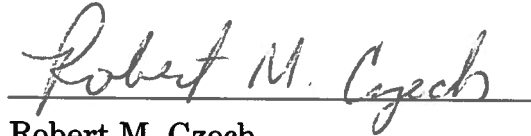


Re: Kidhada Russ

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
JULY 16, 2014

A handwritten signature in cursive script that reads "Robert M. Czech". The signature is written in black ink and is positioned above a horizontal line.

Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals
and Regulatory Affairs
Civil Service Commission
Unit H
P. O. Box 312
Trenton, New Jersey 08625-0312

attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSR 334-14

2014-1667

**IN THE MATTER OF KIDHADA RUSS,
CAMDEN COUNTY CORRECTIONAL
FACILITY.**

John P. Rowland, Esq., for appellant Kidhada Russ

Antonieta Rinaldi, Assistant County Counsel, for respondent Camden County
Correctional Facility (Sherri L. Schweitzer, County Counsel)

Record Closed: April 21, 2014

Decided: June 4, 2014

BEFORE **JOSEPH LAVERY, ALJ** t/a:

Appellant, Kidhada Russ appeals the appointing authority's decision to terminate her from the title and position of County Correction Officer in the County of Camden. She has been charged with (a) falsification of a record; (b) failure to report to duty; and (c) violation of a settlement agreement.

The County of Camden (County; appointing authority) contests the appeal.

Today's initial decision affirms the removal of appellant by the County of Camden.

PROCEDURAL HISTORY

This is an appeal filed in the Office of Administrative Law (OAL) on December 31, 2013, pursuant to L. 2009, c. 16, supplementing Title 40A of the New Jersey Statutes (N.J.S. 40A:14-200 through -212) and amending N.J.S. 40A:14-150 and N.J.S. 40A:14-22.

The Acting Director and Chief Administrative Law Judge assigned the case for hearing in a letter to the undersigned dated January 14, 2014. Prehearing Order issued on January 16, 2014. Hearing was scheduled for March 11, 2014, but adjourned for cause at appellant's request until April 4, 2014. Post-hearing submission on a point of evidence were submitted, the last of which was filed on April 21, 2014. On that date, the record closed.

STATEMENT OF THE CASE

Background:

Many of the basic facts are not in serious contention:

County Correction Officer David Crossan and appellant, prior to her removal, worked together in the Camden County Correctional Facility. Both concede that they have for some time been involved in a sexual relationship which continued to the time of hearing. The length of their personal connection extended through the days here in issue.

On December 22, 2012, appellant had submitted a request for days off, to begin on January 1, 2013, with a date for return to work set as January 3 (Exh. 4a). Her request was denied. On December 31, 2012, at line-up, Officer Crossan formed with

other officers joining him on the 4:00 p.m. to 12:00 p.m. shift. While there, he received a "switch-slip" from his lieutenant, Albert Richer, dated December 28, 2012 (Exhibit R-4b). A "switch-slip" is a document through which officers routinely are permitted to exchange shift assignments, if the change is approved by supervisors.

In this instance, the switch-slip disclosed that appellant would exchange her shift running from 12:00 a.m. to 8:00 a.m. on January 1, 2013, for the shift during which Officer Crossan was to work: 4:00 p.m. to 12:00 a.m. on December 31, 2012. It had ostensibly been signed, as required, by both appellant and Officer Crossan, with the signature of the approving sergeant at the bottom. In fact, the signature of Officer Crossan had been placed there by appellant. Seeing this, Officer Crossan took the slip back to Lieutenant Richer, declaring that the signature under his name was not his own.

Lieutenant Richer directed him to either resolve the matter with appellant or to write an incident report. Officer Crossan complied by contacting appellant, and, later, by writing an incident report (Exh. R-5). In the report, the officer wrote that he knew nothing about the slip, and that he had twice contacted appellant during New Year's Eve, at approximately 5:00 p.m. and at 8:40 p.m. He reasserted in those contacts that he would not take her midnight shift. (Exh. R-5). Also, he denied ever agreeing to the change.

Officer Crossan's report further asserted that during the two contacts made to appellant during his shift, reiterating his stance on the matter, appellant told him she had spoken to Lieutenant Richer. She stated that the lieutenant said that he, Officer Crossan, had not submitted a report. Moreover, according to Officer Crossan, appellant maintained first that she would appear on her own shift, which would begin at 12:00 a.m. on January 1, 2013, then temporized, saying she might not be in.

Appellant herself would later insist that Officer Crossan had agreed to the switch as well as to her signing of the switch-slip on his behalf.

In any event, before the midnight shift began, the next shift commander, Lieutenant Robert Riemer, became aware of her absence but was unsuccessful in calling her both before and after the onset of the shift. As a result, Lieutenant Riemer submitted a Supervisor's Staff Complaint Report (Exh. R-6) on January 1, in which he adverted to those phone calls. There had been no response. Consequently, a work detail was shut down to cover staffing. Lieutenant Riemer wrote that appellant called in to the jail at 1:21 a.m., claiming to have an authorized day off. According to the lieutenant's report, she was told this was not the case. She agreed then to come in. By 2:15 a.m. appellant had not arrived. At that point, the lieutenant reported, he called appellant advising her not to appear, since she had passed the 2:00 a.m. cut-off, and in his later report concluded that, under the circumstances, appellant would be "carried as A.W.O.L. for this day [01 January 2013]."

For her part, appellant maintained that she had called in time to arrive at work before 2 a.m., which qualified as being a "late" arrival, as opposed to an AWOL charge. Lieutenant Riemer told her not to, according to appellant.

An investigation followed, conducted by Internal Affairs, through Sergeant James T. Jones, Case Investigator. It included recorded interviews with Officer Crossan and appellant (Exhs. R-7 and R-8) in June and July respectively with the end result that following Investigator Jones' report, a series of preliminary and final disciplinary notices issued, terminating appellant's employment (Exhibits R-1 and R-2).

In response, appellant brought the present timely appeal.

Respondent County's argument:

In addition to the investigative report (Exh. R-3) and testimony reiterative of that report adopted as testimony by Case Investigator **Sergeant John T. Jones**, the County elicited supplementing testimony from **Correction Officer David Crossan**. He also had been interviewed before a certified reporter on June 27, 2013 (Exh. R-7). Officer

Crossan testified that appellant first asked him to switch shifts on December 28, 2012. He refused. At the line-up on December 31, when he went to Lieutenant Richer, the latter told him to either contact appellant to resolve the matter, or write an incident report. Officer Crossan testified that he did both.

He stated in the report that he texted appellant at 5:00 p.m. on December 31 to say he never approved the shift change. She responded that she would come to work on her normal shift. He texted again at around 9:00 p.m. to confirm, and this time, he recalled, the answer came that she was unsure whether she would appear. By at least after midnight, the contacts ceased. Officer Crossan denied that he was mad, angry, or jealous over any plans appellant might have made for New Years. He stated that he submitted his incident report on New Year 's Day at about 1:30 a.m. and that he wrote the report to avoid getting into trouble himself.

Officer Crossan conceded in testimony that on approximately a half-dozen earlier occasions, he had arranged with appellant to make shift switches. In some instances she had done so by signing his name to the switch-slip. He allowed this usually by texting. As it happened, the officer was compelled to volunteer for work on the 12:00 a.m. to 7:00 a.m. shift on New Year's anyway, in anticipation of being called from the mandatory overtime roster. His name happened to be placed high on the list.

Addressing the issue of whether one officer might allowably sign the name of another on a switch-slip, **Deputy Warden Christopher Fosler** testified emphatically that such a practice was not permitted. The approving Human Resources officers must rely on the truthfulness of the officers signing. It would be impossible to verify each document submitted with such frequency. Consequently, when the slip is signed by one officer with the signature of another without his or her knowledge, the offense rises to the level of fraud. From his experience, the Deputy Warden knew that, even if appellant had appeared timely on her shift, her disciplinary status would still be problematic because of the fraud.

Appellant's argument:

Appellant presented her case through testimony at hearing. Also in the record was the certified transcription of her sound recorded interview with Internal Affairs (IA) investigators on July 30, 2013 (Exh. R-8).

Appellant was emphatic in her assertion that Officer Crossan had agreed to take her place on the midnight to 8:00 a.m. shift, starting January 1, 2013. It was her intention to take her son to a New Year's party at his godmother's house during those hours. She stated that she had asked Officer Crossan daily to switch, beginning before December 22, 2012, each time obtaining only the ambiguous response that he was uncertain. In appellant's perception, his real concern was that she would be with another man, despite her reassurances to the contrary. Nevertheless, since he had never denied her requests in the past, appellant felt free to submit the switch-slip (Exh. 4b) and to sign the slip in his name, as well. Finally, in her interview with IA, she added that on December 31, Officer Crossan relented. As she was leaving work at approximately 8:00 a.m., he promised by text that he would take her shift. This occurred after multiple back-and-forth texting that day. Appellant explained that Officer Crossan's decision left her believing she need not report to her assigned midnight duties. The history of these crucial textings has since been deleted from her cell phone through "updating," which removes all stored data, whether text or pictures.

Appellant testified that her first inkling that appellant had changed his mind came some six-and-one-half hours before her reporting time: Officer Crossan texted that he would not take her place. Appellant testified that, knowing this, she nonetheless chose not to appear for work. At about 12:20 a.m. on January 1, a phone call eventually came from Lieutenant Riemer, the midnight shift commander. She missed the call, but returned it five minutes later. The lieutenant directed her to come in. Appellant recalled that she said she was in Cherry Hill, from where it would not be possible to arrive at the jail before what she knew, from past practice, was an allowable two-hour cut-off. If her

arrival were to be within that time, she would be marked only as "late." Appellant stated that she therefore refused.

Eventually, however, she changed her mind. Appellant described a drive to Camden on the way to the jail, during which she dropped off her child with his grandmother and called Lieutenant Riemer en route, at approximately 1:20 a.m. She told him she was close enough that she would arrive after all, by 1:55 a.m. He responded that she should not bother. The paperwork had been completed. Appellant stated that she assumed from this phraseology he referred to a disciplinary write-up, so she turned around. Appellant was absolutely certain that the report written by Officer Crossan which initiated her discipline was prompted by his mistaken belief she would be with another man on New Year's Day.

Appellant maintained that she did not intend to commit fraud. Though wrong, she justified her signing of the slip as an act commonly practiced among officers who often signed switch-slips in the name of the other officer agreeing to an exchange. It had happened within her experience many times, she stated. Among them were occasions on which Officer Crossan himself had specifically had been involved.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Burden of persuasion:

The burden of persuasion falls on the agency in enforcement proceedings, such as those in which it is sought to prove an employee has engaged in violations susceptible to removal as a penalty, under controlling regulations, Cumberland Farms, Inc. v. Moffett, 218 N.J. Super. 331, 341 (App. Div. 1987). The agency must prove its case by a preponderance of the credible evidence, which is the standard in administrative proceedings, Atkinson v. Parsekian, 37 N.J. 143 (1962). Precisely what is needed to satisfy the standard must be decided on a case-by-case basis. The evidence must be such as to lead a reasonably cautious mind to a given conclusion, Bornstein v.

Metropolitan Bottling Co., 26 N.J. 263 (1958). Preponderance may also be described as the greater weight of credible evidence in the case, not necessarily dependent on the number of witnesses, but having the greater convincing power, State v. Lewis, 67 N.J. 47 (1975).

Findings:

To resolve disputes of material fact, I make the following **FINDINGS**:

1. When asked by appellant on December 28, 2012, to exchange shifts so that she would not have to work the 12:00 a.m. to 8:00 a.m. shift on New Year's Day, Officer David Crossan refused.
2. Appellant nevertheless affixed her own signature to the shift-switch form dated December 28, 2012 (Exh. 4b) but without his permission and without his knowledge, signed Officer David Crossan's name to indicate his agreement with the change.
3. Officer David Crossan first learned of this act by appellant when the slip was given to him at line-up for the 4:00 p.m. to 12:00 a.m. shift on December 31, 2012.
4. On December 31, at 5:00 p.m. and at 8:40 p.m., Officer Crossan reminded appellant that he would not take her shift, reinforcing her awareness on December 28 that he would not take her shift on New Year's Day.
5. Appellant did not report for work, as scheduled, on the 2013 New Year's Day 12:00 a.m. to 8:00 a.m. shift.
6. Appellant did not have permission to be late or absent.
7. On or about the outset of appellant's shift, Lieutenant Riemer called appellant, and ordered her to report for work. Appellant refused, and did not appear.
8. There is no preponderating evidence that a work detail referred to in Lieutenant Riemer's report (Exh. R-6) was shut down because of appellant's absence.

9. There is no preponderating evidence which would allow findings of what transpired between Lieutenant Riemer and appellant on January 1, 2013, other than his phone call after midnight ordering her to report to her scheduled shift.

Conclusions of law:

The validity of the charges:

The charges which the County must prove are contained in the last version of its final notice of disciplinary action (FNDA), dated December 3, 2013 (Exh. R-2), quoted here:

Count 1: On or about 28 December 2012, you requested to switch shifts with a co-worker and the co-worker denied your request. Subsequently, you submitted a falsified switch request since you were previously denied the day off. By submitting a falsified switch request, your actions are in direct violation of policy and procedure.

Count 2: On or about 1 January 2013, you were Absent Without leave (AWOL) when you failed to report based on Count 1. As a result, a post (work detail) had to be shut down to cover the facility staffing. When contacted by your supervisor, you stated you would report for duty. When you failed to report, you were carried as Absent Without Leave (AWOL) in violation of department Rules of Conduct.

Count 3: You are in violation of the Settlement Agreement and Release dated 09 August 2012.

Those regulations cited in the FNDA itself as being violated by appellant's actions underlying these three counts are:

N.J.A.C. 4A:2-2.3(a)(2) Insubordination; N.J.A.C. 4A:2-2.3(a)(6) Conduct Unbecoming; N.J.A.C. 4A:2-2.3(a)(7) Neglect of Duty; N.J.A.C. 4A:2-2.3(a)(12) Other Sufficient Cause; C.C.C.F. Rules of Conduct: 1.1 Violations in General; 1.2 Conduct Unbecoming; 1.3 Neglect of Duty; 1.4 Insubordination; 3.2 Security; 3.6

Departmental Reports: 2.13 Absence Without Leave and Violation of Policy: General Order #73, 74, et al.

The following is an analysis of the charges as they are applied to the facts of record:

Count 1:

The believable testimony is that of Officer David Crossan, stating that he did not agree to switch shifts. He had disclosed his refusal to Lieutenant Richer over six hours before the New Years midnight shift was to begin, and had reaffirmed his decision to appellant thereafter in two contacts within that time. In comparison with those persuasive facts, appellant cannot be considered credible in her claim that she had his consent. In her testimony and in her IA recorded interview, she conceded she had forged Officer Crossan's name, fatally crippling her believability. Notwithstanding appellant's portrayal of her action as commonplace among officers, what must prevail is the countering testimony of Deputy Warden Fosler. In addition to his current title, he had advanced over time through all the correction officer ranks, giving him hands-on knowledge of institutional practices, acceptable and unacceptable. Deputy Warden Fosler denied such a practice was accepted. He noted that it would be punished if disclosed. His assessment is credible, and it is supported by the regulations cited in the charges.

Consequently, it must be held that the form was falsified, and through that act appellant violated N.J.A.C. 4A:2-2.3(a)(6) Conduct Unbecoming; N.J.A.C. 4A:2-2.3(a)(7) Neglect of Duty; C.C.C.F. Rules of Conduct: 1.1 Violations in General; 1.2 Conduct Unbecoming; 1.3 Neglect of Duty; 1.4 Insubordination; 3.2 Security; 3.6 Departmental Reports: 2.13 Absence Without Leave and Violation of Policy (Exh. R-10). The County's reference to "General Order #73, 74, et al." (Exh. 11) is so broad as to be insufficiently specific for enforcement. Therefore, no violations will be found under their provisions.

Count 2:

This record supports the conclusion that appellant was Absent Without Leave (AWOL). Most of Lieutenant Riemer's report of phone conversations with appellant must be given no weight. It is hearsay unsupported by competent evidence. The lieutenant was not called to testify. N.J.A.C. 1:1-15.5. Nevertheless, appellant herself acknowledges that she spoke with the lieutenant after midnight on January 1, 2013, and that he directed her to come to work. This is an admission against her interests, and has the ring of truth. To that corroborated extent, the report can be considered. The remainder of appellant's assertions are not preponderating evidence, primarily because of her fraud, suggesting that being false in one affirmative defense, she must be false in all.

It is here concluded then that appellant, in violation of a direct order from Lieutenant Riemer, and in disregard of a denial by Human Resources of her request for time off on January 1 (Exh. R-4a) decided not to report for her New Years Day shift in the jail. She did so for reasons which she cannot explain. Significantly, her interview on July 30, 2013 (Exh. R-8) reveals:

- Q. Right. Well, that's what I said, he said wasn't going to do it. That was earlier, that was six o'clock PM [sic] and you knew you had to be, to report to work at 12 o'clock. Why didn't you just come?
- A. I should have, but I don't know. I don't know why I didn't come. [(Exh. R-8); Tr: 23, 16-22]

Neither is the remainder of appellant's testimony credible She contended that she later called-in, but was rebuffed by Lieutenant Riemer when she declared that she had changed her mind, and would now come to work. This version of what occurred lacks persuasiveness. Appellant knew for over six hours that her duty was to report to work. This salient fact was reaffirmed twice in that interval through contacts with Officer Crossan, reminding her of his refusal to take her shift. Nevertheless, she elected not to

appear. After the shift started, Lieutenant Riemer ordered her to come in. Failing to do so amounts to an act which, virtually by definition, is absence without leave.

Because of the foregoing findings, as in Count 1 above, it must again be held that appellant violated N.J.A.C. 4A:2-2.3(a)(6) Conduct Unbecoming; N.J.A.C. 4A:2-2.3(a)(7) Neglect of Duty; C.C.C.F. Rules of Conduct: 1.1 Violations in General; 1.2 Conduct Unbecoming; 1.3 Neglect of Duty; 1.4 Insubordination; 3.2 Security; 3.6 Departmental Reports: 2.13 Absence Without Leave and Violation of Policy (Exh. R-10). The County's reference to "General Order #73, 74, et al." (Exh. 11) is so broad as to be insufficiently specific for enforcement. Therefore, no violations will be found under their provisions.

Count 3

The County cites as a violation of its regulations her ostensible failure to comply with a settlement agreement (Exh. R-9).¹ This tribunal can find no such violation. That agreement is a contract between the parties. It is not enforceable in this forum, and relief or penalty for alleged failure to comply with its terms must be sought elsewhere. Nevertheless, the fact of discipline recorded therein may be considered a legitimate part of her disciplinary history.

Penalty:

The appropriate penalty is removal, for the following reasons.

First, appellant violated regulations touching on honesty. Signing Officer Crossan's name and submitting the switch-slip to Human Resources as an emblem of truth was, in fact, a proof of lying. It constituted fraud. Honesty among sworn officers in law enforcement, particularly in a prison setting, is a primary duty, since the good order

¹ Admitted in evidence after consideration of post-hearing submissions.

and safety of the population and of other officers is dependent on the word and reliability of officers within the ranks.

Second, appellant refused a direct order from a superior officer to come in to work and ignored an implicit order in the demand of the schedule itself to appear. In a member of a para-military organization, compliance with legitimate orders goes to the heart of a correction officer's obligations. Without adherence to the directions of those bearing responsibility for a jail's safety, chaos follows. Appellant neglectfully left her shift short-handed when she disobeyed a direct order and went AWOL.

Dishonesty and non-compliant behavior, objectionable when undertaken by an employee in any class title, must also be assessed through a special filter specific to those sworn officers responsible for public safety. Law enforcement personnel are set apart. Our appellate division has stated:

A police officer is a special kind of public employee. His primary duty is to enforce and uphold the law . . . He represents law and order to the citizenry and must present an image of personal integrity and dependability in order to have respect of the public. [Twp. of Moorestown v. Armstrong, 898 N.J. Super. 560, 566, 215 A.2d 775 (App. Div. 1965), certif. denied, 47 N.J. 80, 219 A.2d 417 (1966)]

Removal in circumstances comparable in seriousness to the instant matter is not without precedent. In the case of In re Carter, 191 N.J. 474, 485-486 (2007), involving a police officer who slept while on duty, the Court held:

In matters involving discipline of police and corrections officers, public safety concerns may also bear upon the propriety of the dismissal sanction. See, e.g., Henry v. Rahway State Prison, 81 N.J. 571, 580, 410 A.2d 686 (1980) (affirming appellate reversal of Board decision to reduce penalty from dismissal to suspension for prison guard who falsified report because of Board's failure to consider seriousness of charge); In re Hall, 335 N.J. Super. 45, 51, 760 A.2d 1148 (App. Div. 200) (reversing Board's decision to reduce penalty imposed on police officer for attempted theft from dismissal to suspension), certif. denied, 167 N.J. 629, 772 A.2d 931 (2001); Bowden v. Bayside State Prison, 268 N.J. Super. 301, 305-06,

633 A.2d 577 (App. Div. 1993) (holding that it was arbitrary, capricious, or unreasonable to reduce penalty from removal to six months suspension for prison guard who gambled with inmates for cigarettes), certif. denied, 135 N.J. 469, 640 A.2d 850 (1994).

In light of the foregoing case law alone, termination is justifiable. Additionally, however, appellant's history of discipline also supports this decision (Exh. R-13).

In sum, I **CONCLUDE** that appellant has violated those regulations cited in the FNDA charge. I **CONCLUDE further** after de novo review that the penalty of removal is called for based on the serious nature of the offenses in a jail setting, on case precedents, and on disciplinary history.

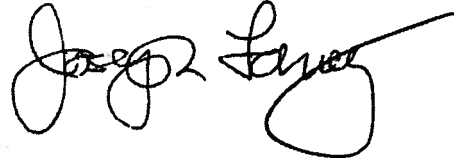
ORDER

I **ORDER, THEREFORE**, that the penalty of removal imposed on **appellant, Kidhada Russ**, be, and hereby is, **AFFIRMED**.

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. 40A:14-204.

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.



June 4, 2014
DATE

JOSEPH LAVERY, ALJ

Date Received at Agency:

June 4, 2014

Date Mailed to Parties:

June 4, 2014

mph

LIST OF WITNESSES:

For appellant:

Kidhada Russ, appellant

For respondent County of Camden:

John T. Jones

David Crossan

Christopher Fosler

LIST OF EXHIBITS:

For appellant:

None

For respondent:

- R-1 Preliminary Notice of Disciplinary Action (31A), dated 14 February 2013
- Preliminary Notice of Disciplinary Action (31A), dated 09 August 2013
- Preliminary Notice of Disciplinary Action (31A), dated 13 August 2013
- Preliminary Notice of Disciplinary Action (31A), dated 14 November 2013
- R-2 Final Notice of Disciplinary Action (31B), dated 03 December 2013
- Final Notice of Disciplinary Action (31C) dated 03 December 2013
- R-3 Internal Affairs Report authored by Investigator Sergeant John Jones
- R-4a Denied Request for Vacation Slip, dated 22 December 2012
- R-4b Approved Request to Switch Shifts Slip, dated 28 December 2012
- R-5 General Incident Report authored by C/O Dave Crossan, dated 31 December 2012
- R-6 Supervisor's Staff Complaint Report authored by Lieutenant Robert

- Reimer, dated 01 January 2013
- R-7 Internal Affairs Interview: Transcript of C/O Dave Crossan, dated 27 June 2013
 - R-8 Internal Affairs Interview: Transcript of C/O Kidahda Russ, dated 30 July 2013
 - R-9 Settlement Agreement and Release between CCDOC and C/O Kidahda Russ, dated 09 August 2012
 - R-10 Camden County Department of Corrections Rules of Conduct
 - R-11 Camden County Department of Corrections General Order 073, Personal Conduct of Employees
 - R-12 Camden County Department of Corrections General Order 074, Professional Code of Conduct
 - R-13 C/O Russ Chronology of Discipline