THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	OEA Matter No.: 1601-0007-24
EMPLOYEE[1],	)	
Employee	)	
	)	Date of Issuance: September 3, 2026
v.	)	
	)	
D.C. OFFICE OF THE ATTORNEY	)	
GENERAL,	)	MICHELLE R. HARRIS, ESQ.
Agency	)	Senior Administrative Judge
	)	
	)	
	)	

Donald M. Temple, Esq., Employee Representative
Michele McGee, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On November 1, 2023, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA" or "Office") contesting the District of Columbia Office of the Attorney General's ("Agency" or "OAG") decision to terminate him from his position as a Paralegal, Grade 12. The effective date of Employee's separation from service was October 6, 2023. Following a letter from OEA dated November 2, 2023, requesting an Agency Answer, the Agency filed its Answer on December 4, 2023. This matter was initially assigned to Administrative Judge Lois Hochauser ("AJ Hochhauser") in or around December 2023. The following is representative of the procedural history in this matter conducted by AJ Hochhauser. On December 28, 2023, AJ Hochhauser issued an Order scheduling a Prehearing Conference for January 31, 2024. On February 2, 2024, Employee's representative entered his appearance. That same day, AJ Hochhauser issued an Order rescheduling the Prehearing Conference to February 23, 2024, noting that it was requested by Employee and Agency had consented to the request. On February 28, 2024, AJ Hochhauser issued a Summary and Order which required that discovery in this matter be completed by May 3, 2024. Further, that Order required the parties to jointly file exhibits, stipulations, proposed witnesses and subpoena requests by May 10, 2024. On March 27, 2024, AJ Hochhauser issued an Order scheduling an Evidentiary Hearing in this matter for June 12, 2024.

[1] Employee's name was removed from this decision for the purposes of publication on the Office of Employee Appeals' website.

On May 8, 2024, Agency filed a Consent Motion to Extend Deadlines and Continue the Evidentiary Hearing. On May 21, 2024, AJ Hochhauser issued an Order which extended the discovery period in this matter until June 24, 2024. Further, the deadline for submissions was extended to June 28, 2024, and the Evidentiary Hearing was rescheduled to July 9, 2024. On June 25, 2024, Employee filed a Consent Motion to Enlarge Discovery and Continue the July 9th Hearing. On July 10, 2024, AJ Hochhauser issued an Order which granted the motion and rescheduled the Evidentiary Hearing to October 9, 2024. She also noted that the deadline for the completion of discovery in this matter would be September 10, 2024. On August 12, 2024, AJ Hochhauser issued an Order rescheduling the Evidentiary Hearing to October 7, 2024, citing a scheduling conflict. On September 9, 2024, the parties filed a Joint Motion to Extend the time for Discovery, Subpoenas and to Continue the Hearing. On September 30, 2024, AJ Hochhauser issued an Order granting the motion and rescheduled the Evidentiary Hearing to December 12, 2024, and extended the discovery deadline to November 14, 2024. She also required the parties to jointly submit their proposed exhibits, stipulations, and witnesses by November 18, 2024. On November 18, 2024, Agency filed a Consent Motion to Extend the Time to file witness lists and exhibits. Agency filed its witness list, subpoena and exhibit list on November 22, 2024. On December 11, 2024, Employee filed a Motion to Reschedule the Evidentiary Hearing, citing a schedule conflict with another trial.

On December 12, 2024, AJ Hochhauser issued an Order regarding Employee's Motion. AJ Hochhauser noted the following therein: *"An Evidentiary Hearing was scheduled to begin in this matter at "9:15am on December 12, 2024. At about 2:15pm on December 11, 2024, the AJ was contacted through this Office's Chief Operating Officer ("COO"), who informed her that he had just been contacted about a continuance in this matter. The AJ asked if a motion had been filed and was informed that no pleading had been filed. AJ Hochhauser asked the COO to inform the parties that a motion would need to be filed, and the parties should still appear on December 12, 2024. At "2:29pm on December 11, 2024, Employee filed a motion to reschedule the proceeding explaining that he was in a "protracted civil trial" that began on December 2, 2024, and which he thought would be concluded prior to December 12, 2024*." AJ Hochhauser also noted in this December 12, 2024, Order that the Employee and Agency's representative were present, but Employee's representative was not present. She also cited that she attempted to call Employee's representative but got no answer. AJ Hochhauser also cited that the Agency requested a dismissal of the matter, but AJ Hochhauser advised that a written motion would need to be filed and that it would be due by January 10, 2025. On January 8, 2025, Agency filed a Motion to Dismiss. On January 10, 2025, Employee's Representative filed a Praecipe citing to Employee's representative explanation for his absence on December 12, 2024. On January 22, 2025, Employee filed an Opposition to Agency's Motion to Dismiss. On February 25, 2025, AJ Hochhauser issued an Order scheduling an Evidentiary Hearing in this matter for April 2, 2025. The Evidentiary Hearing began on April 2, 2025, but did not conclude that day. Following the receipt of dates by the parties, on May 1, 2025, AJ Hochhauser issued an Order scheduling the Evidentiary Hearing in this matter to resume on June 4, 2025.

On June 24, 2025, the undersigned Senior Administrative Judge (SAJ") issued an Order notifying the parties that this matter had been reassigned to her. That Order also convened a Status Conference for July 9, 2025. On July 2, 2025, Agency filed a Motion to Reset the July 9, 2025 Status Conference. On July 7, 2025, I issued an Order Rescheduling the Status Conference to July 22, 2025. Both parties appeared for the Status Conference as required. During the Conference, I explained that the matter had been reassigned and would be considered *de novo*. As a result, the undersigned would not be relying on the Evidentiary Hearing (or associated testimony/admitted exhibits) held by AJ Hochhauser. That same day, I issued a Post Status Conference Order requiring the parties to submit their witness lists by August 8, 2025, and scheduled Status Conference for August 12, 2025, and an Evidentiary Hearing for October 6, 2025, and October 7, 2025. The Evidentiary Hearing was ultimately held in this matter over the course of three (3) days, including October 6, October 7, and October 9, 2025. On October 23, 2025, I issued an Order requiring the parties submit their closing arguments by or before December 29, 2025. On December 29, 2025, the parties filed a Consent Motion to Extend the time to File Closing Arguments. On December 30, 2025, I issued an Order granting the Motion and required the parties to submit their closing arguments by or before January 29, 2026. On January 28, 2026, the parties filed a Consent Motion to Extend the time to File Closing Arguments. That same day I issued an Order granting the Motion and required that closing arguments be filed by February 9, 2026. The parties complied with the prescribed deadline. On August 14, 2026, Employee, by and through his counsel filed a Motion for Status citing therein that a reasonable amount of time had passed and this matter was "ripe for final decision." The undersigned responded to the parties via email correspondence and noted therein that the decision was pending final issuance and that the undersigned noted this would be included in the procedural history of the instant decision. The record is now closed.

JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

ISSUES

1. Whether Agency had cause to take adverse action against Employee;
2. Whether Agency followed all applicable laws, rules and regulations; and
3. If so, whether termination was the appropriate penalty under the circumstances.

BURDEN OF PROOF

OEA Rule § 631.1, 6-B District of Columbia Municipal Regulations ("DCMR") Ch. 600, et seq (December 27, 2021) states:

> The burden of proof for material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean:
>
> > the degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue.[2]

OEA Rule § 631.2 *id.* states:

> For appeals filed under § 604.1, the employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

[2] OEA Rule "Definitions § 699.1."

SUMMARY OF TESTIMONY

On October 6, 2025, October 7, 2025, and October 9, 2025, an Evidentiary Hearing was held before this Office.[3] The following represents a summary of the relevant testimony given during the hearing as provided in the transcript (hereinafter denoted as "Tr.") which was generated following the conclusion of the proceeding. Both Employee and Agency presented testimonial and documentary evidence during the Evidentiary Hearing to support their positions.

Transcript Volume 1: October 6, 2025

Agency's Case In Chief

Jennifer Ward ("Ms. Ward/Ward") Tr. Vol. I. Pp. 26 – 186

Ms. Ward is the Operations Support Manager at the Office of the Attorney General ("OAG") Child Support Services Division ("CSSD"). She testified that she had been Employee's supervisor since September 2019, until the date of his termination. Tr. 27. Ward explained that she first noticed issues with Employee's performance when she began supervising him in September 2019. Ward testified that as she was familiarizing herself with the office, she found an office full of boxes which contained court-related follow-up files. Tr. 27. Ward noted that the files needed follow up actions. Tr. 28. Ward affirmed that prior to the pandemic in 2020, most of the case preparation and case follow-up for child support were done in paper format. Tr. 28. Employee explained to her that those were his boxes and that because he was in court every other day and due to a staffing shortage, he could not complete the work in those boxes. Tr. 28. Ms. Ward testified that she took some of the boxes to complete and assigned some of the boxes to another paralegal who had recently returned from leave. Tr. 29.

Ms. Ward further testified that in the time she began supervising Employee, until 2022 when he was placed on a Performance Improvement Plan (PIP), that there was a "constant issue" of Employee not getting his follow up work done. Tr. 29. She noted that after the pandemic, everything was electronic, so she could log into the case file to see what had been done. Ms. Ward affirmed that during this timeframe, she provided supervision to Employee to improve his performance. She explained that she told all the staff that if they needed assistance or were going to miss a deadline, to let her know prior to the due date. Tr. 30. Ward also noted that the decision to put Employee on a PIP was a group decision made with her supervisor, the Assistant Section Chief Curtis Stanley, and the Chief of Litigation, Dr. Belinda Tilley. She also explained that the decision was discussed with Directors Sophia Ticer and Nicole Morton. Tr. 30-31. Ward affirmed that the same issues she noted about Employee prior to the PIP also occurred following the PIP.

Ms. Ward testified that Employee was placed on a 60-Day PIP which was completed in July 2022. She identified Agency's Exhibit F as the Child Support Division's Policy regarding caseloads. Tr.31. Ward explained that "every child support agency has an electronic case management system. In the District it's called "DCCSES", and that stands for the District of Columbia Child Support Enforcement System." Tr. 31-32. She further cited that "any time an action is taken, we are able to update the case notes because we're in litigation, but if somebody in another unit, like Enforcement or Initiation or even a complaint coming in from the Directors office, you should be able to go into

[3] Vol. 1 denotes the first day of the Evidentiary Hearing, Vol. 2 represents the second day, and Vol 3 represents the third day of the Evidentiary Hearing in this matter.

the case note system and look to see what actions have taken place…" Tr. 32. Ward affirmed that every paralegal uses this system and that Employee was trained on how to use DCCSES. Tr. 32.

Ms. Ward identified Agency's Exhibit G as the training system used for the virtual court management. Tr. 33. She affirmed that this was the standard operating procedures for paralegals and that Employee was trained and received a document of the SOP. Tr. 34. Ms. Ward also affirmed that the expectations outlined in Exhibit G are the expectations she has every paralegal. She required every paralegal to comply with those policies. Tr. 35. Ms. Ward explained that from 2019 until the date of Employee's termination, the expectations for case preparation were the same with the only change being from paper to an electronic form. Tr. 36. Ms. Ward testified that before the pandemic, paralegals were to gather files and have them ready for the attorney to review within 10 days. This meant that they had to gather the paper files, court records and any public assistance information either party had. Tr. 36. The attorneys would write notes and on the day of court, the paralegals would do most of the interviews and draft child support orders. Tr. 36. Ward noted that when they moved to an electronic system, they used Box.com to build their case files. Paralegals were now required to go into the court database called CourtView to download all the files for the attorney. They were also required to go into DCCSES and pull information as well. Tr. 37. Ward also explained there was a post-hearing data sheet and that paralegals had to provide attorneys to review, and then in court the attorney would do half of the interviews. Tr. 37. Ms. Ward testified that this process was all done "within 5 to 10 business days of the hearing, but the premise was that the paralegal was to do all the file prep before the interviews." Tr. 37.

Ms. Ward affirmed that in addition to case preparation, paralegals were also required to do case follow-up. Tr. 38. Ms. Ward explained that if case preparation isn't done, the attorney is not prepared to litigate, and they will look unprepared before the judge. She also stated that if the parties were not interviewed before the hearing, then information that is needed will not be available. Tr.38-39. Ms. Ward further explained that follow-up included "many tasks, including custodial/non-custodial parent wage garnishment, Temporary Assistance for Needy Families (TANF), evaluations, DNA tests and interstate outreach." Tr. 39. She noted that if follow up is not done, then required actions are not completed and it falls on the next paralegal to rush for the next court day and/or may require the attorneys to ask the court for a continuance. Tr. 41. Ms. Ward identified Exhibit H as the paralegal job description and affirmed that it requires paralegals to prepare cases for court and to do follow up after the court. Tr. 41. Ward also affirmed in review of Exhibit D that the Interstate Policy, DCCSES Policy and training materials are standard operating procedures. Tr. 44-45. She testified that all the paralegals are expected to comply with these procedures. Tr. 45.

Ms. Ward identified Agency's Exhibit J as the Performance Improvement Plan ("PIP") for Employee. Tr. 46. She testified that she explained the expectations to Employee. She also noted that the timely completion of case preparation was a part of the accountability for the plan. Tr. 46. Ms. Ward affirmed that Employee successfully completed the 60-Day PIP. She noted that around halfway through the plan, Employee was on track to be successful. Tr. 47. Ms. Ward testified that within 30 days of the completion of the PIP, Employee was back to the previous conduct of not following deadlines and not communicating. Tr. 48. Ms. Ward explained that she received emails from attorneys about Employee's lack of communication with them or response to emails. She also noted that they saw that he was not doing the court follow-up and that the court preparation was late, oppositions weren't filed etc. Tr. 49. Ward identified Agency's Exhibit I as Employee's performance evaluation following the completion of the PIP and affirmed that she had completed the evaluation. Tr. 49-50.

Ms. Ward identified Agency's Exhibit K as a chart she prepared in and around August/September of 2022 through January 2023 which documented hearings and court preparation tasks assigned to Employee. Tr. 54. Ms. Ward stated that Employee was assigned to at least one (1) courtroom, but he could have been asked to cover another courtroom as well. Tr. 55. She explained that depending on the date, there may be approximately two attorneys that presented cases. Tr. 55-56. In explaining Exhibit K, Ward cited that she evaluated the hearing dates and file preparation dates based upon the 10-business day deadline. She also noted that she reviewed the Box.com files to check when folders were completed. Tr. 56-58. Ward stated sections of the document that were highlighted in yellow reflected that there were required documents that were not completed. Tr. 59. Ms. Ward testified that Employee's performance did not comply with the standard operating procedures because everything was late and he was not following the prescribed deadlines. Tr. 60. Ward explained that if a paralegal does not complete case preparation, the attorneys would have to work beyond their scope of time, or she would have to find someone else to do Employee's work. Ward explained that if other paralegals faced similar issues, they would reach out to her, and she would assist them and pull staff to help. She noted that she did not have any other paralegals who were not doing their preparation tasks. Tr. 61.

Ward identified Exhibit L as a document that was requested by Employee. She noted that it was a list of oppositions that were assigned to Employe that were not completed. Tr.63. Ward explained that an opposition is what happens when a non-custodial parent files a *pro se* motion to ask for a modification to the support and/or custody order. Tr. 65. She testified that when a paralegal is drafting an opposition, they are looking at the motion the non-custodial parent filed and changing it to the template verbiage to provide it to the attorney to review and sign. Tr. 64-66. Ms. Ward noted that in the table, for Employee's cases, he failed to complete all his job duties except one where a required praecipe was filed, but it was late. It was due January 27, 2022, and he filed it on February 2, 2022. Tr. 67. Ms. Ward testified that prior to Employee's termination, attorneys complained that the court prep and follow-up had not been completed in a timely manner. Tr. 68. Ms. Ward identified Exhibit M as the "rolling document [she] created for the follow up actions for [Employee] starting with August 8, 2022." Tr. 70. Ward explained that she ascertained the information in this charge by going into each electronic folder and reviewing the attorney case note sheets and court orders to see what follow up actions were needed. Tr. 73. She further explained that based upon the type of cases, if follow up actions were not completed, then issues with support, custody and other obligations, including wage garnishment etc., could be impacted for the cases. Tr. 74-85.

Ward testified that she would go through each case note sheet to determine what follow up actions were needed. She explained that all the paralegals are supposed to put the date and their initials when the follow up assignment is completed. Tr. 85. She affirmed that in the period between January 25, 2022, through January 19, 2023, that she found Employee's case follow up to be deficient. Tr. 86. Ward testified that the biggest impact of untimely follow up is that "there are requirements that the attorney has made or the judge has made that haven't been completed. We have federal goals that we are assigned by the federal government that directly impact our funding." Tr. 87. She also noted that a failure to do timely follow up could mean support payments aren't received and that there may be services that the families are not otherwise provided that they are supposed to receive. Tr. 88. Ward identified Exhibit N as the attorney case note sheet that is generated out of the DCSSES. Tr. 90. Ms. Ward testified that the attorneys Julie Madison ("Madison"), Jalla-Anne Marshall ("Marshall"), Martinez Walker ("Walker") and Matt Lafratta("Lafratta") all reached out to her expressing their concerns about Employee's work. Tr. 92. She stated that most of the outreach was through email or through Microsoft Teams. Tr. 93. She identified Exhibit O as a collection of emails from the attorneys discussing Employee's performance and his need to complete projects. Tr. 98.

Ward further testified that Lafratta expressed concerns about the draft contempt orders that Employee was assigned. She explained that there was a 45-day deadline for contempt. Lafratta said Employee had not responded to him regarding the filing of his contempt orders, and he was worried about that. Ward cited that she emailed Employee to ask for the status of the contempt but did not recall when Employee completed them. Tr. 100. Ward also noted that Madison made complaints about Employee's late court preparation. Tr. 100. Ward explained that she emailed Employee to ask and noted that Madison was concerned. Employee emailed her back and noted he was only one person and that he was working on other things and that they were short staffed. Tr. 101. Ms. Ward cited that she told her team to always reach out to her if they were falling behind, so she did not find out about the issue with Attorney Madison until after she emailed her about Employee's late preparation. Tr 102. Ward noted that she was concerned about the tone of Employee's response to her and the lateness of the file preparation. Tr. 104.

Ward also testified that Attorney Marshall had reached out to her about the late files and that Employee had a pattern of taking leave the day before court and the files were not completed. Tr. 105. Ward said Marshall was nervous about being prepared for court and the interviews because there was no communication from Employee. Tr. 106. Ward also testified that she spoke with Employee about the concerns raised by the attorneys. Ward also explained that there were attorneys who expressed concerns about Employee's failure to complete his work and how it impacted their work. Tr. 107. Ward testified that Attorney Marshall indicated that she had to work on her alternative work schedule day off due to cases not being prepped. She also cited that Attorney Walker said he had to work past his scheduled time because files were not ready for review. Tr. 107. Ward also explained that Employee previously worked for a different set of attorneys than the team he was with at the time of his termination. She noted that the attorneys switched in October 2022 and because they were short staff, paralegals also moved. Tr. 109-110. Ward denied reassigning Employee as punishment or because she didn't like him. T. 111.

Ward testified that there were times when the paralegals in the Child Support Unit were overworked. She reiterated that she told her team to keep her informed so that they could work on ways to make it manageable. Tr. 112. Ward also testified that there were other paralegals who had performance issues like Employee. She noted that she did the same thing with them as she had done with Employee. She also noted that additional training was provided to paralegals as well. Ward testified that she had some knowledge about an Equal Employment Opportunity ("EEOC") complaint that Employee filed. She cited that she was not notified by any administrative office that she was a respondent in any litigation related to this complaint. Tr. 114. She denied making any decisions as it related to Employe based on any type of protected status or protected class that he has. Tr. 114.

Ward explained that they had an issue with the interstate compact that involved Employee. She noted that there was a violation of the standard operating procedure, in that if they are contacted by a party that is in another state, they were supposed to redirect them to that state. Tr. 115. Ward stated that there were no notes in DCCSES about the communications and there was no documentation. She explained that if she had been notified and called the other state, she would not have been able to provide them with the exact dates the custodial parent had called them. Tr. 117. Ward also testified that once she determined Employee had performance issues, that she spoke with managers and supervisors including Dr. Tilley, Nycole Morton and Sophia Ticer. Tt. 118. She cited that they told her to do a thorough review of Employee's work and present it to them. She said that after she presented it to them, they determined that adverse action was warranted. Ward affirmed that she did the initial draft of the Notice of Adverse Action and provided it to Dr. Tilley and Nycole Morton. Tr. 118-119. She noted that they sent it back to her for corrections and then she returned it back to them. Ward cited that she was not the proposing official. Tr. 119.

On cross-examination, Ward affirmed that she was made aware of the EEO complaint when the EEO office contacted her. Tr. 121. She said she was interviewed for the EEO complaint by a representative of the EEO office. Ward said it was her understanding that Employee was "upset that [she] didn't address him by [Mr. Employee], even though [they have] been working together for years and she had never addressed him by [Mr. Employee]." Tr. 122. Ward also noted that there was an ageism complaint. Tr. 122. Ward affirmed that all child support offices are given goals by the federal office. Tr. 122. Ward cited Employee was a contributing factor to the concerns with the compliance with the federal goals. Tr. 123. She also affirmed that there were other paralegals with performance concerns. Tr. 124. Ward affirmed that she reviewed orders of cases that Employee was involved with. She noted that the paralegal helps the attorney litigate the case. She noted that she probably reviewed more than 90 court orders in cases that Employee was involved in. Tr. 125. Ward affirmed that she did an initial draft of Exhibit A- the advance notice of proposed adverse action dated April 4, 2023. Tr. 128. She affirmed that she recommended causes 1 and causes 2 jointly in her initial draft. Tr. 129. Ward testified that data was presented to her management team regarding Employee, they discussed and then the adverse action notice was drafted. Tr. 130. Ward affirmed that she discussed the cases on pages 4, 7, and 9 of the document. Tr. 131. Ward testified that Employee's lack of performance contributed to the outcome of cases. Tr. 132.

Ward was asked about Agency's Exhibit M and the number of cases listed. She cited that many of the cases were people trying to initiate a child support order. Tr. 137. She affirmed that some of the cases were modifications. Tr. 138. Ward maintained that all cases are important. Tr. 138. Ward also described issues that could occur if follow up or case prep was not completed. Tr. 140 She noted that it is a disservice to the District's children if they are not prepared. Tr. 140. Ward explained that her notes were in a file cabinet in her office and that she prepared those because she hand-writes on a notepad to transcribe what she reviews. Tr. 145. She cited that some of her notes may have been made contemporaneously. Tr. 147. Ward testified that in review of the cases in which there were continuances, that the majority of them were continued because there was no documentation received for the government's position on the initial motion. She affirmed that she believes Employee's performance was a contributing factor. Tr. 149. Ward affirmed that she spoke to Employee about the continuances. Tr. 151.

Ward testified that in the cases of continuance, the attorney will put in the case notes the reason why a case was continued and for what, and usually in the court order as well. Tr. 156. Ward explained that if missing tax documents were the reason for the continuance and it was Employee's responsibility to request them, and if he did not do so, then that continuance would be attributed to Employee's performance. Tr. 157. Ward reiterated that she reviewed the case notes for each of the cases. Ward explained that at the time Employee was terminated, he was assigned to a courtroom team that at one point had three (3) attorneys. One for motions, one for contempt and one for oppositions. Tr. 163. She affirmed that Brittney Fox was an attorney who was assigned to Employee at one time for oppositions. Tr. 164. Ward also explained that because of the impact of COVID, they faced paralegal staffing shortages in September 2022. She affirmed that Employee complained to her several times that he was overworked. Tr. 165. She said he told her he had some COVID deaths that he was not dealing well with. She said that she could not lessen his work. Tr. 166.

Ward said that Employee did not work evenings and weekend and that she was able to confirm this through the electronic filing metadata. She testified that Employee would make claims to her that he was working weekends and past his 4:30/5:00 work time. But she could look into the properties of each document and see when they were added. She also noted that at one point Employee accused her of deleting his case notes. She explained that when he claimed the weekend and evening work, she went into those documents to obtain electronic evidence and saw that was not true. Tr. 167. She also testified that Employee would never provide case-specific examples of what docket, and calendars he was working on. Tr. 168. Ward testified that it was group decision to place Employee on a PIP. Tr. 173. She affirmed that within 30 days of the completion of his PIP that Employee's work performance began to decline. Tr. 173. She affirmed that she was involved in the review of the *Douglas* Factors and that she answered them to the best of her ability and included them in the draft, but they were edited by Dr. Tilley. Tr. 175. She discussed the *Douglas* factors with Dr. Tilley and Nycole Morgan. Tr. 175. She affirmed that there was discussion about her review of Employee's past performance. Tr. 177. Ward testified that she was only able to see Employee's performance history for about three or four years back, and that in three of those, she had conducted the evaluation. Tr. 177. She affirmed that Employee's 14-year performance history was mentioned in the *Douglas* Factors analysis. Tr. 178.

On redirect examination, Ward cited that when Employee was supposed to complete a follow up of sending DNA test orders, that it was to be denoted in the case notes with his initials and the date. She affirmed that she recalled noting that no follow up was assigned to Employee and that follow up considerations were made regarding Employee's failure to do timely follow up when assigned. Tr. 184-185. Ward affirmed that she expects all paralegals to follow the standard operating procedures ("SOP"). Tr. 186. She testified that if a paralegal failed to complete follow up or case prep on a timely basis, that it was a violation of the SOP. Tr. 186.

<u>Martinez Walker ("Walker") Tr. Vol. I. Pp. 189 – 199</u>

Walker is an attorney in the Juvenile Division at Agency. Prior to this assignment, he worked with the Child Support Division from March 2022 through November 2023. Tr. 190. Walker testified that Employee worked with him as a paralegal for several months during that time frame. Walker stated that he had concerns about Employee's performance as it related to case preparation. Walker explained that Employee would not have notes completed, parties would not be interviewed and proposed orders were not prepared for court. He cited that all those items needed to be prepared to present in court. Tr. 191. Walker also noted that Employee's failure to complete court preparation made the days longer and more stressful than it should have been. Tr. 191. He explained that they would have to do everything while in court, and also must explain to the court that they may not have spoken to the parties in their cases etc. Tr. 191.

On cross examination, Walker cited that he also worked with other paralegals during this frame, including Ms. Margaret Bell, Patrice Taylor, Erica Brown and another paralegal whose name he could not recall. Tr. 193. He cited that he had more than a few problems with Employee. Tr. 193. Walker noted that Employee was one of the more knowledgeable paralegals in the section and understood the job well. Walker also explained that working in court is a highly demanding job and that he would be in court about three times a week. Walker cited that he was aware of a staff shortage with paralegals at the time he was working with Employee. Tr. 195. Walker also stated that the other attorneys on his team were Julie Madison and Jalla-Anne Marshall. Tr. 196. Walker testified that during this time he did get continuances, but that would depend on the type of case as to why there might be a continuance. Tr. 197. Walker did not recall any adverse action against Agency based on something Employee had done. Tr. 198.

Employee's Case-in-Chief*

Brittnany Fox ("Fox") Tr. Vol. I. Pp. 200 – 211 (Employee Witness)[4]

Fox testified that she currently works for Agency in the Child Support Services Division, and she started in June of 2021. She affirmed that she knows Employee and that she was assigned to a team with him in the summer of 2022. Tr. 201. She noted that she is a trial attorney and Employee was a paralegal. She cited that Employee would prepare the cases and she would review them to present in court. She explained that when she first started working with Employee, she was a new trial attorney, and he was very knowledgeable, so she saw him as a teammate. Tr. 203. She stated that Employee was a nice person and the kind of co-worker you would want. She testified that there were no concerns by any of the judges that she appeared before regarding Employee. Tr. 204. She also noted that a judge called Employee in to explain an issue to her given his experience. Tr. 204. Fox testified that she went on maternity leave in the beginning of September 2022 and that thereafter, she only saw Employee in the halls because the teams had been reassigned. She identified Employee's Exhibit J as a letter she wrote to Jennifer Ward complimenting Employee on June 10, 2022. Tr. 205. Fox testified that after September 2022, she learned that Employee had been terminated. She recalled other paralegals with performance issues during this time. She stated that no one reached out to her about Employee. Fox also recalled working with Employee in the evenings when the caseload was heavy. Tr. 209. On cross examination, Fox affirmed that it was important for everyone to do their job otherwise it could "snowball" into a lot of work. She affirmed that from September 2022 to the present that she had not worked with Employee. Tr. 211.

Transcript Volume 2 October 7, 2025

Agency's Case in Chief

Matthew LaFratta ("LaFratta") Tr. Vol. 2. Pp. 11- 35

LaFratta is an attorney with Agency in the Child Support Services Division. He has been in this position for 15 years and handles all types of child support litigation. Tr. 12. He affirmed that he handles motions for contempt on a regular basis. He explained that there are internal metrics which their office determines if a case may be ripe for filing a motion for contempt. Tr. 13. He further noted that paralegals draft and file motions for contempt. He affirmed that he worked with Employee in and around 2021 and 2022. He explained that Employee was assigned to help him with contempt motions. Tr. 14. He explained that there was a specific timeline for drafting motions, but that their supervisor gave them one 45-day window to get the tasks accomplished. Tr. 15. LaFratta testified that there were several times where Employee did not get the draft motions to him as he was supposed to. He also noted that Employee would be delayed in filling or not file the motions. LaFratta noted that these actions put them outside of the 45-day deadline. Tr. 16. LaFratta said he initially would email Employee and ask him about the status of the draft motions, and ultimately, he still was not getting it to him, so he elevated the issue to his supervisor, Curtis Stanley. Tr. 17. He affirmed that he also contacted Jennifer Ward about the issue. Tr. 17. He recalled telling Ward that Employee was not getting the work to him and that it was jeopardizing the ability to file within the 45-day deadline. Tr.

[4] Fox was called out of order due to her availability to appear.

18. LaFratta explained that the impact on the Court is that the cases would not be held before a judge for contempt hearings. Tr. 18-19.

On cross examination, LaFratta explained that he worked with Employee between 2021-2023. LaFratta noted that he started with the child support division in 2010, and that Employee was already there. He affirmed that through 2021-2023 that it was the COVID era for the workplace. Tr. 23. He could not speak to whether paralegals were short staffed, but that they did lose a couple attorneys. Tr. 23. LaFratta affirmed that there were times where Employee did not file contempt motions. He cited that he could not recall whether he failed to file conclusively, but he believed that he had failed to file some motions for contempt. Tr. 29. LaFratta affirmed that he exchanged emails with both Curtis Stanley and Jennifer Ward about Employee's performance. LaFratta could not recall if there were any adverse actions due to Employee's actions regarding contempt motions. Tr. 31. LaFratta testified that he did not supervise Employee's daily work.

On redirect, LaFratta testified that if Employee did not complete contempt motions as assigned, those contempt motions do not get filed in child support cases. He affirmed that a contempt motion is necessary to get an order of contempt from a judge. Tr. 35.

<u>Fredline (Freddie) D'Ateno ("D'Ateno") Vol.2. Tr. Pp. 39 – 79</u>

D'Ateno affirmed that she is often referred to as "Freddy" in communications. She testified that she is the Chief Human Resources officer for the Office of the Attorney General. Tr. 40. D'Ateno affirmed that she worked on Employe's removal to issue the Advance Notice and the Final Notice of removal. Tr. 41. She worked with the child support division and cited that Sophia Ticer was her primary point of contact. Tr. 42. D'Ateno testified that she attended the service when Ms. Ticer served Employee the Advance Notice of Removal. She also cited that she reviewed the document for accuracy. She did not recall having any edits. Tr. 43. D'Ateno explained that she drafted the final notice, submitted it for signatures and issued the final notice. She affirmed that she was responsible for creating the draft that was sent to Seth Rosenthal ("Rosenthal") for review. Tr. 43. She cited that once Rosenthal approved the final notice, she issued the notice electronically to Employee. Tr. 44.

D'Ateno testified that there was an issue with the issuance of the final notice. She recalled that the notice was issued on a Saturday and the subsequent Monday was a holiday. She explained that an updated notice with an updated date was issued that Tuesday instead. Tr. 44. D'Ateno cited that she believes that separation was the appropriate penalty given the performance issues Employee had. She cited that Employee had previously been placed on a PIP and as such, alternative penalties such as suspensions or otherwise did not seem most productive or efficient. Tr. 45-46. D'Ateno noted that they did consider placing Employee on a second PIP but decided against it because the performance issues that manifested on the PIP were identical to the ones he had previously been placed on the PIP for. Tr 47. She also noted that the performance issues arose "pretty soon" after Employee completed the initial PIP. Tr. 48. D'Ateno affirmed that as the chief human resource officer, that she would inform a division if she believed termination was not an appropriate penalty. Tr. 48. She believed that termination was the appropriate penalty for Employee in this case. Tr. 49. She affirmed that if she believed termination was inappropriate, she would have provided that opinion to Mr. Rosenthal and other individuals at OAG. She affirmed that she still believes termination was the appropriate penalty for Employee.

On cross examination, D'Ateno explained that she is only responsible for the review of proposed terminations at OAG, not at all agencies. She testified that Employee's termination first came to her attention upon her receipt of the draft of an Advance Written Notice submitted by Ms. Ticer. Tr. 52. She did not recall having any questions in review of the draft. Tr. 52. She affirmed that exhibits were also provided but could not specifically recall what those were. D'Ateno affirmed that she had received Agency's Exhibit A and that she reviewed it. Tr. 54. D'Ateno did not recognize or recall the document identified as Employee's Exhibit I. Tr. 55. She did not recall the document identified as Employee' Exhibit J. D'Ateno affirmed that she was familiar with the *Douglas* Factors and that she knew what a *Douglas* factor sheet was. Tr. 59. D'Ateno testified that there was an independent assessment of the *Douglas* factors completed. Tr. 62. D'Ateno reiterated that she and CSSD management determined that another PIP would not have been productive. Tr. 63. She did not recall any physical meetings or what the specific communication method was used to communicate about Employee. Tr. 63. She recalled meetings but could not specify how many meetings took place. She noted that the meetings included Ms. Ticer but she did not recall whether Dr. Tilley or Ms. Ward were present. Tr. 64. D'Ateno did not recall if there was any written memorialization of those meetings. Tr. 65.

D'Ateno reiterated that she is familiar with the *Douglas* factors. She did not recall what specific mitigating factors were considered for Employee in the *Douglas* factor assessment. Tr. 65. She did not recall if she was aware that Employee had complained about Ms. Ward when reviewing Employee's *Douglas* factors. Tr. 66. She also did not recall if she was aware that Employee had appealed his performance evaluations to her office prior to his termination. Tr. 66. She did not recall Employee filing an EEO complaint and again reiterated that she did not recall what specific documents were included with the exhibits. She did not recall seeing any emails where Employee complained about stress related workplace issues and concerns. Tr. 67. She did not recall paralegal staffing issues. Tr. 68. She was aware that Employee worked at OAG for 14 years and had no previous disciplinary history. Tr. 68-69. She testified that she considered those when looking at mitigating circumstances. Tr. 69.

On redirect, D'Ateno testified that it's been over two and half years since she worked on Employe's case and that her memory was clearer then than now. Tr. 73. D'Ateno affirmed that she requires a *Douglas* factor rational worksheet to be completed for each adverse action. Tr. 73-74. She affirmed that there was not a separate rationale sheet here because it was in the Notice of Adverse Action. Tr. 74. D'Ateno testified that she has worked as a human resources staff member since January 2015. D'Ateno stated that she was not aware of any issues of discrimination that would have impacted Employee's termination. Tr.74. She affirmed she would have raised any EEO issues to managers if she had received information of a valid EEO claim. Tr. 75. She was not aware of any lawsuit or administrative action that named the District or OAG as a respondent as it relates to an EEO issue involving Employee. Tr. 75. D'Ateno affirmed that Exhibit A is the Notice of Adverse Action received from the CSSD. Tr. 76. She identified Exhibit C as the Notice of Adverse Action. D'Ateno testified that she did not receive any information that Employee had not had an appropriate opportunity to respond to the allegations against him. Tr. 79.

<u>Dr. Belinda Tilley ("Dr. Tilley). Vol 2. Tr. Pp. 81 – 172</u>

Dr. Tilley testified that she is currently retired, but prior to her retirement, she was the Legal Services Section Chief with the Child Support Services Division at OAG. Tr. 82-83. She was responsible for making sure customers were able to receive services, starting their child support cases and finding parents. She was also responsible for the litigation unit, and they had hearings in D.C. Superior Court. Tr. 83. Dr. Tilley affirmed that she is a licensed attorney. Tr. 83. Dr. Tilley explained that Employee was assigned to work within the litigation unit. She noted that Employee was responsible for reviewing pleadings, paternity petitions, and motions submitted by attorneys and other litigation related duties. Tr. 84. Dr. Tilley supervised Jennifer Ward and cited that she was one of the supervisors responsible for paralegals and administrative staff. Tr. 85. Dr. Tilley affirmed that Employee reported to Ms. Ward. Tr. 85.

Dr. Tilley explained that there came a time when she was informed about performance issues with Employee Tr. 85. She cited that she had been told that Employee was not doing his work in preparation for hearings or the follow up. Tr. 85. Dr. Tilley recalled that she first learned of Employee's issues around the pandemic. She affirmed that during the pandemic, the CCSD switched from paper files to electronic file storage. Tr. 85 -86. Dr. Tilley affirmed that Employee was placed on a PIP and that she was supervising Ms. Ward at that time. Tr. 86. She agreed with the decision to place Employee on a PIP. Dr. Tilley testified that Employee "barely passed the performance improvement plan." Tr. 87. She explained that the concerns they had were whether he would complete work on his own without assistance. She further noted that because Employee was an experienced paralegal, he was placed on the PIP because he was not doing prehearing preparation and not completing court follow up. Tr. 87. She said he began to do those things, so they considered it resolved.

Dr. Tilley stated that Employee was a "seasoned paralegal within child support services and he knows the job and had been performing the job prior to the performance improvement plan in a less of a capacity than what our expectations were." Tr. 88. She explained that at the conclusion of the PIP, they thought Employee would do the work. Dr. Tilley testified that "almost immediately after the conclusion" of the PIP, Employee's did not perform the functions of his job. Tr. 88. She explained that the SOP required paralegals to prepare for hearings by preparing case files and interviewing parties. She said it was frustrating because Employee was not doing those tasks which meant other people "had to either pick up the slack, or the attorneys would complain, and they did, that they weren't prepared properly for court which obviously can risk hearing dates." Tr. 89.

Dr. Tilley said it was brought to her attention again that Employee's performance was not measuring up. She had a discussion with Ms. Ward and then eventually it was sent to the director's office. Tr. 90-91. Dr. Tilley affirmed that she reported to Nycole Morton. Dr. Tilley testified that to her recollection, the director's office and human resources were involved in recommending Employee be terminated. Tr. 91. Dr. Tilley said the decision to terminate Employee was based on the fact that the attorneys need to be prepared and that they cannot have customers complaining or miss hearings because of the lack of preparation. Tr. 92. Dr. Tilley testified that she asked Ms. Ward to collect data about Employee. She affirmed that Ms. Ward provided her a table which provided information about whether Employee had timely completed his tasks. Tr. 93. She received a table about whether follow up had been completed timely by Employee. Tr. 93. A table with information about oppositions was also provided by Ms. Ward. Tr. 94. Dr. Tilley cited that it was difficult to remember all the conversations given the passage of time but cited that it was "staggering the lack of work that had been assigned that ... just didn't get done." Tr. 94. Dr. Tilley remembers reviewing the Notice of Proposed Adverse action and affirmed that she contributed to the *Douglas* Factors. Tr. 95. Dr. Tilley affirmed that she considered every factor when evaluating Employee's performance issues. Tr. 96.

Dr. Tilley testified that paralegal responsibilities are very important. She cited that failure to ensure the attorneys are prepared for court and be effective would mean they are not able to meet the needs of the families. Tr. 97. She affirmed that the SOPS applied to all paralegals, and she expected all paralegals to comply with, and follow the SOPs. Tr. 97. Dr. Tilley explained that Employee's failures to comply with the SOP prevented the attorneys from being prepared for court. Tr. 98. Dr. Tilley recalled reviewing that in 24 of the 28 court days that Employee was responsible for preparing cases, that he was either late or did not complete case preparation. Tr. 99. She recalled "gasping at the significance of that failure." Tr. 99. She also recalled reviewing that 77 of 85 cases that follow up were not completed and that was concerning because that meant there could be backlogs of cases. Tr. 100. Dr. Tilley also recalled that in the 84 cases that were evaluated and included in the Notice of Adverse cation that Employee completed follow up in a very small number of cases. Tr. 101. Dr. Tilley affirmed that she also reviewed Employee's work on oppositions and that it is important that paralegals prepare those motions to terminate or modify child support. Tr. 102.

Dr. Tilley cited that to the best of her recollection, Employee was a Grade 12 paralegal, which was a highly skilled paralegal position in which the expectation is higher than any of the lower grades. Tr. 103. Dr. Tilley explained that she had been with OAG for 13 years, and when she arrived in 2012, Employee was already there, so he had been at OAG since at least that time. Tr. 104. Dr. Tilley cited that she believes Employee understood the SOPs. Tr. 104. She also noted that she considered that Employee had no prior disciplinary history and she considered that to be mitigating. Tr. 104. Dr. Tilley testified that in her review of the table of illustrative actions, there are times in which an employee can performance in such an egregious manner that can trigger termination. Tr. 105. Dr. Tilley stated that she believed Employee was an experienced paralegal and she thought he did not perform in the job and that it was detrimental to the organization. Tr. 106. She cited that she had no confidence in him at that time. Tr. 106. She affirmed that she reviewed the penalty of termination and whether it was consistent with other penalties imposed for similar actions. Tr. 107. Dr. Tilley testified that she did not believe that Employee had potential for rehabilitation given that he had the opportunity to improve and demonstrate that he could pass a performance improvement, and his subsequent resumption of poor performance – did not give her a thought that he would change. Tr. 108. Dr. Tilley cited that she carefully considered alternative sanctions, including demotion, transfer or termination. Tr. 108-109. She affirmed that even if Employee had been demoted, he still would have substantially similar job duties like case preparation and follow up. Tr. 109. Dr. Tilley did not recall being present when Employee was served with the Notice. Tr.11. She affirmed that she still stands by the decision to terminate Employee from service. Tr. 11.

On cross-examination, Dr. Tilley affirmed that the decision to terminate Employee rested with human resources. Tr. 115. She believed that the person involved was Ms. D'Ateno. Tr. 118. Dr. Tilley explained that Ms. Ward prepared the draft of the advance written notice letter, after which she reviewed it and added what was necessary to move that notice forward. Tr. 119. She affirmed that Ms. Ward was Employee's direct supervisor and that she relied entirely on the data provided by Ms. Ward. Dr. Tilley also testified that she spoke with attorneys LaFratta, Madisons and others. Tr. 120. Dr. Tilley cited that she did not conduct an independent review of the cases provided by Ms. Ward because it was not required since Ms. Ward gathered the data as a manager who instructed people on SOPs. Tr. 122. Dr. Tilley reiterated that she relied on the information provided by Ms. Ward and the attorneys. Tr. 122. Dr. Tilley cited that at the time, she was not aware of any attorneys who were complimenting Employee. She noted that there may have been a couple who in previous period complimented him, but in the period of the PIP, she was not aware of any. Tr. 124.

Dr. Tilley explained that when an attorney makes a complaint about a paralegal that the supervisor will reach out to the paralegal to correct deficiencies and make the paralegal aware. Tr. 124. Dr. Tilley affirmed that there were periods of DCCSES outages and that those typically impacted everyone, so when looking at the failure to perform in a job, it would be hard to attribute that to DCCSES when everyone else was doing their job. Tr. 12. Dr. Tilley affirmed that there were attorney and paralegal staff shortages during the period of 2021-2023. She noted that she was looking to fill positions at that time. She explained that she was aware of the shortages that Employee was in and that Ms. Ward filled in the gaps to ensure that they could continue with hearings. Tr. 127-128. Dr. Tilley was not aware that Employee had filled in for paralegals at that time. She did not have specific numbers as to how many paralegals were assigned to the unit at the time she was reviewing his advance notice for removal. Tr. 129. Dr. Tilley recalled the Advance notice and the charges. She affirmed that the two causes of actions are based on the same exact facts, but Employee was not being charged twice for the same offense. Dr. Tilley explained that the charges follow from the behavior of the Employee and his failure to perform his work and his failure to follow the SOPs. Tr. 133. She reiterated that it was not duplicative. Tr. 134.

Dr. Tilley affirmed that she was familiar with the *Douglas* factors and that she reviewed them and the data in review of Employee's case. Tr. 135. Dr. Tilley did not recall the exact timing of when she was made aware of Employee's EEO complaint but affirmed that it did come to her attention that he had filed with the EEOC. Tr. 135. Dr. Tilley did not recall when she read Employee's complaint. She claimed that she was not involved in responding to the complaint. Dr. Tilley affirmed that retaliation for EEO activity is prohibited. Tr. 137. Dr. Tilley cited that she did not see a reason for an unsubstantiated EEO complaint to be included in a Notice of Proposed Action. Tr. 140. She explained that she had not heard a decision or outcome regarding the claim, so that's why she categorized it as unsubstantiated. Tr. 14. Dr. Tilley affirmed that the entire litigation unit complained of excess workload and staffing shortages. Tr. 142. Dr. Tilley said that Ms. Ward placed herself on the calendar during the periods in which they were short-staffed. 143-144. She also noted that other paralegals assist with work and she had others from her unit help as well. Tr. 144. Dr. Tilley recalled seeing emails from a Magistrate Judge regarding Employee. Tr. 145. She also cited that the judge's knowledge of Employee did not really relate to his performance, because these issues happened after she left the bench. Tr. 145.

Dr. Tilley recalled having conversations with Employee prior to the PIP and during the PIP. Tr. 14. Dr. Tilley affirmed that she went through all 12 *Douglas* factors and wrote her assessment in the document. Tr. 151. Dr. Tilley cited again that Ms. Ward drafted the document and that she reviewed it and made grammatical edits and added statistics. Tr. 152. Dr. Tilley noted that she could not recall the entire review process but noted that the document is not final until HR approves it. Tr. 155. Dr. Tilley explained that she did not consider staff shortages to be a mitigating circumstances because other paralegals were performing the work. Tr. 156-157. She agreed that the nature of the job was stressful, but the fact that they had so much work to get done and Employee was not doing his work was unsustainable. Tr. 157. Dr. Tilley did not know that Employee worked evenings and weekends but noted that they discouraged people from working during time periods for which they are not being paid. Tr. 158. Dr. Tilley did not believe that the EEO complaint was a mitigating circumstance. Tr. 159.

Dr. Tilley explained that the considerations of alternative sanctions were discussed with HR and Nycole Morton and Sophia Ticer. Tr. 162-163. Dr. Tilley testified that paralegals assignments were not team based and they did not reassign people to other teams because they don't like people etc. Tr. 165. Dr. Tilley did not recall Employee being reassigned after the completion of his PIP. Dr. Tilley noted that Employee did not have prior disciplinary actions in their review of the adverse action. She noted that Employee's prior work history was considered within the context of the review and noted that his performance declined such that a PIP had to be implemented. Tr. 170.

Seth Rosenthal ("Rosenthal") Vol 2. Tr. Pp. 176-228

Rosenthal is the Chief Deputy Attorney General at OAG and has been in that role since January 2023. Tr. 177. Rosenthal testified that he was the Deciding Official ("DO") for Employee's termination. Tr. 178. Rosenthal explained that his duties as a DO are to look at the record, including the Notice of Adverse Action, employee's responses and reviewing the hearing officer's report and recommendation. Tr. 178-179. Rosenthal affirmed that he reviews the *Douglas* Factors which are in the Notice of Adverse Action. Rosenthal stated that Employee was charged with failure to follow instructions, defined as negligence and with neglect of duty. Rosenthal noted that Employee had failed to timely prepare files for court hearings and failed to prepare court follow up. Tr. 179-180. Rosenthal also explained that Employee's communication with his coworkers, particularly the attorneys, was inadequate and he also failed to file oppositions to motions for support order modifications. Tr. 180. Rosenthal affirmed that Agency's Exhibit C was the Notice of Adverse Action that he signed as the DO. Tr. 181. He also affirmed that he reviewed the Advance Notice prior to signing the final notice and that he reviewed all the exhibits. Tr. 181. Rosenthal testified that he reviewed Employee's response and the exhibits attached and he also reviewed the hearing officer's opinion. Rosenthal affirmed that he weighed all the information available to him in consideration of the *Douglas* Factors.

Rosenthal testified that he considered Employee's conduct to be a serious offense. Rosenthal noted that between August 2022 and mid/late January 2023, Employee was given 28 files to prepare for Court and in 24 of those cases, he did not get the files prepared in a timely way which compromised the attorney's ability to prepare for court. Tr. 183. He also explained that during the time of July 2022 through January 2023, Employee had 84 follow up cases and in 77 of those he did not do any follow up at all and not one case was adequately followed up. Tr. 184. Rosenthal cited that Employee's conduct violated the standard operating procedures in the CSSD. He explained that if internal deadlines are not met, there is a chance that support will not flow as it should to the families involved. Tr. 185. Rosenthal also iterated that Employee failed to communicate with the attorneys regarding the case preparation and follow up. Tr. 186. He also noted that Employee had failed to file oppositions to modify support orders and in two cases, the judges granted the non-custodial parent's motion and rejected the OAG's opposition because of untimely filing. Tr. 187.

Rosenthal noted Employee was a Grade 12 paralegal which is a senior paralegal. He explained that Employee had been with OAG for some time and was entrusted with considerable responsibility for processing child support cases. Tr. 187-188. Rosenthal noted that because of this he considered this to be aggravating in consideration of the *Douglas* factors. Rosenthal testified that he did consider Employee's prior disciplinary history and still determined termination was warranted. Tr. 188. Rosenthal also felt that Employee's conduct compromised his supervisor's confidence in him. Tr. 188. He also noted he did not personally know Employee. Rosenthal testified that he had no reason to doubt the data that was provided to him regarding Employee's misconduct. Tr. 191. He explained that he was given no evidence to rebut the data that was provided with respect to the court file preparation, follow up, failure to file oppositions or to the complaints received from the attorneys regarding Employee's lack of communication. Tr. 191. Rosenthal also cited that Employee did not rebut in any way the evidence that was in Notice of Adverse Action, Employee did not say that he was preparing the court files on time or doing the follow up. Employee did not say that he didn't fail to file oppositions. Instead, Rosenthal noted that Employee said that there may have been some technological issues that slowed down his work and that he had a lot of work and was not able to get all of it done. Tr. 191-92. Rosenthal noted that Employee never brought that to the attention of his supervisor or asked for a reprieve on deadlines and that didn't happen in any of the cases.

Rosenthal affirmed that he determined Employee should be terminated. Tr. 193. He explained that he chose termination because Employee had been given opportunities to remediate or improve and the pattern of deficiency recurred and kept occurring. He noted that Employee had been placed on a PIP in 2022 and that he completed it, and things seemed to go ok. Rosenthal stated that within a month after the completion of the PIP, Employee "slid back into the same pattern of behavior." Tr. 194. Rosenthal also cited that on November 15, 2022, Employee had meeting with his supervisor where the performance was bought to Employee's attention, yet Employee did not improve. Tr 195. For those reasons, Rosenthal felt that alternative sanctions were not an appropriate remedy for Employee's deficient performance. Tr. 196. Rosenthal testified that once he signed the Final Notice, he sent it to Ms. D'Ateno, and afterward he had no further involvement. Rosenthal affirmed that he still stands by his decision to terminate Employee based on the evidence presented to him. Tr. 196.

On cross-examination, Rosenthal cited that it was his understanding that in 10 cases where Employee failed to file, the court ruled against the District. He explained that this information was in the Notice of Adverse Action and supported by an exhibit to it. Rosenthal identified Agency's Exhibit A at Page 4 regarding the cases mentioned. Tr. 199-200. Rosenthal explained that he also looked at Exhibit 8, but that he did not go back and look at each case included in the action. Tr. 200. Rosenthal noted that he was not aware of any other reference in the document that related to adverse rulings against District. He reiterated that Employee's failure to follow rules and comply with deadlines affected the mission of the OAG. Tr. 201. Rosenthal affirmed that he confirmed the attorneys' complaints about Employee. He explained that he reviewed Employee's response which included statements from two attorneys who had previously worked with Employee who commended his performance and a magistrate judge who also noted good things about Employe. Tr. 202.

Rosenthal testified that there were 84 cases where Employee failed to prepare hearing follow up. Tr. 204. Rosenthal could not recall whether he had previously seen Agency's Exhibit M. Tr. 205. He affirmed that he knew what signaled "No follow up assigned" and that it means that no follow up was assigned for OAG for a particular case. Tr. 206. Rosenthal did not know the number of cases where Employee had not been assigned follow up. Rosenthal testified that he did not review Exhibit N in preparation for his testimony. Tr. 207. Rosenthal testified that the termination of Employee came at the "tail-end" of Covid, as it was in late 2022 into early 2023. Tr. 207. He noted that there were no longer COVID restrictions in place. Tr. 207. Rosenthal affirmed that he read evidence that there was a paralegal staffing shortage in the period of August 2022 through December 2022. Tr. 208. He did not inquire as to whether there was a shortage at that time. Tr. 208.

Rosenthal cited that he saw an email wherein Employee communicated with Ms. Ward about workplace assignments but did not recall any others. Tr. 209. Rosenthal explained that that email was on one very discrete issue and that Employee's pattern of misconduct was broader than one assignment to spend an extra day in court. Tr. 209. Rosenthal affirmed that it was his recollection that this email applied to a limited period of time. Tr. 210. He affirmed that he saw Employee's response that there were three paralegals instead of five on his team. Tr. 210. Rosenthal explained that he did inquire about the shortage and that he did not see similar complaints from other paralegals in that section. He also noted that there was nothing in the record to show where Employee requested additional time to complete his work or otherwise. Tr. 211. Rosenthal affirmed that he would not know if there were other complaints if they were not in the record. Rosenthal affirmed that he learned that Employee had appealed his performance evaluation to HR, but that evaluation ended on September 30, 2022. Tr. 212.

Rosenthal testified that he could not recall the exact date but noted that he saw Employee had attached his EEO complaint to his response to the notice of adverse action. Tr. 213. Rosenthal affirmed that he read the EEO complaint, but that without the document in front of him, he could not recall specifically what it involved. He noted that he recalled a complaint about a hostile work environment. Tr. 214. Rosenthal affirmed that the *Douglas* Factors include consideration of mitigating factors like workplace stress but noted that he had no reason to "necessarily take as valid the complaints that were made in the EEO complaint…. or that they were invalid either." Tr. 214. He noted that the Right To Sue Letter issued did not make a finding that there was a hostile work environment. Tr. 215-216. Rosenthal testified that he was not aware that Employee had complained directly to Ms. Ward about his work-related conditions and circumstances. Tr. 217. Rosenthal affirmed that he believed that Employee had failed to timely file oppositions in several cases. Tr. 218. Rosenthal noted that Dr. Tilley had signed the document, but he had no knowledge of how the document came into being. Tr. 219. He did not have any communication directly with Dr. Tilley about the *Douglas* Factors. Tr. 291. Rosenthal cited that he did not think that Employee engaged in malfeasance. He reiterated that Employee's misconduct here was performance deficiencies. Tr. 220. Rosenthal testified that he reviewed Attorney Walker's complaints in the exhibits and affirmed that Walker talked about contempt cases. Tr. 223. Rosenthal did not recall off hand how many cases Walker referenced but noted that it may have been around five. Tr. 224.

On redirect examination, Rosenthal testified that he did not receive any information that caused him to question the data received in the Advance Notice of Proposed Removal. Tr. 226. Rosenthal cited that there was no evidence that the data he received was corrupted by any type of purported discrimination. Tr. 226. Rosenthal reiterated that Employee provided no information as to why he failed to complete and provide timely follow up in 85 cases etc. Tr. 227.

<u>Jennifer Ward ("Ward") Vol 2. Tr. Pp 229- 257[5]</u>

Ms. Ward identified Agency's Exhibit R as a photocopy of her handwritten notes related to Employee. Tr. 232. Ms. Ward cited that she did not have any other notes for Employee that she could locate. Ward testified that she retains her notes and legal pads, as they help her jog her memory for her work duties etc. Tr. 234. She affirmed that she reviewed each of her notepads for the relevant time period related to Employee. Tr. 235. On cross-examination Ward identified dates and numbers on her notes. She could recall with specifics what some of the notations were related to. Tr. 239. She identified her note of "training timeline" to be related to the timeline of trainings offered to employees on performance improvement plans. Tr. 239. She testified that this document (notes) was prepared in 2022, but she did not know a specific date. Tr. 241. She noted that with training timelines she would look in her Outlook calendar for dates of training. Tr. 243. Ward also identified hearing dates and notations that referred to case files Tr. 247-249. She noted where she may have been doing math in her notes and what information she may have ultimately entered into an Excel spreadsheet. Tr. 251.

[5] *Ms. Ward was recalled to attest to her handwritten notes that were mentioned during her initial testimony.* Employee's representative made a proffer about the handwritten notes and instructions were provided from the AJ regarding the line of questioning which would be permitted regarding this topic. Tr. 229-232.

Transcript Vol 3. October 9, 2025

<u>Agency Case-in Chief</u>

<u>Julie Madison ("Madison") Vol. 3. Tr. Pp 5 – 37</u>

Madison is an attorney in the CSSD at OAG and has been in that role since 2006. Madison testified that she worked with Employee in 2022 and 2023. She explained that Employee was a paralegal assigned to her and would be with her when she was in court. Tr. 8. Madison testified that she had concerns about Employee's performance. She cited that paralegals had an SOP and that they were required to get court files to attorneys ten business days in advance. She testified that Employee did not get the files to her in that timeframe. Madison also cited that the majority of the performance issue with Employee was with court preparation. Madison explained that when Employee failed to complete the court preparation, it would fall on her to do it. She noted that she works part time – two (2) 10 hour days, and because of that, she had to receive her cases 10 business days before the hearing. Tr. 9. She explained that she would have to work extra hours to complete tasks and had to work on days she was not scheduled to work due to Employee's failure to complete court preparation. Tr. 9. Madison further testified that Employee's failure was not a one-time event and that it happened enough that it fell on her shoulders. She stated that she would email Employee's supervisor, Ms. Ward, or message her in Teams regarding the issues with Employee. She would also notify Employee and ask when files would be ready and noted that there were still times the files would be late. Tr. 10.

On cross-examination, Madison cited that the other paralegal assigned to her during this same time frame as Employee was Margaret Bell (Bell). Tr. 11. Madison did not recall if she worked with Employee in August or September of 2022. Madison iterated that there were days that she had to work outside her typical schedule due to Employee's conduct and that she was not paid for that work. She testified that she did not notify Ms. Ward every time that she had to work additional hours. Tr. 13. Madison recalled that she had previously worked with Employee during her time with OAG. Tr 14. Madison testified that one of Employee's strengths was his ability to interview parties. Tr. 14. Madison did not recall a staffing issue or shortage for paralegals in 2022. Tr. 15. She did not know what Employee's caseload was between August 2022 through March 2023. Tr. 16. She cited that in terms of her cases, it varied per week and that she could have anywhere from five to 15 cases per day, it just depended on the day. Tr. 16. Madison affirmed that Employee was assigned to other attorneys on her team but did not recall the exact dates. Tr 17. Madison testified that she would not be able to speak on whether a case was adversely impacted due to Employee's conduct. Tr. 18. She did not know when the SOP was implemented for paralegals but affirmed that there was SOP for all paralegals. Tr. 18-19. Madison did not recall whether she had a meeting with Ms. Ward about Employee's conduct. She noted that she tried to keep Ms. Ward abreast of all her interactions with all her paralegals. Tr. 22.

On redirect examination, Madison identified an email that she sent to Ms. Ward on December 14, 2022. She affirmed that she identified issues with Employee's timeliness regarding preparation of oppositions. Tr. 32. She also affirmed that the email noted that she would have to request an extension from Mr. Daley, her supervisor to prepare the documents due to Employee's failure to do so. Tr. 33. She also identified another email sent to Ms. Ward on December 20, 2022, regarding oppositions that needed to be filed. Madison also identified an email she sent to Employee on January 20, 2023, regarding case preparation. Tr. 36.

<u>Employee's Case-in Chief</u>

<u>Employee Vol 3. Tr. Ppl. 39 -144</u>

Employee testified that he attended the University of Maryland Eastern Shore and received a degree in Biology. T. 43.[6] He began working with the District as a contractor paralegal specialist in 2008, and in October 2008, his role was permanent. Employee explained that his responsibilities as a paralegal were to prep cases for attorneys, interview parties, do follow up and file motions for oppositions. Tr. 47. Employee affirmed that he received performance evaluations for all the years he worked and that he received commendations and awards for his work. Tr. 48. Employee cited that in the time period between 2021 and 2023, paralegals in the CSSD were organized by the courtroom and assigned to a team of three attorneys. Tr. 48-49. He also explained that during this time they had transitioned from paper files to electronic files. Tr. 49. Employee noted that he personally adjusted in the transition from paper to electronic files. He explained that prior to electronic files, they used case sheets that they would print out and used a sheet from another database. Tr. 49. Employee affirmed being on a PIP in 2022. He cited that prior to being placed on a PIP, the attorneys he was assigned to were Brittany Fox and Diana Baquero. He noted that paralegals included himself and Margaret Bell. Tr. 50.

Employee further testified that they were assigned a particular number of cases but that it goes by the calendar date. Tr. 51. Employee noted that there was a third paralegal at one time on their team, who he believed was terminated. Tr. 52. Employee cited that he and Margaret Bell took on that paralegal's caseload and this occurred in and around July/August 2022. Tr. 52. He did not recall if that vacancy was filed in September or October of 2022. Employee testified that their expected work hours were 40, but that he worked 50 to 60 hours most week. Tr 52. Employee further noted that when he had court date, he would be in court most of the day and that on those weeks he was still required to do work outside of court. Tr. 53. He explained that work consisted of responding to and filing oppositions and working on motions for contempt and follow up. Tr. 54. Employee asserted that he did not have sufficient time on a three-court day week to do the extra work that was required. Tr. 54. Employee explained that in those situations, he would try to prioritize and that his main goal was to get the cases done that needed to go to court. Tr. 54. He cited that a lot of times he "didn't do the follow ups right away, because the court case is not coming back for two to three months." Tr. 54. Employee also stated that he would do this extra work in the evenings and on weekends. Tr. 55. He was not paid overtime, but he said he had to work evenings and weekends to try to catch up even though he was still behind. Tr. 55. Employee testified that his management knew he was working in the evenings and on the weekends to complete his work. Tr. 55.

Employee testified that the management knew that he worked evening and weekends because when he had his weekly PIO meetings, he told them. Tr. 56. Employee noted that he told this to Jennifer Ward and Dr. Tilley. Tr. 56. Employee cited that in September 2022, he was switched to the attorney team that included Julie Madison, Jalla-Anne Marshall and Martinez Walker. Tr. 57. Employee testified that he did not agree with the information in Agency's Exhibit A because he went through the cases and found that some of the information was incorrect. Tr. 57. Employee testified in review of Agency's Exhibit N that he did not believe that a case was continued because of something he did. Tr. 61. Employee testified that he was transferred to a different attorney team in October 2022. Tr. 64. Employee asserted that in a custody matter, he had no responsibility or control over whether a custodial parent appeared, so this case was not continued based of something he did or did

[6] Employee noted that he is 62 years old.

not do. Tr. 65. Employee identified and reviewed numerous cases listed and cited that issues were not his fault, Tr, 66-81. Employee reiterated that to his knowledge there were no adverse outcomes in cases based on anything he had done. Tr. 82-83.

Employee explained there were times when there wasn't information in the record regarding motions he had been assigned. Tr. 83. Employee noted that once he did have it, that he completed ten opposition in two days. Tr. 84. Employee reviewed Agency's Exhibit M and noted that there were roughly 445 cases and that approximately 395 of those did not have follow up assigned. Tr. 87. Employee affirmed that immediately after his PIP he was working on a team with Ms. Baquero and Ms. Fox. Tr. 88. Employee identified Employee's Exhibit J as an email from Ms. Baquero to him and Ms. Ward dated June 9, 2022, and an email dated June 10, 2022, from Ms. Fox. Tr. 89-90. Employee did not recall any complaints within the 30 days after his PIP from any of the attorneys he worked for. Tr. 90. Employee testified that in his view there was a paralegal staffing shortage. Tr. 91. He also noted that COVID impacted the workplace and the transition to e-filing. Tr. 91. Employee reviewed Agency's Exhibit O as an email from Ms. Ward to him which copied Ms. Marshall Tr. 93. He also identified an email dated November 10, 2022, that was from him to Julie Madison. Employee read the email and noted that he said "I am only one person. I am working on follow -ups and I will try to do the interviews and draft orders this evening. I also have to prep other cases and I'm in court every other day this week. We are short-staffed and there's nothing I can do about that. But Theresa's on vacation this upcoming week, and I have no control over DCCSES being down." Tr. 94. Employee explained that DCCSES would go down from time to time. Employee testified that he got the work done as soon as he could. He reiterated that he would have to finish and it would take him into the evening. Tr. 95. He also noted that it was hard with Ms. Madison because she only worked part time. Tr. 96. Employee further testified that he communicated to Ms. Ward about his workload and told her that it was too much. Tr. 96. Employee also noted that he trained lawyers in a pilot program at Agency. Tr. 98-99.

Employee testified that he began working with Ms. Ward when she came in 2019. Tr. 100. He explained that Ms. Ward came in and "told us that she was going to try and make everybody great.". Tr. 100. He noted that they had not had a supervisor for approximately two years and they had done the work themselves and he felt they had done an outstanding job, Tr. 100. He cited that he "tried to give Ms. Ward a chance, but she was very hostile." He explained that she did things like place a newspaper clip of Jack Nicholoson looking crazy from One Flew Over the Cuckoo's Nest on his post board in his cubicle. Tr. 100. Employee explained that he let it go at first, but other things started happening like her being aggressive toward him. Tr. 101. He noted that that is when he began to complain and send emails to Karl Racine's office to let them know there were problems. Tr. 101. Employee stated that the relationship with Ms. Ward was very antagonistic and that he also sent emails to HR to be transferred to a different section at OAG, and that he did that in 2020 or 2021. Tr. 101. Employee said that Ms. Ward never met with him and told him that an attorney had a complaint about him. Tr. 105.

Employee affirmed that he filed an EEO complaint. Tr. 106. He said he filed it because of how Ms. Ward treated him and it made a hostile work environment. Tr. 106. Employee cited that after he filed the EEO complaint, his relationship with Ward "went from bad to worse." Tr. 106. He said he would notice small things like "her coming around standing over his cubicle which was far from her office." Tr. 106. He also described a situation where he sent Ward an email requesting supplies and that she didn't respond. She then came to his cubicle and "slammed the stuff down and didn't say anything and walked away." Tr. 107. Employee noted that he believed he had a good reputation. He noted that he has a very good work ethic and has worked hard for many years. Tr. 108.

Employee testified that the workplace environment is very stressful. Working with angry parties in custody matters was stressful and then there were challenges with his supervisors. Tr. 109. Employee further testified that it was his belief that he was terminated because Ms. Ward had a vendetta against him. Tr. 110.

On cross examination, Employee affirmed that he did not agree with the SOP. He agreed that he had to follow the SOP whether or not he agreed with them. Tr. 111. He affirmed that the SOP governed his case preparation, follow up, interstate compacts and timelines for oppositions. Tr. 112. Employee affirmed that interstate issues are cases in which as the paralegal, his communication is supposed to be with the state and not the parent. Tr. 112. He affirmed that Agency Exhibit D is the interstate policy and that practice is memorialized in that policy. Tr. 113. Employee did not agree that he was informed of the need to prepare an opposition and then given 45 days to prepare it. He cited that he has to get them from the attorney first. Tr. 115. Employee did not totally agree that the completion and filing of oppositions was very important. He noted that it was an important action, but in his experience the judges "treat it as fresh" so even if the government has filed something "they would still start from the beginning like there was nothing filed for the most part." Tr. 116. Employee affirmed that he had not been to law school and he was not a lawyer. Employee agreed that if an attorney tells him to draft and file an opposition that it's a serious assignment. Tr. 117. Employee did not agree that there were numerous oppositions that he failed to file. Tr. 117. Employee reviewed Agency's Exhibit L. He affirmed that he had access to CaseFileXpress. Tr. 118. Employee agreed that he did not provide any evidence that the information for the files was incorrect. Tr. 119. He affirmed that he has no way to disprove the information in Exhibit L. Tr. 119.

Employee affirmed that follow-up was required to occur within 10 days of the court date. Tr. 120. He affirmed that for the courtrooms he was assigned to that he was required to do the preparation for all those cases and he goes to court on those days. He affirmed that after court he is supposed to do follow up. He reviewed Exhibit M and noted that there were 400 cases on and agreed that follow up was important. Employee attested to the fact that he has no way to prove that he completed timely follow up in review of Exhibit M. Tr. 121. Employee agreed that he was late on some of his follow up. Tr. 122. He agreed that the SOP applied to him and that he violated the SOP with late follow up. Tr. 123. Employee testified that he uploaded some of the GTO orders but that he was informed that there was someone working on that. Tr. 126. Employee reaffirmed that he prioritized case preparation because he felt like that was most important. Tr. 128. Employee agreed that he violated the OAG SOP with respect to file preparation due to the late prep. Tr. 130-131. He agreed that he violated the SOP for file preparation on multiple occasions in 2022 until his termination. Tr. 131. Employee asserted that he does not believe it to be okay for attorneys to go to court unprepared. Tr. 132.

On redirect examination, Employee explained in review of Agency's Exhibit K that sometimes his court preparation might be challenged with software issues and he would have to write them down. Tr. 136. Employee indicated that he went on vacation on September 15, 2022. Tr. 138. He affirmed that there were dates in the document that indicated the court was closed in red ink and that his vacation time was also indicated in red on the document as well. Tr. 141.

<u>Diana Baquero-Stagg ("Baquero-Stagg") Vol. 3 Tr. Pp. 148 – 172</u>

Ms. Baquero-Stagg is an assistant attorney general at OAG in the Family Services Division. Tr. 149. She started in that division in 2025, and prior to that she was with the CSSD from May 2015 through September 2023. Tr. 150. She explained that her duties in the CSSD included representing the District in initiating, modifying or enforcing child support orders. Tr. 150. Baquero-Stagg testified that Employee was her paralegal from May 2015 until he left her team sometime in 2022. Tr. 150. Baquero-Stagg noted that Employee was an amazing paralegal and was very experienced. Tr. 151-152. She stated that he was especially well versed in working with the parties in court. Tr. 152. She also highlighted that Employee was vital in her training when she first started working in the CSSD. Tr. 153. She further testified that Employee also trained other assistant attorneys and paralegals and that he was very reliable. Baquero-Stagg noted that Employee was superb with his case preparation when he was working for her. She cited that prior to COVID; they used case note sheets and he prepared that for her. Tr. 154-155.

Baquero-Stagg could not recall why Employee was switched to another team in 2022. She noted that it was a standard practice in the office to eventually switch teams. Tr. 157. She reiterated that she worked with Employee for a long time and that she never had a problem with him. She stated that she thought the team switch was just a management decision to change the paralegals at that time. Tr. 158. Baquero-Stagg affirmed that she wrote a letter on behalf of Employee in June 2022. She testified that Employee had informed her that he was being placed on a PIP. Tr. 158. She was very surprised to hear that he was being placed on a PIP, so she agreed to write to his manager and provide information about her experience of working with him in the past. Tr. 159. Baquero-Stagg noted that there were a lot of changes after COVID and she recalled that everyone on the team, including paralegals felt overworked. Tr. 163. Baquero-Stagg testified that Employee wasn't required to work on weekends or evenings when he worked with her, but that there were times that evening hours were worked to ensure that they were prepped for court. She noted that it wasn't just Employee, it was the paralegals and attorneys. Tr. 164-165.

On cross-examination, Ms. Baquero-Stagg affirmed that she was not Employee's supervisor and she did not evaluate him. She affirmed that her testimony was based on her personal experiences with Employee. Tr. 166. She affirmed that she did not review Employee's work product on cases that were not hers. She affirmed that Employee understood what was expected of him as a paralegal. Tr. 166. Baquero-Stagg affirmed that case preparation was important ahead of court dates. Tr. 167. She also affirmed that if a paralegal fails to complete case preparation that it makes litigation more stressful as an attorney. Tr. 168. She also agreed that case follow-up was important and that a failure to do so impacts the progress of case in court. Tr. 169. Baquero-Stagg testified that the last time she worked with Employee was around August or September of 2022; and that from that time until his termination she did not have knowledge of Employee's work product. Tr. 170. On redirect, Baquero-Stagg noted that she did not have any issues with follow up with Employee and cited that he was an exceptional paralegal. Tr. 171.

<u>Margaret Bell ("Bell") Vol. 3 Tr. Pp. 174- 184</u>

Ms. Bell is a paralegal at the OAG and has been there over 20 years. Tr. 175. She affirmed that she and Employee worked together for approximately 15 years and that they worked on the same team at times. Tr. 175. She testified that she and Employee worked closely together and their duties include case preparation for court. She cited that she and Employee worked on a lot of cases together over their years of working on the same team. Tr. 177. Bell explained that she observed that Employee did his work. She noted that it was him and two paralegals on their team. Tr. 177. Bell testified that she stayed late sometimes. She explained that her tour of duty was from 7:30am to 5:00pm and sometimes she would stay until 5:30pm and Employee would still be there. Tr. 178. Bell testified that they were understaffed upon their return from the COVID pandemic. Tr. 178. She noted that in 2022 they brought on paralegals and that they were being trained, so it was only her and Employee. Tr. 179. She affirmed that Employee trained some paralegals. Tr. 179.

On cross-examination, Bell affirmed that she and Employee did the same job. She also affirmed that she complied with the SOPs as much as she could and that timely court preparation was important. She also agreed that timely follow up was important and noted it was one of their assignments. Tr. 180. Bell testified that if she is late for follow-up, that they were told to tell their supervisor. Tr. 181. She affirmed that Ms. Ward was her supervisor from 2022 to the present. Tr. 181. Bell testified that she has told attorneys when she is running behind, because Ms. Ward told them to work closely with the attorneys. Tr. 181. Bell testified that she could not remember a time when she was behind on follow-up and did not let anyone know.

On redirect examination, Bell testified that she has been behind and that would occur when she had been off or on vacation and the work was there. She also explained that sometimes it happened if she got back from court late and needed more time. Bell testified that there have been times she was behind on case preparation, but when that occurred, she went "straight to [her] attorneys." She also noted that she was not behind as other people may refer to "being behind." Tr. 183-184.

SUMMARY OF THE PARTIES' POSITION

Agency's Position

Agency avers that its decision to terminate Employee was for cause and supported by substantial evidence and was administered in accordance with all applicable laws, rules and regulations. Agency asserts that its penalty was appropriate under the circumstance and that the OEA should uphold its action. Agency asserts that Employee was terminated for the following causes of action: (1) Failure/refusal to follow instructions and Neglect of Duty.[7] Agency cites that Employee's failure to complete assignments and comply with "OAG SOPs regarding Court Preparation, Follow-Up, Oppositions, and interstate cases" were the reasons for the charges and subsequent termination.

Agency provides that OAG paralegal specialists "are assigned to complete Court Preparation for the attorneys on their team."[8] Agency asserts that "from August 2, 2022, through January 23, 2023, Employee was assigned Court Preparation for 28 court dates…[f]or each of the 28 court dates, Employee had to prepare approximately 20 cases."[9] Agency further cites that the "OAG SOPs mandate that all Court Preparation is due 10 days in advance of the court date [and] Employee failed to timely complete Court Preparation for 24 of the 28 court dates assigned."[10] Agency argues that this is "a significant failure rate and Employe did not present any evidence to rebut this data."[11] Agency also asserts that "multiple attorneys complained to Ward about Employee's failure to complete Court Preparation." Agency also avers that Employee failed to complete Follow-Up after court. Agency explains that "after court, attorneys assigned Follow-up tasks to Employee and he had 10 days to complete the work."[12] Agency notes that there are "10 primary task completed by

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[7] Agency's Closing Argument at Page 25. (February 9, 2026).
[8] *Id*. at Page 26.
[9] *Id*.
[10] *Id*.
[11] *Id*.
[12] *Id*. at Page 27.

Paralegal Specialists as part of Follow-up."[13] Agency avers that Ms. Ward "reviewed court files and DCCSES notes for cases assigned to Employee from July 25, 2022, to January 19, 2023, to determine what Follow-up was assigned and whether it was timely completed." Agency provides that this review revealed that Employee had been assigned Follow-up in 84 cases. Agency avers that the "Employee failed to complete Follow-up in 77 of the 84 cases – a 91.7% failure rate."[14] Agency also notes that for the remaining seven (7) cases, "Employee completed Follow-up, but it was untimely." Agency asserts that "in 100% of the cases assigned to Employe for Follow-up during a 6-month period, Employee failed to timely complete Follow-up."[15] Agency also argues that during the Evidentiary Hearing in this matter, Employee admitted "that he had no evidence to disprove the OAG's findings, nor did he submit any such evidence during his appeal to the Hearing Officer."[16]

Agency argues that Employee's failure to complete timely follow-up "was not without consequence." Agency provides that the "OAG determined that Employee's failure to complete Follow-up delayed the establishment of paternity which in turn, delayed monetary and medical support for the District's children."[17] Agency also provides that Employee's actions also resulted in his supervisor, Ms. Ward, having to "call upon other units in the CSSD to expedite audits, paternity testing, or other tasks necessary to ensure children received their needed child support."[18] Agency further avers that "Employee attempted to defend his failure to complete Follow-up by asserting that OAG did not present any court order(s) entered against OAG because of his failures."[19] Agency argues that this is not the standard. Agency maintains that "OAG has a clear and defined set of SOPs governing a Paralegal Specialists' work [and] Employee was expected to follow these instructions for every matter assigned."[20] Agency also avers that in this timeframe; Employee also failed to timely file and prepare oppositions. Agency explains that "OAG files Oppositions in certain cases when a non-custodial parent seeks to modify or terminate child support."[21] Agency provides that once Employee was assigned an Opposition, he "had 45 days to review the file, use an OAG template to prepare the Opposition, and then send the Opposition to the assigned attorney for review and signature." Agency further notes that once signed by the attorney, "Employee was then responsible for filing the Opposition."[22] Agency avers that Employe "failed to complete and file Oppositions as directed." Agency asserts that an email sent to Employee on November 15, 2022, "identified 16 Oppositions assigned to Employe [and] Employee filed only one Opposition, and it was untimely filed."[23] Agency further cites that "in ten cases, Employee's failure to timely file an Opposition resulted in the non-custodial parent's motion being granted."[24]

Agency also avers that Employee failed to prepare contempt motions for Attorney LaFratta.[25] Agency argues that "on multiple occasions in 2022, Employee failed to prepare motions for contempt after LaFratta directed him to do so."[26] Agency provides that "in some cases, Employee prepared the

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[13] *Id*.
[14] *Id*.
[15] *Id*.
[16] *Id*.
[17] *Id*.
[18] *Id*.
[19] *Id*. at Page 28.
[20] *Id*.
[21] *Id*.
[22] *Id*.
[23] *Id*. at Page 28 citing to Agency Exhibit L.
[24] *Id*. at Page 28.
[25] *Id*.
[26] *Id*. at Page 29.

motions, Lafratta signed them, but Employe never filed them as he was supposed to."[27] Agency asserts that Employee still failed to file contempt motions even after receiving emails from LaFratta. Agency avers that "because Employee failed to draft and file motions for contempt, OAG could not raise the non-custodial parent's failure to pay child support with the court."[28] Agency also argues that Employee violated its Interstate Policy. Agency explains that interstate cases are those where a custodial parent and child live in one state and the non-custodial parent lives in another. Agency notes that "employee was trained and provided with the OAG's CSSD Interstate Policy."[29] Agency further asserts that "in interstate cases, Employee was required to deal with the other state's representative because the other state, and not the custodial parent, is OAG's customer/client."[30] Agency argues that Employee violated this policy "when he communicated directly with an out-of-state custodial parent in January or February of 2023 regarding a child support issue instead of referring the matter direct to OAG's customer/client, the other state."[31] Agency also cites that "Employee failed to document his contacts with out-of-state parent in DCCSES, which violated OAG's SOPs."

Agency argues that Employee's defenses must fail as they are unsupported by the record. Further, Agency avers that Employee's "primary defense is that his misconduct is a result of being overworked."[32] Agency provides that "numerous witnesses acknowledged during the [Evidentiary] Hearing that CSSD is a high-volume and busy place to work [and] Employee likely did have a lot of work to complete." This noted, Agency avers that "OAG created an avenue for Employee to follow if he could not complete his work – Employee should have informed his supervisor, Ward, in advance of the deadline so she could help."[33] Agency also avers that "Employee could have also informed the attorneys who gave him assignments that he needed additional time, but he did not do this either."[34] Agency avers that instead of using these other avenues for support, "Employee just allowed the deadlines for Court Preparation, Follow-up, Oppositions and motions for contempt to pass."[35] Agency cites that "for six months, Employee failed to follow OAG's SOPs and instructions, did not do his job, and did not notify his supervisor (or the attorneys) about his inaction." Agency avers that in this regard, "OAG had substantial evidence to find that Employee [failed]/refused to follow instructions and neglected his duty."[36]

Agency also contends that its penalty of termination was appropriate in these circumstances. Agency asserts that "the purpose of OEA's review of an agency's imposed penalty is to ensure that the agency considered the relevant facts and acted reasonably."[37] Agency provides that "in assessing the appropriateness of the penalty, OEA is limited to ensuring that "managerial discretion has been legitimately invoked and properly exercised."[38] Agency avers that it "thoroughly considered each *Douglas* factor and determined that termination was the most appropriate remedy."[39] Agency further asserts that "Tilley, the Proposing Official, and Rosenthal the Deciding Official, described their full

[27] *Id*.
[28] *Id*.
[29] *Id*. at Page 29.
[30] *Id.*
[31] *Id.*
[32] *Id*. at Page 30
[33] *Id.*
[34] *Id.*
[35] *Id.*
[36] *Id.*
[37] I*d*. at 30. Citing to *Stokes v. District of Col*umbia, 502 A.2d 1006, 1010 (D.C. 1985).
[38] I*d*. at Page 31.
[39] *Id.*

consideration of the *Douglas* factors enumerated in 6-B DCMR §1606."[40] Agency asserts that both Tilley and Rosenthal found Employee's misconduct to be "serious and egregious" in consideration of the *Douglas* Factor. Further, Agency notes that "Rosenthal found *Douglas* factor 2, job level and employment type, to be aggravating…Tilley and Rosenthal explained that Employee was a highly-skilled Grade 12 Paralegal Specialist"[41] Agency notes that "Grade 12 is one of the highest grades for Paralegal Specialists [and] OAG expects its experienced Paralegal Specialists to follow OAG's SOPs and instructions and to complete their work timely."[42] Agency also avers that as it relates to *Douglas* Factor 3, "both Tilley and Rosenthal considered Employee's lack of prior discipline…[n]onetheless, both believed termination was appropriate."[43] Agency avers that "while Employee had not previously been disciplined, the lack of prior discipline does not outweigh his continued and repeated failure to complete his assignments after the conclusion of the PIP."[44] Similarly, Agency asserts that it found that *Douglas* Factor 4, Employee's past work record too be aggravating. Agency contends that "almost immediately after Employee completed the PIP, his performance deteriorated and all the attorneys assigned to work with him complained about his performance."[45] As it relates to *Douglas* Factor 5, the impact of Employee's conduct; Agency provides that "Tilley lost all confidence in Employee's ability to do his job." Agency further notes that "Employee was given an opportunity to improve and *did* improve his performance for a short time (emphasis in original)."[46] But when the pressure of the PIP was off, Employee's performance immediately regressed."[47]

Agency also maintains that its decision to terminate Employee is consistent with *Douglas* Factor 7. Agency asserts that given that it found Employee committed the "offenses of failing/refusing to follow instructions and neglecting his duty; the "Table of Illustrative Actions identified removal as appropriate discipline…."[48] Agency also asserts that Employee's conduct was not a "one-time event." Agency reiterates that Employee was "placed on a 60-day PIP for his failure to follow OAG's SOPs and for failing to complete his job duties as instructed."[49] Agency also avers that "according to the Table of Illustrative Actions, removal is also the appropriate discipline for Employee's neglect of duty, for both first-time and subsequent offenses."[50] Agency contends that in consideration of *Douglas* Factor 9, of whether Employee had notice of OAG's SOPs, is 'unquestionable aggravating." Agency maintains that it "communicated its expectations for Court Preparation, Follow-up and Oppositions both in writing and supervision."[51] Further, "Tilley explained that Employee was a "seasoned" Paralegal Specialist at CSSD and he knew the job."[52] Agency also avers that "Employee demonstrated his understanding of OAG's SOPs for Court Preparation, Follow-up and Oppositions by adequately completing his work while on the PIP."[53] Agency also avers that in review of *Douglas* Factor 10, "that Employee had no potential for rehabilitation." [54]

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[40] *Id.*
[41] *Id*. at Pages 31-32.
[42] *Id.*
[43] *Id.*
[44] *Id.*
[45] *Id.*
[46] *Id.*
[47] *Id.*
[48] *Id*. at Page 33.
[49] *Id.*
[50] *Id.*
[51] *Id.*
[52] *Id.*
[53]*Id.*
[54] *Id*. at Page 34.

Agency provides that "while not previously disciplined, Employee was given the opportunity to improve his performance through a PIP…[a]fter his PIP was completed, Employee chose to go back to his old ways…"[55] Agency maintains that "employees, especially experienced Grade 12 Paralegal Specialists, should not require a PIP to comply with OAG's SOPs…"[56] Agency also avers that "Employee's neglect of his professional duties was frequent and long-standing [and] he was first counseled by Ward and later placed on a PIP in an effort to resolve his performance deficits."[57] Agency notes that "Tilley testified that while she considered other penalties, she did not believe that any other penalty would prompt Employee to meet his job expectations." Further, "D'Ateno explained that a second PIP was considered and ruled out because Employee's performance problems were exactly the same as the performance deficits which resulted in the 60-day PIP."[58] Agency avers that the Deciding Official, Seth Rosenthal, "reviewed Employee's statement and the Hearing Officer's report." "Rosenthal believed that termination was the proper penalty and that no other penalty was appropriate under the circumstances."[59] Agency contends that "it offered overwhelming evidence that it exercised reasonable managerial discretion, Employee offered no testimony other than self-serving statements in an attempt to justify his acts of misconduct."[60] Agency maintains that the instant adverse action of terminating Employee from service was for cause, that it followed all applicable rules and that its penalty of termination was appropriate in the circumstances and should be sustained by the OEA.

Employee's Position

Employee asserts Agency has failed to meet its statutory burden under the CMPA. Employee further avers that his removal "rests almost entirely on the unverified narrative of a single supervisor, Jennifer Ward, whose conclusions were never tested against primary judicial evidence, subjected to neutral supervisory review, or independently validated by the proposing or deciding officials."[61] Employee contends that "every asserted basis for removal in the April 4, 2023, Notice, alleged deficiencies across "approximately 84 cases", a finding of neglect, the assessment of seriousness, and the ultimate penalty, originated in Ward's retrospective summaries of court outcomes and was adopted wholesale by higher-level officials without independent verification."[62] Employee argues that "Ward's own testimony confirms the absence of proof" in that she could "not identify a single case in which a court entered an adverse action attributable to [Employee]."[63]

Employee also asserts that "when challenged, she shifted from alleging adverse rulings to asserting that continuances themselves were adverse, while conceding that continuances may be neutral or beneficial and that their causes are often unrelated to paralegal conduct."[64] Employee argues that "the Agency has produced no court orders, judicial finding, or contemporaneous supervisory documentation to support Ward's claims."[65] Employee also avers that "neither the proposing nor the deciding officials examined underlying court files, reviewed attorney cases notes

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[55] *Id.*
[56] *Id.*
[57] *Id.*
[58] *Id.*
[59] *Id.*
[60] *Id*. at Page 35.
[61] Employee's Closing Argument at Page 3 (February 10, 2026).
[62] *Id.*
[63] *Id.*
[64] *Id.* at Pages 3-4.
[65] *Id*. at Page 4.

explaining outcomes, or consulted neutral supervisors with firsthand courtroom knowledge."[66] Employee contends that "Diane Baquero, the supervising attorney who worked directly with [Employee] for years and testified favorable regarding his performance, was never consulted during the PIP, the proposed removal, or the final decision."[67]

Employee argues that "the unreliability of Agency's case is further underscored by Ward's admissions regarding working and staffing…[s]he acknowledged chronic understaffing, excessive caseloads, and repeated workload complaints by [Employee], yet admitted she took no steps to reduce his workload."[68] Employee also avers that the "Agency's penalty determination is independently defective because the record contains two irreconcilable accounts of how the *Douglas* factors were applied."[69] Employee notes that "Seth Rosenthal, the Deciding Official, testified that he personally applied the *Douglas* Factors without consulting anyone and without discussing them with management or Human Resources."[70] Employee cites that "Freddie D'Ateno, the Chief Human Resources Officer, testified that Human Resources conducted an independent assessment of the *Douglas* Factors and communicated with Child Support Services Division management regarding the appropriateness of termination and the decision not to pursue further remedial action."[71] Employee also maintains that "the Agency produced no *Douglas* worksheet, memorandum, or contemporaneous documentation reconciling these conflicting narratives or demonstrating that a single, coherent *Douglas* analysis was performed."[72] Employee argues that "where an agency relies on court outcomes to support adverse action, it must present competent, case-specific evidence link[ing] the outcome to the employee's conduct."[73] To this end, Employee avers that "measured against these standards the Agency's case fails at the threshold."[74]

Employee contends that his testimony "provides direct, internally consistent, and corroborated account of sustained diligence under extreme workload conditions…[h]is testimony does more than rebut the Agency's allegations; it affirmatively establishes that what the Agency labels as "neglect" was sustained effort in the face of chronic understaffing, managerial inaction, and post-COVID structural overload."[75] Employee further notes that "when read together with the corroborating testimony of Diane Baquero and Margaret Bell, Ward's April 4 narrative collapses both factually and legally."[76] Employee asserts that his testimony reflected how he "routinely worked behind scheduled hours, including evenings and weekends, to manage caseloads supporting multiple attorneys with high-volume court calendars." He also avers that "after COVID, the transition to electronic file systems substantially increased preparation time per case, making overtime a regular necessity rather than exception."[77]

Employee reiterates that his testimony in this regard was corroborated both by Diane Baquero and Margaret Bell.[78] Employee maintains that his complaints regarding workload went

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[66] *Id.*
[67] *Id.*
[68] *Id.*
[69] *Id*. at Page 5.
[70] *Id.*
[71] *Id.*
[72] *Id.*
[73] *Id.*
[74] *Id.*
[75] *Id*. at Page 6.
[76] *Id.*
[77] *Id.*
[78] *Id*. at Page 7.

unanswered by management, despite acknowledging his concerns. Employee avers that "instead, scrutiny increased without corresponding support."[79] Employee provides that his testimony reflects that "he did not abandon responsibilities, refuse assignments, or disengage from his duties…[h]e prioritized tasks as best he could, worked extended hours, trained newer paralegal, and assisted attorneys and staff struggling under the same post-COVID system changes, increasing his own workload to keep the unit functioning."[80]

Employee also provides that his testimony "unequivocally" reflects that "during his fourteen-year tenure no attorney every complained that his preparation caused harm in court, no judge criticized his work, and no supervisor identified a specific case in which his conduct caused an adverse judicial ruling."[81] Employee argues that "the Agency's reliance on Ward's unproduced notes, retrospective summaries, and undisclosed credibility judgments cannot satisfy the preponderance standard." Employee also avers that his sworn testimony "is internally consistent and corroborated by a supervising attorney and a peer; Ward's narrative rests on inference and unverified belief."[82] Employee also argues that the Agency failed to "produce the only evidence capable of proving what it charged: the actual court dockets, orders, or judicial findings allegedly adverse to the District."[83] Employee contends that "where the alleged misconduct turns on the content and legal effect of written court actions, the substantive content of the court orders constitutes the required proof."[84] Employee notes that "Ward's own testimony made this evidentiary failure unmistakable….[a]lthough she testified that she reviewed court orders and dockets, she admitted under oath that she could not identify a single case in which a judge entered an adverse ruling attributable to [Employee]."[85]

Employee further asserts that the Agency "shifted its theories" and that Ward "redefined adverse outcomes to include routine continuances, testifying that the mere fact of a continuance constituted an adverse action."[86] Employee argues that this "redefinition directly contradicts the April 4 Notice, which charged [Employee] with adverse rulings and harm to the District in eight-four specified cases, not routine procedural continuances retroactively recast as misconduct."[87] Employee also maintains that "the Agency's proof of deficiencies are compounded by the absence of the very documentation Ward claimed existed…Ward testified that she made contemporaneous notes while reviewing cases, yet she could not identify, locate or produce them."[88] To this end, Employee reiterates that "Ward's chain of command confirms that they never subjected her documentary narrative to independent scrutiny."[89] Employee also avers that Agency's Exhibit A is a "narrative summary drafted for disciplinary purposes." He asserts that Agency's Exhibit N, "identified the same cases as cited in Exhibit A and that he testified as a "fact witness with personal knowledge regarding cases to which he was assigned and in which he performed paralegal duties."[90] Employee argues that "fundamental fairness forbids the Agency from terminating an employee based on 84

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[79] *Id. at Page 8.*
[80] *Id.*
[81] *Id.*
[82] *Id.*
[83] *Id*. at Page 9.
[84] *Id*. at Page 10. Citing to District of Columbia Rules of Evidence 1002.
[85] *Id*. at Page 11.
[86] *Id.*
[87] *Id.*
[88] *Id*. at Page 12.
[89] *Id*. at page 13.
[90] *Id.* at Page 13-14.

identified cases and then attempting to silence him when he explains what actually occurred in those cases, which the government does not do."[91]

Employee iterates that "Diana Baquero's testimony undermines the Agency's narrative and confirms Ward's exclusion of the most probative witness." Further, Employee avers that "unrefuted, Baquero described [him] as experienced, reliable and deeply knowledgeable in child support law and guideline calculations, including factors and "caveats" that affect court outcomes."[92] Employee further asserts that "this court can and should reject the Agency's "adverse rulings" premise across the board, including its strained pivoted adverse contingency theory, where Agency produced no orders, no findings, and no identified adverse rulings of any nature attributable to [Employee]." Employee also argues that the OEA "can and should discount derivative testimony of Tilley and Rosenthal to the extent it rests on Ward's summarized, unverified interpretations rather than primary court record."[93] Employee contends that "under the CMPA and OEA precedent, an agency must prove disciplinary charges with evidence that establishes both the factual basis and a causal connection between the conduct and the adverse employment action."[94] Employee also avers that the *Douglas* Factor analysis in his matter was "defective."[95] Employee asserts that "even assuming arguendo that Agency could reconcile the internal contradiction between Seth Rosenthal's and Freddi D'Ateno's accounts of the *Douglas* process, the removal decision independently fails because Rosenthal's own application of the *Douglas* Factors was substantively flawed, unsupported by evidence, and legally insufficient."[96]

Employee also maintains that "Rosenthal also failed to meaningfully evaluate mitigation…[h]e conceded that he did not independently verify staffing levels, despite reading [Employee's] submissions that the Child Support Services Section was understaffed with both attorneys and paralegals during the relevant period."[97] Employee also avers that "the record establishes cat's paw liability as a matter of law." He asserts that "although Attorney Rosenthal served as the nominal deciding official, the adverse action against [Employee] was proximately caused by the narrative constructed and supplied by Ward, [Employee's] supervisor, after [Employee] engaged in protected EEO activity."[98] Employee avers that an "employer is liable where a supervisor performs an act motivated by discriminatory or *retaliatory* animus, intends that act to cause an adverse employment action, and the act is the proximate cause of the ultimate decision, even if the formal decision maker lacks animus (emphasis in original)."[99]

Employee maintains that the Agency "failed to prove that [he] caused harm in any specific case, failed to corroborate its allegations with primary evidence, and failed to exercise independent judgment at every level of review." Employee also avers that the Agency's "decision-making process was structurally defective…and most notably, excluded Diane Baquero, the supervisory attorney who worked with [Employee] for years in court and provided unrebutted testimony that his case preparation was superb, his performance exception, and the PIP itself inexplicable in light of the

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[91] *Id.* at Page 13.
[92] *Id*. at Page 15.
[93] *Id.* at Page 17.
[94] *I*d. at Page 18.
[95] *Id*. at Page 26.
[96] *Id.*
[97] *Id.* at Pages 27-28.
[98] *Id*. at Page 30. Citing to *Staub v Proctor Hospital*, 562 U.S. 411, 422 (2011).
[99] *Id.*

absence of complaints on her team."[100] Employee argues that because of the Agency's failures, his removal cannot be sustained and that the appropriate remedy is reversal and "make-whole relief."[101]

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

In the instant matter, Employee was a Grade 12 paralegal specialist employed at Agency and assigned within the Child Support Services Division. In an Advance Notice dated April 5, 2023, Employee was charged with the following: (1) Failure/Refusal to Follow Instructions DPM §1607.2 (d)(1) – "Negligence, including the careless failure to comply with rules, regulations, written procedures or proper supervisory instructions."; and (2) Neglect of Duty §DPM 1607.2 (e) – "Failure to carry out official duties or responsibilities as would be expected of a reasonable individual in the same position."[102] On October 6, 2023, Agency issued a Final Notice sustaining the aforementioned charges and terminated him from service effective October 6, 2023.

ANALYSIS[103]

Whether Agency had cause for adverse action

Title 1, Chapter 6, Subchapter VI of the D.C. Official Code (2001), a portion of the Comprehensive Merit Personnel Act, sets forth the law governing this Office. D.C. Official Code § 1-606.03 reads in pertinent part as follows:

> (a) An employee may appeal a final agency decision affecting a performance rating which results in removal of the employee (pursuant
> (b) to subchapter XIII-A of this chapter), *an adverse action for cause that results in removal*, reduction in force (pursuant to subchapter XXIV of this chapter), reduction in grade, placement on enforced leave, or suspension for 10 days or more (pursuant to subchapter XVI-A of this chapter) to the Office upon the record and pursuant to other rules and regulations which the Office may issue. *(Emphasis added).*

Pursuant to OEA Rule 631.2 (December 27, 2021), Agency has the burden of proof by a preponderance of the evidence that the proposed disciplinary action was taken for cause. Additionally, DPM § 1603.2 provides that disciplinary actions may only be taken for cause. As was previously cited, Employee's termination was administered based on the charges of Failure/Refusal to Follow Instructions and Neglect of Duty as prescribed in the District Personnel Manual.

[100] *Id*. at Pages 34-35
[101] *Id*. at Page 35-36.
[102] The undersigned would note that the Agency's notice cited to DPM §1607.2 and the language for each cause but left off the enumeration as noted in the DPM. This considered, the undersigned finds that there is no issue in this regard, as the text of each charge matches the associated enumerated sections under DPM§ 1607.2 (d)(1) and DPM§ 1607.2 (e).
[103] Although I may not discuss every aspect of the evidence in the analysis of this case, I have carefully considered the entire record. *See. Antelope Coal Co./Rio Tino Energy America v. Goodin*, 743 F.3d 1331, 1350 (10th Cir. 2014) (citing *Clifton v. Chater*, 79 F.3d 1007, 1009-10 (10th Cir. 1996)) ("The record must demonstrate that the ALJ considered all of the evidence, but an ALJ is not required to discuss every piece of evidence").

<u>Failure/Refusal to Follow Instructions & Neglect of Duty</u>

In the instant matter, Employee was charged with failure/refusal to follow instructions based on his failure to complete his work in a timely manner. Agency avers that the record and testimony reflect that it had cause to discipline Employee for this cause of action. Agency maintains that Employee failed to meet the requirements of the Standard Operating Procedures and that he failed to follow instructions. Agency also avers that Employe neglected his duty in his failure to comply with deadline and/or complete assigned tasks and duties. Agency also asserts that Employee's claim that there were no adverse outcomes in the court that can be attributed to him, to be without merit. Agency avers that Employee failed to complete his duties and tasks as assigned, even after having been placed on a PIP to address those issues.

Employee avers that Agency has not met is burden regarding these charges because the Agency has failed to provide any tangible evidence that his actions cause an adverse outcome in the court. Further, Employee asserts that the causes of action rest solely with regard to a review by Ms. Ward, and that her actions are not supported by the record. Employee also avers that Ward's actions reflect a "retaliatory animus" because he had filed an EEO complaint and had requested transfers outside of the CSSD unit. Employee also contends that Agency failed to give due consideration to other attorneys he previously worked with who praised his performance. He also maintains that Agency failed to acknowledge that they were short-staffed with both paralegals and attorneys and that this caused everyone to be overworked, including him. He avers that he cited these issues, but that they went ignored by the management. He also avers that Ms. Bell, another paralegal, attested to the issues of being overworked and the difficulty of completing assignments. As a result, Employee maintains that there was no cause for these charges of action.

During the Evidentiary Hearing in this matter, it was determined that in many of the cases that Employee was assigned to work in the CSSD, he either failed to complete the work in a timely manner or did not complete his work at all. The Standard Operating Procedures (SOPs) for paralegals in Employee's Division required them to meet certain deadlines for assignment. Specifically, paralegals were to complete their court preparation assignments prior to the court dates assigned to the attorneys that they worked with. Further, paralegals were required to complete their court follow-up assignments within ten (10) business days of the court hearing date. Follow-up assignments included tasks such as uploading/forwarding DNA testing orders, requesting documents from out-of-state entities, requesting wage garnishments and other duties. Testimony from the Evidentiary Hearing established that during the relevant timeframe, Employee was assigned follow up for 84 cases, and in 77 of those matters, he did not complete his follow up. Additionally, while Employee completed his follow-up in seven (7) of the matters he was assigned, it was untimely/not in accordance with the SOP-required timeline.

Additionally, attorneys that Employee was assigned to work with during this time frame, also noted their issues with Employee's failure to produce work. Attorney Julie Madison cited that she often had to work outside of her tour of duty (she is part-time) due to Employee's failure to complete court preparation.[104] Attorney Martinez Walker also testified that he had issues with Employee's failure to complete case preparation. He noted that there were several times where Employee had not conducted the interviews with the parties, not prepared notes, and had not completed proposed orders that were meant to be provided to the court.[105] Further, Attorney Matthew Lafratta testified that he

[104] Evidentiary Hearing Transcript Vo1.3 Pages 9-11.
[105] Evidentiary Hearing Transcript Vol 1. Pages 190-191

had issues where Employee failed to draft contempt motions such that it would jeopardize the ability to file those within the 45-day deadline.[106] Each of these attorneys also noted Employee's failures to communicate delays with them. Further, each of these attorneys cited that they contacted Employee's supervisor, Jennifer Ward, to make her aware of the issues with Employee's performance. Employee was also placed on a 60-day Performance Improvement Plan (PIP) to address the very issues identified by the attorneys. Ward credibly testified that Employee's performance improved and that he completed the PIP, however shortly thereafter, the same performance issues persisted.

This Office has consistently held that a failure/refusal to follow instructions (negligence) occurs when an employee fails to follow procedures, policies and supervisory instructions.[107] Likewise, OEA has held that there is a neglect of duty when an Employee fails to complete their assigned tasks and duties as required. [108] In the instant matter, I find that the Agency met its burden for both causes of action. The record and testimony clearly reflect that Employee failed to follow the SOPs and supervisory instructions. He also failed to complete his tasks and assignments and many times failed to complete the work required, which is representative of neglect of duty as defined by the DPM. The undersigned finds that Employee's claims that Agency provided no evidence of adverse outcomes from the court are irrelevant in consideration of the charges. It is of note that Employee's failures certainly cause adverse outcomes. testimonies from attorneys, Walker, LaFratta and Madison, all reflected that they faced issues in doing their jobs and tasks because Employee had not completed his. Madison noted that she had to work outside of her duty hours, Lafratta testified of his frustrations with not meeting deadlines prescribed by his supervisor for contempt motions, and Walker noted how he did not have the case preparation needed for his court dates. It is also notable that everyone who testified in the Evidentiary Hearing all concurred that Employee was an experienced and skilled paralegal. However, Employee still failed to follow the SOPs and procedures and as a result, his work was not completed as required. I also find Employee's claims that Ward's data and her notes to be insufficient to be unsupported by the record. It is clear that at least three (3) attorneys directly contacted Ms. Ward and notified her about Employee's performance deficiencies. The undersigned had the opportunity to view and weigh the credibility of the testimony and found all the attorneys who attested to this to be forthcoming in their testimony. As a result, I find that Agency has met its burden of proof with respect to the charges administered in the instant action.

<u>Whether Agency Followed Applicable Rules/ Whether the Penalty was Appropriate</u>

Based on the above-mentioned findings, I find that Agency's action was taken for cause, and as such, Agency can rely on those charges in its assessment of disciplinary actions against Employee. Further, I find that Agency appropriately followed all applicable laws, rules and regulations in its administration of the instant action. In determining the appropriateness of an agency's penalty, OEA has relied on *Stokes v. District of Columbia*, 502 A.2d. 1006 (D.C. 1985).[109] According to the Court

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[106] Evidentiary Hearing Transcript Vol. 2 Pages 15-18
[107] *Employee v. Department of Human Services*, OEA Matter No. 1601-0048-18; OEA Matter No.1601-0015-18R19 (June 17, 2021)
[108] *Karen Falls v. Department of General Services*, OEA Matter No. 1601-0044-12R14 (August 12, 2014). *See also. Employee v. OAG*, OEA Matter No. 16061-001-21 (May 17, 2023).
[109] *Sharmaine Chittams v. D.C. Department of Motor Vehicles*, OEA Matter No. 1601-0385-10 (March 22, 2013). *See also Anthony Payne v. D.C. Metropolitan Police Department,* OEA Matter No. 1601-0054-01, *Opinion and Order on Petition for Review* (May 23, 2008); *Dana Washington v. D.C. Department of Corrections,* OEA Matter No. 1601-0006-06, *Opinion and Order on Petition for Review* (April 3, 2009); *Ernest Taylor v. D.C. Emergency Medical Services,* OEA Matter No. 1601-0101-02, *Opinion and Order on Petition for Review* (July 21, 2007); *Larry Corbett v. D.C. Department of Corrections,* OEA Matter No. 1601-0211-98, *Opinion and Order on Petition for Review* (September 5, 2007); *Monica Fenton v. D.C. Public Schools,* OEA Matter No. 1601-0013-05, *Opinion and Order on Petition for Review* (April 3, 2009); *Robert Atcheson v. D.C. Metropolitan*

in *Stokes*, OEA must determine whether the penalty was in the range allowed by law, regulation and any applicable Table of Illustrative Actions as prescribed in DPM § 1607; whether the penalty is based on a consideration of relevant factors and whether there is a clear error of judgment by agency. Further, "the primary responsibility for managing and disciplining Agency's work force is a matter entrusted to the Agency, not this Office."[110] Therefore when assessing the appropriateness of a penalty, this Office is not to substitute its judgment for that of the Agency but is simply to ensure that "managerial discretion has been legitimately invoked and properly exercise."[111] Employee avers that the Agency's *Douglas* Factor analysis was flawed. Employee argues that neither the Proposing Official, Dr. Belinda Tilley, nor the Deciding Official, Seth Rosenthal, made an independent review in their consideration of the *Douglas* factors. Employee asserts that both Tilley and Rosenthal merely relied on what was presented by Ward and failed to verify that evidence. Additionally, Employee contends that both Tilley and Rosenthal failed to give due consideration to mitigating factors, namely that there were staffing shortages in the relevant timeframe. Employee also argued that considerations around the work environment also fell short and that no consideration was given to Attorney Diane Baquero's assessments of Employee's work performance. Agency asserts that it conducted a thorough *Douglas* factor analysis and that its decision to terminate Employee was appropriate under the circumstances.

In review of the record and the testimony from the Evidentiary Hearing, I find that Agency's *Douglas* factor analysis was sufficient and appropriate. Further, I find that both Tilley and Rosenthal gave due consideration to all the factors and their testimonies reflected their considerations and the reasons behind their decisions. Rosenthal was able to explain his determinations with detail, also noting the weight he gave for the *Douglas* factors and why he ultimately believed (and retains the position) termination was the appropriate penalty in this circumstance. Agency relied on what it considered relevant factors outlined in *Douglas v. Veterans Administration*, 5 M.S.P.R. 313 (1981), in reaching its decision to terminate Employee from service.[112] Chapter 16 §1607 of the District

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Police Department, OEA Matter No. 1601-0055-06, *Opinion and Order on Petition for Review* (October 25, 2010); and *Christopher Scurlock v. Alcoholic Beverage Regulation Administration*, OEA Matter No. 1601-0055-09, *Opinion and Order on Petition for Review* (October 3, 2011).

[110] *See Huntley v. Metropolitan Police Department*, OEA Matter No. 1601-0111-91, *Opinion and Order on Petition for Review* (March 18, 1994); *Hutchinson v. District of Columbia Fire Department*, OEA Matter no. 1601-0119-90, *Opinion and Order on Petition for Review* (July 2, 1994).

[111] *Stokes v. District of Columbia*, 502 A.2d 1006 (D.C. 1985).

[112] *Douglas v. Veterans Administration,* 5 M.S.P.R. 313 (1981). The *Douglas* factors provide that an agency should consider the following when determining the penalty of adverse action matters:

1) the nature and seriousness of the offense, and it's relation to the employee's duties, position, and responsibilities including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
2) the employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
3) the employee's past disciplinary record;
4) the employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
5) the effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in employee's ability to perform assigned duties;
6) consistency of the penalty with those imposed upon other employees for the same or similar offenses;
7) consistency of the penalty with any applicable agency table of penalties;
8) the notoriety of the offense or its impact upon the reputation of the agency;
9) the clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
10) potential for the employee's rehabilitation;

Personnel Manual Table of Illustrative Actions ("TIA") provides that the penalty range for a first occurrence for Failure/Refusal to Follow instructions and Neglect of Duty, is counseling to removal. Employee also averred that there was some "retaliatory animus" in the charges as it relates to Ward's involvement in this action following his filing of an EEO complaint. OEA has consistently held that to establish a retaliation claim, the party alleging retaliation must demonstrate the following: (1) they engaged in a protected activity by opposing or complaining about employment practices that are unlawful under the District of Columbia Human Rights Act ("DCHRA"); (2) their employer took an adverse personnel action against them; and (3) there existed a causal connection between the protected activity and the adverse personnel action.[113] A prima facie showing of retaliation under DCHRA gives rise to a presumption that the employer's conduct was unlawful, which the employer may rebut by articulating a legitimate reason for the employment action at issue.[114] In the instant matter, I find that Employee provides no tangible evidence to support a prima facie showing of retaliation.

Accordingly, I find that Agency properly exercised its discretion, and its chosen penalty of termination is reasonable under the circumstances, and not a clear error of judgment. I conclude that Agency had appropriate and sufficient cause to terminate Employee from service. As a result, I further conclude that Agency's action should be upheld.

ORDER

Based on the foregoing, it is hereby **ORDERED** that Agency's action of terminating Employee from service is **UPHELD.**

FOR THE OFFICE:

/s/ Michelle R. Harris
MICHELLE R. HARRIS, Esq.
Senior Administrative Judge

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11) mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and
12) the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

[113] *Vogel v. District of Columbia Office of Planning*, 944 A.2d 456 (D.C. 2008).
[114] *Id.*