

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

REBECCA L. BROOKE,

*Appellant,*

v.

Case No. 12-REM-04-0067

MORROW COUNTY JOB AND FAMILY SERVICES,

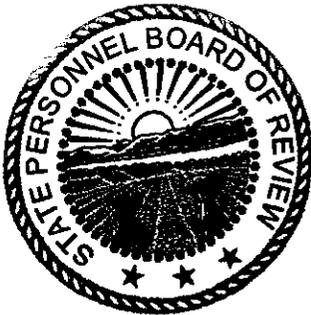
*Appellee*

**ORDER**

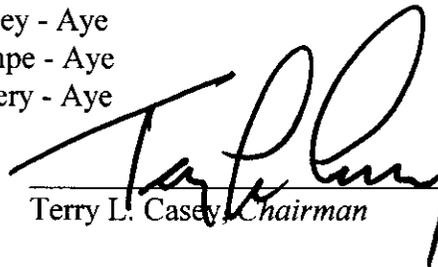
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

After a thorough examination of the entirety of the record, including a review of the Report and Recommendation of the Administrative Law Judge, along with any objections to that report which have been timely and properly filed, the Board hereby adopts the Recommendation of the Administrative Law Judge. It is noted that the Board has reviewed and carefully considered Appellant's arguments concerning disparate treatment, as those arguments were set forth in Appellant's objections to the Report and Recommendation issued in this appeal.

Wherefore, it is hereby **ORDERED** that Appellee's removal of Appellant Brooke is **AFFIRMED** pursuant to section 124.34 of the Ohio Revised.



Casey - Aye  
Lumpe - Aye  
Tillery - Aye

  
Terry L. Casey, Chairman

**CERTIFICATION**

The State of Ohio, State Personnel Board of Review, ss:

I, the undersigned clerk of the State Personnel Board of Review, hereby certify that this document and any attachment thereto constitutes ~~(the original)~~ a true copy of the original order or resolution of the State Personnel Board of Review as entered upon the Board's Journal, a copy of which has been forwarded to the parties this date, March 22, 2013.

  
Clerk

**NOTE:** Please see the reverse side of this Order or the attachment to this Order for information regarding your appeal rights.

3/22/13cc

## NOTICE

Where applicable, this Order may be appealed under the provisions of Chapters 124 and 119 of Ohio Revised Code. An original written Notice of Appeal or a copy of your Notice of Appeal setting forth the Order appealed from and the grounds of appeal must be filed with this Board fifteen (15) days after the mailing of this Notice. Additionally, an original written Notice of Appeal or a copy of your Notice of Appeal must be filed with the appropriate court within fifteen (15) days after the mailing of this Notice. At the time of filing the Notice of Appeal or copy of your Notice of Appeal with this Board, the party appealing must provide a security deposit to the Board. In accordance with administrative rule 124-15-08 of the Ohio Administrative Code, the amount of deposit is based on the length of the digital recording of your hearing and the costs incurred by the Board in certifying your case to court. The length of the digital recording, the costs incurred, the corresponding amount of deposit required, and the final date that the Notice of Appeal or copy of your Notice of Appeal and the Deposit will be accepted by this Board are listed at the bottom of this Notice. If a full or partial transcript of the digital recording has been prepared prior to the filing of an appeal, the costs of a copy of that certified transcript will be accepted by this Board; transcript costs will be listed at the bottom of this Notice.

**IF YOU ELECT TO APPEAL THIS BOARD'S FINAL ORDER, THEN YOU MUST PROVIDE THE DEPOSIT LISTED BELOW AT THE TIME YOU FILE YOUR NOTICE OF APPEAL OR COPY OF YOUR NOTICE OF APPEAL WITH THIS BOARD.** Please note that the law provides that you have fifteen (15) calendar days from the mailing of the final Board Order to file your Notice of Appeal or copy of your Notice of Appeal both with this Board and with the Court of Common Pleas. The fifteenth day is the date that appears at the bottom of this Notice.

**METHOD OF PAYMENT:** for all entities other than State agencies, payment of the deposit must be by money order, certified check, or cashier's check. State agencies are required to use the Intra-State Transfer Voucher (ISTV) system (OBM Form 7205), which must be processed prior to the filing of an appeal. To initiate an ISTV, State agencies may call the State Personnel Board of Review Fiscal Office at 614/466-7046.

**IF YOU MAINTAIN YOU CANNOT AFFORD TO PAY THE DEPOSIT LISTED BELOW, THEN YOU MUST COMPLETE THE BOARD'S "AFFIDAVIT OF INDIGENCE" FORM. YOU CAN OBTAIN THAT FORM BY CALLING 614/466-7046. THE COMPLETED AFFIDAVIT MUST BE RECEIVED BY THIS BOARD ON OR BEFORE March 29, 2013. You will be notified in writing of the Board's determination. If the Board determines you are indigent, you will be relieved of the responsibility to pay the deposit to the Board. However, if the Board determines you are NOT indigent, then YOU MUST FILE YOUR NOTICE OF APPEAL OR A COPY OF YOUR NOTICE OF APPEAL AND PAY THE DEPOSIT BY THE DATE LISTED BELOW.**

**If you have any questions regarding this notice, please contact the Board at 614/466-7046.**

Case Number: 12-REM-04-0067

Transcript Costs: \$219.00 Administrative Costs: \$25.00

Total Deposit Required: \* \$244.00

Notice of Appeal and Deposit Must  
Be Received by SPBR on or Before: April 8, 2013

**STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW**

Rebecca L. Brooke

Case No. 12-REM-04-0067

*Appellant*

v.

December 12, 2012

Morrow County Job & Family Services

Marcie M. Scholl

*Appellee*

*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This cause came on for record hearing on October 17, 2012. Present at the hearing were the Appellant, Rebecca L. Brooke, represented by Marc E. Myers, Attorney at Law and Appellee Morrow County Department of Job and Family Services (DJFS) designee Donald Wake, Jr., Director, represented by Eugene P. Nevada, Attorney at Law.

The subject matter jurisdiction of the Board was established pursuant to section 124.34 of the Ohio Revised Code.

Appellant Brooke was removed from her position of Case Manager, effective April 5, 2012. The pertinent part of the removal order states as follows:

The reason for this action is that you have been guilty of Dishonesty, Neglect of Duty, Malfeasance, and Violation of Agency Policy in that you without permission or privilege to do so accessed confidential Agency computer files concerning cases to which you were not assigned; you made copies of numerous confidential Agency case records on Agency work time, and removed such confidential Agency records from the property without permission. You breached the "Ohio Department of Job and Family Services Code of Responsibility" (form JFS 07078), by the above stated acts. You used your position to access confidential case files in an attempt for personal gain; to wit, you gathered documents to assist you in contesting a four (4) day suspension. By the above stated acts, you violated Agency policy 5.12, Confidentially. (sic).

## STATEMENT OF THE CASE

Appellant Brooke testified she began her employment with Appellee in 1999 and became a Case Manager in 2005. As a Case Manager, she carried a caseload of approximately 500 cases on which she was to collect child support. She identified Appellee's Exhibit 1 as the order of removal she received; Appellee's Exhibit 3 as notice of her pre-disciplinary conference; and Appellee's Exhibit 2 as her position description. She explained that the Support Enforcement Tracking System, or SETS, as it is commonly known, is a statewide system which houses all child support enforcement cases. One needs a password to access the system, but once one is in the system, all court orders, personal information and financial records can be accessed.

Appellee's Exhibit 8 was identified by Appellant Brooke as the Appellee's Confidentiality Policy. She testified she is aware of the policy as she is also aware of Appellee's Exhibit 9, Appellee's Code of Responsibility, which she signed on January 30, 2009. In looking at Appellee's Exhibit 6, the Security Policy of Appellee, Appellant Brooke testified that she does not remember seeing this document until her counsel showed it to her in preparation for this hearing.

Appellant Brooke testified it was her opinion that working on her appeal of her four day suspension was work-related. She identified Appellee's Exhibit 5 as the order of suspension she received in August 2011. In preparation for that suspension appeal hearing, Appellant Brooke testified she obtained the exhibits she was going to use in that hearing from SETS. She was noted as the secondary case manager on all the cases from which she obtained documents. She testified she did not seek approval from the Director to copy those documents. Appellant Brooke identified Appellee's Exhibit 11 as a set of exhibits that she sent to Mr. Nevada so that he had a copy of her exhibits. She did not give a copy of the documents to anyone other than Mr. Nevada. All of the exhibits were copied from SETS. She stated case managers redact information regularly when sending information to the courts. The attorney for Appellee ensures the redaction is done properly. The name across the top of the Exhibit is Joyce Zimmerman, another case manager. Appellant Brooke testified the only document which was taken from SETS was the screen sheets as the other documents are from Appellee's computers. She confirmed that she did not seek permission to copy those documents.

Appellant Brooke testified she attended a pre-hearing for her suspension appeal before this Board with Administrative Law Judge James Sprague. She was appearing *pro se* and during the pre-hearing, Appellant Brooke testified Judge Sprague explained she would need to get copies of any documents that she wished to introduce for purposes of presenting evidence and for purposes of introducing disparate treatment. Appellant Brooke testified that by telling her this, she believed Judge Sprague had given her permission to access the documents and copy them. She stated she felt she had permission to access the documents by virtue of her position and she did not feel that her supervisor would have given her permission to access the documents if she had asked her. She testified she copied all of the documents during her lunch hour and she used the agency copier as she felt it was work-related.

Appellee's Exhibit 12 through 19 were identified by Appellant Brooke as more documents which she copied and sent to Mr. Nevada. She testified she did not know she could request a subpoena *duces tecum* as when she receives a subpoena at work, she gives it to the attorney, of which she is not. She also stated she is unaware of Appellee ever charging anyone for copies that are requested.

Appellee's next witness was Cynthia Libster, Child Support Program Manager for approximately eleven years. Prior to holding that position, Ms. Libster stated she was in the Office of Child Support and she helped in the design of SETS. She did program design based on user knowledge and was part of the federal certification. She stated interstate cases, establishment of paternity and child support information are all contained in SETS and once that information is put into SETS, it becomes confidential. Ms. Libster testified that SETS is owned by the state of Ohio and the state can revoke a user's access permanently. She stated it is very important to protect the public trust and employees are trained on an annual basis on confidentiality.

Ms. Libster identified Appellee's Exhibits 6, 7 and 9 as policies and administrative rules governing security and confidentiality. She testified that the system which images documents are also considered to be confidential, as all of the information relates to the cases. That system is how the Appellee stores the information. Even though the same information can be obtained from another source, it is still considered to be a confidential document once it is entered into their system. Ms. Libster testified Appellant Brooke did not ask for permission to copy any of the documents and if she had made a public records request, Ms.

Libster testified she would have forwarded the request to the Director, as she does not make that determination. She stated the office's attorney does all of the redactions on behalf of the agency and case managers cannot redact information and then give a document to anyone.

Appellee's Exhibit 11 was identified by Ms. Libster as a screen in SETS where a case is documented. She explained that this screen is used by a case manager to document the history or narrative of the case. She testified that this screen is absolutely not a public record, even with it being redacted. Ms. Libster testified this particular case was not assigned to Appellant Brooke although she may have been listed as a back-up, which means that the back-up person can access and view documents which are in another case manager's case. This access is needed due to absences, etc., of case managers. Appellee's Exhibits 12 through 18 were identified by Ms. Libster as documents from SETS which were from cases not assigned to Appellant Brooke. Appellee's Exhibit 19 was identified by Ms. Libster as one of Appellant Brooke's cases and Appellee's Exhibit 20 was identified as written reprimand given to Appellant Brooke on November 29, 2011; Appellee's Exhibit 21 was identified as a written reprimand given to Appellant Brooke on September 29, 2010 and Appellee's Exhibit 22 was identified as a record of oral warning given to Appellant Brooke on October 25, 2010.

On cross examination Ms. Libster testified Appellant Brooke was listed as the secondary person on the all of the files but one that she made copies of. In looking at Appellee's Exhibit 11, Ms. Libster testified that the first two pages of the document, titled Running Record Comments, are documents that would not be released to anyone, including the courts. The court entry found in the document is a public record, which the court could release. She explained that even though this documents and others like it are public record at the court house, it is considered a private document at her agency. In order to release the document, a public records request has to be made.

Appellee's next witness was Donald Wake, Jr. He has been the Director for approximately twelve years and was a childrens' service worker for approximately five years previous to his current position. He testified that confidentiality is an extremely important issue as Appellee holds the public trust to keep information confidential. Mr. Wake testified Appellant Brooke violated the Appellee's Employee Conduct and Protocols and he considers her violation to be a fundamental breach of the public trust. He stated he views this as a serious and major offense. Due to

the irreparable breach of trust, it is his opinion that he will never be able to trust her again and due to the egregious nature of her offense, he believes termination was the only option.

Appellant's witness was Sara Babich, an attorney who was employed by Appellee from May 2009 to May 2012. She was the Staff Attorney for Appellee's Child Support Enforcement Agency and worked with Appellant Brooke. Ms. Babich testified she is familiar with the SETS system. In looking at Appellee's Exhibit 11, she testified that the SETS number itself could be confidential but nothing else on the page was confidential. She identified Appellant's Exhibit A as information from a spring training conference in April 2012 and confirmed that the material contains a page from a SETS file with names redacted. Ms. Babich testified it was her assumption that the person who printed off these materials had permission to use the documents or else they would not have been used.

#### **FINDINGS OF FACT**

After thoroughly reviewing the testimony of the witnesses and the documents admitted into evidence, I find the following facts:

1. Appellant Brooke had been employed by the Appellee for approximately thirteen years at the time of her removal from her position of Case Manager for the Child Support Enforcement Agency.
2. Appellant Brooke's previous discipline consists of a written reprimand in September, 2010; an oral warning in October, 2010; a written reprimand in November, 2011; and a forty hour suspension in August, 2011, which Appellee later reduced to a three day (twenty-four hour) suspension.
3. Appellant Brooke was aware of and had seen Appellee's Confidentiality Policy and the Code of Responsibility. She does not remember seeing Appellee's Security Policy prior to her attorney showing it to her in preparation for her appeal.
4. Appellant Brooke appealed her forty hour suspension to this Board and appeared *pro se* to the pre-hearing in that matter. The Administrative Law Judge explained to her at the pre-hearing that if she was going to present any documents in her case or raise claims of disparate treatment, then she

would have to obtain documents to enter into evidence and that she has to send a copy of her documents to counsel for the Appellee. Appellant Brooke did not request a subpoena *duces tecum* for the documents nor did she make a public records request. She believed the Administrative Law Judge had given her permission to make the copies.

5. Appellant Brooke made copies during her lunch hours of nine different cases. The copies were obtained from the SETS system and Appellant Brooke redacted some of the information from the documents. She did not seek approval from anyone at Appellee to access and make the copies.
6. Appellant Brooke mailed copies of the documents she accessed to Appellee's counsel in her suspension appeal. She did not furnish anyone else with the copies she made.

### **CONCLUSIONS OF LAW**

In order for Appellee's removal of Appellant Brooke to be affirmed, Appellee had the burden of proving by a preponderance of the evidence the allegations contained in the removal order. Appellee has met its burden

The facts contained in the removal order are not contested. Appellant Brooke admitted she made copies of case records. She argued that she did not make the copies on work time, stating she made the copies during her lunch, and that the documents were not confidential.

In looking at Appellee's Exhibit 8, Policy 5.12, Confidentiality, paragraph (A)(2) states as follows:

Any information regarding any client or former client is considered confidential. Any unauthorized disclosure, release or transmission of confidential material is considered to be a breach of this policy, subject to penalties. Employees of the agency are specifically prohibited from disclosing personal information directly or indirectly without the client's expressed written consent.

Paragraph (4) states:

Any questions regarding disclosure or non-disclosure are to be directed to a supervisor or the Director.

Paragraphs B(1), (3) and (4) of the same policy state:

To prevent a breach of confidentiality, the JFS specifically prohibits:

(1) Any staff from removing any JFS records, files, forms, equipment and any other JFS related materials from the JFS premises without prior consent from the Director or his designee.

(3) Employees from viewing case records and computerized records of any case that they are not assigned to. Review of case records for the purpose of securing information for personal reasons or "curiosity" is strictly prohibited.

(4) Disclosure or transmission of any non-public record or confidential information, to anyone without proper authorization.

Under the Penalty section of the above policy, it provides for progressive discipline, with termination as a possible result.

In reading the above policy, it is clear that Appellant Brooke violated the policy. The policy states that client information is confidential. While Appellant Brooke redacted the names, testimony established that the case number itself appearing on the documents could be confidential, but more importantly, is the requirement that any disclosure must be authorized. The authorization requirement also comes up in paragraph B(4). The other issue covered by the above paragraphs is that Appellant Brooke accessed these records for purely personal reasons. She accessed the documents in preparation for her own appeal hearing and not for any business reason or for any reason connected to her duties. She testified she made the copies on her lunch hour, but it was not made clear by the testimony if she also accessed the information during her lunch hour. Appellee did not rebut Appellant Brooke's testimony as to when she made the copies nor did they offer any evidence as to if she accessed the documents during work time. Therefore, Appellee has not met its burden with respect to the allegation that Appellant Brooke did these things on work time.

In looking at Appellee's Exhibit 9, the Code of Responsibility, which Appellant Brooke signed, it states the responsibility of the signer to abide by the following: (in pertinent part)

2. I will not make or permit unauthorized uses of any information in hard copy or computer files maintained by ODJFS.

4. I will not exhibit or divulge the contents of any record to any person except in the conduct of my work assignment or in accordance with the policies of ODJFS.

6. I will not remove or cause to be removed copies of any official record or report from any file from the office where it is kept, except in the normal conduct of my work assignment and in accordance with the policies of ODJFS.

8. I will not violate rules and/or regulations concerning access and/or improperly use Security entry cards or codes for controlled areas.

13. I will treat all case record material as confidential, . . . .

Applying the above policies to the instant case, Appellant Brooke violated all of the above provisions. Her disclosure or copying of files was unauthorized, as she did not request permission of the Director or his designee to make copies of the documents. She did not request a subpoena *duces tecum* for them nor did she make a public records request. She argued that she was representing herself and did not know about the subpoena or public records request options. While it is unfortunate that Appellant Brooke was not aware of those options, ignorance of the law is not a mitigating factor. She stated she does receive subpoenas at work to be processed and they are turned over to the attorney in the office. That should have at least put her on notice that there is such a thing as a subpoena for documents and she could have asked someone about the process. Appellant Brooke worked for Appellee for approximately thirteen years and testified she was aware of the confidentiality policies and procedures, yet she did not seek permission to copy the documents. She testified she did not ask her supervisor for permission to do so for fear that she would not approve it. That statement leads one to believe that Appellant Brooke knew she was supposed to have permission to make copies but because she feared she would be refused, she went ahead and made the copies in contravention of the policy.

Appellant's own witness, Ms. Babich, even testified that approval is necessary before copying any documents. She was presented with a copy of documents from SETS that were used in training employees. She testified that she must assume permission was sought and granted to use those redacted documents or else they would not have been used. Her testimony only underscores Appellee's argument that prior approval is necessary, through one of several avenues (subpoena, public records request or a request to copy made to the Director or his designee) before documents can be copied and used for any other purpose other than in the normal course of one's duties.

Appellant Brooke made unauthorized use of the documents, she divulged the contents of records outside of her work assignment without permission to do so and she removed copies of documents outside of the office by mailing them to Appellee's counsel. All of these actions were in violation of the above policies.

Appellant Brooke argued that Appellee was using these same documents in their case against her, but Appellee did not make any unauthorized copies of documents – they are only using the documents Appellant Brooke copied to show what she did. She also argued that all of her documents are considered to be public records at the court house. The problem with this argument is that it completely ignores the fact that she bypassed the rules and regulations in place to legally access those documents. Public document or not, requests have to be made for access to or to obtain copies of the documents. Just because a document is a public record, that does not give any member of the public a right to walk into any office and make a copy of a document on their own and without any permission to do so. This is what Appellant Brooke did. She wanted the documents for a purely personal reason – her own appeal – and they had nothing to do with her work assignment. The fact that she could access those documents does not give her the permission to do so for a non-work reason.

Director Wake testified he made the decision to terminate Appellant Brooke because she breached the confidentiality of the office, which he places a great priority on since it is the public's trust that has been breached. He testified he would not be able to trust Appellant Brooke again and for that reason, he terminated her employment. She did have previous discipline of two written reprimands, an oral reprimand and a three day suspension. While an argument could be made for a lengthy suspension, there has been no abuse of discretion shown on the part of the appointing authority in removing Appellant Brooke from Appellee's employment.

Rebecca L. Brooke  
Case No. 12-REM-04-0067  
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There are no mitigating factors present. In fact, all of the evidence leads one to believe that Appellant Brooke, a thirteen year employee, should have known about subpoenas, public records requests, and the requirement to seek permission before copying a record that had nothing to do with her work assignments. Mr. Wake testified he would not be able to trust Appellant Brooke in the future and the evidence established she violated agency policy and engaged in malfeasance.

Therefore it is my **RECOMMENDATION** that Appellee's removal of Appellant Brooke be **AFFIRMED** pursuant to section 124.34 of the Ohio Revised Code.

  
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Marcie M. Scholl  
Administrative Law Judge

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