



“SDS,” and that her use of the term “SPS” was no different than “SDS” as both referenced a genital part. It also noted that witnesses corroborated this allegation. The ODC also found that witnesses corroborated that the appellant had stated that a female African-American Administrative Supervisor only had her job because she was a black woman. With regard to the allegations that the appellant referred to a male judge as “Judge Handsome” and had stated that the Judge and his wife had been intimate in the Atlantic City Office, the ODC noted that although these allegations were substantiated and were unprofessional, they were not a violation of the State Policy. ODC also found that although the appellant denied attributing comments made by a male Judge of Compensation to the fact that he was Jewish, she did acknowledge referring to him as a “mensch.” It noted that as none of the witness corroborated the first part of the allegation, there was insufficient evidence to substantiate that allegation. However, although there were text messages which confirmed the appellant’s use of the word “mensch,” without more, the appellant’s use of that word, did not substantiate a violation of the State Policy. Finally, with regard to the last allegation, it noted that the appellant denied ever making any such comments, and none of the witnesses corroborated that the appellant had made comments of a sexual nature with regard to a gift given to a female Clerk Typist. Further, although one witness claimed that the appellant had outright stated that this female Clerk Typist would perform oral sex on the Judges if asked, the ODC noted that as this contradicted the original allegation that such sentiment was implied, but not outright stated, it found that there was insufficient credible evidence to substantiate this allegation. However, as two of the five allegations were sustained, and there were several noted concerns of unprofessional conduct with regard to several other allegations, ODC indicated that appropriate action would be undertaken.<sup>2</sup>

On appeal, the appellant argues that ODC’s determination that she had violated the State Policy was in error. In this regard, she maintains that with regard to the “SDS” comment, there was no sexual connotation, as it was merely referencing a psychological syndrome that was mentioned on the news. The appellant argues that the mere mention of a body part cannot sustain a violation of the State Policy. The appellant also asserts that it was D.P., the female Clerk Typist (noted above) who made several vulgar comments/complaints to her and had started the conversation. The appellant maintains that she told D.P. to take her complaints to D.P.’s supervisor. Moreover, the appellant argues that D.P. first referenced “SDS” in relation to another Judge, and that she merely stated “maybe” and “I don’t know.” The appellant also argues that she is “surprised at the double-standard” that complaints concerning her rhetorical question were the subject of an investigation, but apparently D.P.’s statements that she was “creeped out” by a male Judge were not investigated. The appellant also denies making any statement that a female

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<sup>2</sup> The matter was then referred to the Commission on Judicial Performance, which recommended that major discipline be taken. The appellant has appealed, and the matter was referred to a hearing in that forum.

African-American got her job because she was black. On the contrary, the appellant contends that she helped her by showing her how to start the application. The appellant notes that it was D.P. who had a “tortured history of complaints” to and from that same Judge.

In response, the ODC reiterates that its investigation substantiated that the appellant had violated the State Policy. Additionally, the ODC notes that although the appellant acknowledges that she used the term “SDS/SPS,” she attempts to mitigate it by stating that she was referencing a “psychological syndrome” and therefore, it did not violate the State Policy. However, the ODC argues that the use of the term, regardless of her intent, was a violation. The appellant’s use of a derogatory reference regarding another employee’s sex/gender, is a violation of the State Policy. In this regard, ODC contends that the State Policy specifically prohibits “generalized gender-based remarks and comments” and “verbal . . . suggestive or obscene comments.” The ODC also notes that the appellant attempts to shift blame to D.P.; notes that her and D.P. were friendly at that time; and argues that employees should be allowed “private discussions without fear that every inappropriate comment is a policy violation.” With regard to the allegations concerning the African-American female, the ODC reiterates that there were two credible witnesses who corroborated the allegation. Moreover, even if the appellant did assist that individual in obtaining her position, it does not negate the fact that the use of such a race-based comment violates that State Policy.

Additionally, the ODC argues that as there is currently a hearing pending before the Commission on Judicial Performance with regard to the appellant’s conduct, the Civil Service Commission (Commission) should not render a decision without first waiting for the outcome of that hearing.

In response, the appellant reiterates her arguments. Additionally, she asserts that the Commission on Judicial Performance does not have jurisdiction on the limited issue of a State Policy violation, and thus this matter should proceed.<sup>3</sup>

## CONCLUSION

Initially, *N.J.A.C.* 4A:2-2.1(a), provides that in State service, only permanent employees in the career service or persons serving in their working test period may appeal major disciplinary actions under that section. *N.J.A.C.* 4A:2-2.1(b) provides that appointing authorities may establish disciplinary procedures for all other employees. *See also, N.J.S.A.* 11A:2-6. *N.J.A.C.* 4A:7-3.2(n) provides that in a case where a State Policy violation has been substantiated, and no disciplinary action recommended, the party(ies) against whom the complaint was filed may appeal the determination to the Commission within 20 days of receipt of the final letter of

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<sup>3</sup> The appellant also raises arguments concerning the hearing before the Commission on Judicial Performance which will not be addressed in this matter.

determination by the State agency head or designee. Additionally, *N.J.A.C.* 4A:7-3.2(n)3 states that if disciplinary action has been recommended in the final letter of determination, any party charged who is in the career service may appeal using the procedures set forth in *N.J.A.C.* 4A:2-2 and 3 regarding minor and major discipline, respectively. The purpose of *N.J.A.C.* 4A:7-3.2(n)3 is to ensure that the issues involving the State Policy violation are addressed in the most appropriate proceeding, namely, the disciplinary appeal of a career service employee. See *In the Matter of M.M., Department of Human Services*, 403 *N.J. Super.* 128 (App. Div. 2020) (Appellate Division upheld the Commission's decision that, pursuant to *N.J.A.C.* 4A:7-3.2(n), the appellant who was found to have violated the State Policy where disciplinary action was recommended, could not appeal directly to the Commission and may only appeal using the procedures set forth in *N.J.A.C.* 4A:2-2 and 3).

Although the procedures set forth in *N.J.A.C.* 4A:2-2 and 3, *et. seq.* do not apply to unclassified employees, *N.J.A.C.* 4A:2-2(b) does provide that appointing authorities may establish major disciplinary procedures for employees not covered. The DOL has established such procedures for employees in the appellant's title by providing a comparable appeal process through the Commission on Judicial Performance. In this regard, *N.J.A.C.* 12:235-10.4 and 10.9 set forth the appeal process for Judges of Compensation to appeal recommended major discipline. Specifically, *N.J.A.C.* 12:235-10.9 provides:

When requested by the judge, a final hearing in major discipline shall be conducted by an independent hearing officer under procedures set by the hearing officer. The hearing officer will make a recommendation to the Commissioner. As feasible and as permitted by law, the hearing officer shall be a retired judge of the Superior Court. At the hearing, the Department may be represented by the Attorney General or a designated representative. After recommendation of the hearing officer or on the record if no hearing had been requested, the Commissioner shall make the final decision in all cases other than removal. The Governor, pursuant to *Art. V, Sec. IV, Par. 5 of the New Jersey Constitution* and upon recommendation of the Commissioner, may remove a judge from office.

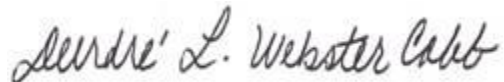
Therefore, per the above, the appropriate venue for this appeal is the Commission on Judicial Performance. In this regard, as major discipline was recommended for the violations of the State Policy, the appellant may raise any arguments regarding the findings that she had violated the State Policy in defense of the disciplinary charges against her. Accordingly, this appeal is dismissed.

**ORDER**

Therefore, it is ordered that this appeal be dismissed.

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 19<sup>TH</sup> DAY OF JANUARY, 2022



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