STATE OF NEW JERSEY

In the Matter of Sonnia Supple
Judiciary, Monmouth Vicinage

CSC DKT. NO. 2018-673
OAL DKT. NO. CSV 13319-17

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

CORRECTED

ISSUED: JULY 2, 2019 BW

The appeal of Sonia Supple, Judiciary Clerk 3, Judiciary, Monmouth Vicinage, of the 14 working day suspension, on charges, was heard by Administrative Law Judge Judith Lieberman, who rendered her initial decision on April 25, 2019. Exceptions were filed on behalf of the appellant and a reply to exceptions was filed on behalf of the appointing authority.

Prior to the matter being presented to the Civil Service Commission, Susan Supple withdrew her appeal. Accordingly, having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting on June 26, 2019, rejected the recommendation of the Administrative Law Judge and noted the withdrawal.

ORDER

The Civil Service Commission rejects the initial decision and notes the withdrawal of Sonnia Supple's appeal with prejudice.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 26TH DAY OF JUNE, 2019

Deirdré L. Webster Cobb

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 13319-17

AGENCY DKT. NO. 2018-673

IN THE MATTER OF SONNIA SUPPLE, SUPERIOR COURT OF NEW JERSEY, MONMOUTH VICINAGE.

Brian M. Cige, Esq., for appellant, Sonnia Supple (Law Offices of Brian M. Cige, attorneys)

Thomas Russo, Esq., for respondent, Superior Court of New Jersey, Monmouth Vicinage, pursuant to N.J.A.C. 1:1-5.4(a)(2)

Record Closed: April 9, 2019 Decided: May 23, 2019

BEFORE **JUDITH LIEBERMAN**, ALJ:

STATEMENT OF THE CASE

The respondent, Superior Court of New Jersey, Monmouth Vicinage (Respondent), suspended the appellant, Sonnia Supple, for fourteen working days without pay. The suspension was based on the charges of incompetency, inefficiency and failure to perform, neglect of duty and insubordination. The appellant appealed these charges and the suspension.

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PROCEDURAL HISTORY

On November 9, 2016, the respondent issued a Preliminary Notice of Disciplinary Action (PNDA) setting forth the charges and specifications made against the appellant. After a departmental hearing, which was held on January 20, 2017, January 26, 2017, and February 6, 2017, the respondent issued a Final Notice of Disciplinary Action (FNDA) on August 24, 2017, sustaining three charges in the PNDA and suspending the appellant from employment for fourteen working days, beginning August 28, 2017, and ending September 14, 2017. The appellant filed a timely appeal and the matter was transmitted to the Office of Administrative Law on September 11, 2017, for hearing as a contested case. The case was heard on October 25, 2018, December 7, 2018, and January 30, 2019. The record remained open for the receipt of written summations by the parties within thirty days of their receipt of the hearing transcript. A short extension of time for submission of the briefs was granted. The summations were received on April 5, 2019, and April 9, 2019, and the record closed on the later of the two days

FACTUAL DISCUSSION AND FINDINGS

The following is undisputed and I, therefore, **FIND** the following as **FACT**:

1. During the times at issue, the appellant, Sonnia Supple, was employed by the respondent as a Judiciary Clerk 3 – Bilingual in the Probation Division, Adult Supervision Unit, during the time at issue.

2. The appellant began working for the respondent in May 2005, when she was assigned to the Finance Division. She was transferred to the Probation Division in October 2012.

3. On November 9, 2016, the respondent filed a PNDA that charged the appellant with incompetency, inefficiency and failure to perform, neglect of duty, insubordination and violation of probation policy and procedure, in violation of N.J.A.C. 4A:20-2.3(a)(1), (a)(7), (a)(2), and (a)(12), respectively. It proposed a twenty working-day suspension. J-1.

4. The PNDA identified the incidents that gave rise to the charge as follows:

> [The appellant] demonstrated a series of incompetent, inefficient and neglectful errors as it related to general clerical functions involving the intaking of Probation cases into the CAPS data base. Such as the case on September 20, 2016, August 16, 2016 and July 20, 2016. When corrected, she insists that someone else is altering the information and is argumentative and defensive.
>
> [The appellant] fails to properly and timely process conditional discharges and posts incorrect restitutions and fines, as demonstrated on August 9, 2016, August 12, 2016 and August 23, 2016. Also, as demonstrated on August 10, 2016 and August 12, 2016, [she] fails to comply with managerial directives regarding work tasks. To illustrate, [she] inappropriately sent an email to a Judge's secretary on August 12, 2016, regarding a restitution information so she could intake the case, despite receiving training on January 6, 2016, regarding the proper procedure for obtaining victim information. She consistently fails and neglects to meet the performance expectation to work harmoniously and effectively with the members of the clerical unit to form a cohesive unit. [The appellant] has demonstrated blatant, insubordinate behavioral patterns on many occasions as it related to following managerial directives. [She] is unable to work effectively without supervision and is unwilling to take direction from lead workers without involving multiple members of management. The employee's deficiencies compromises the integrity of the Judiciary and causes delays in the Probation Officer's ability to schedule clients timely. The need for constant supervision, correction of court documents and data entry, misunderstanding of instructions, all impact the effective operations of the court. J-3.

5. A hearing was conducted by a hearing officer on January 20, 2017, January 26, 2017, and February 6, 2017.

6. The hearing officer sustained charges concerning incidents that occurred on the following days:

- July 26, 2016
- August 10, 2016
- August 16, 2016
- August 23, 2016
- September 20, 2016

J-2.[1]

7. The hearing officer recommended a fourteen-day suspension. Ibid.

8. On August 24, 2017, a FNDA was entered against the appellant sustaining the charges incompetency, inefficiency and failure to perform, neglect of duty and insubordination, in violation of N.J.A.C. 4A:20-2.3(a)(1), (a)(7), (a)(2), respectively. A fourteen-day suspension was imposed, beginning August 28, 2017, and ending September 14, 2017. J-3.

Summary of Relevant Testimony

For the respondent:

Gloria Lynn Brennan worked in the Adult Supervision Unit of the Probation Unit for approximately nineteen years. Her title was a Court Services Supervisor 2 when she retired November 1, 2016. She began as a supervisor of the clerical staff, including the appellant, on February 14, 2014.

She reported first to Ralph Esposito. After Esposito left his position, she reported to Myra Carter, Vicinage Assistant Chief Probation Officer, and Cee Okuzo, Vicinage Chief Probation Officer. Okuzo was the Chief Supervisor of all Probation Division employees.

[1] The hearing officer's recommended decision was jointly offered into evidence for the sole purpose of establishing the procedural history.

Brennan was responsible for ensuring that all clerical staff completed their work accurately and in a timely fashion. The clerical staff was responsible for "intaking" cases. This involved entering into a database information about individuals subject to adult supervision, which included individuals sentenced in the Superior Court, Family Court and municipal court. The staff used the Comprehensive Automated Probation System (CAPS or CAP System), database, which included all probationers' information, including demographic information, conditions of probation, orders, and fines and restitution. Staff was also required to handle mail, answer questions received over the phone, disseminate information, and print reports requested by probation officers.

Staff was required to "intake" a case within forty-eight hours and to ensure that the information they put in the computer was accurate before they gave it to a supervisor, who would review the materials. A delay in the intake process could cause potential risk, confusion and extra work. Probation officers cannot supervise probationers without access to all conditions of the probation and information that would permit them to quickly contact the probationers. This is particularly important with respect to priority cases involving sex offenders, who are required to be supervised immediately, domestic violence offenders, for whom restraining orders are often involved, and drug cases. The probation officer needs to know the conditions of probation and to be able to contact the probationer immediately. Further, when a case is not processed in a timely manner, other agencies and actors that are involved with these cases do not promptly receive necessary information. Parties, such as judges, clients and individuals owed restitution, call the supervisor to inquire about the status of a case. This necessarily requires extra work by supervisor and staff. Supervisors and probation officers "were held responsible" for problems or delays involving the intake process. T1[2] 19:25 to 20-1.

The CAPS database stored probationer's demographics, including their address, phone numbers, special contacts, birthdate, social security number, the charge associated with their probation, special conditions, court ordered payments, and the method of any such payments.

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[2] T1 refers to the transcript of the October 25, 2018, proceeding in this matter. T2 refers to the transcript of the December 7, 2018, proceeding. T3 refers to the transcript of the January 30, 2019, proceeding.

On average, each case typically required five to ten minutes to complete intake. Some cases required more time. The forty-eight-hour time limit was intended to ensure that all information is available to permit supervision of probationers in a timely fashion. All staff were aware of the time limit; Brennan advised all staff by email and verbally.

Each staff member had a password they used to work on their computer. They were required to keep the password secret. They also had a work identification number ("JU" number), which was not confidential and was used to track all information put into the computer. This allowed for identification of any staff member who input data into the computer system.

Brennan evaluated staff on a daily basis and provided verbal feedback. She would email staff if required. She held periodic staff meetings, approximately once every three months in 2016. She would discuss how to work better as a team, address new policies and procedures, and reinforce existing protocols. With respect to employee discipline, she was responsible for gathering required information.

Clerical staff was required to understand three types of case dispositions: conditional discharge, conditional dismissal and pretrial interventions. Conditional discharge was used at the municipal court level for individuals who were not convicted. Conditional dismissal was used at the municipal court level and allowed expungement after completion of a program. Pretrial intervention was used at the Superior Court level for first offenders. Only one disposition may be assigned to a defendant over the defendant's lifetime. Failure to properly record dispositions adversely impacted the intake process.

In 2016, Brennan supervised seven staff members, including the appellant and Wendy Bracken, Judicial Clerk 4, who was the lead clerical staff person. In 2016, Bracken had "myriad duties." T1 25:23. She assisted with case intake and handled judgments, calls and transfers of information to the Administrative Office of the Courts. She served as a "go between" with the court for information about restitution and assisted Brennan. She accompanied probation officers to sentencing hearings every Friday and distributed assignments to staff. Bracken also responded to other requests from Brennan and other

supervisors and to questions or requests for information from probation officers. She also distributed work to the clerical staff.

In 2016, the appellant was responsible for "intaking" all dispositions, including conditional discharges, conditional dismissals, pretrial intervention cases and Superior Court cases. She also had mail duties, which involved distributing mail and "laser" duties, which involved printing reports and distributing them to the appropriate probation officer. As she was bilingual, she occasionally translated for Spanish-speaking clients.

In addition to regularly scheduled training sessions, the appellant received additional training in response to her continued errors. The training included an "intake 101 refresher course" with a supervisor and other training sessions that were scheduled "just for her." T1:64-22, 65-22. It was also recommended that the appellant attend "any trainings that would increase her performance." T1:66-6. Staff continued to observe problems and have concerns about the appellant's performance during 2016. Brennan did not "see any, much improvement" with the appellant's performance. T1:68-7.

Brennan kept a log of all assignments so that she would know when a case came in from court, to whom it was assigned and when it was completed.[3] Brennan recorded the intake assignments given to the appellant on August 16, 2016, at 9:40 a.m. R-2[4] at 6. Seven cases were assigned. Four were completed on August 19, 2016, more than forty-eight hours after they were assigned.[5] Ibid. This was not the first time the appellant failed to complete intake assignments within forty-eight hours.

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[3] In 2014, the appellant complained that she received more cases than the other clerical staff members and that her cases were more complicated. Brennan did not agree with this assessment and began keeping a log to document the distribution and completion of the assignments.

[4] R-2 is a multi-page document; only page thirty-nine of the document was admitted into evidence.

[5] August 16, 2016, was a Tuesday; August 19, 2016, was a Friday. There are handwritten notes on the document indicating the date the work was completed. Brennan did not write these notes; the appellant wrote these notes, as the clerical staff member who performed the work made these notations on the document.

On August 18, 2016, Regina Underwood, Court Services Supervisor 2, advised the appellant that she had improperly entered a case into CAPS. She memorialized their conversation in an email: "I reminded you that the case should not have been entered into CAPS, as the client had a prior PTI on CAPS. I advised that I just wanted to remind you that if a client had a prior PTI or a CD, the case is not eligible to be entered on a new CD." R-3. Underwood noted in the email that the appellant replied that she had not been advised of this policy. Underwood further advised the appellant, "If you receive a case that does not follow this protocol, it should be brought to the supervisor's attention immediately." Ibid. The appellant replied by email. She thanked Underwood for "this new information" and reminded her that she "had never been informed of this matter in advance and was unaware of that information, and also that [she did] not handle PTI cases." Ibid.

On August 29, 2016, Regina Underwood advised Brennan that, on August 23, 2016, the appellant "entered a Municipal Conditional Discharge that does qualify into CAPS." (R-4.) She added, "The defendant does not qualify for the CD as there is a prior PTI in CAPS[.]" Ibid. Underwood notes this was same type of mistake that Underwood discussed with the appellant, and confirmed in writing, on August 18, 2016. Ibid. Although Underwood told the appellant, on August 18, 2016, that she should alert a supervisor if she received a case that did not qualify for a CD, the appellant did not do so. Instead, she entered the case into CAPS. Ibid.

On September 2, 2016, the appellant sent an email to Brennan, Underwood and Okuzu in which she wrote that the August 18, 2016, error was due to the fact that she had not been advised of the appropriate policy. R-5. She wrote, "I thanked Supervisor Underwood and stated that I appreciated this information because I have not received a training about Municipal Conditional Discharge qualifications in reference to prior PTI or CD." Ibid. She also wrote that she did not handle PTI cases. Ibid.

The appellant also addressed her August 23, 2016, error. She wrote, "the information I received on 8/18/16 did not clarify if a client had a prior PTI or CD on an active or closed case. I also stated that my understanding was regarding a prior PTI or CD only on an active case. The prior PTI case was closed when I entered a Municipal

Conditional Discharge on the case[.] I apologized for this inconvenience due to a lack of clarification of this duty." R-5.

On October 5, 2016, Brennan wrote to the appellant, and copied Okuzu, concerning an improper entry. She wrote, "On 10/4/16 you entered a Conditional Discharge for [a] client. This case had a prior PTI case and was not eligible for a Conditional Discharge." R-5. Referring to the prior email exchanges with the appellant, Brennan wrote, "Please review the below prior discussions and emails regarding this protocol." Ibid.

An annual performance review was issued for the appellant, for the period January 1, 2016, through October 31, 2016. R-6. The review was performed by Brennan and Colleen Christie, who supervised the appellant while Brennan was on leave. R-6 at 5. The review referred to the appellant's errors when inputting conditional discharge and conditional dismissal charges that have had prior diversionary sentences. Ibid. In response, the appellant wrote that any errors were the result of a "lack of information at the time" and that these issues were addressed in emails after the errors occurred. Ibid. Brennan testified that the appellant's statements were inaccurate.

Brennan considered Bracken to be competent at her job as lead clerical worker and believed she interacted well with other members of the staff. Brennan noted that she and other supervisors observed that the appellant was "unable" to work well with others. T1:60-19. This was noted in her performance reviews. The appellant had been argumentative with Brennan and denied that she had been trained on functions for which she had, in fact, received training. The appellant would contest Brennan's recitation of a policy or procedure, stating that the statement was incorrect or that no one told her about the policy or procedure. Brennan recalled that her observations and performance reviews of the appellant were similar each year she served as supervisor, from February 2014, through November 2016, with a nine-month absence in the interim. The appellant's performance in these areas did not change.

Brennan was aware of the staff members' interactions with each other. The appellant and Bracken had a "contentious" relationship. T1 29:12. They complained to

Brennan on a regular basis about each other. Brennan's discussions with the appellant were "difficult" and the appellant "always had to have the last word," which she followed with long emails to Brennan. T1 29:16-25. Bracken generally got along well with the other staff members and there were no complaints.

On August 4, 2016, Brennan sent an email to the appellant, which was copied to Cee Okuzo. The email advised:

> This email is to direct you that this day forward there is not to be any further communication with Wendy Bracken, JC4. You are not to communicate with Wendy Bracken in any manner including but not limited to verbal or email. If you have any concerns, work or otherwise, you are to direct them to your immediate supervisor (CSS2 Gloria Lynn Brennan). If I am not available direct any issue to another supervisor as needed.
> R-1.

Director Okuzo approved the email. This was an unusual remedy; she had not previously had to issue a directive like this to anyone other than the appellant.[6] It adversely impacted office operations. Brennan was required to handle additional work to prevent interactions between the appellant and Bracken. She had to notify all other supervisors of the arrangement whenever she was away from the office for an extended period of time. On August 10, 2016, Bracken reported that the appellant said, "Good morning" to her and asked her how she was. This was a violation of the August 4, 2016, directive.

On September 19, 2016, and September 20, 2016, Brennan discussed with the appellant the need to conserve office resources by not printing all CAPS screens for her intake cases. Brennan advised this was unnecessary and a waste of time and resources. R-7. The appellant continued to print these records notwithstanding Brennan's directives. On September 20, 2016, Brennan sent an email to the appellant in which she wrote, "Today, September 20th at 2:24 p.m. you copied on two cases you were intaking, 5 CAP

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[6] Brennan issued a similar directive to the appellant once before. Another supervisor issued a similar directive to the appellant when Brennan was on a leave of absence. Brennan was on medical leave from June 1, 2015, through April 15, 2016.

screens on case . . . and four CAPS screens on . . . . You were directed on 9/19 to cease doing so. This is a violation of this directive which is stated below again." Ibid.

On September 21, 2016, the appellant replied on that, on September 19, 2016, she printed a CAPS screen on an intake case because this is the way I use to improve my knowledge on an intake case which is part of my learning process. . . . On September 20, 2016, I printed the CAPS screens on 2 cases by error but I will not do it again." R-7. She wrote that other employees were permitted to print this type of material during their training periods and she believed her "learning process" was being restricted. Ibid. She added, "I did not do [sic] a violation of the directive." Ibid. Brennan testified that the appellant had completed her training by then and was beyond the point of needing to keep copies of her intake screens for this purpose.

Brennan testified that, on July 21, 2016, Brennan learned about an incident between Bracken and the appellant that occurred the prior day.[7] John Smack, a member of the Adult Supervision Unity, told Brennan about the incident. The appellant told Brennan about it the morning of July 21, 2016. Brennan was directed, by Chief Okuzo, to gather statements from witnesses. The appellant told Brennan who the witnesses were and Brennan obtained statements from each of them: Frieda Green, Kirsten Herring, Wendy Bracken, Fran Gordon and Jim Barrell, and forwarded them to Okuzo. Brennan did not review the statements.

John A. Smack was employed as a Court Services Supervisor 2 in the Probation Division. He retired after thirty-two years of employment. He became supervisor of the Intake Unit in the Adult Supervision Unit after Brennan retired November 1, 2016. In this capacity, he worked closely with the clerical unit. He remained with the Adult Supervision Unit until July 2017, when he transferred to the Juvenile Unit.

Smack knew the appellant and Bracken before he became their supervisor. He was a master probation officer prior to becoming a supervisor, which required him to interact with the clerical staff, including the appellant and Bracken. Smack often "used

[7] Brennan was out of the office on July 20, 2016.

[Bracken] as the primary . . . clerical for the intake unit. . . . She had probably the most experience of all the clerical[.]" T1 91:7-11. She would accompany him when they reported to court and assisted when they "had issues." T1 91:13. She also was responsible for logging in cases from municipal courts and distributing them among the clerical staff and would "assist with training and whatever else she had to do." T1 92:22-22. Bracken was "top notch" and was a very good employee. T1 102:16-23. The appellant's and Bracken's job duties remained the same when Smack became their supervisor.

On July 20, 2016, Bracken noticed that a fine had been incorrectly entered into the computer system. The fine was associated with a case that had been assigned to the appellant. Bracken explained to the appellant that she needed to correct the error. The interaction did not go well, as it "escalated" and the appellant told Bracken to "say please." T1 96:7-13. Employees in the vicinity heard the exchange; Smack believed the appellant felt she was "being embarrassed in front of everybody[.]" T1 96:18-19.

Smack arrived as the interaction was ending and he asked the appellant if she wished to speak with him in his office. She did, and she told him Bracken claimed the appellant incorrectly entered fines associated with two indictments and asked the appellant to enter information into the system concerning a third indictment. The appellant claimed Bracken had been verbally abusive to her. The appellant believed Bracken did not treat other staff members in this manner and that it was discriminatory. R-8. The appellant told Smack that Bracken had previously sent an email concerning the error, with a directive to correct it. Bracken's email also noted that the appellant had previously been instructed and trained concerning this procedure. Ibid. The appellant claimed that she did not enter the fines that had been incorrectly entered into the system.

Smack reviewed the entries and determined that the appellant had, in fact, made them. He attempted to show the appellant that there was no indication that another person had been involved. Ibid. The appellant replied that Bracken is rude to her, causes her embarrassment, and laughs at her in front of other staff members. She appeared stressed, and cried, during her conversation with Smack. Ibid.

Smack next spoke with Bracken, who explained that she saw the error and sent an email about it to the appellant. She then went to the appellant's desk to further explain, at which time the appellant became very defensive and accused Bracken of yelling at her. Bracken asked nearby staff members if she had yelled; they replied that she had not. She continued to discuss the matter with the appellant and asked her to correct the error. The appellant replied, "Say Please." The appellant also attempted to blame the error on someone else. Bracken told Smack she was tired of dealing with repeated episodes like this with the appellant and could not work with her. Ibid.

Smack memorialized the interaction in a July 20, 2016, memorandum, which he gave to Myra Carter, a supervisor. He testified that another person could not have input the data at issue. When an employee entered information into the computer system, or worked on or otherwise changed information in the system, that person's initials were attached to the entry. "It's like a fingerprint and there was no indication that anyone went in and changed anything[.]" T1 97: 25 to 98:1.

Smack was aware that Bracken and the appellant had difficulty getting along with each other. Each time Bracken spoke with the appellant, "it would not go well." T1 96:23-24. Smack believed Bracken became frustrated that she had to frequently address the appellant's errors and request corrections, while the appellant would deny that she had been trained to handle the matter as requested.

Smack testified that the appellant demonstrated a "paranoid" nature that caused her to believe she was being targeted, sabotaged or criticized. He described one incident in which he and another staff member responded to the appellant's concerns and explained that her worry was unfounded. The appellant replied that she did not believe them. This was an example of this type of interaction, which results in "again taking time out of the day, work not getting done [.]" T1 104:10-11.

Smack was not involved with the preparation of the PNDA against the appellant, as he had recently assumed the supervisor position. He was not, however, surprised by the Notice, as he had worked with the appellant and understood the basis for the charges.

Smack prepared one performance evaluation for the appellant, in December 2017. No improvement; stayed the same. Demotion was a possibility but he did not recommend. "[U]sually people always progress throughout the year, but she was constantly . . . needing reinforcement, constantly having to be reminded about things and . . . it's just an everyday task." T1 119:23 to 120:2. He did not "see her passing any of those competencies" enumerated on her performance assessment. T1 120:2-3.

Wendy Bracken is a Judicial Clerk 4 for the Adult Supervision Unit of the Probation Division. She had served as a judiciary clerk for approximately twenty-three years and worked in the unit in 2016. In 2016, her duties included delegating and distributing work assignments to clerical staff, monitoring work flow, and ensuring work was completed in a timely manner. She also trained new employees and staff on new procedures, attended court sessions, and tended to her own work assignments. She addressed the need for corrections to be made by clerical staff; bringing the corrections to staff's attention.

To distribute work assignments, Bracken divided the cases evenly amongst the available staff. She did not review staff members' work; rather, she would answer questions, in person and sometimes in writing.

The clerical staff had personal computer passwords, which were to be kept confidential, and work identification numbers, which were not confidential. The identify of a clerical staff person who input data into the computer system could be identified by their work identification number.

The intake process was expected to be completed within forty-eight hours. The clerical staff was aware of this expectation. Failure to intake information in the system in a timely manner could cause supervised individuals not to get into treatment programs, prevent registration of convicted sex offenders, delay notification of victims of domestic violence, and prevent probationers' reports, among other consequences. Typically, a new matter could be input into the system in four minutes. The appellant did not compare favorably to other employees, with respect to the amount of time she took to complete this task.

With respect to fines, Bracken explained that clerical staff must determine if a fine should be directed to the state or county. All clerical staff were trained to examine whether the defendants served any time in jail. If so, the fine was to be directed to the county. Fines paid by defendants who had not been in jail were to be directed to the state. On July 20, 2016, Bracken observed that the appellant identified two fines incorrectly, thus causing county fines to be directed to the state. In a July 20, 2016, email, Bracken directed the appellant to correct the errors. She wrote, "I have gone over this with you in January and in March 2016. As per the clerical meeting, I also went over this in the training on October 22, 2015." R-9. Bracken reiterated, in the email, how the fines should be directed and asked the appellant to speak with her if she did not understand. Ibid.

Bracken also spoke with the appellant about this at the appellant's cubicle. She explained the procedure and asked her to make the corrections. She asked the appellant if she remembered the policy governing direction of fines. The appellant was "nasty" toward Bracken and said she did not make the error. T1 132:21. She accused Bracken of changing her work. Bracken testified that she did not yell at or ridicule the appellant, nor did she change her work. She treated the appellant in the same manner she treated other staff members when addressing their work errors.

Bracken advised Brennan of the interaction. Brennan subsequently issued a directive that Bracken and the appellant not communicate with each other. Bracken believed the directive was issued because, "whenever I did have to communicate with [the appellant] she would accuse me of humiliating her, of retaliating her work, accuse me of changing things." T1 132:22-25. After the directive was issued, she communicated with the appellant through a supervisor. This caused some delays in processing work, to the extent a supervisor was not available when Bracken needed to distribute work assignments or discuss a work error with the appellant.

The appellant violated the directive when she said to Bracken, "Good morning, Wendy. How are you?" T1 134:13. Two staff members, one of whom was Frieda Green, overheard the appellant. Bracken did not respond, in accord with the non-communication directive, and told Brennan what happened.

Bracken observed that the appellant adversely impacted the work atmosphere. The staff functioned as a team but the appellant "wouldn't be part of the team." She was "not approachable workwise" and would claim she was being mistreated and her work was being changed. T1 136:13-14. Other staff members complained to Bracken about the appellant's work errors, including improperly creating files, giving incorrect information to clients and probation officers, and a failure to advise an officer of a pending warrant.

Frieda Green, is a Judiciary Clerk 3 for the Monmouth County Probation Division, Adult Supervision Unit. She was hired in August 2015, as a Judiciary Clerk 2. Brennan and Smack were her supervisors. Bracken was the lead clerical worker; she was the person the clerical staff would go to when they had questions and would help them resolve discrepancies in their cases.

Green explained that the staff's work assignments are "very time sensitive." T 155:8 Each clerical worker must process a case, including entering required information in the CAP System, before it can be reviewed by a supervisor and assigned to a probation officer. A client cannot be evaluated, assessed and drug tested until this has occurred. A client can be adversely impacted if a delay prevented him from meeting with his probation officer. The average case intake process could be completed in under twenty minutes; some types of cases required only five minutes' work. Barring unusual circumstances, the majority of the cases could be processed fully within forty-eight hours. If a case could not be completed with forty-eight hours, she would alert Bracken and the reason for the delay would be noted in the intake log.

Green recalled explaining to the appellant how to address restitution orders, which the appellant "struggled" to understand. T1 158:22. If restitution orders are improperly handled, the defendant who is required to pay restitution would not get proper credit when the payment is made. The appellant "did not like being assisted. She indicated that she knew what she was doing all the time, but then there was common errors and errors being made with things that . . . she was being assisted on." T1 158: 3-6.

Green witnessed the July 20, 2016, interaction between Bracken and the appellant, as she sat in the cubicle directly in front of the appellant. She prepared a July

22, 2016, memorandum detailing her observations, which she gave to her supervisor. Green explained the context of the interaction: Superior Court cases, which included domestic violence and sex offender cases, were to always be handled as priorities. The appellant had not correctly completed a Superior Court case and the probation officer was waiting for the case file. She also input incorrect fines the prior day and Bracken asked her the prior day to correct the errors. Bracken told the appellant that the officer was waiting for the file and asked if she had corrected the errors. Bracken noted that the appellant made these types of errors "continuously" and had this file for several days. Bracken offered assistance in correcting the error and completing the work on the file. R-10.

The appellant responded in a "defensive" manner and claimed that someone else altered the entries she had made for this case. Bracken asked Green and Kristen Herring, Judicial Clerk 2, to stand nearby and serve as witnesses. Bracken continued to attempt to understand the status of the case. The appellant asked Bracken to stop yelling, although Bracken was not yelling, and told Bracken that she was rude to her. Bracken replied that she was just trying to do her job and that the appellant did not understand why it was important to correct the case. The appellant became "more defensive and combative, telling [Bracken] that she should say please and thank you to her when she wants something." R-10. The appellant "dismiss[ed] [Bracken] and [did] not want the help." T1 161:25 to 162-1. Bracken walked away and supervisor Smack asked the appellant to speak with him. R-10.

Green explained that this type of interaction between Bracken and the appellant was common. Bracken "was trying to approach [the appellant] as far as helping and assisting or working – trying to just deal with doing her job basically and – they could just never have a day where the work or the conversation went smoothly. There was always a lot of tension between the both of them." T1 162:22 to 163:3. This led to the directive prohibiting Bracken and the appellant from speaking to each other. The appellant violated the directive when she greeted Bracken by saying, "Good morning, Wendy." Green was present then and observed the appellant speak to Bracken.

Myra Carter has been the Vicinage Assistant Chief Probation Officer (VACPO) since January 5, 2015. She served as Acting Civil Division Manager from June 2016, through December 2016. Within the Probation Division, her direct supervisor is Vicinage Chief Probation Officer Cee Okuzo. Okuzo reports to Trial Court Administrator Gurpreet Singh who reports to the Assignment Judge. Okuzo kept her apprised of Probation Division operations while she was Acting Civil Division Manager. She was copied on all emails, including email correspondence to the management team, in addition to other correspondence.

As VACPO, Carter was primarily responsible for oversight of all operations within the Probation Division, including eight court services supervisors. She was involved with employee evaluations and disciplines. She was copied on correspondence concerning the disciplinary charges against the appellant She was also involved with some of the investigative inquiries concerning the appellant during preceding years.

Carter explained that each judiciary clerk in the Adult Supervision Unit has an individual "JU" number that permits monitoring of each employee's entries into the CAPS System. The JU number is attached to all System entries, updates, revisions and changes.

A case cannot be assigned to a probation officer, and the client cannot be supervised, until the case has gone through the intake process. Once an officer is assigned to a client, they can meet and the client can be made aware of the terms of his probation. It was expected that all cases would be completed within forty-eight hours; however, most cases were completed the same day, with the average cases requiring only five to seven minutes. Clerical staff were trained concerning the time constraints, the reason for the constraints, and the manner in which cases should be prioritized.

The appellant participated in an "Intake Refresher" course conducted for her by Bracken on October 22, 2015. R-11. It addressed all information required for the case intake process, including fines and use of information provided on judgements of conviction. Bracken was an experienced trainer concerning intake procedures. Carter knew her to be efficient, detailed and knowledgeable.

Carter noted that the forty-eight-hour time limit was effective in August 2016. On August 16, 2016, at 9:40 a.m., the appellant was given seven cases to intake. Two were completed that day; the remainder were completed August 19, 2016. R-2. August 19 was beyond the forty-eight-hour time limit.

Carter observed and heard the interactions between clerical staff, given the proximity of her office. Other interactions were brought to her attention by staff. She was aware that the appellant and Bracken's relationship was "contentious." T2 26:16. While communication within the clerical unit was generally not good, no employee, other than the appellant, complained about Bracken to Carter. The appellant complained that Bracken gave her more difficult assignments and was mean to her. She also complained that she was given different assignments than the other clerical staff members. She made some of these complaints directly to Carter; other complaints were lodged with different immediate supervisors, including Brennan and Smack. The complaints were "continual" and "non-stop." T2 38:21 to 39:1.

With respect to the August 2016, directive that the appellant not communicate with Bracken, it applied to both the appellant and Bracken. Carter did not recall an instance in which a similar directive had been issued to any other employee. The same type of directive had been issued to the appellant once before, with respect to clerical worker Diana Luna. The August 2016, directive disrupted office operations as a supervisor needed to be involved whenever Bracken and the appellant needed to communicate about work matters. This also interfered with the supervisor's own work.

The appellant complained that her work assignments were more difficult that those given to the other clerical workers. Carter did not investigate this allegation because "there's no difference in the [intake] cases. . . . [None] is more difficult than the one prior." T2 54: 14-21. Any additional work required to process a case, such as making a phone call to confirm the amount of a fine or clarify something that was difficult to read, was routine. This was true for all cases; thus, an investigation was not required. Nonetheless, Carter asked the appellant why she believed her cases were more difficult. The appellant said that she "had to make phone calls on her cases to the municipal court or she had to

return a sentencing order because it wasn't clear, where she alleged that others did not have to on their cases." T2 55:7-11.

Carter explained that the October 11, 2015, "Intake Refresher" training course involved both instruction and demonstration of skills. The appellant would have been required to demonstrate that she knew how to do the work that was the subject of the training. T2 68 The course, which is provided on an as-needed basis, addressed all steps involved in the intake process that the trainee needs to review. The appellant's supervisor would have identified the work functions with which the appellant needed assistance.

On cross-examination, Carter was asked about the appellant's transfer requests. On December 15, 2015, the appellant sent an email to Terry Mapson-Steed, Human Resources Division Manager, in which she alleged Bracken subjected her to "a hostile work environment" and requested reassignment to another position. A-3. Mapson-Steed reported that she referred the matter to the Monmouth Vicinage Equal Employment/Affirmative Action Office for investigation. Mapson-Steed also provided the appellant with a reassignment request form and directed the appellant to return it to her. The appellant completed and delivered the form by email on December 17, 2015. In response, Mapson-Steed advised the request will be kept on file for six months, during which time the appellant will be considered for appropriate opportunities that arise. Ibid. Carter was not copied on this correspondence.

In a January 14, 2016, letter to Trial Court Administrator Singh, the appellant requested reassignment to the Civil or Family Divisions of the Superior Court. She wrote that she had been subjected to a hostile work environment. P-2. An August 26, 2016, Reassignment Request form, completed by the appellant, was attached to the letter. Ibid. The documents were forwarded in an email that was copied to Carter.[8] Ibid.

In November 2017, the appellant responded to an email that was sent to all Probation Division staff, inquiring about interest in potential reassignment to a different

[8] Carter was not authorized to unilaterally move an employee to another assignment.

unit. P-1. This was done in an effort to address morale problems that caused staff to be moved out of various teams. The goal was to identify people who were willing to move, rather than involuntarily move staff. The appellant indicated that she was interested in reassignment to the Superior Court, Family Division.

Cee Okuzo was the Monmouth Vicinage Chief Probation Officer for approximately seven years. He was responsible for the direction and evaluation of Probation Division operations. He reported to Trial Court Administrator Singh and supervised Myra Carter.

Okuzo testified concerning data input duties performed by the clerical staff. Their personal identification numbers are used to track the data they input into CAPS. "If you put anything in the system with your ID, we can track the time period when the information was entered in the system." T2 91 8-10. Although the intake process for most cases could be completed in less than five minutes, all clerical staff were notified that they were required to fully intake a case within forty-eight hours from the time it was assigned to them. Delays in this process caused delays in the probation and supervision program, as the probation officer could not be assigned and begin working with the client until the intake process had been completed for the case. This also presented risks for the Judiciary, as unsupervised clients could engage in inappropriate or illegal acts.

All clerical staff were trained concerning the disposition of fines, which required an evaluation whether the fine was to be directed to the county or state. All clerical staff are also trained concerning three diversionary programs, conditional discharge, conditional dismissal, and pre-trial intervention. Clerical staff are trained concerning the limits on access to these diversionary programs and the impact of these programs on how they perform their work. The appellant would have been trained concerning these matters from when she started working in the Probation Division in October 2012.

Okuzo learned about the interactions between staff through monthly meetings with supervisors. He also had "floor meetings" and an "open door policy" so that staff could alert him to what was happening within the work unit. T2 95:18-21. He would discuss complaints with the supervisors and ask if they had been involved and what they did to help the clerical unit. He learned that Bracken and the appellant's interactions were "not

cordial." T2 95:24. The appellant "continually or consistently" lodged complaints against Bracken, some of which were investigated and found to be "frivolous, unfounded[.]" T2 96:1-4. Okuzo observed that Bracken got along well with the other members of the clerical staff. The appellant did not get along well with the other staff members.

An incident occurred on July 20, 2016, when Bracken attempted to discuss errors made by the appellant. R-14. The appellant prepared a statement concerning the incident. She wrote that, at 11:00 a.m., Bracken asked her, in a loud voice, if she completed inputting the cases from the prior day. The appellant explained why she had not yet completed the work, noting that she needed a judgment of conviction that she did not have. Bracken said, "in a loud and sarcastic tone, 'You do not need JOC [judgment of conviction] to enter superior court cases.'" Ibid. At approximately 11:10 a.m., Bracken returned to her own cubicle, where she spoke with a probation officer and "made a sarcastic joke and said '[The appellant] was looking for a JOC to enter superior court cases." Ibid. The appellant added that Bracken and the officer laughed. Ibid. The appellant claimed that Bracken questioned her "in a rude tone" and with a "bad attitude." R-14a. She claimed that Bracken did not highlight priority cases when she assigned them to the appellant; interrupted the appellant while she was working; and walked around her cubicle at various time to watch her, which caused her to be unable to concentrate. Ibid. The appellant also claimed that someone else entered fines for cases assigned to her. Ibid.

The appellant also wrote that she heard Bracken "whisper" in Kristin Herring's[9] ear that the appellant was stupid for searching for a JOC, noting that the appellant had been working there four years. Ibid. Bracken sent the appellant an email noting errors in the inputting of fines and directing the appellant to correct the errors. Later that day, Bracken put cases on the appellant's desk "in a rude manner and with a bad attitude told her to enter the collection case." Ibid. Subsequently, Bracken asked the appellant, "in a nasty and rude tone" if she fixed the fine. Ibid. The appellant replied that she had made the correction but that she had not make the incorrect entry. The appellant believed she was being addressed inappropriately and became very upset and asked to be "treated with

[9]Herring was Judicial Clerk 2.

respect, dignity and in a professional manner." Ibid. She cried and entered Smack's office after he asked if she would like to speak with him. She told Smack that Bracken had treated her improperly several times and that she had not incorrectly entered the fine at issue. Ibid.

Okuzo directed Brennan to gather statements from witnesses.[10] Kristen Herring, Judicial Clerk 2, overheard the incident because she sat in a cubicle that was located directly adjacent to the appellant's cubicle. On July 21, 2016, she prepared a memo concerning the incident, in which she wrote that, after Bracken approached the appellant to distribute court orders for intake, the appellant "immediately became combative and said that she had so many other cases to do, and that she had to work on the VOP Calendar[.]" R-14(b). Bracken replied that she gave the appellant the same amount of cases as the other clerical workers and that this was reflected in the intake log. The appellant said she could not intake a case because she did not have restitution information. Bracken had not asked her to intake the case; rather, she needed the appellant to correct her fine entry errors. Bracken had already communicated this to the appellant by email but was following up to make sure the fines were corrected.

Bracken and the appellant also discussed a case that the appellant entered notwithstanding having been told not to do so by both Bracken and a probation officer. The appellant asserted that a change had been made to the case; Bracken replied that she was not permitted to make such a change and the employee identification number of the staff person who made the entry is readily trackable. Herring noted that the appellant previously accused Bracken of changing information on her cases. The appellant told Bracken she did not need to yell or be rude. Bracken had to ask the appellant three times before the appellant attempted to gather the necessary information.

In response to the appellant's statement that Bracken was yelling at her, Bracken said she was not yelling; rather, she speaks loudly. Herring wrote, "As someone who works directly in the clerical area, I will agree with the statement that Wendy is a loud

[10] Brennan testified she was not in the office July 20, 2016, the day of the incident. When she returned July 21, 2016, Okuzo instructed her to collect statements from each witness identified by the appellant. Brennan delivered the statements to Okuzo. She did not investigate the matter. T1 58 18 to 59 22

speaker, and never yells at anyone, laughs at anyone, or makes anyone feel uncomfortable. She tried to be helpful to [the appellant] in explaining what she had to do to fix the fines and why it should not be entered, and [the appellant] became very defensive and argumentative." Ibid.

Sherry Robinson, Administrative Specialist 2, overheard the exchange. She wrote, "At no time did [Bracken] talk 'at' [the appellant] she continually attempted to talk 'to' [her] but it was clear [the appellant] was defensive as if [Bracken] was wrong and additionally [the appellant] wanted for [Bracken] to not be so loud. It was clear to me that [Bracken] was not raising her voice and handled the situation of defensiveness in a professional manner." R-14(c).[11]

On July 21, 2016, Donna Glasser, Okuzo's confidential secretary, wrote that she overheard the exchange while sitting at her desk, which was across from the appellant's cubicle. Bracken requested the appellant correct an error and explained why and how it should be done. The appellant "became very defensive very quickly and kept insisting that was the way she had done it and [Bracken] had to repeat herself several times to get [the appellant] to understand the problem." R-14(d). The appellant complained that Bracken yelled at her. Glasser wrote that Bracken "does have a very loud voice but at no time did I hear her raise her voice any louder than she usually speaks around the office and she kept her same instructional tone throughout her repeated efforts to explain the problem. In the face of [the appellant's] accusations [Bracken] repeatedly said she was not yelling or blaming, just trying to explain." Ibid.

Okuzo reviewed these written statements, as well as the written statements provided by Smack and Green. R-8, 10. He concluded that the appellant's allegation, that Bracken yelled at her while distributing work, was unfounded.

On August 4, 2016, Bracken was "extremely upset" about an email sent to her by the appellant. In the email, the appellant made allegations against Bracken that were the same as allegations previously made against her by the appellant. The earlier allegations

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[11] Robinson's statement is not dated.

had been investigated and, on August 3, 2016, were determined to be "unfounded." R-12. Bracken expressed frustration and upset over "the continued harassment." Ibid. In an August 4, 2016, memorandum concerning the matter, Okuzo wrote, "Bracken has over 30 years with the judiciary and has never had these sorts of issues with anyone and has never felt harassed and afraid to come to work before." Ibid.

Okuzo convened a meeting to discuss the matter. He determined that Bracken and the appellant should not communicate, given the disruption being caused to the work unit. He instructed Brennan to advise the appellant, in person and by email, not to communicate with Bracken. The directive applied to all forms of communication and circumstances. Bracken and the appellant were required to communicate via Brennan or another supervisor if Brennan was unavailable. Okuzo directed Bracken to similarly not engage in any communication with the appellant and to not respond to any communications initiated by the appellant.

During the meeting, Bracken expressed upset that the "situation had been going on for three years and that she felt [the appellant's] lack of job performance was not being addressed and, as the senior clerical, [she] was having to deal with an unproductive and hostile team member. Bracken said that [the appellant] had been told in the past to not speak to her, but then continued to go to her and ask questions without going through the supervisor as instructed." Ibid. Okuzo acknowledged that this had been an ongoing problem and "the situation had escalated to the point where the entire office was affected." Ibid. He said a meeting was scheduled for the following day with the Trial Court Administrator to address the issue and he directed Bracken to file a harassment complaint in accord with office procedures.

The directive prohibiting communication between Bracken and the appellant was uncommon; however, it was not the first time such a directive was issued concerning them. It disrupted office operations and adversely impact the supervisors' work to the extent they must step in to facilitate communication.

The appellant violated the non-communication directive on August 10, 2016. Bracken returned to work that day after learning her ex-husband had died. Frieda Green,

Judicial Clerk 2, and Bracken were standing in Green's cubicle. The appellant walked by after Green hugged Bracken. The appellant said, "Good morning, Wendy." R-13. Bracken did not respond; she left the area and returned to her cubicle.

Okuzo was involved with the determination concerning the disciplinary charges filed against the Appellant. The basis for each infraction had been brought to his attention at the time they occurred and he reviewed the subsequent investigations that were conducted by others. The information is forwarded to the Human Resources department, which assists concerning disciplinary charges. He worked with Terry Mapson-Steed, Human Resources Division Manager. The charges contained in the preliminary notice of disciplinary action were based on multiple incidents.

Terry Mapson-Steed was the Monmouth Vicinage Human Resources Division Manager at the time at issue. She reported to the Trial Court Administrator, Gurpreet Singh. She was responsible for overseeing all aspects of human resources and her staff as well as payroll, recruitment and selection, benefits and employee relations. With respect to employee discipline matters, she provided guidance to management staff who initially recommended disciplines and penalties. Her role involved interpreting policy and procedure, and review of documentation to determine if discipline is warranted.

Mapson-Steed assisted with the preparation of the PNDA filed against the appellant. J-1. The totality of the incidents giving rise to the charges, as listed on the PNDA, support the charges against the appellant.

For the appellant:

Dayanara Guzman, Senior Bilingual Probation Officer, testified for the appellant. She had been employed as Monmouth County probation officer for twelve years. She reported to the Probation Division office Tuesday through Friday each week. She was on maternity leave from approximately the end of July through October 2016.

Guzman met the appellant approximately two years prior to the hearing, in January 2017. They spoke while in the Probation Division offices and socialized outside work.

She testified the appellant would come to her cubicle, upset and crying, to "vent." T3 11:3-4. She complained that people there were mean to her, talked back to her, and she did not know why. She once told Guzman, "They're discriminating against me." T3 11:10-11. The appellant would sometimes ask Guzman to explain things to her, such as the computer, in Spanish. Guzman helped when she could but was not familiar with all aspects of the appellant's work.

In 2017, Guzman heard Bracken ask the appellant about a file, "not in a nice way." T3 11:16. The appellant did not reply; Bracken asked her about the file, and "then that was it." T3 11:19. She did not witness anyone banging tables. She did not observe any other person speak to the appellant in an aggressive manner.

Guzman recommended the appellant speak with her supervisors and ask for more help with her work. She believed the appellant's situation did not improve as "she'd always come to my cubicle upset about something ... it's always something." T3 12:21-23.

Sonnia Supple, the appellant, was hired in 2005 as a Judiciary Clerk 2, Bilingual. She was assigned to the Finance Division in the Monmouth County Courthouse. On December 26, 2006, she filed a complaint against her supervisor, in which she alleged unfair treatment and a hostile workplace. She requested to be transferred.

The appellant alleged that her complaint was substantiated after an investigation and her supervisor was subsequently demoted. She claimed she was the victim of retaliation and discrimination afterward. "After I filed a complaint . . . the people started treating me very nasty and rude, in a hostile manner, with aggressive manner, and I started getting disciplinary actions . . . they created issues against me." T3 19:24 to 20:4. She alleged this continued until she was suspended in January 2018.

The appellant was transferred to the Probation Division in October 2012. She was subjected to hostile treatment by Bracken, Smack, Brennan and a woman named Gabby Cummings.

Bracken corrected the appellant's work "all the time" even though she was not supposed to correct her work. T3 21:18. Bracken also harassed the appellant and "creat[ed] negative information . . . about my job performance, about my behavior. And she was also changing information into CAPS database[.]" T3 21:18-22. Bracken approached the appellant's desk and treated her "in a rude and nasty manner and sometimes an aggressive manner . . . and asking me about my case or sometimes threw papers on my desk with bad attitude." T3 25:16-20.

The appellant believed Bracken accessed and changed her work through the computer system and she reported this to supervisors Colleen Christie, Brennan and Smack. Christie asked the Division's IT staff to determine whether Bracken changed the appellant's work. IT was unable to determine who changed the entries.

The appellant alleged that Bracken spoke disparagingly to others about her accent and said that she hated the appellant and her accent. The appellant testified that she heard Bracken say this to Frieda Green and Barbara Spanola, both Judiciary Clerk 3 staff members.

With respect to the charges against the appellant, she did not have any difficulty, errors or inefficiencies when entering information into the CAPS system. On September 20, August 16, and July 20, someone else altered the information that she put into the CAPS system. She properly and timely processed conditional discharges and did not post incorrect restitutions. She also fully complied with all managerial directives as well as Judiciary policies and procedures.

The appellant always worked efficiently and assisted her coworkers with projects, such as an inter-county project and conditional discharge and dismissal projects. She handled work for her co-workers when they were not in the office due to vacation or sick days and trained three bilingual clerks.

The appellant reported her allegations of hostile treatment to Chief Okuzo, who did not take action in response to her complaint. Although he told her an investigation would be conducted, the situation did not improve. Bracken continued to treat her poorly and

did not provide the information she needed to intake cases. Bracken continued to speak with the appellant notwithstanding a directive to not speak. Bracken approached her desk every day and put work assignments on it. The appellant offered photographs of stacks of work left on her desk in November and December 2017.[12] A-7(a), (b). She offered them to show that she was the only clerk assigned a voluminous amount of work.

The appellant testified that she was commended by supervisor Laura Selepnik for doing a good job training two bilingual clerks. Mapson-Steed also commented positively concerning the training she provided. On August 1, 2016, Chief Okuzo and Master Probation Officer Sheila B. Jones expressed their appreciation for her participation in a job fair. A-8.

On July 20, 2016, Bracken sent an email to the appellant asking her to correct fines. Bracken wrote that both had been entered as state fines. The appellant replied by way of email to Bracken, Okuzo, Brennan and Smack:

> You stated that I entered both as state fines. I let you know that the clerk performs a part of the general entry process. I **did not enter the state fines on above cases.** They were already entered into CAPS. You did not give me the opportunity to review these cases. You also interrupted me various time when I was entering the information into CAPS. As per probation officers the fines are entered into CAPS by the probation officer who handles the case.
> A-9.(emphasis in original)

In response to Bracken's statement in her email that she reviewed this with the appellant in January and March 2016, and October 22, 2015, the appellant wrote:

> My records showed me that I have not been trained in January and March 2016 regarding state fines. We had a clerical meeting but you did not provide me specific information about state fines. I am wondering if you consider as a training when you talk about a case. I am requesting you to please provide me the correct information when I needed it. In this way the case would be entered properly and timely to prevent any inconvenience. You did not give me an [sic] important

[12] These dates are visible on the documents in the photographs

> information from Criminal regarding the collection case from this client. I am again requesting you to treat me in a non-discriminatory manner with civility, dignity and respect.
> Ibid.

Bracken's treatment of the appellant did not improve after this exchange; rather, it became worse. She also did not make any changes in response to the request for additional training.

The appellant requested to be transferred to a different unit to get away from Bracken. She made this request ten times. She made one of her requests on August 26, 2016. She was advised her request would be reviewed and she would be contacted by the Human Resources office when an opportunity for which she could be considered was available. A-10.

With respect to the directive that the appellant and Bracken not communicate with each other, the appellant said she did not say, "Good morning, Wendy." Rather, she said "Good morning" to other coworkers who were near her desk, not Bracken. Bracken was not in the area of her desk when she greeted her coworkers.

On cross-examination, the appellant testified that there was a forty-eight-hour time limit for intaking cases. She acknowledged that she had an individualized password, which she did not share with anyone, and a worker identification number, which was to be kept confidential. She disputed that the identification number is always attached to an entry into the CAPS system.

The appellant asserted that the October 22, 2015, clerical meeting did not address state fines. Rather, it addressed only restitution in Superior Court cases. She further asserted that the intake process does not include allocating fines to the proper government entity. She noted that the training acknowledgement form she signed that day did not specify that the training session addressed state and county fines. R-11. The appellant also testified that she never asked for additional training.

She denied that she incorrectly entered fines, causing them to be directed to the incorrect government entry. Rather, she corrected fines that were incorrectly in the system when she received the case. She had made the correction by the time Bracken approached her to discuss the matter. She also testified that the paperwork she received "was very faded and difficult to read, so I requested to the team leader to send me another copy." T3 65:9.

The appellant was asked about the outcome of her EEOAA complaints against Bracken and Spanola. She acknowledged that the complaints were found to be unsubstantiated but she believed they were not fully investigated. She appealed the determinations to the Administrative Director of the Courts, who sustained the findings. R-19(a), (b). She noted that these conclusions concerned only the complaints she filed in 2016. She filed additional complaints in 2017 and 2018. She testified that she filed more than twenty-five complaints.

The appellant believed the fourteen-day suspension at issue was retaliation for complaints she filed while she worked for the Finance Division. She filed a complaint in 2006, because she believed her supervisor in the Finance Division treated her in a "very aggressive, unfair" and hostile manner. T3 63:11. The appellant believed "the retaliation never stopped." T3 63:21.

Additional Findings

It is the obligation of the fact finder to weigh the credibility of the witnesses before making a decision. Credibility is the value that a fact finder gives to a witness' testimony. Credibility is best described as that quality of testimony or evidence that makes it worthy of belief. "Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observations of mankind can approve as probable in the circumstances." In re Estate of Perrone, 5 N.J. 514, 522 (1950). To assess credibility, the fact finder should consider the witness' interest in the outcome, motive, or bias. A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or

with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp. 53 N.J. Super. 282, 287 (App. Div. 1958).

As the fact finder, I had the ability to observe the demeanor, tone, and physical actions of the witnesses for the respondent. Brennan and Smack testified clearly and thoroughly about office operations and policies, staff interactions, and specific incidents. They demonstrated a good understanding of their respective roles and office operations and an ample recollection of relevant facts. They also conveyed their professionalism through their testimony. I **FIND** their testimony to be credible. Similarly, Bracken's testimony demonstrated her professionalism and truthful recollection of relevant facts. She also clearly disclosed if she could not remember certain details. I, thus, **FIND** her testimony to be credible. Green demonstrated a thorough understanding of the nature of the Probation Division's operations and the clerical staff's duties, as well as the interpersonal dynamic within the office. She testified in a straightforward and clear manner and I **FIND** her testimony to be credible. The other witnesses for the respondent testified clearly about their roles and relevant facts, to the extent they had personal knowledge of those facts. I **FIND** their testimony to be credible.

As the fact finder, I also had the ability to observe the demeanor, tone, and physical actions of the appellant during the hearing. While she demonstrated genuine upset concerning the manner in which she believed she was treated by her colleagues, her testimony was internally inconsistent and contradicted. She claimed that she did not receive adequate training concerning fine dispositions; however, she also claimed that she independently corrected fine entry errors caused by others. Moreover, while she claimed that she was inadequately trained, and attributed multiple problems to this, she testified that she did not request additional training. Furthermore, while she claimed that Bracken addressed her in an inappropriate manner, and she denied speaking with Bracken when she was directed to not communicate, contemporaneous witness statements contradict these claims.

Although some of the witness statements are hearsay, they are admissible. Hearsay evidence is admissible in the trial of contested cases, and shall be accorded whatever weight the judge deems appropriate taking into account the nature, character

and scope of the evidence, the circumstances of its creation and production, and, generally, its reliability. N.J.A.C. 1:1-15.5(a). However, while hearsay evidence is admissible, some legally competent evidence must exist to support each ultimate finding of fact to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness. N.J.A.C. 1:1-15.5(b). Hearsay may be employed to corroborate competent proof, or competent proof may be supported or given added probative force by hearsay testimony, when there is a residuum of legal and competent evidence in the record. Weston v. State, 60 N.J. 36, 51 (1971).

The written statements of Kristen Herring, Sherry Robinson and Donna Glasser were written close in time to the incidents they described in their statements[12] and in response to a request from their supervisor. N.J.R.E. 803(c)(6) provides:

> A statement contained in a writing or other record of acts, events, conditions, and, subject to Rule 808, opinions or diagnoses, made at or near the time of observation by a person with actual knowledge or from information supplied by such a person, if the writing or other record was made in the regular course of business and it was the regular practice of that business to make it, unless the sources of information or the method, purpose or circumstances of preparation indicate that it is not trustworthy.

Furthermore, these written statements are corroborated by a residuum of admissible, competent evidence in the record. Smack and Green's statements, about which they testified, corroborate the accounts in the other witness' statements. Accordingly, the written statements of Herring, Robinson and Glasser are admissible.

Similarly, the emails from Regina Underwood to the appellant and to Brennan and Okuzo, which addressed errors in intaking cases with diversionary sentences, are admissible. They were written in the course of business and Brennan and Okuzo's testimony corroborated Underwood's written statements.

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[12] Herring and Glasser's statements were written July 21, 2016, the day after the incident. Robinson's statement is undated; however, Brennan was instructed to gather the witness' statements on July 21, 2016.

Furthermore, the appellant did not offer evidence supporting her claims of retaliation. Also, the evidence in the record contradicted her claim that Bracken or others altered or interfered with her entries and cases in CAPS. She also did not offer evidence supporting her claims that she was assigned inappropriately large amounts of work and more work than her colleagues. She only offered photographs of materials she asserted were work assignments, which appeared to be taken in 2017. She did not offer evidence that the photographs were taken during the relevant time period or were otherwise relevant. Finally, it should be noted that the appellant did not answer all questions in a direct manner. The same question needed to be repeated multiple times before an answer could be elicited, to the extent an answer was ultimately provided. I cannot find that the appellant's testimony was wholly reliable or credible.

The only witness who testified on behalf of the appellant, Guzman, testified in a credible manner; however, she was not present in the workplace during the relevant times. While she testified that the appellant confided that she believed she was the victim of discrimination, these communications occurred after the disciplinary action at issue. Guzman did not testify that she observed discriminatory treatment. She did, however, recommend to the appellant that she request assistance with her work.

Therefore, after having the opportunity to review the evidence and consider the testimony, I **FIND** the following additional **FACTS**:

1. The appellant received training concerning her job duties, including but not limited to an October 22, 2015, "refresher" course about the intake process. She received additional, specialized training in response to her having made errors during the intake process.

2. The appellant did not request additional training concerning her work responsibilities and tasks.

3. Each staff member is assigned a unique employee identification number. The number is attached to all data that is entered into the CAPS database. This enabled tracking of the clerical staff person who entered specific data.

4. Lead clerical worker Bracken assigned work to clerical staff. She identified and addressed errors made during the data entry ("intake") process, including errors in the allocation of fines to the appropriate government entity. She was available to the clerical staff to answer questions and provide guidance concerning their work assignments.

5. The length of time required to complete the intake process for cases varied; however, the average case could require less than ten minutes while Superior Court cases could require twenty minutes. More time was required for some cases.

6. All judicial clerks, including the appellant, were required to complete the intake process for all cases within forty-eight hours.

7. Prompt processing of cases was essential for the proper supervision of probation clients by probation officers. A delay in the intake process could cause a probation client to be without supervision and present risks for the probationer and the judiciary.

8. On August 16, 2016, the appellant was assigned seven cases for intake. She completed the intake process for four of the seven cases on August 19, 2016, three days later.

9. The appellant did not advise anyone the she was unable to meet the forty-eight-hour deadline or the reason for the delay.

10. The intake process involved allocation of fines to the appropriate government entity. A fine was to be allocated to the county if the client had spent time in jail.

11. On or about July 20, 2016, the appellant incorrectly allocated fines to government entities in two cases.

12. On July 20, 2016, Bracken observed that the appellant allocated fines to the wrong government entity. She brought this to the appellant's attention. The appellant denied responsibility for the errors.

13. The appellant claimed that Bracken spoke to her in an inappropriate manner during the conversation.

14. Several Probation Division staff members overheard or observed the exchange between the appellant and Bracken. None corroborated the appellant's claim that Bracken spoke to the appellant in an inappropriate manner or otherwise treated her inappropriately.

15. On August 4, 2016, the appellant and Bracken were instructed to not communicate with each other in any fashion.

16. On August 10, 2016, the appellant spoke to Bracken in the presence of other judiciary clerks. Bracken did not respond.

17. The appellant denied speaking to Bracken. The staff members who were present corroborated that the appellant spoke to Bracken and that Bracken did not respond.

18. Judicial clerical staff, including the appellant, were trained concerning diversionary sentences, which were conditional dismissal, conditional discharge and pretrial intervention (PTI). A person cannot have more than one diversionary sentence.

19. On August 18, 2016, the appellant improperly entered a case with a diversionary sentence into CAPS. She was advised of the error and reminded of the proper procedure for such cases, including that she was to advise a supervisor when she received a case of this type.

20. On August 23, 2016, the appellant improperly entered another case involving a diversionary sentence into CAPS. She also did not alert a supervisor to the case, contrary to the required procedure.

21. On September 22, 2016, the appellant wrote that she had not been trained concerning the procedure for handling these types of cases. She claimed she misunderstood the August 18, 2016, explanation of the procedure and that she did not handle PTI cases.

22. The appellant improperly entered another case with a diversionary sentence on October 4, 2016.

23. On September 19, 2016, Brennan directed the appellant to not print CAPS screens for intake cases. The appellant continued to print CAPS screens the following day. She claimed this was permitted during the training process. The appellant had been working for the Division four years and had completed her training.

LEGAL ANALYSIS AND CONCLUSION

The appellant's rights and duties are governed by laws including the Civil Service Act and the regulations promulgated there under. A civil service employee who commits a wrongful act related to his or her employment, or provides other just cause, may be subject to major discipline. N.J.S.A. 11A:2-6, -20; N.J.A.C. 4A2-2.2, -2.3. Major discipline includes removal, or fine or suspension for more than five working days. N.J.A.C. 4A:2-2.2. Employees may be disciplined for insubordination, neglect of duty, conduct unbecoming a public employee, failure or inability to perform duties, and other sufficient cause, among other things. N.J.A.C. 4A:2-2.3. An employee may be removed for egregious conduct without regard to progressive discipline. In re Carter, 191 N.J. 474 (2007). Otherwise, progressive discipline would be applied. W. New York v. Bock, 38 N.J. 500 (1962).

The Appointing Authority has the burden of establishing the truth of the allegations by preponderance of the credible evidence. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). Evidence is said to preponderate "if it establishes the reasonable probability of the fact." Jaeger v. Elizabethtown Consol. Gas Co., 124 N.J.L. 420, 423 (Sup. Ct. 1940) (citation omitted). The evidence must "be such as to lead a reasonably cautious mind to a given conclusion." Bornstein v. Metro. Bottling Co., 26 N.J. 263, 275 (1958); see also Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959)

The first issue in this proceeding is whether a preponderance of the credible evidence substantiates the charges set forth in the FNDA and warrants disciplinary action. If so, the second issue to be addressed is whether a fourteen-day suspension is the appropriate discipline.

The appellant is charged with violating N.J.A.C. 4A:2-2.3(a)(1) for incompetency, inefficiency, or failure to perform her duties. In this type of breach, an employee performs his or her duties, but in a manner that exhibits insufficient quality of performance, inefficiency in the results produced, or untimeliness of performance, such that his or her performance is substandard. See Clark v. N.J. Dep't of Agric., 1 N.J.A.R. 315 (1980), http://njlegallib.rutgers.edu/njar/. Incompetence means that an individual lacks the ability or the qualifications to perform the duties required of him or her. Rivera v. Hudson Cty. Dep't of Corr., CSR 6456-16, Initial Decision (October 24, 2016), http://njlaw.rutgers.edu/collections/oal/.

Here, the appellant incorrectly entered fines, causing them to be allocated to the wrong government entity; failed to intake four of seven cases within the forty-eight-hour deadline; and did not comply with the intake policy for cases that had diversionary sentences. These errors directly impacted the efficient operations of the Probation Division. Accordingly, I **CONCLUDE** respondent has demonstrated, by a preponderance of credible evidence, that appellant's conduct constitutes a violation of N.J.A.C. 4A:2-2.3(a)(1) (incompetency, inefficiency or failure to perform duties), and that such charge must be **SUSTAINED.**

The Civil Service Act does not provide a definition for the charge of insubordination, N.J.A.C. 4A:2-2.3(a)(2). The term, however, is generally interpreted to mean the refusal to obey an order of a supervisor. In re Shavers-Johnson, CSV 10838-13, Initial Decision (July 30, 2014), https://njlaw.rutgers.edu/collections/oal/. According to Webster's II New College Dictionary (1995) "insubordination" refers to acts of non-compliance and non-cooperation, as well as affirmative acts of disobedience. In In re Rudolph, CSV 5083-99 (consolidated), Initial Decision (October 23, 2000), adopted, Merit Sys. Bd. (December 18, 2000), http://njlaw.rutgers.edu/collections/oal/, the Merit System Board upheld the removal of a public works repairer for refusing to respond to the reasonable orders of his supervisor to complete an assignment.

Here, the appellant violated the non-communication directive issued by her supervisors and printed CAPS screens the day after she was told to not print those documents. The directives issued to the appellant were unambiguous and were issued by her supervisors. Accordingly, I **CONCLUDE** respondent has demonstrated, by a preponderance of credible evidence, that appellant's conduct constitutes a violation of N.J.A.C. 4A:2-2.3(a)(2) (Insubordination), and that such charge must be **SUSTAINED.**

Appellant is also charged with neglect of duty, N.J.A.C. 4A:2-2.3(a)(7). "Neglect of duty" has been interpreted to mean that an employee "neglected to perform an act required by his or her job title or was negligent in its discharge." In re Glenn, CSV 5072-07, Initial Decision (February 5, 2009), adopted, Civil Service Commission (March 27, 2009), http://njlaw.rutgers.edu/collections/oal/. The term "neglect" means a deviation from the normal standards of conduct. In re Kerlin, 151 N.J. Super. 179, 186 (App. Div. 1977). "Duty" means conformance to "the legal standard of reasonable conduct in the light of the apparent risk." Wytupeck v. Camden, 25 N.J. 450, 461 (1957) (citation omitted). Neglect of duty can arise from omitting to perform a required duty as well as from misconduct or misdoing. State v. Dunphy, 19 N.J. 531, 534 (1955). Neglect of duty does not require an intentional or willful act; however, there must be some evidence that the employee somehow breached a duty owed to the performance of the job. A failure to perform duties required by one's public position is self-evident as a basis for the imposition of a penalty in the absence of good cause for that failure.

Here, the appellant's failure to complete essential work assignments in a timely fashion, and beyond the outside limit for completion, as well as her improper entry of cases and fines, constitutes a breach of the duty she owed to the performance of her job. These were fundamental functions that were essential to the efficient and proper operation of the Probation Division. Failure to complete the duties properly and in a timely fashion can have significant consequences for the probationers, probation officers, the Judiciary and other government entities. Furthermore, by failing to adhere to directives issued by her supervisors, the appellant again breached the duty she owed to the performance of her job. Accordingly, I **CONCLUDE** respondent has demonstrated, by a preponderance of credible evidence, that appellant's conduct constitutes a violation of N.J.A.C. 4A:2-2.3(a)(7) (Neglect of Duty), and that such charge must be **SUSTAINED.** [13]

PENALTY

A civil service employee who commits a wrongful act related to his duties may be subject to major discipline. N.J.S.A. 11A:1-2(b), 11A:2-6, 11A:2-20; N.J.A.C. 4A:2-2.2, -2.3(a). This requires a de novo review of appellant's disciplinary action. In determining the appropriateness of a penalty, several factors must be considered, including the nature of the employee's offense, the concept of progressive discipline, and the employee's prior record. George v. N. Princeton Developmental Ctr., 96 N.J.A.R.2d (CSV) 463. Pursuant to West New York v. Bock, 38 N.J. 500, 523–24 (1962), concepts of progressive discipline involving penalties of increasing severity are used where appropriate. See also In re Parlo, 192 N.J. Super. 247 (App. Div. 1983). The question to be resolved is whether the discipline imposed in this case is appropriate.

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[13] The appellant suggested that the disciplinary action against her was motivated by retaliatory animus. She referenced her history of filing complaints against her coworkers and supervisors and testified that she believed the discipline at issue was retaliation for complaints she filed while she worked for the Finance Division, from 2005 to 2012. The appellant acknowledged that her past complaints had been investigated and unsubstantiated; however, she referred to newer complaints she filed in 2017 and 2018, which she implied had not been addressed. Here, the appellant offered no competent evidence supporting her claim of discrimination based on any protected category.

The appellant also referred to the fact that she had trained other staff members. She cited to training acknowledgement forms that indicated she trained some staff members on February 26, 2016. A-6(a-c). That the appellant was called upon to train colleagues, four years after she began working for the Probation Division, does not speak to her acts or omissions that are at issue here. Moreover, neither the trainees nor anyone else testified concerning the quality of the training

The Appointing Authority seeks to suspend the appellant fourteen working days for her actions. In her fourteen years as an employee for the respondent, the appellant has been disciplined multiple times. On February 4, 2009, she received a written reprimand for neglect of duty, incompetency, inefficiency and failure to perform duties, and violation of Code of Conduct for Judiciary Employees. R-15. On June 25, 2009, the appellant entered into a settlement agreement, in which the charges of neglect of duty, incompetency, inefficiency and failure to perform duties, failure to follow finance policy and procedures, and other sufficient cause -- violation of Code of Conduct for Judiciary Employees, were sustained and a one-day suspension was imposed. R-16. On January 10, 2013, the appellant was suspended three days, two without pay, for neglect of duty, incompetency, inefficiency and failure to perform duties, conduct unbecoming a judiciary employee, and other sufficient cause -- violation of Code of Conduct for Judiciary Employees. R-17. On April 9, 2013, the appellant was suspended for five days without pay for neglect of duty, incompetency, inefficiency and failure to perform duties, other sufficient cause -- violation of Code of Conduct for Judiciary Employees, and failure to comply with finance policy and procedures. R-18.

After having considered the proofs offered in this matter and the impact of the appellant's behavior upon the institution, and after having given due deference to the principal of progressive discipline, I **CONCLUDE** that appellant's violations are significant enough to warrant a penalty, which, in part, is meant to impress upon her the seriousness of the failure to comply with supervisors' directives and workplace policies and procedures, and to meet important mandatory deadlines. As this is a fourth violation for both incompetency, inefficiency and failure to perform duties and for neglect of duty, I **CONCLUDE** that the action of the appointing authority in suspending the appellant for fourteen working days is reasonable and consistent with progressive discipline, and should be affirmed.

ORDER

I hereby **ORDER** that the charges are sustained. Accordingly, I **ORDER** that the action of the Appointing Authority is **AFFIRMED**, and the appellant shall be suspended for fourteen working days.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

May 23, 2019	[signature]
DATE	JUDITH LIEBERMAN, ALJ
Date Received at Agency:	5/23/19
Date Mailed to Parties:	5/23/19

/vj

APPENDIX

LIST OF WITNESSES

For the appellant

Sonnia Supple

Dayanara Guzman

For the respondent

Gloria Brennan

John A. Smack

Wendy Bracken

Frieda Green

Myra Carter

Cee Okuzo

Terry Mapson-Steed

LIST OF EXHIBITS

Joint Exhibits:

J-1 November 9, 2016, PDNA

J-2 June 30, 2017, Hearing Officer decision, pages 1-6

J-3 August 24, 2017, FDNA

J-4 Excerpts of Collective Bargaining Agreement

For appellant:

A-1 November 22, 2017, email Supple to Glasser

A-2 January 14, 2016, email Supple to Singh

A-3 December 18, 2015, email Mapson-Steed to Supple

A-4 March 27, 2014, email Foster to Supple

A-5 March 27, 2014, email Graubard to Supple

A-6(a-c) February 26, 2016, training acknowledgements

A-7(a-b) Photographs of paperwork

A-8 August 1, 2016, letter Jones and Okuzo to Supple

A-9 August 4, 2016, email Supple to Bracken

A-10 August 30, 2016, email Mapson-Steed to Supple

For respondent:

R-1 August 4, 2016, email Brennan to Supple

R-2 Assignment log, page 39

R-3 August 31, 2016, email Underwood to Brennan

R-4 August 29, 2016, email Underwood to Brennan

R-5 October 15, 2016, email Brennan to Mapson-Steed

R-6 2016 Annual Performance Advisory

R-7 September 21, 2016, email Brennan to Steed

R-8 July 20, 2016, Smack memo

R-9 August 23, 2016, email Brennan to Mapson-Steed

R-10 July 22, 2016, Green memo

R-11 October 22, 2015, Probation Division Training Acknowledgement

R-12 August 4, 2016, emergent meeting memo

R-13 August 17, 2016, file note re: witness interviews

R-14(a-d) Supple, Herring, Robinson, Glasser memoranda

R-15 February 4, 2009, Notice of Written Reprimand

R-16 May 18, 2009, discipline package with settlement and PDNA

R-17 April 23, 2012, Notice of Minor Disciplinary Action package

R-18 August 17, 2012, Notice of Minor Disciplinary Action package

R-19(a) July 28, 2016, correspondence to Supple from Singh

R-19(b) October 4, 2016, correspondence to Singh and Supple from Grant, J.A.D.