



By the order of the court, Judge David A Wiseman

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FOR PUBLICATION

**IN THE SUPERIOR COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

SYLVIO S. ADA,)	CIVIL CASE NO. 10-0304
)	
Petitioner,)	
)	
v.)	FINDINGS OF FACT AND
)	CONCLUSIONS OF LAW AND
DEPARTMENT OF COMMUNITY AND)	ORDER
CULTURAL AFFAIRS and DCCA)	
SECRETARY MELVIN O. FAISAO,)	
)	
Respondents.)	
)	
_____)	

I. INTRODUCTION

THIS MATTER came for evidentiary hearing on January 17, 23, 24, and February 6, 2012 in Courtroom 223A. Respondents Department of Community and Cultural Affairs (“DCCA”) and DCCA Secretary Melvin O. Faisao were represented by Assistant Attorney General Thomas J. Schweiger. Petitioner Silvio S. Ada (“Petitioner”) was represented by attorney Robert Tenorio Torres.

The hearing was with regards to an administrative appeal of a Proposed Adverse Action: Termination and Grievance by Petitioner and DCCA Civil Service employee Silvio S. Ada. The Civil Service Commission, the entity charged with administration of the Personnel Service System Rules & Regulations as well as the Civil Service Act, was and remains unable to take any action as to Mr. Ada’s grievance due to lack of quorum. The Court ordered the parties to submit proposed findings of facts and conclusions of law May 17, 2012. Thus, this Court conducts Judicial Review and this resulting Findings of Fact and Conclusions of Law.

1
2 **II. BACKGROUND**

3 **A. Statutory and Regulatory Authority**

4 The Commonwealth Civil Service Act (“the Act”) was enacted to establish a system of personnel
5 administration based on merit and generally accepted methods governing the classification of positions and
6 the employment, conduct, movement, and separation of public officials and employees. *See* 1 CMC § 8102.

7 A principal purpose of the Act was to ensure that the Commonwealth would be able to retain the
8 best-qualified civil servants on merit and provide incentives in the form of genuine opportunities for
9 promotions. *Id.* To achieve these objectives, the Act created a personnel system that was to be established,
10 applied, and administered to ensure that the “ablest person” would be impartially selected for government
11 service by means of competitive tests that were fair, objective, and in accordance with merit principles. *Id.*
12 The Act further required “just opportunity for competent employees to be promoted within the Service.”
13 The Act required the Civil Service Commission to prepare reasonable rules and regulations to carry out the
14 provisions of the Act. 1 CMC § 8117. Civil service employees, including those employed by DCCA are
15 subject to these Personnel Service System Rules and Regulations (“PSSRRs”), which implement the
16 provisions of the Act and have the force and effect of law. PSSRR § I.A.

17 Consistent with the mandate of the Act, the PSSRRs regulate appointments and employee
18 promotions. They provide procedures for original and temporary appointments, promotions, transfers, and
19 the filling of vacancies. NMIAC §10-2-.2-257 expresses the procedures and regulations regarding adverse
20 actions and demotions for civil service employees.¹ The appointing authority for adverse actions includes
21 the Office of Personnel Management (who in this case was Director Isidro K. Seman) as well as department
22 heads such as DCCA Secretary Melvin Faisao. NMIAC §10-2-.2-257(a). An employee may be removed
23 for just cause “provided all adverse action procedures are followed.” NMIAC §10-2-.2-257(k). Appointing
24

25 ¹ Generally referred to as the “adverse action” rules

1 authorities “must observe certain procedural requirements when processing adverse actions” as set forth in
2 the PSSRRs. NMIAC §10-2-.2-257(m).

3 A proposed adverse action notice “must state any and all reasons for the proposed adverse action
4 specifically and in detail.” NMIAC §10-2-.2-257(m)(2). If the employee answers, “management must
5 consider that answer.” NMIAC §10-2-.2-257(m)(4). Management must give a written decision and the
6 “decision must state which of the reasons in the advance have been found sustained and which have been
7 found not sustained.” NMIAC §10-2-.2-257(m)(6). The Court is the last step in the process of an adverse
8 action. *Id.*

9 The Act and PSSRR also authorize employees to protest unlawful personnel actions by bringing a
10 grievance. The PSSRR names the DCCA Secretary as a department head and the OPM Director as the
11 appointing or supervising authority for the receipt and consideration of employee grievances. *See* NMIAC
12 § 10.20.2-285.

13 An aggrieved employee is first required to discuss the problem informally with his or her supervisor,
14 or if impracticable, with a higher level supervisor. If the grievance is not settled within five calendar days,
15 or if the employee is not satisfied with the decision of the immediate supervisor, the employee or
16 representative may, within the next ten (10) calendar days, put the grievance in writing and submit it to the
17 appointing authority as a formal grievance. NMIAC § 10-20.2-293.

18 The appointing authority is charged with examining the grievance, discussing it with the grievant
19 or his representative, and rendering a written decision within fourteen calendar days after receipt of the
20 grievance.

21 If the appointing authority cannot settle the grievance to the employee’s satisfaction within this time
22 frame, the employee is entitled to submit a grievance to the Civil Service Commission within fifteen (15)
23 calendar days after receiving written notification of the appointing authority’s decision. The time for the
24 Civil Service Commission to address an employee grievance is not unlimited. If the Commission desires
25 to have the grievance heard by a hearing officer, it must inform the aggrieved employee and representative

1 as soon as possible.

2 The Civil Service Commission may, however, deny a hearing when a hearing would be impractical
3 or for any other extraordinary circumstance. NMIAC § 10-20.2-276(b)(1). In this event, the Civil Service
4 Commission must notify both parties in writing of the reason(s) for denying a hearing.

5 **B. Standard of Review**

6 The Administrative Procedure Act at 1 CMC § 9112(f) prescribes the standard of review that the
7 Superior Court must apply when reviewing agency action under the Administrative Procedure Act. *See*
8 *Camacho v. Northern Marianas Retirement Fund*, 1 N.M.I. 362 (1990). Mr. Ada argues that 1 CMC §
9 9112(f)(2)(i) and (iv) control the outcome of this case. Section 9112(f)(2) mandates that a court set aside
10 agency action if it finds the action “(i) arbitrary, capricious, an abuse of discretion, or otherwise not in
11 accordance with law, . . . [or] (iv) without observance of procedure required by law.” Alternatively, Mr.
12 Ada contends that the proposed adverse action and demotion were also “unwarranted by the facts to the
13 extent that the facts are subject to trial de novo by the reviewing court.” 1 CMC § 9112(f)(2)(i, iv, vi).

14 An agency action qualifies as arbitrary and capricious “if the agency has . . . entirely failed to
15 consider an important aspect of the problem.” *In re Hafadai Beach Hotel Extension*, 4 N.M.I. 37 (1993).
16 The arbitrary and capricious standard is appropriate when the agency has refused to hold a formal hearing,
17 where the agency has not bothered to hear evidence and the testimony of witnesses, and where the agency
18 continues to follow a course of action that contravenes the law of the Commonwealth and its own
19 procedures. *See Dept. of Pub. Safety v. Office of the Civil Service Commission (Chong)*, No. 01-521E
20 (N.M.I. Super. Ct. Sept. 12, 2002) (Order Setting Aside Oct. 4, 2001 Civil Service Comm. Decision and
21 Order), *aff’d* by *Dept. of Pub. Safety v. Office of the Civil Service Commission (Chong)*, 2005 MP 6.

22 The construction given to a statute by the executive and administrative officers of the
23 Commonwealth charged with its implementation is generally entitled to great weight and will be followed
24 unless there are cogent reasons for holding otherwise. *See, e.g., Island Apparel, Inc. v. Secretary of*
25 *Finance*, Civil Action No. 01-0110 (N.M.I. Super. Ct. November 29, 2001) (Order on Partial Motion for

1 Summary Judgment).

2 With respect to the testimony of witnesses, the Court will often assess the credibility of witnesses
3 as it makes factual determinations bearing on its decision. The Court will decide the facts and in doing so
4 will decide the weight of credibility to assign a witness. As the fact finder, the Court may believe
5 everything a witness says, part of it, or none of it. In considering the testimony of any witness, the Court
6 may take into account several factors: 1) the opportunity and ability of the witness to see or hear or know
7 the things testified to; 2) the witness' memory; 3) the witness' manner while testifying; 4) the witness'
8 interest in the outcome of the case and any bias or prejudice; 5) whether other evidence contradicted the
9 witness' testimony; 6) the reasonableness of the witness' testimony in light of all the evidence; and 7) any
10 other factors that bear on believability. The weight of the evidence as to a fact does not necessarily depend
11 on the number of witnesses who testify. *Rubuenog v. Commonwealth Election Commission*, Civil Action.
12 09-0463 (Super. Ct. December 30, 2009, Wiseman, AJ) (citing Ninth Circuit Model Jury Instructions 2000).

14 **III. FINDINGS OF FACT**

15 **A. Testimony of DCCA Secretary Melvin O. Faisao**

16 On January 17, 2012, DCCA Secretary and Appointing Authority Melvin Faisao testified. Mr.
17 Faisao understood that the hearing was for Mr. Ada's appeal fo the Proposed Adverse Action regarding
18 Termination. (TR at 8.) Mr. Faisao confirmed that Exhibit A-7 was the Proposed Adverse Action as to Mr.
19 Ada to wit: for "deceivingly" justifying government travel to and from Rota for bogus court hearings. (TR
20 8:23-28.) Mr. Faisao wanted to terminate Mr. Ada because of his "illegal and dishonest act" in misleading
21 him regarding the need to go to Rota for a juvenile hearing. (TR at 9.) Mr. Ada misled him about the Travel
22 Authorization ("TA") (Exhibit A-8) for Rota which Mr. Faisao signed and approved. Mr. Faisao testified
23 that TA (Exhibit B-8) and attachments constituted the records he reviewed and based his Proposed Adverse
24 Action. (TR 11:17-28; 12:1-16.) Mr. Faisao confirmed that only he himself conducted the investigation
25 personally and not anyone else. (TR 12:22-28.)

1 On March 1, 2010, Mr. Ada filed his Trip Report for the December 4, 2009 Rota trip which Mr.
2 Faisao reviewed a few days later. (TR 10:23.) Mr. Faisao issued the Proposed Adverse Action (Exhibit A-
3 7) on July 28, 2010. (TR 11:24.) Mr. Faisao stated he received a call from an anonymous lady in May or
4 April 2010 regarding Mr. Ada's trip to Rota. (TR 13:2-23.) The caller informed Mr. Faisao that he had
5 an employee who goes to Rota to attend "a court election court [sic] or play golf but not attend a juvenile
6 hearing case at the court" (TR 14:4-5), although the caller never said anything about a bogus hearing. Mr.
7 Faisao testified he conducted an investigation by going to the Department of Finance to request copies of
8 Mr. Ada's information, ultimately receiving the TA with attachments. (Exhibit B-8; TR 14:11-15.) After
9 he received TA with attachments, Mr. Faisao testified that he worked on his Proposed Letter for
10 Termination and consulted with the designated Assistant Attorney Generals, Megan Hasselshearer and Tom
11 Schweiger as to his letter. (TR 14:20-28.) Further, Mr. Faisao contacted Barry Toves with Rota DYS who
12 informed him that Mr. Ada handles juvenile probation but also confirmed that Mr. Ada was on Rota. (TR
13 16:1-4.) Mr. Toves, however, did not know whether Mr. Ada did any home assessment for juvenile cases.
14 *Id.* Mr. Faisao then spoke with Jackie Mendiola, DYS Adolescent Therapist who was on Rota on December
15 4, 2009, conducting training. (TR 16:25.) Ms. Mendiola only stated that she had heard that Mr. Ada was
16 on Rota.

17 Mr. Faisao then gathered his evidence and sent a draft copy to the Office of the Attorney General
18 for review and finalizing including routing through the OPM Director and Attorney General. (Exhibit A-7;
19 TR 18:12-14.) Mr. Faisao confirmed that the reason for terminating Mr. Ada was because he illegally
20 created a bogus trip and mislead Mr. Faisao to approve the TA. (TR 18:17.) Mr. Faisao said that Mr. Ada
21 lied and fabricated a TA "to be approved so that he can go to Rota for pleasure or what. [sic] But he was
22 no officially doing an official work. [sic]" (TR 18:23-24.)

23 Mr. Faisao agreed that there was court held on Rota on December 4, 2009, but there was nothing
24 on the calendar regarding juvenile hearings for that date. (*See* Exhibit B-8.) Mr. Faisao, however, testified
25 the November 6, 2009 Rota calendar also did not have any listing for juvenile cases, even though Judge

1 Naraja issued a juvenile adjudication order for that date. (Exhibit 9; TR 21-22.) Mr. Faisao agreed that
2 Mr. Ada went to the Rota hearing on November 6, 2009. (TR 22:21-25.) The adjudication order for
3 November 6th did not issue until December 1, 2009, which scheduled a Review Hearing on April 2, 2010.
4 (Exhibit 9; TR 23:1-13.)

5 Mr. Faisao testified that when he looked at the calendar for the December 4, 2009 court calendar,
6 there was no juvenile calendar. From that, Mr. Faisao concluded there was no juvenile court hearing so
7 that there was no need for Mr. Ada to go to Rota. (TR 24:4-18.) He determined that Mr. Ada was lying
8 about the need to go to Rota on his TA request, and such conduct was dishonest, illegal, and misleading.
9 (TR 24:22-28.) Mr. Faisao did not talk to Mr. Ada about the investigation before giving him the proposed
10 letter of termination. (TR 25 and 27.) Mr. Faisao also did not talk to the Assistant Attorney General who
11 was on Rota on November 6th, William Downer. (TR 25.) Nor did Mr. Faisao talk to Assistant Public
12 Defender Matthew Holley, who was on Rota for the December 4, 2009 court calendar regarding whether
13 there was any need for any juvenile probation work. (TR 26:15-16.)

14 Mr. Faisao testified and confirmed the contents of the Notice of Proposed Adverse Action for
15 Termination. (Exhibit A-7.) He testified that Mr. Ada would be allowed to respond and his office would
16 issue a final decision. (TR 27:25-28.) The final decision would state which of the reasons “have been found
17 to be sustained and which have been found not to be sustained.” (Exhibit A-7 at 3.) Faisao testified that he
18 received Mr. Ada’s response to the Proposed Adverse Action for Termination with attachments. (Exhibit
19 B-5; TR 28:22-29.) Mr. Faisao read Exhibit B-5 and the attachments which constituted Ada’s response to
20 Mr. Faisao’s proposed termination. (TR 29:1-6.) Following receipt, Mr. Faisao forwarded Mr. Ada’s
21 response to the Attorney General and then issued his Appointing Authority’s Final Decision on Adverse
22 Action. (Exhibit A-8.) Mr. Faisao testified that in reaching his final decision he did not consider Mr. Ada’s
23 response and the informal conference discussion at OPM on September 10, 2010. (Exhibit B-5 ; TR 30:1-5.)
24 Further, in his final decision Mr. Faisao did not write down or list the reasons sustained and not sustained.
25 (TR 30:12-18.) Mr. Faisao stated that he did not review or consider the declaration of Mr. Mesgnon nor

1 give it any weight because he did not trust Mr. Mesgnon. (TR 31:1-26; Exhibit B-13.)

2 Mr. Faisao said he received a memorandum from Frances Salas to the OPM Director on OPM
3 letterhead. (Exhibit B-14; TR 33:8-28.) Mr. Faisao, however, said he did not consider it because it was not
4 directed to Mr. Faisao's attention but to the OPM Director.

5 As to the declaration of Mr. Holley attached to Mr. Ada's response, Mr. Faisao said he reviewed it
6 but he did not consider it. (Exhibit B-11; TR 34:17-28.) In the declaration, Mr. Holley discussed his
7 knowledge regarding Mr. Ada's presence on Rota on November 6 and the December court hearing, which
8 Mr. Faisao confirmed reading. (TR 35:1-28.) Mr. Faisao admitted that despite the contents of Mr. Holley's
9 declaration, he did not contact Mr. Holley to verify or ask him questions, nor did Mr. Faisao give Mr.
10 Holley's declaration any consideration. (TR 28:19-26; 37:24-29.)

11 Regarding the Rota juvenile proceedings, Mr. Faisao testified that he requested the juvenile L.G.'s
12 file and read it. (Exhibit B-10.) Mr. Faisao confirmed that the file contained an entry which showed 12-4-
13 10 "provide courtesy supervision information to the court." (TR 40:10-11.) Mr. Faisao did not know who
14 wrote that entry. Ultimately, Mr. Faisao confirmed unequivocally that as to the exhibits presented to him
15 he did not consider any of them. (TR 40:22-24.)

16 Mr. Faisao was examined regarding Mr. Ada's grievance as to his demotion. Mr. Faisao stated that
17 he understood Mr. Ada filed a grievance but there had been no demotion. (TR 41:12-14.) Mr. Faisao then
18 confirmed that Mr. Ada held the position of Juvenile Probation Supervisor and discussed the historical
19 background of Mr. Ada's progression to his current position. (Exhibit A-3; TR 41-42.) Mr. Faisao,
20 however, confirmed that he issued his Directive Memorandum implementing changes within DYS.
21 (Exhibit A-1; TR 42.) Mr. Faisao admitted there were still juvenile probation officers under DYS. (TR 43.)
22 As a result of his Directive Memorandum, Mr. Faisao admitted that he placed Jackie Mendiola and Vince
23 Salas above Mr. Ada as supervisors. Mr. Ada went from a supervisor down to a sub-unit supervisor
24 effective July 2, 2010. (TR 45:5-29.) Despite urging from OPM not to implement the plan, Mr. Faisao went
25 ahead and implemented his merging plan as a temporary basis. (Exhibit A-2; TR 47:12-17.)

1 Mr. Faisao received Mr. Ada's letter of grievance dated July 9, 2010, complaining of his demotion.
2 (TR 47:20-30.) When asked what was Mr. Faisao or DCCA's response or action in response to Mr. Ada's
3 grievance, Faisao stated "I cannot answer that. I don't know." (TR 48:14-16.) Mr. Faisao claimed that he
4 designated former Acting DYS Director Debra Inos to consult and have a dialogue with Mr. Ada about his
5 concern. (*Id.*) When asked whether he ever responded or acted on Mr. Ada's grievance, Mr. Faisao stated
6 "I never, sir" and disagreed that Mr. Ada was demoted. (TR 48:24-30.) Mr. Faisao claimed there was no
7 demotion, just "inter-reorganization" to ensure cost control. (TR 49:2.) When examined further as to
8 whether Mr. Ada was still a Juvenile Probation Supervisor, however, Mr. Faisao stated that they had opened
9 up the position and there was an open announcement. (TR 49:7-27.) Mr. Faisao claimed that Mr. Ada still
10 held the position as a Supervisor for the Correction Unit doing work as a Juvenile Probation Supervisor.
11 (TR 50:11.)

12 On cross-examination, Mr. Faisao testified that as to the reorganization plan, he spoke with the
13 Office of the Attorney General about the plan. (TR 51:13-17.) Mr. Faisao never heard from the Governor
14 and he received nothing which informed him that the reorganization was prohibited. (TR 51:20-23.) Mr.
15 Faisao claimed that there was no juvenile court hearing on December 4, 2009, on Rota. TR 52:1-7. As for
16 Ada's proposed termination, Mr. Faisao testified that he showed his decision letter to the Office of the
17 Attorney General, where Mr. Schweiger and Ms. Hasselshearer reviewed it. (TR 52:17-23.) Further, Isidro
18 Seman of OPM also signed the proposed adverse action. (*Id.* at 25-26.)

19 On re-direct examination, Mr. Faisao stated that he only sent Mr. Ada's response to the Office of
20 the Attorney General. (TR 53:1-9.) Mr. Faisao admitted that he did not discuss Mr. Ada's response with
21 his lawyers and only sent it to them. (*Id.*)

22 **B. Testimony of Petitioner Sylvio S. Ada**

23 On January 23, 2012, Employee and Petitioner Sylvio S. Ada testified. He confirmed his appeal on
24 the Proposed Adverse Action to terminate him as a Juvenile Probation Officer. Mr. Ada also appealed the
25 failure of DCCA and Mr. Faisao to act on his grievance as to his demotion. (TR 3.)

1 Mr. Ada has worked for DCCA since 1993. (TR at 4.) He ultimately received a permanent
2 promotion to a Social Worker III as a Juvenile Probation Supervisor, the position he holds currently. (TR
3 5:1-29; Exhibit A-3.) Mr. Ada explained the structural background of DCCA and DYS under previous
4 department heads and directors. (TR 6:1-30.) The prior description of DYS Corrections was changed to
5 DYS Juvenile Probation and there was a separate unit with the Juvenile Detention Facility. (TR 7-8.) Mr.
6 Ada was placed in the Juvenile Probation Unit, which is different from the Juvenile Detention. (Exhibit B-
7 15; TR 9:1-29.) Sometime in 2010, Governor Fitial issued Executive Order 2010-5, which transferred the
8 Juvenile Detention Facility and its officers to the Department of Corrections. (TR 10:2-7.) Juvenile
9 Probation, however, stayed within DYS/DCCA. (*Id.*)

10 Mr. Ada was the Juvenile Probation Supervisor who oversaw approximately seven subordinate staff
11 from at least 2004 through 2011. (TR 10-11:1-13.) The Juvenile Probation Supervisor would work with
12 subordinates as to pending cases before the juvenile court. (TR 12.) Mr. Ada's section work included
13 handling community service, school attendance, home studies, and pre-disposition reports. (TR 12.) The
14 work included providing services on all three islands. (TR 13.)

15 Mr. Ada then testified as to his TA request for travel to Rota in December. (Exhibit B-8.) He
16 testified that as to a juvenile matter relating to L.G., Mr. Ada attended the hearing on Rota on November
17 6, 2009. (TR 13:17-26.) Mr. Ada testified he went to Rota on November 6, 2009, for juvenile hearings.
18 (TR 14.) He explained that in his years with Juvenile Probation and the Courts, juvenile cases would
19 typically not be listed and DYS would have the order from the Court to use for scheduling matters. (TR 15:
20 1-8.)

21 As to the L.G. matter, Mr. Ada testified that he needed to attend since there was a home study and
22 the juvenile was to relocate to Guam and he needed to prepare a courtesy supervision request. (TR 15: 13-
23 19.) The Adjudication Order, however, did not issue until December 1, 2009. (Exhibit A-9.) Although the
24 Review Hearing was not until April 2, 2010, Mr. Ada testified that he traveled to Rota on December 4,
25 2009, for L.G.'s matter. He needed to meet with the juvenile's mother, to find the location of the father,

1 get a phone number, and find out what school the juvenile would attend while on Guam. Mr. Ada explained
2 that he needed to provide that information to the court for L.G.'s case. (TR 16:8-21.)

3 Mr. Ada testified that he made the entry in the juvenile's file which he prepared on November 6,
4 2009. (Exhibit B-10.) Mr. Ada testified that he noted the review hearing on April 2, 2010, if the juvenile
5 were back on island. Mr. Ada, however, testified that he wrote 12-4-2010 "Provide courtesy information
6 to the court" but that he made a mistake on the date. (TR 17:19-29.) Mr. Ada explained that the courtesy
7 supervision was necessary since the juvenile was relocating to Guam, but if the juvenile stayed, DYS would
8 handle the supervision. (TR 18:2-30.) As a result, Mr. Ada testified that the next reporting date would be
9 on December 4, 2009, rather than April so that the court would be informed. (TR 18:13-16.)

10 As to the Proposed Adverse Action, Mr. Ada understood that Mr. Faisao proposed termination on
11 the basis that Mr. Ada had made up a bogus hearing and that Mr. Ada lied about needing to go to Rota for
12 a juvenile matter. (TR 18:16-30.) Mr. Ada testified that he did need to go to Rota in December because
13 he had to report to the court regarding the courtesy supervision. Jackie Mendiola was in the Courtroom at
14 the November 6, 2009 adjudication hearing which precipitated Mr. Ada's presence in December. After the
15 November hearing, Mr. Ada conferred with the juvenile's attorney, Mr. Holley, to get the juvenile's Guam
16 information. Mr. Ada checked with the prosecutor, Willam Downer, in November, regarding the next court
17 date which was December 4, 2009. Mr. Ada, however, said that he did not receive the order until December
18 1, 2009. (Exhibit A-9.) Mr. Ada had not done any follow up work between November 6 and December 1,
19 2009, because he was waiting for the court order to go along with a request to Guam probation. As a result,
20 Mr. Ada requested travel to Rota for the courtesy supervision on juvenile L.G. and also to do an assessment
21 at a home for another juvenile who would be moving to Rota, juvenile J.C. (TR 20-21; Exhibit B-8.)

22 Mr. Ada traveled to Rota on December 3, 2009. He then made arrangements with Mr. Mesgnon,
23 a former DYS staffer and now DPS police officer, to meet at the judicial complex. Mr. Ada contacted Mr.
24 Mesgnon, who knew the juveniles L.G. and J.C., and could assist Mr. Ada in finding the juveniles. (TR
25 23:1-25.) They met at the courthouse at approximately 9:00 a.m. and learned of a court matter involving

1 an election contest. The courthouse was crowded as a result.

2 From there, they went to Songsong Village District Four to meet L.G.'s mother, but no one was
3 home. Mr. Ada went to eat breakfast with Mr. Mesgnon at As Paris Restaurant, then proceeded back to the
4 courthouse to check on the status of the court calendar. Mr. Ada met with Mr. Holley to find out what was
5 happening, who replied that it appeared that the calendar would be pushed back to make way for the election
6 contest. Mr. Ada discussed L.G.'s case, indicating that it was not yet complete, which Mr. Holley
7 acknowledged. (TR 25:1-29.)

8 Mr. Ada testified he waited with Mr. Mesgnon at the courthouse until 12:30 p.m. to verify the
9 juvenile calendar was cancelled. They went to lunch and returned around 1:30 p.m. (TR 26:1-29.) Upon
10 their return, Mr. Ada testified that he learned and understood that the calendar was moved to January. (TR
11 28:8.) Mr. Ada then left the courthouse with Mr. Mesgnon to visit J.C. at his residence in Sinapalo, but J.C.
12 was not home. The purpose was to talk to J.C.'s uncle to see if he was willing to have the juvenile live with
13 him in order to conduct a home assessment. Mr. Ada detailed the information on his Trip Report with
14 regards to the actions taken for both L.G. and J.C. (Exhibit B-8.) Since no one was at J.C.'s house, Mr. Ada
15 went back to the Coral Gardens hotel around 3:00 p.m.

16 On Saturday, December 5, 2009, Mr. Ada arranged with Mr. Mesgnon to go to J.C.'s aunt's house
17 in Ginalagan. No one was there. The purpose of going there was to do a home assessment. Mr. Ada
18 testified that Mr. Mesgnon informed him that he would talk to the uncle. Mr. Ada then asked Mr. Mesgnon
19 to check flight availability to depart that Saturday evening, even though he had a confirmed flight Sunday
20 morning. Mr. Ada testified he wanted to leave as there was no reason for him to stay any longer in Rota.
21 The flight, however, was unavailable. So, Mr. Ada returned to his hotel and socialized at a family gathering.
22 Mr. Ada received no compensatory time for Saturday's work and he was not paid for Saturday or Sunday,
23 December 5 and 6, 2009. On Sunday morning, Mr. Mesgnon called Mr. Ada and they made plans to meet
24 at the Rota Resort to eat breakfast and play golf. Mr. Ada was not working at that time. Mr. Ada changed
25 his departure from the morning to Sunday evening and he played golf on Sunday. Mr. Ada was not working

1 on Sunday and was not given any overtime or compensatory time for Sunday. (TR 33-35.)

2 Mr. Ada testified that he played golf with Mr. Mesgnon. He did not bring his own golf clubs from
3 Saipan but instead rented clubs on Rota. When Mr. Ada left Saipan on December 3, 2009, he had no
4 intention of playing golf on Rota.

5 Mr. Ada first learned of the Notice of Proposed Adverse Action on July 28, 2010. (Exhibit B-6.)
6 He, with the assistance of his attorney, prepared and submitted the response, along with declarations and
7 exhibits, to Mr. Faisao. On September 10, 2010, Mr. Ada met at OPM for an informal conference with Mr.
8 Faisao, which was followed by the final decision to terminate on September 15, 2010. At no time prior to
9 the July 28, 2010 notice did Mr. Faisao ever contact Mr. Ada to discuss what happened on Rota.

10 Acting DYS Director Laura Ogumoro did, however, approach Mr. Ada regarding what he did on
11 Rota. Mr. Ada learned there were allegations that he falsified a trip to Rota to play golf, which he denied,
12 and showed Ms. Ogumoro his court minutes. (Exhibit B-10.) He also explained the courtesy supervision
13 process and what he needed to do. Mr. Ada also testified that Frannie Salas contacted him prior to the
14 Informal Conference to explain the procedures to him. (TR 37-38:1-29.)

15 Mr. Ada testified that he filed a grievance with respect to his demotion from supervisor of Juvenile
16 Probation to Community-Based Assistant Lead Supervision. (Exhibit A-4.) Mr. Ada stated Mr. Faisao's
17 Directive Memorandum (Exhibit A-1) was the basis of his grievance because prior to that Mr. Ada was the
18 Juvenile Probation Section Supervisor directly under the DYS Director pursuant to the March 3, 2000
19 Memorandum regarding his promotion. (Exhibit A-1, A-3) Mr. Ada was then moved to more of a line staff
20 position. As a result, Mr. Ada would not supervise anyone and he would be supervised by Vincent Salas
21 under Community-Based Supervision. Mr. Salas and Jackie Mendiola would be under the DYS Director.

22 As a result of these organizational changes, Mr. Ada filed his grievance. (Exhibit A-4.) Mr. Ada
23 delivered the letter to Ms. Ramona Camacho, who gave a copy to the DYS Director Debra Inos. Mr. Ada
24 received no response from the DYS Director, received no response from the DCCA Secretary, and further
25 received no response at all. Mr. Ada testified that, to his knowledge, the Directive Memorandum (Exhibit

1 A-)1 has not been changed or rescinded.

2 When Mr. Ada was reinstated by the Court on December 29, 2011, he was directed to report to the
3 Ada Gym to supervise probationers doing community work service. He no longer does court supervision
4 and Mr. Ada was informed by Debra Inos that Jackie Mendiola would be his supervisor. Later, Mr. Ada
5 was informed that he would be reporting to the Ada Gym Director Jose Lizama and Joseph Attao by
6 memorandum from Ms. Mendiola concurred by Ms. Inos. Currently, Mr. Ada reports to the Gym Director.
7 Mr. Ada testified that Missy Aldan is still doing juvenile probation but he is no longer supervising her, nor
8 does he supervise anyone. He has not been reinstated to his position as Juvenile Probation Supervisor. (TR
9 41-45:1-29.)

10 On cross-examination, Mr. Ada confirmed that the merging of the units was a management decision.
11 Mr. Ada agreed that he need not have been consulted as to such management decisions. As to the 1995
12 DCCA/DYS decision to separate Juvenile Probation and Juvenile Detention Facility, Mr. Ada stated he was
13 not consulted before the change took place. (Exhibit B-15; TR 45-47:1-29.)

14 With respect to the Rota trip on December 4, 2009, Mr. Ada agreed that in his TA request he asked
15 for a hotel, car, and per diem. (Exhibit B-8.) Mr. Ada confirmed that he traveled to Rota, rented a car, and
16 checked in at the Coral Gardens hotel. Mr. Ada said that he typically uses a rental car for trips to Rota and
17 does not use the DYS vehicles. Mr. Ada stated he did not use the DYS vehicle on Rota because Ms.
18 Mendiola was on Rota and was using it. (TR 47-48:1-29.)

19 With respect to the work on the juvenile cases, Mr. Ada testified that before he left for Rota he called
20 for juvenile L.G.'s mother by leaving a message for her at the Rota Resort, where she worked. When Mr.
21 Ada went to the house, however, no one was there. Mr. Ada testified that when he had lunch at the Rota
22 Resort, he left a message for her. Mr. Ada did not check at the high school because he needed to know the
23 juvenile's father's number in Guam, residence, and where the juvenile would attend school. The juvenile
24 did not know this information on November 6, when Mr. Ada spoke with the juvenile. Mr. Ada testified
25 that he asked the mother, but she did not know where the father lived or where the juvenile would attend

1 school and would get the contact number. Mr. Ada stated that from November 6 to December 3, 2009, he
2 made no contacts with L.G. or his mother. Mr. Ada stated that when he went to the Rota Courthouse on
3 December 4, 2009, he was going to ask for additional time to report. Mr. Ada stated that the reason was
4 he had not received the adjudication order until December 1, 2009. Mr. Ada did not contact anyone at the
5 Office of the Attorney General but followed up with Mr. Holley a week prior to the Rota trip to see if he
6 had received the order. He had not. As to the Adjudication Order, Mr. Ada confirmed that the order does
7 not make any mention of having to submit a report by December 4, 2009. Mr. Ada went to Rota to meet
8 with L.G.'s mom, and also regarding juvenile J.C. The judge did not ask Mr. Ada to come back on
9 December 4, 2009, but the judge asked him how long it would take to prepare a courtesy supervision packet.
10 Mr. Ada agreed that he could deliver a supervision report to Judge Naraja on Saipan. Mr. Ada also noted
11 he could have obtained the information over the telephone, not face-to-face, but had not obtained the
12 information as of December 4, 2009. (TR 49-55:1-29.)

13 Mr. Ada confirmed the contents of his Trip Report. (Exhibit B-8.) He explained that the two cases
14 referenced were related to L.G. and J.C. Mr. Ada corrected his report and said that J.C. did not have a
15 juvenile case on December 4, 2009, but was still on Guam. There was nothing scheduled for J.C., but J.C.
16 was a continuation from a prior hearing. Mr. Ada stated that he went to Rota for L.G.'s case, which was
17 continued from November 5, 2009. Mr. Ada stated that on December 4, 2009, the courtroom was packed,
18 that he did not go into the courtroom, and that Mr. Holley informed Mr. Ada that the cases were being
19 pushed back. Mr. Ada waited outside the courtroom where he could listen to the proceedings. Mr. Ada
20 stated that the court called several matters, but the court was making way for the election contest matter.

21 Mr. Ada testified that he returned to the courthouse with Mr. Mesgnon around 1:45 p.m. He did not
22 go into the courtroom. Mr. Holley also knew Mr. Ada was there. Mr. Ada said that he did not talk to Mr.
23 Holley after the hearing or when he returned to Saipan. Mr. Ada said he did not go to Rota on the next court
24 date in January 2010 and that it was unnecessary to submit a report to the court. The reason was that the
25 juvenile had come back to Rota. Mr. Ada said that a couple of weeks after the December 4, 2009 hearing,

1 he spoke with Mr. Holley who informed Mr. Ada that the juvenile was back on Rota. The judge did not tell
2 Mr. Ada he had to prepare a report. After his return, the juvenile was being supervised by Missy Aldan who
3 went to Rota, and Mr. Ada did not know if Ms. Aldan submitted any report. (TR 67-69:1-29.)

4 Mr. Ada further stated that the courtesy supervision requirement was from November 6, 2009, and
5 not on December 4, 2009. Mr. Ada stated that he did put the November 6, 2009 information on his report
6 for the November 6, 2009 Trip Report. In comparison to the Trip Report, Mr. Ada stated that he spoke with
7 the juvenile's mom on November 6, 2009, and not on December 4, 2009. The Report also failed to state
8 that Mr. Ada looked for and did not find the mom. Mr. Ada stated that he did not find out where the
9 juvenile was, and that the juvenile did in fact go to Guam but he was not aware of that at the time. Mr. Ada
10 learned the juvenile returned from Guam when the juvenile was caught committing another crime on Rota.
11 The Report failed to note that he did not see the juvenile during his visit. (TR 61-62:1-29.)

12 Mr. Ada has known Mr. Mesgnon for approximately ten years. Mr. Ada has been to Mr. Mesgnon's
13 house, and they socialize. Mr. Ada described going with Mr. Mesgnon to J.C.'s uncle's house on Saturday
14 morning and then going to the aunt's farm. Mr. Ada also said they checked for the uncle at the Mayor's
15 Office and did not find him there, so he was unable to do an assessment. Mr. Ada said he tried to arrange
16 to do the house assessment by calling for the uncle through the Mayor's Office and spoke with the uncle.
17 Mr. Ada informed the uncle he would come Saturday morning but the uncle was not present. Mr. Ada
18 learned the details of his Trip Report on December 5, 2009, describing the information regarding the family
19 situation a couple of days after he returned to Saipan, when he spoke with the uncle. Mr. Ada explained
20 that he got some information he needed but that he needed to see the house structure. He admitted that other
21 DYS employees on Rota could look at the house as to its size, rooms, power, water. Mr. Ada did not meet
22 with the juvenile's family and only spoke with the uncle over the phone before and after he went to Rota.
23 (TR 63-66:1-28.)

24 Mr. Ada traveled to Rota for the purpose of informing Judge Naraja but admitted that he could have
25 called Judge Naraja at his office. Mr. Ada also went to Rota to try and meet with the mother of one of the

1 juveniles. Mr. Ada, however, did not meet with L.G.'s mother or L.G. and did not meet with J.C. nor his
2 mom, uncle, or aunt.

3 Mr. Ada stated that he did not call the Attorney General's Office to tell them he did not have the
4 report. Mr. Ada did not speak with the Attorney General while he was down on Rota. Mr. Ada noted that
5 at juvenile hearings, Juvenile Probation usually sits next to the Assistant Attorney General ("AAG") in
6 court and hands reports to the AAG. Mr. Ada stated he did not inform the AAG that he could not get the
7 report together because he explained that he did not know Ms. Hasselshearer, he only knew Mr. Downer
8 but Mr. Ada did not see him there. Mr. Ada did not know Ms. Hasselshearer was an AAG and was told she
9 was legal counsel for the Election Commission. (TR 67-72:1-23.)

10 On further cross-examination about his Trip Authorization request, Mr. Ada stated his Report
11 indicated he was to do an assessment on Saturday and Sunday. He stated, however, that the assessment was
12 only on Saturday. Mr. Ada stated that he did not prepare the TA request and he did not sign it. Mr. Ada
13 said he did not review it before submission.

14 On redirect examination, Mr. Ada explained that he gave L.G.'s mother his telephone number. He
15 never received her telephone number, however, and only received the main line for the Rota Resort. Mr.
16 Ada said that L.G.'s mom never called him, neither in November nor December before the hearing. Mr.
17 Ada explained that since the juvenile had returned to Rota, a courtesy supervision report was no longer
18 necessary. Instead, the juvenile would be under DYS probation, which Ms. Aldan picked up and continued
19 with the Rota calendar. As to a home assessment for Juvenile J.C., Mr. Ada explained that beyond the
20 sufficiency of space, power or water, a home assessment involves consideration of financial assistance; the
21 number of residents; who the residents are; the use of alcohol; drugs; and associated persons. Juvenile J.C.'s
22 case involved burglary and he was classified as high risk, so a home assessment addressed concerns
23 regarding the safety of property of others. (TR 76-77:1-13.)

24 On re-cross examination, Mr. Ada explained that Mr. Mesgnon assisted with the home assessment
25 of J.C. a few days after December 4, 2009. (TR 80:27-29.) Mr. Mesgnon previously worked for DYS and

1 was now a DPS officer. Mr. Ada did not ask DYS staff in Rota to do it because he was working with Mr.
2 Mesgnon. Mr. Mesgnon had walked through home assessments with Mr. Ada previously but was not being
3 paid for his assistance to Mr. Ada. Mr. Mesgnon reported on the number of bedrooms, that the family was
4 willing to have J.C. relocate back but J.C.'s grandmother had passed away, so they took him to the states.
5 (TR 81:1-28.)

6 **C. Testimony of Robert A. Guerrero**

7 Commonwealth Election Commission Executive Director Robert A. Guerrero testified as to the
8 events of December 4, 2009, at the Rota courthouse. Mr Guerrero went to the Rota courthouse for the
9 election contest and was in the courtroom by 10:30 or 11:00 a.m., seated in the gallery. Mr. Ada was seated
10 next to him. Judge Naraja stated that due to the election contest, he was not going to hear any other cases.
11 Mr. Guerrero was there throughout the whole day and Judge Naraja did not call any other cases scheduled
12 that day.

13 Mr. Guerrero inquired as to why Mr. Ada was on Rota, to which Mr. Ada replied he had a juvenile
14 case but did not specify which case. (TR 85-86:1-230.)

15 After Judge Naraja announced that other cases would not be heard, many people walked out of the
16 courtroom. He believed Mr. Ada did as well because he did not recall seeing Mr. Ada in the courtroom after
17 that. Mr. Guerrero was in the courtroom the whole afternoon until the flight left, around 5:00 p.m. (TR
18 87:1-12.)

19 **D. Testimony of F. Matthew Holley**

20 Former Assistant Public Defender F. Matthew Holley testified as to his declaration and the matters
21 relating to this case. (Exhibit B-11; TR 95.) On December 4, 2009, Mr. Holley was working for the Public
22 Defender's Office, and traveled to Rota for criminal or juvenile cases. (TR 96-97:1-5.) Mr. Holley knew
23 Mr. Ada mostly through juvenile probation matters. Mr. Holley also handled the Rota calendar, both
24 juvenile and adult. Mr. Holley, having prepared a declaration for this hearing, understood the nature of the
25 claim as to Mr. Ada's termination and demotion. (TR 96:1-30.)

1 With respect to the Adjudication Order for juvenile L.G., Mr. Holley stated that the order issued on
2 December 1, 2009, for the hearing on November 6, 2009. (Exhibit B-9.) Mr. Holley testified that he first
3 saw the order a few days before the December 4, 2009 calendar on Rota. While the Review Hearing was
4 set for April 2, 2010, the juvenile was to relocate to Guam so that a custody supervision would be prepared
5 for the Guam Juvenile Probation Office.

6 Mr. Holley understood that Mr. Ada would be working on the report for L.G. The court wanted to
7 know what would happen to the juvenile and so in preparing for the Rota calendar, he assumed that Mr. Ada
8 would be providing an update on December 4, 2009. L.G.'s case was taken seriously by the prosecutor and
9 there were concerns such that the court and government wanted the update at the next available court date.
10 On December 4, however, L.G. was not in court because he was already in Guam and had been in Guam
11 on November 6. Responsibility for following up on the court's adjudication order was, according to Mr.
12 Holley, the responsibility of Mr. Ada. (TR 98-100:1-15.) Mr. Holley planned to discuss or be given an
13 update on L.G.'s matter on December 4, 2009, by Mr. Ada, since he was the person put in charge of the
14 previous court date. Mr. Holley brought the file with him that day.

15 Mr. Holley explained that on Rota there were often cases not calendared which were nonetheless
16 discussed in court. L.G. was a priority for the court and government given the juvenile's history. Mr.
17 Holley testified that he and Ms. Hasselshearer were in the courtroom for the calendar. As to L.G.'s matter,
18 it was not called, which was not unusual.

19 Mr. Holley further stated that L.G. returned to Rota, but he handled the subsequent hearings by
20 telephone due to lack of funds. Mr. Holley also testified that Mr. Ada was in the courtroom and he saw him
21 behind the prosecutor's table. (TR 101-104:1-29.)

22 On cross-examination, Mr. Holley testified that L.G. was not at the courthouse for the hearing. Mr.
23 Holley did not recall if the judge put any timeline in getting a response from Mr. Ada regarding the Guam
24 probation involvement nor whether the judge actually ordered Mr. Ada to appear at the next hearing. Mr.
25 Holley, however, expected Mr. Ada to be there, given the concerns of the prosecutor and because of the

1 Adjudication Order issued before the court calendar. Mr. Holley did not recall having a conversation about
2 L.G. with Mr. Ada after December 4, 2009. Lastly, Mr. Holley did not directly work with Mr. Ada on the
3 case because Mr. Ada is on the opposite side. Lastly, Mr. Holley confirmed his declaration as true, accurate,
4 and complete. (Exhibit 11; TR 105-111:1-10.)

5 **E. Testimony of Frances T. Salas**

6 Former OPM Alcohol Drug Free Workplace Coordinator Frances T. Salas testified regarding Mr.
7 Ada's matter as to what happened with OPM, particularly the OPM Memorandum. (Exhibit B-14.) Ms.
8 Salas was involved with the review of the proposed adverse action against Mr. Ada. She reviewed the
9 Notice of Proposed Adverse Action (Exhibit B-6) against Mr. Ada for the purpose of ensuring proper
10 citation to the administrative code and if there was sufficient evidence for the recommendation for adverse
11 action. Ms. Salas testified that she reviewed supporting documents outside of the Notice of Proposed
12 Adverse Action (Exhibit B-6) and identified Exhibit B-8 as one set of documents supporting the proposed
13 adverse action. With respect to OPM Director Isidro K. Seman's signature on the Notice of Proposed
14 Adverse Action (Exhibit B-6), Ms. Salas suggested getting more documents, but she did not think they were
15 provided. (TR 111-115:1-14.)

16 Ms. Salas explained that with a proposed adverse action, the employee would have an opportunity
17 to respond and also have an informal administrative conference. Mr. Ada did respond, along with attached
18 exhibits, and OPM received this response. (*See* Exhibit B-5.) Ms. Salas, however, stated that she found out
19 about the response much later and was not aware that it was submitted. Although it was stamped as
20 received by OPM on August 23, 2010, Ms. Salas testified that she first reviewed Mr. Ada's response a few
21 days or maybe a week before the informal conference on September 10. (*See* Exhibit 5.) Ms. Salas
22 reviewed Mr. Ada's response (Exhibit B-5) because it would be a chance for the employee, the department,
23 and OPM to try to clear up matters.

24 Ms. Salas identified her memorandum, (Exhibit B-14) where she notes her review of Mr. Ada's
25 response. She issued her memorandum to OPM Director Seman to reconsider and rescind the notice of

1 adverse action. She made that recommendation based on the submission of an affidavit from Mr. Holley
2 which indicated that Mr. Ada was in Rota for a hearing. Ms. Salas, however, did not know whether the
3 OPM Director gave her memorandum to Mr. Faisao or whether Mr. Faisao or Director Seman said anything
4 in response. Mr. Faisao did not express any surprise regarding Mr. Ada's response submission. (TR 115-
5 122:1-29.)

6 Subsequently, Ms. Salas saw Mr. Faisao's final decision to terminate. (Exhibit A-8.) Upon reading
7 it she could not believe they went forward with the termination, and did not think Mr. Ada would be
8 terminated. Ms. Salas explained that she did not think there was sufficient documentation or supporting
9 documents to justify the termination. She believed she brought up her concerns to Director Seman after the
10 final decision issued.

11 Ms. Salas testified that she had been at OPM for seven or eight years and was familiar with the
12 PSSRR. She further stated that the PSSRRs, in NMIAC §10-20.2-257(m)(6), require a final decision to
13 set out what findings of fact were sustained and what were not sustained. (*See*, Exhibit B-16) She testified,
14 however, that Exhibit A-8 did not indicate as such. (TR 123-24:1-20.)

15 On cross-examination, Ms. Salas stated that she looked at supporting documents to see if there is
16 a rightful claim to the department's decision to terminate a person or even give an adverse action. She said
17 that her job was to review the decision of the department taking the adverse action. As for authority to do
18 that review, Ms. Salas cited NMIAC 10-20.257. She undertakes the review in order to present the facts to
19 the OPM Director. She sent her OPM Memorandum to Mr. Ada's counsel; she had made similar
20 recommendations before and would always send a copy to opposing counsel. The OPM Director never
21 discussed her findings with her. (TR 124-28.)

22 Ms. Salas stated that she spoke with Mr. Faisao on the telephone regarding the proposed adverse
23 action, and Mr. Faisao claimed he had information to prove it was a fake trip. Ms. Salas did not see it that
24 way and needed sufficient documentation, in her opinion, before terminating an employee. With respect
25 to whether or not there was a hearing on Rota, Ms. Salas cited the affidavit of Mr. Holley. Further, she said

1 that she waited for the documents Mr. Faisao was going to present but did not receive them. In reviewing
2 Mr. Ada's Trip Report (Exhibit B-8), Ms. Salas did not know what other document supported his claims.
3 (TR 129-133:1-9.)

4 Ms. Salas reviewed the provisions of Exhibit B-16 as to NMIAC 10-120.2-257, which set out the
5 procedural requirements for an adverse action. Ms. Salas stated that when an employee responds to the
6 proposed adverse action, management must consider the response. Ms. Salas testified that it did not seem
7 that Mr. Faisao considered Mr. Ada's response. Ms. Salas testified that the final decision by Faisao did not
8 say which reasons in the advance notice were found to have been sustained and which were not sustained.

9 Ms. Salas also reviewed Mr. Ada's response and the declaration of Mr. Mesgnon as part of her
10 recommendation. Ms. Salas testified that she spoke with Mr. Faisao on the telephone because it did not
11 seem to her that there was sufficient evidence to support the termination. For example, she explained that
12 when Mr. Faisao said he had information to prove that "it was a fake trip," she said to him that she did not
13 see any real evidence. Mr. Faisao never provided to Ms. Salas the documents or proof he claimed he had
14 in his possession. (TR 134-37:1-19.)

15 **F. Testimony of OPM Director Isidro K. Seman**

16 OPM Director Isidro K. Seman testified regarding Mr. Ada's matter. He discussed the proposed
17 adverse action and his review of the proposed action and final decision. Director Seman also testified
18 regarding Mr. Faisao's Directive Memorandum merging divisions within DYS dated July 15, 2010.
19 (Exhibit A-2.) In his memorandum to Mr Faisao (Exhibit A-1), Director Seman told Mr. Faisao to await
20 the result of the audit before implementing the plan, in order to find out how agencies and departments
21 operate. Although he was not sure why Mr. Faisao was implementing the merging plan, Director Seman
22 was letting Mr. Faisao know that there was a study out and to wait for the result. Mr. Faisao did not take
23 the memorandum into consideration, as he then went ahead with the changes. Director Seman said that each
24 department has the final authority as to organizational changes, but OPM reviews how such changes affect
25 a civil service employee's status or position. (TR 1-5:1-11.)

1 As to Mr. Ada's grievance (Exhibit B-4), Seman said he thought he had seen it before. With respect
2 to the grievance, Director Seman said Mr. Ada had a grievance because of demotion. Director Seman
3 testified he was familiar with the grievance procedure set out in NMIAC §10-20.2-285, but was not aware
4 if DCCA ever responded to the grievance or acted on it. (TR 6-8:1-9.)

5 With respect to Mr. Ada's proposed adverse action, Director Seman confirmed he reviewed and
6 signed off on it. (Exhibit B-6.) Before he signed the proposed adverse action, he discussed with Ms. Salas
7 the reasons for the action. Typically, Director Seman said Ms. Salas would register concerns regarding a
8 proposed adverse action, but he did not recall whether this happened in Mr. Ada's case. Director Seman
9 testified regarding the informal conference on September 10 with Mr. Ada, Mr. Faisao, Ms. Salas and Mr.
10 Ada's attorney. He also testified as to Ms. Salas' memorandum and review of Mr. Ada's response. Director
11 Seman reviewed the memorandum and may have instructed Ms. Salas to talk to Mr. Faisao about
12 reconsidering his action. Director Seman reviewed Mr. Ada's response and exhibits, but did not recall if
13 he spoke to Mr. Faisao. (TR 9-13:1-4.)

14 As to Mr. Ada's claim regarding demotion, Mr. Ada was being demoted through the restructuring.
15 Director Seman did not know if Mr. Ada received any reduction in pay. Mr. Seman, however, believed that
16 the grievance procedure was followed as to Mr. Ada's grievance. As to the adverse action, he believed the
17 department head, and not OPM, has the final authority to make the decision. Director Seman said
18 sometimes he disagreed with Ms. Salas concerns on adverse actions but most times he agreed. (TR 13-14:1-
19 23.)

20 Director Seman testified that he was familiar with the PSSRR relating to grievance procedures and
21 agreed it states that with a formal grievance, the department must review and respond in writing. Director
22 Seman was not sure whether DCCA responded at all. (TR 14-15:1-21.)

23 **G. Testimony of Perry Mesgnon**

24 DPS Police Officer and former DYS Rota employee Perry Mesgnon testified regarding Mr. Ada's
25 proposed termination and the events on Rota in December 2009. Mr. Mesgnon testified by telephone from

1 Guam. Mr. Mesgnon confirmed he prepared a declaration in support of Mr. Ada's matter. (Exhibit B-13.)
2 He said that he has known Mr. Ada for eight years both personally and professionally. Mr. Ada is his friend
3 and they socialize together on Rota and Saipan. They worked together when Mr. Mesgnon was still with
4 DYS. They still maintain their relationship. (TR 15-19.)

5 Mr. Mesgnon met Mr. Ada at the Rota courthouse on December 4, 2009. Two days prior, Mr. Ada
6 called Mr. Mesgnon to show him the house of Mr. Ada's juvenile client, L.G. There was also discussion
7 about a house assessment of another juvenile, J.C. From the courthouse they went to Songsong Village but
8 no one was home. Mr. Ada told Mr. Mesgnon he needed to check on the juvenile from a previous court
9 calendar.

10 After breakfast, they returned to the courthouse at 10:30 a.m. so Mr. Ada could request additional
11 time from the judge since they had not found the parent of the juvenile. Mr. Ada went into the courtroom
12 and Mr. Mesgnon checked with the clerk. Mr. Mesgnon said that he told Mr. Ada he learned of the election
13 contest hearing from the clerk. From there they went to Rota Resort for lunch. After lunch, they returned
14 to the courthouse and learned the election contest was still being heard. They stayed for an hour. Mr.
15 Mesgnon left the courthouse but Mr. Ada remained at the courthouse. (TR 20-24:1-10.)

16 Mr. Mesgnon arranged with Mr. Ada to pick him up to assist in the case of J.C. on Saturday. They
17 went to J.C.'s uncle's house in Songsong Village, but no one was home. They then went to J.C.'s aunt's
18 farm in Ginalangan, but no one was there either. Mr. Ada explained he needed to do a home assessment
19 because the juvenile is on Guam and wanted to move back to Rota. When they did not find anyone, Mr. Ada
20 asked him to see if he could help Mr. Ada get a flight out that Saturday evening. Mr. Mesgnon tried but the
21 only available flights were on Sunday. They did no further work that day and he dropped Mr. Ada at the
22 hotel. (TR 24-26:1-27.)

23 On Sunday, they met at 10:00 a.m. at the Rota Resort clubhouse. Mr. Mesgnon invited Mr. Ada to
24 play golf. Mr. Ada rented golf clubs. They played golf and afterwards had lunch at Mr. Mesgnon's house.
25 Mr. Ada left from the house. (TR 27-28:1-19.) He did not know if Mr. Ada did any work for J.C. or L.G.

1 on Sunday. Although Mr. Ada was supposed to fly out Sunday morning, he arranged to fly out Sunday
2 evening.

3 On cross-examination, Mr. Mesgnon testified he did not know whether or not he knew where L.G.
4 was and that he did not recall if Mr. Ada walked into the courtroom. He found Mr. Ada in the courtroom
5 after Mr. Mesgnon had spoke with the court clerk. They then left the courthouse for lunch and returned after
6 lunch to the courthouse, staying there for an hour. Mr. Ada went into the courtroom along with him. They
7 both stood at the back in the courtroom because there were quite a lot of people present.

8 They then went to look for the uncle of J.C. No one was home after they honked the horn three or
9 four times. (TR 28-34:1-8.) Mr. Mesgnon offered to assist Mr. Ada by looking for the uncle, the aunt, and
10 trying to get him a flight out of Rota. Mr. Mesgnon also did a home assessment for J.C. on a later date. He
11 went and got a background assessment from the uncle including information regarding the following: the
12 people staying at the house, financial capability, their willingness to help, and background checks. Mr.
13 Mesgnon said he was not in a police uniform and was not on duty while assisting Mr. Ada in the assessment.
14 (TR 29-35:1-27.)

15 **H. Rebuttal Testimony of Jackie Mendiola**

16 Called on rebuttal by Respondents, DYS Supervisor Jackie Mendiola testified that as of November
17 2009, she was an Adolescent Counselor. She was on Rota on November 6, 2009, at the same time Mr. Ada
18 was on Rota. She testified about a conversation she had with Mr. Ada about a return trip to Rota, which
19 occurred before December 2009. She said that Mr. Ada said he was going to Rota to play golf. Ms.
20 Mendiola said that Mr. Ada did not tie it with business in any way. (TR 1-2:1-5.)

21 On cross-examination, she testified that she went to the Rota courthouse and Mr. Ada was there in
22 the courtroom. Ms. Mendiola could not recall if Mr. Ada was handling juvenile cases. She did not recall
23 if she stayed for the entire calendar. At that time, Ms. Mendiola reported to DYS Director Calvanni Deleon
24 Guerrero and did not supervise Mr. Ada.

25 On December 4, 2009, Ms. Mendiola did not recall whether Mr. Ada was on Rota. With respect to

1 the statement by Mr. Ada that he was going to play golf, she recalled that statement to be made after
2 November 6, 2009, after the Rota court hearing. She could not recall when Mr. Ada made the statement to
3 her– if it was December 2009 or January 2010. Ms. Mendiola finally admitted that she did not know if Mr.
4 Ada went to Rota to play golf. She also admitted that if Mr. Ada went to Rota to play golf, she did not know
5 when. (TR 5-6:1-16.)

6 **I. Rebuttal Testimony of Melvin Faisao**

7 DCCA Secretary Faisao testified further on rebuttal. He stated that prior to the reorganization of
8 DYS, Mr. Ada was a Juvenile Probation office supervisor. Mr. Ada supervised Missy Aldan, Felix Limes,
9 and Dolores Rangamar as well as Jonathan Tenorio from the Mayor’s Office. Mr. Ada’s salary was
10 \$30,000 per annum. After the reorganization, Mr. Ada’s position was lead individual for the community-
11 based program, reporting to Vincent Salas but supervising the same persons above. Mr. Ada was still within
12 the juvenile probation unit and Mr. Ada’s salary remained the same after the reorganization.

13 Mr. Faisao said that he met with Ms. Debra Inos regarding Mr. Ada’s grievance. (TR 11-15:1-20.)
14 As to Mr. Ada’s Trip Report, Mr. Faisao stated that he did not believe his submission to be true and
15 continued to stand firm that it is not true. Mr. Faisao testified that he never gave Mr. Ada authority to have
16 someone outside of DYS do a home study on Rota, claiming a violation regarding confidentiality on a
17 juvenile’s information. He would have obtained clearance from the Attorney General for Mr. Mesgnon to
18 do a home study. (TR 16.)

19 On cross examination, Mr. Faisao again confirmed that the basis for his determination was limited
20 to those in Exhibit B-8. Mr. Faisao again confirmed the declarations of Mr. Mesgnon and Mr. Holley were
21 never considered by him, neither was Mr. Ada’s written response. Mr. Faisao knew nothing about a
22 conversation between Ms. Mendiola and Mr. Ada, as this was not included in the Exhibit B-8. Indeed, Mr.
23 Faisao said Ms. Mendiola’s testimony in court was the first time he ever heard of it.

24 Mr. Faisao testified he spoke with Ms. Inos about Mr. Ada’s grievance and that he told Ms. Inos to
25 consult with Mr. Ada on how to resolve the “concern.” Mr. Faisao, however, admitted he did not respond.

1 He was not aware whether she provided any response. Mr. Faisao stated he never received a written
2 response.

3 **IV. CONCLUSION OF LAW**

4 **A. The Proposed Adverse Action for Termination of Mr. Ada**

5 The issue before the Court is whether or not the proposed adverse action is supported by sufficient
6 evidence to establish that Mr. Ada falsified and misrepresented the purpose of a trip to Rota, specifically
7 asserting the need to go there for juvenile court hearings, when he in fact intended to go to Rota for a
8 personal golfing trip.

9 The Court finds that there is substantial evidence that Mr. Ada did not misrepresent the nature of his
10 trip and that the trip to Rota was for a lawful purpose without falsification or evasion of purpose. The
11 PSSRRs are clear that with respect to a civil service employee, a substantial property interest in employment
12 is at stake such that the appointing authorities must comply with and observe procedures as to adverse
13 actions. In this case, the appointing authorities, DCCA Secretary Melvin Faisao and Director Isidro K.
14 Seman, did not observe the required procedures.

15 Mr. Faisao ignored the PSSRR mandate requiring Mr. Ada's submitted response be considered. The
16 PSSRRs leave no room for discretion to determine which part of a response to review or ignore. Mr. Faisao
17 has admitted several times that he never considered any part of Mr. Ada's response and offered no good
18 reason for failure to consider Mr. Ada's response.

19 Ms. Salas testified that she reviewed Mr. Ada's response and the response was compelling, such that
20 she advised and counseled for reconsideration of the adverse action. Ms. Salas testified that the rebuttal in
21 Mr. Ada's response and the declarations in support of his response by Mr. Holley and Mr. Mesgnon did not
22 support the proposed adverse action. Ms. Salas testified that she called Mr. Faisao regarding Mr. Ada's
23 response and Mr. Faisao asserted that he had information to "prove" that it was a "fake trip." Ms. Salas,
24 however, testified and the evidence supports that Mr. Faisao never provided any such additional information
25 in response.

1 Director Seman mistakenly believed that Mr. Faisao had the sole authority to make the final
2 decision when in fact the PSSRRs identify him, as OPM Director, to be one of several appointing authorities
3 charged with compliance with the PSSRRs regarding adverse actions. Director Seman owed no deference
4 to Mr. Faisao when his independent review of the proposed adverse action, given Mr. Ada's response,
5 compelled the adverse action to be rescinded and withdrawn.

6 The very reason that review by the OPM Director is required justifies and authorizes OPM to reverse
7 and overrule a department head decision which is unsupported by proof or evidence. Unfortunately, OPM
8 did not act on this responsibility or did not realize it had this authority, which resulted in the unwarranted
9 termination of Mr. Ada.

10 Jackie Mendiola commented that Mr. Ada went to Rota to play golf. Upon further examination of
11 Ms. Mendiola, however, the "golf trip" to Rota was unknown as to date and time and speculative at best.
12 This may have been the information cited by Mr. Faisao to Ms. Salas as grounds for showing Mr. Ada
13 embarked on a "fake trip." Or, perhaps the unidentified and anonymous caller was the source of Mr.
14 Faisao's additional information proving a "fake trip." Neither of these questionable grounds, however, form
15 a proper basis for termination when a multitude of evidence suggests otherwise. Further, neither of these
16 grounds were properly relied on by Mr. Faisao in his determination.

17 The evidence showed that Mr. Ada played golf in Rota on Sunday, a day where he was not required
18 to work. The golf game appears to be an afterthought, as Mr. Ada did not bring his clubs to Rota and even
19 tried to leave upon the conclusion of his work on Saturday but was unable to due to the flight schedules.
20 Mr. Ada reasonably believed he was required to conduct investigation on the juvenile cases and attend court
21 in Rota, and these were the reasons for his trip to Rota. Mr. Ada tried to attend to these matters first and
22 foremost, but was precluded from appearing in Court by the election contest that took priority. He was
23 further unable to conduct investigations due to the unavailability of the juveniles and their relevant family
24 members. The court's calendar and unavailability of the juveniles and their families are wholly out of the
25 control of Mr. Ada, who, based on the evidence, was diligent in pursuing his work responsibilities.

1 Ms. Salas' testimony illustrated that there was ample discussion with Mr. Faisao regarding the
2 sufficiency of his proposed adverse action for termination. It was not Ms. Salas' position to interview and
3 investigate Mr. Ada's response and exhibits, but she strongly felt the action taken was unwarranted and
4 unsupported. Ms. Salas tried her best to make her sentiments known; however, it was ultimately the
5 appointing authority and agency's responsibility to objectively and fairly investigate the facts. Mr. Faisao,
6 as one of the appointing authorities, played the role of investigator and fact-finder, but did not consider all
7 the facts, and did not thoroughly investigate what he termed the "fake trip."

8 Mr. Faisao never spoke with Mr. Mesgnon, with former public defender Mr. Holley, nor did he read
9 either of their declarations. Mr. Faisao dispensed with Mr. Holley and Mr. Mesgnon's declarations, failing
10 to undertake the very basic requirement to even read the declaration. It is unclear to the Court why Mr.
11 Faisao conducted the adverse action in the incomplete and one-sided manner that he did, and why he
12 seemingly refused to consider most of the available evidence.

13 Mr. Ada offered his verified response under oath. He supported his response with declarations from
14 persons with him on Rota including Election Commission Director Robert A. Guerrero who testified that
15 Mr. Ada was at the Rota courthouse. Mr. Mesgnon testified that he assisted Mr. Ada with doing work for
16 juveniles J.C. and L.G., attended court with him, and tried to help Mr. Ada leave Rota on Saturday evening.
17 Mr. Holley testified that Mr. Ada handled the juvenile matters and that any follow up work would be
18 performed by Mr. Ada. Since the Adjudication Order issued only on December 1, 2009, and given the
19 unrefuted testimony that the juvenile cases merited serious attention, the Court finds it credible that both
20 Mr. Ada and Mr. Holley expected that the case would be called in December and that Mr. Ada would be
21 required to provide the Court with an update—an update that required him to gather information and data
22 regarding the juvenile cases on Rota.

23 Mr. Faisao made much of the fact that the December Rota calendar showed none of the juvenile
24 proceedings. The Court, however, takes judicial notice that matters not calendared are often nonetheless
25 scheduled or heard. In fact, the November 6, 2009 calendar did not show any juvenile proceedings on Rota

1 but for the December 1, 2009 Adjudication that followed. Fortunately, the Adjudication Order and the
2 testimony of Ms. Mendiola and Mr. Holley confirmed Mr. Ada's testimony that a hearing was in fact
3 scheduled, regardless of what appeared on the calendar for the Rota Court that day. The Court finds that
4 Mr. Faisao's conclusions stem from a rigid reliance on the face of the court calendar and did not consider
5 the multitude of evidence showing that, in fact, Mr. Ada did reasonably believe cases that required his
6 attention were on the calendar that day in Rota.

7 Further, Mr. Faisao's Final Decision of September 15 failed to comply with the PSSRRs. He
8 ignored the requirement that he set forth which facts were sustained and which facts or findings were not
9 sustained. In light of the OPM Memorandum by Ms. Salas, Mr. Faisao's omissions cannot be attributed to
10 administrative oversight, rather, the Court finds such an act or omission to be intended to maintain the
11 desired course or outcome of determination notwithstanding countervailing and compelling facts.
12 Moreover, Mr. Faisao failed to speak to the nature and result of the Informal Conference where Mr. Ada
13 and Ms. Salas further discussed the proposed adverse action. Mr. Faisao said he would consider the
14 substance of the conference but his Final Decision seems to consider nothing and only constitutes a final
15 mandate by an appointing authority. As a result of the failure to consider Mr. Ada's response and the
16 substantial evidence in support of Mr. Ada's response, the Court gives little weight to Mr. Faisao's
17 determination as the agency head. Instead, the Court finds greater weight in the review by Ms. Salas, the
18 response by Mr. Ada, the declarations in support of Mr. Ada's response, and the other supporting exhibits
19 before the Court.

20 For the above reasons, Mr. Ada's proposed adverse action was unsupported by the evidence and
21 constituted arbitrary and capricious actions by DCCA and its Secretary Melvin Faisao. The Court finds Mr.
22 Faisao deliberately disregarded the PSSRRs governing civil service employees as to adverse actions. The
23 Proposed Adverse Action and Final Decision of September 15, 2010 is accordingly reversed.

24 **B. Mr. Ada's Grievance Regarding His Demotion**

25 It is undisputed that the DCCA and its Secretary, Mr. Faisao, never responded to Mr. Ada's

1 grievance regarding his demotion from Juvenile Probation Supervisor. The evidence establishes that at the
2 time of the Directive Memorandum by Mr. Faisao, Mr. Ada was a supervisor reporting directly to the DYS
3 Director. He was a Juvenile Probation Supervisor handling court supervision of juveniles before the Court.
4 The merging plan which Mr. Faisao implemented displaced Mr. Ada and inserted another supervisory level
5 of employees, Vince Salas and Jackie Mendiola , below the DYS Director and above Mr. Ada. The
6 purported justification for this action was an internal restructuring.

7 Mr. Faisao asserts that the merging plan did not displace Mr. Ada nor did he suffer any adverse
8 consequence since he maintained his salary and continued to supervise subordinates like Missy Aldan. The
9 Directive Memorandum, however, (Exhibit A-1) clearly states that Vincent Salas would oversee the
10 Community-Based Supervision Sub-Unit and that Mr. Ada would be an Assistant Supervisor. Indeed, prior
11 to the issuance of the Directive Memorandum (Exhibit A-1), Mr. Ada occupied the position of Social
12 Worker III. Based on the testimony of Jackie Mendiola, she had her position changed from Adolescent
13 Therapist to that of a Social Worker III, supervising the Juvenile Probation Unit, seemingly taking over the
14 position of Mr. Ada. This testimony was uncontroverted and unrebutted.

15 Mr. Ada testified that since his reinstatement by the Court, he was not performing juvenile probation
16 duties but had been relegated to duties at the Ada Gym. Further, Mr. Ada testified that he now is required
17 to report to the Ada Gym Director Joseph Attao and no longer to the DYS Director. In fact, it appears that
18 Ms. Mendiola now has supervisory authority over Mr. Ada.

19 Mr. Faisao asserts that despite being unresponsive to Mr. Ada's grievance, he maintains that Mr. Ada
20 has not been demoted. If this were the case, then the question arises as to why has Mr. Ada not performed
21 any juvenile court supervision for the juvenile court as he had performed prior to the merging or
22 reorganization. The person currently handling those matters is Ms. Mendiola, who appears to have taken
23 Mr. Ada's position. To require Mr. Ada to conduct the duties of maintenance and administration of Ada
24 Gym instead of supervising juvenile probationers for the court and DYS is a demotion in the Court's view.
25 So, while Mr. Faisao and DCCA claim no demotion, the substance of Mr. Ada's actual work and duties

1 suggest a de facto demotion.

2 This de facto demotion is essentially the gravamen of Mr. Ada's grievance. Since Mr. Faisao, OPM
3 Director Seman, and the Civil Service Commission all failed to address Mr. Ada's grievance, the Court is
4 left to make that determination in accord with the PSSRR.

5 The Court finds that although, initially, Mr. Ada's demotion was not apparent with the merging or
6 restructuring memorandum, Mr. Faisao, in his capacity as DCCA Secretary, has in fact demoted him. He
7 has placed Mr. Ada in a line position below a Social Worker III. He allowed Jackie Mendiola to laterally
8 transfer into Mr. Ada's position. Mr. Faisao's actions demoted Mr. Ada by relegating him out of DYS and
9 into the Ada Gym, changing his supervisors, moving him down the rung of the department ladder, and
10 ultimately changing Mr. Ada's job description by telling him to go to the Ada Gym and report to Joseph
11 Attao.

12 For the foregoing reasons based on the testimony and exhibits (*See, e.g.* Exhibit B-15 and Exhibit
13 A-1), the Court finds Mr. Ada's grievance is well-taken and supported by the evidence and record. On
14 account of his demotion, the Court hereby reverses that demotion in its entirety, directing his reinstatement
15 in title, duties and responsibilities to Social Worker III Juvenile Probation Supervisor under the DYS
16 Director.

17 **C. Conclusion**

18 The Court is generally reluctant to intervene within an executive branch agency. The foregoing facts
19 and evidence, however, compel that action inasmuch as the agency itself and those charged with the
20 application of the PSSRRs and Civil Service Act disregarded their responsibilities. The Civil Service Act
21 is clear on the need to protect the rights of civil service employees and give deference when due process and
22 fairness is afforded to an employee with a supported factual and legal context.

23 The result to Mr. Ada was the need to pursue and exhaust his administrative remedies, hire counsel,
24 and pursue his claim before the Civil Service Commission and ultimately this Court. In this case, the OPM
25 and the Office of the Attorney General did not ensure compliance with the PSSRR and assume its role as

1 the appointing authority and legal advisory body. Unfortunately, deference to the DCCA and its Secretary
2 lead to an unfair result, which the Court now reverses to prevent manifest injustice.

3 For the foregoing reasons, the proposed adverse action of Sylvio S. Ada is hereby reversed. Mr.
4 Ada's grievance regarding his demotion is also found to be sustained and he is fully reinstated to his
5 position of Juvenile Probation Supervisor/Social Worker III within the Division of Youth Services, effective
6 immediately.

7 8 **V. JUDGMENT AND ORDER**

9 The Court hereby enters the following judgment and orders as follows:

- 10 A. Judgment is rendered in favor of Petitioner Sylvio S. Ada as to the proposed adverse action
11 for termination. The proposed termination is reversed as it is unsupported by the evidence
12 and constitutes an arbitrary and capricious agency action. The Court finds that the allegation
13 that Mr. Ada went to Rota on a fake trip or on false pretenses to be without merit and
14 unsupported by the record. Rather, his trip was lawful, without deceit, and for purposes of
15 government duties consistent with his representation.
- 16 B. The grievance by Petitioner Sylvio S. Ada regarding his demotion is sustained. The agency
17 action by DCCA Secretary Faisao as to Mr. Ada's demotion is deemed to be arbitrary and
18 capricious and unsupported by substantial evidence, as well as a violation of the PSSRR.
19 Mr. Ada is hereby returned to his duty as Juvenile Probation Supervisor/Social Worker III
20 under the Division of Youth Services reporting to the DYS Director.
- 21 C. Any reduction in wages, benefits, salaries, and other compensation during the de-facto
22 demotion period of, if any, shall be paid to Petitioner Sylvio S. Ada, as well as for the period
23 from his termination from September 30, 2011, through his reinstatement by the Court in
24 December 2011. The Office of Personnel Management and the DCCA Secretary shall
25 certify compliance.

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D. The Court directs the Office of Personnel Management and the Office of the Attorney General to ensure compliance with this judgment and the Court retains jurisdiction for any subsequent enforcement of its order/judgment herein.

E. This ruling by the Court constitutes a final agency decision of the proposed adverse action against Sylvio S. Ada and the grievance by him and resolves all issues so as to constitute a final judgment. A party may file any appeal of this decision to the CNMI Supreme Court within thirty (30) days of the date of this order.

SO ORDERED this 22nd day of August, 2012.

/ s /

David A. Wiseman, Associate Judge