



Professional Compliance Bulletin Issue 43 February 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 February 3, 2011.

Case # 30121 Perjury in Official Proceeding

The respondent was terminated from the St. Augustine Police Department for working off duty security without authorization, untruthfulness to a superior, and untruthfulness during an internal affairs investigation. On Monday, December 21, 2009, two officers with the St. Augustine Police Department were investigating a hit and run traffic crash at a local jewelry store. The hit and run victim was the owner of the store. While the officers were speaking with the owner of the store, the owner asked the officers if they knew the respondent, and also told them that the respondent would be in later that day to work security for the store. Later that day around noon, a commander with the SAPD went into the jewelry store to purchase a gift for his wife. While there, he observed the respondent at the store apparently working as an armed security officer in civilian clothes. The commander asked the store owner if the respondent was working security for him and he advised she was. The commander requested that a sergeant with the SAPD go to the store and investigate if the respondent was working security at the store. At approximately 4:00 p.m. that same day, the sergeant responded to the store and observed the respondent still at the store standing near the register counter. The sergeant asked the store owner if the respondent was working security for him and he stated that she visited his store earlier that day and he asked her to stay over and watch the store because he was concerned about the people coming in. The next morning, Tuesday, December 22nd, the respondent requested to work security at the jewelry store that afternoon, December 22nd, and Thursday, December 24th. While requesting to work the off duty detail, the respondent denied to the sergeant and the commander that she was working off duty at the jewelry store on Monday, December 21st. An investigation was initiated into the respondent working off duty security without authorization and telling the sergeant and commander that she was not working off duty at the jewelry store on Monday, December 21st. During the internal affairs investigation, the respondent stated under oath that she was not working security for the jewelry store on Monday, December 21st. Also during the investigation, the store owner stated under oath he told the two SAPD officers that the respondent would be in later that day to work security for his store. He also stated he told the commander that the respondent was working security for him while the commander was in his store shopping. During the interview, the store owner confirmed that the respondent was working security for his store on Monday, December 21st. The investigation sustained that the respondent worked off duty security without authorization, that she was untruthful to a superior, and that she was untruthful during the investigation.

Penalty Guideline: Prospective suspension to Revocation.

Staff recommended 3 months retroactive suspension; 15 day prospective suspension beginning fifteen days following the filing of the Final Order; 1 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 accepted the settlement agreement.

Case # 29437 Unprofessional Relationship with an Inmate

The respondent was terminated from the Florida Department of Corrections subsequent to an internal investigation, which sustained a charge of conduct unbecoming. On September 28, 2009, an inmate alleged that a correctional officer had been sexually abusing him. During an internal investigation, the inmate stated that approximately a week and a half earlier; he used his hand to masturbate the respondent in the dormitory laundry room and he has had numerous conversations with the respondent that were sexual in nature. When inspectors asked the inmate if he would consider wearing an electronic recording device, the inmate consented. Later that same evening, a digital recorder was placed on the inmate and it recorded two conversations between the inmate and the respondent. A review of the conversation between the inmate and the respondent corroborates the inmate's allegation. During a sworn statement on January 7, 2010, the respondent stated that the recorded conversations between him and the inmate were accurate; however, he denied that there has ever been any physical contact between the inmate and himself. He stated that he had probably gone too far in his conversations with the inmate and he did so only to gain the inmate's trust. The respondent stated that he has spoken with other inmates in such a manner to gain their trust in an attempt to gain information. No criminal charges were filed.

Penalty Guideline: Revocation.

Staff recommended revocation.

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

Case # 30065 Burglary; Battery

The respondent was scheduled to be administratively terminated from the Orange County Sheriff's Office for a non worker's comp medical issue when she was arrested for burglary and battery. On February 10, 2010, the respondent and another woman arrived, uninvited, at the apartment of the other woman's estranged husband (victim) and began knocking and kicking on his front door in an abrupt manner. When the victim opened the door, the respondent and the other woman unlawfully entered the victim's apartment and began to punch him in the head and back. The victim managed to push the respondent and the other woman out of the apartment; however, they continued to batter him, thereby causing him to suffer minor scratches. The victim's current girlfriend then called 911. When law enforcement responded to the scene, the aforementioned events were confirmed to them by witnesses. However, the respondent stated to deputies that she and the other woman were invited over by the victim and, after their arrival, the victim stepped outside the apartment and began to strangle them for no reason. The respondent and the other woman were then arrested and charged with burglary and battery. The internal investigation also sustained burglary and battery against the respondent. On April 8, 2010, the respondent was placed in a pretrial diversion program for the battery charge and a no hostile contact order with the victim was issued by the court. The State Attorney's Office no filed on the burglary charge.

Penalty Guideline: Suspension to Revocation; Suspension

Staff recommended thirty days 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.

Case # 29922 Fighting or Baiting Animals; Battery-Domestic Violence

The respondent was terminated from the Miami Beach Police Department subsequent to an internal investigation which sustained the violations of department rules, duty to conform to the law, personal conduct (2cts), and conduct unbecoming (5cts). On January 20, 2009, a complaint was received by the Miami Beach Police Department on the respondent for allegations of domestic battery, dog fighting, and sexual relations with prostitutes. The complainant and the respondent were involved in a three year relationship. The complainant discovered that the respondent had been having an affair when she placed a recording device in the respondent's police vehicle without his knowledge. On the night of January 16, 2009, the complainant told the respondent about her discovery and asked him to move out. The respondent became enraged and threw her to the floor. He then grabbed the sides of her head/hair and banged the back of her head repeatedly on the marble floor. The complainant looked up at the respondent and saw her hair in his hands. The respondent then retreated to the bedroom and went to sleep. The complainant called 911 and reported the battery, but inadvertently gave a wrong address. When the officers did not come, she called again. Realizing that they had responded to a wrong address, she tried to cancel the call. The 911 operators sent the officers to the home and once there the complainant did not want them to disrupt the respondent in fear of more abuse. The officers found the respondent in the bedroom. The complainant told one officer that the respondent did not hit her. The complainant stated that the respondent told her over and over again that he would kill anyone who messed with his job and she believed this to be a viable threat. The next day the complainant went to the police department and filed her complaint along with three video tapes which were of the respondent participating in dog fighting. On January 21, 2009, the complainant was granted a temporary injunction for protection against domestic violence. On March 13, 2009, an order of dismissal was received by the department that the complainant and the respondent mutually agreed to dismiss the injunction and not pursue the domestic violence case. During the respondent's sworn interview he acknowledged that he actively participated in dog fighting in Mississippi and knew that it was illegal. No criminal charges were filed.

Penalty Guideline: Suspension to revocation; Prospective suspension to revocation.

Staff recommended acceptance of the voluntary relinquishment of certification.

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)(b)2, F.S., requires the Criminal Justice Standards and Training Commission to conduct a Penalty Guidelines Task Force workshop on or before July 1 of each odd-numbered year to receive public comment and to evaluate disciplinary guidelines and penalties concerning certified officers and/or certified instructors.

The Penalty Guidelines Task Force met in Ocala, Florida, on January 20, 2011, to consider revisions to Rule Chapter 11B-27, F.A.C. The Task Force was chaired by Sergeant John Rivera, Miami-Dade PD, and consisted of members Deputy Secretary George Sapp-Florida Department of Corrections, Chief Dennis M. Jones-Tallahassee Police Department, Chief Bob Musco-Green Cove Springs Police

Department, Chief Greg Brand-Milton Police Department, Sheriff Susan Benton-Highlands County Sheriff's Office, Officer Patrick M. Hanrahan-Broward County Sheriff's Office, Sergeant Michael "Mick" McHale-Sarasota Police Department, Sergeant John Kazanjian-Palm Beach County Sheriff's Office, Officer Nelson Cuba-Jacksonville Sheriff's Office, Chief Van Toth-Hialeah Gardens Police Department, Officer Belinda Murvin-Palm Beach County Sheriff's Office.

The following recommendations were made by the Task Force and were adopted by the Commission at its regularly scheduled business meeting held on February 3, 2011, in Orlando, Florida. These changes will be made to Commission rule upon authority being granted. Changes to rule are **highlighted in red**.

Item #1

Current Commission rule does not include "engaging in a romantic relationship" as part of the rule addressing unprofessional relationships. However, these relationships likely create an officer safety risk within the institutions.

Rule 11B-27.0011 Moral Character.

3. Having an unprofessional relationship with an inmate, detainee, probationer or parolee, or community controllee. An unprofessional relationship is defined as:

a. 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

b. 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.

c. Engaging in a romantic association with an inmate, detainee, probationer, parolee, or community controllee. "Romantic association" is defined as the exchange of telephone calls, pictures, letters, greeting cards, or any other form of oral or written communication which expresses feelings or thoughts of affection or the desire to engage in a romantic relationship whether emotional or physical.

Item #2

This item would add two new charges to the current list of enumerated misdemeanors. Obscene and harassing phone calls are often an element in other cases (i.e. stalking, battery-domestic violence), however, are not presented to the Commission. Additionally, cases involving providing false information to law enforcement are not eligible for Commission review. These cases present officer safety issues and warrant review by the Commission.

Rule 11B-27.0011(4)(b)(1) Moral Character.

(b) 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:

1. Sections 316.193, 327.35, **365.16(1)(c)(d)**, 414.39, 741.31, 784.011, 784.03, 784.047, 784.048, 784.05, 784.046(15), 790.01, 790.10, 790.15, 790.27, 794.027, 796.07, 800.02, 800.03, 806.101, 806.13, 810.08, 810.14, 810.145, 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, **901.36**, 914.22, 934.03, 944.35, 944.37, and 944.39, F.S.

365.16(1)(c)-(d) Obscene or harassing telephone calls.

(1) Whoever: (c) Makes or causes the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number; or (d) Makes repeated telephone calls, during which conversation ensues, solely to harass any person at the called number.

901.36 Prohibition against giving false name or false identification by person arrested or lawfully detained; penalties; court orders.

(1) It is unlawful for a person who has been arrested or lawfully detained by a law enforcement officer to give a false name, or otherwise falsely identify himself or herself in any way, to the law enforcement officer or any county jail personnel.

Item #3

Disciplinary cases in which the respondent never responds to the Administrative Complaint enter default status. When making a penalty recommendation for these cases, staff utilizes the highest penalty in rule. However, many charges do not include revocation. In such cases, the recommendation is for a period of probation and/or suspension, and often times, the respondent again fails to respond. These cases then return to the entire disciplinary process as Violation of Commission Ordered Probation. This rule change will include failure to respond to the Administrative Complaint as an aggravator for recommending revocation in default status cases.

Amended Rule 11B-27.005(a) Revocation or Disciplinary Actions.

(a) Aggravating circumstances:

1. Whether the certified officer used official authority to facilitate the misconduct.
2. Whether the misconduct was committed while the certified officer was performing other duties.
3. The number of violations found by the Commission.
4. The number and severity of prior disciplinary actions taken against the certified officer by the Commission, provided the officer was previously disciplined by the Commission within the preceding eight years or received a Letter of Guidance within the preceding five years.
5. The severity of the misconduct.
6. The danger to the public.
7. The actual damage, physical or otherwise, caused by the misconduct.
8. The lack of deterrent effect of the penalty imposed by the employing agency.
9. The pecuniary benefit or self-gain to the officer realized by the misconduct.
10. Whether the misconduct was motivated by unlawful discrimination.
11. Any behavior constituting "domestic violence" defined by Section 741.28(1), F.S.
12. Whether the certified officer has previously received a Letter of Acknowledgment within the preceding three years.
13. The certified officer has not filed any answer to the Administrative Complaint or otherwise responded to the allegations of misconduct alleged by the Commission.

Item #4

This change gives notice to employers that if an officer is separated for a reason requiring an internal investigation, the investigation must be provided to Commission staff upon request.

The following language added to the Affidavit of Separation form CJSTC-61, sections 7E and 7F:

Note: The agency administrator or designee shall provide proof of the internal investigation upon request by Commission staff.

If you have questions concerning the Penalty Guidelines Task Force, or if you have any issued 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).