

Notice: This decision may be formally revised before it is published in the *District of Columbia Register*. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

**THE DISTRICT OF COLUMBIA**  
**BEFORE**  
**THE OFFICE OF EMPLOYEE APPEALS**

|                          |   |                                     |
|--------------------------|---|-------------------------------------|
| _____                    | ) |                                     |
| In the Matter of:        | ) |                                     |
|                          | ) |                                     |
| LLOYD FINCH              | ) |                                     |
| Employee                 | ) |                                     |
|                          | ) | OEA Matter No.: 1601-0015-05        |
| v.                       | ) |                                     |
|                          | ) | Date of Issuance: February 25, 2009 |
| D.C. METROPOLITAN POLICE | ) |                                     |
| DEPARTMENT               | ) |                                     |
| Agency                   | ) |                                     |
| _____                    | ) |                                     |

**OPINION AND ORDER**  
**ON**  
**PETITION FOR REVIEW**

Lloyd Finch (“Employee”) was a Police Officer with the D.C. Metropolitan Police Department (“Agency”). Agency removed him from his position for allegedly failing to obey orders and willfully and knowingly making an untruthful statement. The removal took effect December 13, 2004. Employee filed a Petition for Appeal with the Office of Employee Appeals on January 13, 2005.

During the course of the proceedings, Agency made a motion to dismiss the appeal as having been untimely filed. Employee argued that the removal did not take

effect until December 14, 2004 thereby rendering his appeal timely and not one day late as Agency claimed. According to Employee, his attorney had a verbal agreement with Agency's attorney that the removal would not take effect on December 10, 2004 as the final agency notice stated. Instead the removal would take effect on December 14, 2004. Employee stated that this agreement was made in exchange for allowing Agency's attorney more time in which to respond to a temporary restraining order ("TRO") that Employee had filed in civil court against Agency. Agency countered Employee's claim by stating that the court denied the TRO on December 13, 2004 and the personnel action form that memorialized Agency's action stated that the effective date of the removal was December 13, 2004.

In an Initial Decision issued June 12, 2006 the Administrative Judge granted Agency's motion to dismiss. The Administrative Judge cited to the statute which gave Employee thirty (30) days within which to file an appeal with the Office and found that Employee had indeed missed the filing deadline. As for the agreement that Employee claims his attorney made with Agency's attorney, the Administrative Judge held that "in the absence of any contrary evidence, it is more probable than not that Agency extended the removal effective date from December 10, 2004 until the Court's ruling on December 13, 2004."<sup>1</sup> Therefore Employee's appeal was dismissed.

Thereafter Employee timely filed a Petition for Review. In his Petition he argues that if his attorney had been required to present evidence to support Employee's claim, his attorney would have essentially been violating the rules of professional conduct by having to "act[] as both an advocate and a witness in a given matter."<sup>2</sup> We disagree. By

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<sup>1</sup> *Initial Decision* at 6.

<sup>2</sup> *Petition for Review* at 2.

requiring Employee's attorney to present evidence to support his claim, the Administrative Judge was doing nothing more than asking the attorney to advocate on behalf of his client. This is not a violation of any ethical rules. We are not unsympathetic to Employee; however, his appeal was untimely. Therefore, we must deny his Petition for Review and uphold the Initial Decision.

**ORDER**

Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is **DENIED**.

FOR THE BOARD:

\_\_\_\_\_  
Sherri Beatty-Arthur, Chair

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Barbara D. Morgan

\_\_\_\_\_  
Richard F. Johns

The Initial Decision in this matter shall become a final decision of the Office of Employee Appeals 5 days after the issuance date of this order. An appeal from a final decision of the Office of Employee Appeals may be taken to the Superior Court of the District of Columbia within 30 days after formal notice of the decision or order sought to be reviewed.