



# Professional Compliance Bulletin Issue 46 October 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 October 27, 2011.

## Case # 30909 Sexual Harassment-2 Counts

The respondent received a 30-day suspension from the Miami-Dade Police Department (MDPD) subsequent to an internal investigation which sustained Sexual Harassment (5 counts). On October 15, 2008, the MDPD initiated an internal investigation after receiving multiple complaints from two of the respondent’s female subordinates regarding sexual harassment and the creation of a hostile work environment. The investigation revealed that between May 1, 2008 and September 30, 2008, the respondent engaged in inappropriate behavior with the first complainant by kissing her on the lips on numerous occasions without her consent and, on one occasion, by slapping her on her right buttock. These behaviors were corroborated by both another officer and a civilian that witnessed the actions. The investigation also revealed that between May 1, 2008 and October 31, 2008, the respondent engaged in inappropriate behavior with the second complainant by kissing her on the lips on numerous occasions without her consent and, on one occasion, by making a verbal sexual overture to her. These behaviors were corroborated by several officer witnesses. The respondent stated to investigators that he did not at any time take any action that was intended to create a hostile work environment or harass these employees. No criminal charges were filed.

### **Penalty Guideline:** Probation with Training to Suspension-both counts.

Staff recommended thirty-day prospective suspension to be served within 180 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 Commission-approved sexual harassment awareness course prior to the end of the probationary period.

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

## Case # 30448 Driving Under the Influence

The respondent separated from the Department of Corrections prior to being arrested for driving under the influence. On January 6, 2010, officers from the Tallahassee Police Department were dispatched to a traffic crash. Once on the scene, one officer observed the respondent in the driver’s seat with vomit on his chest. The officer observed that the respondent’s eyes were bloodshot and watery and his speech was slurred as he spoke. Once the respondent was removed from the vehicle, he was treated by EMS personnel and transported to the hospital. While being treated by EMS, the respondent spontaneously admitted that he was intoxicated. The officer indicated that he could detect the obvious odor of alcoholic beverages coming from the respondent as he spoke. The respondent explained to the officer he did not remember the crash and only remembered being at a local pool hall. He further indicated he had consumed alcoholic beverages at the pool hall. The officer requested a blood sample, and the respondent agreed. On February 2, 2010, the blood sample results were reported as 0.140g/100ml and

0.139g/100ml. On March 29, 2010, a county judge signed a warrant for the respondent's arrest and on April 7, 2010, the warrant became active. On May 13, 2010, the respondent pled no contest and was adjudicated guilty of driving under the influence. He was sentenced to one day in the county jail with credit for one day, six-month probation, six month license suspension, and ordered to complete fifty hours of community service. His vehicle was impounded for ten days; he was ordered to complete DUI School, and ordered to pay various court costs and fines.

**Penalty Guideline:** Probation with substance abuse counseling.  
Staff recommended the acceptance of the voluntary relinquishment.

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

**Case # 30860 Excessive Use of Force, False Official Statement**

The respondent was terminated from the Orange County Corrections Department while the subject of an internal investigation which ultimately sustained excessive use of force and untruthfulness. On June 4, 2010, the respondent submitted an incident report detailing an earlier incident. The respondent and another officer, while performing a security check, entered the cell of an inmate in order to remove juice cartons. Upon entering the cell, the inmate in question stood up and suddenly raised his hand in an aggressive manner and then flexed his arm as if to strike the respondent. The respondent's report stated that he grabbed the inmate's arm and redirected the inmate to the cell bed as the inmate continued to resist. The respondent and the second officer ordered the inmate to lie down so they could handcuff him, but he continued to resist. The respondent and the second officer then forced the inmate to the cell floor. The respondent reported that they were finally able to handcuff the inmate, thereby ending their involvement in the incident. However, the investigator's review of the video footage revealed that the respondent and the second officer delivered multiple strikes and kicks to the inmate prior to directing him to the cell floor. The strikes and kicks were not included in the respondent's report. A battery charge was filed against the respondent on September 1, 2010. On April 15, 2011, the respondent pled nolo contendere to battery and the adjudication was withheld. The respondent was given a 6-month suspended jail sentence and placed on a 360-day period of probation. He was ordered to serve 50 hours of community service, successfully complete anger management counseling, surrender his correctional officer certification for one year and pay \$949.00 in fines and court costs.

**Penalty Guideline:** Suspension to Revocation, Prospective Suspension to Revocation.  
Staff recommended a one-year retroactive suspension, thirty-day prospective suspension beginning 15 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 Commission approved use of force and ethics course prior to the end of the probationary period.

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

**Case # 28359 Aggravated Stalking, Solicitation to Commit Murder (2 Counts)**

The respondent was terminated from the Jackson County Sheriff's Office subsequent to his arrest for attempted murder and aggravated stalking. On March 4, 2009, a confidential source brought information to an FDLE agent that the respondent had requested her assistance in killing his estranged wife, the wife's boyfriend, and help in destroying the evidence after the murder. The informant, under the direction of the respondent, conducted surveillance on the wife's boyfriend's residence. The respondent provided the informant with his wife's cellular and work telephone number and suggested that she make threatening calls to his wife so he would have a good alibi. The respondent's wife had previously received threatening text messages from an unknown number. Both victims stated that during the last week of February 2009, they observed a vulgar sign near her residence which they took as a threat. In addition, the respondent telephoned his ex-wife and threatened her. The respondent then showed up at her residence covered in debris as though he had been lying in grass or a wooded area. On March 4, 2009, under the direction of a law enforcement officer, the informant met with the respondent and discussed the possibility of how the murders would be accomplished and his need for the informant to

provide him with a weapon and a vehicle to commit the murders. Under surveillance, the respondent was observed driving past the victim's residence twelve times. On March 5, 2009, the respondent was arrested without incident for aggravated stalking and attempted felony murder in Jackson County. On April 8, 2009, the state attorney filed no information for the charge of attempted felony murder due to insufficient evidence to prove all the necessary elements of the charge. On April 30, 2010, the court dismissed the charge of aggravated stalking. The State Attorney filed direct information for the charge of stalking. On December 7, 2010, the respondent entered into a pre-trial intervention program for one year for the charge of stalking and harassment. He was ordered to take medication as needed, attend counseling, to have no contact with the victim, to pay various court costs and fines.

**Penalty Guideline:** Suspension to Revocation, Suspension to Revocation (both counts).  
Staff recommended revocation.

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

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

Florida Statutes and Florida Administrative Code require an employing agency to conduct an internal investigation when having cause to suspect that an officer has violated state officer standards, as defined in Commission rule. Further, the employing agency is required to report sustained findings from the internal investigation to Commission staff.

Upon receipt of a completed investigation, Commission staff reviews all pertinent documentation to determine if there appears to be sufficient evidence to initiate a disciplinary case. Items reviewed include, but are not limited to, agency internal investigations, interviews, supporting documentation, arrest documents where applicable, and court documents where applicable. If Commission staff's review indicates that probable cause of an officer standards violation likely exists, then staff prepares the case for presentation to a Commission Probable Cause Panel for determination.

However, Rule 11B-27.004 (12)(a) F.A.C. states:

In cases in which the facts presented to Commission staff are inconclusive, lack reliability, are insufficient to permit a reasonable determination of what occurred, or fail to demonstrate that the alleged misconduct meets the statutory criteria for Commission action, Commission staff shall "no cause" the case. Commission staff shall reopen a case that has been "no caused" if new evidence or witnesses become available to Commission staff. However, Commission staff shall "no cause" a violation of paragraph 11B-27.0011(4)(b) or (c), F.A.C., if the officer is alleged to have committed the violation more than eight years prior to the case being presented at a Probable Cause Determination Hearing.

As the rule makes clear, many factors may influence the determination by Commission staff that a case should be no caused. The sustained violation must first be a violation listed in Commission rule. Reported violations of agency policy that do not equate to a state standards violation under Commission rule, for example, would not be presented for a finding of probable cause and would be no caused by staff. Additionally, misdemeanor offenses reported to Commission staff that fall outside the enumerated misdemeanors in Commission Rule 11B-27-0011(4)(b)(1), F.A.C. are no caused.

Commission rule further provides for staff to no cause a violation when an administrative tribunal or court proceedings reverse agency findings or the officer is acquitted of criminal charges. Specifically, Rule 11B-27.004 (11)(b), F.A.C. states:

In cases in which administrative or judicial review results in a final reversal of discipline imposed by the employing agency relating to the alleged misconduct that is subject to review by the Commission, or criminal proceedings that result in the respondent's acquittal on all charges subject to review by the Commission after a trial, Commission staff shall take no further action, provided that Commission staff may present the case to a Probable Cause Panel upon Commission staff's specific showing that the findings of fact in the collateral proceedings were based upon inclusion or exclusion of evidence, or that the testimony was a departure from the essential requirements of law, the findings of fact in the collateral proceedings were not supported by competent and substantial evidence, or were clearly contrary to the evidence presented.

Staff may also not cause a case when the available evidence is insufficient to demonstrate that the officer committed the violation. Normally, corroborating evidence or witness testimony must be present to support taking the case forward to a Probable Cause Panel. Cases may not be caused when witness testimony is contradictory, inconclusive, or when key witnesses will not cooperate with the investigation.

Finally, Commission staff may not cause a reported violation of perjury or a false statement if the statement was recanted. Rule 11B-27.0011(5) states:

A certified officer's failure to maintain good moral character as defined in subsection (4) of this rule section by committing a violation involving perjury or false statement in a court proceeding, shall not include a statement which was recanted. If the violation involving perjury or false statement is alleged to have occurred in the performance of regularly required work duties or the course of an administrative or disciplinary investigation, a certified officer's failure to maintain good moral character as defined in subsection (4) of this rule section shall not include a statement in which the officer making the statement conceded such statement to be false prior to the employing agency's final disciplinary determination as provided for in Section 112.532(4)(b), F.S.

Although the Commission's rule recognizes an officer's recant (under the circumstances set out in the rule) as a complete defense to a violation of state officer standards, this defense only applies to the Commission's ability to take disciplinary action on the officer's certification. It does not have any direct application to the employing agency's findings or govern its ability to take disciplinary action or terminate an officer.

It is Commission staff's duty to help assure that only appropriate officer cases are presented to the Commission Probable Cause Panel. The staff's action of "no causing" cases that fail to meet the Commission's criteria is an important filter in safeguarding the integrity of the professional compliance process.

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).