

IDAHO PERSONNEL COMMISSION  
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**IDAHO PERSONNEL COMMISSION**

**STATE OF IDAHO**

TRACEY DOYLE	)	
	)	
	)	
Petitioner/Appellant,	)	IPC NO. 03-01
	)	
vs.	)	DECISION AND ORDER
	)	ON PETITION FOR REVIEW
DEPARTMENT OF HEALTH AND WELFARE,	)	
	)	
Respondent.	)	
_____	)	

THIS MATTER CAME FOR HEARING ON PETITION FOR REVIEW on October 19, 2004. Appellant Tracey Doyle (“Doyle” or “Appellant”) was represented by Michael B. Schwarzkopf. Respondent Idaho Department of Health and Welfare (“Department”) was represented by Melissa Vandenberg. The petition for review involves the hearing officer’s decision dated August 19, 2003 upholding the Department’s termination of Doyle. We affirm.

**I.**  
**BACKGROUND AND PRIOR PROCEEDINGS**

**A. Course of Proceedings.**

On December 19, 2002, the Department terminated the employment of Appellant Tracey Doyle by letter signed by R. Scott Cunningham of the Division of Welfare. On

January 6, 2003, the Idaho Personnel Commission received a letter from Tracey Doyle appealing her termination (the “Appeal”). The Idaho Personnel Commission referred the Appeal to the Hearing Officer on January 7, 2003.

After several prehearing conferences in the first part of 2003, a hearing was conducted over four days- May 29-30 and June 6 and 10, 2003 with testimony from fifteen (15) witnesses and admittance of numerous exhibits. On August 19, 2003, the Hearing Officer entered his Preliminary Order and Decision (“Order”) ultimately upholding the Department’s termination of Doyle. Doyle filed a Petition for Review on September 23, 2003 with the Commission alleging errors of law and fact. On December 24, 2003, the Commission issued a *Request for Hearing Transcript* to Doyle pursuant to old DHR Rule 202.04<sup>1</sup>. Doyle responded with a *Motion to Extend Transcript Deadline or Have the State Transcribe the Record in the Alternative* on February 13, 2004. On March 4, 2004, the Commission issued an *Order Granting Appellant’s Motion to Extend Transcript Deadline*, to May 3, 2004, but denied Doyle’s request that the Commission (State) incur the cost of the transcript preparation.

On May 3, 2004, Doyle filed an Amended Petition for Review, “based solely upon . . . errors of law made by the Hearing Officer”, thereby raising no factual issues for review and alleviating the need for a hearing transcript pursuant to DHR Rule 202.04.

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<sup>1</sup> DHR recently promulgated many changes to the rules during Legislative Session 2004. These revised rules went into effect at the close of the session on or about March 20, 2004. However, for purposes of this appeal, the old DHR rules apply to this appeal. DHR Rule 202.04 was unchanged.

**B. Facts.**

**1. Doyle's Employment in Region IV.**

At the time in question in this matter Tracey Doyle was employed as a Self Reliance Specialist with the Department. Doyle worked in Region IV, in Boise, and dealt with benefit eligibility issues. The benefit program deals with food stamps, childcare subsidies, aid to the aged, blind and disabled and Medicaid eligibility. Doyle managed a caseload of 140-200 cases. She had worked for the Department for eight years when her employment was terminated in December 2002.

**2. Lien Incident**

**a) Child Support Case.**

Department child support services (CSS) deals with the collection, receipting and distribution of child support to custodial parents. CSS is also Idaho's child support enforcement agency, which locates absent parents, establishes paternity, and conducts other enforcement activities such as license suspensions.

Doyle is married to an individual who will be referred to in this decision as Father. Father and his ex-wife, who will be referred to as Mother, have a son, who will be referred to as Son. At some point Mother applied for and received a child support order from the State of California requiring Father to pay Mother for the support of Son. When Father moved to Idaho, CSS began enforcing California's child support order.

Because Father was married to Doyle, Mother and Father's child support case was re-assigned from Region IV where Doyle worked. Department of Health and Welfare Policy No. U20 provides:

A conflict case is a case that should not be worked in the regional office. Employees of the regional child support office are restricted from accessing, working, or otherwise managing any child support case in which they may have a conflict of interest.

Policy U20.1, Ex. 89. A conflict of interest “involves an employee of a region who is related to, or is a party to a case that is managed in the employee’s region.” U20.1.1, Ex. 89. Because of this policy, Mother and Father’s child support case was originally transferred by CSS to Region I, in Coeur d’Alene, in 1999, and then to Region III, in Caldwell, in February 2001.

The existence of the conflict of interest within Region IV with Mother and Father’s child support case was flagged on the Idaho Child Support Enforcement System (ICES) computer screens to ensure that workers accessing the case would be aware of the conflict. ICES is the computer information system used by CSS to monitor and manage child support enforcement cases. All activity on a child support case by CSS workers is required to be described, or “narrated,” on ICES.

During the time period that Doyle and Father have been married, the child support case between Father and Mother was extremely difficult to manage. Son has moved between Mother’s home in California and Father’s home in Idaho several times. During the time period Son resided with Father, current child support should not have been owed to Mother. Idaho often continued to collect support from the Father, however, because the child support order from California remained in place. CSS could not modify California’s child support orders, it was simply required to enforce them. Father had to go through an extensive process with California to end this child support obligation. When Son moved back to Mother, and back to Father again, the whole process would repeat.

Father also owed an arrearage to the State of California for child support he previously failed to pay to Mother. The amount of this arrearage is disputed, based upon the calculation of interest attached to the arrearage and amounts Father allegedly owed for periods when Son was in his custody. As part of its child support enforcement duties, on November 6, 1998, CSS placed a lien on Doyle and Father's house to secure approximately \$8000.00 Father owed to the State of California. At that time the house was held in the name of both Doyle and Father.

Doyle was understandably upset by the complications of Father's child support case, and Son's movements between Father and Mother's homes. During the period from 1998 to 2002 Doyle became quite used to talking with Region IV personnel regarding Father and Mother's child support case. Doyle had conversations with co-workers in Region IV both in group settings and individually regarding Father's child-support case. She discussed it with her immediate supervisor, Loretta Williams. Doyle had informal conversation with Randy Woods, her overall supervisor. He told her to work through California authorities to resolve any problems.

Doyle knew that Father and Mother's child support case was a conflict case assigned outside Region IV. However, in addition to working with Regions I and III, Doyle talked to child support enforcement workers in Region IV for advice regarding dealing with the State of California on both the custody issues and the arrearage issues. Region IV personnel became comfortable talking with Doyle regarding Father and Mother's child support case. If Region III workers were not available, Doyle would talk with Region IV child support enforcement personnel. A Deputy Attorney General also assisted Doyle and Father in their dealings with the State of California.

Region IV child support enforcement personnel even accessed Father and Mother's case on one occasion and entered changes based upon information they received from Doyle. Doyle at one point told Diana Stewart, a self reliance specialist in child support enforcement, that Father was on unemployment. Ms. Stewart updated ISCES to ensure that child support was withheld from his unemployment payments. Kim Lafferty, a co-supervisor in Region III, wrote the narrative in ISCES regarding this action by Region IV. This action by Ms. Stewart benefited CSS in its efforts to collect child support from Father.

**b) Region III Activities On Lien.**

In September 2002 Doyle and Father decided to re-finance the loan on their house, to which the child support enforcement lien attached. Father had been laid off and was unemployed. With proceeds from the re-finance, approximately \$2000.00, they could pay off their credit card debt and have funds for upcoming activities such as Christmas.

Ms Doyle and Father applied with First Horizon Home Loans for the refinancing. As part of that application Doyle signed a document entitled "Borrower's Certification & Authorization," which among other things allowed the release of information to First Horizon Home Loans and the title insurance company. Ex. 5. Father did not sign this document.

On Friday, October 4, 2002, Title One, the title insurance company in the refinance, called Region III about subordinating the child support enforcement lien on Doyle and Father's home to the re-finance loan. An alert was posted on ISCES to have a CSS worker return the title company's call. Ex. 6. A Region III CSS caseworker

returned this call on Monday, October 7, 2002. Ex. 7. The Region III worker left a message with Title One that an information release signed by either Father or Mother was needed before Region III could even talk to Title One about the case. Ex. 7. Typically, to release child support information to a title or mortgage company, or anyone else besides the parties to a child support case, a release needs to be signed by either the custodial or non-custodial parent and given to the Department.

Title One followed up on Region III's October 7 message on October 8 by faxing the "Borrower's Certification & Authorization," signed by Tracey Doyle, to Region III. Region III left another message on October 8 with Title One indicating that Doyle was neither the custodial or non-custodial parent and they could not release the information. A final phone exchange occurred on October 8 between Region III and Title One, Title One again indicating that it needed the lien information for a subordination to take place. Region III was again unable to respond because it had not received an information release signed by either Father or Mother. Ex. 8.

Neither Doyle nor Father attempted to call Region III regarding the lien and Title One's concerns. See Ex. 8. No evidence was presented at the hearing before the Hearing Officer that Doyle was ever authorized by either Father or Mother to access their case file or release information from that file to third parties. Region III would not allow Doyle access to Father and Mother's child support case without such authorization.

On Wednesday, October 9, 2002, a Region III caseworker made a follow up phone call with Title One regarding subordination of the lien. Title One indicated that subordination was no longer necessary. The lien on Doyle and Father's home had been released by a caseworker in Region IV.

Region III would not have released the child support lien on Doyle and Father's home. Department of Health and Welfare policy 7.10 provides the circumstances when a child support lien will be released:

- The underlying judgment no longer being valid.
- The lien being identified as filed in error.
- The non-assistance case closes and no arrears are owed to the state.
- The youngest child turning 23 years old, except on out-of-state orders filed as a lien in Idaho, the lien would remain in place until the statute of limitations of the state that issued the order expires, full faith and credit under UIFSA.
- CSS is closing a case which has an active lien.

Exhibit 90. None of these circumstances were present in the Father and Mother's case on October 7 – 9, 2002.

**c) Region IV Activities On Lien.**

On Monday, October 7, 2002 Title One apparently contacted Doyle around 5:00 p.m. and informed her that they were having difficulties obtaining information from Region III regarding the child support lien. Doyle approached a CSS caseworker in Region IV who primarily worked on paternity establishment cases, Karen Dyas, and asked her what the problem was. Ms. Dyas pulled up the ISCES screens on Father and Mother's case. After her review she could not identify what the problem was. Being late in the day, Doyle did not go any further in her attempt to find out what the problem was.

Sometime early on Tuesday, October 8, 2002, Doyle approached Diana Stewart, a child support services worker in Region IV at her cubicle. Ms. Stewart's cubicle was located in the same Region IV building as Doyle, but in a different area. Doyle told Ms.

Stewart that she had been trying to get the lien released for a week in Region III, and Region III was not responding to the title insurance company.

Instead of contacting Region III, Doyle wanted to see if Region IV could do something. Doyle was frustrated and talking fast, because it was taking so long and she felt, although she did not attempt to contact Region III, that nobody in Region III was doing anything to help her resolve the lien. Doyle indicated to Ms. Stewart that she was going to pay off a credit card bill with refinance proceeds; that Father was on unemployment; and they could not otherwise afford to pay off the credit card.

In an attempt to help Doyle and her family expeditiously refinance their home Ms. Stewart told Doyle that she could release the lien. Doyle asked Ms. Stewart if she would get into any trouble by releasing the lien. Ms. Stewart told her “No” and warned Doyle that the lien would automatically re-attach and Father may have to pay additional interest. Doyle indicated to Ms. Stewart that it was okay for her to proceed to release the lien. Doyle was standing at Diana Stewart’s cubicle when the lien was released. Doyle was happy about the removal of the lien.

There was a conflict in the testimony whether Doyle approached Diana Stewart and expressly asked her to remove the lien. Department of Health and Welfare witnesses testified that Doyle told them in a meeting on October 28, 2002, that she asked Ms. Stewart to release the lien. In later meetings and in her testimony Doyle stated she never specifically requested Ms. Stewart to release the lien. Ms. Stewart first testified, under examination by the Department of Health and Welfare that she could not remember whether Doyle asked her to remove the lien. Ms. Stewart then testified, under examination by Doyle, that Doyle did not ask her to remove the lien. In any event, if by

nothing more than her silent acquiescence, standing by while Ms. Stewart told her that she could and would remove the lien, Doyle authorized Ms. Stewart to remove the lien in Father and Mother's child support case. The circumstances certainly compelled the Hearing Officer to find that Doyle could have stopped the lien removal at any time before it was completed. *Preliminary Decision and Order*, p. 15.

Ms. Stewart released the lien on October 8, 2002. On that date she signed a letter to Father indicating that this had been done. Ex. 4. This letter was faxed to Title One so the re-finance could proceed. Title One in turn faxed this letter to Region IV on October 9, 2003. Ex. 8.

**d) Policies of the Department of Health and Welfare.**

There are specific conflict policies within Region IV of the Department for CSS workers, such as Diana Stewart, working on CSS cases and Benefits workers, such as Doyle, working on Benefits cases. Ex. 89 and 75, respectively. The Department has no specific policy dealing with Doyle's actions in the present case.

The Department does have general policy 2.H.2. addressing conflicts of interest in its employee handbook:

Any activity performed in the course of employment that might have the appearance of impropriety or preferential treatment of family or relatives, significant other, etc. is prohibited.

Ex. 92, p. 4, Sec. 2H2. Private Interest. This policy was available to Doyle on the Department of Welfare infonet in October 2002 and as mentioned was contained in the employee handbook. The infonet is an online, internal information system available to all employees. Department employees, including Doyle, received training on conflicts of interest as a standard part of their initial training. Doyle's supervisor, Ms. Williams,

noted in Doyle's 1999 and 2000 evaluations, also acknowledged by signature by Doyle, that Doyle was aware of the Department's policy on conflict of interest actions. Exhibits 72-73.

The imposition of discipline for violations of the Department of Health and Welfare's conflict policy is not mandatory. Tammy Payne, the former Deputy Administrator of the Self Reliance Program, Division of Welfare of the Department of Health and Welfare, testified that in a situation where a conflict of interest violation occurs, the Department retains discretion to conduct an investigation and impose discipline depending on the circumstances.

**e) Outcome for Lien**

Within 2 days after the release of the lien Father and Doyle separately executed quitclaim deeds on October 10 and 11, 2002, respectively, transferring their individual interest in the house to Doyle as her separate property. Ex. 18 and 19. Doyle's testimony was that she did not remember signing the quitclaim deed at closing, although her signature is on the deed. Ex. 19. The execution of the quitclaim deeds within two days following the release of the child support lien extinguished any interest Father had in the house.

When Region III learned that Diana Stewart had released the lien on Doyle and Father's house attempts were made to re-attach the lien. As of June 1, 2003, the child support lien had not been re-established, and the Department lost its priority date of November 6, 1998.

### C. **Procedural History**

After the Department discovered that the lien on Doyle and Father's house had been released by a Region IV child support worker, the Department instituted an investigation into Doyle's actions. Following the investigation R. Scott Cunningham of the Department issued a Notice of Contemplated Disciplinary Action to Doyle on November 22, 2002, notifying her that the Department was contemplating taking disciplinary action against her. The November 22 Notice cited IDAPA 15.04.01.190.01.e (hereinafter "IPC Rule 190.01e.") as the basis for the contemplated action:

Insubordination or conduct unbecoming a state employee or conduct detrimental to good order and discipline in the Department.

The November 22 Notice also alleged violation of the Department of Health and Welfare Conflict of Interest Policy, section 2H2 and described the facts surrounding the lien incident discussed above in Finding of Fact, Section B.2. The November 22 Notice further alleged instances of unsatisfactory performance by Doyle since 1999 and, in summary, stated that Doyle's supervisors met with her many times to discuss and direct the need for sustained change in her conduct in the workplace. Doyle was given until November 29, 2002 to respond in person or in writing.

Doyle, with her representative, Andrew Hanhardt, responded to the November 22 Notice at meetings with R. Scott Cunningham and others on December 11 and 17, 2002. After considering Doyle's response, the Department issued the letter imposing a disciplinary dismissal on December 19, 2002 (the "December 19 termination letter").

In his Preliminary Decision and Order, the Hearing Officer found that the Department had not shown that Doyle violated IPC Rule 190.01e. by her alleged

instances of unsatisfactory performance since 1999. *Preliminary Decision and Order* pp. 22-23. This ruling was not appealed to the Commission.

With respect to the lien incident, while finding that the Department did not prove insubordination under IPC Rule 190.01e. (not appealed to Commission), the Hearing Officer held that the Department proved that Doyle's actions constituted (1) conduct unbecoming a State employee and (2) conduct detrimental to good order and discipline in the Department, both in violation of IPC Rule 190.01e. *Preliminary Decision and Order*, pp. 19-21. Therefore, the Hearing Officer upheld the Department's termination of Doyle. Doyle timely appealed to the Commission.

## II.

### ISSUES<sup>2</sup>

1. **Do the factual findings made by the Hearing Officer with respect to Appellant's conduct in this case amount, as a matter of law, to a violation of IPC Rule 190.01e.?**
2. **Did the Hearing Officer err, as a matter of law, in refusing to admit Appellant's Exhibit 109?**

## III.

### STANDARD OF REVIEW

The standard of review on disciplinary appeals to the Commission is as follows:

When a matter is appealed to the Idaho Personnel Commission it is initially assigned to a Hearing Officer. I.C. § 67-5316(3). The Hearing Officer conducts a full evidentiary hearing and may allow motion and discovery practice before entering a decision containing findings of fact and conclusions of law. In cases involving Rule 190 discipline, the state must prove its case by a preponderance of the evidence. IDAPA 29.01.01.201.06. That is, the burden of proof is on the state to show that at least one of the proper cause reasons for dismissal, as listed in I.C. § 67-

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<sup>2</sup> Appellant's Petition for Review is limited to issues of law. The Hearing Officer's findings of fact are not challenged and therefore, the thrust of the appeal is whether the unchallenged findings of fact, as discussed above, support Appellant's termination as a matter of law.

5309(n) and IDAPA 28.01.01.190.01, exist by a preponderance of the evidence.

On a petition for review to the Idaho Personnel Commission, the Commission reviews the record, transcript, and briefs submitted by the parties. Findings of fact must be supported by substantial, competent evidence. *Hansen v. Idaho Dep't of Correction*, IPC No. 94-42 (December 15, 1995). We exercise free review over issues of law. The Commission may affirm, reverse, or modify the decision of the Hearing Officer, may remand the matter, or may dismiss it for lack of jurisdiction. I.C. § 67-5317(1).

*Soong v. Idaho Dep't of Welfare*, IPC No. 94-03 (February 21, 1996), *aff'd*, 132 Idaho 166, 968 P.2d 261 (Ct. App. 1998).

#### **IV. DISCUSSION**

##### **A. Appellant's Conduct with Respect to the Lien Incident, as Found by the Hearing Officer, Constituted Violation of IPC Rule 190.01e.**

Doyle argues that what the Hearing Officer factually found she had done, in relation to the lien incident did not, as a matter of law, amount to a violation of IPC Rule 190.01e. This is an issue of law upon which the Commission exercises free review.

##### **1. Appellant's conduct constituted conduct unbecoming a State employee in violation of IPC Rule 190.01e.**

The Hearing Officer found, as a matter of law that the Department had proven by a preponderance of the evidence that Doyle engaged in conduct unbecoming a State employee in violation of IDAPA 15.04.01.190.01.e during the lien incident. The Commission agrees. The pertinent facts, undisputed on appeal to the Commission, support such a finding. Doyle knew that Father and Mother's child support case was a conflict case assigned to Department of Health and Welfare Region III. A conflict case connotation is meant to ensure that an arms-length relationship between the CSS caseworkers and persons interested in a child support case is maintained. Doyle was

aware of the importance of the Department conflict of interest policies and the purpose therefore. She had received training on conflicts of interest, and Doyle's 1999 and 2000 performance evaluations signed by Doyle indicate her understanding and awareness of those policies.

The Hearing Officer, in his Preliminary Decision and Order, while noting that Doyle was aware of IDHW conflict of interest policies did not specifically find that Doyle violated Policy 2.H.2., nor did he specifically find any such violation as basis for finding Doyle violated Rule 190.01e. Rather, the Hearing Officer found that Doyle used her relationship as a regional co-worker of Ms. Stewart to have Ms. Stewart access Father's child support case in order to release the lien on Doyle and Father's house on Doyle's behalf. *Preliminary Decision and Order*, p. 20. Ms. Stewart's action, with Doyle's complete instigation, acquiescence and approval, violated Department Policy U20, of which both were aware. In essence, the Hearing Officer found that Doyle used her position as a Department employee for her private benefit and to the detriment of her employer. *Id.* at 21. The Commission agrees with the Hearing Officer.

Doyle's conduct with respect to her husband's child support case destroyed this arms-length relationship intended by Policy U20 and resulted in the complete release of the lien on the house to Doyle's private benefit. This would not have occurred in Region III if the arms-length relationship of the conflict case policy (Policy U20) had been maintained.

Instead, as the Hearing Officer found, Doyle had become accustomed to using the informal goodwill among colleagues in Region IV to work on Father and Mother's child support case. No evidence was presented to show that Doyle had ever been formally

granted access to Father and Mother's child support case. Nonetheless, Department of Health and Welfare personnel and attorneys provided information on Father and Mother's case to Doyle and Region IV personnel even accessed Father and Mother's case and entered changes based upon information received from Doyle on a particular occasion. In that instance, as found by the Hearing Officer, Ms. Stewart of Region IV updated ISCES to ensure child support was withheld from Father's unemployment payments and the narrative was written up by Kim Lafferty, a co-supervisor in Region III.

Of course, this action, which technically appears to violate Policy U20, actually benefited CSS in its efforts to collect child support from Father. That access and other informal goodwill discussion and aid may evidence a wider, long-term violation of the CSS conflict of interest policy on child support cases (Policy U20) within the Department with Doyle.

However, contrary to Doyle's assertion on petition for review, any prior potential policy violations and the fact they went undisciplined does not evidence condonation or ratification of Doyle's actions or excuse Doyle for taking advantage of those relationships in the lien incident to attain a private benefit directly detrimental to the Department and the State of California. There is no evidence that the informal goodwill discussions and aid provided (not elaborated upon in the Hearing Officer's decision) and the access of Father's case file to provide for collection of child support on his unemployment payments accomplished any private benefit to Doyle or a private benefit to anyone else and to the detriment of the State of Idaho. Nor is there any evidence that this access and informal goodwill discussions ever resulted in the State of Idaho's being placed in a

position of potential liability as has resulted from the releasing of the lien on the house. Certainly, in no event, could the prior informal goodwill among colleagues, even if evidencing violation of CSS conflict of interest policy U20, be construed as condoning and allowing Doyle's actions in this case, as she asserts. The use by an individual of her status as a state employee to bypass or lessen the State's procedural safeguards for private benefit, in a way not available to other citizens, is an insidious and enticing course for all state employees, and one that Doyle chose to take.

The fact of the matter is that on October 8, 2002, Doyle used her relationship as a regional co-worker of Ms. Stewart to have Ms. Stewart access Father and Mother's child support case on Doyle's behalf. Doyle knew the child support case was a conflict case assigned to Region III. Yet, Doyle did not contact Region III, she went straight to a colleague. Further, Doyle used her relationship as a regional co-worker of Ms. Stewart to have Ms. Stewart release the lien on Doyle and Father's house. Doyle told Ms. Stewart of her family's need to refinance the loan and happily stood by while Ms. Stewart released the lien in violation of Department policy. Previous informal and improper contacts of this nature within Region IV may have resulted in no harm to the child support case, and may have even redounded to the benefit of enforcing the child support obligation. In the lien incident Doyle's informal and improper activities injured enforcement of the child support owed in Father and Mother's child support case while providing a significant private benefit.

Releasing the lien allowed someone, whether it was Doyle and Father, Title One, or First Horizon Home Loans, to structure the quitclaim deed exchange that extinguished Father's interest in the house and stymied efforts to re-attach the child support lien.

Doyle used her position as a Department employee for her private benefit and to the detriment of her employer, the State of Idaho. Doyle's conduct violated what a reasonable person would consider acceptable conduct by a State employee and constitutes conduct unbecoming a state employee in violation of Rule 190.01e.

**2. Appellant's conduct constituted conduct detrimental to good order and discipline in the Department in violation of IPC Rule 190.01e.**

The Hearing Officer also found that IDHW had shown by a preponderance of the evidence that Doyle engaged in conduct detrimental to good order and discipline in the Department in violation of IDAPA 15.04.01.190.01.e during the lien incident. The Commission agrees with the Hearing Officer. As has been previously discussed, Doyle approached her colleague in Region IV, Diana Stewart, in order to access Father and Mother's child support case. Doyle then allowed Ms. Stewart to release the lien on Doyle and Father's house on Doyle's behalf and for her private benefit. Both Doyle and Ms. Stewart also knew that this was a conflict case assigned to Region III.

Doyle's actions and acquiescence in Stewart's actions resulted in Ms. Stewart's violation of the Department's conflict of interest policy U20 for child support cases. Ex. 101, 102 and 103. Further, Doyle's actions in having the lien released has exposed IDHW to potential liability with respect to the State of California's interest in the released lien. It is clearly "conduct which is detrimental to good order and discipline in the Department" in violation of IPC Rule 190.01e.

**3. IDHW Policy 2.H.2.- Vagueness and Lack of Notice**

On petition for review to the Commission, Doyle asserts that the Department Policy 2.H.2. is vague, thus giving her no notice as to what was prohibited. Doyle also asserts the Department didn't show that she had been notified of the policy and that the

Hearing Officer didn't so conclude she had been notified, and, therefore, she was improperly disciplined for violation of the same. However, in raising these issues on petition for review to the Commission, Doyle misinterprets the Hearing Officer's holding concerning the Rule 190.01e violations.

As discussed above, the Hearing Officer, in his Preliminary Decision and Order, did not specifically find that Doyle violated Policy 2.H.2., nor did he specifically find any such violation as basis for finding Doyle violated Rule 190.01e. Rather, the Hearing Officer found that Doyle used her relationship as a regional co-worker of Ms. Stewart to have Ms. Stewart access Father's child support case in order to release the lien on Doyle and Father's house on Doyle's behalf. *Id. at 20.* Ms. Stewart's action, with Doyle's complete instigation, acquiescence and approval, violated Department Policy U20, of which both were aware. In essence, the Hearing Officer found that Doyle used her position as a Department employee for her private benefit and to the detriment of her employer and correctly found this to be conduct unbecoming a state employee as well as conduct detrimental to good order and discipline in the Department in violation of Rule 190.01e. *Id. at 21.*

Regardless, even if the Hearing Officer had found that Doyle's actions concerning the lien incident violated Policy 2.H.2., and that such violation of Policy 2.H.2. also constituted conduct unbecoming a state employee, Doyle's claims of vagueness and lack of notice with respect to Policy 2.H.2. lack merit.

First, as discussed above, the Hearing Officer did find that "Doyle was aware of the importance of the Department of Health and Welfare conflict of interest policies". *Preliminary Decision and Order*, p. 19. He also found that she received training on

conflicts of interest and Doyle's performance evaluations for 1999-2000 made specific mention (ratified by Doyle's signature to the evaluations) of her understanding and awareness of Department policy on conflict of interest actions. *Id.* at 16.

Further, Policy 2.H.2. is not unconstitutionally vague. It is well settled that a statute violates due process on vagueness grounds (void for vagueness) where it forbids or requires doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application. *Doe v. Doe*, 138 Idaho 893, 893, 71 P.3d 1040, 1050 (2003); *Capital Care Center v. Idaho Dep't of Welfare*, 129 Idaho 773, 776, 932 P.2d 896, 899 (1997) (citations omitted); *Bingham Memorial Hospital v. Idaho Dep't of Health and Welfare*, 112 Idaho 1094, 1095, 739 P.2d 393, 394 (1987) (quoting *Wyckoff v. Board of County Commissioners of Ada County*, 101 Idaho 12, 15, 607 P.2d 1066, 1069 (1980)). However, it is also well settled that if "persons of reasonable intelligence can derive core meaning" from a civil statute, it is not unconstitutionally vague. *Doe* at 1050 (quoting *Olsen v. J.A. Freeman Co.*, 117 Idaho 706, 716, 791 P.2d 1285, 1295 (1990)). This tenet of statutory construction has been applied to agency policies as well. *See Allen v. Lewis-Clark State College*, 105 Idaho 447, 455-56, 670 P.2d 854, 862-63 (1983).

Applying this analysis, the Commission finds Policy 2.H.2. clear enough that "persons of reasonable intelligence can derive core meaning" from it. Policy 2.H.2. prohibits "[a]ny activity performed in the course of employment that might have the appearance of impropriety or preferential treatment of family or relatives, significant other, etc." On its face, persons of reasonable intelligence can discern what activity is prohibited. People of common intelligence should not have to guess whether an action or

activity performed in course of employment would provide or appear to provide preferential treatment to a family member or relative. “Impropriety” is commonly defined as an improper act. *See Webster’s Collegiate Dictionary, 10<sup>th</sup> Edition*, p. 585 (defining “impropriety” as “the quality or state of being improper”). Policy 2.H.2. is sufficient to put a reasonable person in Doyle’s position and circumstance on notice that her actions were improper and certainly provided prohibited preferential treatment to a family member, and were prohibited --particularly recognizing that Doyle received training on conflicts of interest and had so acknowledged her understanding on performance evaluations.

**B. The Hearing Officer did not err in refusing to admit Appellant’s Exhibit 109.**

Doyle asserts it was prejudicial error for the Hearing Officer to exclude what she deems “self-authenticating” e-mails introduced as Exhibit 109 at the hearing before the Hearing Officer. Doyle contends the emails illustrate the corrective actions taken by the Department after the fact and are relevant to show that the conflict “rules” (policies) were not enforced before her termination. *Memorandum in Support of Appellant’s Exceptions to the Preliminary Decision and Order*, p. 15.

Evidentiary matters before the Commission are governed by Idaho Code § 67-5251 and IDAPA 04.11.01.600. The statute provides in relevant part:

- (1) The presiding officer may exclude evidence that is irrelevant, unduly repetitious, or excludable on constitutional or statutory grounds or on the basis of any evidentiary privilege provided by statute or recognized in the courts of this state. All other evidence may be admitted if it is of a type commonly relied upon by prudent persons in the conduct of their affairs.

Idaho Code § 67-5251. Similar language is found in IDAPA 04.11.01.600:

Evidence should be taken by the agency to assist the parties' development of the record, not excluded to frustrate that development. The presiding officer at hearing is not bound by the Idaho Rules of Evidence . . . . The presiding officer, with or without objection, may exclude evidence that is irrelevant, unduly repetitious, inadmissible on constitutional or statutory grounds, or on the basis of any evidentiary privilege provided by statute or recognized in the courts of Idaho. All other evidence may be admitted if it is of a type commonly relied upon by prudent persons in the conduct of their affairs.

The Hearing Officer excluded the document for lack of relevance and because it was not a document prudent persons would rely upon in the conduct of their affairs:

This document was excluded on June 10, 2003, for which no recording exists. The document was excluded for lack of relevance and because it was not a document prudent persons would rely upon in the conduct of their affairs. The document was dated after the events in question occurred. Further, the proponent of the document, Andrew Hanhardt, testified that it was slipped under the door of his office and provided no additional (sic) authentication. There was no testimony regarding who the individuals named in the document were, whether they developed the document, or what the purpose of the document was.

*Preliminary Order and Decision*, p. 7, n.2.

The Hearing Officer did not err in excluding the e-mails. The e-mails contained in Exhibit 109 are not self-authenticating and on its face, it certainly is not evident how they are relevant to the issue of whether Doyle's actions constituted violation of IPC Rule 190.01e. Further, Doyle did not lay proper foundation for the exhibit's admittance at the hearing. The individuals named in Exhibit 109 were not called to testify regarding Exhibit 109's creation, or to explain who they were and why it was created. Nor was there any testimony offered to place the e-mails in context or provide testimony as to the purpose of the e-mails in order to show relevance. Exhibit 109 was simply offered into evidence without proper authentication and without foundation or context and lacking these elements, the Hearing Officer did not err in finding that Exhibit 109 was irrelevant

and was not a document “prudent persons would rely upon in the conduct of their affairs”. I.C. § 67-5251; IDAPA 04.11.01.600.

It is true that the Hearing Officer could have taken a more liberal approach regarding the admissibility of Exhibit 109. Such an approach is common in administrative proceedings and in Commission proceedings where the rules of evidence are not strictly applied. However, the Hearing Officer’s exclusion of Exhibit 109, even if erroneous (and this Commission does not so find) does not constitute prejudicial error. As discussed, Doyle asserts the emails contained in Exhibit 109 show that the Department took corrective actions following the lien incident involved in this case and demonstrate that the Department conflict of interest policies were not always followed. *Memorandum in Support of Appellant’s Exceptions to the Preliminary Decision and Order*, p. 15. Therefore, Doyle asserts she should not have been disciplined for her actions in the lien incident.

Even had Exhibit 109 been admitted and even if Exhibit 109 was shown to prove what Doyle asserts it does, the Commission’s decision is not influenced. Prior potential policy violations and the fact they went undisciplined simply does not evidence condonation or ratification of Doyle’s actions or excuse her for her actions in the lien incident. *See* p. 16-17, *supra*. The Hearing Officer recognized this as well. *Preliminary Decision and Order*, p. 20, lines 9-23. Further, any corrective action taken (as Exhibit 109 was offered to show) certainly does not evidence Department ratification of Doyle’s self-serving actions, relating to the lien incident. Therefore, even if the Hearing Officer erred in excluding Exhibit 109 (and the Commission does not so find) it constitutes harmless error.

**V.**

**CONCLUSION**

Based on the foregoing, the Commission affirms the decision of the Hearing Officer upholding the Department's termination of Doyle. Based on the unchallenged factual findings of the Hearing Officer, Doyle's conduct constituted conduct unbecoming a state employee and conduct detrimental to the good order and discipline of the Department in violation of IPC Rule 190.01e. The Commission declines to consider the issue set forth in Appellant's Amended Petition for Review, p.3, paragraph 5 (whether the Hearing Officer's Pre Hearing Order, limiting Appellant's ability to receive back pay as a discovery sanction, was in error) because Doyle's termination is hereby affirmed and thus, no backpay is awarded.

**VI.**

**STATEMENT OF APPEAL RIGHTS**

Either party may appeal this decision to the District Court. A notice of appeal must be filed in the District Court within forty-two (42) days of the filing of this decision. Idaho Code § 67-5317(3). The District Court has the power to affirm, or set aside and remand the matter to the Commission upon the following grounds, and shall not set the same aside on any other grounds:

- (1) That the findings of fact are not based on any substantial, competent evidence;
- (2) That the commission has acted without jurisdiction or in excess of its powers;
- (3) That the findings of fact by the commission do not as a matter of law support the decision. Idaho Code § 67-5318.

DATED this \_\_\_\_ day of November, 2004.

BY ORDER OF THE  
IDAHO PERSONNEL COMMISSION

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Mike Brassey, Commission Chair

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Don Miller, Commissioner

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Pete Black, Commissioner

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered to the following parties by the method stated below on this \_\_\_\_ day of November, 2004.

### FIRST CLASS MAIL

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Laurie L. Jilbert  
Secretary to the Idaho Personnel Commission