called "client appointments" and are held on the 1st Floor of the building. However, the majority of contact with parties, employers or non-team members is conducted by telephone.

17. Each team keeps track of individual team member/Tech's case statistics in the areas of collections (dollar amount collected), "paying", "debt due" and "under [court] order". These statistics are also referred to as a Tech's "numbers".

18. Shortly after Appellant's transfer to Team 44, it became apparent that her "numbers" were low compared to other team members. Caroline Scott, the other new team member, filed 18 contempt actions in the same time that Appellant filed only 3 contempt actions. Shortly after Appellant's transfer to Team 44, Arter transferred 123 cases, including 47 "paying" cases, to Appellant's case load to increase her total collections. Appellant's overall numbers increased. However, due to the increase in her case load, she didn't work on 50 to 60 cases. Her case load at that time was 500.

19. Arter began transferring Appellant's cases that hadn't been worked to other team members and helping Appellant to close out other cases. It was necessary to close out cases by the end of the year to be in compliance with federal audit requirements. By December 2002, Appellant's case load was down to 402 cases. An average case load for Child Support Enforcement Techs, at that time, was 380 to 400 cases per Tech. By January 2003, Appellant's case load was between 400 and 450.

20. Between September 23, 2002 and the end of December 2002, Appellant suffered a death in the family, an ankle injury (for which she had to be transported to the emergency room by ambulance) and a stress-related Worker's Compensation injury.

21. During the same time, Appellant was a union steward and, as such, was allowed 2 hours per work week, with prior approval from her supervisor, to address union matters away from her desk.

22. Arter felt that Appellant was away from her desk too often. On one occasion, Arter called Appellant's private cell phone number to try to determine where Appellant was. On occasion, Arter would go down to the first floor receptionists and ask if they had seen Appellant. She did not ask for any other member of Team 44.

23. Appellant was never fully accepted as a member of Team 44. Consequently, Appellant was not at ease to ask for help from other team members. When Appellant did ask team members for assistance, they often refused or said they were too busy. On occasion, team members would send away walk-in clients on Appellant's cases, even though Appellant often took "walk-ins" for team members. Some of Appellant's team members would check with the 1st floor receptionists looking for Appellant, though they did not check up on any other team members.

24. From August 1, 2002 to the end of December 2002, Appellant completed an additional 12 training sessions including ethics, Consolidated Contempt Docket(s), Family to Family Orientation, interstate establishment, State (Department of Human Services) Training, reports (including CHRON messages), administrative reviews, judicial establishment and modifications (of child support). In spite of a second training on administrative reviews, Appellant did not understand how to prepare for an administrative review or hearing.

25. On average it took 9 months to learn "enforcement" of child support cases, even if the Tech had a prior specialty such as intake or establishment. Over 19 months, between May 2001 and December 2002, Appellant completed a total of 33 training sessions.

26. Between September 23, 2002 and the end of December 2002, Arter tried to set up monthly one-on-one training sessions with Appellant. Arter completed only 2 one-on-one training sessions with Appellant. Arter also gave Appellant written direction on chronology printouts for specific cases. However, Appellant didn't always understand how to follow through with Arter's instructions.

27. Beginning in January 2003, training for Child Support Enforcement Techs was done on a one-on-one basis, working actual cases, rather than in a training or classroom setting.

28. On January 2, 2003, Appellant received a pre-disciplinary letter citing, by case number, approximately 20 cases that had been mishandled or neglected from the time she began with Team 44 through the end of December 2002, including: 1) sending a case to accounting for a calculation when a calculation was not necessary, 2) failure to file an entry of appearance in a court case, 3) failure to file legal pleadings, 4) failure to provide a copy of a "foreign order" and "certificate of mailing" as required by the court, 5) erroneous

disbursement of child support payment caused by Appellant's erroneous posting to the (computer) ledger, 6) possible breaches of confidentiality on four separate cases, 7) failure to close a case where the family was intact, 8) rudeness in three separate cases, 9) failure to reply to telephone calls on specific cases, and 10) failure to follow up on specific cases.

29. Appellant was out of the office on Family Medical Leave Act (FMLA) leave from January 3, through January 20, 2003. While Appellant was out on FMLA leave, Arter placed a packet of changes (to the Team's practices and procedures) in Appellant's box which was to be implemented immediately.

30. When Appellant returned from FMLA leave, she was behind on the changes that were to be implemented in managing her case load. Appellant felt overwhelmed and believed that she needed more training.

31. Appellant's pre-disciplinary meeting was held on February 11, 2003 and Appellant was represented by a union representative. The Manager was also present at the pre-disciplinary meeting. At her pre-disciplinary meeting Appellant admitted that there were errors in her handling of some cases that she didn't know how to correct. However, she denied being rude or unresponsive to clients.

32. In determining whether to impose discipline and, if so, the appropriate level of discipline, the Manager considered the information contained in the Agency's pre-disciplinary letter (including Appellant's disciplinary history) and the additional information Appellant presented at the pre-disciplinary meeting. She considered only the child support enforcement cases listed in the pre-disciplinary letter.

33. Appellant's relevant disciplinary history is as follows: 1) A Verbal Reprimand, on October 17, 2002, for failure to appear at a scheduled conference with a non-custodial parent and prepare the file so another Tech could handle the conference, 2) A Written Reprimand, on October 29, 2002 for unauthorized absence from work, and 3) A Written Reprimand, on December 23, 2002, for refusal to comply with orders of a supervisor and failure to perform in that Appellant failed to act as directed in 7 different Child Support Enforcement cases between September 25, 2002 and December 16, 2002.

34. Appellant attempted several times to comply with her supervisor's written directive of September 25, 2002. Nonetheless, as of December 19, 2002, Appellant had not filed the contempt order she was directed to file. Therefore, it became part of the grounds for Appellant's December 23, 2002 Written Reprimand.

35. By disciplinary letter dated February 24, 2003, the Agency imposed a 10-day suspension, as the next step in progressive discipline of Appellant for

refusing to comply with the orders of an authorized supervisor, failure to perform/gross negligence and divulging confidential information.

36. Breaches of confidentiality, alleged in the pre-disciplinary and disciplinary letters were inadvertent on the part of Appellant.

DISCUSSION

1. **Authority of the Hearing Officer:** The City Charter and Career Service Rules require the Hearing Officer to determine the facts, by *de novo* hearing, in "[a]ny action of an appointing authority resulting in dismissal, suspension, involuntary demotion...which results in alleged violation of the Career Service Charter Provisions or Ordinance relating to the Career Service, or the Personnel Rules." (City Charter C5.25 (4) and CSR 19-10 b).) A *de novo* hearing is one in which the Hearing Officer makes independent findings of fact, credibility assessments and resolves factual disputes. (*See Turner v. Rossmiller*, 35 Co. App. 329, 532 P.2d 751 (Colo. App.1975).)

2. **Cause for discipline:** Career Service Rules provide, in pertinent part: "The purpose of discipline is to correct inappropriate behavior or performance." (*See* CSR 16-10.) In this case, prior to the institution of the cradle-to-grave concept, Appellant was a competent Collections Agent specializing in establishment of child support enforcement cases. However, like many Techs assigned to multi-function teams, and in spite of massive training, there were some areas of enforcement that Appellant did not readily grasp. (*See* Findings of Fact, paragraphs 1 through 8.) From the time Appellant was assigned to Team 44 in September 2002, she was aware that she had a heavy case load and that she did not have the skills to handle a heavy case load. (*See* Findings of Fact, paragraphs 8, 9, 12, 18 and 19.) Arter gave Appellant one-on-one time, wrote specific directions for Appellant and transferred paying cases to Appellant's case load. Nonetheless, after 19 months of classroom training and on-the-job training, there were some areas of enforcement that Appellant did not understand well enough to prepare for Administrative Hearings or follow up on Arter's directions. (*See* Findings of Fact, paragraphs 18 and 24 through 26.)

At hearing, Appellant denied being rude or unresponsive to clients but admitted there were errors in her handling of some cases. She attributed the errors to her need for additional training and the fact that she got little help, from supervisors and team members, to transition from an Establishment Team to the cradle-to-grave/multi-function team. (*See* Findings of Fact, paragraphs 3 through 5, 8, 11, 12, 19, 22 through 24, 26, 31 and 34.) Based on the evidence presented at hearing, the Hearing Officer concludes that, although Appellant was not well treated by Team 44 members, she had sufficient opportunity for training in order to be able to handle a heavy case load. Additionally, Appellant had

sufficient direction from her supervisor and sufficient warning, in the form of prior discipline, to be able to comply with her supervisor's orders and to improve her performance. However, Appellant's performance did not improve and she did not comply with her supervisor's orders on specific cases listed in Appellant's disciplinary letter. (*See* Agency's Exhibit 11.) Therefore, the Hearing Officer concludes that the Agency has met its burden to prove, by a preponderance of the evidence, that there is cause for discipline[1].

With regard to whether Appellant was rude or unresponsive to clients: In this case, clients reported to Appellant's supervisor that Appellant was rude or unresponsive. Those clients were not available for cross-examination at hearing. At hearing, then, the allegations of rudeness or unresponsiveness were presented through Appellant's supervisor and denied by Appellant, in a "he said, she said" fashion. Nonetheless, from the perspective of the Hearing Officer, it is not a question of credibility but of perspective. That is, whether someone is rude (versus loud or brusque) and whether someone is unresponsive (versus not responding as fast as the complainant might have liked) is a question of opinion and/or perspective. Based on the evidence presented at hearing, the Hearing Officer concludes that, in this case, the Agency failed to prove that Appellant was rude or unresponsive to clients. Further, the Hearing Officer concludes that the allegations of rudeness and unresponsiveness (where there is no breach of confidentiality) are not cause for discipline.

3. **Degree of discipline:** Career Service Rules provide, in pertinent part: "The type and severity of discipline depends on the gravity of the infraction. The degree of discipline shall be reasonably related to the seriousness of the offense and take into consideration the employee's past record." (*See* CSR 16-10.) In mitigation, Appellant argues that, while there were errors in her handling of some cases, she was not rude or unresponsive to clients. Appellant also argues that the errors in her handling of some cases occurred because she needed additional training and she got little help from supervisors and team members. Therefore, Appellant argues, the type and severity of discipline is not reasonably related to the seriousness of the offense.

Having concluded that Appellant had sufficient opportunity for training, sufficient direction from her supervisor and sufficient warning to be able to improve her performance (*See* above.), the Hearing Officer turns to the question: whether lack of support from Appellant's Team members is an appropriate consideration in determining the degree of discipline. First, it is unclear whether the Manager considered difficulties in transition from specialty teams to multi-function teams or the actions of other Team 44 members in setting the level of discipline in this case. Second, it is clear from the evidence that some Techs,

[1] Included in the Hearing Officer's determination that there is cause for discipline are Appellant's breaches of confidentiality. Whether such breaches were inadvertent or not, breaches of confidentiality are cause for discipline.

supervisors and teams made the transition from specialty teams to multi-function teams with little difficulty and others had great difficulty. The fact that Appellant did not receive sufficient support from her first supervisor (Herrera) or from the other members of Team 44, does not change the fact that Appellant had certain performance requirements as an individual employee. Although Appellant may have performed better if she had greater support from her supervisors and team members, the Hearing Officer cannot consider such speculation. Therefore, the Hearing Officer concludes that lack of support from Appellant's Team members and supervisors is not an appropriate consideration, in this case, in determining the degree of discipline imposed.

With regard to whether Appellant was rude or unresponsive to clients: Because the Agency did not prove, by a preponderance of the evidence, that Appellant was rude or unresponsive to clients, the Hearing Officer does not consider such allegations in reviewing the degree of discipline imposed in this case. However, the Hearing Officer may appropriately consider "the employee's past record" and the severity of the offenses for which there is cause for discipline. (*See* CSR 16-10.) In this case, within 2 months time, Appellant received a Verbal Reprimand and a Written Reprimand for failures to perform and refusal to comply with her supervisor's orders. (*See* Findings of Fact, paragraph 33.) The next level of discipline is suspension. Therefore, the Hearing Officer concludes that suspension is an appropriate level of discipline in this case.

In determining whether a 10-day suspension is an appropriate degree of discipline, the Hearing Officer considers the severity of the offenses for which there is cause for discipline. That is, the Hearing Officer considers all errors and breaches of confidentiality made in Appellant's handling of the child support enforcement cases listed in Appellant's pre-disciplinary and disciplinary letters (*See* Exhibit 11.), but does not consider any allegations of rudeness or unresponsiveness where there is no breach of confidentiality. Based on the number and type of errors, including breaches of confidentiality, the Hearing Officer concludes that Appellant could have been dismissed for such errors. (*See* CSR 16-50 A.) The right to confidentiality is paramount in the handling of child support enforcement and other Agency cases. For those breaches of confidentiality alone, a 10-day suspension does not appear unreasonable given the seriousness of the offense. Additionally, given the number of cases in which errors were made, nine listed in the pre-disciplinary and disciplinary letters, a 10-day suspension is not outside the reasonable range of discipline available to the Manager. Therefore, the Hearing Officer concludes that the Agency has met its burden to prove, by a preponderance of the evidence, that the degree of discipline is reasonably related to the severity of the offense.

CONCLUSIONS OF LAW

1. The Hearing Officer has jurisdiction to make and issue Findings and Order in this matter.

2. The Agency met its burden to show there is cause for discipline and that the level of discipline imposed is reasonably related to the severity of the offense.

3. Allegations of rudeness and unresponsiveness contained in the February 24, 2003 disciplinary letter, where there is no breach of confidentiality, shall be removed from Appellant's disciplinary letter.

ORDER

Therefore, for the reasons stated above, the Agency's 10-day suspension of Appellant is **AFFIRMED**.

Dated this 27th day of October 2003

M. Gallegos

Michael S. Gallegos
Hearing Officer for the
Career Service Board