

**Issue #61**

**August 2015**

**Professional Compliance Bulletin**

The Criminal Justice Standards and Training Commission has as its mission “to ensure that the citizens of the State of Florida are served by the most qualified, well trained, competent and ethical criminal justice officers in the nation”. The Commission meets quarterly in an open forum to address issues relating to criminal justice. As a part of these quarterly meetings, cases regarding officer misconduct are reviewed and action is taken against the officer’s criminal justice certification. Disciplinary action is based on the facts of each case and is guided by both Florida Statute and Florida Administrative Code. The following is a sample of the cases that were heard by the Commission at its meeting held on August 6, 2015.

**Case #37880-Respondent 1-Solicitation to Commit Sell, Manufacture Delivery of a Controlled Substance**

**Case #37879 Respondent 2-Solicitation to Commit Sell, Manufacture Delivery of a Controlled Substance**

Respondent 1 is currently employed with the Miami-Dade Police Department after she received a Record of Counseling subsequent to an internal investigation which sustained agency policy violations for Departmental Misconduct – Substance Violation and Departmental Misconduct – Improper Procedure. Respondent 2 retired from the Miami-Dade Police Department for reasons unrelated to the internal investigation, which sustained an agency policy violation charge for Departmental Misconduct – Substance Violation. Had she remained with the agency, she would have received a Record of Counseling. On June 10, 2013, the agency’s Professional Compliance Bureau received a complaint from the ex-husband of Respondent 1 alleging she had a substance abuse problem and had become dependent on the controlled substance oxycodone. The ex-husband further alleged that in 2010, Respondent 1 ingested oxycodone tablets without a prescription. He stated that the tablets were obtained from Respondent 2. In her sworn statement on November 20, 2013, Respondent 1 admitted that sometime in 2010 she was experiencing pain from a foot injury and mentioned it to Respondent 2. Respondent 2 mentioned she had some oxycodone in her desk that Respondent 1 could take if she needed some. Respondent 1 obtained three or four tablets to take home with her and consumed them after she got home and was off duty. Respondent 1 denied any other incidents in which she took someone else’s prescription medication. Respondent 2 also provided a sworn statement attesting to the same sequence of events. Respondent 2 further stated that she did not witness Respondent 1 physically taking the medication off of her desk or ingesting it while on duty and denied knowing of any other time Respondent 1 had taken prescription medication not prescribed to her. The state attorney declined to file criminal charges for either respondent.

**Penalty Guideline**: Revocation (both cases)

Staff entered into a settlement agreement with each respondent for a 45 day prospective suspension; 2 year probation to begin at the conclusion of the suspension period.

**Disciplinary Action by the Commission:** The Commission rejected both settlement agreements and dismissed each respondent’s case.

**Case # 37984-Interference with Custody**

The respondent was terminated from the St. John’s County Sheriff’s Office subsequent to an internal investigation which sustained the Commission of a Criminal Act, Conduct Unbecoming, Use of Position, Insubordination, Bringing Disrepute, and Neglect or Refuse to Obey Lawful Order. On October 21, 2014, the respondent went to her son’s school and picked him up. The respondent was told by office staff that their records indicated that she was not designated to pick up her son. The respondent ignored their instruction and left the school with her son. The school then notified the respondent’s estranged husband. The respondent’s estranged husband then notified law enforcement authorities that his son had been taken by the respondent which was in violation of the custody order. Per the custody order the respondent is only to have third-party supervised visitation with her son. An Amber Alert was issued. Shortly after, the respondent posted on a social networking website that she was at a local restaurant with her son. An officer with the Fernandina Beach Police Department responded to the scene and took custody of the child without incident. The respondent was placed under arrest for Interference with Custody of a Minor. On December 15, 2014, the respondent entered into a pretrial intervention program for two counts of Deprive Custody of Minor. The respondent received 18 months of supervised probation, 20 hours community service, random urinalysis testing, was required to participate fully in a mental health evaluation and treatment program, and to not violate the custody order.

**Penalty Guideline**: Suspension to Revocation

Staff entered into a settlement agreement with the respondent for a 180 day retroactive suspension; 1 year prospective suspension; 2 year probation to begin at the conclusion of the suspension period; provide staff with proof of successful completion of Commission-approved mental health counseling and a fitness for duty evaluation prior to the end of the probationary period.

**Disciplinary Action by the Commission:** The Commission accepted the terms of the settlement agreement.

**Case # 37897-** **False Official Statement**

The respondent was terminated from the Department of Corrections for submitting a false doctor’s note. From August 20, 2014, to August 22, 2014, the respondent was absent from work on sick leave. He later submitted a note from a doctor written to the department. The note was on the letterhead of a medical practice, listed the dates the respondnet was out of work, and contained a doctor’s signature. The Department of Corrections contacted the doctor’s office to verify the information. According to the doctor’s office, the respondent was not a patient, had never been a patient, and that the office did not issue the note. No criminal charges were filed.

**Penalty Guideline**: Prospective suspension to Revocation

Staff recommended a 30 day prospective suspension; 1 year probation to begin at the conclusion of the suspension period; provide staff with proof of successful completion of Commission-approved ethics course prior to the end of the probationary period.

**Disciplinary Action by the Commission:** The Commission accepted staff’s recommendation.

**Case # 36530-Excessive Use of Force**

The respondent was terminated from the Jacksonville Sheriff’s Office subsequent to an internal investigation which sustained the charges of Commission of Conduct Supporting Criminal Acts – Battery and Repeated Infractions (Unnecessary Force). On July 20, 2013, the respondent was on-duty at a local hospital when an inmate was brought in from the jail. The respondent heard the inmate being rowdy and belligerent to hospital staff. The hospital security guards requested the respondent’s assistance. The inmate was seated in a wheeled transporting chair and was restrained at the wrists and ankles. The respondent’s efforts to get the inmate to calm down were unsuccessful. In response, the respondent informed the inmate that he was going to write a report on him. The inmate then cursed at the respondent and spit on him. The respondent reacted by slapping the inmate and shoving him, causing him to almost fall out of the transport chair. The incident was captured on the hospital surveillance system. A warrant was issued for the respondent’s arrest and he was subsequently arrested for battery. On December 5, 2013, the respondent pled no contest to battery. Adjudication was withheld and he was placed on probation for twelve months and ordered to complete an anger management course. During his sworn internal affairs interview, the respondent stated that he reacted to being spit on by the inmate by quickly hitting him on the face. According to the respondent, the inmate then made a remark that upset him, so he hit the inmate a second time.

**Penalty Guideline**: Suspension to Revocation

Staff recommended a 30 day prospective suspension; 1 year probation to begin at the conclusion of the suspension period; provide staff with proof of successful completion a Commission-approved anger management counseling prior to the end of the probationary period.

**Disciplinary Action by the Commission:** The Commission accepted staff’s recommendation.

**The following information is provided to facilitate an understanding of the Professional Compliance process.**

Section 943.1395(8)(d), F. S., requires Commission staff to review cases in which an employing agency has disciplined an officer and the officer’s employment is continued or reinstated by the employing agency. Staff is required to determine whether the employing agency’s sustained disciplinary charges and disciplinary penalty conforms to the disciplinary penalties prescribed by Commission rule. If staff determines that the employing agency’s penalty conforms to the Commission’s disciplinary penalty, staff is required to issue an LOA to the employing agency. No further action is authorized on such cases.

In compliance with the statutorily-mandated rulemaking requirement, Subsection (7) of Rule 11B-27.004, F.A.C., addresses cases in which an officer has been disciplined by an employing agency and retained (employment continued or reinstated) by the employing agency. However, Subsection (8) of the rule goes further and requires staff to issue LOAs in instances in which an officer has been terminated by the employing agency if that penalty conforms to the disciplinary penalties prescribed by Commission rule. The statute directing the Commission to adopt rules concerning LOAs does not include any reference to instances in which an officer has been terminated by the employing agency. When the statute was changed in 2004 to its current form, Commission rule was amended to reflect the change of responsibility to staff for issuance of LOAs. Possibly as a result of an oversight, the rule provisions for LOAs in instances in which an officer had been terminated were erroneously retained in the rule.

At the August 6, 2015, business meeting, the Commission directed staff to discontinue issuance of Letters of Acknowledgement in instances where an officer has been terminated by the employing agency, based on a lack of statutory authority for the cited rule provision. Additionally, the Commission directed staff to present such cases that would be otherwise eligible for a Letter of Acknowledgement under the cited rule, to the Probable Cause Panel with a recommendation for the issuance of a Letter of Guidance, pending promulgation of corrective rule amendments.

If you have questions concerning the Officer Discipline process, or if you have any issues you would like to see addressed in the Professional Compliance Bulletin, please forward them to R. Stacy Lehman, Professional Compliance Section Manager in the Bureau of Standards, at the Florida Department of Law Enforcement, P.O. Box 1489, Tallahassee, Florida 32302 or via e-mail at: stacylehman@fdle.state.fl.us.