



## STATE OF NEW JERSEY

In the Matter of Michelle Adams  
Camden Vicinage, Judiciary

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

CSC DKT. NO. 2018-2946  
OAL DKT. NO. CSV 06725-18

ISSUED: APRIL 24, 2019      BW

The appeal of Michelle Adams, Judiciary Clerk 2, Camden Vicinage, Judiciary, removal effective March 27, 2018, on charges, was heard by Administrative Law Judge Susan L. Olgiati, who rendered her initial decision on March 25, 2019. No exceptions were filed.

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting of April 24, 2019, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was justified. The Commission therefore affirms that action and dismisses the appeals of Michelle Adams.

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

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 24<sup>th</sup> DAY OF APRIL, 2019

A handwritten signature in cursive script, reading "Deirdre L. Webster Cobb".

Deirdré L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Christopher S. Myers  
Director  
Division of Appeals and Regulatory Affairs  
Civil Service Commission  
P. O. Box 312  
Trenton, New Jersey 08625-0312

Attachment



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CSV 06725-18

AGENCY DKT. NO. 2018-2946

**IN THE MATTER OF MICHELLE ADAMS,  
SUPERIOR COURT OF NEW JERSEY,  
CAMDEN VICINAGE.**

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**Michelle Adams, appellant, pro se**

**Susanna J. Morris, Staff Attorney, for respondent Superior Court of New Jersey,  
Camden Vicinage**

Record Closed: December 28, 2018

Decided: March 25, 2018

**BEFORE SUSAN L. OLGATI, ALJ:**

**STATEMENT OF THE CASE**

Appellant, Michelle Adams, appeals the action of the respondent, Superior Court of New Jersey, Camden Vicinage, (Judiciary) removing her from her position as a Judiciary Clerk 2, on grounds of failure to perform duties, insubordination, conduct unbecoming a public employee, neglect of duty, and violation of Cannon 1 of the Code of Conduct for Judiciary Employees.

## **PROCEDURAL HISTORY**

Appellant was served with a Preliminary Notice of Disciplinary Action (PNDA), dated January 8, 2018, seeking her removal effective on a date to be determined. Appellant requested a departmental hearing and on March 27, 2018, she was served with a Final Notice of Disciplinary Action (FNDA) removing her from her position. Appellant timely filed a notice of appeal, and on May 10, 2018, the matter was transmitted to the Office of Administrative Law for a hearing as a contested case. N.J.S.A. 52:14-1 to -15 and N.J.S.A. 52: 14F-1 to -13. A hearing in this matter was held on November 28, 2018. The record remained open to allow for post-hearing written summations and closed on December 28, 2018. On February 7, 2019, an Order of Extension was requested extending the due date of the Initial Decision until March 28, 2019.

## **FACTUAL DISCUSSION AND FINDINGS**

### **I. Undisputed facts:**

The following facts are not in dispute, therefore I **FIND**:

1. Appellant was employed as a Judiciary Clerk 2, in the Superior Court of New Jersey, Camden Vicinage.
2. Appellant was served with a Preliminary Notice of Disciplinary Action (PNDA), dated January 8, 2018, seeking her removal on grounds of failure to perform duties, insubordination, conduct unbecoming a public employee, neglect of duty, and other sufficient cause - Violation of Canon 1 (Performance of Duties) of the Code of Conduct for Judiciary Employees, in violation of N.J.A.C. 4A:2-2.3(a)1, 2, 6, 7, and 11.
3. Thereafter, appellant was served with a Final Notice of Disciplinary Action (FNDA), on grounds set forth above, removing her from her position effective March 27, 2018.

## II. Testimony

The following is a summary of the relevant and material testimony.

### For respondent:

**Nalo Brown**, testified that she has worked for the Judiciary for thirteen years. She has served in her current position of Family Division Manager for the Camden Vicinage, for three years.

Appellant was originally assigned to the matrimonial team/unit within the Family Division. She was later assigned to the domestic violence (DV) team. Appellant's primary function was that of CourtSmart<sup>1</sup> operator. Operators are responsible for annotating the record, and pausing and resuming the CourtSmart recording as directed. During a court proceeding, CourtSmart operators must pay attention to the judges for direction. They must also listen to the hearing to ensure that it is being properly recorded. Operators must log off CourtSmart prior to going on breaks or ending their workday. Failure to do so prevents other operators from logging into and operating the system.

Appellant typically operated the CourtSmart system four days a week. In late summer 2017, Brown learned of issues regarding appellant's failure to log out of CourtSmart. Brown had an informal meeting with appellant to discuss the CourtSmart performance issues. Appellant denied any problems operating CourtSmart and suggested that co-workers were trying to make her look bad.

In September 2017, the Presiding Family Judge, Charles W. Dortch, Jr., J.S.C, contacted Brown to advise that appellant was not properly going on and off the record as required. Judge Dortch wanted appellant to receive training to ensure she knew how to properly operate CourtSmart. Brown had not previously received a complaint of this nature from any judge.

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<sup>1</sup> CourtSmart is the Judiciary's official audio recording system.

On September 20, 2017, Brown met with appellant and her union representative to address the concerns raised by Judge Dortch. Appellant advised Brown that she knew how to properly operate CourtSmart and thought the issue had been a miscommunication between her and Judge Dortch as they had not often worked together. Brown also raised at the meeting, the issue of appellant's failure to log out of CourtSmart. Appellant advised that she understood the importance of logging out of the system and would not let it happen again. Brown advised that further issues with appellant's operation of CourtSmart might lead to discipline. Brown asked appellant's supervisor, Brian Butts, to monitor the situation.

Following the September 20, 2017, meeting, Brown again met with Judge Dortch. He disagreed with appellant's assessment that her CourtSmart operation issues were the result of a miscommunication. Judge Dortch explained that on one occasion, appellant failed to stop the recording after the court proceeding had ended. Appellant's action caused unrelated conversations to become part of the official record.

Additionally, Brown was advised by Butts of an email received from Judiciary Clerk Charlotte Eggleston, regarding a September 12, 2017, incident in which appellant failed to log out of CourtSmart. She had turned off her computer and left the court room but had left CourtSmart running.

Brown arranged for CourtSmart training for appellant through the Administrative Office of the Courts ( AOC). However, due to a number of scheduling difficulties, that training did not take place. Brown requested Butts to meet with appellant to ensure she knew how to operate the system. Butts had an individual training with appellant in October 2017, in which he reviewed her CourtSmart operation. Appellant advised Butts that she understood how to use CourtSmart including how to pause the recording as needed. Butts was confident that appellant knew how to properly operate the system.

For several weeks following the training with Butts, there were no issues regarding appellant's CourtSmart operation. Brown thought that the issues had been resolved. Thereafter, Brown was advised of a December 7, 2017, incident reported by Judiciary Clerk, Diane Murphy, in which appellant again failed to log out of CourtSmart at the end

of the day. Brown was also advised of a December 11, 2017, incident reported by Eggleston in which appellant left for the day without logging out of CourtSmart. Eggleston had to call the IT department to gain access into CourtSmart. Brown was further advised of a December 19, 2017, incident reported by Probation Officer Kimberly Fonseca<sup>2</sup> in which Judge Christine Orlando, J.S.C. had to repeat instructions to appellant to go on/off the record.

Brown also learned that in December 2017, Judge Linda W. Eynon, J.S.C., advised Butts that she was having ongoing problems with appellant's operation of CourtSmart. Judge Eynon advised that when appellant was operating CourtSmart she would have to look to make sure that it was running. Judge Eynon was so concerned with appellant's operation of CourtSmart that she refused to allow appellant to cover her adoption proceedings.

Brown was concerned that the problems with appellant's operation of CourtSmart were getting worse. As a result, she directed Butts to schedule another meeting with appellant and her union representative. The meeting took place on December 20, 2017. Butts provided Brown with a written summary of the meeting. Butts explained to appellant the CourtSmart complaints made by the judges and the other judiciary clerks. In response, appellant advised that she had a problem with Judge Eynon and felt that she was in a "molestation" or "abuse or neglect" situation. Appellant said she did not feel safe and would not go back into the court room with Judge Eynon. Brown was very concerned when she heard of these allegations. Appellant had not previously raised these allegations.

Following the December 20, 2017, meeting, Brown spoke to Judge Eynon regarding appellant's CourtSmart issues. Judge Eynon explained that appellant was not properly going on and off the record, it seemed like she was in "LaLa Land" and not paying attention. Judge Eynon gave appellant specific directions but she did not follow them. On January 23, 2018, Brown prepared an email summarizing her conversation with Judge Eynon. (R-6.) The judge confirmed that Brown's summary was accurate. Id.

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<sup>2</sup> Also known as Kimberly Fortune.

Thereafter, Brown came to the conclusion that disciplinary action against appellant would be necessary as informal and formal meetings as well as training had not resolved the problems. Brown concluded that appellant's failure to properly operate CourtSmart was creating chaos and therefore, termination was appropriate. In recommending termination, Brown also reviewed appellant's disciplinary history which included one major discipline, based on similar charges of failing to perform duties. Brown presented her disciplinary recommendation at a file management meeting with the trial court administrator and the human resources manager. They agreed with the decision to terminate. As a result, on January 8, 2018, a PNDA was issued. On March 27, 2018, the FNDA was issued. The termination was sustained at the departmental hearing.

On cross-examination, Brown was questioned regarding a variety of topics including:

#### **Transfer to DV Unit**

Brown explained that she offered to transfer appellant (in 2016) to the Domestic Violence (DV) unit to give her a fresh start. Appellant appeared happy about the transfer. Christina Pressey was the then supervisor of the unit and Brown thought Pressey would be a good supervisor for appellant. Pressey planned to teach appellant new areas of work, however these plans did not materialize because Pressey was transferred shortly after appellant joined the unit.

#### **Meetings with Appellant**

Brown and appellant had several meetings in which appellant shared her concerns about the work place. Appellant seemed appreciative of having an opportunity to be heard. During one meeting, Brown introduced appellant to Travis Watson, her new union representative. Brown viewed the meeting as positive because she was aware that appellant had problems with her prior union representative.



### **Problems with Coworkers and Judges**

Brown was questioned about a prior discipline in which appellant alleged she was yelled at by another employee. Brown clarified that appellant's May 2017, discipline for insubordination was not related to her interaction with another employee but rather, her failure to directly respond to a judge when needed.

Brown was aware that appellant had problems with her coworkers, including Charlotte Eggleston and Diane Murphy. Brown did not think the other employees expressed hostility towards appellant but rather expressed frustration with her continuing CourtSmart problems. Appellant had not advised Brown of any problems she had with Judges Orlando, Eynon, or Dortch.

### **Appellant's Hearing**

Brown did not know of any appointments appellant had with her ear doctor, nor did she know what, if any, of appellant's medical records had been received by the Judiciary.

**Charlotte Eggleston**, Judiciary Clerk 2, testified that she has been employed by the Judiciary for seven years and is currently assigned to the DV unit within the Family Division. She has operated CourtSmart throughout the course of her employment. Eggleston explained that Court Smart is the system used for creating an official record of court proceedings. A CourtSmart operator is responsible for conducting microphone tests to make sure that they are working properly. Some CourtSmart microphones are stronger than others. The judges' microphones are much stronger than those assigned to the litigants. CourtSmart operators wear headphones during the proceedings. Instructions from the judges to the operators come directly through the headphones.

CourtSmart operators are also responsible for checking the docket, watching the judges for direction, and starting and stopping the recording as needed. Before an operator can be relieved, she must log out of the system and wait for a new operator to log in. If the first operator is not logged out, the new operator cannot use CourtSmart. It takes time for a new operator to log into CourtSmart. Delays in logging into CourtSmart

interrupt the court proceedings and often frustrate the judges. Logging out of CourtSmart, however, takes very little time and is one of the first things taught when using the system. Operating CourtSmart is not difficult.

Eggleston sent Butts an email regarding a September 12, 2017, incident in which she had to relieve appellant on CourtSmart. Appellant logged off of her computer and left the courtroom but left CourtSmart running. Eggleston also sent Butts an email regarding a December 2017, incident in which appellant failed to log off of CourtSmart. Eggleston had to call IT to log appellant out of the system. Eggleston tried to speak to appellant about her failure to log out of CourtSmart. Appellant was not receptive to the discussion so Eggleston went to the team leader.

On cross-examination, Eggleston didn't recall being angry or bitter towards appellant. Eggleston did not recall an incident in which she allegedly made appellant wait for several minutes before acknowledging her or acted like appellant "was not there."

**Brian Butts**, testified that he has been the team leader of the Domestic Violence Unit, Family Division since May 2017. Appellant was on his team. Operating CourtSmart had been one of appellant's duties throughout the course of her employment. She was the primary CourtSmart operator and in court four days a week. In summer 2017, some of the other judiciary clerks brought to his attention issues regarding appellant's failure to log out of CourtSmart. Butts spoke with appellant and she walked him through her operation of the system.

In September 2017, Butts received an email from Eggleston regarding an incident in which appellant did not remain in the courtroom to wait for Eggleston to log into the system. Operators are not supposed to leave until their replacements arrive to continue CourtSmart operation as needed. Butts forwarded this email to Brown. Butts also learned that Judge Dortch had complained that appellant was not properly going on and off the record as required. He spoke to appellant about Judge Dortch's complaint. Appellant explained that Judge Dortch was not her usual judge.

Butts attempted to schedule formal CourtSmart training for appellant with the AOC. However, due to scheduling conflicts and miscommunications between Butts and the AOC trainer, the training did not take place. As a result, Butts met with appellant and they went through CourtSmart including how to log in and out and how to pause the recording to go on/off the record. The session lasted approximately five to ten minutes. Appellant seemed to understand what she was doing and she did not have any questions that Butts was unable to answer.

Butts received an email from Diane Murphy regarding a December 2017, incident in which appellant failed to log out of CourtSmart. Murphy advised that she was not able to access the system to continue operating CourtSmart in connection with an ongoing court proceeding. Appellant had to be sent back into the courtroom to log out of CourtSmart. The judge in that matter completed the proceeding before Murphy was able to log into CourtSmart.

Butts also received a December 2017, email from Eggleston regarding another incident in which appellant had not logged out of CourtSmart before leaving for the day. Eggleston had to call IT to log appellant out of the system. During that time, Eggleston was not able to operate CourtSmart.

Additionally, during a December 2017 holiday luncheon, Judge Eynon advised Butts that appellant was not properly going on and off the record. Butts discussed Judge Eynon's concern with Brown. This was now the second judge to raise an issue with appellant's operation of CourtSmart.

On December 19, 2017, Butts received an email from Parole Officer, Kim Fortune, regarding an incident in which Judge Orlando had to repeat instructions to appellant to go on/off the record. Fortune witnessed the incident and informed appellant that the judge was speaking to her. Thereafter, Butts met with Judge Orlando who expressed concern regarding appellant's operation of CourtSmart. Appellant's actions required the judge to concentrate on the CourtSmart recording. Butts had not received complaints from the judges regarding any other CourtSmart operator.

On December 20, 2017, Butts met with appellant and union representative, Lisa Bean, to discuss her performance issues. During the meeting, appellant advised that Judge Eynon made faces at her and made her feel like she was in a situation of "molestation" in the courtroom. She said she felt like she was in an "abuse and neglect" situation. Appellant's union representative cautioned her against using such terms. Appellant said that she did not feel safe and did not want to go back into the courtroom with Judge Eynon. These claims raised much concern for Butts. Appellant had not raised these claims prior to the December 20, 2017, meeting.

During the meeting, appellant also indicated that she had a hearing deficit. Upon mentioning this, the union representative stopped the meeting and told appellant that if she had hearing loss which affected her job, she needed to speak to HR to request an ADA accommodation. Appellant said that she could do her job and did not want an accommodation. Appellant had previously mentioned her hearing to Butts. During that prior occasion, Butts asked appellant if she had an accommodation. Appellant said that she did not. She stated she did not want to pursue an accommodation because she could do her job. Butts made notes of the December meeting shortly after it concluded and provided them to Brown.

Several days after the meeting, appellant advised Butts that she would return to Judge Eynon's courtroom.

On cross-examination, Butts was questioned about a variety of topics including:

#### **Other Job Duties**

Butts indicated that he was aware that appellant's prior supervisor, Christina Pressey, had planned to assign her other duties. Appellant had asked Butts to be trained in other areas including docketing and transfers of matters from other counties. Butts attempted to train appellant on transfers however, during one session, they were interrupted by another worker who had a question. Appellant advised Butts that due to the distraction she was not able to focus and walked out of the training.

Butts acknowledged receiving a January 24, 2018, email from appellant regarding her goals for 2018, which included a request for training in several other areas. Butts and appellant had several conversations regarding training. He had discussed with her other possible job assignments and told appellant that he would look into other options. Butts explained however, that this occurred at approximately the same time that he learned of problems regarding her operation of CourtSmart.

### **Coworkers**

Butts recalled appellant raising issues of coworkers relieving her for breaks. On one occasion, appellant claimed that a coworker had said something (to or about her) on the record. Butts reviewed the record but did not find anything.

### **Appellant's Hearing**

Butts was aware that appellant had taken time off for an appointment with her ear doctor.

### **CourtSmart Training**

Butts acknowledged that he would have liked for appellant to have attended CourtSmart training through the AOC. He did not know how long that training would have been. Butts explained however, that after their training session, he was satisfied that appellant knew how to properly operate CourtSmart.

**Jim Grazioli**, testified that he has been the Human Resources (HR) manager for the Camden Vicinage for twenty-four years. He first became aware of an issue with appellant's hearing during an October 31, 2017, meeting. At that time, appellant advised that she had a seventy percent hearing loss in one ear. Grazioli explained the interactive accommodation process to appellant and advised her whom to contact. Appellant said that she could do her job and did not want an accommodation.

Grazioli also testified that he, along with Brown and the trial court administrator, attended a file management meeting concerning discipline recommended against appellant. Brown presented her case and recommended removal. The recommended disciplinary charges of neglect of duty, insubordination, and violation of the Code of Conduct for Judiciary employees, were similar to prior disciplinary charges. Grazioli explained that employees are required to annually acknowledge that they have received and read the Code of Conduct. Grazioli believed that appellant's actions violated Canon 1 of the Code of Conduct. Appellant's actions affected not only several of the judges but the litigants as well. Appellant's failure to properly operate CourtSmart prevented the judges from fully focusing on their cases. Given the nature of DV proceedings, the Judiciary cannot not afford to have any errors in the official record.

On cross-examination Grazioli was questioned about a variety of topics including:

#### **Union Representative**

Grazioli explained that management does not play a role regarding to whom union representatives are assigned.

#### **Interview for Promotional Position**

Grazioli had no recollection of interviewing appellant for a promotional position to Judiciary Clerk 3 (J3.) He explained however, that every employee who met the qualifications for the position received an interview. He further explained that a PNDA would not disqualify appellant for the position. "On paper" appellant met the minimum qualifications for the position.

#### **For appellant:**

Appellant, Michelle Adams, testified that she had been employed with the Judiciary for eighteen and one-half years. Her primary job duty throughout the course of her employment was CourtSmart operator. Appellant enjoyed her job and enjoyed working with the judges.

### **Coworkers**

Appellant testified that she struggled "fitting in" to the DV unit. She claimed that her coworkers disliked her. She tried to focus on her job but felt overwhelmed by the "negativity." Her coworkers treated her differently. They were friendly to others and treated them with "endearment" but they were angry with appellant. They displayed "frowny faces" towards her. When coworkers would come to relieve her from CourtSmart their faces would look "disfigured, angry and hostile." It was embarrassing to her. Appellant wanted to be part of the team but the negativity was having a "psychological effect" on her so she eventually spoke with her supervisor about it. Appellant suggested that coworkers did not have to "break her" (relieve her from CourtSmart). She offered to go on break only when the judges were on break but her supervisors did not approve this suggestion.

Appellant testified about an incident in which a coworker had been assigned to work in place of her. Appellant was unaware of the assignment change. Appellant told the coworker that she did not have to "break" her. The coworker responded angrily and "with hostility" that if appellant had a problem with it she should speak with her supervisor. Appellant had not expected that type of reaction. Sometime later, appellant encountered that same coworker and she laughed in her face, mocking appellant.

Appellant also testified about an incident involving a judicial law clerk. The law clerk seemed surprised when appellant entered the court room. The law clerk made a face at her. Appellant surmised that "bad news travels faster than good." She felt like she was being conspired against. She felt like she was in a "spooky house." She did not tell her supervisor about the law clerk incident.

### **Judges**

Appellant testified that 2017 brought changes to her job. Two new judges, Orlando and Eynon, came on board and appellant was excited. Judge Dortch made a complaint about appellant failing to go and off the record. Appellant shared information regarding

Judge Dortch's complaint with a coworker who worked very closely with Judge Eynon. Thereafter, it was on everyone's radar that "Michelle did not know what she was doing."

Appellant was "totally unaware" of any problems that Judge Eynon had with her operation of CourtSmart. Appellant mentioned to Judge Eynon that she had a hearing deficit. She was not complaining or indicating that she could not do her job. She just wanted the judge to know. Judge Eynon would make angry facial expressions towards her. When Judge Eynon would look to see if CourtSmart was running her face would be "frowned up." The judge would angrily, "with a nasty disposition," and in a loud voice say to her "on the record," or "off the record." It was frightening to appellant. It made her feel threatened and demeaned. Based on Judge Eynon's facial expressions, tone of voice, and body language, appellant felt the judge did not like her. Appellant assumed that someone had told Judge Eynon negative things about her. The judge was new and highly respected. She was someone whom appellant looked up to. Appellant did not want her supervisor to know she was having problems with Judge Eynon but she felt her job was on the line. So, appellant asked her supervisor if there were things she could do other than work with Judge Eynon. Butts said he would look into it.

Appellant was aware of the CourtSmart issue reported by Kim Fortune. Fortune was in Judge Orlando's courtroom and informed appellant that the judge told her to go off the record. Appellant testified that she heard the judge "loud and clear." Appellant noted that right after the incident, Fortune "rushed" to her supervisor to report it. Appellant also testified that she recalled Judge Orlando yelling "off the record" at her. Appellant knew about the complaints from Judge Dortch because Nalo Brown brought them to her attention. She testified that she wasn't aware that her hearing had gotten worse until Judge Dortch complained about her.

#### **December 20, 2017, Meeting/Union Representation**

Appellant attended a December 20, 2017, meeting with her supervisor and union representation, Lisa Bean. She was surprised that Lisa Bean would be at the meeting. Appellant previously had problems with Bean who would bang on tables and yell. Appellant walked out of prior meetings with Bean. In the past, Bean told appellant that if



it hadn't been for her, appellant would have lost her job years ago. Appellant eventually asked for a new union representative and was assigned Travis Watson. During the December 20, 2017, meeting, Bean yelled at appellant. She felt like she was a child being scolded.

Appellant was unaware of CourtSmart problems raised by Eggleston and Murphy. Her supervisors did not say anything to her when the complaints were made. Several judges and co-workers were complaining about her. She felt like she was "in the midst of a conspiracy."

Appellant denied using the terms "molestation" or "abuse and neglect" in reference to Judge Eynon. She would never say anything like that about a judge.

### **Interview for Promotional Position**

Appellant testified that she interviewed for a promotional, judiciary clerk position. She was confused about why she was being interviewed for the position if she had a pending discipline for removal. The interview was with Grazioli and the trial court administrator (TCA.) Appellant told the TCA that she had a hearing deficit. She asked if this would be an issue and the TCA said that it would not.

### **Blood Rituals**

Appellant testified that co-workers were performing blood rituals and/or acts of Satanism around her work area.<sup>3</sup>

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<sup>3</sup> Following the conclusion of her fair hearing testimony, after respondent's witnesses had been released, appellant attempted to introduce two photos of what she claimed to be documentation of blood that had been squirted by her desk. Appellant argued this was evidence that co-workers were performing blood rituals/acts of Satanism. One photo was purported to be from 2015 and another from 2018. There had been no direct testimony regarding the alleged blood rituals/acts of Satanism and appellant did not question or cross-examine any of respondent's witnesses on this issue. Respondents objected to the photographs. Appellant was advised that to fully consider the admissibility of the photographs, the record would need to remain open to allow the Judiciary to provide rebuttal testimony. Appellant advised, on the record, that she did not want to come back for another day of hearing and chose not to introduce the photographs into evidence.

### **Hostile work environment**

Appellant testified that her hearing deficit was not the issue, rather, it was her "defense" that she had been working in a hostile work environment and that her colleagues had conspired against her.<sup>4</sup>

### **Credibility**

For testimony to be believed, it must not only come from the mouth of a credible witness, but it also has to be credible in itself. It must elicit evidence that is from such common experience and observation that it can be approved as proper under the circumstances. See Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). A credibility determination requires an overall assessment of the witness' story in light of its rationality or internal consistency and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). Also, "[t]he interest, motive, bias, or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony." State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.), certif. denied, 10 N.J. 316 (1952) (citation omitted).

A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

As to the credibility of the witnesses, I accept the testimony of each of respondent's witnesses as credible. Their testimony concerning appellant's continuing failure to properly operate CourtSmart was rational, reasonable, and internally consistent. Moreover, their testimony was consistent with the ample additional competent evidence in the record. Additionally, I accept as credible, Butts testimony regarding the December 20, 2017, meeting and appellant's use of the terms including "molestation" and "abuse"

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<sup>4</sup> Any claims relating to a hostile work environment are outside of the scope of this administrative appeal of appellant's disciplinary action. If appellant wishes to pursue such claims she must do so in another forum.

and “neglect” in reference to her perceived treatment by Judge Enyon. In addition to Butts having no motivation or bias to misrepresent the facts of that meeting, the terms used were so unusual that it belies belief that he fabricated this testimony.

Conversely, I do not accept appellant’s testimony as credible. As an initial matter, for the reasons set forth above, her denial of the use of the terms “molestation” “abuse” and “neglect” is not credible. Moreover, her other testimony was unfocused, rambling, often confusing and internally inconsistent. For example, appellant’s claims that she was unaware of problems that Judge Eynon had with her operation of CourtSmart are inconsistent with her admissions that the judge would have to “yell” to her to go on or off the record. Her claims were also inconsistent with her admission that [in the midst of a court proceeding] the judge would look to make sure that CourtSmart was recording. Further, her testimony that she was disliked, conspired against, and subject to hostile work environment was overborne by the testimony and ample competent evidence in the record which demonstrated that appellant continually failed to properly perform her CourtSmart duties.

Additionally, her intermittent reference to her hearing loss was inconsistent with her repeated admissions that her hearing was not an issue and did not affect her ability to perform her job. Finally, appellant’s testimony is best described as motivated by her interest in overturning the discipline and being reinstated to her former position.

**Additional Findings:**

Accordingly, after having an opportunity to review the evidence and consider the testimony and demeanor of the witnesses, I **FIND:**

In late summer 2017, Nalo Brown learned of problems regarding appellant’s operation of CourtSmart. As a result, Brown met with appellant to discuss her CourtSmart performance issues. Appellant assured Brown that she knew how to properly operate CourtSmart.

On or about September 12, 2017, appellant failed to log off of CourtSmart. She shut down her computer while CourtSmart continued to run. Her actions prevented Charlotte Eggleston from timely logging into and operating CourtSmart.

In September 2017, in a matter before Judge Dortch, appellant failed to properly follow a court proceeding and go off the record as required. Her actions caused unrelated conversations to become part of the official record.

In a September 20, 2017, meeting, appellant advised Nalo Brown that she knew how to properly operate CourtSmart. Appellant was advised that additional issues with her operation of CourtSmart might lead to discipline.

In October 2017, Brian Butts met with appellant to review her operation of CourtSmart. During the meeting, appellant demonstrated an appropriate understanding of, and ability to, operate the system.

On or about December 7, 2017, appellant failed to log out of CourtSmart and prevented coworker Diane Murphy from timely logging into and operating the CourtSmart.

On or about December 12, 2017, appellant failed to log out of CourtSmart and prevented coworker Charlotte Eggleston from logging into and operating CourtSmart.

Appellant also failed to properly follow Judge Enyon's instructions to go on and off the record as required. Additionally, in December 2017, appellant failed to follow Judge Orlando's repeated instructions regarding CourtSmart. Probation Officer Kimberly Fortune had to inform appellant that Judge Orlando was speaking to her.

During the course of her employment, appellant consistently advised her employer that her hearing loss did not affect her ability to perform her job and that she was not in need of an ADA accommodation.<sup>5</sup>

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<sup>5</sup> Indeed, at the fair hearing in this matter, appellant testified that her hearing loss did not affect her ability to perform her job.

## LEGAL ANALYSIS AND CONCLUSIONS

A civil service employee who commits a wrongful act related to his or her duties, or gives other just cause, may be subject to major discipline. N.J.S.A. 11A:2-6; N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2. In an appeal from such discipline, the appointing authority bears the burden of proving the charges by a preponderance of the credible evidence. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a). In re Polk License Revocation, 90 N.J. 550, 560 (1982); Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). Here, the Judiciary charged appellant with failure to perform duties in violation of N.J.A.C. 4A:2-2.3(a)(1); insubordination in violation of N.J.A.C. 4A:2-2.3(a)(2); conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6); neglect of duty in violation of N.J.A.C. 4A:2-2.3(a)(7), and other sufficient cause – Violation of Cannon 1 (Performance of Duties) of the Code of Conduct for Judiciary Employees, in violation of N.J.A.C. 4A:2-2.3(a)11, in connection with her failure to properly operate CourtSmart.

### **Failure to Perform Duties**

Appellant is charged with failure to perform duties. Under N.J.A.C. 4A:2-2.3(a)(1), an employee may be subjected to major discipline for “incompetency, inefficiency, or failure to perform duties.” In general, incompetence, inefficiency, or failure to perform duties exists where the employee’s conduct demonstrates an unwillingness or inability to meet, obtain or produce effects or results necessary for adequate performance. Clark v. New Jersey Dep’t of Agric., 1 N.J.A.R. 315 (1980).

Appellant had been a Judiciary Clerk for over eighteen years. Throughout the course of her employment, her primary function was to operate CourtSmart. Logging off CourtSmart, following the court proceedings, and following the instructions of the judges are tasks that all CourtSmart operators are expected to perform. There is ample evidence in the record, including appellant’s own admissions, demonstrating her incompetency, inefficiency, and failure to perform her duties. Appellant admitted that Judges Orland and Eynon “yelled” at her to go on and off the record. She also admitted that Judge Eynon would have look over to see if CourtSmart was running. She further acknowledged Judge Dortch complained about her operation of CourtSmart and that she shared this complaint

with a coworker. Despite repeated instruction from the judges, and several informal and formal meetings with supervisors, appellant continued to fail to properly operate CourtSmart including pausing the recording, and/or going on and off the record as required. Appellant similarly continued to fail to properly log off CourtSmart, thereby preventing others from operating CourtSmart. Her continued failure to properly operate CourtSmart demonstrates an inability or unwillingness to perform basic job duties. Thus, I **CONCLUDE** that the respondent proved the charge of failure to perform duties.

### **Neglect of Duty**

The next charge against appellant is neglect of duty in violation of N.J.A.C. 4A:2-2.3(a)(7). Neglect of duty is not defined under the New Jersey Administrative Code, but the charge has been interpreted to mean that an employee has failed to perform and act as required by the description of his/her job title. Generally, the term "neglect" connotes a deviation from normal standards of conduct. In re Kerlin, 151 N.J.Super. 179, 186 (App Div. 1977). It has been applied both to not fully carrying out duties and to acting incorrectly. See, e.g., In re Marucci, CSV 07241-09, Initial Decision (January 1, 2010), modified, CSC (March 6, 2010), <<http://njlaw.rutgers.edu/collections/oal/>>, aff'd, A-3607-09T1 (App. Div. January 3, 2012), <<http://njlaw.rutgers.edu/collections/courts/>> (removal of a police officer with no disciplinary record where he failed to remove drugs from under a sewer grate and then lied about his actions). Here to, the neglect of duty charge is supported by the ample competent evidence in the record. Despite repeated instruction from the judges, and several informal and formal meetings with supervisors, appellant continued to fail to properly operate CourtSmart including pausing the recording, and/or going on and off the record as required. Appellant similarly continued to fail to properly log off CourtSmart thereby preventing others from operating CourtSmart. Her continued failure to properly operate CourtSmart demonstrates a deviation from normal standards of conduct. Therefore, I **CONCLUDE** that respondent has proved the charge of neglect of duty.

### **Other Sufficient Cause**

Appellant is also charged with other sufficient cause in violation of N.J.A.C. 4A:2-2.3(a)(11), namely violating the Code of Conduct for Judicial Employees. Cannon 1—Performance of Duties provides in pertinent part:

- A. A Court employee shall uphold the Constitutions and laws of the United States and the State of New Jersey, and shall faithfully carry out all duties assigned to the employee's judicial function.
- B. Every court employee shall endeavor at all times to perform official duties properly, courteously, and with diligence.

For the reasons set forth above, the competent evidence in the record amply supports that appellant was not able to carry out the duties assigned to a Judiciary Clerk 2 and that she was not able to perform her official duties properly, and with diligence. Despite repeated instruction from the judges and several informal and formal meetings with supervisors, appellant continued to fail to properly operate CourtSmart including pausing the recording, and/or going on and off the record as required. Appellant similarly continued to fail to properly log off CourtSmart thereby preventing others from operating CourtSmart. Therefore, I **CONCLUDE** that respondent has proved the charge of other sufficient cause, namely violation of the Code of Conduct for Judicial Employees.

### **Insubordination**

Appellant is also charged with insubordination. The New Jersey Administrative Code, does not provide a definition for insubordination. See N.J.A.C. 4A:1-1.3. However, case law generally interprets the term to mean the refusal to obey an order of a supervisor. In re Shavers-Johnson, CSV 10838-13, Initial Decision (July 30, 2014), According to Webster's II New College Dictionary (1995) "insubordination" refers to acts of non-compliance and non-cooperation, as well as affirmative acts of disobedience.

Here, appellant continued to fail to follow repeated instructions regarding proper logging out of CourtSmart and go to on and off the record as required. In the case of Judge Orlando, appellant admitted that she heard the judge's instructions "loud and clear." She further acknowledged instructions from Judges Dortch and Eynon regarding going on and off the record. Despite these repeated instructions, appellant failed to operate CourtSmart as directed and required. Appellant's failure to follow the repeated instructions of the judges and her supervisors constitutes insubordination. Therefore, I **CONCLUDE** that respondent has proved the charge of insubordination.

### **Conduct Unbecoming**

Finally, appellant is charged with "conduct unbecoming a public employee," in violation of N.J.A.C. 4A:2-2.3(a)(6). Conduct unbecoming a public employee is an elastic phrase, which encompasses conduct that adversely affects the morale or efficiency of a governmental unit or that has a tendency to destroy public respect in the delivery of governmental services. Karins v. City of Atlantic City, 152 N.J. 532, 554 (1998); see also In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960).

Appellant's continued failure to properly operate CourtSmart prevented other operators from accessing CourtSmart and annotating, pausing, and stopping the recordings as necessary. Moreover, her failure to properly operate CourtSmart became a source of distraction for the judges and affected their ability to fully concentrate on the substance of the court proceedings. Thus, her actions affected not only the morale and efficiency of her unit but also the accuracy and completeness of the vicinage's official record of court proceedings. Therefore, I **CONCLUDE** respondent has proved the charge of conduct unbecoming a public employee.

### **PENALTY**

Having concluded that appellant engaged in the conduct charged, I must determine the proper penalty to be assessed. When dealing with the question of penalty in a de novo review of a disciplinary action against an employee, it is necessary to reevaluate the proofs and "penalty" on appeal, based on the charges. N.J.S.A. 11A:2-



19; Henry v. Rahway State Prison, 81 N.J. 571 (1980); W.N.Y. v. Bock, 38 N.J. 500 (1962).

Where appropriate, concepts of progressive discipline involving penalties of increasing severity are used in imposing a penalty and in determining the reasonableness of a penalty. W. New York v. Bock, 38 N.J. 500, 523–24. Factors determining the degree of discipline include the employee’s prior disciplinary record and the gravity of the instant misconduct.

Here, the respondent had proved all of the charges against appellant. As a Judiciary Clerk 2, appellant's primary duty was to operate CourtSmart, the Judiciary's official audio recording system. Appellant's failure to properly operate CourtSmart, despite repeated instruction from her supervisor and the judges, not only adversely affected the workplace but the accuracy and completeness of the vicinage's official record of court proceedings. Accordingly, based on the seriousness of the current charges as well as appellant's prior disciplinary history which includes, but is not limited to, a thirty-day suspension in 2017, for failure to perform duties; insubordination; chronic and excessive absenteeism; conduct unbecoming; neglect of duty; and violation of Canon 3 of the Code of Code of Judiciary Employees, as well as a ten-day suspension in 2015, for failure to perform duties; conduct unbecoming; neglect of duty; and violation of Canon 3 of the Code of Conduct for Judiciary Employees, I **CONCLUDE** that removal is the appropriate penalty.

### **ORDER**

I **ORDER** that the charges of failure to perform duties, insubordination, conduct unbecoming a public employee, neglect of duty, and other sufficient cause--violation of Cannon 1 of the Code of Conduct for Judiciary Employees in violation of N.J.A.C. 4A:2-2.3(a)(1)(2)(6)(7) and(11) are sustained, and that the action of the respondent removing appellant from her position as a Judiciary Clerk 2 is hereby **AFFIRMED** and appellant's appeal is **DISMISSED**.

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

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

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

March 25, 2019

DATE



SUSAN L. OLGIATI, ALJ

Date Received at Agency:

3/25/19

Date Mailed to Parties:

3/25/19

SLO/vj

**APPENDIX**  
**LIST OF WITNESSES**

**For appellant:**

Michelle Adams

**For respondent:**

Nalo Brown, Family Division Manager

Brian Butts, Courts Services Supervisor 2

Charlotte Eggleston, Judiciary Clerk 2

Jim Grazioli, Human Resources Division Manager

**LIST OF EXHIBITS**

**For appellant:**

P-1 Email from Adams to Butts, My goals for 2018, January 24, 2018

P-2 Email chain, Adams to Pressey, ETRO Access Request Form, May 18, 2018

P-3 Email from Adams to Butts, October 12, 2018

P-4 Email from Adams to Butts, Court Smart Audio Recording, November 1, 2017

P-5 Email from Adams to Brown, Exchange in Courtroom, September 25, 2017

P-6 Email chain, Adams and Butts, Judge Eynon Court Room 22, October 5, 2017

P-7 Email Adams to Butts, Judge Eynon Court Room 22, October 5, 2017  
(duplicate of last email in chain from P-6)

**For respondent:**

R-1 Email chain, Butts to Brown, September 18, 2017

R-2 Email chain, Butts to Brown, December 28, 2017

R-3 Email chain, Brown to Grazioli, February 5, 2018

R-4 FNDA dated March 27, 2018

R-5 Summary of December 20, 2017, meeting prepared by Butts

R-6 Email chain, Honorable Linda Eynon, J.S.C. and Brown, January 23, 2018

R-7 Email chain, Butts to Brown, January 24, 2018

R-8 PNDA, January 8, 2018

R-9 Not admitted into evidence

R-10 Excerpt of Code of Code for Judiciary Employees

R-11 Disciplinary History for Adams