



Professional Compliance Bulletin Issue 44 May 2011



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 meetings held on May 19, 2011.

Case # 30121 Misuse of Official Position; Perjury in Official Proceeding

The respondent was terminated from the Gadsden County Sheriff’s Office subsequent to an internal investigation which sustained the charges of misuse of official position, untruthfulness, and standard of conduct. On November 20, 2009, the respondent traveled from Tallahassee to Miami to purchase a used vehicle from a private owner. The respondent completed the purchase and decided to drive the used vehicle back to Tallahassee, leaving his vehicle in the seller’s driveway. During the drive home, the recently purchased car had mechanical issues and the respondent telephoned the seller. The seller stated to the respondent to have a tow truck return it to her. However, the respondent continued to drive, taking several breaks before reaching Tallahassee. Over the next ten days, the respondent collected estimates to repair the vehicle and called the seller several times to negotiate a refund of the price of the car. On November 30, 2009, the respondent left work at approximately 0700 hours and at 1752 hours went to the bus station in Tallahassee and paid for a previously ordered one way ticket to Miami. The respondent was to travel to Miami to pick up his vehicle that he left previously and to renegotiate the purchase price of the car. On December 1, 2009, the private owner observed the respondent exit a cab in front of her residence and stand behind a bush, which blocked her vision. Before walking to her door, the respondent was observed placing a duffle bag and jacket on the ground near the bush. The respondent appeared at the door wearing a Gadsden County Sheriff’s Office uniform with a gun-belt and pistol. The owner invited the respondent into her residence and they discussed a refund for the car. The owner refunded the respondent \$200 for the repairs and \$47 for the cab fare. The respondent continued to negotiate for more money telling the owner that he might have to get a lawyer if he did not get enough money back. The respondent left the residence when the owner gave an additional \$100 to the respondent and a bill of sale for the car. The respondent began to drive away from the residence then stopped to retrieve his duffle bag and jacket from the yard. The owner and her son called the Gadsden County Sheriff’s Office to inquire about his employment status. The owner stated to the Sheriff’s Office that the purchase of the vehicle was strange to her and that she was frightened and intimidated by the respondent’s dress and the presence of a firearm when he returned for his vehicle. On December 7, 2009, during sworn testimony, the respondent stated he left work at 0700 hours and went to several repair shops to get estimates for the repair. Twelve hours later, he went to the bus station wearing his uniform and jacket because he never went to his home to change. The respondent stated he concealed his attire with a jacket while he traveled on the bus. The respondent stated he would never wear his uniform to intimidate the owner. As a result of additional evidence, a second sworn interview with the respondent occurred on December 18, 2009. After viewing a video from the bus station, the respondent changed his testimony and stated that he changed into his wife’s shirt before entering the bus. The respondent stated that he placed his uniform shirt, belt, and gun inside the small duffle bag. The respondent stated the only reason he changed clothes in Tallahassee was that he did not want anyone

to know he was an officer. The respondent stated he changed before he got to the owner's residence, because he was uncomfortable and could not breathe in his wife's shirt.

Penalty Guideline: Suspension; Prospective Suspension to Revocation.

Staff recommended thirty day prospective suspension beginning fifteen days following the filing of the Final Order; one year probation to begin at the conclusion of the suspension period; provide staff with proof of successful completion of approved ethics course prior to the end of the probationary period.

Disciplinary Action by the Commission: The Commission denied the respondent's motion to withdraw from the settlement agreement and accepted the settlement agreement.

Case # 31003 Misuse of Official Position (8 counts)

The respondent resigned from the Altamonte Springs Police Department subsequent to an internal investigation which sustained the charges of standards of conduct, knowledge and obedience of laws and regulations, city ethics policy, and code/cannons of police ethics. Between November 30, 2006 and February 17, 2010, the respondent used his management authority to either void or have traffic citations dismissed for his friends. On at least eight separate incidents during the aforementioned period, the respondent directed officers under his authority to either void, dismiss, or not issue traffic citations for friends of his that violated traffic laws in the city of Altamonte Springs. On July 28, 2010, the respondent admitted in the internal investigation that it was improper of him to interject himself into the traffic enforcement decisions of his subordinates. The respondent also acknowledged in his resignation letter that he had intervened "without good cause" on occasion, related to the issuance of traffic citations. No criminal charges were filed.

Penalty Guideline: Suspension (each count).

Staff recommended two years prospective suspension beginning fifteen days following the filing of the Final Order; two years probation to begin at the conclusion of the suspension period; provide staff with proof of successful completion of approved ethics course prior to the end of the probationary period.

Disciplinary Action by the Commission: The Commission rejected staff's recommendation and imposed a one year retroactive suspension; one year prospective suspension beginning fifteen days following the filing of the Final Order; two years probation to begin at the conclusion of the suspension period; provide staff with proof of successful completion of approved ethics course prior to the end of the probationary period.

Case # 29967 Grand Theft

The respondent was terminated from the Department of Corrections subsequent to an internal investigation which sustained the charge of conduct unbecoming a public employee. On November 16, 2009, the respondent went to a discount store and requested that four new tires be mounted on his vehicle. The respondent signed a service order to have the tires mounted with a total dollar amount of \$541.00 with a false name. The store mounted the tires on the vehicle and parked the vehicle outside the service bay. The respondent then used a spare key that was in his possession to gain access to the vehicle and flee without paying for the tires. On November 18, 2009, the respondent was arrested for grand theft. On February 3, 2010, the respondent entered into a pretrial intervention program for the charge of grand theft and was ordered to complete one year felony probation and court costs.

Penalty Guideline: Revocation.

Staff recommended revocation.

Disciplinary action by the Commission: The Commission accepted staff's recommendation.

Case # 29193 **Battery (4 counts)**

The respondent resigned from the Leon County Sheriff's Office subsequent to an investigation that sustained the charge of Standard of Conduct/Integrity – Gross Violation, Commission of a Crime, and Standard of Conduct/Integrity. On August 6, 2009, the respondent went to his apartment complex pool, where he was the courtesy officer. Upon arrival, the respondent dove into the shallow end of the pool wearing cargo pants and swam around for a period. The respondent then exited the pool and made contact with several individuals sitting within the pool area. Using profane language and racially disparaging remarks, he requested them to leave the pool area immediately. The respondent stated that it was 10:30 and that the pool was closed, citing his position as a deputy sheriff with Leon County. The individuals advised the respondent that it was only 9:30 and stated they would leave the pool by 10:30. A verbal altercation escalated into several citizens being shoved and hit by the respondent. Several individuals who witnessed the incident, reported the respondent being intoxicated and belligerent. Tallahassee Police Department responded. During the period in which the police officers were investigating, the respondent picked up one of the individual's keys, which he denied. The police officer searched the respondent and found the keys. The respondent was arrested for four counts of battery, disorderly intoxication, and petit theft. On June 11, 2010, the respondent entered a plea of nolo contendere to the charges of battery (4 counts) and disorderly intoxication and adjudication was withheld. The charge of petit theft was nolle prossed. The respondent was ordered to two years probation, fifteen days of Jail Work Camp, no alcohol, biweekly alcohol testing at random, anger management, and various court costs.

Penalty Guideline: Suspension (each count).

Staff recommended ninety day prospective suspension beginning fifteen days following the filing of the Final Order; one year probation to begin at the conclusion of the suspension period; provide staff with proof of successful completion of approved anger management course 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.

For both initial certification and continued eligibility, individuals must comply with Florida Statute and Commission rule as it relates to criminal arrests and "good moral character". The following information is provided in an effort to clarify the difference and provide an overview of the types of offenses and actions in violation of the Commission's rules governing good moral character.

Chapter 943.13, Florida Statute, states that officers must:

- (4) Not have been convicted of any felony or of a misdemeanor involving perjury or a false statement, or have received a dishonorable discharge from any of the Armed Forces of the United States. Any person who, after July 1, 1981, pleads guilty or nolo contendere to or is found guilty of any felony or of a misdemeanor involving perjury or a false statement is not eligible for employment or appointment as an officer, notwithstanding suspension of sentence or withholding of adjudication. Notwithstanding this subsection, any person who has pled nolo contendere to a misdemeanor involving a false statement, prior to December 1, 1985, and has had such record sealed or expunged shall not be deemed ineligible for employment or appointment as an officer.
- (7) Have a good moral character as determined by a background investigation under procedures established by the commission.

Violations of 943.13(4) F.S. bar individuals from becoming a certified officer in Florida. In instances where a certified officer violates 943.13(4) F.S., Commission rule requires the revocation or denial of that officer's certification.

Officers found to have violated chapter 943.13(7) F. S. may be disciplined by the Commission according the penalty guidelines set forth in rule 11B-27.005, F.A.C. Commission rule 11B-27.0011, F.A.C., outlines offenses and actions that would constitute a violation of 943.13 (7) F.S., as it relates to good moral character. The following is an overview of moral character violations:

- The perpetration by an officer of an act that would constitute any felony offense, whether criminally prosecuted or not.
- Except as otherwise provided in Section 943.13(4), F.S., a plea of guilty or a verdict of guilty after a criminal trial for any of the following misdemeanor or criminal offenses, notwithstanding any suspension of sentence or withholding of adjudication, or the perpetration by an officer of an act that would constitute any of the following misdemeanor or criminal offenses whether criminally prosecuted or not: Sections 316.193, 327.35, 414.39, 741.31, 784.011, 784.03, 784.047, 784.048, 784.05, 790.01, 790.10, 790.15, 790.27, 794.027, 796.07, 800.02, 800.03, 806.101, 806.13, 810.08, 810.14, 812.014, 812.015, 812.14, 817.235, 817.49, 817.563, 817.565, 817.567, 817.61, 817.64, 827.04, 828.12, 831.30, 831.31(1)(b), 832.05, 837.012, 837.05, 837.055, 837.06, 839.13, 839.20, 843.02, 843.03, 843.06, 843.085, 847.011, 856.021, 870.01, 893.13, 893.147, 914.22, 934.03, 944.35, 944.37, and 944.39, F.S.
- Any principal, accessory, attempt, solicitation, or conspiracy, pursuant to Chapter 777, F.S., which had the crime been committed or completed would have been a felony offense.
- The perpetration of an act in any jurisdiction other than the State of Florida, which if committed in the State of Florida would constitute any offense listed in this rule section.
- Excessive use of force, defined as a use of force on a person by any officer that is not justified under Sections 776.05 or 776.07, F.S., or a use of force on an inmate or prisoner by any correctional officer that would not be authorized under Section 944.35(1)(a), F.S.
- Misuse of official position, defined by Section 112.313(6), F.S.
- Having an unprofessional relationship with an inmate, detainee, probationer or parolee, or community controllee. An unprofessional relationship is defined as:
 - Having written or oral communication with an inmate, detainee, probationer or parolee, or community controllee that is intended to facilitate conduct prohibited by this rule section; or
 - Engaging in physical contact not required in the performance of official duties, and is defined as kissing, fondling of the genital area, buttocks, or breasts, massaging or similar touching, holding hands, any other physical contact normally associated with the demonstration of affection or sexual misconduct as applied to all certifications, which is defined in Section 944.35(3), F.S.
- Sexual harassment pursuant to and consistent with decisions interpreting 29 C.F.R. 1604.11, including unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when the harassment involves physical contact or misuse of official position and when:
 - Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or
 - Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or

- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.
- Engaging in sex while on duty, or at any time the officer is acting under the color of authority as a Commission-certified criminal justice officer.
- False statements during the employment application process.
- Conduct that subverts or attempts to subvert the State Officer Certification Examination process pursuant to Rule 11B-30.009, F.A.C.
- Conduct that subverts or attempts to subvert the Basic Abilities Test process pursuant to subsections 11B-35.0011(1), F.A.C.
- Any overt, conspicuous, or public act of a sexual or simulated sexual nature which is likely to be observed by others.
- Willful failure of the agency administrator to comply with Chapter 943, F.S., as it pertains to the Criminal Justice Standards and Training Commission or Commission rules.
- Intentional abuse of a Temporary Employment Authorization, pursuant to Section 943.131(1), F.S.
- Testing positive for controlled substances by a urine or blood test.

Recommended penalty guidelines are set forth in Commission rule 11B27.005, F.A.C. For felony offenses, whether criminally charged or not, the Commission provides a specific penalty guideline for seventeen charges, ranging from prospective suspension of certification to revocation. For all other felony offenses, whether criminally charged or not, the Commission penalty guideline ranges from suspension of certification to revocation. Commission rule also outlines specific penalty guidelines for fifteen misdemeanor violations and all non-criminal offenses. For all other misdemeanor violations enumerated in Commission rule, the guideline penalty ranges from probation of certification to suspension.

The Commission may deviate from the disciplinary guidelines upon the showing of aggravating or mitigating circumstances. The aggravating circumstances are: whether the certified officer used official authority to facilitate the misconduct, whether the misconduct was committed while the certified officer was performing other duties, the number of violations found by the Commission, the number and severity of prior disciplinary actions taken against the certified officer by the Commission, the severity of the misconduct, the danger to the public, the actual damage, physical or otherwise, caused by the misconduct, the lack of deterrent effect of the penalty imposed by the employing agency, the pecuniary benefit or self-gain to the officer realized by the misconduct, whether the misconduct was motivated by unlawful discrimination, any behavior constituting "domestic violence" defined by Section 741.28(1), F.S., whether the certified officer has previously received a Letter of Acknowledgment within the preceding three years.

Mitigating circumstances are: the officer's employment status in a position requiring Commission certification at the time of the final hearing before the Commission, the recommendations of character or employment references, the lack of severity of the misconduct, the length of time the officer has been certified by the Commission, any effort of rehabilitation by the certified officer, the effect of disciplinary or remedial action taken by the employing agency or recommendations of the employing agency administrator, the recommendation of a Probable Cause Panel to impose a penalty below the penalty guideline, the effort of the officer to retract a false statement prior to the close of the disciplinary or criminal investigation

All Commission rules can be accessed through the FDLE website at:

<http://www.fdle.state.fl.us/Content/getdoc/a13d2caa-7e0f-4bf1-9c86-770a60101d68/CJSTC-FAC-Rules.aspx>

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](mailto:stacylehman@fdle.state.fl.us).