

LURETHA M. STRIBLING, ESQ.  
1030 South Avenue West, Suite 1A  
Westfield, New Jersey 07090  
(908) 403-0113  
Attorney for the Appellant  
Attorney ID No. 0008452004  
lmstribling@verizon.net

<p>IN THE MATTER OF IDESHA HOWARD, ESSEX COUNTY DEPARTMENT OF CORRECTIONS</p> <p>Appellant,</p>	<p>SUPERIOR COURT NEW JERSEY APPELLATE DIVISION</p> <p>DOCKET NO.: A-002406-23t4</p> <p>Civil Action</p> <p><b>AMENDED APPELLANT BRIEF</b></p> <p><b>SAT BELOW:</b> <b>DANIEL BROWN, ALJ</b> <b>OFFICE OF ADMINISTRATIVE</b> <b>LAW</b> <b>DOCKET, NO. CSR05665-23</b></p> <p><b>CIVIL SERVICE COMMISSION</b> <b>DOCKET NO. 2023-2840</b></p>
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LURETHA M. STRIBLING, ESQ.  
JANUARY 17, 2025

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### STATEMENT OF FACTS

Idesha Howard (Officer Howard or Appellant) was hired as a Correctional Police Officer on May 12, 2014 and worked at the Essex County Correctional Facility. **(6<sup>th</sup> Transcript, Hearing Tr., T82:25, T83:1-6)** On August 28, 2018, Appellant worked the night shift which was 10:00 P.M. to 6:00 A.M. and Appellant was directed by her supervisor to report to housing Unit, 2D3 and did so. **(6<sup>th</sup> Transcript, Hearing Tr., T84:12-20)** Appellant relieved Correctional Police Officer S. Williams for one hour for her meal break from 12:00 A.M. to 1:00 A.M. and upon that officer's return, Appellant covered Correctional Police Officer C. Lawson for one hour for meal break which was 1:00 A.M. to 2:00 A.M. **(6<sup>th</sup> Transcript, Hearing Tr., T86:1-15, T102:20-25, T103:1-13, T116:11-15)** During the one hour period from 1:00 A.M. to 2:00 A.M., Appellant conducted tours every thirty minutes which meant that she walked through the tiers where inmates were in cells and checked on the inmate's status. **(Pa91, 2D3 Tour Camera Footage)** In addition, Appellant monitored inmates in cells with cameras at two points within the hour by observing the inmates in their cells via the monitor at the Officer's Desk which is referred to as the POD. **(Pa92, POD Camera Footage)** When Officer Lawson returned to the unit at 2:00 A.M., Appellant had completed meal break coverage and left Unit 2D3 and Appellant had no further responsibility to perform work on Unit 2D3. **(6<sup>th</sup> Transcript, Hearing Tr., T121:11-21)** An investigation was

conducted because of an inmate death near the end of the shift on August 28, 2018. **(6<sup>th</sup> Transcript, Hearing Tr., T126:4-25, T127:1-3)** Appellant was interviewed at the Professional Standards Bureau of the Prosecutor's Office in September of 2018 and as noted, Appellant had no responsibility for Unit 2D3 and had left Unit 2D3 shortly after 2:00 A.M. after covering for meal breaks for the Correctional Police Officers that worked on that unit. **(6<sup>th</sup> Transcript, Hearing Tr., T126:22-25, T121:11-21)**

On March 3, 2022, Appellant reported to work for her shift which was the 2:00 P.M. to 10:00 P.M. shift and shortly after arrival at work, Appellant was served with charges by one of the Assistant Prosecutors from the Essex County Prosecutor's Office who handed her a Complaint and the charges on the Complaint were for the date of August 28, 2018. **(Pa1, Criminal Complaint, 3/3/22)** Appellant was served with a Preliminary Notice of Disciplinary Action (PNDA) and other documents from the Essex County Correctional Facility (ECCF) on that same date immediately suspending her from the job based on having been served with the criminal charges and for claimed violation of departmental policies. **(Pa2, PNDA 3/3/2022)** The other noted charges were N.J.A.C. 4A:2-2.3(a)(1) Incompetent, inefficient or failure to perform duties; N.J.A.C. 4A:2-2.3(a)(6) Conduct unbecoming; N.J.A.C. 4A:2-2.3(a)(7) Neglect of duty. **(Pa2, PNDA, March 3, 2022)** Appellant was represented by Counsel to address the criminal charges and on July 12, 2022, the criminal

charges were dismissed. **(Pa6, Dismissal of Criminal Charges)** Gregory Bartelloni of the Essex County Correctional Facility, Internal Affairs was notified that the criminal charges were dismissed on July 13, 2022. **(Pa10, PNDA 9/10/22)** In the time period after this dismissal of the criminal charges, there was no further communication from personnel at the Essex County Correctional Facility and Appellant was not served with another PNDA within 45 days after the dismissal of the criminal charges as was required per N.J.S.A. 30:8-18.2. On September 9, 2022, a letter was written to the Director at the Essex County Correctional Facility requesting that he return Appellant to the payroll and return her to her job. **(Pa7, Letter to Director Charles)** On the date of September 10, 2022, Appellant was served with a PNDA which was out of time. **(Pa10, PNDA 9/10/22)** The County of Essex sought to terminate Appellant's employment based on the claim that she had not performed her job and that she had falsified the Close Custody Observation Sheet. **(Pa10, PNDA 9/10/22, Pa13, Envelope, Pa14, Tracking Sheet for PNDA)** A hearing was held and the Hearing Officer recommended termination and the Appellant was terminated. **(Pa15, Hearing Officer Decision)** Thereafter, a request for a hearing was filed with the Civil Service Commission (CSC) and the matter was transmitted to the Office of Administrative Law for a hearing. **(Pa19, Notice from OAL)** The hearing took place over five days and seven witnesses provided testimony. **(Pa21, Witness List)** The hearing was presided over by Daniel Brown,



Administrative Law Judge (ALJ) who rendered a decision that was inconsistent with the testimony and evidence presented throughout the hearing. **(Pa22, ALJ Decision)**. The decision was accepted by the chairperson at the Civil Service Commission. **(Pa31, CSC Decision)** Thereafter, the instant Appeal as of Right was filed. **(Pa34, Notice of Appeal)**.

It is requested that the Appellate Court vacate the decision rendered by the Office of Administrative Law and the Civil Service Commission and enter a final decision in this matter for the Appellant. It is requested that Appellant be returned to work with back pay, benefits, seniority, all benefits that accrued in Appellant's absence and counsel fees and costs.

## **PROCEDURAL HISTORY**

Appellant was served with Internal Charges at the Essex County Correctional Facility on March 3, 2022. **(Pa2, PNDA 3/3/22)** An Internal Hearing was conducted on February 6, 2023 and February 7, 2023 and the Hearing Officer recommended termination. **(Pa15, Internal Hearing Decision)**. Appellant appealed the termination by filing an Appeal request with the Civil Service Commission and the Civil Service Commission transferred the Appeal to the Office of Administrative Law (OAL) and the matter was set down for a trial before Daniel Brown, ALJ. **(Pa19, Notice of Hearing before OAL)** The trial was conducted over five days which were September 19<sup>th</sup> and 21<sup>st</sup>, 2023 and October 3<sup>rd</sup>, 13<sup>th</sup> and 18<sup>th</sup>, 2023 and the record was closed on October 18<sup>th</sup>, 2023 with an initial decision rendered by ALJ Brown on the date of February 1, 2024. **(Pa22, ALJ Decision)** The Chairperson of the Civil Service Commission adopted the findings of fact and conclusions of law as noted in the initial decision from ALJ Brown **(Pa31, CSC Decision)** Thereafter, an Appeal as of Right was filed with the Appellate Court. **(Pa34, Notice of Appeal)**

## **LEGAL ARGUMENT**

### **POINT I**

**THE ALJ ACTED IN AN ARBITRARY, CAPRICIOUS AND UNREASONABLE MANNER IN CONDUCTING THE TRIAL AND AS A RESULT, THE DECISION RENDERED AT THE OFFICE OF ADMINISTRATIVE LAW WAS INCONSISTENT WITH THE RECORD DEVELOPED IN THAT COURT. THE DECISION SHOULD BE VACATED WITH ENTRY OF JUDGMENT FOR APPELLANT BY THIS COURT Pa22**

In the law, arbitrary and capricious means having no rational basis. Bayshore Sewerage Co. v. Department of Environmental Protection, 122 N.J. Super. 184, 199 (Decided January 15, 1973) quoting Bucknell v. United States, 422 F.2d 1055, 1057 (5<sup>th</sup> Cir. 1970). Arbitrary and capricious actions of administrative bodies represents willful and unreasoning action with no consideration of the circumstances. Id. at 199. An agency decision should not be disturbed unless it is arbitrary, capricious, unreasonable or it lacks fair support in the evidence provided in a case. In Re Carter, 191 N.J. 474, 482 (2007). Thus, an agency decision should not be overturned unless there is a showing that it is arbitrary, capricious or unreasonable or that it lacks fair support in the evidence. Id. at 482. See also Campbell v. Dept. of Civil Service, 39 N.J. 556, 562 (1963). In analysis of the agency decision, the following inquiries should be made: (1) whether the agency's actions violate express or implied legislative policies which essentially means, did the agency follow the law; (2)

whether the record contains substantial evidence to support the findings on which the agency based its actions; (3) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors. Mazza v. Board of Trs., Police & Firemen's Ret. Sys., 143 N.J. 22, 25(1995). See also Campbell v. Department of Civil Service supra at 562. An Appellate Court owes no deference to an agency's interpretation of a strictly legal issue, but, if substantial evidence supports the agency's decision, a court may not substitute its own judgment for the agency's even though the court might have reached a different result. In Re Carter, supra at 483. By the same token, an Appellate Court may not simply rubber stamp an agency's decision. In Re Taylor, 158 N.J. 644, 657 (1999). Despite the deferential standard of review that is owed to an administrative agency in the review of disciplinary sanctions imposed by the agencies, a reviewing court should alter the sanctions imposed by an administrative agency when necessary to make sure that the agency's actions are in conformity with its delegated authority. In Re Hermann, 192 N.J. 28 (2007). The Appellate Court must determine whether in review of sanctions if the punishment is disproportionate to the offense in review of all of the circumstances to result in shock to one's sense of fairness. Id. at 28-29 quoting In Re Polk, 90 N.J. 550, 578 (1982)

In order to reverse an agency's decision, the Appellate Court must reach a finding that the agency's decision was arbitrary, capricious, unreasonable or was not supported by the substantial evidence in the record as a whole. In Re Stallworth, 208 N.J. 182, 194 (2011) quoting Henry v. Rahway State Prison, 81 N.J. 571, 579-580 (1980). If a reviewing court concludes that a decision of the Commission is arbitrary, the court may either finally determine the matter by assigning an appropriate penalty or the court may remand the matter to the Commission for redetermination. Town of West New York v. Bock, 38 N.J. 500, 520 (1962). The Appellate Court review and analysis of the concerns noted on Appeal are de novo.

When the trial was conducted in the Office of Administrative Law, there was a failure to follow the law which was illustrated in how the testimony of witnesses and the documentary evidence was treated by the Court and the flawed decision reached in that forum. Succinctly, the Administrative Law Judge (ALJ) failed to follow the law. The focus of the hearing at the Office of Administrative Law (OAL) was whether the Appellant's termination was proper based on the charges assessed against Appellant. In the Supplemental Preliminary Notice of Disciplinary Action **(Pa10, PNDA Received 9/10/22)** which was received by the Appellant on September 10, 2022 and which was out of time, it was alleged that Appellant did not conduct tours as was required per the General Housing Unit Policy and that Appellant falsified the Close Custody Observation Sheet for inmate LV. **(Pa10,**

**PNDA Received 9/10/22)** The General Housing Unit Policy (**Pa38, General Housing Unit Policy**), the Special Housing Unit Policy (**Pa48, Special Housing Unit Policy**) and the Close Custody Observation Sheet of LV (**Pa82, Close Custody Observation Sheet**) were entered into evidence. Testimony was taken from Appellant and three witnesses for the Appellant who were supervisory custody staff. The witnesses were Captain Vera Cornelius (Retired), Lieutenant Wali Gibson and Sergeant James Miller.

In review of the noted policies on the issue of conducting tours of housing unit tiers where the inmates' cells were located, tours were and are to be conducted every thirty minutes. (**Pa83, General Housing Unit Policy, Pa48, Special Housing Unit Policy**) Tours that were conducted were to be documented on the Close Custody Observation Sheet. The Close Custody Observation Sheet was also used to document observations of inmates in camera cells. In addition, the Correctional Police Officer working as the Desk Officer sitting at the POD was to document in the Unit Log Book the status of the unit and if there were no issues, the entry would be "All Appears Secure." (**Pa83, Logbook for 2D3 8/28/18**) A perusal of the Logbook entries for August 28, 2018 show that throughout the night shift there were notations by the Desk Officer that All Appears Secure. Per the Log Book, new inmates were brought to 2D3 for processing and housing which required specific work from the Correctional Police Officers who were scheduled to work on Unit

2D3. Per the Logbook, the Officers scheduled to work on 2D3 on August 28, 2018 were Williams, Shelton and Lawson. The General Housing Unit Policy set forth the process and time frame for observation of the inmates. The General Housing Unit Policy was noted to have an effective date of March 1, 2008 and revised date of February 2022. **(Pa38, General Housing Unit Policy)** Under the section entitled, Security/Safety with regard to the information regarding tours, the entry noted was **“Personally observe each inmate who has been classified as being in need of close supervision as directed by an immediate supervisor or as requested by the medical department (under no circumstances shall it be more than once every thirty minutes).”** The Special Housing Unit Policy which was abbreviated as the SHU Policy applied to Unit 2D3 and with regard to tours, the following information was noted at Close Supervision on page 8, **“Inmates/Ice Detainees in the Close Custody SHU shall be personally observed at least every thirty (30) minutes on an irregular schedule.” (Pa48, Special Housing Unit Policy, page 8)**

The noted policies were adhered to by the Appellant because she conducted tours of the tiers on which the inmates were housed in cells every thirty minutes and the tour times were documented on the Close Custody Observation Sheets for the inmates. Each inmate had a Close Custody Observation Sheet on which documentation had to be done after completing the tour. There were 64 Inmates housed on 2D3 on the right side and 64 Inmates housed on 2D3 on the left side.

Despite the Appellant having followed the policies of the ECCF which was obvious from the camera footage of the Appellant engaging in electronic observations of the Inmates in camera cells following the time requirements and touring the cells every thirty minutes, Appellant was accused of not performing her job. The ALJ viewed the camera footage of Appellant conducting electronic surveillance by viewing the monitor at the POD for each inmate in camera cells and the ALJ viewed the camera footage of Appellant conducting tours. The General Housing Unit Policy and the SHU Policy were reviewed and testified about by the Appellant and witnesses Captain Vera Cornelius (Retired), Lieutenant Wali Gibson and Sergeant James Miller. This compelling evidence made it clear that Appellant had followed policies and procedures and properly performed her job, however, this evidence was disregarded by the ALJ. The ALJ reached a conclusion that was inconsistent with the documentary evidentiary material including the policies and procedures, the camera footage and the testimony of the witnesses. The conclusion reached by the ALJ failed to apply the requirements of the General Housing Unit Policy and the Special Housing Unit Policy regarding tours to the actions of the Appellant, hence, the ALJ failed to follow the law. Had the tenets of the policies been applied to this case, the Court would have had to reach the conclusion that Appellant performed her job with regard to tours appropriately. Furthermore, the Court would have had to conclude that for the Inmates in camera cells including LV, the electronic monitoring



that the Inmates were entitled to had been received. With monitoring at the POD, what is reflected is Appellant viewing the monitors and then documenting on the Close Custody Observation Sheets. The monitoring at the POD was done timely. Appellant monitored the Inmates electronically at the times between the tours which resulted in either electronic monitoring or personal observation of the Inmates in camera cells every fifteen minutes. The observations of the Inmates in camera cells included personal observation with the tours and electronic monitoring via viewing the Inmates in the camera cells. LV was observed every fifteen minutes by the tours and camera cell monitoring. In the camera footage of the tours, Appellant is observed touring the cells and at times stopping at a cell and speaking with the inmate because some of the inmates were awake at night. Appellant stopped to speak with Inmate LV at about 1:46 A.M. which was observed on the tour camera footage and to which Appellant testified. Appellant was also observed at fifteen minute intervals observing LV and other inmates who were in camera cells and documenting the observations on the Close Custody Observation Sheets at the POD. The evidence of Appellants actions were recorded in the camera footage of Appellant touring the Inmate cells on Unit 2D3 and of Appellant at the POD watching the monitor of the Inmates who were in camera cells. Appellant's actions were in compliance with the policies. At the trial, the camera footage from Unit 2D3 was viewed and clearly depicted Appellant conducting cell observations where Appellant could be seen

reviewing the monitor at the POD interspersed with touring the housing unit cells during the time when Appellant covered the Correctional Police Officers when they took their meal breaks. **(Pa92, Camera Footage from 2D3 at POD; Pa91, Camera Footage of Appellant's Tours)** There was no issue with the touring and documentation on the Close Custody Observation Sheet when Appellant covered Officer S. Williams for her break from 12:00 A.M. to 1:00 A.M. The process followed in covering for C. Lawson was exactly like the process followed when covering S. Williams when Lawson had his meal break. The camera footage for 2D3 at the POD and camera footage of Appellant touring the cells and the Close Custody Observation Sheet were entered into evidence.

The camera footage of Appellant touring the cells and Appellant observing the camera cells and documenting this information on the Close Custody Observation Sheets were reviewed when Lieutenant Zapata was questioned about his review of the camera footage. Lieutenant Zapata admitted that there was a female officer conducting the tours twice during a one hour period. **(1<sup>st</sup> Transcript, Trial Day One, T110:22-25, T111:1-10, 15-18T144:25, T145:22-25)** He also testified that there was documentation on the Close Custody Observation Sheet consistent with the tours. **(1<sup>st</sup> Transcript, Trial Day One, T23:1-25, T24:1-25, T25:1-9).** Counsel, the witnesses and the ALJ watched the camera footage intently of the Appellant touring the inmate cells consistent with policy which required tours every

thirty minutes. A review of the camera footage showed Appellant making her tours timely which were then documented on the Close Custody Observation Sheet for each inmate. Appellant was asked to explain the observation process and the documentation during her testimony. Appellant satisfied this inquiry. Appellant explained that some of the inmate cells had cameras which allowed her to conduct the observations of the inmates at 15 minute intervals for the times that she was not conducting the tours. Appellant testified that Inmates in camera cells needed to be observed every fifteen minutes which consisted of touring the inmate cells and the observation via the monitor at the POD. **(4<sup>th</sup> Transcript, Trial Day Four, T198:25, T199:1-25, T200:1-25)** Per the policy, the observation of the inmates in camera cells could be done by observing the inmates in their cells from the POD, the desk area for the Correctional Police Officers. Appellant could be seen on the camera footage for 2D3 observing the inmates in the camera cells and then documenting the observations for inmates and for LV on the Close Custody Observation Sheet at 1:00 A.M. At 1:15 A.M. Appellant was observed on the camera footage touring the entire right side of the Inmate cells. After Appellant toured the cells, she then documented the times on the Close Custody Observation Sheets. At 1:30 A.M., Appellant conducted the observation of inmates in camera cells from the monitor at the desk and documented the time on the Close Custody Observation Sheets. At 1:45 A.M., Appellant was observed on the camera footage again touring the right side of 2D3

walking past all of the inmate cells, observing them and at times stopping to talk to the inmates who were awake. Appellant then documented this on the Close Custody Observation Sheets. At 2:00 A.M., Appellant was viewed sitting at the POD, organizing her papers and at this time, C. Lawson had returned from meal break. **(Pa91, 2D3 Camera Footage of Tours; Pa92, 2D3 Camera Footage of Monitoring from the POD)**. Despite the best evidence having been presented which consisted of Unit 2D3 camera footage of Appellant touring and observing inmates in camera cells and then documenting on the Close Custody Observation Sheets, the ALJ entered a decision that Appellant had not performed her job. The evidence in the record, the Unit 2D3 camera footage of the POD and tours and the Close Custody Observation Sheet for LV made it clear that Appellant had done her job. The decision of the ALJ did not comport with the evidentiary record, thus rendering his decision arbitrary, capricious and unreasonable.

In addition to the documentary evidence supportive of Appellant's performance of her job, testimony was provided by Captain Vera Cornelius, Lieutenant Wali Gibson and Sergeant James Miller on the issue of conducting tours and monitoring inmates in camera cells. Captain Cornelius retired from the Essex County Correctional Facility after sixteen years of service. Lieutenant Gibson has worked at the Essex County Correctional Facility for about 24 years and continues to work there. Sergeant Miller has worked at the Essex County Correctional Facility

for greater than ten years and continues to work at the Essex County Correctional Facility at this time. The noted witnesses testified regarding conducting tours of the housing units and what was required with documentation on the Close Custody Observation Sheet and all of the supervisory custody staffs' testimony was consistent with the testimony from Appellant as well as the policies. The testimony of what was required in touring and documentation in the Close Custody Observation Sheets was consistent from the witnesses and was consistent with the policies, yet, the ALJ disregarded this testimony which was further evidence that Appellant performed her job properly. The testimony coupled with the documentary evidence should have exonerated Appellant and resulted in Appellant being returned to her job. Instead, the ALJ upheld the termination of Appellant. The decision reached was not consistent with the record and testimony provided. There was clear error in the conclusion reached by the ALJ as the record did not support upholding the termination. The ALJ could not reach the conclusion reached had the relevant evidence including the policies, procedures and the witness testimony been properly considered by the ALJ as noted in Mazza supra at 25.

The ALJ failed to follow the law including the policies and procedures of the ECCF. The substantial evidence in the record did not support the conclusion reached by the ALJ and in application of the policies, the law to the facts, the ALJ rendered a decision which was arbitrary, capricious, unreasonable and inconsistent with the

facts and record presented. The ALJ determination was in error. It is requested that the Appellate Court vacate the decision that was entered by the ALJ and CSC and render a final decision and order that the Appellant be returned to employment and be awarded back pay, benefits, seniority, counsel fees and costs.

## **POINT II**

### **THE COURT DISREGARDED THE TESTIMONY OF THE WITNESSES WHO WERE IN THE RANK OF SERGEANT, LIEUTENANT AND CAPTAIN WHO TESTIFIED REGARDING THE PROCESS FOR CONDUCTING TOURS, CAMERA MONITORING OF INMATES AND DOCUMENTATION ON THE CLOSE CUSTODY OBSERVATION SHEETS. Pa22, 2<sup>nd</sup> Transcript, September 21, 2023**

The sufficiency of the record was examined in the matter of Mazza v. Board of Trustees, Police and Firemen's Retirement System, supra at 22. In Mazza, it was noted that court intervention is necessary where an agency action is clearly inconsistent with its statutory mission or with state policy. Id. at 25. In this process a search is undertaken for arbitrary or unreasonable state action. Id. at 25. The judicial role is to analyze three inquiries that were cited in Campbell v. Department of Civil Service supra at 556. To reverse an administrative agency determination, the Appellate Court must find that the agency decision was arbitrary, capricious, or unreasonable or not supported by the substantial credible evidence in the record as a whole. In Re Stallworth, 208 N.J. 182 (Decided April 12, 2011). With regard to witness testimony, New Jersey Rule of Evidence (NJRE) 701 provides that a lay

witness's opinion testimony may be admitted if it: (a) is rationally based on the witness' perception; and (b) will assist in understanding the witness testimony or determining a fact in issue. NJRE 701 The testimony of the witnesses as well as the Appellant were crucial and significant in this case. The witnesses that testified were Captain Vera Cornelius (Retired), Lieutenant Wali Gibson and Sergeant James Miller, Jr.

The testimony of Captain Vera Cornelius was compelling and yet it was disregarded by the ALJ. Captain Vera Cornelius had the responsibility of management of the entire prison prior to her retirement after having worked at the Essex County Correctional Facility for sixteen years. The allegations in this case were that Appellant had failed to perform her tours and that Appellant had engaged in falsification of the Close Custody Observation Sheet for LV. Captain Cornelius testified regarding the 2D3 Unit and noted to the court that this was a specialized unit which had its own policy. **(Pa48, Special Housing Unit (SHU) Policy)**. Per the Special Housing Unit Policy, **“Close Supervision, Inmates/Ice Detainees in the Close Custody SHU shall be personally observed at least every thirty (30) minutes on an irregular schedule.” (Pa48, SHU Policy, page 7)**. Per the General Housing Policy, the personal observation of inmates is every thirty minutes as well. **(Pa38, General Housing Unit Policy)**. With regard to tours, Captain Cornelius testified that tours are to be conducted every thirty minutes and involve the officer

walking past the cells of the inmates and checking on the inmates, **(2<sup>nd</sup> Transcript, Trial Day 2., T153:21-26, T154:1-3)** She testified further that to determine whether an officer did tours, you would only need to pull the camera footage. **(2<sup>nd</sup> Transcript, Trial Day 2, T156:13-16)** It must be noted that in this case, the camera footage of the Appellant conducting the tours was pulled and played repeatedly in court. In the footage, at the start of the meal break for Lawson at 1:00 A.M., Appellant was at the POD and conducting monitoring of the inmates in camera cells and she was observed documenting on the Close Custody Observation Sheets. At 1:16 A.M., Appellant was observed getting up from her seat and going onto the area of the cells of the housing unit to tour the inmates in their cells. By the time of 1:30 A.M. Appellant was observed in the camera footage back at the POD and again monitoring the inmates in their cells and then documenting this information on the Close Custody Observation Sheets. By 1:46 A.M., Appellant is again observed touring the housing units and at one point she stops at the cell of LV and speaks with him. At 2:00 A.M., Appellant is again at the desk and observed organizing the Close Custody Observation Sheets and placing the sheets in the binder. Thus, the claim that Appellant had not performed her tours was inaccurate. The ALJ despite closely watching the camera footage in Court issued a decision which was arbitrary, capricious, unreasonable and did not comport with the evidence. It should be noted that the testimony that was given by Captain Cornelius regarding monitoring was



consistent with the requirements set forth in the Special Housing Unit Policy (**Pa48, Special Housing Unit Policy** and **Pa93, Significant Self Harm and Suicide Prevention and Intervention Policy** known as the Suicide Prevention Policy)

Captain Cornelius testified that it was the responsibility of the officer sitting at the desk to monitor inmates in camera cells from the desk. (**2<sup>nd</sup> Transcript, Trial Day 2, T156:23-26**) Captain Cornelius testified that the Tier Officer is responsible for handling observations on the tours. (**2<sup>nd</sup> Transcript, Trial Day 2, T148:17-26, T149:1-14**), It is in that role that the tours are undertaken as was observed when Appellant was covering for Tier Officer Lawson and performing the tours. Appellant not only toured but also monitored the Inmates in camera cells once back at the POD.

Captain Cornelius explained the various type of monitoring utilized on 2D3 where some of the inmates might be at risk for hurting themselves and explained to the Court that Constant Monitoring meant that an officer with a chair was to sit in front of the inmate's cell and could not leave. (**2<sup>nd</sup> Transcript, Trial Day 2, T140:10-22**) Constant monitoring per Captain Cornelius is described as one-on-one monitoring where an officer is assigned to the inmate at risk. She testified that there was also Constant Electronic monitoring which was used at the Essex County Correctional Facility (ECCF) to take the place of an officer being placed in front of the inmate's cell. (**2<sup>nd</sup> Transcript, Trial Day 2, T148:9-14**). Per Captain Cornelius, the way the unit was set up, the desk officer was responsible for monitoring the inmates in cells

who were on Constant Electronic Monitoring. (2<sup>nd</sup> Transcript, Trial Day 2, T141:11-15, T142:16-21). The various types of monitoring are documented in the Significant Self Harm and Suicide Prevention and Intervention Policy, the Suicide Prevention Policy. (Pa93, Suicide Prevention Policy). At Housing and Monitoring section of this policy, the various types of Observation of Inmates are documented. For Constant Observation **“Suicidal inmates/ICE Detainees will be monitored by assigned officers who maintain constant one-to-one visual observation, twenty-four (24) hours a day, until the inmate/ICE Detainee is released from suicide watch. Furthermore, they shall be seen by a member of medical staff at least once every eight (8) hours and daily by mental health. The assigned officer makes a face to face evaluation notation minimally every fifteen minutes on the Close Custody Supervision Report-Suicide Precautions Observation Sheet.”** (Pa93, Suicide Prevention Policy). As can be seen, Constant Observation requires that the inmate have an **assigned officer** whose sole responsibility is to sit outside of that inmates’ cell and every fifteen minutes, the officer must stand up and look into the cell to observe the inmate.

In contrast, Constant Electronic monitoring allows for monitoring of the inmates in camera cells by viewing the inmates on the monitor. Constant Electronic monitoring is what LV was on. Per the policy on the section entitled Electronic Surveillance, **“a. Observation through electronic surveillance systems may be**

used to observe inmates and to observe inmates during movements and other activities and only when approved by the Facility Administrator or designee. b. Electronic surveillance shall not be a substitute for regular contact with staff members. c. Electronic surveillance shall be utilized in such a manner as to avoid interference with the privacy of inmates, whenever possible.” (Pa93 Suicide Prevention Policy, page 8). The inmate LV was on Constant Electronic monitoring which was discussed by Captain Cornelius. Captain Cornelius testified that at ECCF, Constant Electronic monitoring took the place of an officer being placed in front of the inmate’s cell. (2<sup>nd</sup> Transcript, Trial Day 2, T148:9-14). Captain Cornelius testified that she was concerned about the use of electronic monitoring of the inmates as Constant Observation was supposed to be done by an officer **assigned** to the inmate and sitting at the inmate’s cell. The testimony of Captain Cornelius was consistent with the provisions in the noted policies, including the General Housing Policy with regard to tour frequency and the Special Housing Unit Policy with regard to tours and the various levels of monitoring, including Electronic monitoring, however, her testimony was disregarded by the ALJ who failed to apply her testimony to the facts and failed to discuss her testimony in his decision. The ALJ focused on testimony from Lt. Zapata which was inaccurate.

Lieutenant Wali Gibson was called to the witness stand and testified regarding the monitoring and his testimony was consistent with that of Captain Cornelius and

the noted policies. Wali Gibson testified that tours were to be done on the Special Housing Unit every thirty minutes. **(2<sup>nd</sup> Transcript, Trial Day 2, T87:13-17).** Gibson testified that he was the Sergeant scheduled to work 2D3 on September 28, 2018 for the morning shift which is 6:00 A.M. to 2:00 P.M. and it was at about 5:55 A.M. that LV hung himself. **(2<sup>nd</sup> Transcript, Trial Day 2. T80: 24-26, T81:1-7).** During the course of Lieutenant Wali Gibson testifying, the Court exhibited behavior which was disrespectful to this witness. At one point, the Court said to Lieutenant Gibson, “just look at me buddy, Here I am”. **(2<sup>nd</sup> Transcript, Trial Day 2, T106:10-22).** The Court also said to Lieutenant Gibson, “I need for you to turn R9 over, can you do that for me?” and look at me. **(2<sup>nd</sup> Transcript, Trial Day 2, T108:10-14, T120:21-24).**

When Sergeant James Miller testified, he said that he was assigned to do meal breaks on the SHU, 2D1 and 2D3. **(2<sup>nd</sup> Transcript, Trial Day 2, T35:4-5, T36:8-14).** He testified that he was reassigned and instead was sent out on a trip with an inmate. Of note, the Court stated that Miller’s testimony was credible. **(2<sup>nd</sup> Transcript, Trial Day 2, T76:23-25).** Lieutenant Gibson and Sergeant Miller all testified that Officer Howard was an excellent officer. **(2<sup>nd</sup> Transcript, Trial Day 2. T84:7-24, T64:18-25, T65:1-4)** Both Lieutenant Gibson and Sergeant Miller had worked with Officer Howard. Captain Cornelius testified that Officer Howard was a good officer. Of note, despite the testimony of Captain Cornelius, Lieutenant

Gibson and Sergeant Miller regarding the work environment, the policies and procedures and monitoring, the Court appeared to disregard this testimony which is absent from the decision from the Court. The Court heard testimony from Lieutenant Zapata which was inconsistent with the written policies and was inconsistent with the testimony of Captain Cornelius and Lieutenant Gibson on the issue of monitoring and tours. In the decision, the Court documented the testimony of Lieutenant Zapata despite the fact that his testimony about monitoring was inconsistent with the policies and the testimony of his peers. Lieutenant Zapata erroneously testified that inmates on Close Observation have to be monitored every fifteen minutes which requires that the officer go to the inmates cell every fifteen minutes. **(1<sup>st</sup> Transcript, Trial Day One, T77:22-25, T78:1-8, T79:10-16).** Of note, the focus of the testimony was to be on Constant Electronic Observation which is different from the Close Observation that Zapata testified about. When Zapata was asked to read the passage in the Suicide Prevention Policy which defined the Constant Electronic Observation, it was clear that going to the inmate's cell every fifteen minutes did not appear there. When the Court asked Zapata if the Constant Electronic Monitoring policy explicitly stated that electronic surveillance must be done in addition to face to face observations of the inmate, Zapata responded not necessarily. **(1<sup>st</sup> Transcript, Trial Day 1, T83:5-12)** Constant Electronic Observation did not require that the officer go to the inmate's cell every fifteen minutes. Lieutenant Zapata

testified that Constant Electronic means that the inmate is placed in a camera cell in addition to the officer viewing the inmate on camera the officer must do those 15 minutes face to face checks. **(1<sup>st</sup> Transcript, Trial Day 1, T78:1-8, T79:10-16).** Lieutenant Zapata was asked to read the Constant Electronic Monitoring in the policy and was asked if the policy explicitly states that electronic surveillance must be done in addition to face to face and Zapata admitted no. **(1<sup>st</sup> Transcript, Trial Day 1, T83:5-12).** Thus, Lieutenant Zapata's testimony did not align with the written policies and monitoring requirements, yet the court adopted his testimony which was erroneous and inconsistent with the policies. The court noted in the decision that "Captain Zapata testified that as part of Appellant's job responsibility, appellant was required to conduct in person observations of LV an inmate that was housed on the tier. It was noted that LV had previously attempted to harm himself while housed in the jail and was at risk to commit suicide. As a result on August 28, 2018 LV was placed in a cell with a camera on August 28, 2018 and was required to have in person observations by a corrections officer in fifteen minute intervals per respondents' written policy." Captain Zapata mis-stated the policy and his testimony was inconsistent with the policy and was inconsistent with the testimony of Captain Cornelius and Lieutenant Gibson. Even after having read the policy on Constant Electronic Monitoring aloud, the Court went with the initial erroneous statement about the policy from Zapata. The SHU Policy specifically notes that all inmates

receive observations every 30 minutes and as previously noted, this policy is consistent with the General Housing Unit Policy. When an inmate is at risk for hurting himself, administrators and medical personnel have to order the type of monitoring that is required. In the case of an inmate at risk for self-harm, the inmate should be provided with Constant Observation which is the one-on-one monitoring. Per Constant Observation monitoring, an officer sits outside of the inmate's cell and every fifteen minutes the officer stands up and looks into the cell at the inmate. LV was on Constant Electronic which resulted in per policy the inmate being housed in a cell with a camera. The inmate could then be monitored from the POD. On the Close Custody Observation Sheet, the monitoring that LV received was Constant Electronic. At the Suicide Prevention Policy and Constant Electronic, the following requirements are provided: **“Electronic Surveillance: (a) Observation through electronic surveillance systems may be used to observe inmates and to observe inmates during movements and other activities only when approved by the Facility Administrator or designee. (b) Electronic surveillance shall not substitute for regular contact with staff members. (c) Electronic surveillance should be utilized in such a manner as to avoid interference with the privacy of inmates whenever possible.” (Pa93, Suicide Prevention Policy).** Absent from the policy on electronic surveillance is any language that the inmate must be observed every fifteen minutes in person. The purpose of the electronic surveillance is to

allow visualization of all inmates in camera cells from the POD. Despite the testimony of Captain Cornelius and Lieutenant Gibson which was consistent with the requirements of the electronic monitoring policy, the court adopted the testimony of Lieutenant Zapata which was inconsistent with the policy. Lieutenant Zapata got electronic surveillance confused with Constant Observation which requires that the inmate be observed every fifteen minutes and as noted, inmates on Constant Observation have an officer assigned who then sits outside of the inmates' cell so that the officer is constantly observing the inmate and has no other responsibility. Lieutenant Gibson stated that the assigned officer sits outside of the inmates' cell and every fifteen minutes stands up to observe the inmate. **(2<sup>nd</sup> Transcript, T88:9-14, T101:11-19))**

It must be noted that this case is not about Appellant being responsible for LV's death. The false charge by the Prosecutor's Office on March 3, 2022 which suggested that the Appellant had placed LV in harms way was rejected after this issue was litigated and the charges were dismissed on July 12, 2022. **(Pa6, Dismissal of Criminal Charges)**. This case is about whether Appellant performed her tours every thirty minutes and monitoring and whether she properly documented the tours and monitoring on the Close Custody Observation Sheet. The PNDA served on Appellant out of time alleged that she had falsified the Close Custody Observation Sheet and had failed to conduct her tours. These allegations were refuted by the Unit 2D3



camera footage of Appellant working at the POD and the camera footage of Appellant touring the 2D3 housing unit in the time period from 1:00 A.M. to 2:00 A.M. where she satisfied the requirement to tour every thirty minutes.

The testimony from the witnesses, Captain Cornelius, Lieutenant Gibson and Sergeant Miller were not discussed in the decision. The Court failed to include the significant and relevant testimony provided by Captain Cornelius, Lieutenant Gibson and Sergeant Miller in the written decision. A perusal of the decision from the court discussed Captain Cornelius in one sentence despite the crucial testimony that she gave which goes to the heart of the case. Not only was there a failure to include and discuss the evidence obtained in this case, there was a failure to document the testimony of the witnesses, Captain Cornelius, Lieutenant Gibson and Sergeant Miller. In addition, the court wrote that because LV was at risk of suicide he was placed in the cell with a camera on August 28, 2018. That was not the testimony of any of the witnesses and the fact is that LV had been in the same cell for days and was not placed there on August 28, 2018. The Court disregarded the fact that the administrators and the physician were responsible for determining what kind of monitoring an inmate would receive and as a result of this determination, the monitoring that the inmate would receive is noted on the Close Custody Observation Sheet. In this case, LV was on Constant Electronic Monitoring.

The Court ignored the evidence in this case which supported the fact that the Appellant had followed protocol and performed her job. The camera footage from 2D3 showed the Appellant performing her job. This footage was shown to Lieutenant Zapata and he admitted that a female officer was touring the 2D3 Unit at the times documented on the Close Custody Observation Sheet. Lt. Zapata insisted that the Appellant was supposed to go to the inmate's cell every fifteen minutes but this is not the policy. Per the policy, the observations would consist of electronic monitoring at the desk and tours twice per hour. In the footage, Appellant accomplished this and at 15 minute intervals either saw the inmates during the tours or saw the inmates per the camera via electronic monitoring. When Appellant testified, she identified herself in the camera footage and noted that the female conducting the tours was her. She also described her actions at the desk where she studied the monitor and observed inmates in camera cells and then documented this information on the inmates Close Custody Observation Sheets. **(5<sup>th</sup> Transcript, Trial Day 5, T67:1-25 through to T85:1-18, T87:1-14, T98:22-25 through to T102:1-10)** The times noted on Zapatas Video Report matched the times noted on Appellant's Observation Sheet for LV. **(5<sup>th</sup> Transcript, Trial Day 5, T23:1-12, T24:1-25, T25:1-9)** The Court watched this footage intently and noted the times and then rendered a decision that Appellant did not perform her job and upheld the termination. The Court ruling was inconsistent with the testimony presented by

Appellant and witnesses, was inconsistent with the best evidence that was presented in court which included the camera footage of the officer's desk where the monitors were located and the camera footage of Appellant touring the inmate cells. The charges of falsification of a document and failure to tour were refuted by the camera footage and Appellant's documentation on the Close Custody Observation Sheets, so, the decision of the court was against the weight of the documentary evidence and testimony and was inconsistent with the law, the noted policies.

It is requested that the Appellate Court vacate the ruling of the Civil Service Commission and render a final decision and order that the Appellant be returned to employment and be awarded back pay, benefits, seniority, counsel fees and costs.

### **POINT III**

**THE COURT WAS NOTIFIED THAT THE RESPONDENT’S WITNESS, VINCENT CONTI WOULD BE CALLED TO TESTIFY AS AN ADVERSE WITNESS AS HE CLAIMED THAT HE HAD PERFORMED THE INVESTIGATION OF THE APPELLANT AND THAT SHE HAD NOT PERFORMED HER JOB ON AUGUST 28, 2018. THE COURT REFUSED TO ALLOW QUESTIONING OF CONTI AS AN ADVERSE WITNESS AND INSTEAD INTERFERED WITH QUESTIONING OF THE WITNESS**

**3<sup>rd</sup> Transcript October 3, 2023, 4<sup>th</sup> Transcript October 13, 2023, Pa22**

Court Rules and statutes in New Jersey allow for calling the other party’s witness and engaging in questioning of this witness as an adverse witness. New Jersey Rules of Evidence 611(c) permits a party to call an adverse party as a witness and subject to the Court’s discretion to interrogate through the use of leading questions. N.J.R.E. 611(c) This right to call a witness as an adverse witness is further supported by N.J.S.A. 2A:81-6 which provides, “in all civil actions in any court of record a party shall be sworn and shall give evidence when called by the adverse party, but no party shall be compelled to be sworn or give evidence in any action brought to recover a penalty or to enforce a forfeiture. This section shall not be applied to actions for divorce.” Borough of Franklin v. Smith, 466 N.J. Super. 487, 493 (Decided March 8, 2021). The issue of calling an adverse witness is further noted in N.J.S.A. 2A:81-11 which provides, except as otherwise provided by law, when any party is called as a witness by the adverse party, he shall be subject to the

same rules as to examination and cross examination as other witnesses. N.J.S.A. 2A:81-11. In Borough of Franklin the court pointed out that Federal Rule of Evidence 611(c) permits a party to call an adverse witness and to interrogate him with leading questions. Id. at 493. Our case law also provides support for calling a witness for the purpose of testimony and treating that witness for the other party as an adverse witness. This was the case is State v. Rajnai where the court noted, while broad latitude may be allowed in examining a hostile witness, especially a party called by his adversary in a civil action, it is clear that prior testimony not itself offered into evidence may be used in a limited fashion to refresh the recollection of a non-hostile witness. State v. Rajnai, 132 N.J. Super. 531,541 (App. Div. 1975).

In understanding that an important witness for the Respondents' was not going to be called by that party, this Counsel communicated with the ALJ in a conference call and notified the court that this Counsel would be calling Vincent Conti as an adverse witness. Vincent Conti had done the investigation of the Appellant and wrote that she had failed to conduct tours and had not observed the inmate LV every fifteen minutes. Vincent Conti had answered the same questions differently in different hearings. There was no objection to Mr. Conti being called as an adverse witness by the ALJ and there was no objection by the Respondent's Counsel. Vincent Conti was the identified investigator from the Internal Affairs Department at the Essex County Department of Corrections. Mr. Conti had allegedly

investigated Appellant and had issued a report claiming that she had not performed her job on August 28, 2018. Mr. Conti had testified in an internal hearing that he had engaged in further investigation of Appellant in 2022 after the criminal charges were dismissed. This Counsel was advised by Respondent's Counsel that she could not produce Vincent Conti despite the fact that he was still employed at the Essex County Correctional Facility because he was suspended as the result of an infraction, therefore she was not allowed to contact him. Respondent's Counsel provided the name of Mr. Conti's Counsel who was assisting him with the matter for which he had been suspended. The ALJ did not have the authority to issue a Subpoena. In light of this, a Subpoena Ad Testificandum was prepared by this Counsel and sent by a Process Server from Guaranteed Subpoena to the office of the Counsel for Mr. Conti. The Subpoena was served during the week prior to October 13, 2023. At the end of the week, this Counsel received notice from the attorney for Mr. Conti that he was not being allowed by Mr. Conti to accept service of the Subpoena. The ALJ was made aware of the fact that Mr. Conti would not allow his attorney to accept service of the Subpoena and that I would have to go to the Superior Court to have the subpoena enforced. Thereafter, this Counsel filed an Order to Show Cause in the Superior Court and the matter was heard by the Hon. Richard T. Sules, J.S.C. on October 13, 2023. Respondent's Counsel appeared at the Superior Court and the

Court after hearing oral argument ordered Respondent's Counsel to produce Mr. Conti that afternoon at 1:30 P.M. for trial at the Office of Administrative Law.

Mr. Conti appeared at 1:30 P.M. at the Office of Administrative Law. The ALJ was notified that he was waiting to provide testimony. When Mr. Conti was called to the witness stand, it was established that he had previously testified in the internal hearing that he had taken the proper courses required to work as an investigator. (6<sup>th</sup> Transcript, Internal Hearing for Idesha Howard 2/27/23, T11:8-25, T12:1-22)

When his credentials were provided in the Internal Hearing, the date of completion of the Basic Course for Investigators which is the initial course required to become an investigator was not completed prior to investigation of Appellant as Mr. Conti had claimed but instead the completion date per his Certificate was June 3, 2019. (Pa104, Conti Certificate) At the trial in the OAL, Mr. Conti had to admit that the course had not been completed until 2019, yet, Mr. Conti had conducted an investigation of Appellant in August of 2018. Understanding this, Mr. Conti lacked the qualifications to investigate Appellant and it was emphasized to the Court that Mr. Conti's investigation was unacceptable. Mr. Conti while testifying at the OAL stated that he began to work as an investigator in 2015. (4<sup>th</sup> Transcript, Trial Day 4, October 13, 2023, T5:21-26, T6:1-12). Further, this inconsistent testimony at two different times supported the fact that he was not reliable and had issues with credibility. When this Counsel continued in the questioning of Mr. Conti as an

adverse witness on the date of October 13, 2023, the ALJ repeatedly interrupted my questioning and instead questioned Mr. Conti in a sympathetic way. Mr. Conti was repeatedly asked by the ALJ as he was questioned about documents, does this refresh your recollection? The ALJ also emphasized to Mr. Conti if you don't remember then state that. The goal of treating Mr. Conti as an adverse witness and impeaching his testimony was thwarted by the ALJ.

When Mr. Conti was questioned about his prior testimony regarding receiving the certificate as an Investigator and as he was being impeached on this inconsistent statement, the court interrupted and said if you don't remember, just say that you don't remember whereupon, the impeachment of his testimony was thwarted by the Court. **(4<sup>th</sup> Transcript, Trial Day 4, October 13, 2023, T8:2-25, T9:1-25, T10:1-10)**. As this Counsel continued questioning Mr. Conti, the interruptions by the Court and then by Respondent's Counsel continued. The Court had to be told that I was impeaching Mr. Conti's testimony. **(4<sup>th</sup> Transcript, OAL Trial Day 4, T8:2-25 through T18:1-2)**. The Court stated that impeachment is for cross-examination, but, the court had been told from the outset that Mr. Conti was being called as an adverse witness. **(4<sup>th</sup> Transcript, OAL Trial Day 4, T19:20-25, T20:1-8)**. The Court went into a discussion about whether Mr. Conti would be treated as an adverse witness. The Court was told that reliance was placed on Court Rule 611(c) as the basis for treating Mr. Conti as an adverse witness. Of note, Mr.



Conti was the person that investigated Appellant and wrote in a report that she had not conducted the tours and had falsified the Close Custody Observation Sheet. When Mr. Conti was questioned on the policies at the ECCF regarding conducting tours and undertaking electronic monitoring, he could not explain what the tenets of those policies were. Mr. Conti mis-stated how frequently tours were to be done and how the Close Custody Observation Sheet was used and he repeatedly said, you have to refer to the policy. When Mr. Conti was questioned about the investigation that he did following the death of LV and whether he had interviewed the staff, his response was that he did not interview the staff. **(6<sup>th</sup> Transcript, Internal Hearing October 2023, T18:1-25, T19:1-4)**. When Mr. Conti was questioned at the OAL and was asked per the policy whether staff had to be interviewed in circumstances of an inmate's death, he admitted that staff had to be interviewed. **(4<sup>th</sup> Transcript, Trial Day 4, T30:25, T32:1-25, T32:1-11)** The fact that there was any belief that Vincent Conti was not adverse to the Appellant given his role which resulted in her termination from employment was unreasonable, was arbitrary, capricious and inconsistent with the law. The Court repeatedly interrupted this Counsel throughout the period in which Mr. Conti was questioned. An example of the repeated interruptions as this Counsel questioned Mr. Conti is clear from the questioning of Mr. Conti related to his investigation. **(4<sup>th</sup> Transcript, Trial Day 4, T20:14-25 through to T32:1-11)**

It is requested that the Appellate Court vacate the ruling of the Civil Service Commission and render a final decision and order that the Appellant be returned to employment and be awarded back pay, benefits, seniority, counsel fees and costs.

**POINT IV**

**THE COURT ENGAGED IN ACTIONS WHICH SET FORTH AN  
APPEARANCE OF BIAS WHICH FAVORED THE RESPONDENT AND  
WITNESSES FOR THE RESPONDENT THROUGHOUT THE TRIAL 4<sup>th</sup>**

**Transcript, October 13, 2023, Pa22**

Justice has to be administered fairly by judges but it must also appear to the public that justice has been administered fairly; justice must satisfy the appearance of justice. State v. Deutsch, 34 N.J. 190, 206 (1961) quoting Offit v. United States, 348 U.S. 11, 14 (1954). The Supreme Court noted in DeNike v. Cupo, “it is not necessary to prove actual prejudice on the part of the court” to establish an appearance of impropriety; an objectively reasonable belief that the proceedings were not fair is sufficient to prove prejudice. DeNike v. Cupo, 196 N.J. 502 (2008).

In the matter before the OAL, the Court set forth an appearance of bias. There was repeated interruption of the Appellant’s Counsel at the OAL as witnesses were questioned. There were instances where the Court engaged in detailed questioning of the Appellant’s witnesses and the interruptions and engagement in questioning of the witnesses did not occur when the Respondents were presenting their case. At

one point during the trial, this Counsel had to telephone one of the Appellant's witnesses and stepped away from the Court Room to do so. There was a need to retrieve a document from this Counsel's litigation bag which was in the court room and upon entry to the court room, the ALJ was telling the Respondent's Counsel that he used to be a government attorney. Even during the course of the trial, the ALJ stated that he had previously been employed by the Prosecutor's Office. (4<sup>th</sup> Transcript, Trial Day 4, T36:16-18). In further appearance of a bias, the Court gave weight to the testimony of Lieutenant Zapata despite the fact that his testimony was not consistent with the policy on tours and inmate monitoring and was not consistent with the testimony of supervisory witnesses. When Zapata was asked to review the Suicide Prevention Policy and read what was required for monitoring inmates who were on Constant Electronic and he was asked if the policy said that the inmate was to have face to face monitoring every fifteen minutes in addition to monitoring by camera as he repeatedly claimed, he admitted that the policy did not state face to face monitoring in addition to monitoring by camera and in fact there was no language in the Constant Electronic monitoring about face to face monitoring every fifteen minutes. (1<sup>st</sup> Transcript, Trial Day 1, T179:17-25, T80:1-3) With regard to tours, Lieutenant Zapata testified that the tours of the inmates were to be conducted every fifteen minutes who were on Constant Electronic monitoring. When he was asked to read into the record the tour requirements per the General

Housing Policy, it was read into the record that the tours were to be every thirty minutes. **(1<sup>st</sup> Transcript, Trial Day 1, T21-25, T91:10-15, T91:21-25)** There was no mention that the tours would need to be conducted every fifteen minutes but were to be conducted every thirty minutes was stated to Zapata he agreed and said yes ma'am. **(1<sup>st</sup> Transcript, Trial Day 1, T96:21-23).** Despite there being an absence per the policy of in person face to face observation every fifteen minutes for inmates who were on Constant Electronic Monitoring like LV was, this position was adopted by the Court and in the decision, the statement that the Appellant was to make in person visits to LV every fifteen minutes was included despite there being no requirement for face to face observations every fifteen minutes per the Suicide Prevention Policy and the SHU Policy. This statement in the Court decision was wrong. There was an absence in the Suicide Prevention Policy that there was to be in person observation of inmates every fifteen minutes and the testimony of Captain Cornelius made it clear that the observation of the inmates was done twice per hour on tours as tours had to be done every thirty minutes for all housing units. **(2<sup>nd</sup> Transcript, Trial Day 2, T153:21-26, T154:1-3)** The tour of inmate cells is to be done every thirty minutes per the General Housing Unit Policy and the Special Housing Unit (SHU) Policy. **(Pa38, General Housing Unit Policy and Pa48, SHU Policy)** Captain Cornelius made it clear that electronic surveillance was used to observe the inmates including LV who were in camera cells and that is how the

inmates were viewed. **(2<sup>nd</sup> Transcript, Trial Day 2, T141:11-15, T142:16-24).**

Captain Cornelius stated that the officer assigned as the desk officer sat at the POD and was responsible for viewing the inmates in camera cells and that this was the desk officer's job. **(3<sup>rd</sup> Transcript, Trial Day 3, T141:11-15, T142:16-24)** Of note, LV was on Constant Electronic which required viewing the inmate in his cell by viewing him on the monitor. Lieutenant Gibson also testified that the tours were done every thirty minutes and this was consistent with the General Housing Unit Policy and the Special Housing Unit Policy. **(2<sup>nd</sup> Transcript, Trial Day 2, T87:13-17)** Lieutenant Gibson testified that for the inmates on Constant watch, the inmate had to be observed every fifteen minutes, however, in Constant watch, an officer was assigned to monitor that inmate and sat outside of the inmate's cell. Lieutenant Gibson made it clear that the officer assigned to sit outside of the inmate's cell and stand up every fifteen minutes to observe the inmate was referred to as the Assigned Officer. The Officer that walked the housing units every thirty minutes was the Tier Officer. As a practical matter, the Tier Officer was responsible for making tours of the inmates every thirty minutes and had other responsibilities throughout the shift, so, it would not be possible to make in person observations of inmates in camera cells every fifteen minutes by going to the inmates' cells. Officer Howard covered for Officer Lawson who was a Tier Officer. As Lieutenant Gibson testified, the Tier Officer and the Assigned Officer were two different people. The Assigned Officer

was the officer that sat outside of the Inmates cell for the entire shift and every fifteen minutes, the officer stood up to view the inmate. The Tier Officer was responsible for observations of other inmates on the tours and had other work to perform on the unit. (2<sup>nd</sup> Transcript, T87:16-17, T88:9-14, T101:11-19, T125:6-25, T126:1-11).

It is requested that the Appellate Court vacate the ruling of the Civil Service Commission and render a final decision and order that the Appellant be returned to employment and be awarded back pay, benefits, seniority, counsel fees and costs.

#### **POINT V**

**THE COURT ISSUED A DECISION WHICH WAS LACKING IN ANALYSIS, FAILED TO INCORPORATE THE TESTIMONY OF THE WITNESSES FOR THE APPELLANT AND ADOPTED THE TESTIMONY OF THE WITNESSES FOR THE RESPONDENT EVEN THOUGH THE TESTIMONY GIVEN BY RESPONDENT ZAPATA WAS INCORRECT Pa22**

The Court issued a decision on February 1, 2024 which was inconsistent with the documentary, evidentiary material entered into evidence and the testimony of the witnesses. (Pa22, OAL Decision of ALJ) The trial of the termination of Appellant took place over a period of five days which were September 19<sup>th</sup>, September 21<sup>st</sup>, October 3<sup>rd</sup>, October 13<sup>th</sup> and October 18<sup>th</sup>, 2023, but, the court failed to list the date of September 21<sup>st</sup>, 2023 in the decision. On September 21<sup>st</sup>, 2023, Sergeant Miller, Lieutenant Wali Gibson and Captain Cornelius provided testimony. Of note, there

was no documentation of the testimony of Sergeant Miller, Lieutenant Wali Gibson and scant documentation of the testimony from Captain Cornelius included in the decision from the court. Captain Cornelius and Lieutenant Gibson. provided consistent testimony of what the policies required with regard to monitoring of inmates and tours of inmate housing which were the central issues in this Appeal. Appellant testified and explained what she had done within the one hour that she covered the meal break for Officer Lawson and her testimony was minimized and it was claimed that Appellant had a credibility problem. In addition, the footage of the Unit 2D3 was repeatedly viewed during the course of the trial and Lieutenant Zapata viewed this footage and admitted that a female officer was viewed touring the housing unit twice during the time period of 1:00 A.M. to 2:00 A.M. When Appellant was asked to describe her work during the one hour period, video footage was reviewed and Appellant explained her actions. Appellant at 1:00 A.M. was seen sitting at the POD and watching the monitor to see what the inmates in camera cells were doing and then she documented this on the Close Custody Observation Sheet. At 1:16 A.M., Appellant described what she was doing and at this time, she was clearly conducting the tour of the housing unit for the inmates that were the responsibility of Officer Lawson. At 1:30 A.M., Appellant described what she was doing as she sat at the POD. At this time, she was watching the inmates in camera cells and then she documented this on each inmates Close Custody Observation

Sheet. At 1:46 A.M., Appellant was again conducting a tour of the housing for the inmates and in the footage, she is observed stopping at the last cell to the left and talking to the inmate. In this tour, Appellant was actually speaking with Inmate LV. At the time of 2:00 A.M., Appellant was again seen on video footage sitting at the POD and organizing documents and at this time Lawson had returned. The Close Custody Observation Sheets were placed in a binder. **(5<sup>th</sup> Transcript, Trial Day T67:21-25 to T85:1-18, T87:1-14)** Despite it being obvious that Appellant performed her job responsibilities, she was accused of failing to conduct tours and then falsifying LV's Close Custody Observation Sheet. These charges were erroneous and resulted from the Lieutenant Zapata testifying that Appellant was supposed to view LV every fifteen minutes in person. As has been noted in this brief, inmates like LV on Constant Electronic were entitled to two tours per hour and electronic monitoring interspersed with that which resulted in observations of LV and inmates on Constant Electronic four times during one hour. Recall that Zapata had to admit that the Suicide Prevention Policy for Constant Electronic did not say that inmates had to be observed face to face every fifteen minutes. Lieutenant Zapata agreed that the language of face to face observation every fifteen minutes was not a part of that policy. The Court adopted the false understanding of monitoring that was erroneously testified to by Lieutenant Zapata. It was pointed out in this matter that the General Housing Policy required that tours of inmate housing was to be done



every thirty minutes. It was also pointed out that inmates on Constant Electronic monitoring were not entitled to face to face monitoring every fifteen minutes in addition to electronic monitoring which Lieutenant Zapata read into the record and reluctantly agreed with this Counsel on monitoring.

The Court heard the testimony from the Appellant and viewed the best evidence of what her actions were on August 28, 2018 and therefore, made a determination that was not supported by the record. After the repeated review of the video footage from the POD and the tours that Appellant conducted, it was error for the Court to conclude that Appellant had not done her job. There was no basis for stating that there was falsification of the Close Custody Observation Sheet. Clearly from the video footage it was clear that Appellant fulfilled her job responsibility. Appellant stated that the 2:01 entry may have been made by someone else on the Close Custody Observation Sheet, however, from the video footage, the work that was required of Appellant was performed. There is no basis to claim that there was falsification of the Close Custody Observation Sheet which was based on the erroneous belief that all inmate monitoring had to be face to face. The issue in this case appears to be that Lieutenant Zapata made his allegations because he erroneously believed that the Appellant was to make four in person face to face views of the inmate LV during the one hour period. As previously noted, Constant Electronic Monitoring does not require in person face to face view of the inmate LV

every fifteen minutes and after this was pointed out to Lieutenant Zapata per the policy, he reluctantly agreed that the policy did not require face to face in person observations every 15 minutes of an inmate on Constant Electronic Monitoring.

The Court reached a conclusion not supported by the documentary evidentiary material entered into evidence. The Court wrote that in person observations could have been performed if LV was in housing in general population. The Court erred here because both the General Housing Policy and the Special Housing Policy for the location where LV was housed were consistent and noted that in person observations by way of tours were required every thirty minutes. In the General Housing Policy the information about tours read as follows: **Inmates shall be personally observed by an officer at least twice (2) per hour, but no more than (30) minutes apart on a regular schedule, on ALL housing units. (Pa38, General Housing Unit Policy, page 6)** When the Special Housing Unit Policy is reviewed with regard to tours, it reads at Close Supervision on page 7, **Inmates/Ice Detainees in the Close Custody SHU shall be personally observed at least every thirty minutes on an irregular schedule. (Pa48, Special Housing Unit Policy, page 7)** Finally, when looking at the Suicide Prevention Policy, the type of monitoring in addition to tours is set forth. In this case, the Inmate LV was on Constant Electronic Monitoring which reads: (a) Observation through electronic surveillance systems may be used to observe inmates and to observe inmates during movements and other

activities and only when approved by the Facility Administrator or designee (b) Electronic surveillance shall not substitute for regular contact with staff members.

(c) Electronic surveillance shall be utilized in such a manner to avoid interference with the privacy of inmates, whenever possible. **(Pa93, Suicide Prevention Policy).**

In order for an inmate to be placed on Constant Electronic, it is approved by an administrator in conjunction with the medical director in order for the Close Custody Observation Sheet to get this designation. In the case of an inmate being on Constant Electronic, the inmate is not deprived of regular contact with staff because tours are done every thirty minutes. It should be noted that the testimony of Captain Cornelius and Lieutenant Gibson was consistent with the noted policies on the issue of tours and monitoring of inmates. The Court did not understand the policies as in the decision, the Court wrote that tours for the inmates are every thirty minutes only if the inmate is in general population, however both the General Housing Unit Policy and the Special Housing Unit Policy document that tours are to be done every thirty minutes for all housing units. Under Constant Electronic as Lieutenant Zapata finally admitted, the inmate is to receive tours every thirty minutes and then camera monitoring between the tours which amounted to the inmate being viewed every fifteen minutes. As Captain Cornelius pointed out during her testimony, Constant Electronic was used as a result of staffing issues and to provide a mechanism for monitoring the inmates. The Court in error wrote that “I find that appellant was

required as part of her job duties on August 28, 2018 between 1:00 A.M and 2:00 A.M to perform 15 minutes in-person checks of L.V. and that appellant did not do so.” This conclusion by the Court is shocking, inaccurate and inconsistent with the record. The finding that the Appellant did not perform 15 minute in person checks of LV is correct, because, there was no requirement to perform in person fifteen minute checks on inmates on Constant Electronic Monitoring. Appellant did provide the appropriate monitoring per policy by performing tours every thirty minutes and observation of inmates in camera cells by viewing the inmates in their cells via the monitor. Appellant did not testify to nor did she document that she did 15 minute in person checks of the inmate LV. As Appellant testified, the work done in touring the inmate cells and in Electronic Surveillance are included on the Close Custody Observation Sheet. The documentation of the tours and electronic surveillance on the Close Custody Observation Sheet is the pattern and practice at the ECCF. Because there was no requirement to perform in person checks of the inmate LV every fifteen minutes, there was no falsification of the entries. The Court watched intently as did everyone else in the court room the Appellant monitoring the inmates in camera cells as LV was at 1:00 A.M and 1:30 A.M. and at 2:00 A.M. Lawson returned. Thus, it is clear that the monitoring of the inmate LV was proper. At the other time periods of 1:16 A.M. and 1:46 A.M., Appellant is viewed in camera footage touring the housing areas where all of the inmates were in cells. There was

no falsification and it is astonishing that after the detailed testimony of the Appellant which is consistent with the camera footage that the Court could reach such an erroneous and detrimental conclusion which failed to find in Appellant's favor. The documentation on the Close Custody Observation Sheet was accurate.

In this case, there was no failure to perform tours nor was there falsification of the Close Custody Observation Sheet. As was testified to, Appellant had worked at the Essex County Correctional Facility since 2014, she was regarded highly by the witnesses that testified including Sergeant Miller, Lieutenant Gibson and Captain Cornelius, she had no disciplinary action in her work history and was attentive to the work required of her. A Progressive Discipline Policy was in place at ECCF. There is a requirement with regard to Progressive Discipline Policy and the statutes and administrative code as well as case law to look at mitigation in cases where there has been some violation which warrants discipline and the Court failed to engage in this analysis. Because Appellant had performed her job, there were no infractions to mitigate, however, the court never discussed nor engaged in this analysis. In the final analysis, Appellant was charged with failure to perform tours and falsification of the Close Custody Observation Sheet as a result of the failure of Lieutenant Zapata and Vincent Conti to understand the policies including the Special Housing Unit Policy, the General Housing Unit Policy and the Suicide Prevention Policy. Because the Court failed to understand the requirements per the policies that were repeatedly

discussed in Court and relied on the testimony of Zapata and Conti, the conclusion reached by the ALJ was in error. The Chairperson of the Civil Service Commission appeared to have some concerns about the scant analysis of the evidence by the ALJ, however, rubberstamped the conclusion reached by the ALJ which was inconsistent with the evidentiary record and policies to the Appellant's detriment.

It must be pointed out as well in review of the Appendix in the Decision that the Court in error has the Appellant's witnesses listed as Carlos Zapata and Thomas McEnroe. Both of those witnesses were actually witnesses for the Respondent. In turn, in error, the witnesses listed under Respondent are actually the witnesses for the Appellant which include James Miller, Wali Gibson, Captain Cornelius, Vincent Conti and Idesha Howard. The Court failed to list Vincent Conti as a witness despite the fact that Mr. Conti was ordered to appear and provide testimony.

With regard to the Exhibits entered into evidence for the Appellant, the only exhibits that were not in evidence were P5 which was a Transfer Form, P12 an Autopsy Report for LV, P19 Promotional List and P20 Promotional List. The exhibits in evidence were P1 Preliminary Notice of Disciplinary Action, P2 Notice of Dismissal of Criminal Charges, P3 Envelope of Certified Mailing of PNDA dated September 10, 2022, P4 Significant Self Harm and Suicide Prevention and Intervention Policy, P6 Close Custody Observation Sheet for LV, P7 Logbook for 2D3, P8 Essex County Correctional Staff Schedule, P9 Howard Supplemental

Notice of Disciplinary Action, P10 Post Order for the General Housing Unit, P11 Letter of Dismissal of Criminal Charges from the Prosecutor's Office, P12 Conti Investigative Report, P13 Conti Certification of Training, P15 CD of the POD or Platform on 2D3, P16 CD of the Appellant touring the housing units, P17 Letter to Ronald Charles, P18 Zapata Investigative Report of Analysis of the camera footage and P21 Special Housing Unit Policy. The markings of what was not in evidence was incorrect on the Appendix.

It is requested that the Appellate Court vacate the ruling of the Civil Service Commission and render a final decision and order that the Appellant be returned to employment and be awarded back pay, benefits, seniority, counsel fees and costs.

### **CONCLUSION**

For all of the reasons set forth in the Appellant's Brief, the Appendix, the case law and Court rules it is requested that the Appellate Court vacate the ruling of the Civil Service Commission and enter a decision in favor of Appellant and reinstate the Appellant to her job with back pay, seniority, benefits and the award of counsel fees and costs and any and all other relief that the Court deems appropriate.

Luretha M. Stribling  
Luretha M. Stribling  
Attorney for Appellant

DATED: January 17, 2025

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**Superior Court of New Jersey**  
**Appellate Division**

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Docket No. A-002406-23T2

IN THE MATTER OF	:	CIVIL ACTION
IDESHA HOWARD, ESSEX	:	
COUNTY DEPARTMENT	:	ON APPEAL FROM
OF CORRECTIONS	:	THE FINAL AGENCY
	:	DECISION OF THE
	:	NEW JERSEY CIVIL
	:	SERVICE COMMISSION
	:	Sat Below:
	:	DANIEL BROWN, ALJ
	:	OFFICE OF
	:	ADMINISTRATIVE LAW
	:	DOCKET NO. CSR05655-23
	:	CIVIL SERVICE
	:	COMMISSION DOCKET NO.
	:	2023-2840

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**BRIEF FOR RESPONDENT ESSEX COUNTY  
DEPARTMENT OF CORRECTIONS**

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CHIESA SHAHINIAN &  
GIANTOMASI PC  
*Attorneys for Respondent Essex  
County Department of  
Corrections*

*On the Brief:*

COURTNEY M. GACCIONE, ESQ.  
Attorney ID# 0207311996  
ALICE M.B. ANDERSON, ESQ.  
Attorney ID# 204752017

105 Eisenhower Parkway  
Roseland, New Jersey 07068  
(973) 325-1500  
cgaccione@csglaw.com  
aanderson@csglaw.com

Date Submitted: February 28, 2025





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## PRELIMINARY STATEMENT

Appellant Idesha Howard (“Appellant”), an individual formerly employed as a Corrections Officer by the Essex County Correctional Facility (“ECCF”), is appealing the New Jersey Civil Service Commission’s (the “Commission”) February 28, 2024 Final Administrative Action (the “Final Decision”) adopting the Office of Administrative Law’s (“OAL”) February 1, 2024 Initial Decision to sustain the charges against, and subsequent removal of, Appellant from her position following a five-day hearing before an Administrative Law Judge (the “ALJ”). After conducting an independent review of the underlying record, the Commission adopted the findings of fact and conclusions of law set forth by the ALJ as its Final Decision, adding only additional analysis to support the ALJ’s determination that removal was the proper penalty.

Rather than provide any evidence to demonstrate how the Commission’s Final Decision was arbitrary, capricious, unreasonable or unsupported by substantial credible evidence, Appellant makes immaterial arguments and ignores all facts that do not support her blatantly incorrect version of events. The Commission correctly recognized that as an employee of ECCF, Appellant was required to follow the ECCF’s Post Order-General Housing Unit, Special Housing Unit, and Significant Self Harm and Suicide Prevention Intervention Policies (collectively the “ECCF Policies”). Appellant not only failed to abide

by those policies, but she submitted a report falsely indicating that the ECCF policies had been followed. This was demonstrated by the undisputed video footage and testimony presented in the record to the ALJ. Appellant's focus on the ALJ's alleged procedural defects and bias does not change the unambiguous ECCF Policies that Appellant violated. Appellant cannot show—because the record does not support—that the Commission's Final Decision was arbitrary or capricious. Accordingly, the Commission's Final Decision was proper as a matter of law and should be affirmed.

### **COMBINED STATEMENT OF FACTS & PROCEDURAL HISTORY<sup>1</sup>**

On August 28, 2018, while working the overnight shift from 10 p.m.-6 a.m. at the ECCF, Appellant was assigned to provide coverage for another officer during that officer's meal break. Between the hours of 1:00 a.m. and 2:00 a.m., Appellant was responsible for conducting tours of the 2D3 tier of the housing unit at the ECCF, which included an inmate that was on suicide watch. Pursuant to the applicable ECCF policies, Appellant was required to conduct in-person observations of the inmate on suicide watch every fifteen minutes. Pa099-100. Specifically, the relevant policies stated that “[i]nmates on suicide precautions who have not been placed in an isolated confinement setting by the

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<sup>1</sup> The procedural history and factual background overlap and are combined to avoid repetition for the Court's convenience.

qualified mental health professional will receive documented close observation at staggered intervals not to exceed 15 minutes[.]” Id. Importantly, the policy further specified that “Electronic Surveillance shall not substitute for regular contact with staff members.” Pa100.

During the relevant time period, Appellant failed to conduct the required in-person cell checks on the inmate and then falsely reported that such checks in fact occurred. Pa001. According to the Close Custody Supervision Report – Constant/Close Observation Sheet (the “Close Custody Supervision Report”) dated August 28, 2018, Appellant recorded that she conducted a close custody check of the inmate at 1:00 a.m., 1:16 a.m., 1:30 a.m., 1:46 a.m., and 2:01 a.m. Pa082. However, Appellant admits (and video surveillance footage presented at the OAL hearing confirmed) that while Appellant conducted the 1:16 a.m. and 1:47 a.m. close custody checks in-person, she did not conduct an in-person close custody check of the inmate at 1:00 a.m., 1:30 a.m., or 2:01 a.m., despite her indication to the contrary on the Close Custody Supervision Report. Pa082. Day 5 T12:11-13; Day 5 T195:17-21; Day 5 T196:7-11; App. Br. p.42-43. Tragically, the inmate committed suicide later that morning. Pa001.

Following the incident, on September 24, 2018 the Essex County Prosecutor’s Office (“ECPO”) notified ECCF Director Alfaro Ortiz that the ECPO was conducting an investigation of the incident. The ECPO instructed

Director Ortiz to cease any administrative investigation during the pendency of the ECPO investigation, indicating that the “[t]he (45) forty-five-day rule is tolled.” Ra01. The ECPO ultimately charged Appellant on March 3, 2022 with knowingly engaging in conduct which creates a substantial risk of serious bodily injury to another person in violation of N.J.S.A. 2C:24-7.1A (3); and knowingly creating a false record in violation of N.J.S.A. 2C:28-7A (1). Pa001.

As a result of the criminal charges, the Essex County Department of Corrections issued a Preliminary Notice of Disciplinary Action on March 3, 2022 (the “March 3, 2022 PNDA”) to Appellant, charging her with failure to perform duties, conduct unbecoming a public employee, neglect of duty, and “other sufficient cause” pursuant to N.J.A.C. 4A:2-2.3(a)(1), (6), (7), and (12). Pa003-005. Per the March 3, 2022 PNDA’s recommendation, Appellant was immediately suspended without pay from her employment, pending disposition of the criminal charges. Id.

The ECPO ultimately dismissed the criminal charges against Appellant on July 12, 2022. Pa006. The following day, the ECPO notified the Internal Affairs Department at the ECCF (“IA”) that the criminal charges against Appellant had been dismissed. Ra02. Upon dismissal of the criminal charges, IA was permitted to then begin its own investigation. IA immediately commenced its administrative investigation which it concluded on August 20, 2022. Ra05.

After receiving the IA investigation report on August 22, 2022, and based on the report's findings, the Director issued a Supplemental PNDA dated August 31, 2022 (the "August 31, 2022 PNDA"), charging Appellant with failure to perform duties, conduct unbecoming of a public employee, neglect of duty, and "other sufficient cause" pursuant to N.J.A.C. 4a:2-2.3(a)(1), (6), (7), and (12). Pa010. Per the recommendation of the August 31, 2022 PNDA, Appellant's suspension was continued. Pa010-Pa012. Following the August 31, 2022 PNDA, on September 11, 2022, Appellant appealed to the Commission for interim relief citing to procedural defects surrounding the 45-day rule. The Commission issued a decision on December 7, 2022, and then a final decision following Appellant's request for reconsideration on July 19, 2023 which upheld the PNDA, finding that the ECCF had not violated the 45-day rule. In July 2023, Appellant filed an appeal with the Appellate Division, in which the Court upheld the Commission's decision in In the Matter of Idesha Howard, A-003889-22.

Simultaneously to Appellant's first appeal regarding the 45-day rule, the ECCF held a departmental disciplinary hearing over three days to determine whether the disciplinary charges in the August 31, 2022 PNDA could be sustained. Pa015. In his February 27, 2023 Recommendation, the neutral Hearing Officer sustained the charges set forth in in the August 31, 2022 PNDA and recommended that Appellant be removed from her employment with the



ECCF based upon a preponderance of the credible evidence presented at the hearing. Pa018. Following the Hearing Officer's decision, Appellant appealed the case to the OAL. Pa019. The OAL hearing proceeded in front of the Honorable Daniel J. Brown, ALJ over the course of five days in the fall of 2023, during which the ALJ was presented witness testimony and documentary evidence presented by both Appellant and Respondent. Upon consideration of the evidence presented at the hearing, the ALJ issued his opinion via the Initial Decision on February 1, 2024 sustaining the removal of Appellant from her employment at the ECCF. Pa022-023. On February 28, 2024, the Commission adopted as its Final Decision the ALJ's findings of fact and conclusions of law finding that Appellant's removal was appropriate. Pa031. Appellant now appeals the Commission's February 28<sup>th</sup> Final Decision.

### LEGAL ARGUMENT

To prevail on her appeal, Appellant must demonstrate that the Commission's determinations were arbitrary, capricious, or unreasonable. Karins v. City of Atl. City, 152 N.J. 532, 540, 706 A.2d 706 (1998); Dennery v. Bd. of Educ. of Passaic Cnty. Reg'l High Sch. Dist. No. 1, Passaic Cnty., 131 N.J. 626, 641 (1993). To determine whether an agency's decision is arbitrary, capricious or unreasonable, courts examine: "(1) whether the agency's action violates express or implied legislative policies, that is, did the agency follow the

law; (2) whether the record contains substantial evidence to support the findings on which the agency based its action; and (3) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors.” In re Stallworth, 208 N.J. 182, 194 (2011) (internal citations and quotations omitted). In recognition of agencies’ specialized knowledge, the court’s review of an agency action is extremely limited. Mesghali v. Bayside State Prison, 334 N.J. Super. 617, 622 (App. Div. 2000) (quoting Matter of Musick, 143 N.J. 206, 216 (1996)). The court defers to the specialized or technical expertise of the agency and affords a strong presumption of reasonableness to the administrative agency’s exercise of its statutorily delegated responsibilities. In re Virtua-W. Jersey Hosp. Voorhees for a Certificate of Need, 194 N.J. 413, 422 (2008); Lavezzi v. State, 219 N.J. 163, 171 (2014).

Appellant appears to argue that the Commission improperly adopted the ALJ’s findings of fact and conclusions of law because the underlying record does not contain sufficient evidence to support the ALJ’s findings. In a clear (and improper) attempt to re-litigate the underlying hearing, Appellant argues that the ALJ failed to properly consider the documentary evidence and witness testimony, demonstrated bias throughout the hearing, and lacked sufficient analysis in his findings of fact and conclusions of law. However, each of

Appellant's arguments are premised on cherry-picked descriptions of the record that conveniently ignore the ample evidence supporting the ALJ's findings and fail to meet Appellant's burden of proof. See In re Arenas, 385 N.J. Super. 440, 443-44 (App. Div. 2006) ("The burden of demonstrating that the agency's action was arbitrary, capricious or unreasonable rests upon the person challenging the administrative action"). Indeed, an objective review of the record clearly refutes each and every argument Appellant raises, and fails to demonstrate that the ALJ's decision, as adopted by the Commission, was arbitrary, capricious, or unsupported by the facts.

**I. The Record Contains Substantial Evidence to Support the ALJ's Decision**

Appellant asserts that the ALJ failed to properly apply the applicable policies and procedures, and otherwise disregarded witness testimony that supported Appellant's interpretation of the rules. Specifically, Appellant argues that the relevant ECCF policies only required her to perform in-person observations of the inmate every thirty minutes, and otherwise permitted her to perform an electronic observation of the inmate through the camera in his cell as a means to comply with the required fifteen minute checks for inmates on suicide watch. Appellant further argues that the ALJ did not give due credit to the testimony of Captain Vera Cornelius, Lieutenant Wali Gibson, and Sergeant James Miller, Jr., which she claims support her mischaracterization of the

applicable policies and procedures. Notably, Appellant raises these arguments for the first time on appeal, despite having the opportunity to file written exceptions regarding the ALJ's Initial Decision within thirteen days to the agency head of the Commission—which she never did. N.J.A.C. 1:1-18.4.

There is a “strong presumption of reasonableness attached to the actions of the administrative agencies.” In re Carol, 339 N.J. Super. 429, 437 (App. Div. 2001) (internal quotations omitted). As such, “the reviewing court may not substitute its own judgment for the agency’s even though it may have reached a different result.” In re Stallworth, 208 N.J. 182, 194 (2011) (internal citations and quotations omitted). Instead, the question before the court is “whether the findings made could reasonably have been reached on sufficient credible evidence present in the record, considering the proofs as a whole, with due regard to the opportunity of the one who heard the witnesses to judge their credibility.” Close v. Kordulack Bros., 44 N.J. 589, 599 (1965) (internal quotations omitted). Put another way, “if in reviewing an agency decision an appellate court finds sufficient credible evidence in the record to support the agency’s conclusions, that court **must** uphold those findings even if the court believes it would have reached a different result.” In re Taylor, 158 N.J. 644, 657 (1999) (emphasis added).

**A. The ALJ's Decision Is Supported by The Clear Language of the Applicable Policies and Procedures**

The crux of Appellant's argument is that the policies and procedures did not require her to perform in-person checks of the inmate every fifteen minutes, but rather permitted her to substitute some of those checks with an electronic check via the camera in the inmate's cell. Appellant does not refute that she only performed certain checks in-person, but instead argues that, for every check she attested to that was not done in person, she performed by observing the inmate via electronic surveillance. But Appellant's argument is premised on a fundamental misunderstanding of the policies and procedures and ignores not only the plain language of the policies, but also testimony throughout the hearing refuting her interpretation.

As a Corrections Officer and employee of ECCF, Appellant was required to comply with all applicable ECCF Policies. The Post Order-General Housing Unit (the "GHU Policy"), Special Housing Unit (the "SHU Policy"), and Significant Self Harm and Suicide Prevention Intervention Policies (the "Suicide Prevention Policy") all apply to the observation of inmates. Whether these policies apply is dependent on the location and status of the inmate(s) that are under observation. For example, if an inmate is located in general population, the Corrections Officer is required to follow the GHU Policy. This policy requires the Corrections Officer to personally observe inmates "at least

twice (2) per hour, but no more than thirty (30) minutes apart, on an irregular schedule, on ALL housing units.” Pa045. It also requires that officers “personally observe inmates who have been classified as being in need of close supervision as directed by an immediate supervisor or as requested by the medical department (under no circumstances shall it be more than once every thirty (30) minutes.” Id.

In contrast, the SHU Policy applies to inmates who have been segregated from the general population, whether because of a need for protective custody, disciplinary detention, or medical needs. Pa049. Under the SHU Policy, inmates located in the Special Housing Unit “shall be personally observed at least every thirty (30) minutes on an irregular schedule” Pa054. However, the SHU Policy separately specifies that “Suicidal inmates/ICE Detainees shall receive observation in accordance with PS. MED.005 INMATE/ICE DETAINEE SUICIDE PREVENTION AND INTERVENTION,” otherwise known as the Suicide Prevention Policy. Pa055.

The Suicide Prevention Policy is intended to protect the health and well-being of staff members and inmates and minimize risks to individuals through a comprehensive self-harm and suicide prevention program. Pa094. In aid of this goal, it establishes more frequent and stringent observation requirements as compared to either the GHU Policy or SHU Policy. Notably, the Suicide

Prevention Policy contains different types of observations: “close” observation and “constant” observation. Pa099-100. Close Observation applies to “[i]nmates on suicide precautions who have not been placed in an isolated confinement setting by the qualified mental health professional” and requires that those inmates receive “documented close observation at staggered intervals not to exceed fifteen (15) minutes (e.g. 5, 10, 7 minutes), checks at least every eight (8) hours by clinical staff, and daily mental health treatment.” Pa100. Constant Observation requires that inmates are monitored by an assigned officer “who maintain constant one-to-one visual observation, twenty-four hours a day” while on suicide watch, and further requires that “[t]he assigned officer makes a face to face evaluation notation minimally every fifteen (15) minutes on the Close Custody Supervision Report – Suicide Precautions Observation Sheet.” Pa099.

Separately, the Suicide Prevention Policy provides that inmates can be under electronic surveillance “when approved by the Facility Administrator or designee,” but clearly states that “[e]lectronic surveillance shall not substitute for regular contact with staff members.” Pa100. Thus, an inmate who is on suicide watch, as was the case here, can either be under close or constant observation, but in either case, the ECCF Policies require face-to-face observation checks every fifteen minutes. The type of observation required for each specific inmate is indicated to the assigned Corrections Officer at the top

of the Close Custody Observation Report which needs to be completed by all assigned officer during their shift. Pa082. The report itself also states that “Close Custody checks must be conducted every fifteen minutes and indicated so by the officer below,” further confirming the requirement of face-to-face checks every fifteen minutes. Pa082.

Applying the ECCF Policies to the facts here, it is clear that Appellant misconstrues and misunderstands their requirements. On the day in question, one of the inmates Appellant was tasked with observing was on suicide watch in the Special Housing Unit. At the time, Appellant was covering housing unit 2D3 between 1:00 a.m. to 2:00 a.m. and the ECCF Policies required that Appellant monitor the inmate on suicide watch electronically in addition to making the face-to-face observations every fifteen minutes. The inmate’s Close Custody Supervision Report had “Constant Electronic” checked off, indicating that he was under Constant Observation—and therefore required one-on-one visual observation—which in his case was done via the camera in his cell, as indicated by the “Electronic” notation. Pa082. But, as is made clear by the Suicide Prevention Policy, this electronic surveillance did not negate the requirement for in-person observation every fifteen minutes—it was *in addition* to that requirement. Pa100. It is uncontroverted that because the inmate was deemed at risk of committing suicide, he was placed in a cell with a camera



which required Constant Electronic observation from the Corrections Officers in addition to the in-person observations every fifteen minutes. See, e.g. Day 1 T71:10-25.

Appellant even acknowledges that she was required to observe the inmate every fifteen minutes but argues that she was only required to observe the inmate face-to-face every thirty minutes and could otherwise observe the inmate through electronic observation in satisfaction of the fifteen minute requirement. To achieve this interpretation, Appellant must cherry-pick portions of three separate policies, some of which were demonstrably inapplicable to the inmate at the time. Appellant points to portions of the GHU and SHU Policies and quotes language that is clearly superseded by the Suicide Prevention Policy by virtue of the inmate's suicide-watch status, which is not covered by either policy. While the inmate was located in the Special Housing Unit, he was additionally characterized as an inmate on suicide-watch, and thus the Suicide Prevention Policies superseded the policies for inmates otherwise located in the Special Housing Unit.

Moreover, the Close Custody Supervision Report—as filled out by Appellant herself—indicates that she logged five tours: 1:00 a.m., 1:16 a.m., 1:30 a.m., 1:46 a.m., and 2:01 a.m. Pa082. By Appellant's own admissions, she did not perform an in-person check every fifteen minutes as required; rather, she

performed a “visual check” via electronic surveillance at 1:00 a.m., 1:30 a.m., and 2:01 a.m. Day 5 T12:11-13; Day 5 T195:17-21; Day 5 T196:7-11; App. Br. p.42-43. This is also independently confirmed by video footage of the corridor area outside of the inmate’s cell and from the camera in his cell played during the OAL hearing. It is therefore undisputed that Appellant did not perform the required in-person observations every fifteen minutes, despite attesting that she did so on the Close Custody Supervision Report.

But even assuming *arguendo* that Appellant’s characterization of the ECCF Policies is correct, the record demonstrates that she still did not comply with her own interpretation of the policies and procedures. Further underscoring her disregard for the ECCF Policies, Appellant also indicated on the Close Custody Supervision Report that the inmate was quiet at the time of her purported 1:30 a.m. check, which she acknowledges was done “visually” by observing the inmate in his cell via the camera. Pa082. However, footage presented at the hearing from that the same time period shows the inmate kicking his cell door repeatedly in direct contrast to Appellant’s “quiet” characterization. Pa090. Additionally, and perhaps most egregiously, despite Appellant’s claim that she conducted a camera review of the inmate’s cell at 2:01 a.m., the relevant camera footage shows that the inmate’s in-cell camera had been covered by wet paper towels thrown by the inmate, which obstructed the camera’s view from

approximately 1:46 a.m. until 6:00 a.m. that morning, making even a camera review of the inmate impossible. Day 1 T63:2-25 through T64:1-4. Thus, there was no way that Appellant could have electronically observed the inmate via cameras in accordance with her own interpretation of the policies, despite her attestation that she did so on the Close Custody Supervision Report. Accordingly, under either interpretation of the ECCF Policies, the result is the same: Appellant submitted a false report indicating that she had performed her observations of the inmate, when in fact she had not. It is also significant to note that, as a result of Appellant's failure to conduct face-to-face checks every fifteen minutes as well as continuing to conduct electronic checks after 1:30 a.m. via the cell camera, the inmate remained unobserved for a significant period of time, resulting in this ability to obscure his camera and proceed to tragically take his own life.

**B. The ALJ Properly Considered All the Evidence in the Record.**

Even if the plain language of the policies and procedures did not unequivocally demonstrate that Appellant was required to conduct in-person observations every fifteen minutes, the testimony at the hearing nonetheless confirms that this is the accepted interpretation of the policies. And contrary to Appellant's claims, the ALJ did not overlook, ignore, or undervalue critical

evidence nor did he fail to give due credit to the testimony of Captain Vera Cornelius, Lieutenant Wali Gibson, and Sergeant James Miller, Jr.

As the one with the opportunity to hear the direct witness testimony, the ALJ's determinations on credibility must be given the appropriate deference. In re Snellbaker, 414 N.J. Super. 26, 36 (App. Div. 2010); see also In re Tenure Hearing of Ziznewski, A-0083-10T1, 2012 WL 1231874, at \*3 (N.J. Super. Ct. App. Div. Apr. 13, 2012) (stating "[a]n appellate court accepts and defers to the credibility determinations and fact finding of the ALJ and the Acting Commissioner.") The ALJ wrote a seven-page decision after hearing five full days of testimony with seven witnesses in total. Pa022-028. Significant portions of the hearing were dedicated to witness testimony interpreting the relevant policy and procedures. See e.g. Day 1 T125:17-25 through T127:1-12; Day 1 T168:2-13; Day 1 T171:16-25 through T174:1-15; T176:6-25; Day 2 T88:4-25 through T95:1-24; Day 2 T114:9-25 through T117:1-22; Day 3 T81:9-25; Day 5 T200:16-25. Based on the testimony and evidence presented at the hearing, the ALJ found that Appellant lacked credibility due to the inconsistency between her testimony and the objective video evidence and determined from witness testimony and the policies themselves that the ECCF policies did not support her interpretation of the requirements. Pa022-28.

Appellant's argument that the ALJ did not give credit to the testimony of Cornelius, Gibson, and Miller is also plainly incorrect. Not only did the ALJ cite directly to Cornelius's testimony in his opinion, but this testimony clearly supported Respondent's position that the GHU Policies—which required in-person checks every thirty minutes—did not apply to unit 2D3 in the Special Housing Unit. Pa025; Day 3 T78:16-19. And while the ALJ did not cite to the testimony of Gibson or Miller, it is clear that their testimony, cited or not, supports Appellant's arguments in any event. For instance, Gibson testified that under Constant Electronic surveillance, the inmate had to have in-person observation in addition to viewing the inmate through electronic surveillance:

THE COURT: If I'm an assigned corrections officer and I'm assigned to the inmate, and "Constant Electronic" is checked on the sheet, and I'm sitting at the desk and I can see that inmate through the camera, okay? In addition to that do I have to go perform in- person visual observation? Yes or no?

THE WITNESS: Yes.

Day 2 T120:14-20.

THE COURT: Okay. If "Constant Electronic" surveillance is checked and I can satisfy that by look-ing at the monitor and seeing in the cell, does that satisfy my obligation or do I, in addition to that, have to do in-person checks?

THE WITNESS: You have to do -- you have to do in-person checks, we have to do tours anyway.

Day 2 T122:17-23.

Gibson's testimony confirms Respondent's argument that the electronic surveillance requirement was in addition to, and not in place of, the fifteen minute face-to-face checks, and directly contradicts Appellant's arguments. Day 2 T120:15-16 through T121:1.; Day 2 T122:17-23; Day 2 T128:2-6. Therefore, it would not have made a difference to Appellant's case had the ALJ included Gibson's testimony in his decision.

More importantly, however, is that as the administrative factfinder, the ALJ is entitled to 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). Nor is the ALJ is required to "discuss the testimony and the statements of every witness and describe in detail why he found some more credible than others." Marjarum v. Twp. of Hamilton, 336 N.J. Super. 85, 100 (App. Div. 2000); see also In re Taylor, 158 N.J. 644, 659 (1999) (stating that "credibility findings need not be explicitly enunciated if the record as a whole makes the findings clear"). As the trier of fact who directly heard the testimony of each witness at the hearing, the ALJ is in the best position to make determinations of credibility, and Appellant has offered nothing to refute those determinations.

## II. The ALJ Did Not Exhibit Bias

Appellant separately asserts that the Commission’s decision should not be upheld because the ALJ displayed bias throughout the OAL hearing. Appellant specifically cites to the ALJ’s purported “repeated interruption” of Appellant’s counsel and engagement in questioning of the witnesses that did not occur when the Respondents were presenting their case.

A judge is granted discretion over the conduct of a trial. Persley v. N.J. Transit Bus Operations, 357 N.J. Super. 1, 9 (App. Div.), certif. denied, 177 N.J. 490 (2003). Judges may question witnesses “to elicit material facts on their own initiative and within their sound discretion.” State v. Medina, 349 N.J. Super. 108, 131 (App. Div.) certif. denied, 174 N.J. 193 (2002). New Jersey Courts have recognized that “the discretionary power of a judge to participate in the development of proof is of ‘high value.’” State v. Ross, 229 N.J. 389, 408 (2017) (citation omitted). As such, a judge may intervene and interrogate witnesses to expedite proceedings and clarify testimony. Id. In a jury trial, this intervention must be exercised with “great restraint” because of the risk of influencing a jury through its questioning. Id. However, in a bench trial, a judge “may examine witnesses to clarify testimony, aid the court’s understanding, elicit material facts, and assure the efficient conduct of the trial.” D.M.R. v. M.K.G., 467 N.J. Super. 308, 320–21 (App. Div. 2021).

Appellant's OAL hearing did not have a jury. Rather, the ALJ as the ultimate fact-finder had discretion over the trial and the right to question witnesses to elicit material facts on his own, expedite proceedings and clarify testimony. But most significantly, the ALJ interrupted both Appellant and Respondent equally throughout the hearings. Day 1 T24:8-24; Day 1 T30:24-25 through 31:1-13; Day 1 T33:21-25 through T35:1-8; Day 1 T40:6-25 through Day 1 T43:1-16; Day 1 T50:5-8; Day 1 T61:21-25 through T62:1-12; Day 2 T92:1-26 through T95:1-24; Day 3 T24:5-25 through T25:1-18; Day 3 T26:13-18; Day 3 T29:16-25 through T30:1-13; Day 5 T126:4-25 through T127:1-11; Day 5 T127:21-25 through T128:1-25; Day 5 T132:9-25 through T133:1-13; Day 5 T:21-25 through T160:24 Day 5 T180:14-22. It is evident that the ALJ's direct questioning of both parties' witnesses was for the explicit purpose of developing the record and clarifying testimony. It is also abundantly clear that, to the extent the ALJ's interruptions were improper (which they were not), Respondent and Appellant were equally subjected to the interruptions and questions, negating any bias.

Appellant also argues that her counsel sought to impeach Conti regarding an Investigator Course that he had not completed when he conducted the investigation about the Appellant, but was thwarted by the ALJ interrupting her questioning at the hearing. As an initial matter, Appellant mischaracterizes the



ALJ's interruptions of Ms. Stribling's questioning. It is apparent from the record that each interruption by the ALJ was in an attempt to expedite the proceeding, clarify Conti's testimony and address objections. For example, Appellant cites one portion of testimony where she claims the ALJ interrupted her, but the record demonstrates that the ALJ was simply clarifying whether Conti was agreeing or disagreeing with Ms. Stribling's questions about the certificate from the basic investigators course because he was responding "okay." Day 4 T9:1-25 through T10:1-10.

Further, Appellant's argument that the Court "refused" to allow questioning of Conti as an adverse witness is also disingenuous. Appellant never indicated she planned to call Vincent Conti as an adverse witness on the witness list submitted prior to the hearings, and in fact did not inform the Court of her intention to do so until midway through Conti's testimony—and only after Respondent's counsel made an objection. Pa021; Day 4 T4:20-21 and Day 4 T44:5-25. And while Appellant's counsel indicated at that point that she planned to have Conti declared as an adverse witness, the application never came. *Id.* Nonetheless, the ALJ's objections demonstrate that he was mindful of Appellant's intention to treat Conti as an adverse witness, even if the application never occurred. *See, e.g.*, Day 4 T58:12-17 ("I believe Ms. Stribling wishes to have this witness declared as adverse, that application has not been made, so I

have not ruled upon it, but I’m trying to accommodate Ms. Stribling as best as I can, so I’m going to overrule the objection”).

Finally, Appellant’s attempt to impeach Conti is misplaced because there was no contradicting testimony. When he was asked at the OAL hearing when he took the basic course for investigators, Conti testified “I believe it was 2018 or 2019.” Day 4 T8:11-13. Appellate counsel then attempted to impeach Conti by showing him his certificate of completion from the basic course for investigators, which was dated June 3, 2019, and by reading his testimony from the February 27, 2023 hearing wherein Conti similarly stated that he “believe[d] it was 2018” when he took the basic investigator course. Day 4 T9:1-8; Day 4 T13:23-24. As Respondent’s counsel noted during her objection (and as the ALJ agreed) Conti’s testimony was not contradictory. Day 4 T18:11-24. On both occasions, Conti stated that he “believe[d]” he received the certificate in 2018, which is in and of itself not contradictory, but also, indicates only that Conti was not sure of the exact date he received the certificate. And even to the extent the ALJ made any decision regarding testimony of Conti or whether he was certified to investigate Appellant’s actions, such a decision is ultimately immaterial and does not change the underlying facts that Appellant has admitted to (and which video footage confirms), which is that she did not conduct the necessary in-

person checks and falsely attested that she did on the Close Custody Supervision Report.

Appellant also asserts that the ALJ was biased because the ALJ was formerly a government attorney and stated so on the record. Day 4 T36:16-18. The ALJ did acknowledge that he was previously employed by the ECPO on the record—however he did this only in response to Respondent’s third objection to the same question from Appellant to Vincent Conti. Appellant asked three times whether Conti had spoken with the ECPO. After the third ask and second objection from Respondent, the ALJ sustained the objection and Appellant stated she was asking about the Professional Standards Bureau in the ECPO. Day 4 T36:7-9. In response—and after this distinction was previously discussed during the first objection—Appellant’s counsel informed the ALJ that the ECPO and Professional Standard Bureau were in the different location. The ALJ responded by stating that he was aware and that he was familiar with the ECPO because he had previously been employed there. Day 4 T36:12-20. But this off-handed comment hardly demonstrates bias, nor did Appellant raise any objection at the time the comment was made.

The Appellant additionally argues the ALJ showed bias by giving weight to the testimony of Lieutenant Zapata despite his testimony being inconsistent with other witnesses or the Policies. As noted above, the ALJ’s credibility

determinations are given great deference. See e.g. In re Snellbaker, 414 N.J. Super. 26, 36 (App. Div. 2010). In any event, the ALJ’s opinion only makes one reference to Lieutenant Zapata: “Investigator Zapata testified that, as part of appellant’s job responsibility, appellant was required to conduct in-person observations of [the inmate]....” Pa024. But more importantly, Lieutenant Zapata’s testimony was consistent with both videos played for the ALJ and the ECCF policies, upon which the ALJ based the majority of his decision. Pa024. It is clear that the record contains ample support for the ALJ’s findings, and while the Appellant presented her own interpretation of the policies, the ALJ reasonably found them to be inconsistent with the objective video evidence, and therefore unbelievable. See Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958). The ALJ was not biased against Appellant simply because he found her testimony and arguments not credible.

### **III. The ALJ Engaged in Sufficient Analysis to Support His Findings**

Finally, Appellant suggests that the Commission had some concerns regarding the ALJ’s analysis, however “rubberstamped” the conclusion. This is a blatant mischaracterization of the Commission’s Final Decision. Not only did the Commission agree with—and adopted in full—the ALJ’s conclusions that removal was appropriate under the circumstances, it did so after its own independent examination of the record. Pa031-Pa033. The “concerns” that

Appellant cites to are, in fact, not concerns, but additional support for the ALJ's findings. When adopting the ALJ's findings in full, the Commission only noted that it prefers for an ALJ to indicate more history when discussing the penalty to be imposed. Pa031. The Commission then provided additional analysis of progressive discipline and why it was not applicable to Appellant's case because of the severity of her actions. Pa032. ("The infractions that the appellant committed are egregious and pose a serious safety and security risk in a secured facility . . . The appellant is a law enforcement officer who is held to a higher standard where such serious misconduct cannot be tolerated.") This discussion does not undermine the ALJ's analysis nor factual determinations, but rather further confirms them. Pa032 ("the Commission agrees with the ALJ that the appellant's conduct was egregious and wholly inappropriate for a law enforcement officer and worthy of removal without regard to progressive discipline"). Notably, the Commission stated that "[w]hile the ALJ's penalty discussion was brief, the Commission agrees that removal is the proper penalty in this matter. The infractions that appellant committed are egregious and pose a serious safety and security risk." Pa032. As demonstrated above, the ALJ's conclusions were properly supported by evidence and the Commission's reliance and adoption of the ALJ's conclusions was not arbitrary, capricious or unreasonable.

## CONCLUSION

For these reasons, Respondent respectfully submits that the Court affirm the Commission's Final Decision.

Respectfully submitted,

*s/ Courtney Gaccione*

By:

Dated: February 28, 2025

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COURTNEY GACCIONE  
**CHIESA SHAHINIAN &  
GIANTOMASI PC**

Attorneys for Respondent Essex County  
Department of Corrections

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-002406-23T2

IN THE MATTER OF IDESHA  
HOWARD, ESSEX COUNTY  
DEPARTMENT OF  
CORRECTIONS

)                    Civil Action  
)  
)                    On Appeal from a Final  
)                    Agency Decision of the  
)                    Civil Service Commission  
)                    CSC Docket No. 2023-2840  
)

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STATEMENT IN LIEU OF BRIEF ON BEHALF OF  
THE NEW JERSEY CIVIL SERVICE COMMISSION  
Date Submitted: March 31, 2025

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MATTHEW J. PLATKIN  
Attorney General of New Jersey  
R.J. Hughes Justice Complex  
PO BOX 112  
Trenton, New Jersey 08625-0112  
(609) 376-2955  
Brian.Ragunan@law.njoag.gov  
NJ Attorney ID No. 336622021  
Attorney for Respondent,  
Civil Service Commission

BRIAN D. RAGUNAN  
Deputy Attorney General  
On the Statement

This Statement in Lieu of Brief is filed on behalf of the Civil Service Commission under Rule 2:6-4(c). Idesha Howard appeals the February 28, 2024, Final Administrative Action of the Civil Service Commission upholding her removal from employment as a Correctional Police Officer with Essex County Correctional Facility (ECCF). (Aa31-33).<sup>1</sup>

The ECCF employed Howard as a Correctional Police Officer. (Aa22). On August 28, 2018, Appellant was assigned to provide coverage for another officer during that officer's meal break. (Aa24). Between the hours of 1:00 a.m. and 2:00 a.m., Howard was responsible for conducting tours of the 2D3 tier of the housing unit at the ECCF, which included an inmate who was on suicide watch. Ibid. Under the applicable ECCF policies, Howard was required to conduct in-person observations of the inmate on suicide watch every fifteen minutes. (Aa 24; 099-100). Howard failed to perform the required in-person cell checks on the inmate and then falsely reported that such checks occurred on the close-custody observation report. (Aa1; 10-12). Tragically, the inmate committed

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<sup>1</sup> "Aa" refers to the Appellant's appendix. "Ra" refers to Respondent, Essex County's appendix.



suicide later that morning. (Aa24). Following the inmate's death, the Essex County Prosecutor's Office ("ECPO") began an investigation into the incident. (Ra1). The ECPO charged Idesha Howard on March 3, 2022, with knowingly engaging in conduct which creates a substantial risk of serious bodily injury to another person in violation of N.J.S.A. 2C:24-7.1A(3), a crime of the third degree; and knowingly creating a false record in violation of N.J.S.A. 2C:28-7A (1), a crime of the third degree. (Aa1).

In addition to the criminal charges, Idesha Howard was served on March 3, 2022, with a Preliminary Notice of Disciplinary Action ("PNDA") charging her with violations of (1) N.J.A.C. 4A:2-2.3(a)(1) - Incompetent, inefficient or failure to perform duties; (2) N.J.A.C. 4A:2-2.3(a)(6) - Conduct unbecoming; (3) N.J.A.C. 4A:2-2.3(a)(7) - Neglect of duty; and (4) N.J.A.C. 4A:2-2.3(a)(12) - Other sufficient cause - Criminal charges and Violation of Department Policies and Procedures. (Aa2-3). Howard was immediately suspended from her employment at the ECCF pending the outcome of the criminal investigation. (Aa3).

The ECPO dismissed the criminal charges against Idesha Howard on July 13, 2022. (Aa6). Upon dismissal of the criminal charges, the Internal Affairs

Department at the ECCF (“IA”) began its investigation. (Aa11). IA concluded its investigation on August 20, 2022. Ibid. Based upon the IA investigation report, a Supplemental PNDA was issued charging Idesha Howard with all of the above-cited provisions and adding Violation of Essex County Departmental Policies and Procedures: PS.CUS.006 Post Orders; Violation of Essex County Department Rules and Regulations; 3:1.2 Competence; 3:10.5 Truthfulness; 1:2.33 Neglect of Duty; 3:1.1 Standard of Conduct; 3:1.23 Knowledge of Laws and Regulations; 3:132 Withholding Information or Giving False Information. (Aa10-11).<sup>2</sup>

The ECCF held a departmental disciplinary hearing to determine whether the disciplinary charges in the August 31, 2022, Supplemental PNDA could be sustained. (Aa15-18). The hearing was held over three days: December 21, 2022; February 6, 2023; and February 27, 2023. Ibid. The Hearing Officer

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<sup>2</sup> Separate from this appeal, Howard appealed to the Commission for interim relief, citing procedural defects surrounding the 45-day rule. The Commission issued a decision on December 7, 2022, and then a final decision following the Appellant’s request for reconsideration on July 19, 2023, which upheld the PNDA, finding that the ECCF had not violated the 45-day rule. In July 2023, the Appellant filed an appeal with the Appellate Division, in which the court upheld the Commission’s decision in In the Matter of Idesha Howard, A-003889-22.

sustained the charges and recommended that Howard be removed from her employment with the ECCF. (Aa18).

Howard appealed her removal to the Commission, and the matter was transmitted to the Office of Administrative Law as a contested case. (Aa19). Hearings were held before Administrative Law Judge (“ALJ”) Daniel Brown on September 19 and 21 and October 3, 13, and 18, 2023. The record was closed on October 18, 2023. (Aa22).

On February 1, 2024, the ALJ issued a detailed nine-page initial decision. (Aa 22-30). The ALJ found that Howard’s testimony was not credible. According to ECCF’s written policy, Howard was required to perform fifteen-minute in-person checks on inmates deemed a suicide risk and did not do so. (Aa24-25). Howard did not perform those in-person checks and falsified entries on the close custody observation report, which reflected that she had performed the in-person checks. Ibid. The ALJ concluded that the ECCF had sustained the charges and that a preponderance of the evidence exists that Howard (1) failed to perform her duties; (2) engaged in conduct unbecoming a public employee; (3) neglect of duty; (4) other sufficient cause for violation of departmental policies. (Aa22-30).

The ALJ found that, based on the serious nature of Howard's falsification of the closed custody report, removal of Idesha Howard was the appropriate penalty. (Aa27). In reaching this decision, the ALJ acknowledged that a single incident can be egregious enough to warrant removal. Ibid.

On February 28, 2024, after an independent evaluation of the record, the Commission issued its Final Administrative Action adopting the ALJ's Findings of Facts and Conclusions and her recommendation to uphold the removal. (Aa31-33). The Commission further elucidated why removal was appropriate. (Aa31-32). It found that Howard's conduct was egregious and posed a serious safety and security risk. (Aa32). As a law enforcement officer, Howard was held to a higher standard of conduct. Ibid. The Commission agreed with the ALJ that Howard's "conduct was egregious and wholly inappropriate for a law enforcement officer and worthy of removal without regard to progressive discipline." Ibid.

Having reviewed the merits briefs filed by the primary parties, the Commission has determined that the factual and legal issues involved in this appeal do not warrant the filing of a separate brief. The primary issue raised in this appeal is whether the Commission's decision to sustain the removal of

Howard from employment as a Correctional Police Officer was arbitrary, capricious, or unreasonable. The primary parties to this appeal have adequately addressed the relevant issues, and the public interest does not require the Commission's participation.

Nevertheless, the Commission's decision should be affirmed. It is well-established that an agency's determination will not be upset unless it is affirmatively shown that it is arbitrary, capricious, or unreasonable or that it lacks fair support in the record as a whole. Karins v. City of Atl. City, 152 N.J. 532, 540 (1998). A strong presumption of reasonableness attaches to the Commission's decision. In re Carroll, 339 N.J. Super. 429, 437 (App. Div. 2001). Thus, a court must affirm the decision if the evidence supports it, even if the court may question its wisdom or would have reached a different result. Campbell v. N.J. Racing Comm'n, 169 N.J. 579, 587 (2001).

Here, the Commission made an independent evaluation of the record before it adopted the ALJ's detailed findings of fact and conclusions. (Aa31-33). Its decision is reasonable and grounded in the record. Therefore, its determination that Howard should be removed from employment should be affirmed.

Respectfully submitted,  
MATTHEW J. PLATKIN  
ATTORNEY GENERAL OF NEW JERSEY

By: s/Brian Ragunan  
Brian D. Ragunan  
Deputy Attorney General  
NJ Attorney ID #336622021  
Brian.Ragunan@law.njoag.gov

Date: March 31, 2025

LURETHA M. STRIBLING, ESQ.  
1030 South Avenue West, Suite 1A  
Westfield, New Jersey 07090  
(908) 403-0113  
Attorney for the Appellant  
Attorney ID No. 0008452004  
lmstribling@verizon.net

<p>IN THE MATTER OF IDESHA HOWARD, ESSEX COUNTY DEPARTMENT OF CORRECTIONS</p> <p>Appellant,</p>	<p>SUPERIOR COURT NEW JERSEY APPELLATE DIVISION</p> <p>DOCKET NO.: A-002406-23T2</p> <p>Civil Action</p> <p><b>APPELLANT’S REPLY BRIEF</b></p> <p><b>SAT BELOW:</b> <b>DANIEL BROWN, ALJ</b> <b>OFFICE OF ADMINISTRATIVE</b> <b>LAW</b> <b>DOCKET NO. CSR05655-23</b></p> <p><b>CIVIL SERVICE COMMISSION</b> <b>CSC DOCKET NO. 2023-2840</b></p>
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LURETHA M. STRIBLING, ESQ.  
APRIL 14, 2025

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## **APPELLANT'S RESPONSE TO THE PRELIMINARY STATEMENT**

Idesha Howard (Officer Howard or Appellant) was hired as a Correctional Police Officer on May 12, 2014 and worked at the Essex County Correctional Facility. **(6<sup>th</sup> Transcript)** On August 28, 2018, Appellant worked the night shift which was 10:00 P.M. to 6:00 A.M. and Appellant provided meal break coverage on housing Unit, 2D3. **(6<sup>th</sup> Transcript)** Four years later, Appellant was accused of having not fulfilled her obligation during the one hour meal break and she was served with criminal charges which were dismissed. **(Pa56)** Appellant was terminated from employment after an Internal Hearing and the matter was appealed to the Civil Service Commission. **(Pa70)** The matter was heard at the Office of Administrative Law by Administrative Law Judge Daniel Brown. **(Pa77)** The ALJ disregarded the paper evidence, the testimony of the witnesses and the video footage and in doing so rendered a decision that did not comport with the record and was arbitrary, capricious and unreasonable as noted in my Appellate Brief. **(Pa77)** The Civil Service Commission noted that the record was sparse and in error adopted the decision rendered by the ALJ. **(Pa86)** This Reply Brief is responsive to the Brief submitted by the Appointing Authority and the Statement in Lieu of Brief submitted by the Civil Service Commission. This Counsel relies on the Appellate Brief submitted as well as the evidence submitted in the Appendices.

## **APPELLANT'S RESPONSE TO THE STATEMENT OF FACTS AND PROCEDURAL HISTORY**

Appellant will rely upon the Statement of Facts and Procedural History set forth in the Appellant's Brief. The Appellant was not required to conduct in person observations of the inmate every fifteen minutes because the inmate was on Constant Electronic Monitoring and was to be monitored by viewing the camera which was in his cell. **(Pa148)** Appellant was covering one of the Corrections Officers for meal break on August 28, 2018 between 1:00 A.M. and 2:00 A.M. **(6<sup>th</sup> Transcript)** Respondent mis-states the policy with regard to inmates on suicide watch. The type of monitoring required for an inmate on suicide watch is set forth in the Close Custody Observation Sheet and the understanding of the monitoring types is set forth in the Significant Self Harm and Suicide Prevention Intervention Policy. **(Pa148)** In this case, the inmate in question was on Constant Electronic monitoring which meant that he was entitled to a tour from the Corrections Officers every thirty minutes where he would be observed in person and all of the housing unit policies note that tours **for all** housing units are to be done every thirty minutes. **(Pa93, Pa103)** This was done by the Appellant. All observations including tours and electronic surveillance are put on the Close Custody Observation Sheet. **(Pa148)**

In March of 2022, Appellant was served with criminal charges which were dismissed which referenced falsification of the Close Custody Observation Sheet

and placing the inmate at risk of substantial risk of serious bodily injury. **(Pa56)** After dismissal of the charges, the Appointing Authority did not serve another PNDA as required and Appellant after 45 days was to be returned to her job, per N.J.S.A. 30:18-8 as the Appointing Authority's obligation when criminal charges are dismissed is to serve another PNDA within 45 days of dismissal of the criminal charges and this law was not followed. The misinterpretation of the 45 day rule is on Appeal with the Appellate Docket Number A-003889-22. The Appellant was terminated and an Appeal to the Civil Service Commission was filed. **(Pa74)** The decision reached by the ALJ after a five day hearing was arbitrary, capricious and unreasonable and should be overturned by the Appellate Court. **(Pa77)** The Appellant Brief is relied upon in addition to this submission.

### **APPELLANT'S RESPONSE TO THE LEGAL ARGUMENT**

In order to reverse an agency's decision, the Appellate Court must reach a finding that the agency's decision was arbitrary, capricious, unreasonable or was not supported by the substantial evidence in the record as a whole. In Re Stallworth, 208 N.J. 182, 194 (2011) quoting Henry v. Rahway State Prison, 81 N.J. 571, 579-580 (1980). If a reviewing court concludes that a decision of the Commission is arbitrary, the court may either finally determine the matter by assigning an appropriate penalty or the court may remand the matter to the Commission for redetermination. Town

of West New York v. Bock, 38 N.J. 500, 520 (1962). The Appellate Court review and analysis of the concerns noted on Appeal are de novo.

The Appellant set forth the basis for the argument made that the decision of the ALJ was arbitrary, capricious and unreasonable. Simply put, the ALJ ignored the evidence both written, video recordings and testimony from erudite witnesses who served the Appointing Authority in the positions of Captain, Lieutenant and Sergeant. The witnesses explained in great detail the policies regarding monitoring of inmates, how tours were to be conducted and the frequency of tours, employment of electronic surveillance, how the Close Custody Observation Sheet was used and this testimony took place over five days. The ALJ ignored much of the testimony of witnesses for the Appellant which is reflected in the decision rendered. There is an absence of the testimony from Lieutenant Wali Gibson and Sergeant James Miller in the decision. Despite the lengthy testimony of Captain Cornelius where she testified about the patterns and practices of the institution with regard to inmate monitoring routinely and for inmates who were at risk of harming themselves, yet, the ALJ mentioned Captain Cornelius in one sentence in the decision. The testimony of the witnesses supported the fact that Appellant had performed her job properly. The ALJ ignored the testimony of seasoned supervisory custody personnel. In addition, in his decision, he attributed exhibits submitted on behalf of the Appellant to the Respondent, listed the Appellant's witnesses as witnesses for

the Respondent and failed to list one day of testimony. The ALJ failed to consider this testimony from the one date that was not listed in his decision. The ALJ improperly ignored the record presented in this case. This resulted in a decision that was arbitrary, capricious and unreasonable. The sparse record from the ALJ was discussed by the Civil Service Commission and despite this sparse record, the CSC adopted the ALJ decision. Both the ALJ and the CSC are in error and a reversal of the decision reached is requested. This Appeal is not an effort to relitigate the underlying case but is an effort to correct the erroneous decision reached at the Office of Administrative Law and the adoption by the Civil Service Commission.

**I. The ALJ's Decision is Not Supported by the Record and**

**A. and B. The ALJ Failed to Consider All of Evidence in the Record/Policies**

The repeated mis-reading of the housing policies and what the Appellant was required to do with monitoring of the inmates is problematic. Per the General Housing Policy and the Special Housing Unit Policy, all inmates were entitled to two tours per hour as noted in all of the housing policies. The fifteen minute observations of inmates in camera cells was to be done by electronic surveillance at the desk which was per pattern and practice. There was a huge monitor at the officer's desk and the officer was able to observe each inmate in a camera cell from the desk which is what was done every fifteen minutes. The policy did not require in person checks every fifteen minutes as was explained by Captain Cornelius. Had

the Appointing Authority required that the inmate be observed every fifteen minutes in person, the Appointing Authority was supposed to have an officer stationed for the entire shifts at the inmate's cell. As the testimony of Captain Cornelius bore out, the institution used electronic surveillance to conduct the fifteen minute observations instead of having an officer stationed at the inmate's cell. The Appellant had worked for the Appointing Authority for greater than ten years and knew the policies quite well and followed the policies as was supported by the witness testimony. All of the housing unit policies required that inmates be viewed on tour every thirty minutes. When the witnesses were asked what regular contact meant, the answer was that regular contact is every thirty minutes which is consistent with the tour requirements. The Appointing Authority mis-states the policy and replaces the Constant Electronic requirements with Constant monitoring which is inaccurate and misleading. As testified to by Captain Cornelius, electronic surveillance was used instead of one on one monitoring. Close Custody checks are yet another type of monitoring which was not checked off for the inmate in question who was on Constant Electronic Monitoring. Further, it is misreading of the Suicide Prevention Policy where the Respondent claims that electronic monitoring requires in-person monitoring every fifteen minutes. This language is absent from the policy and there is no language with reference to electronic monitoring that requires additionally monitoring in

person every fifteen minutes. The wording in addition to is absent from the section of the Suicide Prevention Policy on electronic monitoring.

The evidence in this record supports the Appellant's argument that the tours were conducted every thirty minutes and electronic surveillance was interspersed with the tours which resulted in the inmate being observed at fifteen minute intervals. There was no falsification of the Close Custody Observation Sheet on which tours and electronic observations were documented per the pattern and practice of the institution.

The ALJ did not consider all of the evidence in the record and had this been the case, the decision would have been for the Appellant. As noted, the testimony of Captain Cornelius was reduced to one sentence in the decision and the testimony of Lieutenant Gibson and Sergeant Miller is not even referenced in the decision. The decision was flawed as it was not based on the full record. In addition, the ALJ interfered with this Counsel's questioning of Mr. Conti who was called as an adverse witness. In a Case Management Conference weeks prior to the hearing, this Counsel notified the Court that this Counsel would call Mr. Conti as an adverse witness as he was involved in the investigation and writing the investigative report. The ALJ had no issue with my calling Mr. Conti as an adverse witness. Because the Appointing Authority refused to present Mr. Conti, a subpoena was issued which they could not accept as Mr. Conti was on suspension. This Counsel had to file an Order to Show



Cause in the Superior Court which was heard by the Hon. Richard Sules, J.S.C. who ordered the Appointing Authority to produce Mr. Conti to testify at the Office of Administrative Law later that day. Thus, the ALJ knew that Mr. Conti would be questioned as an adverse witness and repeatedly interrupted my questioning of Mr. Conti and interfered with the witness being treated as an adverse witness.

Both Captain Cornelius and Lieutenant Gibson testified to what was required for an inmate who required constant observation and both witnesses explained what the meaning was and difference in obligations of Assigned Officer and Tier Officer. As was explained, the Assigned Officer was an Officer who would be assigned to sit at the inmate's cell who required constant observation and this Assigned Officer would stand up and look at the inmate every fifteen minutes and had to remain at the inmate's cell for the entire shift with another Officer relieving that Officer for meal break. The witnesses explained that the Tier Officer conducted the tours of inmate cells. This was the role that the Appellant was working in as she covered for meal breaks. There are 64 inmates on each side of the 2D3 Unit, so, from a practical standpoint, it would be impossible for the Tier Officer to go to the inmate's cell every fifteen minutes who required constant watch. That is not what the policy required either. Even after detailed explanation, the ALJ appeared to conflate the two types of Officers. Gibson testified about the Assigned Officer responsibilities as did Captain Cornelius. Gibson testified that the Assigned Officer and the Tier

Officer were two different officers and when he was asked if the Assigned Officer could be the Tier Officer, his response was no. This was true of the testimony of Captain Cornelius also.

The Respondent's position that the ALJ can reject testimony is inaccurate. The ALJ is to consider the entire record and not ignore those parts of the record that he or she might not like. The ALJ must consider the entire record which includes the testimony of witnesses, the documentary evidence and in this case the video recordings of Appellant performing her job. The failure of the ALJ to consider the entire record in this matter requires that the decision reached be reversed and that the Appellant be returned to her job with the provision of back pay and all of the benefits that she is entitled to.

## **II. THE ALJ EXHIBITED BIAS AS SET OUT IN THE APPELLANT'S BRIEF**

Justice has to be administered fairly by judges but it must also appear to the public that justice has been administered fairly; justice must satisfy the appearance of justice. State v. Deutsch, 34 N.J. 190, 206 (1961) quoting Offit v. United States, 348 U.S. 11, 14 (1954). The Supreme Court noted in DeNike v. Cupo, "it is not necessary to prove actual prejudice on the part of the court" to establish an appearance of impropriety; an objectively reasonable belief that the proceedings were not fair is sufficient to prove prejudice. DeNike v. Cupo, 196 N.J. 502 (2008).

In this case, the ALJ presented an appearance of bias as set out in the Appellant's Brief. The statements made that he was a government attorney suggested that he could be favorable to the government, in this case, the Appointing Authority. This statement regarding being a government attorney was made when speaking to the Counsel for the Appointing Authority when not on the record. The claim that the ALJ interrupted the Appellant and Respondent equally is not accurate. The interruptions of this Counsel were frequent and even at the point where this Counsel was making the closing statement, the ALJ interrupted this Counsel and asked questions. This was not the case when the Appointing Authority made the closing statement. The claim that the Appellant did not notify the judge that Mr. Conti would be treated as an adverse witness is inaccurate as noted above. Mr. Conti made inconsistent statements in the Internal Hearing regarding his certification as an investigator as well as his role in doing the investigation. The impeachment of his testimony was thwarted by the ALJ.

While the Respondent attempts to justify the actions of the ALJ, it is in fact the appearance of the ALJ through the eyes of the Appellant that counts. This Counsel will rely on the Appellant's Brief for the additional arguments made regarding bias. It is this Counsel's position that the decision reached by the ALJ should be reversed with the Appellate Court finding that the Appellant should be returned to work with back pay and all of the benefits to which she is entitled to.

**III. THE ALJ ANALYSIS WAS FLAWED AND INSUFFICIENT AND THE ISSUES BEFORE HIM WERE WHETHER APPELLANT CONDUCTED TOURS AND DOCUMENTED ON THE CLOSE CUSTODY SHEET ACCURATELY AND HE FAILED IN THIS REGARD**

In this case, a five day hearing was conducted. There was testimony from the Appellant, Captain Cornelius, Lieutenant Gibson, Sergeant Miller, Mr. Conti, Captain Zapata and a witness from Internal Affairs. When the ALJ decision is reviewed, the testimony of Captain Cornelius is reduced to one sentence. There is no documentation of the testimony of Lieutenant Gibson nor Sergeant Miller. The testimony of these important witnesses who had between them greater than thirty years of experience in employment at the Appointing Authority was disregarded. In addition, one of the days of testimony was not even listed in the documentation of the days of hearing as hearing dates noted were four dates.

The Civil Service Commission while acknowledging that the analysis of the record was sparse, accepted the findings of the ALJ. This is a case that did not warrant any discipline as the Appellant performed her job for that one hour period as she was required to do. It is puzzling that the Respondent uses words such as severity of the Appellant's actions and infractions are egregious and a safety concern when these statements are lacking in accuracy and truthfulness. This case was not about the inmate but was about whether Appellant did her job. The references o the

inmate and safety are inflammatory and should be disregarded by the Appellate Court. The ALJ's conclusions were not supported by the record. The issues before him were whether the Appellant had conducted tours properly and whether there was falsification of the Close Custody Observation Sheet. These matters were before the Essex County Criminal Court which dismissed the case. The ALJ failed to consider the full record and this resulted in a flawed decision which was arbitrary, capricious and failed to comport with the record. This requires reversal of the ALJ and CSC decisions, reinstatement of the Appellant to her job with back pay and all benefits to which she is entitled.

### **CONCLUSION**

For all of the reasons stated in this Reply Brief, the Appellate Brief, the Appendices, case law and Rules of Court, it is requested that the Appellate Court reverse the decision rendered at the Office of Administrative Law by the ALJ and reverse the adoption of this decision by the Civil Service Commission. It is requested that the Appellant be reinstated to her job with back pay and all of the benefits that she is entitled to.

**Luretha M. Stribling**  
Luretha M. Stribling  
Attorney for the Appellant

DATED: April 14, 2025