

1 Michael F. Dean
MEYERS, NAVE, RIBACK, SILVER & WILSON
2 555 Capitol Mall, Suite 1200
Sacramento, California 95814
3 Telephone: (916) 556-1531
Facsimile: (916) 556-1516
4 mdean@meyersnave.com
5 Attorneys for the El Dorado County
Civil Service Commission
6
7

8 **CIVIL SERVICE COMMISSION OF THE**
9 **COUNTY OF EL DORADO**
10

11 **In re the Appeal of**)
12 **SHAWN KESTNER**) **DECISION**
13)
14)

15 This appeal is brought by Shawn Kestner ("Appellant"). Appellant is employed by El
16 Dorado County ("the County") in the El Dorado County Sheriff's Office ("EDSO") as a
17 correctional officer. The appeal is taken from a discipline imposed by Sheriff John D'Agostini
18 ("Sheriff") in a June 5, 2014 letter entitled "Final Notice to Terminate" (the "Final Notice"). In
19 general terms, the Final Notice terminated the Appellant's employment based upon his alleged
20 untruthfulness during an internal affairs investigation.

21 The County was represented in this matter by Senior Deputy County Counsel Michael
22 Ciccozzi. The Appellant personally appeared and was represented by Joe Rose and Mehran
23 Tahoori (Rose Law). The Civil Service Commission was represented by Michael F. Dean
24 (Meyers, Nave, Riback, Silver & Wilson) as its Legal Advisor. All Commission members were
25 present throughout the hearing and deliberations.¹

26
27 ¹ Also present during the hearing while the parties were present, but not testifying, were Captain Robert Ashworth on
28 behalf of the Sheriff and Gregory C. Ramirez, Senior Business Representative—Public Employees Division of
Operating Engineers Local no. 3, on behalf of Appellant. Commission staff present during the hearing while the
parties were present was Bobbi Bennett (County Human Resources Manager). These persons were excluded, along
(footnote continued)

1 The hearing in this matter was held in closed session pursuant to the "personnel exception"
2 provisions of the Ralph M. Brown Act, California Government Code section 54957. The hearing
3 commenced on January 21, 2015 at 10:00 a.m. in the meeting room of the El Dorado County
4 Office of Emergency Services. Testimony was taken on that date as well as on April 16 and April
5 21, 2015, at which time testimony concluded². Following the conclusion of testimony, oral
6 arguments by both parties were heard by the Commission on April 21.

7 Following oral arguments, the matter was taken under submission on April 21, 2015. The
8 Commission deliberated in closed session that same day outside the presence of the parties. Upon
9 the conclusion of its deliberations, on April 21, 2015, the Commission announced its tentative
10 decision to reverse the discipline imposed. Since neither party had remained present to hear this
11 announcement, the announcement was made to the Commission's staff with instructions to advise
12 the parties of the Commission's tentative decision. The Commission now provides its formal
13 findings and decision with respect to the appeal.

14 Consistent with its tentative announcement on April 21, 2015, and as indicated below, the
15 Commission by a vote of 5-0 orders that the discipline imposed be reversed in full.

16
17 **I.
PRELIMINARY MATTERS**

18 **A. Exhibits Admitted**

19 The parties submitted a Joint Exhibit Binder containing written Exhibits, labeled Exhibits
20 1-13. Inasmuch as these exhibits were jointly submitted, and there were no objections to any of
21 the exhibits by either party, all of these exhibits were received into evidence and considered by the
22 Commission³. During the course of the hearing, Exhibits 14-20 were presented by Appellant,
23 marked as exhibits and accepted into evidence without objection.

24
25 with the parties, during Commission deliberations.

26 ² The gap in the hearing dates was as a result of the illness of one of the attorneys.

27 ³ At the outset of the hearing, Appellant reserved the right to object to exhibits 8 (January 8, 2014 transcript of the
28 interview with Corrections Officer) and 10 (February 4, 2014 transcript of the interview with
Corrections Officer) on hearsay grounds. These objections were later withdrawn and exhibits 8 and 10
were accepted into evidence with the other jointly submitted exhibits.

1 Key to this matter were those exhibits which were the transcripts of the interviews of
2 various witnesses during prior internal affairs investigations (Exhibits 5-13) and the recordings of
3 those same interviews (Exhibits 19-20). While the recordings of the interviews were not played
4 during the hearing, each member of the Commission individually listened to the several hours of
5 recordings in full prior to Commission deliberations.

6 **B. Testimony Received and Evidentiary Stipulations**

7 Both parties called various witnesses to testify. Witnesses on behalf of the County were:
8 Sergeant Edward Falkenstein, former Corrections Officer , Corrections Officer
9 former Corrections Officer , Corrections Officer ,
10 Corrections Officer , Undersheriff Randy Peshon and Sheriff John D'Agostini.
11 Witnesses on behalf of Appellant were: former Corrections Officer and
12 Appellant, who testified on his own behalf.

13 During the hearing, Appellant also requested that the Commission consider an audio
14 recording of Correctional Lieutenant Pamela Lane's internal affairs interview on December 11,
15 2013 due to Lt. Lane's unavailability. The Commission had, just several days prior,
16 listened to that same recording in full during a prior hearing relating to a different matter. The
17 parties stipulated that the Commission could consider the content of that recording in this matter
18 as well and that if called as a witness, Lt. Lane would testify as she did during that interview.

19 The parties further stipulated during the hearing that a certain sexual harassment
20 investigation conducted by the Human Resources Department of the County and arising out of the
21 rumors which were the original subject of the internal affairs investigation in this matter during
22 which Appellant was alleged to have been untruthful, was not relied upon by the Sheriff in taking
23 the disciplinary action in question in this matter and is not evidence in this matter.

24 **C. Burden of Proof**

25 The Civil Service Commission notes that the County bears the burden of proof in this
26 proceeding. That is, the County must by a preponderance of the evidence prove both that
27 Appellant violated the various rules or regulations he is charged with violating, and that the level
28 of discipline imposed by the County is appropriate. (Civil Service Commission Rules of

1 Procedure, Rule 3.01(G).)

2
3 **II.
CHARGES AGAINST APPELLANT**

4 Appellant was charged with a multitude of violations of County rules or EDSO rules as
5 indicated in a April 24, 2014 letter from Captain (now Undersheriff) Randy Peshon entitled
6 "Notice of Intent to Terminate" ("Notice of Intent", Exhibit 1) and carried forward into the Final
7 Notice. The specific violations alleged were:

8 A. Violations of the County Personnel Rules, section 1203. Various
9 subsections of section 1203 were alleged to have been violated, specifically:

10 (c) On-duty or off-duty conduct...that (i) tends to bring the County
11 service into disrepute, or (ii) is a direct hindrance to the effective performance of
12 County functions;

13 (d) Disorderly or immoral conduct;

14 (f) Insubordination or willful disobedience;

15 (i) Neglect of duty;

16 (j) Violation of any lawful or reasonable regulation or order given by a
17 supervisor or department head;

18 (k) Violation of any of the provisions of applicable law, these Rules or
19 County policies;

20 (p) Dishonesty or theft; and

21 (y) Any other conduct of equal gravity with the above.

22 B. Violation of the EDSO Policy Manual section 340.3.5, regarding
23 "performance" as follows:

24 **340.3.5 PERFORMANCE**

25 (d) Concealing, attempting to conceal, removing or destroying
26 defective or incompetent work;

27 (e) Disobedience or insubordination to constituted authorities,
28 including refusal or deliberate failure to carry out or follow lawful directives and

1 orders from any supervisor in position of authority;

2 (g) Disparaging remarks or conduct concerning duly constituted
3 authority to the extent that such conduct disrupts the efficiency of the Department
4 or subverts the good order, efficiency and discipline of the Department or which
5 would tend to discredit any member thereof;

6 (m) Any knowing or negligent violation of the provisions of the
7 department manual, operating procedures, or other written directive of an
8 authorized supervisor;

9 (o) Criminal, dishonest, infamous or disgraceful conduct adversely
10 affecting the employee/employer relationship, whether on or off duty;

11 (p) Failure to disclose, or misrepresenting material facts, or the making
12 of any false or misleading statement on any application, examination form, or
13 other official document, report or form, or during the course of any work related
14 investigation;

15 (aa) Any other on duty or off duty conduct which any employee knows
16 or reasonably should know is unbecoming to a member of the Department or
17 which is contrary to good order, efficiency or morale, or which tends to reflect
18 unfavorably upon the Department or its members;

19 (ab) Any failure or refusal of an employee to properly perform the
20 function and duties of an assigned position; and

21 (ad) Giving false or misleading statements, or misrepresenting or
22 omitting material information to a supervisor, or other person in a position of
23 authority, in connection with any investigation or in the reporting of any
24 department related business.

25 C. Violation of the EDSO Policy Manual section 1020.6, regarding
26 "administrative investigation of complaint" as follows:

27 "(i) All employees shall provide complete and truthful responses to questions
28 posed during interviews."

1
2
3 **III.**
GENERAL BACKGROUND

4 Appellant is a correctional officer, assigned to work at the EDSO's Placerville jail facility.
5 In late 2012, EDSO management became aware, at least in part through Appellant's reporting of
6 it, that there was a rumor circulating among employees at the jail regarding an inappropriate
7 sexual relationship between _____ and her subordinate,
8 _____, both of whom worked at the Placerville jail. (see Exhibit 17, a
9 memorandum from Correctional Lieutenant Lane to then Captain Peshon dated November 9, 2012
10 entitled "Request for Investigation".) Appellant brought this rumor to the attention of EDSO
11 management on at least two occasions, once when he reported it to Correctional Lieutenant
12 Pamela Lane, and once when he mentioned it to Correctional Sergeant _____. Both
13 Lane and _____ were in Appellant's "chain of command."
14 _____ was _____'s supervisor. A sexual
15 relationship between those two persons could have violated various EDSO policies, and rumors of
16 the relationship, whether or not based in fact, could have a detrimental effect on jail operations and
17 morale. Correctional Lt. Lane therefore reported what she had heard from Appellant further up
18 her chain of command, and as a consequence an internal affairs investigation (IA 12-25⁴) was
19 commenced to determine the truth of those rumors. The investigation ultimately determined that
20 there was no truth to the rumors of the alleged relationship between _____ and _____

21 Appellant was interviewed by Sergeant Edward Falkenstein as a part of the internal affairs
22 investigation. Prior to his interview for IA 12-25, Appellant signed an administrative
23 admonishment (Exhibit 1, Bates pages 49-51) which advised him of the implications of
24 dishonesty during the interview. This admonishment contained a direct order to answer all
25 questions put to him and to answer them truthfully. During his internal affairs interview Appellant

26
27 ⁴ That portion of IA 12-25 which related specifically to Appellant was designated as IA 12-25E. Apparently, each
28 person suspected of potentially being a part of the rumor mill was given a different letter designation. Sergeant
Falkenstein's November 20, 2013 report relating to IA 12-25E is Exhibit 4.

1 conceded that he had spread the rumor regarding and As a consequence of this
2 conduct, Appellant was suspended without pay by the Sheriff for 36.75 hours. Appellant did not
3 contest or appeal this suspension. He did, however, request that the suspension be imposed over
4 several pay periods so as to mitigate the monetary impact. (Exhibit 13.) This request was
5 accommodated.

6 During his interview in IA 12-25, Appellant was repeatedly asked to name those other
7 persons with whom he had discussed the rumors or from whom he had heard the rumors in the
8 first instance. Appellant's answers often indicated that he did not recall, or was uncertain just who
9 else had or might have participated in the rumor mill. Upon repeated questioning, Appellant
10 allegedly implicated Correctional Officers and in his
11 answers, indicating that each either had a conversation with Appellant about the rumors, or had
12 been present when the rumors were discussed by others, or had actually told Appellant one or
13 more of the rumored "facts." Those five officers were later interviewed in IA 14-01. In the view
14 of Sergeant Falkenstein, and ultimately in the view of the Sheriff, each denied any involvement in
15 the rumors as had been indicated by Appellant in his interview in IA 12-25. The cumulative
16 impact of those five denials lead first Falkenstein * and later the Sheriff to conclude that Appellant
17 had been untruthful in his interview during IA 12-25.

18 The second investigation — IA 14-01—was again assigned to Sergeant Falkenstein. It was
19 specifically to consider whether or not Appellant had been honest in his answers to Falkenstein
20 during IA 12-25. (Exhibit 1, Bates pages 46-47.) This second investigation largely consisted of
21 the interviews of the five correctional officers whose interview answers were thought to conflict
22 with the interview of Appellant, and a new interview of Appellant. (Exhibit 1, Bates pages 9-45.)⁵

23 It is based on the results of this second internal affairs investigation that the disciplinary
24 termination in question was imposed.

25 ⁵ The basis for IA 14-01 was Sergeant Falkenstein's belief that Appellant had lied to him during the interview for IA
26 12-25. Yet it was Falkenstein who conducted IA 14-01, in effect investigating his own conclusion that he had
27 previously been lied to. Perhaps unsurprisingly, the investigation concluded that his prior conclusion was correct.
28 While it is not prohibited to have the same investigator conduct the follow-up internal affairs investigation, the
Commission believes that the EDSO might have been better served to have someone else, using "fresh eyes," attempt
to discern the truth behind the various interviews and the alleged inconsistencies.

1 The parties concurred, as does the Civil Service Commission, that the instant appeal is not
2 related to the spreading of rumors dealt with in IA 12-25 and for which discipline was previously
3 imposed. Rather, the appeal is solely concerned with whether or not the answers given by
4 Appellant during his internal affairs investigation interview in IA 12-25 were truthful. If the
5 questions were answered honestly, none of the allegations may be sustained. If the questions were
6 not answered honestly, all of the allegations should be sustained.

7
8 **IV.**

9 **TERMINATION AS THE APPROPRIATE LEVEL OF DISCIPLINE FOR DISHONESTY**

10 As explained herein, the Civil Service Commission finds that no discipline is appropriate.
11 However, the Commission wishes to take the opportunity to affirm as forcefully as is possible the
12 view expressed by both parties: where a law enforcement officer -- including a correctional
13 officer-- is found to have been dishonest, the appropriate level of discipline is termination,
14 regardless of length of service or the lack of prior discipline. This is so, even though the
15 Commission is acutely aware that a termination under such circumstances is not merely the ending
16 of employment with the County, it effectively would foreclose a career in law enforcement with
17 any agency in the State of California.

18 While Appellant is a long term employee with a generally good service record, up to the
19 point at which he was suspended for his part in the rumor mill at the jail, that would not overcome
20 a finding of dishonesty. There is no place within the El Dorado Sheriff's Office for a dishonest
21 officer. As succinctly stated by the Sheriff in his testimony in explaining why termination had
22 been imposed as the level of discipline, "If you lie, you die." And, as stated by counsel for the
23 Appellant in his closing argument, "If the County proved by a preponderance of the
24 evidence...that he lied, then you should terminate him..."

25 To be clear, the Civil Service Commission believes that no discipline is appropriate in this
26 case because it finds that Appellant was not dishonest in his answers in the internal affairs
27 investigation and did not lie.

V.

APPELLANT'S RECOLLECTION OF EVENTS WAS NOT CLEAR

Appellant's answers to the questions posed in the internal affairs investigations, both IA 12-24 and IA 14-01, were not models of coherent thought and recollection. Neither was his testimony during the Civil Service Commission hearing. Direct answers to direct questions were many times notably lacking.

This lack of clarity and coherence is, however, not surprising given the context in which correctional officers work, the types of questions being asked, and the passage of time between events and the subsequent IA interviews or testimony. The correctional officers work varied shifts with many different co-workers. During each day they come in contact with many of their co-workers, sometimes in a fleeting manner and sometimes for somewhat more extended periods of time. As a consequence, it appears that many short "conversations" may occur each day. Some of the conversations are substantive and involve work related matters, and many are with respect to personal matters or are merely comments or idle "chit-chat" about the issues of the day, whether those be the weather, politics, what the co-worker may be planning to have for dinner, or the latest rumor with respect to other co-workers' sexual relationships. Some conversations involve a back and forth of statements by the participants, and many involve solely a sentence or two at most. To be asked many months after the fact to accurately reflect on "conversations" that may have been but a single sentence and last but seconds when the conversation had no particular significance at the time will cause the answers to naturally be fraught with inherent inaccuracies or faulty memory, even for those who are intent on veracity. As Appellant himself noted when specifically asked to "name names," "...specific events and specific time conversations over two-plus years of the rumors flying around about her I have no idea." (Exhibit 5; Bates page 284:23- 285:6.)

One is particularly struck by the number of times Appellant responded with some variation of "I don't recall" or "I am not certain" in his interview, but is nonetheless asked by the investigators to continue to provide more detail or to speculate on the question. One is doubly struck by the fact that this same level of tenacity is often missing when the interviews of other correctional officers was conducted in IA 12-25.

1 When asked to state from whom he heard the rumor, Appellant first responded, "I don't
2 remember. There was—people came, people left. Prior retired officers long since retired, people
3 came. That – that rumor hasn't been mentioned in a long time." (Exhibit 5; Bates page 291:1-7.)
4 When asked if he passed the rumor on to anyone, Appellant first responded that it was "possible"
5 (Exhibit 5; Bates page 291:8-9.) In response to the follow-up question "do you remember who
6 you passed it on to?," Appellant answered, "I have no idea." (Exhibit 5; Bates page 291:8-11.)
7 Those same types of responses from other correctional officers appear to have been generally
8 accepted by those conducting the internal affairs investigation; in the case of Appellant, those
9 answers were cause for additional, sometimes very leading and repeated, questioning.

10 The Civil Service Commission's view of this evidence is that the Appellant, on being
11 pressured for additional answers – to name names or to state details—did his best to recall. This
12 additional testimony reflects the fact that Appellant was attempting to comply with the admonition
13 to be forthcoming, even when he was not certain. The Commission acknowledges that it could be
14 viewed as evidence of lying or being misleading, and the Sheriff has so viewed it, but it can
15 equally be viewed as a person scouring his recollection and providing what best he can in the way
16 of information, even when it may be wrong.

17 The Commission agrees with the County's argument that this type of questioning is
18 sometimes how a good investigator gains information: by attempting to draw out a potential
19 witness, asking about other matters to determine if this will refresh his or her recollection, or
20 attempting to find inconsistencies in what has been said and asking follow-up questions.
21 However, like any cross-examination, finding these inconsistencies or successfully drawing
22 further information in an internal affairs investigation does not necessarily mean the witness
23 earlier lied in his first recollection.

24 VI 25 ALLEGED CONFLICTING INTERNAL AFFAIRS TESTIMONY

26 The Final Notice incorporates the allegations in the Notice of Intent with respect to the five
27 correctional officers whose testimony is thought to be at variance with that of Appellant in IA 12-
28 25. These variances are at the heart of the Sheriff's view that Appellant lied. But examination of

1 the actual internal affairs transcripts indicates that the conflicts are not always as stark as the
2 Notice of Intent implies.

3
4 The Notice of Intent states that "...you indicated that you had a conversation with
5 Correctional Officer in which asked you if you had heard the rumor that

6
7 . Correctional Officer was interviewed and denied ever having a
8 conversation with you relating to sexual misconduct rumors between
9 and ." (Exhibit 1, Bates page 4.)

10 The Notice of Intent overstates what Appellant said. Rather than a definitive statement of
11 a comment by Correctional Officer Appellant appears to have been, out-loud, simply
12 searching his recollection for whether a conversation had occurred. In his testimony Appellant was
13 asked, "Have you heard any rumors regarding

14 ?" Appellant responded, "That, I believe, is what said
15 to me and it may have – I have heard that. When or is the—they
16 may have been in the same room at the same time." (Exhibit 5, Bates page 312:21-25.) The
17 interview continued in that vein, with Sergeant Murdoch inquiring again whether or
18 perhaps mentioned this rumor to Appellant. Appellant's response was equivocal: "And
19 they may have been in the room...." (Exhibit 5, Bates page 313:1-4.)

20 The allegation in the Notice of Intent therefore does not accurately reflect the content of
21 Appellant's statements. And, it does not accurately reflect the content of interview,
22 either. Far from denying ever having a conversation with Appellant regarding the rumors, upon
23 being asked whether he had heard the rumors, indicated he had heard this from
24 Appellant. (Exhibit 7; Bates page 347:19-24; page 351: 6-13; page 351:28-352:4.)

25
26 The Notice of Intent states that "You indicated during your interview that Correctional
27 Officer made a comment to you about and
28 calling in sick on the same days or going home early on the same days.

1 Correctional Officer was interviewed and denied making this comment to you.” (Exhibit 1,
2 Bates page 4.)

3 The Notice of Intent overstates Officer testimony, in which she was asked if she
4 remembered a conversation with Appellant to this effect. Officer indicated, “Is it possible?
5 Yes. Do I remember? No.” (Exhibit 9, Bates page 377: 1-4.) The testimony continued in that
6 vein with Officer indicating, “I can say I pretty much probably never said that.” (Exhibit 9,
7 Bates page 377:5-11.)

8 The County argued forcefully that Officer had indicated that she was 100% certain
9 that Appellant was incorrect. However, it was the investigating officer, Sergeant Falkenstein, who
10 placed this imprimatur of infallibility on her testimony. own words were very equivocal:
11 she “pretty much probably” did not say what Appellant had indicated she did. Immediately after
12 Officer indicated that, despite her lack of memory about the incident, it was possible that
13 there was some type of conversation or that Appellant may have discussed or mentioned the rumor
14 to her, Falkenstein categorized her recollection as being 100% that she had not mentioned the
15 rumor to Appellant. To this, Officer responded with “yeah.” (Exhibit 9, Bates page
16 377:12-21.)

17 In the context of rumors that all concede were swirling around the jail regarding the
18 alleged relationship, and where both the witness and the Appellant are uncertain this appears a
19 slim reed on which to place the termination of Appellant’s employment and career.

20

21 The Notice of Intent states “You indicated during your interview that you had a
22 conversation with Correctional Officer relating to the sexual misconduct rumors between
23 and , although you could not remember
24 the specifics. Correctional Officer denies ever speaking with you in regards to such
25 rumors following up with the fact that you two rarely work together.” (Exhibit 1, Bates page 4.)

26 Appellant was a bit more equivocal in his interview in IA 12-25 than the Final Notice
27 implies. While he does indicate that such a conversation took place, he introduces his comments
28 by noting “If I remember the conversation...” with (Exhibit 5; Bates page 304:3-7.) And

1 while the County attempts to demonstrate a difference between that version and the version of
2 Appellant's later testimony in IA 14-01, that later testimony simply clarifies that perhaps
3 was merely present and Appellant does not know if she actually said anything or merely listened
4 to what was being said by Appellant and (Exhibit 12; Bates page 412:23-413:1.)

5 Correctional Officer testimony is further contradicted by that of Correctional
6 Officer who was interviewed in IA 12-25. interview was not provided to the
7 Commission and he did not testify at the hearing. Nonetheless, the report in IA 12-25 indicates,
8 consistent with Appellant's testimony, that Correctional Officer was present in guard
9 tower C-1 while the rumor was discussed and that she engaged in conversation regarding it.
10 (Exhibit 4; Bates pages 235-236.)

11
12 The Notice of Intent states "You indicated during your interview that you had a
13 conversation with Correctional Officer relating to the sexual misconduct rumors between
14 and , although you could not remember
15 the specifics. Correctional Officer denies the allegation by saying you can be
16 'imaginative' and your allegation that you two exchanged information about the rumor is false and
17 inaccurate." (Exhibit 1, Bates page 4.)

18 In regards to this witness particularly, Appellant's responses to questions about the rumors
19 demonstrate his lack of recollection. In response to the open question "tell me about the
20 conversation you had with regarding the rumors," Appellant says, "Details of that
21 conversation, I have no idea. I work with nearly every day. We talk about all kinds of stuff."
22 (Exhibit 5; Bates page 291:12-15.) When asked what he remembers, Appellant says, "I don't
23 remember specifically what I ever discussed with him." (Exhibit 5; Bates page 291:16-17.) When
24 asked who raised the subject of the rumors, Appellant says, "I don't remember." (Exhibit 5: page
25 291:20-21.)

26 What is more, the denials by Correctional Officer contained in his internal affairs
27 transcript (Exhibit 10) appear to be equally equivocal. When asked if he had a conversation with
28 Appellant regarding the rumors, first response is "I don't recall." Upon further

1 questioning he indicates "I doubt it" with respect to whether it occurred, but he does not actually
2 deny it. (Exhibit 10; Bates page 389:9-16.) It is not clear how the Notice of Intent would conflate
3 this to a lie by Appellant that is denied by
4

5 The Notice of Intent states that, "You indicated during your interview that you had a
6 conversation with Correctional Officer relating to the sexual misconduct rumors
7 between and , although you could not
8 remember the specifics. Correctional Officer denies the allegation that you and he had a
9 conversation relating to the sexual misconduct rumors between and
10 . Correctional Officer states he does not involve himself in
11 matters regarding rumors." (Exhibit 1, Bates pages 4-5.)

12 This is simply not confirmed by Correctional Officer interview nor by
13 Appellant's interviews. Again, Appellant's first reply to questioning about conversations with
14 Correctional Officer about the rumors is simply "I don't remember." (Exhibit 5; Bates
15 page 291:22-23.) This is confirmed by own interview in which he is asked from
16 whom he heard the rumor and he indicates, "I don't recall who. I just remember, like locker room
17 talk kind of stuff." (Exhibit 11; Bates pages 399:5-9.) And continues when pressed
18 from whom he might have heard this that he simply does not recall. (Exhibit 11; Bates pages
19 399:10-12.) As to whether he had a conversation about the rumors with Appellant,
20 several more times indicates, "I don't recall." (Exhibit 11; Bates page 401:6-25.) Indeed,
21 eventually concedes, "I might have shared words" with Appellant on the subject
22 (Exhibit 11; Bates page 401:26-28.) although he attempts to draw some unknown distinction
23 between "sharing words" and "having a conversation."

24 In short, the heart of the allegations against Appellant, that he lied about the involvement
25 of five other correctional officers, each of whom denied such involvement, is undercut by the fact
26 that neither Appellant nor the other officers were at all certain about the facts. And, Appellant
27 attempted to tell the investigating officers just that by his repeated indications that he was himself
28 uncertain or did not recall.

VII

TESTIMONY COLLABORATED BY OTHERS OR MISSING

Appellant's truthfulness during the interview for IA 12-25 is also supported by the fact that additional correction officers, beyond the five noted in the Notice of Intent, were implicated by Appellant in his interview. The allegations against these additional correctional officers were either supported by the investigation, or the additional allegations were not followed up.

Appellant indicated that his first awareness of the rumors regarding _____ and _____ came from a conversation with now retired correctional officer _____ Mr. _____ was apparently not interviewed, and whether he would have corroborated Appellant's testimony is not known. Where the County bears the burden of proof, however, the failure to demonstrate whether or not the testimony would be corroborated implies that Appellant was in fact telling the truth.

Appellant indicated that he had heard the rumor from Detention Aide _____ That _____ was confirmed by _____

Appellant indicated a conversation regarding the rumor in a control tower, implicating Correctional Officer _____ That conversation was confirmed by Correctional Officer _____ according to the report in IA 12-25, but whose interview was not provided in evidence nor did he testify.

In effect, the Sheriff's version of the testimony would require the Commission to believe that Appellant told the truth with respect to a number of correctional officers, but lied with respect to several others. The County argued that there was a motive for Appellant to lie in that he was attempting to "spread the guilt" around to as many people as possible so as to make his own conduct in spreading rumors look less unique. But this does not explain why Appellant would ever choose to lie about specific individuals with whom there was no particular quarrel, and tell the truth about the others. There were already correctional officers with whom to share the guilt of rumor mongering, and no need to drag in others.

What is more, there might never have needed to be a need to say anything about any other correction officer, but for Appellant's own conduct. Appellant in effect personally initiated the

1 internal affairs investigations when he reported the rumors up his chain of command to Lieutenant
2 Lane (who then requested the instigation of the IA, see Exhibit 17) and to
3 Again, this raising the issue of the rumors does not appear to represent the conduct of a
4 correctional officer intent on concealing his own part in a rumor mill by lying about the rumor
5 mongering of others.

6
7 **VIII.**

8 **TESTIMONY OF THE SHERIFF**

9 The general thrust of the argument by the County in the Notice of Intent, the Final Notice
10 and in its arguments to the Civil Service Commission was that Appellant had lied, and that his
11 statements had been contradicted by the testimony of other correctional officers. While the
12 Commission finds this not to be the case (as indicated *supra.*), the argument is also undercut by
13 the testimony before the Commission of the Sheriff himself. Sheriff D'Agostini testified that,
14 prior to signing the Final Notice, he had reviewed the transcripts of Appellant and Correctional
15 Officer He indicated he had reviewed others as well, but he did not recall which. He did
16 not indicate that he had reviewed all the transcripts on which the County relied. Under those
17 circumstances it is difficult to understand how the Sheriff could have reached the conclusion that
18 Appellant's testimony did or did not conflict with that of other correctional officers. In addition,
19 he testified that in his view the Appellant did not lie, but rather had been "purposely evasive" in
20 his answers during the internal affairs investigations. Again, how one reaches that conclusion
21 without having read the transcripts (or listened to the recordings) is not known, but even so being
22 evasive is not the argument that the County has put forward in the Final Notice and during the
23 hearing: it has argued that Appellant lied, and the Sheriff's concession that there was more an
24 "omission of truth" and not a "direct lie", appears to belie the attempt to terminate Appellant.

25
26
27 ⁶ Admittedly, the "report" to appears to have taken the form more of a further passing of the rumor to her
28 rather than being an effort to make management aware of a problem. Nonetheless, as a superior officer,
would have presumably had a duty to follow up on Appellant's comments.

IX
FINDINGS

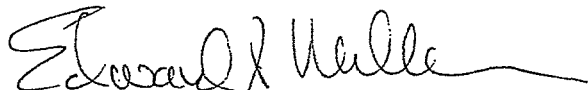
The Commission finds as follows:

1. The Commission hereby incorporates by reference all of the facts and findings included in sections I- VIII above.

2. The County has failed to meet its burden of proof with respect to any of the alleged violations of County rules or departmental policies contained in the Final Notice to Terminate, which incorporated by reference the allegations of the Notice of Intent to Terminate.

For the reasons as stated above, the disciplinary termination of Appellant from the position of corrections officer as indicated in the Final Notice is hereby ordered **REVERSED**.

Dated: 5/14/2015



Edward I. Miller, Chair

2433134.3



JOHN D'AGOSTINI
SHERIFF - CORONER - PUBLIC ADMINISTRATOR
COUNTY OF EL DORADO
STATE OF CALIFORNIA

PERSONAL SERVICE

June 5, 2014

Shawn Kestner
Correctional Officer
300 Fair Lane
Placerville, CA 95667

Re: FINAL NOTICE TO TERMINATE

Officer Kestner,

On May 19, 2014, I met with you and your attorney, Gregory C. Rameriz for the purpose of conducting a Skelly hearing related to the Notice of Intent to Terminate dated May 21, 2014. After a careful review of the investigation file, the Notice of Intent to Terminate and the information provided at the Skelly hearing, I have upheld the termination as the appropriate level of discipline.

This letter is to inform you that the Sheriff's Office intends to TERMINATE you from employment as a Correctional Officer effective June 7, 2014 at 5:00 p.m.

The basis of this action is due to violation of the County of El Dorado Personnel Rules (PR) 048-13, Part 12, Section 1203 (c), (d), (f), (i), (j), (k), (p) and (y).

In addition, there is sufficient evidence to conclude that you violated certain provisions of the El Dorado County Sheriff's Office Policy Manual sections 340.3.5 (d), (e), (g), (m), (o), (p), (aa), (ab), (ad) and 1026.1 (i).

You have a previous history of discipline which includes:

2-26-2014, (3) Day – 36.75 hour suspension for violation of the El Dorado County Sheriff's Office Policy sections, 329.2, 329.3, 340.3.2 (f), (k),, 340.3.5 (c), (g), (h), (m), (o), (q) and (aa).

El Dorado County Policy Prohibiting Discrimination, Harassment and Retaliation sections, II, III (A), (C) and IV (C).

"Serving El Dorado County Since 1850"

HEADQUARTERS- 300 FAIR LANE, PLACERVILLE, CA 95667
JAIL DIVISION- 300 FORNI ROAD, PLACERVILLE, CA 95667
TAHOE JAIL- 1051 AL TAHOE BLVD., SOUTH LAKE TAHOE, CA 96150
TAHOE PATROL- 1360 JOHNSON BLVD., SUITE 100, SOUTH LAKE TAHOE, CA 96150

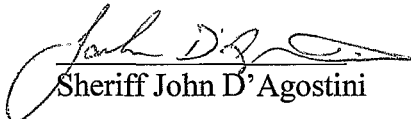
Because of your actions as described herein, the trust that the public, the Sheriff's Office, co-workers, and the County place in you as a Correctional Officer has been significantly harmed. If your behavior were ignored, minimized, or repeated, the harm to the Sheriff's Office and the County would be immense. Therefore, I have concluded that TERMINATION is the appropriate level of discipline for this offense.

Pursuant to Section 1206.1 (d) of the County of El Dorado Personnel Rules (PR) 048-13, you may review the material upon which this action is based. Attached for your information are copies of:

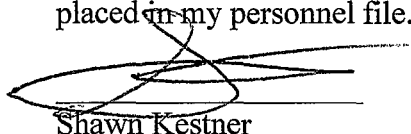
1. Internal Affairs Investigation 14-01 with attachments
2. County of El Dorado Personnel Rules (PR) 048-13, Part 12, Section 1203
3. El Dorado County Sheriff's Office Policy Manual Sections 340.3.5 (d), (e), (g), (m), (o), (p), (aa), (ab), (ad) and 1026.1 (i)

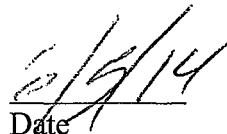
Pursuant to the County of El Dorado Personnel Rules (PR) 048-13, Section 1208, you have the right to appeal this action. Such appeal must be in writing—through Human Resources, 330 Fair Lane, Placerville, CA 95667—to the Civil Service Commission, within ten (10) working days from receipt of this notice as acknowledged by your signature below. Employees who do not wish to appeal but who wish to make a statement regarding the Notice of Decision may have a written response or statement entered into their personnel file.

Sincerely,


Sheriff John D'Agostini

Without agreeing or admitting to any of the statements above, I acknowledge receiving this Notice and the document listed as Attachments. I am aware this Notice shall be placed in my personnel file.


Shawn Kestner


Date

cc: Director of Human Resources

PART 12

DISCIPLINARY ACTIONS

1201. GENERAL. Disciplinary action with respect to any employee with post-probationary status in the classified service shall comply with these Rules and shall be reported to the Human Resources Department in the manner and on the forms prescribed.
1202. CONDUCT. All County employees are expected to render the best possible service that will reflect credit upon the County. The highest standard of conduct is essential to the proper operation of the County service. The County has the right and authority to establish work standards for all officers and employees. Any officer or employee may be dismissed, suspended or reduced in rank or compensation for cause.
1203. DISCIPLINE. The appointing authority may suspend without pay, reduce in pay, demote or dismiss any employee who has attained post-probationary status for reasonable cause, including but not limited to:
- (a) Absence without authorized leave;
 - (b) Conviction of any felony or criminal act involving moral turpitude, or accepting a plea of *nolo contendere* to any felony or criminal act involving moral turpitude;
 - (c) On-duty or off-duty conduct, including without limitation crimes that do not fall within subsection (b) above, that (i) tends to bring the County service into disrepute, or (ii) is a direct hindrance to the effective performance of County functions;
 - (d) Disorderly or immoral conduct;
 - (e) Incompetence or inefficiency;
 - (f) Insubordination or willful disobedience;
 - (g) Being at work under the influence of intoxicating beverages, non-prescribed narcotics or drugs; carrying onto County premises any such substance; or consuming or using any such substance or misusing any prescribed drugs during work hours and/or on County premises;
 - (h) Being under the influence of intoxicating beverages, non-prescribed narcotics or drugs in any public place while wearing or displaying clothing, badges, or insignia identifying the employee as a County employee;
 - (i) Neglect of duty;
 - (j) Violation of any lawful or reasonable regulation or order given by a supervisor or department head;
 - (k) Violation of any of the provisions of applicable law, these Rules or County policies;

- (l) Material and intentional misrepresentation or concealment of any fact in connection with obtaining employment;
- (m) Failure to obtain or maintain a current license or certification required as a condition of employment;
- (n) Misappropriation of County funds;
- (o) Unreasonable failure or refusal to undergo any physical, medical and/or psychiatric exam and/or treatment authorized by these Rules;
- (p) Dishonesty or theft;
- (q) Violation of the County's Code of Ethics;
- (r) Acceptance of any bribe, gratuity, kickback, or other item of value when the item is given in the hope or expectation of receiving preferential treatment;
- (s) Excessive or unexcused absenteeism and/or tardiness;
- (t) Discourteous treatment of the public or other employees;
- (u) Disregard of a departmental or County policy or statutes regarding the confidentiality of records;
- (v) Negligence or willful damage to public property, or waste, theft or unauthorized use of public supplies or equipment;
- (w) Sick leave abuse;
- (x) Unlawful harassment or unlawful discrimination or retaliation against another employee, an applicant for employment, or anyone using County services; and
- (y) Any other conduct of equal gravity with the above.

1204. DISMISSAL OF PROBATIONARY EMPLOYEE. A probationary employee may be dismissed at any time during the probationary period without right of appeal or hearing, except as may otherwise be provided by law, ordinance or rule.

1205. DISMISSAL OF UNCLASSIFIED EMPLOYEE. An unclassified employee may be dismissed at any time without right of appeal or hearing except as may otherwise be provided by law, ordinance or rule.

1206. PRE-DISCIPLINE (SKELLY) REQUIREMENTS.

1206.1 Notice of Intent to Discipline (Skelly Notice). Except as otherwise expressly provided in these Rules, before taking action to suspend without pay, reduce in pay, demote or dismiss an employee, the appointing authority or his or her designee shall (i) consult with the Human Resources Department on the nature of the proposed discipline, and (ii) cause to be served on the employee

either personally or by mail to the employee's last known address a Notice of Intent to Discipline (NOI). The NOI shall contain the following:

- (a) The name and title of the initiator;
- (b) A statement of the action proposed to be taken;
- (c) A statement of the reason for the proposed action, including the acts or omissions alleged and grounds upon which the action is based and any rule or regulation claimed to be violated;
- (d) A copy of any written materials upon which the proposed action is based;
- (e) The date upon which the proposed action is to become effective;
- (f) A statement of the employee's right, prior to the effective date of the proposed action, to a meeting with a designated Skelly officer, at which time the employee will be afforded a reasonable opportunity to respond orally or in writing to the proposed action;
- (g) A statement of the employee's right to be accompanied by a representative of the employee's choice during the meeting;
- (h) A statement of the employee's rights to a hearing and appeal process; and
- (i) A statement that the employee has ten (10) working days to respond to the appointing authority either orally or in writing.

The initiator shall also serve a complete copy of the NOI, including all accompanying documentation, upon the Human Resources Department on or before the date on which service of the NOI is made upon the employee.

Service shall be deemed complete upon personal service or five (5) days after mailing.

Nothing in this Rule shall affect the ability of constitutional officers from operating their departments in accordance with California law.

- 1206.2 Employee Response. The employee upon whom a NOI has been served shall have at least ten (10) working days to respond to the Skelly officer either orally or in writing before the proposed action may be taken. Upon application and for good cause, the appointing authority may extend in writing the period to respond. Responses, if made, may be oral or in writing and shall be communicated to the Skelly officer at a reasonable time and place designated by the County. Any meeting pursuant to this Rule is not an evidentiary hearing.

If the employee's response is not communicated to the Skelly officer within ten (10) working days or at the time and place designated by the County, the right to respond will be deemed waived.

The Skelly officer shall consider the response, if any, of the employee in determining the propriety and nature of disciplinary action.

1207. SERVICE OF ORDER. Following any meeting held in accordance with Rule 1206 or presentation of the employee's written response to the Skelly officer, or any waiver of such response by the employee, the appointing authority may uphold, modify or revoke the proposed action. The appointing authority shall give written notice of the decision (NOD) to the employee, with a copy to the Human Resources Department. For post-probationary employees, the NOD shall contain a statement of the employee's hearing and appeal rights under Section 1208. The NOD shall be effective either upon personal service or deposit with the U.S. Postal Service.
1208. EMPLOYEE APPEALS FROM NOTICE OF DECISION. A post-probationary employee may, within ten (10) working days after service or mailing of the NOD, appeal in writing through the Director to the Civil Service Commission. Implementation of the action described in the NOD will not be stayed pending the outcome of this appeal. Employees who do not wish to appeal but who wish to make a statement regarding the NOD may have a written response or statement entered into their personnel file.

340.3.5 Performance

- (d) Concealing, attempting to conceal, removing, or destroying defective or incompetent work.
- (e) Disobedience or insubordination to constituted authorities, including refusal or deliberate failure to carry out or follow lawful directives and orders from any supervisor or person in position of authority.
- (g) Disparaging remarks or conduct concerning duly constituted authority to the extent that such conduct disrupts the efficiency of the Department or subverts the good order, efficiency and discipline of the Department or which would tend to discredit any member thereof.
- (m) Any knowing or negligent violation of the provisions of the department manual, operating procedures or other written directive of an authorized supervisor. Employees shall familiarize themselves with and be responsible for compliance with each of the above and the Department shall make each available to the employees.
- (o) Criminal, dishonest, infamous or disgraceful conduct adversely affecting the employee/employer relationship, whether on or off duty.
- (p) Failure to disclose, or misrepresenting material facts, or the making of any false or misleading statement on any application, examination form, or other official document, report or form, or during the course of any work related investigation.
- (aa) Any other on duty or off duty conduct which any employee knows or reasonably should know is unbecoming a member of the Department or which is contrary to good order, efficiency or morale, or which tends to reflect unfavorably upon the Department or its members.
- (ab) Any failure or refusal of an employee to properly perform the function and duties of an assigned position.
- (ad) Giving false or misleading statements, or misrepresenting or omitting material information to a supervisor, or other person in a position of authority, in connection with any investigation or in the reporting of any department-related business.

1020.6 Administrative Investigation of Complaint

- (i) All employees shall provide complete and truthful responses to questions posed during interviews.



JOHN D'AGOSTINI

SHERIFF - CORONER - PUBLIC ADMINISTRATOR
COUNTY OF EL DORADO
STATE OF CALIFORNIA

PERSONAL SERVICE

April 24, 2014

Shawn Kestner
Correctional Officer
300 Forni Road
Placerville, CA 95667

RE: NOTICE OF INTENT TO TERMINATE

Dear Officer Kestner,

This letter is to inform you that the Sheriff's Office intends to TERMINATE you from your employment as a Correctional Officer. This proposed action is to take effect June 7, 2014, at 5:00 p.m.

The basis of this action is due to violation of the County of El Dorado Personnel Rules (PR) 048-13, Part 12, Section 1203:

- (c) On-duty or off-duty conduct, including without limitation crimes that do not fall within subsection (b) above, that (i) tends to bring the County service into disrepute, or (ii) is a direct hindrance to the effective performance of County functions.
- (d) Disorderly or immoral conduct.
- (f) Insubordination or willful disobedience.
- (i) Neglect of duty.
- (j) Violation of any lawful or reasonable regulation or order given by a supervisor or department head.
- (k) Violation of any of the provisions of applicable law, these Rules or County Policies.
- (p) Dishonesty or theft.

"Serving El Dorado County Since 1850"

HEADQUARTERS- 300 FAIR LANE, PLACERVILLE, CA 95667
JAIL DIVISION- 300 FORNI ROAD, PLACERVILLE, CA 95667
TAHOE JAIL- 1051 AL TAHOE BLVD., SOUTH LAKE TAHOE, CA 96150
TAHOE PATROL- 1360 JOHNSON BLVD., SUITE 100, SOUTH LAKE TAHOE, CA 96150

(y) Any other conduct of equal gravity with the above.

In addition, there is sufficient evidence to conclude that you violated certain provisions of the El Dorado County Sheriff's Office Policy Manual, specifically:

340.3.5 Performance

(d) Concealing, attempting to conceal, removing, or destroying defective or incompetent work.

(e) Disobedience or insubordination to constituted authorities, including refusal or deliberate failure to carry out or follow lawful directives and orders from any supervisor or person in position of authority.

(g) Disparaging remarks or conduct concerning duly constituted authority to the extent that such conduct disrupts the efficiency of the Department or subverts the good order, efficiency and discipline of the Department or which would tend to discredit any member thereof.

(m) Any knowing or negligent violation of the provisions of the department manual, operating procedures or other written directive of an authorized supervisor. Employees shall familiarize themselves with and be responsible for compliance with each of the above and the Department shall make each available to the employees.

(o) Criminal, dishonest, infamous or disgraceful conduct adversely affecting the employee/employer relationship, whether on or off duty.

(p) Failure to disclose, or misrepresenting material facts, or the making of any false or misleading statement on any application, examination form, or other official document, report or form, or during the course of any work related investigation.

(aa) Any other on duty or off duty conduct which any employee knows or reasonably should know is unbecoming a member of the Department or which is contrary to good order, efficiency or morale, or which tends to reflect unfavorably upon the Department or its members.

(ab) Any failure or refusal of an employee to properly perform the function and duties of an assigned position.

(ad) Giving false or misleading statements, or misrepresenting or omitting material information to a supervisor, or other person in a position of authority, in connection with any investigation or in the reporting of any department-related business.

1020.6 Administrative Investigation of Complaint

(i) All employees shall provide complete and truthful responses to questions posed during interviews.

The facts underlying the proposed termination are as follows: on January 2, 2013, you were interviewed by Sergeant Falkenstein and Sergeant Murdoch in relation to a sexual harassment complaint in which you were a subject officer (IA12-25e). On this date you were given an admonishment prior to the interview which included the following policies on insubordination:

340.3.5 Performance

(c) Unsatisfactory work performance, including but not limited to, failure, incompetence, inefficiency or delay in performing and/or carrying out proper orders, work assignments or instructions of supervisors without reasonable and bona fide excuse.

(e) Disobedience or insubordination to constituted authorities, including refusal or deliberate failure to carry out or follow lawful directives and orders from any supervisor or person in position of authority.

(h) Knowingly making false, misleading or malicious statements that are reasonably calculated to harm or destroy the reputation, authority or official standing of the Department or members thereof.

After being advised of these sections you were asked if you understood to which you indicated, "yes."

You were also admonished on the following policies relating to dishonesty and untruthfulness.

340.3.5 Performance

(ac) Giving false or misleading statements, or misrepresenting or omitting material information to a supervisor, or other person in a position of authority, in connection with any investigation or in the reporting of any department related business.

1020.6 Administrative Investigation of Complaint

(i) All employees shall provide complete and truthful responses to questions posed during interviews.

After being advised of these sections you were asked if you understood to which you indicated, "yes."

You were also given a direct order to answer all the investigator(s) questions and answer them truthfully. After being ordered to answer all questions and tell the truth you were asked if you understood. You indicated, "yes."

You were then interviewed as to your involvement into the allegations of sexual harassment involving _____ and _____. During this interview you indicated you had a conversation with Correctional Officer _____ in which _____ asked you if you had heard the rumor that _____

Correctional Officer _____ was interviewed and denied ever having a conversation with you relating to sexual misconduct rumors between _____ and _____

You indicated during your interview that Correctional Officer _____ made a comment to you about _____ and _____ calling in sick on the same days or going home early on the same days.

Correctional Officer _____ was interviewed and denied making this comment to you.

You indicated during your interview that you had a conversation with Correctional Officer _____ relating to the sexual misconduct rumors between _____ and _____, although you could not remember the specifics.

Correctional Officer _____ denies ever speaking with you in regards to such rumors following up with the fact you two rarely work together.

You indicated during your interview that you had a conversation with Correctional Officer _____ relating to the sexual misconduct rumors between _____ and _____, although you could not remember the specifics.

Correctional Officer _____ denies the allegation by saying you can be "imaginative" and your allegation that you two exchanged information about the rumor is false and inaccurate.

You indicated during your interview that you had a conversation with Correctional Officer _____ relating to the sexual misconduct rumors between _____ and _____, although you could not remember the specifics.

Correctional Officer _____ denies the allegation that you and he had a conversation relating to the sexual misconduct rumors between _____ and _____ . Correctional Officer _____ states he does not involve himself in matters regarding rumors.

Individually, the conflicting statements between you and Correctional Officers _____ and _____ may not rise to the level of accusing you of being dishonest as by your own admission you had other confirmed conversations with correctional staff about the rumor between _____ and _____ over a period of time. However, based on the entirety of the investigation, it is my finding that you were intentionally being misleading in Internal Affairs Investigation (IA12-25e) to deflect some of the blame of your conduct onto others in an attempt to show everyone in the jail was aware of the rumor and speaking of it just as openly as yourself, thus showing your conduct was minimums. Doing so is in defiance to the order you were given during your admonishment prior to your interview. This defiance is an act of insubordination and is a violation of policy. Your attempt to place blame on others as a defense is unprofessional and unbecoming the standards for employees of the Sheriff's Office. Your misrepresentation of the facts as to what others may have said is unacceptable. Your actions are in violation of El Dorado County Personnel Rules (PR) 048-13, Part 12, Sections 1203 (c), (d), (f), (i), (j), (k), (p), (y), El Dorado County Sheriff's Office Policy Manual Sections 340.3.5 (d), (e), (g), (m), (o), (p), (aa), (ab), (ac) and 1020.6 (i).

You were again interviewed on February 26, 2014, by Sergeant Falkenstein and Sergeant Foxworthy relating to the allegations you gave dishonest statements during Internal Affairs Investigation IA12-25e. Prior to the interview you were given the following admonishment: You are ordered to give a complete and truthful statement to the investigator regarding this investigation. Do you understand? You indicated, "yes" that you understood this order.

You were told that Correctional Officer _____ denied making a statement to you about the relationship between _____ and _____ being sick on the same days and going home early on the same days. You changed your story stating you did not have a direct conversation with Correctional Officer _____ that she made the statement to a group of 5 to 6 other officers in your presence. You cannot remember who the other officers present were.

I find your statement in relation to Correctional Officer _____ involvement of spreading rumors to be untruthful. The fact that you gave two statements with differing facts is a concern. Your claim to remember when and where the conversation took place but your failure to remember those that could confirm or deny the conversation took place is suspicious.

You were told that Correctional Officer _____ denied having a conversation with you about rumors of a sexual nature involving _____ and _____ . You state you do not remember the specifics of the conversation but you

had several of them with Correctional Officer
direct conversation with Correctional Officer
people come and go.”

You were asked if you had a
You replied, “Probably I mean,

When Detention Aid was interviewed, he said he spoke to you and
about the rumor out of concern

I find your statement to be untruthful. Although it is believable there was a conversation
in which Detention Aid spread rumors while you and Correctional Officer
were present, your recollection of a separate conversation with is not.

You were told that Correctional Officer denied having a conversation with you
about rumors of a sexual nature involving and
.. You again say you had multiple conversations with Correctional Officer
but do not remember the locations or other persons involved that would lend
credibility to your statement.

I find your statement regarding Correctional Officer involvement of
spreading rumors to be untruthful.

You state you were speaking to Correctional Officer in which Correctional
Officer was present about the sexual rumors between
and .. In separate interviews, both officers deny
having this conversation with you. When confronted with a statement from IA12-25e in
which you claim Correctional Officer made relating to the rumors, you state that
statement could have been a false recollection but was adamant about Correctional
Officer involvement.

I find your statements relating to Correctional Officer involvement to be
untruthful. I find your initial statements as to Correctional Officer involvement
to be untruthful in which you describe as a “false recollection.”

Again, I find that individually, the conflicting statements would not rise to the level of
accusing you of being dishonest. However, based on the totality of the circumstances, I
find you to have been dishonest and insubordinate when answering direct questions from
Sergeant Falkenstein and Sergeant Murdoch during your interview in relation to Internal
Affairs Investigation IA12-25e. I also find you were dishonest and insubordinate when
answering direct questioning from Sergeant Falkenstein and Sergeant Foxworthy during
your interview in relation to Internal Affairs Investigation IA14-01. Your untruthfulness
is in defiance to direct orders given to you by sergeants to answer all questions
completely and truthfully. This act of defiance is an insubordinate act towards those in
authority. The fact that your untruthfulness falsely implicated others in wrongdoing is
unacceptable and adversely affects the working conditions between you, your supervisors
and peers. Your actions are in violation of El Dorado County Personnel Rules (PR) 048-
13, Part 12, Sections 1203 (c), (d), (f), (i), (j), (k), (p), (y), El Dorado County Sheriff’s

Office Policy Manual Sections 340.3.5 (d), (e), (g), (m), (o), (p), (aa), (ab), (ac) and 1020.6 (i).

You have a previous history of discipline which includes:

February 26, 2014: 3 day (36.75 hour) suspension for violation of the following:

El Dorado County Sheriff's Office Policy Manual sections: 329.2, 329.3, 340.3.2 (f), (k), 340.3.5 (c), (g), (h), (m), (o), (q), and (aa).

El Dorado County Policy Prohibiting Discrimination, Harassment and Retaliation sections: II, III (A), (C) and IV (C).

Because of your actions described herein, the trust the public, the Sheriff's Office, co-workers, and the County place in you as a Correctional Officer has been irreparably harmed. If your behavior were ignored, minimized, or repeated, the harm to the Sheriff's Office, and County would be immense. Therefore, I have concluded that TERMINATION is the appropriate level of discipline for this offense.

Pursuant to Section 1206.1 (d) of the County of El Dorado Personnel Rules (PR) 048-13, you may review the material upon which this action is based. Attached for your information are copies of:

1. IA14-01 with attachments
2. County of El Dorado Personnel Rules (PR) 048-13, Part 12, Section 1203
3. EDSO Policy 340.3.5 (d), (e), (g), (m), (o), (p), (aa), (ab), (ad) and 1026.1 (i)

You have the right to respond to Sheriff John D'Agostini, either orally or in writing if you believe this action is not appropriate. If you wish to respond in writing, Sheriff D'Agostini must receive your written response within ten (10) working days or by May 8, 2014 by 5:00 pm. Your written response should be addressed to Sheriff John D'Agostini, at 300 Fair Lane, Placerville, CA 95667.

If you wish to respond orally, you must call Sheriff John D'Agostini at (530) 621-6529 no later than May 8, 2014 by 5:00 pm to set up an appointment for your Skelly hearing.

If you do not take advantage of the above alternatives it will be assumed that you have waived the right to respond and your right to respond will be lost pursuant to El Dorado County Personnel Rule 1206.2. Any meeting pursuant this Rule is not an evidentiary hearing. Any response you present, verbally or in writing, will be considered before final action is taken.

Sincerely,



Captain Randy Peshon
Custody Division

Without agreeing or admitting to any of the statements above, I acknowledge receiving this Notice and the document listed as Attachments. I am aware this Notice shall be placed in my personnel file.



Correctional Officer Kestner

4-24-14

Date

cc: Human Resource Director

PART 12

DISCIPLINARY ACTIONS

1201. GENERAL. Disciplinary action with respect to any employee with post-probationary status in the classified service shall comply with these Rules and shall be reported to the Human Resources Department in the manner and on the forms prescribed.
1202. CONDUCT. All County employees are expected to render the best possible service that will reflect credit upon the County. The highest standard of conduct is essential to the proper operation of the County service. The County has the right and authority to establish work standards for all officers and employees. Any officer or employee may be dismissed, suspended or reduced in rank or compensation for cause.
1203. DISCIPLINE. The appointing authority may suspend without pay, reduce in pay, demote or dismiss any employee who has attained post-probationary status for reasonable cause, including but not limited to:
- (a) Absence without authorized leave;
 - (b) Conviction of any felony or criminal act involving moral turpitude, or accepting a plea of *nolo contendere* to any felony or criminal act involving moral turpitude;
 - (c) On-duty or off-duty conduct, including without limitation crimes that do not fall within subsection (b) above, that (i) tends to bring the County service into disrepute, or (ii) is a direct hindrance to the effective performance of County functions;
 - (d) Disorderly or immoral conduct;
 - (e) Incompetence or inefficiency;
 - (f) Insubordination or willful disobedience;
 - (g) Being at work under the influence of intoxicating beverages, non-prescribed narcotics or drugs; carrying onto County premises any such substance; or consuming or using any such substance or misusing any prescribed drugs during work hours and/or on County premises;
 - (h) Being under the influence of intoxicating beverages, non-prescribed narcotics or drugs in any public place while wearing or displaying clothing, badges, or insignia identifying the employee as a County employee;
 - (i) Neglect of duty;
 - (j) Violation of any lawful or reasonable regulation or order given by a supervisor or department head;
 - (k) Violation of any of the provisions of applicable law, these Rules or County policies;

340.3.5 Performance

- (d) Concealing, attempting to conceal, removing, or destroying defective or incompetent work.
- (e) Disobedience or insubordination to constituted authorities, including refusal or deliberate failure to carry out or follow lawful directives and orders from any supervisor or person in position of authority.
- (g) Disparaging remarks or conduct concerning duly constituted authority to the extent that such conduct disrupts the efficiency of the Department or subverts the good order, efficiency and discipline of the Department or which would tend to discredit any member thereof.
- (m) Any knowing or negligent violation of the provisions of the department manual, operating procedures or other written directive of an authorized supervisor. Employees shall familiarize themselves with and be responsible for compliance with each of the above and the Department shall make each available to the employees.
- (o) Criminal, dishonest, infamous or disgraceful conduct adversely affecting the employee/employer relationship, whether on or off duty.
- (p) Failure to disclose, or misrepresenting material facts, or the making of any false or misleading statement on any application, examination form, or other official document, report or form, or during the course of any work related investigation.
- (aa) Any other on duty or off duty conduct which any employee knows or reasonably should know is unbecoming a member of the Department or which is contrary to good order, efficiency or morale, or which tends to reflect unfavorably upon the Department or its members.
- (ab) Any failure or refusal of an employee to properly perform the function and duties of an assigned position.
- (ad) Giving false or misleading statements, or misrepresenting or omitting material information to a supervisor, or other person in a position of authority, in connection with any investigation or in the reporting of any department-related business.

1020.6 Administrative Investigation of Complaint

- (i) All employees shall provide complete and truthful responses to questions posed during interviews.

SHAWN KESTNER
2470 Augustine Lane
Placerville, CA 95667

May 19, 2014

COPY

Sheriff John D'Agostini
El Dorado County
300 Fair Lane Drive
Placerville, CA 95667

Subject: "Notice of Intent to Terminate" dated April 24, 2014

Dear Sheriff D'Agostini:

I would like to take this opportunity to share with you what type of person I am, how I came to be employed at the El Dorado County Sheriff's Department, my career to date and my position in regard to the "Notice of Intent to Terminate."

PERSONAL/PROFESSIONAL BACKGROUND

In the Spring of 2001, I applied for a Correctional Officer position with El Dorado County hoping to one day advance to Deputy. I was hired on September 22, 2001, which was one of my proudest moments. After a few years of working in the jail, I realized I enjoyed the position and planned to continue my career in the corrections field until retirement.

I am a ; enjoy and appreciate working in the safe and rural community of El Dorado County. My position with the El Dorado County Sheriff's officer provides I have ever dreamed for. This may sound corny, it reflects our appreciation and understanding of our circumstances and the life that we have here in El Dorado County.

We love the rural lifestyle of El Dorado County and have planned to spend the rest of our lives here.

Over the last 12 years, since 2001, I have served in the highest capacity at the El Dorado County Sheriff's Department. I have received a Letter of Commendation in 2010, multiple memorandums of appreciation, and nothing but positive performance evaluations, throughout my career.

RESPONSE TO THE NOTICE OF INTENT TO TERMINATE

During the interviews concerning IA12-25, I was completely honest, forthcoming and candid with the investigators. I admitted to speaking about the rumors I had heard. I did not deny that I spoke with coworkers about these rumors, continuing to admit and take responsibility for my actions throughout, up to and including at my Skelly conference with you in February of this year.

As it relates to that prior discipline and my response, it was never my intent to be malicious nor to cause harm. I realize and understand how my actions negatively impacted the department and my colleagues. I was disciplined accordingly and agreed and accepted the findings and discipline meted out as a result of my actions.

It was my hope that I would be able to accept responsibility, accept the discipline and move forward with the Department and become a better Correctional Officer as a result.

Unfortunately, my actions in that matter continue to haunt me. I have reviewed the "Notice of Intent to Terminate" dated April 24, 2014 several times and with an open mind to determine if I felt the charges were valid and if indeed I had done something wrong or was less than candid in the IA interviews. As I noted above, I was completely honest, forthcoming and candid with the investigators in all interviews. I do not agree with the charges, the facts used to support the charges, the conclusions drawn from those facts, nor the recommendation for termination.

I believe my willingness to admit my culpability previously to you and myself in this matter is representative of my personal and professional integrity and honesty.

The sustained findings of IA14-01 (Exhibit C) are solely based on my admitting to my behavior in inappropriately passing along unfounded rumors to colleagues, between August to November 2012, juxtaposed against the 2013-2014 interviews and recollections of C.O. C.O. C.O.
C.O. and C.O.

I feel the underlying facts and conclusions drawn from same as noted in the "Notice of Intent to Terminate" are incorrect and as such that the recommendation to terminate my employment is inappropriate. I would ask that you consider the following information:

STATEMENTS BY OR ABOUT CORRECTIONAL OFFICER

[Notice of Intent to Terminate, page 4]

*"... During this interview you indicated you had a conversation with Correctional Officer
in which asked you if you had heard the rumor*

Correctional Officer [redacted] was interviewed and denied ever having a conversation with you relating to sexual misconduct rumors between [redacted] and [redacted].

[Notice of Intent to Terminate, page 5]

You state you were speaking to Correctional Officer [redacted] in which Correctional Officer [redacted] was present about the sexual rumors between [redacted] and [redacted]. In separate interviews, both officers deny having this conversation with you. When confronted with a statement from IA12-25e in which you claim Correctional Officer [redacted] made relating to the rumors, you state that statement could have been a false recollection but was adamant about Correctional Officer [redacted] involvement.

I find your statements relating to Correctional Officer [redacted] involvement to be untruthful."

I stated that I believed it was Correctional Officer [redacted] who passed the rumor to me (Exhibit B, page 31, line 23). I also reported this to Sgt. [redacted]. Sgt. [redacted] stated that, "Officer Kestner is the first person she heard this from." Sgt. [redacted] also states, "Officer Kestner relayed it to me and that he had heard it from someone else." (Exhibit A, page 25).

Correctional Officer [redacted] states he heard the rumor from Officer Kestner, who had heard it from Officer [redacted] (Exhibit A, page 40). Officer [redacted] also states he heard the same exact rumor that same exact day from Correctional Officer [redacted] (Exhibit A, page 40). In my second interview I confirmed I have no doubt that I heard this rumor from Officer [redacted]. I also go on to give specific details regarding where we were and what we were doing (Exhibit C, Audio File Kestner, interview time stamp 36:56).

In regards to working and getting along with Kestner, [redacted] states, "there has been some stuff between him and I. Like our J numbers. I was actually here before him. He ranked higher, he wouldn't, he couldn't start for 20 days when I started and he gets to sign up, everything before I do and stuff and I have pushed the envelope and stuff and I know it's only one number but it has affected our sign up and stuff." (Exhibit C, Audio File [redacted] time stamp 19:15).

[redacted] also states, "What really upsets me is that he (Kestner) should go to the Captain and say, "You know [redacted] right. He should be in front of me." (Exhibit C, Audio File [redacted] interview time stamp 19:56). He then goes on to say, "I don't really care to work with him (Kestner)." (Exhibit C, Audio File [redacted] interview time stamp 20:20).

I reported these rumors to supervisors. C.O. [redacted] not only cannot or will not reveal any details about the rumors he admits to hearing, but he also admittedly makes no attempt to stop them or report them. I am senior to [redacted] (Exhibits F, G, and H) and he has had a problem with that since we started. His statements show he feels he has reasons to be upset with me and not care to work with me, which may disincline him to corroborate my statements.

Throughout, I did as I was ordered, answering the questions put to me in all interviews, honestly and to the best of my recollection.

STATEMENTS BY OR CONCERNING CORRECTIONAL OFFICER

[Notice of Intent to Terminate, page 4]

"... You indicated during your interview that Correctional Officer made a comment to you about and calling in sick on the same days or going home early on the same days.

Correctional Officer was interviewed and denied making this comment to you."

[Notice of Intent to Terminate, page 5]

"... You were told that Correctional Officer denied making a statement to you about the relationship between and being sick on the same days and going home early on the same days. You changed your story stating you did not have a direct conversation with Correctional Officer that she made that statement to a group of 5 to 6 other officer in your presence. You cannot remember who the other officer present were.

I find your statement in relating to Correctional Officer involvement of spreading rumors to be untruthful. The fact that you gave two statements with differing facts is a concern. Your claim to remember when and where the conversation took place but your failure to remember those that could confirm or deny the conversation too place is suspicious."

It is alleged my story changes regarding C.O. from interview to interview this is not correct. In my first interview I state, "One of the other people that I've heard make mention of or say something – um- Officer has said it's funny that they call in sick on the same days and go home early on the same days." (Exhibit B, page 16, line 13).

I then state in the second IA interview, "I did not actually have a conversation with Officer To the best of my recollection there was a brief contact at shift change in Control Tower 1." I explained that Officer came into the tower to drop off keys. While dropping off the keys Officer made a statement that and call in sick and leave early on the same days. The contact lasted for 30 seconds to a minute. There were several people in the room but I could not remember who specifically. I also state I did not have a direct one-on-one conversation with Officer (Exhibit C, page 29).

I did not change my story during my second interview. In fact it was only during my second interview (Exhibit C, Audio File Kestner, time stamp 1:26) that I was asked to elaborate and to provide detail regarding C.O. statement.

Throughout, I did as I was ordered, answering the questions put to me in all interviews, honestly and to the best of my recollection.

STATEMENTS BY OR ABOUT CORRECTIONAL OFFICER

[Notice of Intent to Terminate, page 4]

"... You indicated during your interview that you had a conversation with Correctional Officer [redacted] relating to the sexual misconduct rumors between [redacted] and [redacted], although you could not remember the specifics.

Correctional Officer [redacted] denies ever speaking with you in regards to such rumors following up with the fact you two rarely work together."

[Notice of Intent to Terminate, page 5]

"... You state you were speaking to Correctional Officer [redacted] in which Correctional Officer [redacted] was present about the sexual rumors between [redacted] and [redacted]. In separate interviews, both officers deny having this conversation with you. When confronted with a statement from IA12-25e in which you claim Correctional Officer [redacted] made relating to the rumors, you state that statement could have been a false recollection but was adamant about Correctional Officer [redacted] involvement.

... I find your initial statements as to Correctional Officer [redacted] involvement to be untruthful in which you describe as a "false recollection."

C.O. [redacted] was interviewed on January 8, 2014, and during the interview she stated she worked for [redacted] from September 2012 until January 2013 (Exhibit C, page 22). When asked if she had heard rumors about [redacted] and [redacted] she stated she first heard the rumor from [redacted] on December 12, 2012, which was the day she returned from being off for one month, [redacted], and the day [redacted] was escorted out of the jail (Exhibit C, pages 22-23).

On December 6, 2012, C.O. [redacted] was interviewed and stated he had heard a rumor about [redacted] and [redacted] being in a relationship and sleeping together. [redacted] states he heard the rumor from numerous employees and added, "I am pretty sure everyone on the shift has spoken to me about it. So, just say every Officer I've heard it from except [redacted] and [redacted]." [redacted] states he last heard the rumor approximately a month prior (early November 2012) and believed he first heard the rumor in mid-October 2012 (Exhibit A, page 17).

On December 6, 2012, C.O. [redacted] was interviewed and stated he has heard other officers speaking about the rumor. However, he could not remember specifically what was said about the rumor but stated, "I can't really remember. I can tell you it's been like bits and pieces throughout the jail, you know, so it's pretty much been everybody, you know." C.O. [redacted] stated the rumor had been going around the jail for a couple of months (Exhibit A, page 19).

On December 6, 2012, C.O. [redacted] was interviewed and stated he had heard the rumor two or three times. He also stated he remembers C.O. [redacted] being present in C-1 on one occasion when the rumor was being spoken about. C.O. [redacted] stated C.O. [redacted] asked him if he had heard the rumor. He told her no. C.O. [redacted] then stated something to the effect of "apparently they are having an affair." C.O. [redacted] gave him no further details (Exhibit A, pages 20-21).

On December 6, 2012, C.O. was interviewed and states that had discussed the rumors during briefing. This was about the time the rumors were first coming out and she told everyone that they were, "bullshit," (Exhibit A, page 27).

On January 2, 2013, C.O. was interviewed and states he has heard people speaking about the rumor in the locker room and in briefing. said that briefed us on the rumor, told everyone, "there was a rumor that was going around about her and somebody else were in a relationship, and she assured everybody that it wasn't true and that it was only rumor." C.O. stated that all the members on his shift were present at the briefing (Exhibit A, page 41).

On January 2, 2013, was interviewed and stated he had heard the rumor from, "pretty much everyone on his shift." also stated he did not know where the rumor started, but that C.O. C.O. and C.O. are who he suspects of spreading the rumor. believes this because when he asked other people who they heard the rumor from; it always comes back to one of those three people (Exhibit A, pages 44-45).

Based on the six statements above, "everyone" was aware of the rumors. Correctional Officer even claims that he first heard the rumors from C.O. This shows knew the rumor before 12-12-12 in contradiction of her statement. C.O. statement also shows I was not intentionally misleading during my Internal Affairs Investigation when I said, " has mentioned suspicion or rumor of them," even though I could not recall detail (Exhibit B, page 23, line 4).

Throughout, I did as I was ordered, answering the questions put to me in all interviews, honestly and to the best of my recollection.

STATEMENTS BY OR CONCERNING CORRECTIONAL OFFICER

[Notice of Intent to Terminate, page 4]

"... You indicated during your interview that you had a conversation with Correctional Officer relating to the sexual misconduct rumors between and , although you could not remember the specifics.

Correctional Officer denies the allegation by saying you can be "imaginative" and your allegation that you two exchanged information about the rumor is false and inaccurate."

[Notice of Intent to Terminate, page 5]

"... You were told that Correctional Officer denied having a conversation with you about rumors of a sexual nature involving and

You state you do not remember the specifics of the conversation but you had several of them with Correctional Officer you were asked if you had a direct conversation with Correctional Officer you replied, "Probably I mean, people come and go."

When Detention Aid was interviewed, he said he spoke to you and about the rumor out of concern

I find your statement to be untruthful. Although it is believable there was a conversation in which Detention Aid spread rumors while you and Correctional Officer were present, your recollection of a separate conversation with is not."

C.O. was interviewed on February 4, 2014. C.O. was interviewed because of my claims of having had conversations with him.

C.O. stated, "He believes sometime around November of 2012, he was approached by multiple correctional officers who believed was showing favoritism to . (Exhibit C page 25). He also goes on to say, "Sometime after hearing the allegations of favoritism there was rumor of and being in a sexual relationship," however, he could not remember where he heard the rumor (Exhibit C, page 25). Detention Aid admitted to telling C.O. the rumor, "I opened my big mouth." Detention Aid stated that he was in Tower Three when he told the rumor to Officer Kestner and Officer

C.O. acknowledges knowing about the rumors, and when asked if he did anything to stop the rumors he does not say no. He instead states, "I didn't participate in them." (Exhibit C, Audio File time stamp 8:46).

Detention Aid states that he believes that Officer Kestner reported the rumor to Lieutenant Lane as soon as he heard it (Exhibit A, page 38). Lieutenant Lane's documentation supports belief (Exhibit A, page 12).

The quotes from both Correctional Officer and Detention Aid support statements that I made and further show I answered the questions put to me honestly.

Throughout, I did as I was ordered, answering the questions put to me in all interviews, honestly and to the best of my recollection.

STATEMENTS BY OR ABOUT CORRECTIONAL OFFICER

[Notice of Intent to Terminate, page 4]

You indicated during your interview that you had a conversation with Correctional Officer relating to the sexual misconduct rumors between and , although you could not remember the specifics.

Correctional Officer denies the allegation that you and he had a conversation relating to the sexual misconduct rumors between and Correctional Officer states he does not involve himself in matters regarding rumors."

[Notice of Intent to Terminate, page 5]

". . . You were told that Correctional Officer denied having a conversation with you about rumors of a sexual nature involving and You again say you had multiple conversations with Correctional Officer but do

not remember the locations or other persons involved that would lend credibility to your statement.

I find your statement regarding Correctional Officer _____ involvement of spreading rumors to be untruthful."

I am still unable to recall specific conversations with C.O. _____ regarding the rumors concerning _____ and _____. However, I am sure that we had conversations about _____ and _____ as well as other issues that were occurring in the jail because C.O. _____ is a union steward responsible for attending labor meetings, and reporting labor related issues to upper management on behalf of coworkers.

C.O. _____ and I have had conversations about different subjects that we think are a problem or could become a problem. Please review Exhibits D and E, which document a conversation and its reporting between _____ and I regarding a personnel issue.

Throughout, I did as I was ordered, answering the questions put to me in all interviews, honestly and to the best of my recollection.

CONCLUSION AND CHARGES

[Notice of Intent to Terminate, page 5]

Individually, the conflicting statements between you and Correctional Officers _____ may not rise to the level of accusing you of being dishonest as by your own admission you had other confirmed conversations with correctional staff about the rumor between _____ and _____ over a period of time . . .

. . . However based on the entirety of the investigation, it is my finding that you were intentionally being misleading in Internal Affairs Investigation (IA12-25e) to deflect some of the blame of your conduct onto others in an attempt to show everyone in the jail was aware of the rumor and speaking of it just as openly as yourself, thus showing your conduct was minimums . .

. . . Doing so is in defiance to the order you were given during your admonishment prior to your interview. This defiance is an act of insubordination and is a violation of policy. Your attempt to place blame on others as a defense is unprofessional and unbecoming the standards for employees of the Sheriff's Office. Your misrepresentation of the facts as to what others may have said is unacceptable . . .

. . . Again, I find that individually, the conflicting statements would not rise to the level of accusing you of being dishonest. However, based on the totality of the circumstances, I find you to have been dishonest and insubordinate when answering direct questions from Sergeant _____ Falkenstein and Sergeant Murdoch during your interview in relation to Internal Affairs Investigation IA12-25e. I also find you were dishonest and insubordinate when answering direct

questioning from Sergeant Falkenstein and Sergeant Foxworthy during your interview in relation to Internal Affairs Investigation IA 14-01. Your untruthfulness is in defiance to direct orders given to you by sergeants to answer all questions completely and truthfully."

I believe that the conclusions drawn in this matter are incorrect. Throughout this unfortunate matter, I did as I was ordered, answering the questions put to me in all interviews, honestly and to the best of my ability and recollections of events.

MITIGATING FACTORS

It has been brought to my attention before, during and after each of my interviews by my Union Representative that my interviewing skills were lacking, and that I needed to be more focused and direct when answering questions. In listening to the audio recordings of my interviews, my poor testimonial skills are evident. My statements are hard to follow.

After a recent IA interview, my Union Representative asked _____, I advised him that in fact I _____ around sixth or seventh grade and

This may explain how I appointed myself in these interviews; interviews which, understandably, caused me to be anxious and apprehensive.

IN CLOSING

Sheriff D'Agostini, I am asking that you consider this information and take into account that these five correctional officers we're not interviewed for 18 month or more after these rumors occurred. I was as forthcoming as my memory allowed in all of my interviews. You can see from the statements above every officer involved had knowledge but lacked recollection or the desire to give specific detail.

At no time throughout these interviews was it my intent to neither mislead nor be untruthful to the investigators, quite the opposite. In fact, my being as candid and forthcoming in trying to answer the questions put to me, may have put me in the current position I find myself. My attempts to "talk-through" my answers and recollect what happened, may have given the appearance of dishonesty.

I sincerely apologize for my involvement in this entire situation. I would again like to highlight that I had no desire to hurt nor degrade anyone.

Throughout, I did as I was ordered, answering the questions put to me in all interviews, honestly and to the best of my recollection.

If after reviewing this investigation and my statements you still feel that discipline is warranted, please consider a less drastic form of discipline such as a suspension without pay, a reduction in pay, or a demotion to a lower position.

Sheriff John D'Agostini

May 19, 2014

Page 10 of 10

I believe that I am a valuable employee to the El Dorado Sheriff's Department, that I can be a positive member of the team, and that I have many more years of professional, honest service to give to the Department and the County.

Thank you for your thoughtful consideration of my case.

Sincerely,

A handwritten signature in black ink, appearing to read 'SHAWN KESTNER', with a long horizontal line extending to the right.

SHAWN KESTNER

Correctional Officer

El Dorado County Sheriff's Department

Enclosures: Exhibits A-H
 Sheriff's Letter of Commendation
 Miscellaneous Memorandums of Good Job Performance
 Kestner Employee Evaluations from 9/2001 through October 4, 2013

cc: OE3 Business Representative Gregory Ramirez