



**Stephanie Y. O'Malley**  
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September 4, 2015

Desiree Archuleta, S07016  
Deputy Sheriff  
Downtown Division  
Denver Sheriff Department

Re: DSD IAB Case #S2014-0278

Deputy Archuleta:

This is official notification that, after an independent review by the Office of the Executive Director of the Department of Safety, you are being suspended without pay for ten (10) days (80 hours). Your ten (10) day suspension will begin on September 14, 2015 through and inclusive of September 25, 2015. You may return to work on September 25, 2015 at 1445 hours to complete the remainder of your shift, or use your own time. You are required to turn in your identification card to the Internal Affairs Bureau at the end of your last day of duty preceding this suspension. During this suspension, you are not authorized to work for the City and County of Denver or to enter its facilities other than to conduct personal business. This suspension is for misconduct that violated the Career Service Rules set forth below and is discussed more fully in the section of this letter entitled Departmental Determinations of Discipline (pgs. 6- 11).

**Career Service Rule 16-60 Discipline and Dismissal:**

The following may be cause for discipline or dismissal of a Career Service employee:

- A. Neglect of Duty.
- J. Failure to comply with the lawful orders of an authorized supervisor or failing to do assigned work which the employee is capable of performing.
- L. Failure to observe written departmental or agency regulations, policies or rules.

**As it pertains to:**

**Denver Sheriff Departmental Rules and Regulations**

**PREAMBLE**

Deputies shall obey all Departmental rules, regulations, duties, procedures, instructions, and orders; the provisions of the Operations Manual; Mayor's Executive Orders; and Rules of the Career Service Authority. Failure to comply with any of these shall be construed as a violation. Members in violation shall be subject to disciplinary action. The following provisions of conduct shall be construed as a rule violation of the Operations Manual and Directives and Orders of the Denver Sheriff Department, but not by way of limitation.

**RR-200.9 – Full Attention to Duties**

Deputy Sheriffs and employees shall devote their full attention to their duties in accordance with the policies and procedures of their assigned post.

Under the DSD disciplinary matrix, a violation of DSD Rule 200.9 is a Conduct Category A through F violation.

**RR-300.11.6 – Conduct Prejudicial**

Deputy Sheriffs and employees shall not engage in conduct prejudicial to the good order and effectiveness of the Department or conduct that brings disrepute on or compromises the integrity of the City or the Department or conduct unbecoming which:

- a) May or may not specifically be set forth in Departmental rules and regulations or the Operations Manual; or
- b) Causes harm greater than would reasonably be expected to result, regardless of whether the misconduct is specifically set forth in Department rules and regulations or the Operations Manual.

Under the DSD disciplinary matrix, a violation of DSD Rule 300.11.6 is a Conduct Category A through F violation.

**RR-300.19.1 – Disobedience of Rule**

Deputy Sheriffs and employees shall not violate any lawful Departmental rule (including CSA rules), duty, procedure, policy, directive, instruction, order (including Mayor's Executive Orders), or Operations Manual section.

**As it pertains to:**

Department Order 2710.1E – Employee Use of Cellular and Land Line Phones

...

2. Policy: It is the policy of the Denver Sheriff Department that all employees working in a Denver City and County employee capacity, including contracted employees, who use publicly and privately purchased communication devices during the course of their daily assigned duties follow any rules and procedures applying to such usage. ...

...

5. Implementation:

...

- C. Personal Cell Phones: Personal cell phones are considered to be cellular phones not issued through the City or Department.

1. Denver Sheriff employees shall not use a personal cell phone while on duty, nor use or have in their possession a cell phone inside any secure area of DSD jail facilities or in any secure area where a prisoner is or may be detained under the direct control of the Department without prior authorization and express permission of the Director of Corrections and Undersheriff or designee.

2. It is the responsibility of each employee to know and follow the guidelines in this order and his/her divisional procedures regarding the use of personal cell phones on Department time. Abuse of this privilege may result in corrective action, up to and including dismissal.

6. Accountability:

...

- B. It is the responsibility of each employee to know and follow the guidelines in this order and his/her divisional procedures regarding the use of personal cell phones on Department time. Failure to do so may result in corrective action, up to and including dismissal.

Under the DSD disciplinary matrix, a violation of DSD Rule 300.19.1 is a Conduct Category A through F violation.

- Z. Conduct prejudicial to the good order and effectiveness of the Department or agency, or conduct that brings disrepute on or compromises the integrity of the City.

**PRE-DISCIPLINARY MEETING**

You were served with a pre-disciplinary letter regarding this matter on July 29, 2015. A pre-disciplinary meeting was held on August 20, 2015, at approximately 10:00 am, in the Denver Sheriff Department (DSD) Downtown Detention Center (DDC) administrative conference room, located at 490 West Colfax Avenue, Denver, Colorado.

The purpose of this meeting was to allow you to correct any errors in the Agency's information or facts, to tell your side of the story, and to present any mitigating information as to why possible disciplinary action should not be taken against you. Present at this meeting was Sheriff Elias Diggins and Division Chief Venessie Brown. Present from the Internal Affairs Bureau (IAB) was Major Jodi Blair. Present from the Conduct Review Office (CRO) was Sergeant Jerry Sherrod, Rose Ceja-Aragon, Luis Lipchak, and Ms. Rachelle Wright. Present from the Executive Director of Safety's Office was Ms. Shannon Elwell. Present from the Office of the Independent Monitor was Mr. Gregg Crittenden. Present from the City Attorney's Office was Ms. Jennifer Jacobson. You attended this meeting with Mr. David Goddard as your attorney.

The pre-disciplinary meeting was transcribed and is contained in the IAB file, incorporated by reference herein. You and your attorney also provided emails that were sent after the incident that your attorney argued attempted to correct some widely-held confusion among staff, as well as two letters of commendation. A summary of the pre-disciplinary meeting follows.

You made a brief statement that began with an admission that you violated a department order. You also stated, however, that you had the understanding that deputies were permitted to use their cell phones at the courthouse for a number of reasons. You also stated that such use was common practice. You further apologized that you put the safety of the persons in the courtroom at risk by allowing yourself to be distracted by your cell phone. You admitted that "it [using your cell phone] caused a distraction and something bad could have happened that day, but I thank God it didn't." You stated that you deeply regretted your actions and you're thankful nothing happened. You stated that you have learned from this case by making yourself a better deputy, being more aware of your surroundings, and taking extra precautions, which has made your courtroom safer than it was on the date of this incident. You concluded by stating that there are plenty of distractions that occur in a courtroom daily, and on the date of this incident, you made a poor choice by adding another distraction to that mix.

Your attorney then made a statement on your behalf which advanced the position that you understood the significance of your conduct and took full responsibility for this serious matter. Your attorney also highlighted your background and advanced arguments concerning potential issues in the case.

Sheriff Diggins then had some questions for you. Sheriff Diggins asked you if you were aware that, on the date of the incident, your courtroom was trying a murder case, and you stated that you were. Sheriff Diggins then asked if you would consider a murder trial to be something that is of a higher security risk for a deputy assigned to that courtroom, and you stated yes, that you would consider it a serious, high risk. Sheriff Diggins then asked you if you understood why your use of a cell phone during that assignment, and not paying attention to your duties because of it, was considered a serious risk to herself, the public, and the inmate. You stated that you understood that it was a serious risk, but then said that you had had previous encounters with the inmate and his family that lead you to be overconfident in your relationships you had built and the calmness of the courtroom as a result of those relationships. You admitted that, even given that, however, you had made a mistake, and you understood why your behavior was of serious concern to the agency.

Ms. Elwell asked you if you had submitted all of your awards and commendations to IAB for consideration, and you stated that you had.

The meeting then concluded with a commitment to return a response to you within fifteen days.

**Your previous discipline includes:**

<u>Date/Served</u>	<u>Type of Violation</u>	<u>Discipline Imposed</u>
09/16/08	Violation of Sick Leave Policy	Verbal Reprimand
05/14/08	Carelessness in Performance of Duties (Vehicle Accident)	Verbal Reprimand

The Department has concern regarding your ability to act responsibly and to conduct yourself appropriately while on duty. Your conduct has been in violation of the Department's policies and procedures. There is an immediate need for improvement in this area. Further rule violations shall be dealt with appropriately.

Please be advised that you may appeal the discipline imposed and these determinations in accordance with Career Service Rule 19, Appeals. You may also initiate dispute resolution pursuant to Career Service Rule 18, Dispute Resolution. Please note that pursuing dispute resolution does not toll your time for filing an appeal.

Finally, please be reminded that you are not to take any retaliatory action against anyone as a result of this disciplinary action. If any such action is taken, further discipline may be contemplated and taken, up to and including dismissal.

Sincerely,



Shannon Elwell  
Civilian Review Administrator

cc: Career Service Authority, Records Management Division  
IAB File  
Administration

## **DEPARTMENTAL DETERMINATIONS OF DISCIPLINE**

Deputy Sheriff Desiree Archuleta, S07016  
S2014-0278

After a thorough review of the DSD Internal Affairs Bureau (IAB) investigation, the Executive Director of the Department of Safety's Office has made the following findings of fact and determinations of discipline.

### **SUMMARY OF FACTS**

The preponderance of evidence establishes the following summary of the facts and circumstances surrounding the conduct upon which discipline is being imposed.

Deputy Archuleta has been employed as a Deputy Sheriff with the Denver Sheriff Department (DSD) for approximately 7 years. On July 31, 2014, Deputy Archuleta's assignment was with Court Services at the Downtown Division. Her main job duties, as reflected in the DSD Mission, are to "provide safety and security for the community by ensuring care, custody, transportation, and re-entry services for detainees by operating safe, secure, efficient, and humane facilities that adhere to federal, state, and local laws."

On July 31, 2014, Deputy Archuleta was assigned to the Lindsey-Flanigan Courthouse (LFC) courtroom 4H, where an in-custody murder trial was being conducted. Inmate ML was on trial for murder and was restrained by a leg brace.<sup>1</sup> During the trial, Deputy Archuleta was observed by both her sergeant as well as the presiding judge using her personal cell phone as well as another electronic device. Deputy Archuleta's conduct in this matter was subsequently investigated by DSD IAB for potential rule violations. The entire investigative file has been reviewed, including but not limited to surveillance video footage, audio interviews, and relevant paperwork.

On July 31, 2014, when Sergeant Phil Swift was doing his rounds, he looked through a window into courtroom 4H from the vestibule area and he could not see Deputy Archuleta in the courtroom. Sergeant Swift entered courtroom 4H to check on Deputy Archuleta. He was unable to immediately locate Deputy Archuleta upon entering the courtroom, but eventually observed Deputy Archuleta sitting to the left of the main entrance in the public seating area, approximately two rows from the back. Sergeant Swift observed Deputy Archuleta with a cell phone on one leg and another electronic device on the other leg. Sergeant Swift stood at the door to the courtroom waiting for Deputy Archuleta to notice him, and observing Deputy Archuleta's behavior. While doing so, Sergeant Swift observed Deputy Archuleta texting on one phone and scrolling through what appeared to be photographs on the other electronic device. Sergeant Swift also received a look from the presiding judge, indicating that the judge was aware of Deputy Archuleta's behavior. Sergeant Swift also observed both the defendant's and the victim's families in the courtroom, and characterized the security situation as "this is as bad as it gets." Approximately four minutes passed before Sergeant Swift approached Deputy Archuleta and spoke to her. When he did so, Deputy Archuleta was so startled that she dropped one of the electronic devices. Sergeant Swift told Deputy Archuleta to put the devices away and then he walked out of the courtroom. After leaving the courtroom, Sergeant Swift had Deputy Archuleta relieved from her assignment, as he needed to ensure that the person assigned to the

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<sup>1</sup> The inmate is referred to by his initials.

courtroom was able to pay attention to their surroundings and to the trial. Sergeant Swift subsequently assigned another deputy sheriff to Deputy Archuleta's post.

Surveillance video footage from courtroom 4H on the date of the incident shows Deputy Archuleta seated in the rear of the courtroom, in public seating, two rows from the back. During this time, the murder trial is going on, the jury is seated in the jury box, the judge is on the bench, and a witness is on the stand. Also, inmate ML is seated in the courtroom. For most of the time shown on the video footage, Deputy Archuleta remains seated in the back with her head down. A review of the surveillance video footage shows that Deputy Archuleta is not paying attention for approximately fifteen minutes.

Deputy Archuleta was interviewed by DSD IAB and admitted that, during the incident, she had one cell phone that worked and another that she was using as a day planner, and that she was looking at her calendar. Deputy Archuleta further admitted to using her phone to visit various websites on the internet.

Based on the review of the record, a preponderance of the evidence establishes the following acts of misconduct in violation of the following departmental rules and policies.

#### **ANALYSIS AND CONCLUSIONS**

**Career Service Rules 16-60 A, Neglect of Duty; J, Failure to comply with the lawful orders of an authorized supervisor or failing to do assigned work which the employee is capable of performing; L, Failure to observe written departmental or agency regulations, policies or rules, as it pertains to DSD RR-200.9 – Full Attention to Duties, and as it pertains to 300.19.1, Disobedience of Rule, as it pertains to Department Order 2710.1E**

As a deputy assigned to courtroom 4H during a murder trial, Deputy Archuleta violated these Career Service Rules and the above Departmental Rule when she failed to pay full attention to her duty to provide for the overall security of the courtroom and its occupants by using her personal cell phone and electronic device while on duty and in the presence of an in-custody inmate on trial for murder. Video surveillance footage shows Deputy Archuleta seated in the rear of the courtroom during the murder trial and in the presence of an in-custody inmate. Other persons in the room include jurors, witnesses, attorneys, the judge, and members of the public, including members of the families of both the victim and the defendant. For approximately fifteen minutes, Deputy Archuleta is observed with her head mostly down, her attention diverted from her primary duties for an extended period of time. By her own admission, Deputy Archuleta's use of her personal cell phone and electronic device distracted her from her duties and put the safety of all persons in the courtroom at risk. With her head lowered, Deputy Archuleta was unable to monitor the situation and the multiple potential security threats present. Furthermore, Sergeant Swift observed Deputy Archuleta using her personal cell phone to send text messages, and Deputy Archuleta admitted to using her personal cell phone to visit various websites on the internet. By choosing to engage in personal communications as well as use the internet while on duty, Deputy Archuleta likewise neglected her duty to refrain from using her personal cell phone while on duty and in the presence of an in-custody inmate.

Moreover, a preponderance of the evidence indicates that Deputy Archuleta was unaware of her surroundings, in that she did not observe Sergeant Swift standing at the door of the courtroom,

and was oblivious to his presence for approximately four minutes. Once Sergeant Swift approached Deputy Archuleta, she was so startled that she dropped her phone. Deputy Archuleta was pre-occupied with her activities on her cell phone and electronic device for approximately fifteen minutes, four of which Sergeant Swift stood at the doors to the courtroom, unnoticed by Deputy Archuleta. Deputy Archuleta likewise, therefore, neglected her duty to be aware of and pay attention to the events of the courtroom at all times.

A preponderance of the evidence indicates that, by remaining seated with her head down and engaging in the use of her personal electronic devices to search the internet and send personal text messages while on duty and in the presence of an in-custody inmate during a murder trial, Deputy Archuleta failed to "devote [her] full attention to [her] duties in accordance with the policies and procedures of [her] assigned post." In failing to pay full attention to her duties with respect to her obligations to provide for the overall security of the courtroom and its occupants and obligation not to use her personal cell phone while on duty and in the presence of an in-custody inmate, Deputy Archuleta neglected her duty as a deputy sheriff assigned to a courtroom of the LFC.

Under the DSD disciplinary matrix, violations of DSD Rules 200.9 and 300.19.1 fall in Conduct Categories A through F. Deputy Archuleta's behavior was "substantially contrary to the guiding principles of the department or...substantially interfere[d] with its mission, operations, or professional image, or ...involve[d] a demonstrable serious risk to Deputy Sheriff, employee, or public safety." Deputy Archuleta admitted that a murder trial is considered to be a very serious, high risk security threat for deputies working in a courtroom, as it creates a potentially volatile, dangerous situation. This incident involved a demonstrable, serious risk of harm for those involved, as it was a murder trial where both the victim and defendant's families were present in the courtroom, and the defendant, accused of committing murder, was relatively unrestrained. Deputy Archuleta's failure to pay full attention to her duties with respect to such an important task as ensuring the safety and security of all persons present in the courtroom in such an environment constituted a serious lack of professionalism and judgment and compromised the integrity of the Department. As a result, Deputy Archuleta was relieved from duty almost immediately after the incident occurred. Moreover, Deputy Archuleta's misconduct constituted a substantial interference with the professional image of the Department, as perceived by Sergeant Swift and the presiding judge. As such, this rule violation is a Conduct Category D violation.

In her 7 years on the Department, Deputy Archuleta has two prior instances of discipline, none of which count for purposes of imposing discipline in the instant matter. Therefore, pursuant to the disciplinary matrix, the penalty level is a 5. The presumptive penalty for a Conduct Category D, level 5 offense is a ten (10) day suspension. The mitigated penalty is a four (4) to six (6) day suspension, and the aggravated penalty is a fourteen (14) to sixteen (16) day suspension.

In analyzing the appropriate penalty, sections 19 through 23 of the disciplinary matrix, pertaining to considering and weighing mitigating and aggravating factors, have been considered. After an examination of the circumstances of the case, nature of the misconduct, and Deputy Archuleta's record, there are present mitigating factors that include excellent PEPRs, history with the Department, and lack of significant disciplinary history compared to her years of service. Additionally, Deputy Archuleta provided some mitigating material that was considered in the case. Deputy Archuleta also took responsibility and expressed remorse for her behavior. However, there are also present aggravating factors. Deputy Archuleta's misconduct

jeopardized the Department's relationship with other agencies in that it affected the Department's relationship and professional image with the courtroom staff. This effect of Deputy Archuleta's misconduct also constituted actual and demonstrable prejudice to the Department. By failing to pay full attention to her duties to ensure the safety and security of all those present in the courtroom in the potentially volatile, dangerous environment of a murder trial, Deputy Archuleta also created endangerment to the judge, jurors, attorneys, inmate, and members of the public in attendance, as well as an actual and demonstrable legal or financial risk to the Department and City.

After considering the above mitigating and aggravating factors, they were not found to be sufficiently weighty to warrant a penalty other than the presumptive penalty. Accordingly, the presumptive penalty of ten (10) days suspension is hereby imposed for violations of CSA rules 16-60A, J, L, and DSD Rules 200.9 and 300.19.1, to run concurrently with each other and concurrently to all other rule violations as discussed in this departmental determination of discipline.

**Career Service Rules 16-60 A, Neglect of Duty; L, Failure to observe written departmental or agency regulations, policies or rules as it pertains to DSD RR-300.11.6 – Conduct Prejudicial; Z, Conduct prejudicial to the good order and effectiveness of the Department or agency, or conduct that brings disrepute on or compromises the integrity of the City.**

Deputy Archuleta violated these Career Service Rules and the above Departmental Rule when she failed to pay full attention to her duty to provide for the overall security of the courtroom and its occupants by using her personal cell phone and electronic device while on duty and in the presence of an in-custody inmate on trial for murder. Video surveillance footage shows Deputy Archuleta seated in the rear of the courtroom during the murder trial and in the presence of an in-custody inmate. Other persons in the room include jurors, witnesses, attorneys, the judge, and members of the public, including members of the families of both the victim and the defendant. For approximately fifteen minutes, Deputy Archuleta is observed with her head mostly down, her attention diverted from her primary duties for an extended period of time. A preponderance of the evidence indicates that the presiding judge observed this unprofessional and unsafe behavior, and signaled to Sergeant Swift his displeasure with it. Sergeant Swift then felt he needed to relieve Deputy Archuleta of her duties, as he needed to ensure that the person assigned to the courtroom was able to pay attention to their surroundings and to the trial. Another deputy sheriff was then brought into the courtroom to cover Deputy Archuleta's post. Deputy Archuleta therefore "engage[d] in conduct prejudicial to the good order and effectiveness of the Department [and] conduct that [brought] disrepute on [and] compromise[d] the integrity of the City [and] the Department."

Furthermore, during the time in which Deputy Archuleta was distracting herself through the use of her personal cell phone and electronic device, a murder trial was being conducted, with an in-custody defendant present in the room, as well as the families of both the victim and defendant. The nature of the trial itself, by Deputy Archuleta's own admission, caused a serious, high security risk for all those present. As a deputy sheriff assigned to a courtroom of the LFC, especially during a murder trial of an in-custody inmate, Deputy Archuleta had a duty to be aware of and pay attention to the events of the courtroom at all times in order to provide for the safety and security of all persons present in the courtroom. By keeping her head down for approximately fifteen minutes and distracting herself with her personal cell phone and electronic

device, Deputy Archuleta placed many people at a greater risk of harm than they would otherwise have been exposed to. Deputy Archuleta's misconduct therefore created the potential to "[cause] harm greater than would reasonably be expected to result."

Under the DSD disciplinary matrix, a violation of DSD Rule 300.11.6 falls in Conduct Categories A through F. Deputy Archuleta's behavior was "substantially contrary to the guiding principles of the department or...substantially interfere[d] with its mission, operations, or professional image, or ...involve[d] a demonstrable serious risk to Deputy Sheriff, employee, or public safety." Deputy Archuleta admitted that a murder trial is considered to be a very serious, high risk security threat for deputies working in a courtroom, as it creates a potentially volatile, dangerous situation. This incident involved a demonstrable, serious risk of harm for those involved, as it was a murder trial where both the victim and defendant's families were present in the courtroom, and the defendant, accused of committing murder, was relatively unrestrained. Deputy Archuleta's failure to pay full attention to her duties with respect to such an important task as ensuring the safety and security of all persons present in the courtroom in such an environment constituted a serious lack of professionalism and judgment and compromised the integrity of the Department. As a result, Deputy Archuleta was relieved from duty almost immediately after the incident occurred. Moreover, Deputy Archuleta's misconduct constituted a substantial interference with the professional image of the Department, as perceived by Sergeant Swift and the presiding judge. As such, this rule violation is a Conduct Category D violation.

In her 7 years on the Department, Deputy Archuleta has two prior instances of discipline, none of which count for purposes of imposing discipline in the instant matter. Therefore, pursuant to the disciplinary matrix, the penalty level is a 5. The presumptive penalty for a Conduct Category D, level 5 offense is a ten (10) day suspension. The mitigated penalty is a four (4) to six (6) day suspension, and the aggravated penalty is a fourteen (14) to sixteen (16) day suspension.

In analyzing the appropriate penalty, sections 19 through 23 of the disciplinary matrix, pertaining to considering and weighing mitigating and aggravating factors, have been considered. After an examination of the circumstances of the case, nature of the misconduct, and Deputy Archuleta's record, there are present mitigating factors that include excellent PEPRs, history with the Department, and lack of significant disciplinary history compared to her years of service. Additionally, Deputy Archuleta provided some mitigating material that was considered in the case. Deputy Archuleta also took responsibility and expressed remorse for her behavior. However, there are also present aggravating factors. Deputy Archuleta's misconduct jeopardized the Department's relationship with other agencies in that it affected the Department's relationship and professional image with the courtroom staff. This effect of Deputy Archuleta's misconduct also constituted actual and demonstrable prejudice to the Department. By failing to pay full attention to her duties to ensure the safety and security of all those present in the courtroom in the potentially volatile, dangerous environment of a murder trial, Deputy Archuleta also created endangerment to the judge, jurors, attorneys, inmate, and members of the public in attendance, as well as an actual and demonstrable legal or financial risk to the Department and City.

After considering the above mitigating and aggravating factors, they were not found to be sufficiently weighty to warrant a penalty other than the presumptive penalty. Accordingly, the presumptive penalty of ten (10) days suspension is hereby imposed for violations of CSA rules

16-60A, L, Z and DSD Rule 300.11.6, to run concurrently with each other and concurrently to all other rule violations as discussed in this departmental determination of discipline.

**SUMMARY OF DISCIPLINARY DETERMINATIONS**

CSR 16-60 A, J, L, as it pertains to DSD RR-200.9, 300.11.6, 300.19.1, and Z					
Conduct	Finding	Category	Level	Range	Penalty
Full Attention to Duties; Disobedience of Rule as it pertains to Use of Personal Cell Phones	Sustained	D	5	Presumptive	10 days suspension (concurrent)
Conduct Prejudicial	Sustained	D	5	Presumptive	10 days suspension (concurrent)

  
Shannon Elwell  
Civilian Review Administrator

9/4/15  
Date