

CRIMINAL JUSTICE STANDARDS AND TRAINING COMMISSION

(ADDENDUM 1/8/19)



OFFICER DISCIPLINE PENALTY GUIDELINES TASK FORCE MEETING

JANUARY 16, 2019

AGENDA ITEM: 10 (Addendum 12/17/18; Amended Addendum 1/8/19)

Final Reversal of Discipline Imposed by the Employing Agency Relating to Alleged Misconduct – Amends Rule 11B-27.004(10)(b), F.A.C.

SUPPORTING INFORMATION

Attachment 1: January 2015 Task Force Packet, pages 3 - 34.

Attachment 2: February 2015 Task Force Workshop Overview, pages 35 - 39.

Attachment 3: March 2015 Task Force Packet, pages 40 - 96.

Attachment 4: May 2015 Task Force Workshop Overview and Commission Meeting Minutes, pages 97 - 103.

Attachment 5: Arbitration Rule Timeline, pages 104 - 105.

Attachment 6: Arbitrator Overturned Agency Findings (January 2015 to Present), page 106.

CRIMINAL JUSTICE STANDARDS AND TRAINING COMMISSION



OFFICER DISCIPLINE PENALTY GUIDELINES TASK FORCE MEETING

JANUARY 21, 2015

TASK FORCE AGENDA



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JANUARY 21, 2015 OFFICER DISCIPLINE PENALTY GUIDELINES TASK FORCE MEETING

Officer Discipline Penalty Guidelines Task Force

CJSTC Chairman Greg S. Hutching	Florida Panhandle Technical College Public Safety Institute 757 Hoyt Street Chipley, Florida 32428 Telephone Number: 850.638.1180, Ext 339 E-mail: greggh@whtc.us
Commission Attorney Nick Cox	Office of the Attorney General 3507 E. Frontage Road, Suite 325 Tampa, Florida 33607 Telephone Number: 813.287.7960 E-mail: Nick.Cox@myfloridalegal.com Executive Assistant/Office Manager: Beth Decker Telephone Number: 813.287.7950 E-mail: Beth.Decker@myfloridalegal.com
Commission Secretary Joyce Gainous-Harris	JoyceGainous-Harris@fdle.state.fl.us 850.410.8615

Task Force Membership		
Management/Officer	Name	Address
Management	Chairman Edward L. Griffin (Warden)	Putnam Correctional Institution 148 Yelvington Road East Palatka, Florida 32131-2100 Telephone Number: 386.326.6690 E-mail: Griffin.Edward@mail.dc.state.fl.us Assistant: Sandra Knox Telephone Number: 386.326.6690 E-Mail: knox.sandra@mail.dc.state.fl.us
Management	Sheriff Ric L. Bradshaw	Palm Beach County Sheriff's Office 3228 Gun Club Road West Palm Beach, Florida 33406 Telephone Number: 561.688.3021 E-mail: bradshawr@pbso.org Assistant: Annette Marvin Telephone Number: 561.688.3021 E-mail: marvina@pbso.org
Management	Commissioner David Hobbs (Sheriff)	Jefferson County Sheriff's Office 171 Industrial Park Monticello, Florida 32344 Telephone Number: 850.997.2523 E-mail: hobbsdc@fcjn.net Assistant: Dawn Stiff, 850.997.2287 E-mail: stiffd@fcjn.net Office Manager: Jean Willis, 850.997.8272 E-mail: willisjc@fcjn.net

Rev: 12/18/2014

January 21, 2015, Officer Discipline Penalty
Guidelines Task Force Workshop

Task Force Membership

Management/Officer	Name	Address
Management	Commissioner Steven Steinberg (Chief)	Aventura Police Department 19200 West Country Club Drive Aventura, Florida 33180 Telephone Number: 305.466.8966 E-mail: ssteinberg@aventurapolice.com Assistant: Rita Noa Telephone Number: 305.466.8966 E-mail: Noar@aventurapolice.com
Management	Chief Jeff M. Pearson	Satellite Beach Police Department 510 Cinnamon Drive Satellite Beach, Florida 32937 Telephone Number: 321.773.4400 E-mail: jpearson@satellitebeach.org
Management	Commissioner Steve Courtoy (Captain)	Tampa Police Department, District 3 411 N. Franklin Street Tampa, Florida 33602 Telephone Number: 813.242.3897 E-mail: Charles.Courtoy@tampagov.net
Officer	Sergeant Mick McHale	Sarasota Police Department 2099 Adams Lane Sarasota, Florida 34237 Telephone Number: (941) 915-3532 E-mail: fxrmick@msn.com Assistant: Laura Smith Telephone Number: 941-366-1436 E-mail: laurasmith@flpba.org
Officer	Commissioner William Weiss (Deputy)	Martin County Sheriff's Office 800 S.E. Monterey Road Stuart, Florida 34994-4507 Telephone Number: 772.260.9033 (cell) E-mail: wrweiss@sheriff.martin.fl.us Assistant: Laurie Weber 772.220.7146 and Office Manager: Gail Seldomridge, 561.689.3745 E-mail: LJweber@sheriff.martin.fl.us E-mail: gail@pbcpsba.org
Officer	Commissioner Matthew "Matt" L. Williams (Sergeant)	Clay County Sheriff's Office 1836 Blanding Boulevard Middleburg, Florida 32068 Telephone Number: 904.237.6925 E-mail: mwilliamsfop@att.net
Officer	Commissioner Nicholas Marolda, Jr. (Detective)	Lakeland Police Department 219 North Massachusetts Avenue Lakeland, Florida 33801-4972 Telephone Number: 813.478.1618 E-mail: Nicholas.Marolda@lakelandgov.net
Officer	Sergeant Alexander Schroader	Hamilton Correctional Institution 10650 SW 46 th Street Jasper, Florida 32052-1360 Telephone Number: 386.792.9391 E-mail: awschroader@gmail.com
Officer	Deputy William Lawless	Pasco County Sheriff's Office 2341 Woodbend Circle New Port Richey, Florida 34655 Telephone Number: 727.657.7876 E-mail: wlawless@pascosheriff.org

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January 21, 2015, Officer Discipline Penalty
Guidelines Task Force Workshop

Task Force Membership

Commission Staff

Criminal Justice Professionalism Management	
Name	Email and Telephone
Division Director Dean Register	DeanRegister@fdle.state.fl.us 850.410.8611
Bureau Chief Glen Hopkins	GlenHopkins@fdle.state.fl.us 850.410.8660
Professional Compliance Manager Stacy Lehman	StacyLehman@fdle.state.fl.us 850.410.8645

FDLE Counsel	
Name	Email and Telephone
General Counsel Tom Kirwin	ThomasKirwin@fdle.state.fl.us 850.410.7686
Deputy General Counsel Joe White	JoeWhite@fdle.state.fl.us 850.410.8339
Assistant General Counsel Jeff Dambly	JeffDambly@fdle.state.fl.us 850.410.8872
Assistant General Counsel Weston Petkovsek	WestonPetkovsek@fdle.state.fl.us 850.410.7688
Assistant General Counsel Rebecca Cambria	RebeccaCambria@fdle.state.fl.us 850.410.8190

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January 21, 2015, Officer Discipline Penalty
Guidelines Task Force Workshop

Task Force Membership



Criminal Justice Standards and Training Commission

P.O. Box 1489 | Tallahassee, FL 32302-1489 | (850) 410-8600

December 11, 2014

MEMORANDUM

TO: Glen W. Hopkins, Bureau Chief of Standards *GH*

FROM: R. Stacy Lehman, Professional Compliance Section Manager *SL*

SUBJECT: Penalty Guidelines Task Force Issues

The following is a summary of issues compiled by staff for consideration by the Penalty Guideline Task Force. Where rule amendments are recommended, proposed deletions are indicated with ~~strikethroughs~~ and proposed new language is indicated by underlining.

ISSUE NUMBER 1:

In 2012, a statutory change was made to the charge of Video Voyeurism. This change made the charge a misdemeanor for anyone under 19 years old, and a felony for anyone 19 years old or older. Since the Commission requires an individual to be 19 years old in order to become certified, the charge of misdemeanor Video Voyeurism and associated penalty guideline should be removed from rule.

Amended Rule 11B-27.0011(4) F.A.C. Moral Character-Misdemeanor Violations

(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, 817.61, 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.

PGTF Issues
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Amended Rule 11B-27.005(5) F.A.C. Range of Penalties-Misdemeanor Violations

(b) For the perpetration by the officer of an act that would constitute any of the misdemeanor offenses, pursuant to paragraph 11B-27.0011(4)(b), F.A.C., but where there was not a violation of Section 943.13(4), F.S., the action of the Commission shall be to impose a penalty ranging from probation of certification to suspension of certification. Specific violations and penalties that shall be imposed, absent aggravating or mitigating circumstances, include the following:

	Violation	Recommended Penalty Range
8.	Prostitution or lewdness; voyeurism, video voyeurism (796.07, 810.14, 810.145 , F.S.)	Prospective suspension, and probation with counseling to revocation

ISSUE NUMBER 2:

Amend current rule language to add an enumerated penalty guideline for the felony charge of Video Voyeurism. This rule language will apply the same penalty guideline for the current misdemeanor charge of Voyeurism. Any aggravators or mitigating circumstances as outlined in Rule 11B-27.005(6)(a)(b), F.A.C. may be considered when determining the appropriate final disciplinary action by the Commission.

Amended Rule 11B-27.005(5) F.A.C. Range of Penalties-Felony Violations

(a) For the perpetration by the officer of an act that would constitute any felony offense, pursuant to paragraph 11B-27.0011(4)(a), F.A.C., but where there was not a violation of Section 943.13(4), F.S., the action of the Commission shall be to impose a penalty ranging from suspension of certification to revocation. Specific violations and penalties that shall be imposed, absent mitigating circumstances, include the following:

	Violation	Recommended Penalty Range
18.	<u>Video Voyeurism</u>	<u>Prospective suspension and probation with counseling to revocation</u>

ISSUE NUMBER 3:

In numerous cases, officers with a sustained charge of Sexual Harassment have been suspended by their agency, qualifying them to receive a Letter of Acknowledgement (LOA) from the Commission since the agency's discipline met the Commission's penalty guideline. The current penalty guideline for this charge is probation with training to suspension. An officer receiving at least a one day suspension, regardless of training, is eligible for an LOA. A change to rule will ensure that the officer will receive the necessary training from the agency or through the Commission's discipline process.

PGTF Issues
Page 3

Amended Rule 11B-27.005(5) F.A.C. Range of Penalties-Non-Criminal Violations

(c) For the perpetration by the officer of an act or conduct, as described in paragraph 11B-27.0011(4)(c), F.A.C., if such act or conduct does not constitute a crime described in paragraphs (5)(a)-(b) of this rule section, the action of the Commission shall be to impose the following penalties, absent aggravating or mitigating circumstances:

	Violation	Recommended Penalty Range
2.	Sexual harassment involving physical contact or misuse of position	Probation with training to suspension <u>with training.</u>

ISSUE NUMBER 4:

Amend rule to specify that the charge of Falsification of a Use of Force Report (Section 944.35(4)(b) F.S.) is included in the penalty guideline for misdemeanors involving false reports and statements. The current penalty guideline rule includes the entire section 944.35 F.S. Both Falsification of a Use of Force Report (Section 944.35(4)(b) F.S.) and Failure to Report Use of Force (Section 944.35(4)(a) F.S.) are included within the statute. However, only Section 944.35(4)(b) involves a false statement. The charge of Failure to Report Use of Force (Section 944.35(4)(a) F.S.), is also a moral character violation but does not involve a false statement. The charge of Failure to Report Use of Force will remain within the generic penalty guideline of probation to suspension for misdemeanor moral character violations.

Amended Rule 11B-27.005(5) F.A.C. Range of Penalties-Misdemeanor Violations

(b) For the perpetration by the officer of an act that would constitute any of the misdemeanor offenses, pursuant to paragraph 11B-27.0011(4)(b), F.A.C., but where there was not a violation of Section 943.13(4),F.S., the action of the Commission shall be to impose a penalty ranging from probation of certification to suspension of certification. Specific violations and penalties that shall be imposed, absent aggravating or mitigating circumstances, include the following:

	Violation	Recommended Penalty Range
4.	False reports and statements (817.49, 837.012, 837.05(1), 837.055, 837.06, 901.36, 944.35(4)(b), F.S.).	Prospective suspension to revocation

ISSUE NUMBER 5:

Amend rule to include a timeframe during which an officer can recant a false statement.

Amended Rule 11B-27.0011 F.A.C. Moral Character

(5) 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 conclusion of the internal affairs investigation in which the false statement related to a material fact or within 10 working days of making the false statement, whichever occurs first. For purposes of this subsection, the employing agency's internal affairs investigation shall be deemed to be at a conclusion upon the investigator's execution of the statement required by Section 112.533(1)(a)2., F.S.

ISSUE NUMBER 6:

Amend rule to restore the Commission's ability to discipline or revoke an officer's certification, notwithstanding a decision in an arbitration, civil service board or other administrative review to overturn the employing agency's dismissal or discipline and reinstate the officer to employment.

Note: In *Newberry v. Florida Dept. of Law Enforcement, Criminal Justice Standards & Training Com.*, 585 So.2d 500 (Fla. 3rd DCA 1991), the 3rd DCA upheld the Commission's order revoking an officer's certification for testing positive for cocaine, notwithstanding the fact that the officer had been reinstated to her job by a civil service board that overturned her dismissal from employment on the same violation. The Commission was not legally bound by the civil service board's decision to reject the officer's drug test results and return the officer to duty. In 2003, the Commission approved the recommendation of the Penalty Guidelines Task Force to adopt the current rule which forbids Commission staff to present a case if the officer had prevailed in arbitration or a civil service hearing on the same misconduct – thereby choosing not to exercise the Commission authority that the court had recognized in the *Newberry* case.

PGTF Issues
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Amended Rule 11B-27.004(11) F.A.C. Probable Cause Determination

(b) In cases subject to review by the Commission 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 on the merits of the case 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 that 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.~~

ISSUE NUMBER 7:

Discussion concerning agencies that fail to properly report moral character violations to the Commission.

AGENDA ITEM: 6

Commission's Ability to Discipline or Revoke Certification – Amends Rule 11B-27.004 (11)(b), F.A.C.

ISSUE

This agenda item is presented to the Task Force to amend current rule to restore the Commission's ability to discipline or revoke an officer's certification, notwithstanding a decision in arbitration, civil service board or other administrative review to overturn the employing agency's dismissal or discipline and reinstate the officer to employment.

PROPOSED AMENDMENT(S)

- Amends Rule 11B-27.004, F.A.C. – Probable Cause Determination. **To amend the following language:**
 - (11)(a) If administrative or judicial review results in a final disposition of the respondent's termination or discipline, the case shall no longer be held in abeyance and Commission staff shall review the case for the issuance of a Letter of Acknowledgment, if applicable, or for presentation to the Commission for Commission action.
 - (b) In cases subject to review by the Commission 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 on the merits of the case 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 that 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.

SUPPORTING INFORMATION

- **Attachment 1:** Letter to Director Dean Register, Criminal Justice Professionalism Division, Florida Department of Law Enforcement; from Director Joel Cantor, Professional Standards Committee, Broward County Sheriff's Office, dated May 5, 2014.
- **Attachment 2:** Letter to Director Joel Cantor from Director Dean Register, dated May 29, 2014.
- **Attachment 3:** An Excerpt from the August 2014 Minutes of the Criminal Justice Standards and Training Commission Business Meeting.
- **Attachment 4:** Memorandum to Criminal Justice Standards and Training Commission staff from Assistant General Counsel Jeff Dambly, Office of the General Counsel, Florida Department of Law Enforcement.
- **Attachment 5:** Arbitration Rule History

Broward Sheriff's Office
 2601 West Broward Boulevard
 Fort Lauderdale, Florida 33312
 954.831.8900 • www.sheriff.org



May 5, 2014

Mr. Dean Register, Director
 Bureau of Standards/ Criminal Justice Professionalism
 Florida Department of Law Enforcement
 P.O. Box 1489
 Tallahassee, Florida 32302-1489

Dear Mr. Register:

Re: Postponement and/or Dismissal of Certification and Standards Review;
 Sgt. John Goodbread; Case No. 32264 and [REDACTED]

Having represented law enforcement interests for many years, I have a genuine appreciation of the comprehensive certification review process conducted by your division of the Florida Department of Law Enforcement. Monitoring the decisions of your division and the various panels has proved helpful in forecasting disciplinary trends in law enforcement. The disposition of a couple of recent cases sent to your division from the Broward Sheriff's Office as required for law enforcement certification standards and review has raised concerns with the agency. Both of these cases involve deputies who have engaged in felony crimes, yet the criminal activity and subsequent "No Contest" pleas of each deputy has been entirely disregarded or postponed in favor of a ruling or anticipated ruling of an arbitrator.

One of these cases of concern involved a Broward Sheriff's Sergeant, who was criminally investigated and charged with several felony narcotics-related crimes. The sergeant, through counsel, arranged to postpone his probable cause determination with your division, unbeknownst to our agency, while negotiating a "No Contest" plea to one (1) of the felony counts. This sergeant was allowed to enter his plea before a Court dedicated to first-time felony offenders and he successfully completed the mandatory programs imposed by the Court. While the probable cause determination remained suspended, the sergeant took advantage of the administrative arbitration process, ultimately seeking reinstatement to the position that the Broward Sheriff's Office appropriately terminated him from when he was criminally charged.

Although presented with overwhelming evidence of the criminal allegations, the sergeant convinced an arbitrator to reinstate him, and apparently based on this arbitrator's obscure decision, your division abandoned its entire certification review process against this sergeant.

Mr. Dean Register
 Page 2
 May 5, 2014

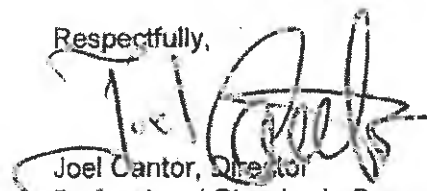
The concept of suspending and ultimately abandoning the entire certification review of a law enforcement officer in reliance upon an administrative ruling, entirely discounting what transpired in the criminal courts, is incomprehensible. Collective Bargaining imposed labor arbitrations are often viewed as tenuous to both sides that engage in the process. Upholding a termination decision in a process normally viewed as "labor friendly" is very difficult. Most arbitrators are simply not familiar with law enforcement standards, and as a result, it has become increasingly more difficult to sustain serious discipline, much less termination.

With this in mind, I simply do not understand why the Florida Department of Law Enforcement Bureau of Standards relies so heavily and distinctly on the outcome of an arbitration hearing rather than the outcome in the criminal court. I can certainly understand the decision to suspend proceedings if the deputy is acquitted/exonerated in criminal court, but not by an obscure arbitration ruling. I believe the Bureau of Standards will likely confront more cases with similar issues due to the increasingly unpredictable nature of these arbitration decisions. As previously referenced, these cases are not misdemeanor crimes, but serious felony crimes that your division may choose to adjust your stance as many of these offenses may also qualify as crimes of moral turpitude.

The administrative code provision that is often relied upon by your division personnel provides latitude in determining whether a matter will proceed in the face of an inconsistent arbitrator's decision. The ruling issued by this arbitrator, who was made aware of the activity and outcome of the Sergeant's criminal court proceedings, was clearly contrary to the evidence presented.

I understand that the decision to dismiss the entire certification review process against Broward Sheriff's Office Sergeant John Goodbread is not subject to reversal, and my agency has reluctantly accepted that fact. I do hope that in future similar cases involving serious felony crimes, the cases can promptly proceed to a probable cause determination without delay and further review and hearing, notwithstanding an administrative ruling contrary to the outcome in the collateral criminal court proceedings.

Respectfully,


 Joel Cantor, Director
 Professional Standards Committee

cc: Sheriff Scott Israel
 Colonel Steve Kinsey, Undersheriff
 Colonel John Dale



Florida Department of
Law Enforcement

Gerald M. Bailey
Commissioner

Criminal Justice Professionalism
Post Office Box 1489
Tallahassee, Florida 32302-1489
(850) 410-8600
www.fdle.state.fl.us

Rick Scott, Governor
Pam Bondi, Attorney General
Jeff Atwater, Chief Financial Officer
Adam Putnam, Commissioner of Agriculture

May 29, 2014

Director Joel Cantor
Broward County Sheriff's Office
2601 West Broward Boulevard
Fort Lauderdale, Florida 33312

Re: Sergeant John Goodbread, Case #32264 and [REDACTED]

Dear Director Cantor:

I met with Bureau Chief Glen Hopkins and Training and Research Manager Stacy Lehman to discuss the issues that you raised concerning Sergeant Goodbread and Deputy Brindle. As you are aware, an arbitrator overturned the findings in Sergeant Goodbread's case. Rule 11B-27.004(11)(b), F.A.C. states that 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, Commission staff shall take no further action. However, Commission staff may present the case to a probable cause panel if we can show 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. Based on our legal counsel review of this case, we do not feel that we could meet any of the exceptions listed in the rule above that would allow us to present this case to a probable cause panel.

[REDACTED]

I would like to point out that the Commission has historically allowed an agency administrator to request that a case be heard by a probable cause panel upon request. If Sheriff Israel would like to have either case heard at a probable cause hearing, please contact Mr. Stacy Lehman at (850)410-8645 or via e-mail at stacylehman@fdle.state.fl.us.

Lastly, Section 943.1395(8)(b)2, FS requires the Commission to conduct a workshop on or before July 1st of every odd-numbered year to receive public comment and evaluate disciplinary guidelines and penalties. If you or Sheriff Israel would like to attend this workshop to address these concerns, we will be happy to notify you when the workshop is scheduled. We are tentatively looking at some time in the Spring of 2015.

If you have any questions, please contact me at (850) 410-8611 or Bureau Chief Glen Hopkins at (850) 410-8660.

Sincerely,

Dean Register, Director
Criminal Justice Professionalism Division

WDR/gwh

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UNAGENDAED ITEMS

Bureau Chief Glen Hopkins presented information on the following items:

1. New Commission letterhead and envelopes will be used for Commission-related correspondence instead of using FDLE letterhead and envelopes.
2. The Commission's Penalty Guidelines Task Force is required to meet every other year to review the officer discipline rules. The task force plans to convene in January 2015 and has already begun to solicit agenda issues of concern from the Florida Police Chiefs Association, Florida Sheriff's Association, and collective bargaining partners.
3. A Commission Rules Workshop will be held on Wednesday, November 5, 2014, to review the pending 2014-2015 Rule Summary Packet. The current 2013-2014 rules became effective May 29, 2014.
4. Director Dean Register, FDLE, received a letter of arbitration and findings, dated May 5, 2014, from Director Joel Cantor and Colonel Jack Dale of the Broward County Sheriff's Office. Chief Hopkins stated that the case mentioned in the letter would be reviewed and discussed during the Penalty Guidelines Task Force meeting in January 2015.

Director Cantor and Colonel Dale offered details about the said case, which was allowed to go to arbitration instead of coming before the Commission. The case involved an officer who pled no contest to a felony and was allowed into the diversionary court program as a first-time offender. The charges were nolle prossed (not processed) because the arbitrator reversed the finding. **RECOMMENDATION:** Commission Attorney Nick Cox stated that Rule 11B-27.011(4)(b), F.A.C., precludes Commission staff from taking action; however, the Commission may choose to act upon the request. **COMMISSION ACTION:** Discussion was held, and ***Commissioner Steinberg moved that the Commission task staff with bringing the case before a Probable Cause Panel; seconded by Commissioner Toth.*** Further discussion was held, and ***Commissioner Steinberg withdrew his motion.*** **Note:** Chief Hopkins will contact Sheriff Scott Israel, Broward County, to determine if he would like to pursue this matter. If so, Commission staff will proceed with a "no cause case" to be presented before the Probable Cause Panel.

GENERAL INFORMATION AGENDA ITEMS A - I

No general information items were presented.

BUSINESS MEETING ADJOURNED

Chairman Hutching requested a motion to adjourn the business meeting. ***Commissioner Griffin moved to adjourn the business meeting; seconded by Commissioner Cannon; motion carried.***



Florida Department of
Law Enforcement

Gerald M. Bailey
Commissioner

Office of General Counsel
Post Office Box 1489
Tallahassee, Florida 32302-1489
(850) 410-7676
www.fdle.state.fl.us

Rick Scott, Governor
Pam Bondi, Attorney General
Jeff Atwater, Chief Financial Officer
Adam Putnam, Commissioner of Agriculture

October 9, 2014

MEMORANDUM

TO: Staff, Criminal Justice Standards and Training Commission

FROM: Assistant General Counsel Jeff Dambly

SUBJECT: Recommendation for No Cause of *FDLE v. John P. Goodbread*, Case No. 32264

FDLE Counsel respectfully takes the position that Commission Staff cannot present the above-noted case to a Probable Cause Panel of the Criminal Justice Standards and Training Commission for the reasons set forth. The Respondent in this case is alleged to have violated officer standards by committing the offense of Obtaining Controlled Substances by Fraud.

The procedural history of this case began in March of 2011, when the Broward County Sheriff's Office (BSO) received information from a local doctor's office alleging that they suspected the Respondent and his wife were doctor shopping for prescription medications. Following a criminal investigation, the Respondent was arrested on April 8, 2011, for concealing information to obtain a prescription and trafficking in hydrocodone/oxycodone. The BSO suspended the Respondent without pay effective the same day. On January 7, 2013, the Respondent pled no contest to a charge of Withholding Information from a Practitioner to enter into a deferred prosecution agreement¹. The BSO terminated the Respondent one day later. The Respondent completed the requirements of the deferred prosecution agreement, and the State Attorney's Office filed a Nolle Prosequi on May 2, 2013. According to the Arbitration Decision and Award (hereinafter, "Arbitration Ruling") a grievance was filed on January 19, 2012, against the BSO.

The Arbitration Ruling was issued on December 20, 2013, by Arbitrator Robert Hoffman. In that Arbitration Ruling, Arbitrator Hoffman ordered that the Respondent be reinstated to his former position at the BSO with qualified back pay. The arbitrator determined that the BSO did not present sufficient evidence for the just cause standard of termination. Moreover, the arbitrator found that the evidence presented by the BSO failed to establish a violation of law "on the merits." (Arbitration Ruling at p. 19) "The proof offered by BSO lacks the weight of evidence needed to reach the clear and convincing level. BSO did not prove through reliable evidence that is clear and convincing the grievant violated Fl. Stat. 893.13(7)(a)(8) for withholding information from a practitioner." (Id.)

¹ A plea of no contest for purposes of entering into deferred prosecution does not trigger a statutory bar for law enforcement certification under Section 943.13, Florida Statutes. "(F)ormal acceptance of a plea occurs when the trial court affirmatively states to the parties, in open court and for the record, that the court accepts the plea." Harden v. State, 453 So.2d 550, 551 (Fla. 4th DCA 1984).

As required by Rule 11B27.004(11)(b), Florida Administrative Code, Staff “no caused” this case on April 14, 2014. On August 7, 2014, the BSO requested to be heard by the Criminal Justice Standards and Training Commission on this matter at the General Business Meeting. That presentation ended without a formal vote on the matter by the CJSTC, however, from a review of the record, there appeared to be a general understanding that Staff, per customary policy, would present the case to a Probable Cause Panel of the CJSTC if the BSO desired. This case has again been presented to FDLE Counsel for review prior to presentation of the case to a Probable Cause Panel.

There are two legal obstacles concerning CJSTC Staff’s presentation of this case to a Probable Cause Panel. First, this case falls within Rule the provisions of 11B-27.004(11)(b), F.A.C., which prohibits taking action in cases where arbitration has overturned an agency’s findings. Second, the statutory time limit of 6 months for Staff to present the case to a Probable Cause Panel has expired.

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. (Emphasis added.)

This rule prohibits Staff from presenting a case to a Probable Cause Panel when the agency’s findings were overturned at arbitration based on the merits presented at hearing. Unfortunately, this is exactly what occurred in the Respondent’s case; Counsel does not believe this ruling falls into the narrow exceptions provided above. The arbitrator’s rulings on the merits of what was presented at the arbitration preclude the narrow exceptions of Rule 11B-27.004(11)(b). Thus, Staff would violate the Commission’s own rule by even *presenting* the case to the Probable Cause Panel. Neither the Commission, nor Staff, can willingly violate its own rule. Removal of this procedural bar would require a rule waiver, though FDLE Counsel does not believe there is a party with proper standing to request such a waiver in this scenario.

The second legal obstacle is that the statutory time limit of 6 months for Staff to present this case to a Probable Cause Panel has expired. Section 943.1395, Florida Statutes. Specifically:

The commission shall cause to be investigated any ground for revocation from the employing agency pursuant to s. 943.139 or from the Governor, and the commission may cause verifiable complaints to be investigated. ***Any investigation initiated by the commission pursuant to this section must be completed within 6 months after receipt of the completed report of the disciplinary or internal affairs investigation from the employing agency or the Governor’s office...***(a)n investigation shall be considered completed upon a finding by a probable cause panel of the commission. These time periods shall be tolled during the appeal of a termination or other disciplinary action through

the administrative or judicial process or during the period of any criminal prosecution of the officer.

Fla. Stat. § 943.1395(6)(a)(2014). Staff must present a disciplinary case to a Probable Cause Panel within 6 months of receipt of the completed report in order to comply with statute. Agencies have latitude to interpret its own statutes, but it is Counsel's understanding that the CJSTC (and Staff) has long held that a completed report is received by Staff upon the receipt of the CJSTC 78 or 61 Form(s) from an agency. (would require changing interpretation and tortured interpretation of facts to allow 6 month period) Here, the CJSTC 78 Form was received from the BSO on January 25, 2012. As the statute indicates, the case could be tolled as late as December 20, 2013, the date of the Arbitrator's Ruling. However, even with that extension, this case exceeded the statutory deadline in May 2014. Even if there was a rule waiver regarding Rule 11B-27.004(11)(b), F.A.C., neither the CJSTC nor Staff have the authority to waive a state statute. As such, even if this case were presented to the Probable Cause Panel, the CJSTC has no authority move forward with prosecution.

In light of BSO's concerns about this matter, Counsel would raise one further issue in closing. At the Business Meeting discussion from August 7, 2014, Counsel for BSO indicated that the purpose in discussing the case was to raise the proposal of a rules review regarding the administrative bar to prosecution set out in Rule 11B-27.004(11)(b). FDLE Counsel agrees and considers this issue ripe for review before the Penalty Guidelines Task Force. However, at this time, the law in place prohibits further action. For the foregoing reasons, FDLE Counsel respectfully takes the position that CJSTC Staff is prohibited from presenting this case to a Probable Cause Panel.

Arbitration Rule Changes

Rule Effective Date	Rule Section
4-11-2004	<p data-bbox="443 269 596 297">11B-27.004</p> <p data-bbox="443 337 1976 634">(10) In cases where the respondent has been terminated or disciplined and is seeking review of that termination or discipline through the administrative or judicial process, the respondent and employing agency shall notify Commission staff of such review, prior to the convening of the Probable Cause Panel. The respondent and employing agency shall also notify Commission staff of the final resolution of the administrative or judicial review. Such notification shall be done within fifteen days of the final resolution. When the administrative or judicial review is pending at the time of the Probable Cause Determination Hearing, any findings of the Probable Cause Panel shall be conditional, except in cases where the respondent is statutorily ineligible to maintain certification, regardless of the outcome of the appeal. Pending final resolution Commission staff shall hold cases involving conditional finding in abeyance without further action.</p> <p data-bbox="443 639 1955 805">(11) If administrative or judicial review results in a final approval of the respondent's termination or discipline, the case shall no longer be held in abeyance and shall be presented to the Commission for Commission-action. If administrative or judicial review results in a final imposition of a penalty of less than termination of employment, the conditional finding of probable cause shall be re-addressed by a subsequent Probable Cause Panel for determination of handling under subsection (7) of this rule section (Letter of Guidance rules).</p> <hr data-bbox="443 808 1976 812"/> <p data-bbox="443 846 1696 873">The above rule language was consistent as far back as rules with the effective date of 6-29-1995.</p>

Rule Effective Date	Rule Section
<p>11-30-2004 (no changes have been made to this rule since 2004)</p>	<p>11B-27.004(11)</p> <p>(10) In cases where the respondent has been terminated or disciplined and is seeking review of that termination or discipline through the administrative or judicial process, the respondent and employing agency shall notify Commission staff of such review; prior to the convening of the Probable Cause Panel. Pending final resolution, Commission staff shall hold such cases in abeyance. The respondent and employing agency shall also notify Commission staff of the final resolution of the administrative or judicial review. Such notification shall be done within fifteen days of the final resolution. When the administrative or judicial review is pending at the time of the Probable Cause Determination Hearing, any findings of the Probable Cause Panel shall be conditional, except in cases where the respondent is statutorily ineligible to maintain certification, regardless of the outcome of the appeal. Pending final resolution Commission staff shall hold cases involving conditional finding in abeyance without further action.</p> <p>(11)(a) If administrative or judicial review results in a final <u>disposition</u> approval of the respondent's termination or discipline, the case shall no longer be held in abeyance and <u>Commission staff shall review the case for the issuance of a Letter of Acknowledgment, if applicable, or for presentation.</u> shall be presented to the Commission for Commission-action. If administrative or judicial review results in a final imposition of a penalty of less than termination of employment, the conditional finding of probable cause shall be re-addressed by a subsequent Probable Cause Panel for determination of handling under subsection (7) of this rule section.</p> <p><u>(b) 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.</u></p>

CRIMINAL JUSTICE STANDARDS AND TRAINING COMMISSION



OFFICER DISCIPLINE PENALTY GUIDELINES TASK FORCE MEETING

JANUARY 21, 2015

(ADDENDUMS)

Addendums for the January 21, 2015 ODPGTF Meeting

Addendum 1: Letter from FOP General Counsel Diamond

Addendum 2: Overturned Agency Findings

Addendum 3: Alternative Rule Language by Executive Director Cantor

Addendum 4: PBA History of Recantation in CJSTC Rule

Addendum 5: Recantation No-Caused Cases

Addendum 6: Memo from FSA General Counsel Evans
via Executive Director Casey

Addendum 7: Memo from FPCA General Counsel Dietzen
via Executive Director Mercer



FLORIDA STATE LODGE Fraternal Order of Police

Office of General Counsel

ALAN S. DIAMOND, Esq.

General Counsel



TO: Criminal Justice Standards and Training Commission
Task Force Committee

RE: Proposed Rule Amendment

January 5, 2015

Dear Committee,

".. [NO] person [shall] be subject for the same offense to be twice put in jeopardy of life or limb..."

- - 1789 – James Madison - the 5th Amendment to the
U.S. Constitution – the U.S. Bill of Rights.

-

These are not just words – they are the cornerstone to the American justice system and the basic principles which separate our country from authoritarian dictatorships.

The proposed amendment to Rule 11B-27.004(11) violates the principle of double jeopardy, due process and basic fairness. The current rule precludes the Commission from disciplining and officer in the very limited and infrequent situation where a certified officer is subject to review by the commission but an administrative judge, jury, arbitrator, civil service or career service hearing officer has made a finding of fact and law which speaks to the very action which the officer is accused of and finds that there is insufficient evidence or that the officer is in fact not guilty of the alleged conduct. The amendment

3962 West Eau Gallie Blvd. Suite B

Melbourne, FL 32934

321-953-0104 Phone • 321-253-5975 Fax

would allow a department to have an alternative avenue to discharge an officer if the legal ruling goes against them. They would merely send the issue to the Commission to have a "second bite at the apple" and have the Commission decertify an officer who an arbitrator put back to work. This action would effectively render the entire arbitration process ineffectual and moot.

It is patently unfair for a department to discipline an officer – have that officer challenge the discipline, be successful and prove that the allegations are unfounded and regain his job only to have the department then seek to have the Commission do what they could not. Decertify the officer to force his termination. The proposed rule amendment is nothing but a thinly veiled attempt by the Chiefs of Police and the Sheriffs to subvert the process and "pass the buck" to the Commission to do what they cannot.

Under the proposed amendment it appears that the Commission has no faith in the judicial system, arbitrator, career service or civil service hearing, the Constitution or the law. The Chiefs and the Sheriffs have agreed to this process. Under the proposed change even if there is a factual determination by an arbitrator – supported by substantial and competent evidence the Commission will review the case, make its own findings and seemingly arbitrarily determine if the verdict by the jury or the findings by a arbitration judge should be honored or not. If not, then the Commission will commence action against the officer and seek to decertify him. This process, even if not intended to be, will be perceived as arbitrary and capricious. The decision to proceed or not to proceed will be scrutinized by the public and the Union and the lack of any formal means to distinguish one case from another will promote the appearance of impropriety even if none exists.

Additionally, the Commission needs to consider the huge burden of time and cost this amendment would place on the Commission's legal department. Under the proposal every arbitration and potentially every trial would require the Commission to print and review the entire transcript of each hearing or trial to determine if the ruling is "supported by competent and substantial evidence". The cost could easily run into the tens of thousands of dollars range for a lengthy jury trial or arbitration just for the transcription

alone. Additionally, a full blown investigation into the merits of the case would further stretch an already overworked legal department.

In conclusion, the scenario which precipitated this amendment is a rare occurrence. Where an arbitration judge determines that facts presented at the hearing are insufficient to support the department's action and thus result in a reversal of the discipline and those very same facts are also the sole basis for the Commission's review. The current rule is fair and takes into account due process and the officer and department's rights to be heard in a court of law. Unfortunately, the proposed amendment would give the departments the unfettered ability to discipline an officer, have an arbitration, if the department wins then the discipline stands; if the facts are such that the officer wins then this amendment allows the department to have a second chance to get what they want and have the Commission do their dirty work. The Commission should be aware that the Chiefs and the Sheriffs have agreed to the process of arbitration, career service and / or civil service hearings to resolve disputes. And now they want to use this rule change to subvert and change the process if the outcome of the hearing is contrary to their desires. With the proposed amendment they will seek to force the issue before the Commission and seek decertification of the officer on the very same facts and evidence that a judge arbitrator, career service or civil service hearing officer or a jury reviewed, and had already determined did not occur.

To rely on a jury verdict, judge or hearing officer's ruling in determining if a law enforcement officer is responsible for actions which could lead to decertification seems inherently more fair and consistent with the law and Constitution than for a department to force the issue before the Commission in attempt to subvert the ideals of fairness and due process. The Fraternal Order of Police urges the Commission to keep the rules as they are. Justice demands that a finding of fact have some meaning and weight and that an officer's livelihood is not subjected to the whims and capricious acts of a department, but only effected by the established facts in evidence and rulings from a court of competent jurisdiction. To do otherwise is a travesty of justice.

Sincerely,

Alan S. Diamond, Esq.

Alan S. Diamond, Esq.
General Counsel
Florida State Lodge
Fraternal Order of Police

Arbitrator Overturned the Agency's Findings-January 1, 2013 to December 31, 2014

Complaint #	Date Case No Caused by Staff
33109	2/20/2013
33216	3/8/2013
32927	3/29/2013
34130	4/29/2013
31970	9/25/2013
33108	10/3/2013
32264	4/14/2014
34825	5/8/2014
36966	5/15/2014
35815	5/28/2014
36036	8/11/2014
36287	8/14/2014
34963	11/4/2014

Hopkins, Glen

From: Cantor, Joel <Joel_Cantor@sheriff.org>
Sent: Monday, January 12, 2015 2:15 PM
To: Hopkins, Glen
Subject: FW: Updated 11B-27.004 Probable Cause Determination
Attachments: Proposed Amended Rule 11B.docx

Glen, I hope the attached is satisfactory. Let me know if you need anything else. I am also hoping this compromise language for the amended rule as well as the original "Goodbread" letter from several months ago can be presented to the panel in advance.

From: Artis, Danielle
Sent: Monday, January 12, 2015 2:09 PM
To: Cantor, Joel
Subject: Updated 11B-27.004 Probable Cause Determination

Joel,

For your review and approval, please find the attached updated document with strikeouts and underlines.

Thank you,

Danielle D. Artis
Administrative Assistant to
Colonel John Dale, Executive Director
Department of Professional Standards
Tel: 954-321-4184
Fax: 954-321-4352
Email: danielle_artis@sheriff.org



Sheriff Scott Israel

Please note that Florida has a broad public records law, and that all correspondence to me via email may be subject to disclosure.

11B-27.004 Probable Cause Determination

11(b) ~~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 in which criminal proceedings that result in the respondent's acquittal conviction on all any of the criminal charges subject to review by the Commission after a trial or any lesser included offense of any of the criminal charges subject to review, or the respondent is allowed to enter a diversionary court or proceeding through a plea of nolo contendere or by recommendation of a prosecuting authority without disputing the allegations or the criminal offense(s) subject to review, 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 regardless of any collateral proceedings were based upon inclusion or exclusion of evidence, or that 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 administrative or arbitration decision reversing or mitigating the disciplinary decision of the employing agency.~~



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MEMORANDUM

To: Steve Casey, Executive Director, FSA

From: Wayne Evans, General Counsel, FSA

January 19, 2015

Re: Proposed CJSTC Rule Amendment

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You asked that I review correspondence of the General Counsel for the Fraternal Order of Police to the Criminal Justice Standards and Training Commission's task force committee regarding the proposed amendment to Rule 11B-27.004(11), Fla. Admin. Code. As I understand it, the intent of the rule change would be to permit the Criminal Justice Standards and Training Commission ("CJSTC" or "Commission") in certain cases to consider charges of misconduct of an officer who has been dismissed from his or her agency, even if that officer has prevailed in an arbitration or career service hearing such that the dismissal was reversed or mitigated. The current rule precludes the Commission from disciplining an officer if a dismissal is reversed in an administrative or judicial review or if the officer is acquitted on all charges subject to review by the Commission, unless the findings of fact in the collateral proceedings are determined to be contrary to the law or the evidence presented at the hearing.¹

I respectfully disagree with the opinion of the FOP General Counsel that the proposed rule amendment violates principles of double jeopardy, due process, and basic fairness. For the Commission to effectively perform its duties it must be provided independent authority to review dismissals regardless of any decision by a board or an arbitrator on whether just cause exists to support the termination.

Proceedings before the CJSTC relating to violation of standards involve different issues, and in many cases different standards of proof,² than disciplinary appeals. Unlike a board or an arbitrator which reviews dismissals for just cause, the CJSTC is authorized to

¹ Rule 11B-27.004 (11) (b) provides: 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.

² Disciplinary appeals typically involve a preponderance of the evidence standard; the CJSTC is required to prove charges alleged in the Administrative Complaint by clear and convincing evidence. See §120.57(1)(j), Fla. Stat.; *Dieguez v. Dep't of Law Enforcement, Crim. Just. Stds. & Training Comm'n*, 947 So.2d 591 (Fla. 3d DCA 2007)

investigate incidents in which officers are alleged to have failed to maintain minimum qualifications for certification, including good moral character. If an officer is found to have failed to maintain compliance with these standards, the CJSTC may discipline the officer, including suspending or revoking the officer's certification. See § 943.1395, Fla. Stat.; Rule 11B-27.005, Fla. Admin. Code. To understand how distinct disciplinary and CJSTC proceedings may be, it is important to consider what transpires if a board or an arbitrator sustains a dismissal.

In the event that just cause is found by a board or an arbitrator to support a dismissal, the findings of the board or the arbitrator have no conclusive effect on the authority of the CJSTC to determine whether or not standards of conduct relating to moral character as defined in Rule 11B-27.0011 have been violated. Indeed, if an officer disputes the factual allegations in the Administrative Complaint prepared by FDLE staff, the officer may request an evidentiary hearing conducted by an administrative law judge. In such a case, the administrative law judge conducts separate fact-finding, which may involve some of the same matters addressed in the disciplinary hearing, such as allegations of excessive use of force or sexual harassment. The administrative law judge can make credibility determinations and weigh the evidence presented at the administrative hearing without regard to the decision of the career service board or the arbitrator.

Similarly, the Commission, upon reviewing the findings in a recommended order by the administrative law judge, arrives at a final decision regarding the alleged violation of standards. In short, the decision of a career service board or an arbitrator to affirm a termination of employment has no preclusive effect on the Commission because the respective proceedings are necessarily separate and distinct.

Because disciplinary and CJSTC proceedings are designed for different purposes and have different objectives, it cannot be reasonably argued that an officer is subjected to double jeopardy through an independent review by the Commission. The proposed rule amendment does not subject an officer to a retrial of the career service hearing or arbitration. Rather it ensures that a favorable outcome for an officer in a criminal or disciplinary proceeding will not preclude the Commission from independently reviewing the alleged misconduct for moral character violations.

It seems only reasonable, therefore that if the Commission may review a termination which has been sustained by a board or an arbitrator, it should have similar authority to consider a dismissal by the employing agency even if it has been reversed or mitigated by a board or an arbitrator. If the Commission is to fulfill its role as the final authority on certification of correctional and law enforcement officers, it should have complete authority to examine dismissals and draw its own conclusions as to whether or not an officer should be permitted to be licensed in this state.



Florida Police Chiefs Association

Quality Law Enforcement for the Sunshine State

MEMORANDUM

TO: Amy Mercer, Executive Director, FPCA

FROM: Leonard J. Dietzen, General Counsel, FPCA

DATE: January 20, 2015

RE: Proposed CJSTC Rule Amendment

Pursuant to your request, I have reviewed the proposed amendment to Rule 11B-27.004(11), Fla. Admin. Code and the correspondence of the General Counsel for the Fraternal Order of Police to the Criminal Justice Standards and Training Commission's task force committee. I have also reviewed a Memorandum to FSA Executive Director Steve Casey from their General Counsel Wayne Evans that analyzes the many reasons why the FOP's General Counsel's position on this proposed amendment to the Rule is incorrect. Rather than repeating his well-reasoned and thoughtful legal analysis, I recommend that the FPCA adopt in full the FSA's Memorandum dated January 19, 2015, and advise the CJSTC's task force committee that we share the same concerns.

AGENDA ITEM: 7

Officer Discipline Penalty Guidelines Task Force Briefing

ISSUE NUMBER 1

This agenda item is presented to the Commission to provide an overview of proposed Criminal Justice Standards and Training Commission rule revisions in Rule Chapter 11B-27, F.A.C. The proposed rule revisions were on the January 21, 2015 Officer Discipline Penalty Guidelines Task Force meeting agenda and will be discussed during the February 4, 2015 Commission Workshop. Where rule amendments are recommended, proposed deletions are indicated with ~~strikethroughs~~ and proposed new language is indicated by underlining.

EXECUTIVE SUMMARY

Proposed Rule Revision 1: This item is presented to amend current rule language as a result of a 2012 statutory change made to the charge of Video Voyeurism. This change made the charge a misdemeanor for anyone under 19 years old, and a felony for anyone 19 years old or older. Since the Commission requires an individual to be 19 years old in order to become certified, the charge of misdemeanor Video Voyeurism and associated penalty guideline should be removed from rule.

- Amends Rule 11B-27.0011, F.A.C. – Moral Character. **To remove the following language:**
 - (4) For the purposes of the Criminal Justice Standards and Training Commission's implementation of any of the penalties specified in Section 943.1395(6) or (7), F.S., a certified officer's failure to maintain good moral character required by Section 943.13(7), F.S., is defined as:
 - (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, 817.61, 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.
- Amends Rule 11B-27.005, F.A.C. – Revocation or Disciplinary Actions; Disciplinary Guidelines; Range of Penalties; Aggravating and Mitigating Circumstances. **To remove the following language:**
 - (5) When the Commission finds that a certified officer has committed an act that violates Section 943.13(7), F.S., the Commission shall issue a final order imposing penalties within the ranges recommended in the following disciplinary guidelines:
 - (b) For the perpetration by the officer of an act that would constitute any of the misdemeanor offenses, pursuant to paragraph 11B-27.0011(4)(b), F.A.C., but where there was not a violation of Section 943.13(4), F.S., the action of the Commission shall be to impose a penalty ranging from probation of certification to suspension of certification. Specific violations and penalties that shall be imposed, absent aggravating or mitigating circumstances, include the following:

	Violation	Recommended Penalty Range
8.	Prostitution or lewdness; voyeurism, video-voyeurism (796.07, 810.14, 810.145 , F.S.)	Prospective suspension, and probation with counseling to revocation

Task Force Vote: Passed.

Proposed Rule Revision 2: This item is presented to amend current rule language to add an enumerated penalty guideline for the felony charge of Video Voyeurism. This rule language will apply the same penalty guideline for the current misdemeanor charge of Voyeurism. Any aggravators or mitigating circumstances as outlined in Rule 11B-27.005(6)(a)(b), F.A.C., may be considered when determining the appropriate final disciplinary action by the Commission.

- Amends Rule 11B-27.005, F.A.C. – Revocation or Disciplinary Actions; Disciplinary Guidelines; Range of Penalties; Aggravating and Mitigating Circumstances. **To add the following language:**
 - (5) When the Commission finds that a certified officer has committed an act that violates Section 943.13(7), F.S., the Commission shall issue a final order imposing penalties within the ranges recommended in the following disciplinary guidelines:
 - (a) For the perpetration by the officer of an act that would constitute any felony offense, pursuant to paragraph 11B-27.0011(4)(a), F.A.C., but where there was not a violation of Section 943.13(4), F.S., the action of the Commission shall be to impose a penalty ranging from suspension of certification to revocation. Specific violations and penalties that shall be imposed, absent mitigating circumstances, include the following:

	Violation	Recommended Penalty Range
18.	<u>Video Voyeurism</u>	<u>Prospective suspension and probation with counseling to revocation</u>

Task Force Vote: Passed.

Proposed Rule Revision 3: This item is presented to amend current rule language to address cases involving officers with a sustained charge of Sexual Harassment. Those who have been suspended by their agency, qualifying them to receive a Letter of Acknowledgement (LOA) from the Commission since the agency's discipline met the Commission's penalty guideline. The current penalty guideline for this charge is probation with training to suspension. An officer receiving at least a one day suspension, regardless of training, is eligible for an LOA. A change to rule will ensure that the officer will receive the necessary training from the agency or through the Commission's discipline process.

- Amends Rule 11B-27.005, F.A.C. – Revocation or Disciplinary Actions; Disciplinary Guidelines; Range of Penalties; Aggravating and Mitigating Circumstances. **To add the following language:**
 - (5) When the Commission finds that a certified officer has committed an act that violates Section 943.13(7), F.S., the Commission shall issue a final order imposing penalties within the ranges recommended in the following disciplinary guidelines:
 - (c) For the perpetration by the officer of an act or conduct, as described in paragraph 11B-27.0011(4)(c), F.A.C., if such act or conduct does not constitute a crime described in paragraphs (5)(a)-(b) of this rule section, the action of the Commission shall be to impose the following penalties, absent aggravating or mitigating circumstances:

	Violation	Recommended Penalty Range
2.	Sexual harassment involving physical contact or misuse of position	Probation with training to suspension <u>with training.</u>

Task Force Vote: Passed.

Proposed Rule Revision 4: This item is presented to amend current rule to specify that the charge of Falsification of a Use of Force Report [Section 944.35(4)(b), F.S.] is included in the penalty guideline for misdemeanors involving false reports and statements. The current penalty guideline rule includes the entire Section 944.35, F.S. Both Falsification of a Use of Force Report [Section 944.35(4)(b), F.S.] and Failure to Report Use of Force [Section 944.35(4)(a), F.S.] are included within the statute. However, only Section 944.35(4)(b), F.S., involves a false statement. The charge of Failure to Report Use of Force [Section 944.35(4)(a), F.S.], is also a moral character violation but does not involve a false statement. The charge of Failure to Report Use of Force will remain within the generic penalty guideline of probation to suspension for misdemeanor moral character violations.

- Amends Rule 11B-27.005, F.A.C. – Revocation or Disciplinary Actions; Disciplinary Guidelines; Range of Penalties; Aggravating and Mitigating Circumstances. **To add the following language:**
 - (5) When the Commission finds that a certified officer has committed an act that violates Section 943.13(7), F.S., the Commission shall issue a final order imposing penalties within the ranges recommended in the following disciplinary guidelines:
 - (b) For the perpetration by the officer of an act that would constitute any of the misdemeanor offenses, pursuant to paragraph 11B-27.0011(4)(b), F.A.C., but where there was not a violation of Section 943.13(4), F.S., the action of the Commission shall be to impose a penalty ranging from probation of certification to suspension of certification. Specific violations and penalties that shall be imposed, absent aggravating or mitigating circumstances, include the following:

	Violation	Recommended Penalty Range
4.	False reports and statements (817.49, 837.012, 837.05(1), 837.055, 837.06, 901.36, 944.35(4)(b), F.S.).	Prospective suspension to revocation

Task Force Vote: Passed.

Proposed Rule Revision 5: This item is presented to amend current rule to include a timeframe during which an officer can recant a false statement.

- Amends Rule 11B-27.0011, F.A.C. – Moral Character. **To add the following language:**
 - (5) 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 conclusion of the internal affairs investigation in which the false statement related to a material fact or within 10 working days of making the false statement, whichever occurs first. For purposes of this subsection, the employing agency's internal affairs investigation shall be deemed to be at a conclusion upon the investigator's execution of the statement required by Section 112.533(1)(a)2., F.S.

Task Force Vote: Amended proposed rule text to specify "10 calendar days" instead of "10 working days". Passed with two (2) oppositions.

Proposed Rule Revision 6: This item is presented to amend current rule to restore the Commission's ability to discipline or revoke an officer's certification, notwithstanding a decision in arbitration, civil service board or other administrative review to overturn the employing agency's dismissal or discipline and reinstate the officer to employment.

- Amends Rule 11B-27.004, F.A.C. – Probable Cause Determination. **To amend the following language:**

- (11)(a) If administrative or judicial review results in a final disposition of the respondent's termination or discipline, the case shall no longer be held in abeyance and Commission staff shall review the case for the issuance of a Letter of Acknowledgment, if applicable, or for presentation to the Commission for Commission action.
- (b) In cases subject to review by the Commission 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 on the merits of the case 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 that 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.

Task Force Vote: Discussion was held, and it was moved and seconded for the Task Force NOT to change Rule 11B-27.004(11)(b), F.A.C., at this time; however, it was recommended that Commission staff craft alternative rule language regarding diversionary programs for presentation at the next Task Force meeting. Passed with one (1) opposition.

Proposed Issue for Discussion: Agency Failure to Report Moral Character Violations. This agenda item is presented to discuss ongoing concerns regarding agencies that fail to properly report moral character violations to the Commission.

Task Force Vote: Discussion was held; however, no vote was required.

RECOMMENDATION(s): Commission staff recommends the Commission: 1) Approve the Task Force's proposed rule revisions as presented, with the exception of Proposed Rule Revision 6; 2) Approve Commission staff to begin the rule promulgation process; and 3) Approve Commission staff to make non-substantive revisions as requested by the Joint Administrative Procedures Committee and FDLE Legal Counsel.

VOTING IMPACT

CONSEQUENCES OF A "YES" VOTE ON FDLE CRIMINAL JUSTICE PROFESSIONALISM STAFF: A yes vote will approve Commission staff's recommended revisions to the rules.

CONSEQUENCES OF A "NO" VOTE ON FDLE CRIMINAL JUSTICE PROFESSIONALISM STAFF: A no vote will not approve Commission staff's recommended revisions to the rules.

SUPPORTING INFORMATION

The supporting information for this agenda item is only available on the Commission meeting CD-ROM using the below link(s), and is not available in paper format or on the FDLE website.
To request a CD-ROM please e-mail: joycegainous-harris@fdle.state.fl.us

- January 21, 2015 Officer Discipline Penalty Guidelines Task Force Meeting Packet

Note: The ODPGTF Meeting Packet contains the Task Force Membership, Memorandum of Penalty Guidelines Task Force Issues (*including issue pages for Agenda Items 1 – 6*), Officer Discipline Rules (*CJSTC Rule Chapter 11B-27*), and Addendums 1 - 7.

CRIMINAL JUSTICE STANDARDS AND TRAINING COMMISSION

AMENDED 4/15/15



OFFICER DISCIPLINE PENALTY GUIDELINES TASK FORCE MEETING

MARCH 24, 2015

TASK FORCE AGENDA



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MARCH 24, 2015, OFFICER DISCIPLINE PENALTY GUIDELINES TASK FORCE MEETING

TASK FORCE AGENDA (Continued)



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March 24, 2015 ODPGTF Meeting Minutes (*Addendum 4/15/15*)

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MARCH 24, 2015, OFFICER DISCIPLINE PENALTY GUIDELINES TASK FORCE MEETING

Officer Discipline Penalty Guidelines Task Force

CJSTC Chairman Greg S. Hutching	Florida Panhandle Technical College Public Safety Institute 757 Hoyt Street Chipley, Florida 32428 Telephone Number: 850.638.1180, Ext 339 E-mail: greggh@whtc.us
Commission Attorney Nick Cox	Office of the Attorney General 3507 E. Frontage Road, Suite 325 Tampa, Florida 33607 Telephone Number: 813.287.7960 E-mail: Nick.Cox@myfloridalegal.com Executive Assistant/Office Manager: Beth Decker Telephone Number: 813.287.7950 E-mail: Beth.Decker@myfloridalegal.com
Commission Secretary Joyce Gainous-Harris	JoyceGainous-Harris@fdle.state.fl.us 850.410.8615

Task Force Membership		
Management/Officer	Name	Address
Management	Chairman Edward L. Griffin (Warden)	Putnam Correctional Institution 148 Yelvington Road East Palatka, Florida 32131-2100 Telephone Number: 386.326.6690 E-mail: Griffin.Edward@mail.dc.state.fl.us Assistant: Sandra Knox Telephone Number: 386.326.6690 E-Mail: knox.sandra@mail.dc.state.fl.us
Management	Sheriff Ric L. Bradshaw	Palm Beach County Sheriff's Office 3228 Gun Club Road West Palm Beach, Florida 33406 Telephone Number: 561.688.3021 E-mail: bradshawr@pbso.org Assistant: Annette Marvin Telephone Number: 561.688.3021 E-mail: marvina@pbso.org
Management	Commissioner David Hobbs (Sheriff)	Jefferson County Sheriff's Office 171 Industrial Park Monticello, Florida 32344 Telephone Number: 850.997.2523 E-mail: hobbsdc@fcjn.net Assistant: Dawn Stiff, 850.997.2287 E-mail: stiffd@fcjn.net Office Manager: Jean Willis, 850.997.8272 E-mail: willisjc@fcjn.net

Management/Officer	Name	Address
Management	Commissioner Steven Steinberg (Chief)	Aventura Police Department 19200 West Country Club Drive Aventura, Florida 33180 Telephone Number: 305.466.8966 E-mail: ssteinberg@aventurapolice.com Assistant: Rita Noa Telephone Number: 305.466.8966 E-mail: Noar@aventurapolice.com
Management	Chief Jeff M. Pearson	Satellite Beach Police Department 510 Cinnamon Drive Satellite Beach, Florida 32937 Telephone Number: 321.773.4400 E-mail: jpearson@satellitebeach.org
Management	Commissioner Steve Courtoy (Captain)	Tampa Police Department, District 3 411 N. Franklin Street Tampa, Florida 33602 Telephone Number: 813.242.3897 E-mail: Charles.Courtoy@tampagov.net
Officer	Sergeant Mick McHale	Sarasota Police Department 2099 Adams Lane Sarasota, Florida 34237 Telephone Number: (941) 915-3532 E-mail: fxrmick@msn.com Assistant: Laura Smith Telephone Number: 941-366-1436 E-mail: laurasmith@flpba.org
Officer	Commissioner William Weiss (Deputy)	Martin County Sheriff's Office 800 S.E. Monterey Road Stuart, Florida 34994-4507 Telephone Number: 772.260.9033 (cell) E-mail: wrweiss@sheriff.martin.fl.us Assistant: Laurie Weber 772.220.7146 and Office Manager: Gail Seldomridge, 561.689.3745 E-mail: LJweber@sheriff.martin.fl.us E-mail: gail@pbcpsba.org
Officer	Commissioner Matthew "Matt" L. Williams (Sergeant)	Clay County Sheriff's Office 1836 Blanding Boulevard Middleburg, Florida 32068 Telephone Number: 904.237.6925 E-mail: mwilliamsfop@att.net
Officer	Commissioner Nicholas Marolda, Jr. (Detective)	Lakeland Police Department 219 North Massachusetts Avenue Lakeland, Florida 33801-4972 Telephone Number: 813.478.1618 E-mail: Nicholas.Marolda@lakelandgov.net
Officer	Sergeant Alexander Schroader	Hamilton Correctional Institution 10650 SW 46 th Street Jasper, Florida 32052-1360 Telephone Number: 386.792.9391 E-mail: awschroader@gmail.com
Officer	Deputy William Lawless	Pasco County Sheriff's Office 2341 Woodbend Circle New Port Richey, Florida 34655 Telephone Number: 727.657.7876 E-mail: wlawless@pascosheriff.org

Commission Staff

Criminal Justice Professionalism Management	
Name	Email and Telephone
Division Director Dean Register	DeanRegister@fdle.state.fl.us 850.410.8611
Bureau Chief Glen Hopkins	GlenHopkins@fdle.state.fl.us 850.410.8660
Professional Compliance Manager Stacy Lehman	StacyLehman@fdle.state.fl.us 850.410.8645

FDLE Counsel	
Name	Email and Telephone
General Counsel Tom Kirwin	ThomasKirwin@fdle.state.fl.us 850.410.7686
Deputy General Counsel Joe White	JoeWhite@fdle.state.fl.us 850.410.8339
Assistant General Counsel Jeff Dambly	JeffDambly@fdle.state.fl.us 850.410.8872
Assistant General Counsel Weston Petkovsek	WestonPetkovsek@fdle.state.fl.us 850.410.7688
Assistant General Counsel Rebecca Cambria	RebeccaCambria@fdle.state.fl.us 850.410.8190

Criminal Justice Standards and Training Commission

Officer Discipline Penalty Guidelines Task Force

MINUTES OF THE JANUARY 21, 2015 TASK FORCE MEETING

Chairman Edward Griffin called the Officer Discipline Penalty Guidelines Task Force meeting to order at 8:40 a.m. at the Seminole State College in Sanford, Florida.

OFFICERS KILLED IN THE LINE OF DUTY

Chairman Griffin paused for a moment of silence to acknowledge the following officers who were killed in the line of duty: Deputy Sheriff Christopher Smith of the Leon County Sheriff's Office; and Police Officer Charles Kondek of the Tarpon Springs Police Department.

TASK FORCE MEMBERS

The roll was called and the following twelve (12) Task Force members represented a quorum:

- | | |
|---|---|
| 1. Warden Edward L. Griffin, Task Force Chairman
Department of Corrections | 2. Sheriff Ric L. Bradshaw
Palm Beach County Sheriff's Office |
| 3. Commissioner David Hobbs (Sheriff)
Jefferson County Sheriff's Office | 4. Commissioner Steven Steinberg (Chief)
Aventura Police Department |
| 5. Chief Jeff M. Pearson
Satellite Beach Police Department | 6. Commissioner Steve Courtoy (Captain)
Tampa Police Department |
| 7. Sergeant Mick McHale
Sarasota Police Department | 8. Commissioner William Weiss (Deputy)
Martin County Sheriff's Office |
| 9. Commissioner Matthew L. Williams (Sergeant)
Clay County Sheriff's Office | 10. Commissioner Nicholas Marolda, Jr. (Detective)
Lakeland Police Department |
| 11. Sergeant Alexander Schroader
Hamilton Correctional Institution | 12. Deputy William Lawless
Pasco County Sheriff's Office |

COMMISSION STAFF

- | | |
|--|---|
| 1. Director Dean Register
Criminal Justice Professionalism Division | 2. Bureau Chief Glen Hopkins
Bureau of Standards |
| 3. Training & Research Manager Stacy Lehman
Professional Compliance and Trust Fund Section | 4. Commission Attorney Nick Cox
Office of the Attorney General |
| 5. FDLE Deputy General Counsel Joe White
Office of General Counsel | 6. FDLE Counsel Linton Eason
Office of General Counsel |
| 7. FDLE Counsel Rebecca Cambria
Office of General Counsel | 8. FDLE Counsel Jeff Dambly
Office of General Counsel |
| 9. FDLE Counsel Weston Petkovsek
Office of General Counsel | 10. Government Operations Consultant
Joyce Gainous-Harris , Bureau of Standards
(Commission Operations/Secretary) |

March 24, 2015, Officer Discipline Penalty
Guidelines Task Force Workshop

8

January 21, 2015 ODPGTF
Meeting Minutes

SUNSHINE LAW

Commission Attorney Nick Cox stated that the Sunshine Law applies to agenda items on the ODPGTF Agenda and Task Force members shall not have conversations with another Task Force member or in the presence of another Task Force member about agenda items currently pending before the Task Force. Task Force members may discuss agenda items with another Task Force member during the ODPGTF meeting and may have conversations with Commission staff and other individuals about agenda items prior to the ODPGTF meeting.

APPROVAL OF THE JANUARY ODPGTF MEETING AGENDA

Chairman Griffin asked if there were any amendments to the January 21, 2015 Task Force Meeting Agenda. Commission Secretary Joyce Gainous-Harris read the following amendments into the Task Force record, submitted on January 8th, 16th, and 20th, 2015:

- **Addendum 1:** Letter from Fraternal Order Police (FOP) General Counsel Diamond
- **Addendum 2:** Overturned Agency Findings
- **Addendum 3:** Alternative Rule Language by Executive Director Cantor
- **Addendum 4:** Police Benevolent Association (PBA) History of Recantation in CJSTC Rule
- **Addendum 5:** Recantation No-Caused Cases
- **Addendum 6:** Memorandum from Florida Sheriffs Association (FSA) General Counsel Evans via Executive Director Casey
- **Addendum 7:** Email from Florida Police Chiefs Association (FPCA) General Counsel Dietzen via Executive Director Mercer

TASK FORCE ACTION: *Commissioner Williams moved that the Task Force approve the amended agenda; seconded by Chief Pearson; motion carried.*

CRIMINAL JUSTICE PROFESSIONALISM DIRECTOR'S COMMENTS

Director Dean Register thanked the members for serving on the Task Force to discuss the issues at hand. He also extended thanks to Commission staff for preparing the materials for the Task Force meeting and welcomed the opportunity for positive dialog among members of the Task Force and audience to address proposed rule revisions.

TASK FORCE ACTION: This agenda item did not require Commission action.

AGENDA ITEM 1: Amends Rule 11B-27.0011(4)(b)1., and 11B-27.005(b)8., F.A.C., To Remove Charge of Video Voyeurism

Bureau Chief Glen Hopkins presented this agenda item to the Task Force to amend current rule language as a result of a 2012 statutory change made to the charge of Video Voyeurism. This change made the charge a misdemeanor for anyone under 19 years old, and a felony for anyone 19 years old or older. Since the Commission requires an individual to be 19 years old in order to become certified, the charge of misdemeanor Video Voyeurism and associated penalty guideline should be removed from rule.

Amends Rule 11B-27.0011, F.A.C. – Moral Character. To remove the following language:

- (4) For the purposes of the Criminal Justice Standards and Training Commission's implementation of any of the penalties specified in Section 943.1395(6) or (7), F.S., a certified officer's failure to maintain good moral character required by Section 943.13(7), F.S., is defined as:
- (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, 817.61, 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.

Amends Rule 11B-27.005, F.A.C. – Revocation or Disciplinary Actions; Disciplinary Guidelines; Range of Penalties; Aggravating and Mitigating Circumstances. To remove the following language:

- (5) When the Commission finds that a certified officer has committed an act that violates Section 943.13(7), F.S., the Commission shall issue a final order imposing penalties within the ranges recommended in the following disciplinary guidelines:
- (b) For the perpetration by the officer of an act that would constitute any of the misdemeanor offenses, pursuant to paragraph 11B-27.0011(4)(b), F.A.C., but where there was not a violation of Section 943.13(4), F.S., the action of the Commission shall be to impose a penalty ranging from probation of certification to suspension of certification. Specific violations and penalties that shall be imposed, absent aggravating or mitigating circumstances, include the following:

	Violation	Recommended Penalty Range
8.	Prostitution or lewdness; voyeurism, video-voyeurism (796.07, 810.14, 810.145 , F.S.)	Prospective suspension, and probation with counseling to revocation

TASK FORCE VOTE: Discussion was held, and *Commissioner Courtroy moved that the Task Force adopt Commission staff's recommendation; seconded by Sheriff Bradshaw; motion carried.*

AGENDA ITEM 2: AMENDS RULE 11B-27.005(5)(A), F.A.C., TO ADD CHARGE OF VIDEO VOYEURISM

Bureau Chief Glen Hopkins presented this agenda item to the Task Force to amend current rule language to add an enumerated penalty guideline for the felony charge of Video Voyeurism. This rule language will apply the same penalty guideline for the current misdemeanor charge of Voyeurism. Any aggravators or mitigating circumstances as outlined in Rule 11B-27.005(6)(a)(b), F.A.C., may be considered when determining the appropriate final disciplinary action by the Commission.

Amends Rule 11B-27.005, F.A.C. – Revocation or Disciplinary Actions; Disciplinary Guidelines; Range of Penalties; Aggravating and Mitigating Circumstances. To add the following language:

- (5) When the Commission finds that a certified officer has committed an act that violates Section 943.13(7), F.S., the Commission shall issue a final order imposing penalties within the ranges recommended in the following disciplinary guidelines:
- (a) For the perpetration by the officer of an act that would constitute any felony offense, pursuant to paragraph 11B-27.0011(4)(a), F.A.C., but where there was not a violation of Section 943.13(4), F.S., the action of the Commission shall be to impose a penalty ranging from suspension of certification to revocation. Specific violations and penalties that shall be imposed, absent mitigating circumstances, include the following:

	Violation	Recommended Penalty Range
18.	<u>Video Voyeurism</u>	<u>Prospective suspension and probation with counseling to revocation</u>

TASK FORCE VOTE: Discussion was held, and *Commissioner Williams moved that the Task Force adopt Commission staff's recommendation; seconded by Chief Pearson; motion carried.*

AGENDA ITEM 3: AMENDS RULE 11B-27.005(c)2., F.A.C., TO ADD TRAINING TO SUSPENSION FOR SEXUAL HARASSMENT VIOLATION

Bureau Chief Glen Hopkins presented this agenda item to the Task Force to amend current rule language to address cases involving officers with a sustained charge of Sexual Harassment. Those who have been suspended by their agency, qualifying them to receive a Letter of Acknowledgement (LOA) from the Commission since the agency's discipline met the Commission's penalty guideline. The current penalty guideline for this charge is probation with training to suspension. An officer receiving at least a one-day suspension, regardless of training, is eligible for an LOA. A change to rule will ensure that the officer will receive the necessary training from the agency or through the Commission's discipline process.

Amends Rule 11B-27.005, F.A.C. – Revocation or Disciplinary Actions; Disciplinary Guidelines; Range of Penalties; Aggravating and Mitigating Circumstances. To add the following language:

- (5) When the Commission finds that a certified officer has committed an act that violates Section 943.13(7), F.S., the Commission shall issue a final order imposing penalties within the ranges recommended in the following disciplinary guidelines:
- (c) For the perpetration by the officer of an act or conduct, as described in paragraph 11B-27.0011(4)(c), F.A.C., if such act or conduct does not constitute a crime described in paragraphs (5)(a)-(b) of this rule section, the action of the Commission shall be to impose the following penalties, absent aggravating or mitigating circumstances:

	Violation	Recommended Penalty Range
2.	Sexual harassment involving physical contact or misuse of position	Probation with training to suspension <u>with training.</u>

TASK FORCE VOTE: Discussion was held, and *Sheriff Bradshaw moved that the Task Force adopt Commission staff's recommendation; seconded by Commissioner Marolda; motion carried.*

AGENDA ITEM 4: AMENDS RULE 11B-27.005(5)(B)4., F.A.C., TO ADD SPECIFICATION TO FALSIFICATION OF A USE OF FORCE REPORT VIOLATION

Bureau Chief Glen Hopkins presented this agenda item to the Task Force to amend current rule to specify that the charge of Falsification of a Use of Force Report [Section 944.35(4)(b), F.S.] is included in the penalty guideline for misdemeanors involving false reports and statements. The current penalty guideline rule includes the entire Section 944.35, F.S. Both Falsification of a Use of Force Report [Section 944.35(4)(b), F.S.] and Failure to Report Use of Force [Section 944.35(4)(a), F.S.] are included within the statute. However, only Section 944.35(4)(b), F.S., involves a false statement. The charge of Failure to Report Use of Force [Section 944.35(4)(a), F.S.], is also a moral character violation but does not involve a false statement. The charge of Failure to Report Use of Force will remain within the generic penalty guideline of probation to suspension for misdemeanor moral character violations.

☐ **Amends Rule 11B-27.005, F.A.C. – Revocation or Disciplinary Actions; Disciplinary Guidelines; Range of Penalties; Aggravating and Mitigating Circumstances. To add the following language:**

- (5) When the Commission finds that a certified officer has committed an act that violates Section 943.13(7), F.S., the Commission shall issue a final order imposing penalties within the ranges recommended in the following disciplinary guidelines:
- (b) For the perpetration by the officer of an act that would constitute any of the misdemeanor offenses, pursuant to paragraph 11B-27.0011(4)(b), F.A.C., but where there was not a violation of Section 943.13(4), F.S., the action of the Commission shall be to impose a penalty ranging from probation of certification to suspension of certification. Specific violations and penalties that shall be imposed, absent aggravating or mitigating circumstances, include the following:

	Violation	Recommended Penalty Range
4.	False reports and statements (817.49, 837.012, 837.05(1), 837.055, 837.06, 901.36, 944.35(4)(b), F.S.).	Prospective suspension to revocation

TASK FORCE VOTE: Discussion was held, and *Commissioner Steinberg moved that the Task Force adopt Commission staff's recommendation; seconded by Chief Pearson; motion carried.*

AGENDA ITEM 5: AMENDS RULE 11B-27.0011(5), F.A.C., TO INCLUDE TIMEFRAME FOR RECANTATION OF FALSE STATEMENT

Bureau Chief Glen Hopkins presented this agenda item to the Task Force to amend current rule to include a timeframe during which an officer can recant a false statement.

Amends Rule 11B-27.0011, F.A.C. – Moral Character. To add the following language:

- (5) 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 conclusion of the internal affairs investigation in which the false statement related to a material fact or within 10 working days of making the false statement, whichever occurs first. For purposes of this subsection, the employing agency's internal affairs investigation shall be deemed to be at a conclusion upon the investigator's execution of the statement required by Section 112.533(1)(a)2., F.S.

TASK FORCE VOTE: Discussion was held, and *Commissioner Marolda moved that the Task Force amend Commission staff's recommendation to specify "10 calendar days" instead of "10 working days"; seconded by Commissioner Weiss; motion carried with two (2) oppositions by Sheriff Bradshaw and Sheriff Hobbs.*

AGENDA ITEM 6: AMENDS RULE 11B-27.004 (11)(b), F.A.C., TO RESTORE COMMISSION'S ABILITY TO DISCIPLINE OR REVOKE CERTIFICATION

Bureau Chief Glen Hopkins presented this agenda item to the Task Force to amend current rule to restore the Commission's ability to discipline or revoke an officer's certification, notwithstanding a decision in arbitration, civil service board or other administrative review to overturn the employing agency's dismissal or discipline and reinstate the officer to employment.

Amends Rule 11B-27.004, F.A.C. – Probable Cause Determination. To amend the following language:

- (11)(a) If administrative or judicial review results in a final disposition of the respondent's termination or discipline, the case shall no longer be held in abeyance and Commission staff shall review the case for the issuance of a Letter of Acknowledgment, if applicable, or for presentation to the Commission for Commission action.
- (b) In cases subject to review by the Commission 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 on the merits of the case 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 that 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.

The following individuals participated in the discussion held about the proposed rule language:

- | | |
|--|--|
| 1. Warden Edward Griffin, Task Force Chairman | 13. Chief Paul O'Connor, Wilton Manors Police Department, President of the Broward County Chiefs Association |
| 2. Deputy William Lawless, Task Force Member | 14. General Counsel's Chief of Staff George Hachigian, Fraternal Order of Police, Florida State Lodge |
| 3. Sergeant Mick McHale, Task Force Member | 15. General Counsel Alan S. Diamond, Fraternal Order of Police, Florida State Lodge |
| 4. Sheriff Ric Bradshaw, Task Force Member | 16. Chief Tony Pustizzi, Coral Springs Police Department |
| 5. Commissioner Williams, Task Force Member | 17. Executive Director Joel Cantor, Arbitration Litigator |
| 6. Bureau Chief Glen Hopkins | 18. General Counsel Hal Johnson, Florida Police Benevolent Association |
| 7. Commissioner Steve Courtoy, Task Force Member | 19. CJSTC Chairman Greg Hutching, Florida Panhandle Technical College Public Safety Institute |
| 8. Chief Jeff M. Pearson, Task Force Member | |
| 9. Deputy General Counsel Joe White, FDLE | |
| 10. Commission Attorney Nick Cox | |
| 11. Colonel Jack Dale, Broward County Sheriff's Office | |
| 12. Executive Director Ernie George, Palm Beach County Police Benevolent Association | |

TASK FORCE VOTE: Discussion was held, and *Sheriff Bradshaw moved that the Task Force reject Commission staff's recommendation at the time; however, it was recommended that Commission staff craft alternative rule language regarding diversionary programs for presentation at the next Task Force meeting; seconded by Sergeant McHale; motion carried with one (1) opposition by Sheriff Hobbs.*

Discussion Comments:

Some Task Force members commented that the arbitration process is unfair and resembles double jeopardy, allowing officers to have a "second bite at the apple."

Commissioner Courtoy stressed that probable cause hearings must be fair and effective.

Deputy General Counsel White advised that no changes have been made to the current rule since 2004. He also addressed related case law regarding factual findings by arbitrators.

Bureau Chief Hopkins reminded the Task Force that an agency has 180 days to present its case to the Commission. Colonel Dale discussed a case that was presented to FDLE for probable cause and was turned down. The same case was presented to the Commission and returned to the agency, causing the case to go beyond the 180-day timeframe.

Mr. George commented that if a person was charged criminally, they have 180 days to come before the Commission; however, some officers have also gone to trial, arbitration, and hearings, which resulted in them spending hundreds of thousands of dollars.

Chief O'Connor stated that the arbitration process and the criminal trial process are two different processes and should not be considered as "double jeopardy" or "two bites at the apple". He asked that the Commission take on a case-by-case evaluation to determine whether there is probable cause to go forward with an officer's decertification. If there is probable cause, the Commission should hear the case and have its "first and only bite at the apple."

Chief of Staff Hachigian stated that the issue at hand is whether the arbitrator's decision is final and binding. The agencies who have elected to enter into a collective bargaining agreement have agreed to that process and the fact that the arbitrator's decision is final and binding. He contends that when the agencies do not agree with the

arbitrator's ruling (rules against the agency), the agency chooses to bring the case before the Commission and he feels this process is unfair. The statute and rule that's in place is working. The respondents feel they are getting a "fair shake" when they go to arbitration. Overall, if the arbitrator overturns the agency head or if the arbitrator concurs with the agency head's decision, they feel that it is a fair process. However, according to Mr. Hachigian, the Commission takes a second look at the same case with the same set of facts; respondents may feel that they are not going to get a fair and impartial hearing before the Commission because they are trying the case twice with two different venues. Mr. Hachigian further stated that changing the rule is unfair because the respondents are already under a lot of stress because they have committed the violation and now they have to undergo internal investigation, discipline or termination, arbitration and possibly a criminal proceeding. All agencies have agreed to the arbitration process and should respect the arbitrator, respect the arbitration process, and do a better job of pleading their case at the arbitration level. The FOP opposes any rule change at this time.

General Counsel Diamond stated that under the current rule, there are instances when an alleged violation may not come before the Commission. However, when an officer is charged with a non-criminal, moral character violation that goes to arbitration and the findings of fact by the agency do not rise to the level of the alleged conduct, the case will come before the Commission. General Counsel Diamond also used as an example that if the officer is charged with a capital offense, i.e., trafficking in oxycodone, the case still comes before the Commission even if the State Attorney's Office chooses not to prosecute the case. Under the current rule, if a "not guilty" verdict is determined during the arbitration process, the case automatically comes before the Commission. Changing the rule will bog down the system. The current rule works because it is fair and gives both sides due process. General Counsel Diamond further stated that no "system" is perfect; however, the current adversarial system with trained arbitrators, judges, and attorneys from both sides ensure the arbitrators are given fair and appropriate respect, unless it is determined that the arbitrator acted out of the scope of his authority.

Chief Pustizzi advised that it is the Commission's job to protect the citizens of Florida and make sure the officers are held to a high standard. Some arbitrators are not professional or highly skilled in their craft. Instead of having law enforcement background, they have bachelor's or master's degrees in social administration, and they are deciding on the fate of the officer.

Executive Director Cantor commented that when the rule was established in 2004, no one envisioned that labor would take on certain cases representing law enforcement officers through the plea agreement and reducing charges down to misdemeanors, convictions, deferral programs and diversionary programs. Director Cantor referenced several cases that are currently in diversionary courts in Broward, Dade, Leon and Palm Beach Counties. First-time offenders charged with a felony were allowed to enter into a diversionary court (not acquittal) or plead to lesser-included offenses (misdemeanors). He further referenced a May 2014 letter he submitted to the Commission regarding a sergeant who was arrested by the Palm Beach County Sheriff's Office and charged with 10 felonies. Because of plea negotiations, the state attorney allowed the sergeant to plead to one of the counts and enter into a diversionary program. Director Cantor stated this is a disturbing, growing trend wherein the collective bargaining unit is allowing offenders a "second bite at the apple". He suggested that the Task Force approve the proposed rule change or adopt a modified rule.

Commission Attorney Cox invited Mr. Cantor to voice his concerns to the Florida Prosecuting Attorney Association (FPAA). Mr. Cox stressed that state attorneys have valid reasons for putting officers into the diversionary program. They do not put officers in diversionary programs because they feel bad for them or because they are first-time offenders.

General Counsel Johnson concluded that the rule is not "broken". However, he agrees there is a development going on with the prosecutors wherein they are allowing individuals to enter diversionary programs and apparently, it is precluding the Commission's ability to review the case. General Counsel Johnson thinks the Commission needs to adjust its rules to address the diversionary program if it wants to become more actively involved in reviewing deferrals of police officers. Instead of changing the rule, he recommended rule language that says if an

officer enters into a diversionary program on a criminal charge, the case would be reviewed by the Commission before it goes to probable cause. FDLE Deputy General Counsel White offered clarification to General Counsel Johnson's suggested rule language to say the following: *Notwithstanding an arbitration outcome, if an officer who participated in a diversion program on a criminal charge that would arise from the same factual basis, language could be crafted to ensure the probable cause panel saw this case even if the officer won on the merits of arbitration.*

Chairman Hutching extended thanks to the Task Force, Commission staff, general counsels, police chiefs and sheriffs for participating in the ODPGTF Meeting. He also read the mission statement of the Criminal Justice Standards and Training Commission and stressed that the Commission has the statutory right, responsibility, and authority to ensure that officers that serve the state of Florida are ethical.

Sheriff Bradshaw made a suggestion for the Commission to evaluate the diversionary process because some individuals are taking the "no contest" plea and then taking the diversionary program. He also encouraged agencies to develop a relationship with their prosecutors so that the diversionary package includes a stipulation that the individual will have to give up his certification voluntarily. The Commission will have the authority to take the certification, which should be outlined in the diversionary program.

Commissioner Courtoy suggested that Task Force members might need to review the 13 arbitration cases included in the Task Force meeting packet prior to making a final decision on the proposed rule change. He also agreed with Mr. Johnson's recommendation to do a separate rule to address diversion programs.

Commissioner Hobbs was of the opinion that the rule should be amended. The Commission is responsible for making sure there are good law enforcement officers in Florida – not the arbitrators or the unions. The source of the problem is sub-standard law enforcement officers that were rehired or never fired, resulting in ongoing problems for good officers and the agencies. The Commission has an obligation to take a stand for doing the right thing.

Chairman Griffin stressed that the Commission's purpose is to serve the citizens of the state of Florida with well-trained and ethical people; to that end, the Commission has the ultimate decision on the officer's certification. Despite what the agency decides to do, i.e., fire, suspend, etc., the Commission has the final authority on the individual's certification.

AGENDA ITEM 7: AGENCY FAILURE TO REPORT MORAL CHARACTER VIOLATIONS

Bureau Chief Glen Hopkins presented this agenda item to the Task Force to discuss ongoing concerns regarding agencies that fail to properly report moral character violations to the Commission. The issue was brought to the attention of the Commission by former Commission Chair, Sheriff Susan Benton of Highlands County Sheriff's Office. According to Sheriff Benton, agencies are failing to report their internal investigations.

Bureau Chief Hopkins advised that statute allow Commission staff to review every internal investigation that is completed by an agency; however, this would be a huge undertaking for Commission staff because there are approximately 435 agencies and only eight (8) Commission field representatives to cover the state.

Sheriff Bradshaw inquired about the sanctions for failing to properly report moral character violations to the Commission. Bureau Chief Hopkins informed the Task Force that it would be considered a non-criminal offense would be imposed for the "willful failure" of the agency head or agency administrator to comply with Chapter 943. He further stated that he is not aware of staff ever using this sanction. The Commission does not have investigative authority, as it is an administrative body; however, pursuant to rule and statute, agencies have a duty to report moral character violations to the Commission.

Bureau Chief Hopkins stated that Commission staff does not have a solution for this problem or a recommendation for a rule change.

TASK FORCE ACTION: Discussion was held, however this agenda item did not require Task Force action.

MEETING ADJOURNED

Chairman Griffin requested a motion to adjourn the Task Force meeting. ***Commissioner Williams moved to adjourn the Task Force meeting; seconded by Chief Pearson; motion carried.***

The Officer Discipline Penalty Guideline Task Force meeting adjourned at 11:05 a.m., Wednesday, January 21, 2015. The minutes were prepared by Government Operations Consultant/Commission Secretary Joyce Gainous-Harris of the Florida Department of Law Enforcement, Criminal Justice Professionalism Division, Post Office Box 1489, Tallahassee, Florida 32302.

Criminal Justice Standards and Training Commission

MINUTES OF THE FEBRUARY 4, 2015 COMMISSION WORKSHOP

Chairman Greg Hutching called the Criminal Justice Standards and Training Commission Workshop to order on February 4, 2015, at 3:00 p.m. at the Hilton Sandestin Beach Golf Resort & Spa in Miramar Beach (Destin), Florida. The purpose of the workshop was to discuss proposed rule changes discussed during the Officer Discipline Penalty Guidelines Task Force (ODPGTF) meeting that was held on Wednesday, January 21, 2015, at the Seminole State College in Sanford, Florida. The Task Force is statutorily required to review the penalty guidelines every two years to determine if rule changes need to be made, and bring suggested changes to the Commission for final voting approval.

COMMISSION MEMBERS PRESENT OR ABSENT

The roll was called and the following nine (9) Commission members represented a quorum:

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| <p>1. Director Greg S. Hutching, Chairman
Florida Panhandle Technical College Public Safety Institute
757 Hoyt Street, Chipley, FL 32428
Telephone: 850-638-1180 Ext 339</p> | <p>2. Warden Edward L. Griffin, Vice-Chairman
Department of Corrections
148 Yelvington Road, East Palatka, FL 32131
Telephone: 386-326-6690</p> |
| <p>3. Colonel David H. Brierton, Jr., Director
Florida Department of Highway Safety and Motor Vehicles
Division of Florida Highway Patrol, Neil Kirkman Building
Tallahassee, FL 32399, Telephone: 850-617-2300</p> | <p>4. Officer Kathleen A. Connell
Tallahassee Police Department
234 East Seventh Street, Tallahassee, FL 32303
Telephone: 850-891-4353</p> |
| <p>5. Deputy Secretary Timothy Cannon, proxy for Secretary Julie L. Jones, Florida Department of Corrections
501 Calhoun St., Tallahassee, FL 32399-2500
Telephone: 850-717-3037</p> | <p>6. Sheriff David Hobbs (Absent)
Jefferson County Sheriff's Office
171 Industrial Park, Monticello, Florida 32344
Telephone: 850-997-2523</p> |
| <p>7. Captain Steve Courtoy (Absent), proxy for Attorney General Pam Bondi, Tampa Police Department,
District 11, 411 N. Franklin St., Tampa, FL 33602
Telephone: 813-913-6500</p> | <p>8. Mr. William "Bill" Harriss
Florida Citizen
1110 Bayforest Road, St. Augustine, FL 32084
Telephone: 904-669-4688</p> |
| <p>9. Correctional Officer Benito Arzon
Orange County Department of Corrections
Post Office Box 4970, Orlando, FL 32802
Telephone: 407-448-1730</p> | <p>10. Chief Steven Steinberg (Absent)
Aventura Police Department
19200 West Country Club Drive, Aventura, FL 33180
Telephone: 305-466-8966</p> |
| <p>11. Sheriff John H. Rutherford (Absent)
Jacksonville Sheriff's Office
501 E. Bay Street, Jacksonville, FL 32202
Telephone: 904-630-5898</p> | <p>12. Sergeant Matthew "Matt" L. Williams (Absent)
Clay County Sheriff's Office
1836 Blanding Boulevard, Middleburg, FL 32068
Telephone: 904-237-6925</p> |
| <p>13. Sheriff David B. Shoar (Absent)
St. Johns County Sheriff's Office
4015 Lewis Speedway, St. Augustine, FL 32084
Telephone: 904-810-6601</p> | <p>14. Chief Van Toth
Hialeah Gardens Police Department
10301 NW 87th Avenue, Hialeah Gardens, FL 33016
Telephone: 305-558-3333</p> |
| <p>15. Detective Nicholas Marolda, Jr. (Absent)
Lakeland Police Department
219 North Massachusetts Avenue, Lakeland, FL 33801
Telephone: 813-478-1618</p> | <p>16. Deputy William "Willie" Weiss (Absent)
Martin County Sheriff's Office
800 S.E. Monterey Road, Stuart, FL 34994-4507
Telephone: 772-260-9033</p> |
| <p>17. Chief George Turner
Brooksville Police Department
87 Veterans Avenue, Brooksville, FL 34601
Telephone: 352-540-3800</p> | <p>Commission Attorney
Assistant Attorney General Clark R. Jennings
Office of the Attorney General
PL-01 The Capitol Building, Tallahassee, Florida 32399
Telephone Number: (850) 414-3799</p> |

Chairman Hutching turned the Commission Workshop over to Vice-Chairman Griffin, as he is the ODPGTF Chairman. Vice-Chairman Griffin advised that he would provide a briefing of the January 21, 2015, Task Force meeting during the Commission Business Meeting on Thursday, February 5, 2015. Bureau Chief Glen Hopkins was asked to present the Task Force issues for the workshop.

AGENDA ITEM 1: Amends Rule 11B-27.0011(4)(b)1., and 11B-27.005(b)8., F.A.C., To Remove Charge of Video Voyeurism

Bureau Chief Glen Hopkins presented this agenda item to the Commission to amend current rule language as a result of a 2012 statutory change made to the charge of Video Voyeurism. This change made the charge a misdemeanor for anyone under 19 years old, and a felony for anyone 19 years old or older. Since the Commission requires an individual to be 19 years old in order to become certified, the charge of misdemeanor Video Voyeurism and associated penalty guideline should be removed from rule.

Task Force Action: The Task Force voted to pass the proposed rule revision to remove rule language associated with the charge of Video Voyeurism in Rule 11B-27.0011(b)1. AND Rule 11B-27.005(5)(b)8., F.A.C.

AGENDA ITEM 2: AMENDS RULE 11B-27.005(5)(a), F.A.C., TO ADD CHARGE OF VIDEO VOYEURISM

Bureau Chief Glen Hopkins presented this agenda item to the Commission to amend current rule language to add an enumerated penalty guideline for the felony charge of Video Voyeurism. This rule language will apply the same penalty guideline for the current misdemeanor charge of Voyeurism. Any aggravators or mitigating circumstances as outlined in Rule 11B-27.005(6)(a)(b), F.A.C., may be considered when determining the appropriate final disciplinary action by the Commission.

Task Force Action: The Task Force voted to pass the proposed change to Rule 11B-27.005(5)(a), F.A.C., to add a penalty guideline for the felony charge of Video Voyeurism.

AGENDA ITEM 3: AMENDS RULE 11B-27.005(c)2., F.A.C., TO ADD TRAINING TO SUSPENSION FOR SEXUAL HARASSMENT VIOLATION

Bureau Chief Glen Hopkins presented this agenda item to the Commission to amend current rule language to address cases involving officers with a sustained charge of Sexual Harassment. Those who have been suspended by their agency, qualifying them to receive a Letter of Acknowledgement (LOA) from the Commission since the agency's discipline met the Commission's penalty guideline. The current penalty guideline for this charge is probation with training to suspension. An officer receiving at least a one-day suspension, regardless of training, is eligible for an LOA. A change to rule will ensure that the officer will receive the necessary training from the agency or through the Commission's discipline process.

Task Force Action: The Task Force voted to pass the proposed rule language to add a training requirement to Rule 11B-27.005(5)(c)2., F.A.C.

AGENDA ITEM 4: AMENDS RULE 11B-27.005(5)(b)4., F.A.C., TO ADD SPECIFICATION TO FALSIFICATION OF A USE OF FORCE REPORT VIOLATION

Bureau Chief Glen Hopkins presented this agenda item to the Commission to amend current rule to specify that the charge of Falsification of a Use of Force Report [Section 944.35(4)(b), F.S.] is included in the penalty guideline for misdemeanors involving false reports and statements. The current penalty guideline rule includes the entire Section 944.35, F.S. Both Falsification of a Use of Force Report [Section 944.35(4)(b), F.S.] and Failure to Report Use of Force [Section 944.35(4)(a), F.S.] are included within the statute. However, only Section 944.35(4)(b), F.S., involves a false statement. The charge of Failure to Report Use of Force [Section 944.35(4)(a), F.S.], is also a moral character violation but does not involve a false statement. The charge of Failure to Report Use of Force will remain within the generic penalty guideline of probation to suspension for misdemeanor moral character violations.

Task Force Action: The Task Force voted to PASS the proposed rule revision to Rule 11B-27.005(5)(b)4., F.A.C., to add the specification that the charge of Falsification of a Use of Force Report [Section 944.35(4)(b), F.S.] is included in the penalty guideline for misdemeanors involving false reports and statements.

Agenda Item 4 – Workshop Discussion/General Information:

Commissioner Arzon inquired about the current recommended penalty guideline. Bureau Chief Hopkins advised the proposed rule change should be considered a “housekeeping” item because in the past, Commission staff has taken the liberty of applying the general range to violations dealing with “failure to report”. Likewise, Commission staff has used the recommended penalty range of *prospective suspension to revocation* for “falsification of use of force” violations.

AGENDA ITEM 5: AMENDS RULE 11B-27.0011(5), F.A.C., TO INCLUDE TIMEFRAME FOR RECANTATION OF FALSE STATEMENT

Bureau Chief Glen Hopkins presented this agenda item to the Commission to amend current rule to include a timeframe during which an officer can recant a false statement.

Task Force Action: The Task Force voted to amend the proposed rule text to specify “10 calendar days” instead of “10 working days” in Rule 11B-27.0011(5). The proposed rule revision PASSED with two (2) oppositions.

Agenda Item 5 – Workshop Discussion/General Information:

The recantation rule has been an issue of discussion at past Commission meetings and ODPGTF groups. For the benefit of the January 2015 ODPGTF meeting, Commission staff collected statistical data over a two-year period for 44 cases involving recantation in order to determine how long it takes for an officer to recant a false statement. The report revealed, of the 44 cases, the recantations ranged anywhere from one to 118 days, or an average of 48 days. This is an extremely long time; therefore, Commission staff recommended a reasonable period of time for the officer to tell the truth and “set the record straight”. Due to officers’ work schedules and shift times, the Task Force specified “10 calendar days” instead of “10 working days”.

Commissioner Harriss stated that he agreed with Commission staff’s recommendation. Under the current rule, the officer has until the investigator signs off on the investigation to recant a statement. Under the proposed rule, Chairman Hutching offered a point of clarification that if the investigator concludes the investigation in 3 days and signs off on the investigation, the 10-calendar-day widow would be closed. The recantation period ends at the conclusion of the investigation or 10 calendar days – whichever occurs first.

AGENDA ITEM 6: AMENDS RULE 11B-27.004 (11)(b), F.A.C., TO RESTORE COMMISSION'S ABILITY TO DISCIPLINE OR REVOKE CERTIFICATION

Bureau Chief Glen Hopkins presented this agenda item to the Commission to amend current rule to restore the Commission's ability to discipline or revoke an officer's certification, notwithstanding a decision in arbitration, civil service board or other administrative review to overturn the employing agency's dismissal or discipline and reinstate the officer to employment.

Task Force Action: The Task Force Voted NOT to change Rule 11B-27.004(11)(b), F.A.C., at this time; however, it was recommended that Commission staff create alternative rule language regarding diversionary programs for presentation at the next Task Force meeting. The motion PASSED with one (1) opposition.

Workshop Discussion/General Information:

This issue was brought to the attention of the Commission at the request of the Broward Sheriff's Office as a result of two cases, in particular, that went to arbitration and the arbitrator reversed the findings in both cases. Under the current rule, most arbitration cases deal with disciplinary matters. *Example: The officer was terminated, the arbitrator looks at the case and decides the discipline was harsh and only warranted a 5 or 10-day suspension.* If the facts and circumstances still stand, the Commission can proceed further with the case; however, if the arbitrator reverses the findings, it "kills" the Commission's case. For the benefit of the January 2015 ODPGTF meeting, Commission staff collected statistical data over a two-year period for 13 cases involving arbitration. Commission staff presented rule language to the Task Force, which would essentially remove any consideration if an arbitrator reversed the findings in a particular case (refer to the Newberry case law, 2004). Several individuals spoke to the issue, including representatives from the Broward County Sheriff's Office, Palm Beach County Police Benevolent Association, Palm Beach County Police Benevolent Association, Fraternal Order of Police/Florida State Lodge, Wilton Manors Police Department, Coral Springs Police Department, and Florida Police Benevolent Association.

Chairman Hutching stated the mission of the Commission is to be the final authority of the officer's certification, decertification, and discipline. If a respondent decides to take the route of a formal hearing before an administrative law judge, the case comes back before the Commission for a vote to accept the administrative law judge's findings or specify why the Commission decided to go against it. In instances such as this, the final decision is out of the Commission's hands. The case is in the hands of the staff of FDLE attorneys or the arbitrator and the Commission does not give an administrative law judge the authority to keep the Commission from hearing a case. Chairman Hutching stressed that if the Commission members do not see the case, they (Commission members) are doing a disservice to the Commission. If the Commission allows its authority to be taken away and given to an outside entity, this could possibly weaken the Commission's ability to fulfill its statutory requirements.

Vice-Chairman Griffin echoed Chairman Hutching's concerns. The Commission's sole responsibility is the authority over the officers' certification; therefore, the Commission must ensure that it does not lose that authority by accepting the decision of an administrative law judge or arbitrator.

Commissioner Arzon expressed opposition to the arbitration process, but thanked the Task Force for its work. If an officer goes before a judge and is found "not guilty", then goes through an arbitrator and is found "not guilty", the officer still has to come before the Commission. Commissioner Arzon thinks this is unfair. An officer should not have to go before three judicial systems and have his case heard three different times. He stated that even a common criminal's case is only seen once. Bureau Chief Hopkins informed Commissioner Arzon that the proposed rule only deals with arbitration, civil service board or other administrative reviews. The criminal aspect of the rule remains unchanged, so if an officer is found "not guilty" (acquittal) in a criminal court of his peers, the case will not require a review by the Commission.

General Counsel's Chief of Staff George Hachigian, Fraternal Order of Police/Florida State Lodge stated that the proposed rule derived out of a diversion issue. When officers enter a diversion program, they agree to the terms and conditions and agree that they have violated certain statutes. The agencies that have elected to enter into a collective bargaining agreement have agreed to that process and the arbitrator's decision is final and binding. Mr. Hachigian contends that when the agencies do not agree with the arbitrator's ruling (rules against the agency), the agency chooses to bring the case before the Commission and he feels this process is unfair, especially when the facts and circumstances are the same for the criminal case, administrative case, and Commission case.

Chairman Hutching offered clarification to Mr. Hachigian's comments. The focus of the Commission is not on those agencies which have elected to enter into a collective bargaining agreement. The Commission members are statutorily required to sit on the Commission and they are not legally bound by arbitration or collective bargaining agreements; however, due to these collective bargaining agreements, the Commission's hands are being tied. Chairman Hutching stated that the Commission is no longer allowed to see a case based on agreements made between bargaining units and agencies. The Commission is not held to that standard because it is a separate entity and has the final say regarding the status of the officer's certification. The Commission's decision is not based solely on the criminal charge. Upon reviewing the case, the Commission is within its rights to add to an administrative complaint based on moral character violations. He further stated that the Commission should not be bound by bargaining agreements, as it is responsible for ensuring that law enforcement agencies have the finest and most ethical officers in Florida.

Commissioner O'Connell discussed the scenario wherein the officer goes through the arbitration process and the agency ends up losing because it (the agency) failed to do the right thing. When the officer gets his job back, the agency decides to bring the case back to the Commission in hopes of getting a favorable outcome. While Commissioner O'Connell agrees that it is the Commission's duty to review the cases, she expressed resentment toward those agencies that shift the responsibility onto the shoulders of the Commission.

Commissioner Harriss stated that arbitration is not a double jeopardy issue and stressed that the Commission should not give up its authority to any entity – whether it is an agency or an arbitrator.

Mr. Hachigian advised that he took an informal poll of his colleagues in the other organizations. Combined, they handle 300-350 arbitration cases per year; of that number, only 13 overturned cases were from the past two years. When asked by Chairman Hutching the difference between a case going before an arbitrator and a case going before an administrative law judge, Mr. Hachigian responded as follows: The administrative law judge can only make a recommended order back to the Commission and an arbitrator's decision is final and binding for dismissing the charges and the discipline. He further stated that the current rule that's in place is working; it doesn't need to be fixed. The real problem is a diversion issue wherein someone found a "loophole".

Vice-Chairman Griffin stated that the diversion issue was also mentioned during the January 2015 Task Force meeting, which is why the Task Force voted not to change the rule at that time. It was recommended that Commission staff create alternative rule language regarding diversionary programs for presentation at the next Task Force meeting.

Chairman Hutching restated that the Commission has no control over the bargaining agreements between the agencies and unions. Unfortunately, the Commission has not been allowed to review certain cases because of these said agreements. Chairman Hutching applauded Commission staff for doing an excellent job of bringing recommendations and cases to the Commission; however, he stressed the importance of the Commission being allowed to look at each case on a case-by-case basis.

AGENDA ITEM 7: AGENCY FAILURE TO REPORT MORAL CHARACTER VIOLATIONS

Bureau Chief Glen Hopkins presented this agenda item to the Commission to discuss ongoing concerns regarding agencies that fail to properly report moral character violations to the Commission. The issue was brought to the attention of the Commission by former Commission Chair, Sheriff Susan Benton of Highlands County Sheriff's Office. According to Sheriff Benton, agencies are failing to report their internal investigations.

A solution to this issue was not presented; however, it was suggested that Commission field specialists develop a rapport with their respective agencies to educate agency personnel about the do's and don'ts, circulate informational flyers, and share accreditation standards.

Task Force Action: Discussion was held; however, this agenda item did not require Task Force action.

MEETING ADJOURNED

Commission Chairman Hutching adjourned the Commission Workshop at 4:03 p.m., Wednesday, February 4, 2015. The minutes were prepared by Government Operations Consultant/Commission Secretary Joyce Gainous-Harris of the Florida Department of Law Enforcement, Criminal Justice Professionalism, Post Office Box 1489, Tallahassee, Florida 32302.





Criminal Justice Standards and Training Commission

P.O. Box 1489 | Tallahassee, FL 32302-1489 | (850) 410-8600

February 25, 2015

MEMORANDUM

TO: Glen W. Hopkins, Bureau Chief of Standards 
FROM: R. Stacy Lehman, Professional Compliance Section Manager 
SUBJECT: Penalty Guidelines Task Force Meeting Issue-March 24, 2015

The following is a summary of the issue to be considered by the Penalty Guideline Task Force. Where rule amendments are recommended, proposed deletions are indicated with ~~strikethroughs~~ and proposed new language is indicated by underlining.

ISSUE NUMBER 1:

At the initial meeting of the 2015 Penalty Guidelines Task Force held on January 21, 2015, language was presented related to the Commission's ability to discipline an officer after an arbitrator overturns the sustained findings of an agency's internal investigation. The Task Force voted against adopting the proposed language and directed staff to create language related to cases involving an arbitrator overturning the agency findings when the officer had been placed on a pretrial diversion or intervention program.

Amended Rule 11B-27.004(11) F.A.C. Probable Cause Determination

(c) 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, and where the criminal proceedings arising from the same underlying facts result in the dismissal or *nolle prosequi* of all charges after the successful completion of a pretrial diversion or intervention program, or a pretrial treatment-based drug court program, Commission staff shall present the case to a Probable Cause Panel to determine whether or not probable cause exists to file an administrative complaint pursuant to Section 120.60(5), F.S., charging a violation of Chapter 943, F.S., or Rule Chapter 11B-27, F.A.C. This provision shall not supersede the requirements of Commission staff under Section (12)(a) of this Rule.

AGENDA ITEM: 1

Commission's Authority in Cases Where an Arbitrator Overturned the Agency Findings and When the Officer was Placed in a Pre-Trial Diversion or Intervention Program – Amends Rule 11B-27.004 (11), F.A.C.

ISSUE

This agenda item is presented to the Task Force to amend the current rule. At the initial meeting of the 2015 Penalty Guidelines Task Force held on January 21, 2015, language was presented related to the Commission's ability to discipline an officer after an arbitrator overturns the sustained findings of an agency's internal investigation. The Task Force voted against adopting the proposed language and directed staff to create language related to cases involving an arbitrator overturning the agency findings when the officer had been placed on a pretrial diversion or intervention program.

PROPOSED AMENDMENT(S)

- Amends Rule 11B-27.004, F.A.C. – Probable Cause Determination. **To add the following language:**
 - (11)(a) If administrative or judicial review results in a final disposition of the respondent's termination or discipline, the case shall no longer be held in abeyance and Commission staff shall review the case for the issuance of a Letter of Acknowledgment, if applicable, or for presentation to the Commission for Commission action.
 - (b) 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 that 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.
 - (c) 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, and where the criminal proceedings arising from the same underlying facts result in the dismissal or *nolle prosequi* of all charges after the successful completion of a pretrial diversion or intervention program, or a pretrial treatment-based drug court program, Commission staff shall present the case to a Probable Cause Panel to determine whether or not probable cause exists to file an administrative complaint pursuant to Section 120.60(5), F.S., charging a violation of Chapter 943, F.S., or Rule Chapter 11B-27, F.A.C. This provision shall not supersede the requirements of Commission staff under Section (12)(a) of this Rule.

SUPPORTING INFORMATION

- **Attachment 1:** Arbitration Rule History, **pages 27 - 28.**
- **Attachment 2:** Arbitrator Overturned Agency Findings for 13 cases (January 1, 2013 – December 31, 2014), **page 29.**
- **Attachment 3:** Statistical Data for 13 Arbitration Cases, **pages 30 - 317.**
- **Attachment 4:** Letter to Director Dean Register, Criminal Justice Professionalism (CJP) Division, Florida Department of Law Enforcement (FDLE); from Director Joel Cantor, Professional Standards Committee (PSC), Broward County Sheriff's Office (BCSO), dated May 5, 2014, **pages 318 - 319.**
- **Attachment 5:** Letter to BCSO/PSC Director Joel Cantor from FDLE/CJP Division Director Dean Register, dated May 29, 2014, **page 320.**
- **Attachment 6:** An Excerpt from the August 2014 Minutes of the Criminal Justice Standards and Training Commission (CJSTC) Business Meeting, **page 321.**
- **Attachment 7:** Memorandum to CJSTC staff from FDLE Assistant General Counsel Jeff Dambly, Office of the General Counsel, dated October 9, 2014, **pages 322 - 324.**
- **Attachment 8:** Letter to the Officer Discipline Penalty Guidelines Task Force (ODPGTF) from General Counsel Alan S. Diamond, Fraternal Order of Police (FOP), dated January 5, 2015, **pages 325 - 328.**
- **Attachment 9:** Memorandum to Executive Director Steve Casey, Florida Sheriffs Association (FSA), from General Counsel Wayne Evans, FSA, dated January 19, 2015, **pages 329 - 330.**
- **Attachment 10:** Memorandum to Executive Director Amy Mercer, Florida Police Chiefs Association (FPCA), from General Counsel Leonard J. Dietzen, FPCA, dated January 20, 2015, **page 331.**
- **Attachment 11:** Email and Memorandum to the ODPGTF from General Counsel Hal Johnson and General Counsel Stephanie Dobson Webster, Florida Police Benevolent Association (FPBA), dated March 9, 2015, **pages 332 - 334.**
- **Attachment 12:** Letter to the ODPGTF from General Counsel Alan S. Diamond, FOP, dated February 28, 2015, **pages 335 - 337.**
- **Attachment 13:** Letter to the ODPGTF from Lodge President Glenn Matonak, FOP, Coral Springs Lodge 87, dated March 5, 2015, **pages 338 - 339.**

Statistical Data and Arbitrator Decisions for 13 Arbitration Cases

Reporting Period: January 1, 2013 - December 31, 2014

Complaint #	Date Case "No Caused" by Staff	Name of Complainant/Grievant
33109	2/20/2013	Hazzi, Eliut
33216	3/8/2013	Richbourg, Kimberly D.
32927	3/29/2013	Powell, Maurice
34130	4/29/2013	Jones, Diana Laura
31970	9/25/2013	Conger, Jennifer R.
33108	10/3/2013	Forte, Frankly L.
32264	4/14/2014	Goodbread, John P.
34825	5/8/2014	Romero, Freddy
36966	5/15/2014	Dean, Michael B.
35815	5/28/2014	Ranzie, Frank P.
36036	8/11/2014	Lehman, Trevor L.
36287	8/14/2014	Edwards, Jeffrey S.
34963	11/4/2014	Patrick, Scott D.



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Adam Putnam, Commissioner of Agriculture

MEMORANDUM

DATE: February 28, 2013

TO: FILE

VIA: R. Stacy Lehman, Training and Research Manager *RL*
Bureau of Standards

FROM: Kandace Zachary, Case Specialist *KZ*
Bureau of Standards, Professional Compliance Section

SUBJECT: Eliut Hazzi
Case# 33109

The circumstances surrounding the separation/misconduct of the above-named subject were reviewed by staff. As a result of the review, it was found that either the subject's separation/misconduct does not meet the criteria established in Section 943.1395 for disciplinary action, or the misconduct cannot be proven. In light of this, it is recommended that the case be closed at this time.

Employing Agency: Miami Beach Police Department

Separation Date: N/A

Reason for Separation: N/A

Reason for No Cause: On February 3, 2010, the Miami Beach Police Department Chief's Office received a letter from an organization advising their intent to sue the city for an unlawful arrest of a civilian which occurred on March 13, 2009. The witness stated in a report that he observed a man being chased and assaulted by two undercover police officers (one later identified as Hazzi) while walking back to his hotel. The witness stated that the man yelled for help in English and Spanish, as he ran from the officers. The man was then tackled to the ground and punched in the head several times by one of the officers. The second officer kicked the man in the head and kneed the victim's upper back. The witness stated that the man's hands appeared to be "pinned" behind his back during the incident. The man was then pulled off the ground and placed in a prisoner transport van. The witness stated that he was approximately twenty feet from the incident and decided to call 911 to report the incident. While the witness was on the phone with the 911 dispatcher, both officers approached him and began questioning him. He stated that one of the officers told him to sit down and asked for identification. One of the officers then yanked the phone from his hands and disconnected the call. The witness stated to the officers that he was on the phone with dispatch. The witness stated that he was called derogatory names, as he sat handcuffed on the curb. One of the officers then asked the witness to stand up. When the witness was unable to do so, the officer kicked him in the torso. The witness was then placed in the prisoner van and transported to the jail. On June 7, 2011, Hazzi stated, during a sworn interview, that he and the other officer were working in an undercover capacity targeting crime in a designated area. Hazzi stated that the man was observed in a parking lot, looking into vehicles. Hazzi further stated that the

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victim then approached their undercover vehicle and looked inside and then concealed himself in the bushes. When Hazzi exited the vehicle and identified himself as a police officer, the man ran off. Hazzi caught the man and placed him under arrest. While Hazzi left to retrieve their vehicle, he noticed the man running away from the other officer, while handcuffed, at which time he apprehended him again. The officers claimed that the man lost his balance and fell onto a parked vehicle. Hazzi advised that he did not observe any suspicious actions of the witness. He explained that during his contact with the witness, he acted as a backup to the other officer. The witness was arrested by the other officer. Hazzi denied ever touching or striking the man or the witness and denied witnessing the other officer touch or strike the man or the witness. On August 3, 2011, Hazzi was terminated. On December 17, 2012, Hazzi was reinstated after his case went through arbitration. Since the initial charges sustained during the internal investigation were overturned by the arbitrator, Staff recommends no causing this case. Legal concurs.

C



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MEMORANDUM

DATE: March 8, 2013

TO: FILE

VIA: R. Stacy Lehman, Training and Research Manager 
Bureau of Standards

FROM: Ashley Hegler, Case Specialist 
Bureau of Standards, Professional Compliance Section

SUBJECT: Kimberly D. Richbourg
Case# 33216

The circumstances surrounding the separation/misconduct of the above-named subject were reviewed by staff. As a result of the review, it was found that either the subject's separation/misconduct does not meet the criteria established in Section 943.1395 for disciplinary action, or the misconduct cannot be proven. In light of this, it is recommended that the case be closed at this time.

Employing Agency: Tampa International Airport Police Department

Separation Date: 11/09/2011

Reason for Separation: Termination

Reason for No Cause: Between the years of 1994 and 2001, Richbourg went to a physician's office several times for back pain. Richbourg was hired by the Tampa International Airport Police Department on April 9, 2001. On April 24, 2008, four workers compensation claims were received by Preferred Governmental Claims Solutions Company, petitioning for benefits on Richbourg's behalf. When Richbourg was originally deposed regarding the claims case in 2008, she indicated that she did not recall ever having injured her back, or having problems with her back, before being hired by the Tampa International Police Department. On June 24, 2008, when asked about previous back pain she explained, "Minor aches, nothing I would have sought medical treatment for, let me put it that way". However, documentation outlined in Richbourg's medical records from 1994-2009 show previous back pain and medical treatment prior to her employment with the Tampa International Airport Police Department. On March 7, 2013, the arbitrator found that she did not provide false statements in order to receive worker's compensation benefits, nor did she lie in her deposition. Due to the finding during arbitration, Staff recommends No Cause and legal concurs.

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MEMORANDUM

DATE: April 3, 2013

TO: FILE

VIA: R. Stacy Lehman, Training and Research Manager
Bureau of Standards

FROM: Karla Whiddon, Case Specialist
Bureau of Standards, Professional Compliance Section

SUBJECT: Maurice Powell
Case# 32927

The circumstances surrounding the separation/misconduct of the above-named subject were reviewed by staff. As a result of the review, it was found that either the subject's separation/misconduct does not meet the criteria established in Section 943.1395 for disciplinary action, or the misconduct cannot be proven. In light of this, it is recommended that the case be closed at this time.

Employing Agency: Broward Sheriff's Office

Separation Date: n/a

Reason for Separation: n/a

Reason for No Cause: At the conclusion of an internal investigation on another officer, the Broward Sheriff's Office determined and sustained that Powell, who was a witness, was untruthful during his sworn interviews. As a result, Powell was terminated for violating truthfulness policies and conduct unbecoming of an employee. In April of 2012, the matter of Powell's termination was presented to an arbitrator. The arbitrator cleared Powell of serious infractions pertaining to truthfulness and conduct unbecoming. Powell was awarded reinstatement with full back pay and restoration of all seniority rights and benefits. Since Powell was cleared of untruthfulness and conduct unbecoming, Staff recommends no causing this case. Legal concurs.

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MEMORANDUM

DATE: April 30, 2013

TO: FILE

VIA: R. Stacy Lehman, Training and Research Manager
Bureau of Standards 

FROM: Kandace Zachary, Case Specialist
Bureau of Standards, Professional Compliance Section

SUBJECT: Diana Laura Jones
Case# 34130

The circumstances surrounding the separation/misconduct of the above-named subject were reviewed by staff. As a result of the review, it was found that either the subject's separation/misconduct does not meet the criteria established in Section 943.1395 for disciplinary action, or the misconduct cannot be proven. In light of this, it is recommended that the case be closed at this time.

Employing Agency: Jacksonville Sheriff's Office

Separation Date: N/A

Reason for Separation: N/A

Reason for No Cause: On December 5, 2011, a concerned citizen called the Jacksonville Sheriff's Office while observing a marked Jacksonville Sheriff's Office patrol vehicle being driven by Jones in an aggressive manner. The citizen followed the marked vehicle as he videotaped the events on his cell phone. He continued to follow the vehicle through a busy highway, into a fast-food drive-thru and into the driveway of a local residence. The Jacksonville Sheriff's Office arrived at the residence. The responding officer reviewed the video footage recorded on the cellphone and spoke with Jones. The responding officer testified that he did not observe any signs of impairment by Jones while on scene. The Jacksonville Sheriff's Office issued Jones a notice on June 22, 2012 stating that she was suspended without pay following the events on December 5th for the sustained charges of two counts of commission of conduct supporting criminal acts (DUI and careless driving), departure of the truth, three counts of failure to conform to work standards and failure to conform to work standards-repeated infractions. On November 8, 2012, an arbitration hearing took place. On March 17, 2013, the arbitrator made their decision to not uphold the charges of commission of conduct supporting criminal acts (DUI), departure of the truth and failure to conform to work standards-repeated infractions. For the remaining charges, Jones received suspension without pay for sixty days retroactive from the date of her termination. Since the charge of conduct supporting criminal acts (DUI) was not upheld, Staff recommends no causing this case.

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MEMORANDUM

DATE: October 10, 2013

TO: FILE

VIA: R. Stacy Lehman, Training and Research Manager
Bureau of Standards

FROM: Erica Bradham, Case Specialist *EB*
Bureau of Standards, Professional Compliance Section

SUBJECT: Jennifer R. Conger
Case# 31970

The circumstances surrounding the separation/misconduct of the above-named subject were reviewed by staff. As a result of the review, it was found that either the subject's separation/misconduct does not meet the criteria established in Section 943.1395 for disciplinary action, or the misconduct cannot be proven. In light of this, it is recommended that the case be closed at this time.

Employing Agency: Miramar Police Department

Separation Date: n/a

Reason for Separation: n/a

Reason for No Cause: Jennifer R. Conger was terminated from the Miramar Police Department subsequent to an internal investigation which sustained the charges of Official Misconduct, Falsifying Records, Criminal Mischief, Trespassing and other agency policy violations. Conger filed a grievance against the agency and arbitration was held. The arbitrator ruled that Conger did not commit any moral character violations. According to the arbitrator, the only allegation that was supported was that Conger failed to create property receipts and place items into Property and Evidence. Conger's termination was rescinded and she was issued a letter of reprimand. Based on the arbitrator's decision, staff recommends no cause.



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MEMORANDUM

DATE: October 15, 2013

TO: FILE

VIA: R. Stacy Lehman, Training and Research Manager
Bureau of Standards

FROM: Kandace Zachary, Case Specialist
Bureau of Standards, Professional Compliance Section 

SUBJECT: Frankly L. Forte
Case# 33108

The circumstances surrounding the separation/misconduct of the above-named subject were reviewed by staff. As a result of the review, it was found that either the subject's separation/misconduct does not meet the criteria established in Section 943.1395 for disciplinary action, or the misconduct cannot be proven. In light of this, it is recommended that the case be closed at this time.

Employing Agency: Miami Beach Police Department

Separation Date: 8-3-2011

Reason for Separation: Terminated

Reason for No Cause: On February 3, 2010, the Miami Beach Police Department Chief's Office received a letter from an organization advising their intent to sue the city for an unlawful arrest of a civilian which occurred on March 13, 2009. The witness stated in a report that he observed a man being chased and assaulted by two undercover police officers (one later identified as Forte) while walking back to his hotel. The witness stated that the man yelled for help in English and Spanish, as he ran from the officers. The man was then tackled to the ground and punched in the head several times by one of the officers. The second officer kicked the man in the head and kned the victim's upper back. The witness stated that the man's hands appeared to be "pinned" behind his back during the incident. The man was then pulled off the ground and placed in a prisoner transport van. The witness stated that he was approximately twenty feet from the incident and decided to call 911 to report the incident. While the witness was on the phone with the 911 dispatcher, both officers approached him and began questioning him. He stated that one of the officers told him to sit down and asked for identification. One of the officers then yanked the phone from his hands and disconnected the call. The witness stated to the officers that he was on the phone with dispatch. The witness stated that he was called derogatory names, as he sat handcuffed on the curb. One of the

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officers then asked the witness to stand up. When the witness was unable to do so, the officer kicked him in the torso. The witness was then placed in the prisoner van and transported to the jail. On June 8, 2011, Forte stated, during a sworn interview, that he and the other officer were working in an undercover capacity targeting crime in a designated area. Forte stated that the man was observed in a parking lot, looking into vehicles. The man then approached their undercover vehicle and looked inside then concealed himself in the bushes. When the other officer exited the vehicle and identified himself as a police officer, the man took off running. The officers caught the man and placed him under arrest. Forte then stated that the man took off again, while handcuffed, at which time they apprehended him again. The officer claimed that the victim fell to the ground and suffered minor scrapes on his arms. Forte indicated that he observed the witness walking up to parked cars and attempting to open the doors. When approached by the officers, Forte stated that the witness claimed he was visiting a friend, but was unable to provide a friend's name or address. The witness was then arrested. Forte denied ever touching or striking the man and denied witnessing the other officer touch or strike the man. The State Attorney's Office felt there was insufficient corroborating evidence to support the filing of charges and did not file a criminal case. On August 3, 2011, Forte was terminated. On April 1, 2013, Forte's case was sent to arbitration. On August 31, 2013, the initial charges sustained during the internal investigation were overturned by the arbitrator and decided Forte should be reinstated. Therefore, Staff recommends no causing this case. Legal concurs.

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MEMORANDUM

DATE: April 14, 2014

TO: FILE

VIA: R. Stacy Lehman, Training and Research Manager
Bureau of Standards

FROM: Crystal Glisar, Case Specialist
Bureau of Standards, Professional Compliance Section

SUBJECT: John P. Goodbread
Case# 32264

The circumstances surrounding the separation/misconduct of the above-named subject were reviewed by staff. As a result of the review, it was found that either the subject's separation/misconduct does not meet the criteria established in Section 943.1395 for disciplinary action, or the misconduct cannot be proven. In light of this, it is recommended that the case be closed at this time.

Employing Agency: Broward County Sheriff's Office

Separation Date: N/A

Reason for Separation: N/A

Reason for No Cause: On March 2, 2011, The Broward County Sheriff's Office received information from a local doctor's office alleging that they suspected Goodbread and his wife of doctor shopping for prescription medication. According to the doctor's office, they discovered that Goodbread and his wife were prescribed Hydrocodone from one doctor's office and during the same time frame, they were prescribed Oxycodone from a second doctor's office. During preliminary investigation, it was discovered that both Goodbread and his wife were receiving overlapping prescriptions for Hydrocodone and Oxycodone from two different practitioners during the same time period. Since the location of the alleged incidents occurred in Palm Beach County, the information was forwarded to the Palm Beach County Sheriff's Office for further investigation. During the criminal investigation, it was discovered that between, November 30, 2009, to December 13, 2012, Goodbread received 868 dosages of Hydrocodone from one doctor and between November 16, 2009, to December 13, 2010, Goodbread received 1980 dosages of Oxycodone from another doctor. Both doctors provided sworn affidavits indicating that they had no knowledge that Goodbread was under the care of another medical practitioner and receiving medication. April 8, 2011, Goodbread was arrested for concealing information to

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obtain a prescription and trafficking in hydrocodone/oxycodone. On July 26, 2011, the charges were Nolle Prossed and the State Attorney's Office filed a single count of Withholding Information from a Practitioner against Goodbread. On January, 23, 2013, Goodbread entered into a Deferred Prosecution Agreement. He was placed on probation for twelve months, required to receive a substance abuse evaluation and complete fifty hours of community service. On December 20, 2013, an arbitration agreement was reached between Goodbread and the Broward County Sheriff's Office. Goodbread was reinstated to his former position and both the charges previously sustained by the agency were overturned. Due to the outcome of the arbitration and the charges being overturned, staff recommends to no cause and legal concurs.

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MEMORANDUM

DATE: May 20, 2014

TO: FILE

VIA: R. Stacy Lehman, Training and Research Manager 
Bureau of Standards

FROM: Crystal Glisar, Case Specialist
Bureau of Standards, Professional Compliance Section

SUBJECT: Freddy Romero
Case# 34825

The circumstances surrounding the separation/misconduct of the above-named subject were reviewed by staff. As a result of the review, it was found that either the subject's separation/misconduct does not meet the criteria established in Section 943.1395 for disciplinary action, or the misconduct cannot be proven. In light of this, it is recommended that the case be closed at this time.

Employing Agency: Medley Police Department

Separation Date: N/A

Reason for Separation: N/A

Reason for No Cause: On September 27, 2012, Romero was terminated from the Medley Police Department subsequent to an internal affairs investigation which sustained Falsifying Official Records, False Statement, and departmental policy and procedure violations. On August 8, 2011, Romero was driving northbound in a left turn lane and the victim was driving southbound toward the same intersection that Romero was approaching. When the two vehicles entered the intersection they collided causing minimal damage to each vehicle. Romero was in his agency issued patrol car. Another officer with the Medley Police Department responded to the scene and prepared an official report to reflect the collision was a result of the victim speeding through the intersection and failing to yield to the right of way traffic. Within the report skid marks were noted as well as a witness to the collision. The officer issued the victim a citation for failing to yield and driving on a suspended license. Romero arrested the victim for driving under the influence and had his vehicle towed. However, upon providing a breath test it was discovered that the victim was not under the influence of alcohol and was released. A security camera nearby captured the collision and, upon review, it was discovered that the accident was in fact Romero's fault. Romero had turned in front of the victim and neither vehicle was traveling at a high rate of speed. This evidence contradicts the official report of the accident as

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well as the report Romero submitted to the insurance company to reflect the victim at fault for the collision. On August 16, 2013 Romero's arbitration concluded and he was awarded his position with the Medley Police Department, back pay and benefits lost, and all record of the incident removed from his personnel file. The arbitration overturned the previously sustained charges against Romero due to insufficient evidence. Due to the outcome of the arbitration and the charges being overturned, staff recommends to no cause and legal concurs.

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MEMORANDUM

DATE: May 19, 2014

TO: FILE

VIA: R. Stacy Lehman, Training and Research Manager
Bureau of Standards 

FROM: Karla Whiddon, Case Specialist
Bureau of Standards, Professional Compliance Section

SUBJECT: Michael B. Dean
Case# 36966

The circumstances surrounding the separation/misconduct of the above-named subject were reviewed by staff. As a result of the review, it was found that either the subject's separation/misconduct does not meet the criteria established in Section 943.1395 for disciplinary action, or the misconduct cannot be proven. In light of this, it is recommended that the case be closed at this time.

Employing Agency: Orange County Corrections Department

Separation Date: n/a

Reason for Separation: n/a

Reason for No Cause: Dean was initially terminated from the Orange County Corrections Department subsequent to an internal investigation which sustained workplace violence and code of conduct. Due to his termination, Dean exercised his right to the grievance process. Upon completion of the process, the charge of workplace violence was not sustained. Dean was reinstated and demoted to corporal. On April 13, 2013, during the return trip from an event, Dean was involved in an altercation with another officer in the chartered bus. Dean swung at the officer and the officer blocked it. That same evening, Dean was involved in a verbal altercation with the officer in the parking lot. During the investigation, the other officer claimed he received two anonymous calls trying to discourage him from talking to investigators about the incident. According to the officer, the voice was electronically disguised. It was later found that the phone number belonged to Dean. During his interview, Dean acknowledged that it was his number but that indicated that he did not make the calls. Upon discussing the case with legal, it was determined that there was insufficient evidence to determine that Dean made the calls to the other officer in an attempt to intimidate him. Since workplace violence was not sustained at the conclusion of the arbitration, Staff recommends no causing this case. Legal concurs.



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MEMORANDUM

DATE: May 28, 2014

TO: FILE

VIA: R. Stacy Lehman, Training and Research Manager *RL*
Bureau of Standards

FROM: Ashley Hegler, Case Specialist ✓
Bureau of Standards, Professional Compliance Section

SUBJECT: Frank P. Ranzie
Case# 35815

The circumstances surrounding the separation/misconduct of the above-named subject were reviewed by staff. As a result of the review, it was found that either the subject's separation/misconduct does not meet the criteria established in Section 943.1395 for disciplinary action, or the misconduct cannot be proven. In light of this, it is recommended that the case be closed at this time.

Employing Agency: Boynton Beach Police Department

Separation Date: N/A

Reason for Separation: N/A

Reason for No Cause: On August 30, 2012, Ranzie informed the technical services unit at the Boynton Beach Police Department that there was a virus on his work laptop and that his son may have downloaded pornography. A routine maintenance procedure was done, which included checking the browsing history. The officer doing the maintenance check observed several pornographic websites that had been accessed. The officer reported his findings to the chief and the chief instructed the internal affairs unit to conduct an internal investigation. Subsequent to the internal investigation's completion, which sustained the charges of Conduct Unbecoming, Neglect of Duty, Untruthfulness, and Conformance to Laws by Theft, Ranzie was terminated. On May 12, 2014, Ranzie won arbitration which found that there was no evidence that Ranzie had been untruthful, neglected his duties, or acted in a manner which was unbecoming a police officer. The arbitration awarded Ranzie his position with the Boynton Beach Police Department be reinstated and that he receive full back pay. Due to these reasons, Staff recommends No Cause.



Criminal Justice Standards and Training Commission

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MEMORANDUM

DATE: August 21, 2014

TO: FILE

VIA: R. Stacy Lehman, Training and Research Manager
Bureau of Standards

FROM: Erica Bradham, Case Specialist
Bureau of Standards, Professional Compliance Section

SUBJECT: Trevor L. Lehman
Case# 36036

The circumstances surrounding the separation/misconduct of the above-named subject were reviewed by staff. As a result of the review, it was found that either the subject's separation/misconduct does not meet the criteria established in Section 943.1395 for disciplinary action, or the misconduct cannot be proven. In light of this, it is recommended that the case be closed at this time.

Employing Agency: Ft. Myers Police Department

Separation Date: 07/10/13

Reason for Separation: Terminated

Reason for No Cause: Trevor L. Lehman was terminated from the Ft. Myers Police Department subsequent to an internal investigation which sustained the charges of Derogatory Remarks, Overreacting, and Use of Force. On February 4, 2013, Lehman allegedly used profane language and excessive force while arresting a suspect. Subsequent to being disciplined, Lehman filed a grievance. On May 16, 2014, an arbitrator concluded that there was no clear and material basis to establish that Lehman used unnecessary and/or excessive force in arresting the suspect. With the exception of the profane language charge, the arbitrator sustained Lehman's grievance and ordered that he be reinstated to his previous position. Based on the arbitrator's decision, staff recommends no cause.



Criminal Justice Standards and Training Commission

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MEMORANDUM

DATE: August 20, 2014

TO: FILE

VIA: R. Stacy Lehman, Training and Research Manager *RL*
Bureau of Standards

FROM: Karla Whiddon, Case Specialist
Bureau of Standards, Professional Compliance Section

SUBJECT: Jeffrey S. Edwards
Case# 36287

The circumstances surrounding the separation/misconduct of the above-named subject were reviewed by staff. As a result of the review, it was found that either the subject's separation/misconduct does not meet the criteria established in Section 943.1395 for disciplinary action, or the misconduct cannot be proven. In light of this, it is recommended that the case be closed at this time.

Employing Agency: Jacksonville Sheriff's Office

Separation Date: n/a

Reason for Separation: n/a

Reason for No Cause: Edwards is currently employed by the Jacksonville Sheriff's Office. Edwards was terminated following an investigation that sustained unnecessary force. During an arbitration proceeding, the charge of unnecessary force was deemed not sustained. As a result, Edwards was reinstated with no disciplinary action taken against him. On May 9, 2012, during a traffic stop, the driver of the vehicle refused Edwards loud and forceful commands. The driver appeared to be looking for something on the floorboard of the vehicle. Edwards became perplexed that the driver did not comply or engage him in conversation. When the driver continued to move around, leaning back, and hiding his hands in his lap, Edwards became concerned for his safety. At that time, Edwards believed that the driver was looking for a weapon. Edwards took out his firearm and told the driver to grip the steering wheel and not let go, but again the driver refused to comply. When the driver made a sudden motion and dipped down to the floorboard, convinced that the driver had gotten a firearm and was going to shoot him, Edwards fired seven times. The driver was killed. It was later discovered that the driver was not armed. At the conclusion of the investigation, the State Attorney's Office deemed that the shooting was a justifiable homicide. Because the sustained charge of unnecessary force was not sustained by the arbitration and no other charges were sustained, Staff recommends no causing this case.

c

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Criminal Justice Standards and Training Commission

P.O. Box 1489 | Tallahassee, FL 32302-1489 | (850) 410-8600

MEMORANDUM

DATE: November 21, 2014

TO: FILE

VIA: R. Stacy Lehman, Training and Research Manager
Bureau of Standards

FROM: Crystal Glisar, Case Specialist
Bureau of Standards, Professional Compliance Section

SUBJECT: Scott D. Patrick
Case# 34963

The circumstances surrounding the separation/misconduct of the above-named subject were reviewed by staff. As a result of the review, it was found that either the subject's separation/misconduct does not meet the criteria established in Section 943.1395 for disciplinary action, or the misconduct cannot be proven. In light of this, it is recommended that the case be closed at this time.

Employing Agency: Sarasota Police Department

Separation Date: 11/6/2012

Reason for Separation: Termination

Reason for No Cause: On November 6, 2012, Patrick was terminated from the Sarasota Police Department subsequent to an internal affairs investigation which sustained the charges of Violation of Rules and Policies, Code of Conduct, Code of Conduct – Abusive Language, Excessive Force, and Use of Force with an Improper Object. On August 4, 2012, a officer with the Sarasota Police Department filed an inquiry into the actions of Patrick during an arrest that day. The officer reported that he responded to a local lounge and observed the suspect sitting on the floor in handcuffs and several officers standing around him. The suspect had cuts on his face and there was broken glass on the floor. Patrick told the officer that he did cause the injuries to the suspect's face. The manager of the lounge told the officer that the incident was bad. The officer reviewed the video from the camera inside the lounge. The officer observed on the video that Patrick and another officer were attempting to arrest the suspect when all three of them fell to the floor behind a three foot barrier wall that partially obstructed the camera's view. The video showed Patrick delivered several punches to the suspect while two other officers attempted to place him under arrest. Patrick punched the suspect ten times and then applied

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a vascular neck restraint hold to gain the suspect's compliance. The officer felt that Patrick's actions and level of force appeared to be emotionally charged and uncharacteristic of him. An inquiry investigation also revealed that Patrick used profane language towards the suspect and some of the employees of the lounge. During Patrick's sworn statement it appeared that Patrick had provided misleading information about the incident based upon the video evidence. On January 17, 2013, State Attorney's Office declined to file criminal charges against Patrick. On March 18, 2014, an arbitration agreement was reached between Patrick and the Sarasota Police Department. Patrick was reinstated to his former position and the charges of Excessive Force and Use of Force-Improper Object which were previously sustained by the agency were overturned. The charge of False Statement remained unsustained. Patrick received an unpaid thirty day suspension for the charges of Violation of Rules and Policies, Code of Conduct, and Code of Conduct – Abusive Language. Due to the outcome of the arbitration and the charges being overturned, staff recommends to no cause and legal concurs.

C

Gainous-Harris, Joyce

From: Hal Johnson <hal@flpba.org>
Sent: Monday, March 09, 2015 10:04 AM
To: Hopkins, Glen; griffin.edward@mail.dc.state.fl.us; 'Bradshaw, Ric L.'; hobbsdc@flcjin.net; ssteinberg@aventurapolice.com; jpearson@satellitebeach.org; charles.courttoy@tampagov.net; fxrmick@msn.com; 'William R. Weiss'; 'Matt Williams FOP'; 'Nicholas Marolda Jr.'; awschroader@gmail.com; 'William Lawless'
Cc: 'Greg Hutching'; 'Nick Cox'; clark.jennings@myfloridalegal.com; beth.decker@myfloridalegal.com; knox.sandra@mail.dc.state.fl.us; marvina@pbso.org; willisjc@flcjin.net; noar@aventurapolice.com; laurasmith@flpba.org; ljweber@sheriff.martin.fl.us; gail@pbcpbpa.org; Register, Dean; Lehman, Stacy; Kirwin, Thomas OGC; White, Joe; Dambly, Jeff; Cambria, Rebecca; Petkovsek, Weston; 'Joel Cantor'; GF3378@aol.com; Gainous-Harris, Joyce; Taylor, Cheryl; 'Paul O'Connell'; tpustizzi@coralsprings.org; 'Ernie George'; 'Ernie George'; 'John Rivera'; john_dale@sheriff.org; 'Amy Mercer'; 'Steve Casey'; scasey@flsheriffs.org; HQ CJP Standards Field Services
Subject: RE: Reconvening of the 2015 Penalty Guidelines Task Force
Attachments: penalty reommendation.pdf

Please find attached a rule proposal developed by the Florida PBA to address the issue raised by the Penalty Task Force regarding an officer who is criminally charged and enters a diversionary program, resulting in the charge being dismissed. This rule makes it clear the CJSTC has authority to review these types of cases. Review is not dependent on other avenues of relief available to the officer. The Florida PBA believes this language addresses the concerns expressed by several speakers at the penalty task force meeting in January.

The proposal has been submitted to the CJST program staff for review.

Thank you for your consideration of the proposal.

Hal Johnson | hal@flpba.org
General Counsel
Florida Police Benevolent Association
Phone - (800) 733-3722, Ext. 406 | Fax - (850) 561-8898
Representing Florida's Finest

Warning: This transmission contains confidential information intended only for the person(s) named above. It may contain information that is confidential and protected from disclosure by the attorney-client privilege and/or work product doctrine or exempt from disclosure under other applicable laws, including, but not limited to, the FOIA, Privacy Act, 5 USC 552, Ch. 119, F.S., or the Florida Rules of Evidence. Any use, distribution, copying or other disclosure by any other person is strictly prohibited. If you have received this transmission in error, please notify the sender immediately.



To: Penalty Task Force Committee Members
Criminal Justice Standards and Training Committee

From: Hal Johnson, Stephanie Dobson Webster *[Signature]*
Legal Counsel, Florida Police Benevolent Association, Inc.

Re: Proposed Rule Amendment Rule 27.004(11)(c)

Date: March 9, 2015

As you are aware, at the first meeting of the Penalty Task Force in January, 2015, various recommendations were adopted by the Task Force and forwarded to the Criminal Justice Standards and Training Commission for approval. These recommendations were approved by the Commission at the February meeting. **Significantly, the Task Force recommended that Subsection 11(b) remain unchanged and the staff prepare language focusing on the Commission's review of officers who have been criminally charged but entered diversionary programs which resulted in charges being dismissed in some manner.**

Attached you will find both the Commission's staff recommended diversionary language and the language recommended by the Florida PBA. Quite honestly, the PBA believes that its language is simpler, broader and clearer than the current staff language. It should be adopted by the Penalty Task Force for recommendation.

Under the PBA's language, the Commission can review any criminal case falling within its "moral character" jurisdiction even if the officer had the criminal charges resolved through a diversionary program. The language carries out the Task Force's recommendation relating to diversionary programs in a fair and simple manner without need or reference to outside forms of relief.

Our proposal has been submitted to the Commission staff for review. To date, no comments regarding the PBA proposal have been received.

Thank you.

Commission Staff Recommendation creating Rule 11B-27.004(11) (c) :

(c) 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, and where the criminal proceedings arising from the same underlying facts result in the dismissal or *nolle prosequi* of all charges after the successful completion of a pretrial diversion or intervention program, or a pretrial treatment-based drug court program, Commission staff shall present the case to a Probable Cause Panel to determine whether or not probable cause exists to file an administrative complaint pursuant to Section 120.60(5), F.S., charging a violation of Chapter 943, F.S., or Rule Chapter 11B-27, F.A.C. This provision shall not supersede the requirements of Commission staff under Section 12(a) of this Rule.

PBA's Proposed Creation to Rule 11B-27.004(11) (c) :

(c) Notwithstanding the provisions of Subsection (b), the Commission staff may present the case to a Probable Cause Panel where the criminal proceeding arising from the same underlying facts results in the dismissal or *nolle prosequi* of all charges after successful completion of a pretrial diversion or intervention program, or a pre-trial treatment-based drug court program.



**FLORIDA STATE LODGE
FRATERNAL ORDER OF POLICE
OFFICE OF GENERAL COUNSEL
ALAN S. DIAMOND, Esq.
GENERAL COUNSEL**



TO: Criminal Justice Standards and Training Commission
Task Force Committee

RE: Proposed Rule Amendment

February 28, 2015

Dear Committee,

Criminal Justice

MAR 11 2015

Standards & Training Commission

"It's déjà vu all over again".
- Lawrence Peter "Yogi" Berra

Very recently this committee discussed the proposed amendment to Rule 11B-27.004(11). After lengthy discussion and input from the effected parties the Task Force overwhelmingly voted to allow that rule to remain status quo. Then within weeks there is now a subsequent proposed change which again undermines the same fundamental principles of fairness.

This newest proposal strikes at the heart of fairness and due process. The most recent proposed amendment to Rule 11B-27.004 again violates the principle of double jeopardy and due process. The proposed change would grant the CJTSC the authority to review cases where the prosecutor has dismissed the case because of a diversion or intervention program and an arbitrator or hearing officer has reviewed the facts and overturned the agency's action. The current rule is silent on this issue. The proposed change would affect officers who find themselves in the very limited and infrequent situation where a certified officer was charged with a crime and for whatever reason chose to enter into a diversion program and the charges were dismissed. This proposed change would only apply in situations where an officer enters into a diversion program as a best

**3962 WEST EAU GALLIE BLVD. SUITE B
MELBOURNE, FL 32934
321-953-0104 PHONE • 321-253-5975 FAX**

interest resolution to avoid a potential, wrongful conviction at trial and then those same facts are brought before an arbitrator, administrative judge or hearing officer and they agree that there is insufficient evidence to prove that the officer was guilty of any crime. The proposed amendment would allow a department to have an alternative avenue to discharge an officer if the arbitrator's ruling goes against them. The agency would merely send the issue to the Commission to have a "another bite at the apple" and have the Commission decertify an officer who an arbitrator has already ruled should be put back to work and a prosecutor has already decided to forgo prosecuting. This action would effectively render the entire arbitration process ineffectual and moot.

It is patently unfair for a department to discipline an officer – have that officer challenge the discipline, be successful and prove that the allegations are unfounded and regain his job only to have the department then seek to have the Commission do what they could not. Decertify the officer to force his termination. The proposed rule amendment is nothing but a thinly veiled attempt by the Chiefs of Police and the Sheriffs to subvert the process and "pass the buck" to the Commission to do what they could not.

Under the proposed amendment it appears that the Commission has no faith in the judicial system, arbitrator, career service or civil service hearings, the Constitution or the law. The Chiefs and the Sheriffs have agreed to the rules as written there is no need to amend them. If this backdoor amendment to allow for decertification is adopted the rulings from the CJSTC may be perceived as arbitrary and capricious. The CJSTC decisions to decertify an officer when there is a contrary ruling by an administrative judge will be scrutinized by the public and the FOP and the lack of any formal means to distinguish one case from another will promote the appearance of impropriety even if none exists.

The scenario which precipitated this amendment is a rare occurrence. Only where an arbitration judge determines that facts presented at the hearing are insufficient to support the department's action and thus result in a reversal of the discipline and those very same facts are also the sole basis for the Commission's review would this case arise. The current rules as written are fair and take into account due process and the officer's and department's rights to be heard in a court of law or administrative hearing. Unfortunately, the proposed amendment would give the departments the unfettered ability

to discipline an officer, have an arbitration, if the department wins then the discipline stands; if the facts are such that the officer wins then this proposed amendment allows the department to have another chance to discipline or terminate the officer and have the Commission do the dirty work for them. The Commission should be aware that the Chiefs and the Sheriffs have agreed to the process of arbitration, career service and / or civil service hearings to resolve disputes. Now it appears that they want to use this rule change to subvert and change the process if the outcome of the hearing is contrary to their desires. With the proposed amendment they will seek to force the issue before the Commission and seek decertification of the officer on the very same facts and evidence that a judge, arbitrator, career service or civil service hearing officer or a State Attorney already reviewed and rejected.

To rely on the State Attorney's Offices, arbitrators or hearing officer's ruling in determining if a law enforcement officer is responsible for actions which could lead to decertification seems inherently more fair and consistent with the law and Constitution than for a department to force the issue before the Commission in attempt to subvert the ideals of fairness and due process. The Fraternal Order of Police urges the Commission to keep the rules as they are. Justice demands that a finding of fact have some meaning and weight and that an officer's livelihood is not subjected to the whims and capricious acts of a department head, but only be affected by the established facts in evidence and rulings from a court of competent jurisdiction. To do otherwise is a travesty of justice. If the system is not broken why try to fix it?

Sincerely,

A handwritten signature in black ink, appearing to read 'Alan S. Diamond', enclosed within a large, loopy oval shape.

Alan S. Diamond, Esq.
General Counsel
Florida State Lodge
Fraternal Order of Police



FRATERNAL ORDER OF POLICE CORAL SPRINGS LODGE 87

P.O. Box 770626, Coral Springs, Florida 33077-0626 (954) 340-6375

Criminal Justice

MAR 11 2015

**TO: Criminal Justice Standards and Training Commission
Task Force Committee**

Standards & Training Commission

RE: Proposed Rule Amendment

March 5, 2015

Dear Committee,

Very recently this committee discussed the proposed amendment to Rule 11B-27.004(11). After lengthy discussion and input from the effected parties the Task Force overwhelmingly voted to allow that rule to remain status quo. Then within weeks there is now a subsequent proposed change which again undermines the same fundamental principles of fairness.

This newest proposal strikes at the heart of fairness and due process. The most recent proposed amendment to Rule 11B-27.004 again violates the principle of double jeopardy and due process. The proposed change would grant the CJTSC the authority to review cases where the prosecutor has dismissed the case because of a diversion or intervention program and an arbitrator or hearing officer has reviewed the facts and overturned the agency's action. The current rule is silent on this issue. The proposed change would affect officers who find themselves in the very limited and infrequent situation where a certified officer was charged with a crime and for whatever reason chose to enter into a diversion program and the charges were dismissed. This proposed change would only apply in situations where an officer enters into a diversion program as a best interest resolution to avoid a potential, wrongful conviction at trial and then those same facts are brought before an arbitrator, administrative judge or hearing officer and they agree that there is insufficient evidence to prove that the officer was guilty of any crime. The proposed amendment would allow a department to have an alternative avenue to discharge an officer if the arbitrator's ruling goes against them. The agency would merely send the issue to the Commission to have an "another bite at the apple" and have the Commission decertify an officer who an arbitrator has already ruled should be put back to work and a prosecutor has already decided to forgo prosecuting. This action would effectively render the entire arbitration process ineffectual and moot.

It is patently unfair for a department to discipline an officer – have that officer challenge the discipline, be successful and prove that the allegations are unfounded and regain his job only to have the department then seek to have the Commission do what they could not. Decertify the officer to force his termination. The proposed rule amendment is nothing but a thinly veiled attempt by the Chiefs of Police and the Sheriffs to subvert the process and "pass the buck" to the Commission to do what they could not.

Under the proposed amendment it appears that the Commission has no faith in the judicial system, arbitrator, career service or civil service hearings, the Constitution or the law. The Chiefs and the Sheriffs have agreed to the rules as written and there is no need to amend them. If this backdoor amendment to allow for decertification is adopted the rulings from the CJSTC may be perceived as arbitrary and capricious. The CJSTC decisions to decertify an officer when there is a contrary ruling by an administrative judge will be scrutinized by the public and the FOP and the lack of any formal means to distinguish one case from another will promote the appearance of impropriety even if none exists.

The scenario which precipitated this amendment is a rare occurrence. Only where an arbitration judge determines that facts presented at the hearing are insufficient to support the department's action and thus result in a reversal of the discipline and those very same facts are also the sole basis for the Commission's review would this case arise. The current rules as written are fair and take into account due process and the officer's and department's rights to be heard in a court of law or administrative hearing. Unfortunately, the proposed amendment would give the departments the unfettered ability to discipline an officer, have an arbitration, if the department wins then the discipline stands; if the facts are such that the officer wins then this proposed amendment allows the department to have another chance to discipline or terminate the officer and have the Commission do the dirty work for them. The Commission should be aware that the Chiefs and the Sheriffs have agreed to the process of arbitration, career service and / or civil service hearings to resolve disputes. Now it appears that they want to use this rule change to subvert and change the process if the outcome of the hearing is contrary to their desires. With the proposed amendment they will seek to force the issue before the Commission and seek decertification of the officer on the very same facts and evidence that a judge, arbitrator, career service or civil service hearing officer or a State Attorney already reviewed and rejected.

To rely on the State Attorney's Offices, arbitrators or hearing officer's ruling in determining if a law enforcement officer is responsible for actions which could lead to decertification seems inherently more fair and consistent with the law and Constitution than for a department to force the issue before the Commission in attempt to subvert the ideals of fairness and due process. The Fraternal Order of Police urges the Commission to keep the rules as they are. Justice demands that a finding of fact have some meaning and weight and that an officer's livelihood is not subjected to the whims and capricious acts of a department head, but only be affected by the established facts in evidence and rulings from a court of competent jurisdiction. To do otherwise is a travesty of justice. If the system is not broken why try to fix it?

Sincerely,



Glenn Matonak
Lodge President

Criminal Justice Standards and Training Commission
Officer Discipline Penalty Guidelines Task Force

MINUTES OF THE MARCH 24, 2015 TASK FORCE MEETING

Chairman Edward Griffin called the Officer Discipline Penalty Guidelines Task Force meeting to order at 1:15 p.m. at the Seminole State College in Sanford, Florida.

TASK FORCE MEMBERS

The roll was called and the following twelve (12) Task Force members represented a quorum:

- | | |
|--|--|
| 1. Warden Edward L. Griffin, Task Force Chairman
Department of Corrections | 2. Sheriff Ric L. Bradshaw
Palm Beach County Sheriff's Office <i>(Dialed-In)</i> |
| 3. Commissioner David Hobbs (Sheriff)
Jefferson County Sheriff's Office | 4. Commissioner Steven Steinberg (Chief)
Aventura Police Department <i>(Dialed-In)</i> |
| 5. Chief Jeff M. Pearson
Satellite Beach Police Department | 6. Commissioner Steve Courtoy (Captain)
Tampa Police Department |
| 7. Sergeant Mick McHale
Sarasota Police Department | 8. Commissioner William Weiss (Deputy)
Martin County Sheriff's Office <i>(Dialed-In)</i> |
| 9. Commissioner Matthew L. Williams (Sergeant)
Clay County Sheriff's Office <i>(Dialed-In)</i> | 10. Commissioner Nicholas Marolda, Jr. (Detective)
Lakeland Police Department |
| 11. Sergeant Alexander Schroader
Hamilton Correctional Institution <i>(Dialed-In)</i> | 12. Deputy William Lawless
Pasco County Sheriff's Office |

COMMISSION STAFF

- | | |
|--|--|
| 1. Director Dean Register <i>(Dialed-In)</i>
Criminal Justice Professionalism Division | 2. Bureau Chief Glen Hopkins
Bureau of Standards |
| 3. Training & Research Manager Stacy Lehman
Professional Compliance and Trust Fund Section
<i>(Dialed-In)</i> | 4. Commission Attorney Nick Cox
Office of the Attorney General |
| 5. FDLE Counsel Jeff Dambly
Office of General Counsel <i>(Dialed-In)</i> | 6. Government Operations Consultant
Joyce Gainous-Harris , Bureau of Standards
(Commission Operations/Secretary) |

SUNSHINE LAW

Commission Attorney Nick Cox stated that the Sunshine Law applies to agenda items on the ODPGTF Agenda and Task Force members shall not have conversations with another Task Force member or in the presence of another Task Force member about agenda items currently pending before the Task Force. Task Force members may discuss agenda items with another Task Force member during the ODPGTF meeting and may have conversations with Commission staff and other individuals about agenda items prior to the ODPGTF meeting.

APPROVAL OF THE MARCH 2015 ODPGTF MEETING AGENDA

Chairman Griffin asked if there were any amendments to the March 24, 2015 Task Force meeting agenda. Commission Secretary Joyce Gainous-Harris stated there were no amendments; however, she advised that staff received 30 individual letters from the Fraternal Order of Police (FOP), Coral Springs Lodge 87, signed by FOP members, reflecting their opposition to the proposed change to Rule 11B-27.004(11), F.A.C. The verbiage is identical to the letters submitted by FOP General Counsel Alan S. Diamond (*Attachment 12*) and FOP Coral Springs Lodge 87 President Glenn Matonak (*Attachment 13*) in the Task Force meeting packet.

RECOMMENDATION: Chairman Griffin requested a motion to approve the March 2015 Task Force meeting agenda. **TASK FORCE ACTION:** *Commissioner Hobbs moved that the Task Force approve the agenda; seconded by Commissioner Courtoy; motion carried.*

APPROVAL OF THE JANUARY 2015 ODPGTF MEETING MINUTES

Chairman Griffin asked if there were amendments to the January 21, 2015 Task Force meeting minutes. Commission Secretary Joyce Gainous-Harris stated there were no amendments. **RECOMMENDATION:**

Chairman Griffin requested a motion to approve the January 2015 Task Force meeting minutes. **TASK FORCE ACTION:** *Deputy Lawless moved that the Task Force approve the minutes; seconded by Commissioner Hobbs; motion carried.*

AGENDA ITEM 1: COMMISSION'S AUTHORITY IN CASES WHERE AN ARBITRATOR OVERTURNED THE AGENCY FINDINGS AND WHEN THE OFFICER WAS PLACED IN A PRE-TRIAL DIVERSION OR INTERVENTION PROGRAM – AMENDS RULE 11B-27.004 (11), F.A.C.

Bureau Chief Glen Hopkins presented this agenda item to the Task Force to amend the current rule. At the initial meeting of the 2015 Penalty Guidelines Task Force held on January 21, 2015, language was presented related to the Commission's ability to discipline an officer after an arbitrator overturns the sustained findings of an agency's internal investigation. The Task Force voted against adopting the proposed language and directed staff to create language related to cases involving an arbitrator overturning the agency findings when the officer had been placed on a pretrial diversion or intervention program. **The proposed new language is indicated by underlining.**

☐ Amends Rule 11B-27.004, F.A.C. – Probable Cause Determination. To amend the following language:

- (11)(a) If administrative or judicial review results in a final disposition of the respondent's termination or discipline, the case shall no longer be held in abeyance and Commission staff shall review the case for the issuance of a Letter of Acknowledgment, if applicable, or for presentation to the Commission for Commission action.
- (b) 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 that 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.

(c) 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, and where the criminal proceedings arising from the same underlying facts result in the dismissal or *nolle prosequi* of all charges after the successful completion of a pretrial diversion or intervention program, or a pretrial treatment-based drug court program, Commission staff shall present the case to a Probable Cause Panel to determine whether or not probable cause exists to file an administrative complaint pursuant to Section 120.60(5), F.S., charging a violation of Chapter 943, F.S., or Rule Chapter 11B-27, F.A.C. This provision shall not supersede the requirements of Commission staff under Section (12)(a) of this Rule.

The following individuals participated in the discussion held about the proposed rule language:

- | | |
|---|---|
| 1. Warden Edward Griffin, Task Force Chairman | 6. Commissioner Nicholas Marolda, Task Force Member |
| 2. Sheriff Ric Bradshaw, Task Force Member | |
| 3. Bureau Chief Glen Hopkins | 7. Sergeant Alexander Schroader, Task Force Member |
| 4. Commissioner Steve Courtoy, Task Force Member | 8. Commission Attorney Nick Cox |
| 5. General Counsel Hal Johnson
Florida Police Benevolent Association | 9. Colonel Jack Dale
Broward County Sheriff's Office |

TASK FORCE ACTION: Discussion was held, and Chairman Griffin requested a motion to approve the proposed language to amend Rule 11B-27.004, F.A.C. ***Commissioner Hobbs moved that the Task Force accept the proposed new language; seconded by Chief Pearson; motion failed 10-2, with two (2) votes by Commissioner Hobbs and Chief Pearson.***

TASK FORCE VOTE: Discussion was held, and ***Commissioner Marolda moved that the Task Force reject Commission staff's recommendation and requested that no changes be made to the current rule at this time; seconded by Sergeant McHale; motion carried with two (2) oppositions by Sheriff Hobbs and Chief Pearson.***

Discussion Comments:

Sheriff Ric Bradshaw requested clarification on the purpose of the Task Force meeting. Bureau Chief Glen Hopkins advised that the proposed language does delve into the area of arbitration. At the initial meeting of the Penalty Guidelines Task Force held in January 2015, Commission staff was advised to create language related to the Commission's ability to discipline an officer after an arbitrator overturns the sustained findings of an agency's internal investigation. The Task Force voted against adopting the proposed language and directed staff to create language related to cases involving an arbitrator overturning the agency findings when the officer had been placed on a pretrial diversion or an intervention program. The language that Commission staff recommended was the creation of a new subsection (c) under 11B-27.004(11), F.A.C., as previously stated in **Issue 1**.

Bureau Chief Hopkins informed Task Force members that FOP General Counsel Alan S. Diamond vehemently opposes any change to the rule language, as well as PBA General Counsel Hal Johnson who proposed the following alternative rule language for adoption by the Task Force:

(c) Notwithstanding the provisions of Subsection (b), the Commission staff may present the case to a Probable Cause Panel where the criminal proceeding arising from the same underlying facts results in the dismissal or *nolle prosequi* of all charges after successful completion of a pretrial diversion or intervention program, or a pre-trial treatment-based drug court program.

Commissioner Courtoy inquired about the 13 arbitration cases included in the March 2015 Task Force meeting packet and wanted to know if the Commission staff's proposed rule change would apply. Bureau Chief Hopkins advised, of the 13 cases, only the two Broward Sheriff's Office cases would be applicable under the provisions of the proposed rule. He further stated that none of the cases would be brought before the Probable Cause Panel. Commissioner Courtoy also asked if "no cause" cases would come before the Probable Cause Panel. Assistant General Counsel Dambly and Commission Attorney Cox advised "yes".

Sheriff Bradshaw stated the only difference between the PBA's proposed rule language and Commission staff's proposed rule language is the word "may" and "shall", as both recommendations indicate the cases will be presented to a Probable Cause Panel. Sheriff Bradshaw advised that he would vote against anything that would overturn an arbitrator's decision. He reminded everyone that during the January 2015 meeting, the Task Force voted 11-1 not to make changes to the rule. At that time, Commission staff was only instructed to craft alternative rule language related to diversionary programs and intervention programs.

General Counsel Johnson made suggestions for Commission/Task Force consideration. First, the Commission must decide whether the diversionary program needs to be addressed in the rule at all. With regard to felony and misdemeanor cases, the general rule language allows the cases to be reviewed by the Commission staff. Based on his calculations over a two-year period, the Commission received approximately 200 cases per quarter that were ruled on for Probable Cause. This total averages approximately 1600 cases. Of the 1600 cases, only 13 were overturned by the arbitrator and of those 13 cases, only two would be applicable under the provisions of the proposed rule change. He also stated that it is unnecessary to attempt to adopt a rule change for one diversionary case. Second, the Commission staff's proposed rule language is too complicated in the format presented. While the PBA does not support changing the rule, the PBA did create proposed language that is easier to read and understand. Lastly, whether the case is a diversionary program or an arbitration decision, the PBA does not believe the cases should be brought back before the Commission. If there is a specific finding in the decision, that charge was not sustained. The rule and the statute encompass the concept that the employing agency makes the decision for sustaining the charge, regardless of its disciplinary procedures. General Counsel Johnson does not think the Commission should second-guess the agency's decision. He further stated under the current circumstances, this is a very rare situation and he does not believe an administrative rule should be crafted to include it. If it becomes a problem later, then the Task Force should address it at that time. He concluded his comments by saying, "If the rule is not broken, don't fix it."

Commissioner Marolda reiterated Sheriff Bradshaw's remarks about the 11-1 vote not to make changes to the rule. He also commented that the PBA's proposed language was much simpler, broader, and clearer than the Commission staff's proposed rule language.

Chairman Griffin stated that the new language would give Commission staff the ability to "weed out" cases that are insufficient. Assistant General Counsel Jeff Dambly clarified that the PBA's proposed language is simpler; however, it does not meet the Joint Administrative Procedures Committee (JAPC) specification because "may" is too broad. The FDLE Counsel crafted the language to include "shall" in order to receive JAPC review and approval. All cases that go to diversion will go to a Probable Cause Panel. Assistant General Counsel Dambly also commented on the final sentence of the proposed rule language: "This provision shall not supersede the requirements of Commission staff under Section (12)(a) of this Rule." The intention of the language is to continue to allow Commission staff to have the review authority to "weed out" the insufficient evidence cases that should not be brought before the Probable Cause Panel. Commission staff still has the discretion to pull out the cases for a final review.

Sergeant Schroeder inquired about a letter of admission that officers write for pre-trial when guilty of a 3rd degree felony. He asked if the letter could be used by the Commission as proof of an officer's failure to adhere to the moral character standard. Chairman Griffin advised that a letter of admission might be written in such a way that it does not contain a "guilty admission"; instead, it may reflect nolle prosequi of all charges.

Bureau Chief Hopkins provided additional clarification on the overall purpose of the March 2015 Task Force meeting. The initial language presented at its January meeting was a “wholesale” removal; if an arbitrator reverses findings, the Commission would then have jurisdiction. Bureau Chief Hopkins separated this complex issue regarding the arbitration cases into three components: **1)** reverse the findings from the arbitrator; **2)** criminal charges where the case was dismissed or nolle prosequi; and **3)** rare circumstances, such as the two Broward Sheriff’s Office cases, where an individual can enter a pretrial diversion or intervention program, or a pretrial treatment-based drug court program. Bureau Chief Hopkins noted, the third element is what makes the proposed language different from what the Task Force members voted against in January 2015.

Colonel Dale advised that the Broward Sheriff’s Office has worked closely with the prosecutors on reoccurring arbitration cases; however, sometimes, the case records were insufficient, there were no admissions of guilt, or the agency did not have influence in the prosecution of the cases because the incidents occurred outside the agency’s jurisdiction, as with the Goodbread Case. Colonel Dale also informed the Task Force that the union refused to represent the individuals in the arbitration cases – not only because the cases were outside their jurisdiction, but also based on their bylaws and specified violation of moral character. The Broward Sheriff’s Office has endorsed the Commission staff’s recommended rule language. If the rule is not changed, there will be more cases like Goodbread, wherein the officer had 10 counts of trafficking in oxycodone and oxycontin, received reduced charges, entered into a diversion program, completed the diversionary program, and completed an arbitration process that occurred in another jurisdiction. By rule, the Goodbread Case could not be heard by the Commission; however, if the case had gone to a Probable Cause Panel, the case could have been decided by the Commission.

Chairman Griffin stressed that the jurisdiction of the officer’s certification does not rest with an arbitrator, diversionary court, or a diversion or acquittal received in court. The Commission has the final authority on the individual’s certification – not the courts, especially when the misconduct involves a moral character violation. If the case is a felony or misdemeanor, the Commission is already authorized to review the case. Chairman Griffin commended Commission staff on doing an outstanding job of working with FDLE Legal to determine whether a case needs to be reviewed by the Commission.

Bureau Chief Hopkins informed the Task Force that the final vote not to change the rule will be presented to the Commission at the Commission Workshop in May 2015. He will email the workshop date and time to members.

MOTION TO ADJOURN THE TASK FORCE MEETING

Chairman Griffin requested a motion to adjourn the Task Force meeting. ***Chief Pearson moved to adjourn the Task Force meeting; seconded by Sergeant McHale; motion carried.***

The Officer Discipline Penalty Guideline Task Force meeting adjourned at 2:25 p.m., Tuesday, March 24, 2015. The minutes were prepared by Government Operations Consultant/Commission Secretary Joyce Gainous-Harris of the Florida Department of Law Enforcement, Criminal Justice Professionalism Division, Post Office Box 1489, Tallahassee, Florida 32302.

AGENDA ITEM: 9

Officer Discipline Penalty Guidelines Task Force Briefing

ISSUE NUMBER 1

This agenda item is presented to the Commission to provide an overview of a proposed Criminal Justice Standards and Training Commission rule revision in Rule Chapter 11B-27.004, F.A.C. The proposed rule revision was discussed during the meetings of the Officer Discipline Penalty Guidelines Task Force on January 21, 2015 and March 24, 2015. This issue and the Task Force's decision will also be discussed during the May 6, 2015 Commission Workshop. **The proposed new language is indicated by underlining.**

EXECUTIVE SUMMARY

1. At the initial meeting of the 2015 Penalty Guidelines Task Force held on January 21, 2015, language was presented in Rule 11B-27.004(11), F.A.C., related to the Commission's ability to discipline an officer after an arbitrator overturns the sustained findings of an agency's internal investigation.
2. In January 2015, the Task Force voted against adopting the proposed language and directed staff to create language related to cases involving an arbitrator overturning the agency findings when the officer had been placed on a pretrial diversion or intervention program.
3. During the March 2015 Task Force meeting, Commission staff presented the following recommendation:

PROPOSED AMENDMENT(S)

- Amends Rule 11B-27.004, F.A.C. – Probable Cause Determination. **To add the following language:**
 - (11)(a) If administrative or judicial review results in a final disposition of the respondent's termination or discipline, the case shall no longer be held in abeyance and Commission staff shall review the case for the issuance of a Letter of Acknowledgment, if applicable, or for presentation to the Commission for Commission action.
 - (b) 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 that 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.
 - (c) 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, and where the criminal proceedings arising from the same underlying facts result in the dismissal or *nolle prosequi* of all charges after the successful completion of a pretrial diversion or intervention program, or a pretrial treatment-based drug court program, Commission staff shall present the case to a Probable Cause Panel to determine whether or not probable cause exists to file an administrative complaint pursuant to Section 120.60(5), F.S., charging a violation of Chapter 943, F.S., or Rule Chapter 11B-27, F.A.C. This provision shall not supersede the requirements of Commission staff under Section (12)(a) of this Rule.

Task Force Action: Discussion was held, and *Commissioner Hobbs moved that the Task Force accept the proposed new language to amend Rule 11B-27.004(11), F.A.C.; seconded by Chief Pearson; motion failed 10-2, with two (2) affirmatives by Commissioner David Hobbs and Chief Jeff M. Pearson.*

Task Force Vote: Discussion was held, and *Commissioner Nicholas Marolda moved that no changes be made to the current rule at this time; seconded by Sergeant Mick McHale; motion carried 10-2, with two (2) oppositions by Sheriff David Hobbs and Chief Jeff M. Pearson.*

RECOMMENDATION(s): Commission staff recommends the Commission: 1) Approve the Task Force's decision to reject the proposed rule revision as presented; and 2) Support the Task Force's vote to NOT make any changes to Rule 11B-27.004(11), F.A.C., at this time.

VOTING IMPACT

CONSEQUENCES OF A "YES" VOTE ON FDLE CRIMINAL JUSTICE PROFESSIONALISM STAFF: A yes vote will approve Commission staff's recommendation.

CONSEQUENCES OF A "NO" VOTE ON FDLE CRIMINAL JUSTICE PROFESSIONALISM STAFF: A no vote will not approve Commission staff's recommendation.

SUPPORTING INFORMATION

The supporting information for this agenda item is only available on the Commission meeting CD-ROM using the below link(s), and is not available in paper format or on the FDLE website.
To request a CD-ROM please e-mail: joycegainous-harris@fdle.state.fl.us

- March 24, 2015 Officer Discipline Penalty Guidelines Task Force Meeting Packet (*Amended April 15, 2015*)

Note: The ODPGTF Meeting Packet contains the Task Force Membership, Memorandum of Penalty Guidelines Task Force Issue (*including the issue page and supporting information*), and Officer Discipline Rules (CJSTC Rule Chapter 11B-27).

Criminal Justice Standards and Training Commission

MINUTES OF THE MAY 7, 2015 COMMISSION MEETING

Chairman Greg Hutching called the Criminal Justice Standards and Training Commission meeting to order on May 7, 2015, at The Plaza Resort & Spa, in Daytona Beach, Florida.

POSTING OF COLORS, PLEDGE OF ALLEGIANCE, AND INVOCATION

Chairman Hutching thanked the following individuals for participating in the Commission's meeting activities: **1)** Troopers Scott Credidio, Luis DeLeon, and Heather Zuber of the Florida Highway Patrol who provided security; **2)** the Honor Guard of the Daytona Beach Police Department who presented the colors; **3)** Director Louie W. Mercer of the Daytona State College School of Emergency Services who lead the audience in the pledge of allegiance; and **4)** Chaplain George Clark of the Daytona Beach Police Department who gave the invocation. Prior to Chaplain Haney giving the invocation, Chairman Hutching paused for a moment of silence for the following officers who were killed in the line of duty: Police Officer Jared Forsyth of the Ocala Police Department; and Special Agent William Sheldon of the United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (in partnership with the Orlando Regional Operations Center and Seminole County Sheriff's Office).

COMMISSION MEMBERS PRESENT OR ABSENT

The roll was called and the following sixteen (16) Commission members represented a quorum:

- | | |
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| <p>1. Director Greg S. Hutching, Chairman
Florida Panhandle Technical College Public Safety Institute
757 Hoyt Street, Chipley, FL 32428
Telephone: 850-638-1180 Ext 339</p> | <p>2. Warden Edward L. Griffin, Vice-Chairman
Department of Corrections
148 Yelvington Road, East Palatka, FL 32131
Telephone: 386-326-6690</p> |
| <p>3. Colonel David H. Brierton, Jr., Director
Florida Department of Highway Safety and Motor Vehicles
Division of Florida Highway Patrol, Neil Kirkman Building
Tallahassee, FL 32399, Telephone: 850-617-2300</p> | <p>4. Officer Kathleen A. Connell (Absent)
Tallahassee Police Department
234 East Seventh Street, Tallahassee, FL 32303
Telephone: 850-891-4353</p> |
| <p>5. Regional Warden Brian D. Riedl, proxy for Secretary Julie L. Jones, Florida Department of Corrections
501 Calhoun St., Tallahassee, FL 32399-2500
Telephone: 850-717-3037</p> | <p>6. Sheriff David Hobbs
Jefferson County Sheriff's Office
171 Industrial Park, Monticello, Florida 32344
Telephone: 850-997-2523</p> |
| <p>7. Captain Steve Courtoy, proxy for Attorney General Pam Bondi, Tampa Police Department,
District 11, 411 N. Franklin St., Tampa, FL 33602
Telephone: 813-913-6500</p> | <p>8. Sergeant Matthew "Matt" L. Williams
Clay County Sheriff's Office
1836 Blanding Boulevard, Middleburg, FL 32068
Telephone: 904-237-6925</p> |
| <p>9. Mr. William "Bill" Harriss
Florida Citizen
1110 Bayforest Road, St. Augustine, FL 32084
Telephone: 904-669-4688</p> | <p>10. Chief Steven Steinberg
Aventura Police Department
19200 West Country Club Drive, Aventura, FL 33180
Telephone: 305-466-8966</p> |
| <p>11. Sheriff John H. Rutherford
Jacksonville Sheriff's Office
501 E. Bay Street, Jacksonville, FL 32202
Telephone: 904-630-5898</p> | <p>12. Chief George Turner
Brooksville Police Department
87 Veterans Avenue, Brooksville, FL 34601
Telephone: 352-540-3800</p> |
| <p>13. Sheriff David B. Shoar
St. Johns County Sheriff's Office
4015 Lewis Speedway, St. Augustine, FL 32084
Telephone: 904-810-6601</p> | <p>14. Chief Van Toth
Hialeah Gardens Police Department
10301 NW 87th Avenue, Hialeah Gardens, FL 33016
Telephone: 305-558-3333</p> |

15. Detective Nicholas Marolda, Jr.
Lakeland Police Department
219 North Massachusetts Avenue, Lakeland, FL 33801
Telephone: 813-478-1618

17. Deputy William "Willie" Weiss
Martin County Sheriff's Office
800 S.E. Monterey Road, Stuart, FL 34994-4507
Telephone: 772-260-9033

16. Correctional Officer Benito Arzon
Orange County Department of Corrections
Post Office Box 4970, Orlando, FL 32802
Telephone: 407-448-1730

Commission Attorney
Assistant Attorney General Clark R. Jennings
Office of the Attorney General
PL-01 The Capitol Building, Tallahassee, Florida 32399
Telephone Number: 850-414-3799

CRIMINAL JUSTICE PROFESSIONALISM STAFF - PRESENT

- | | |
|---|--|
| 1. Director Dean Register
Criminal Justice Professionalism | 2. Bureau Chief Dwight Floyd
Bureau of Training |
| 3. Bureau Chief Kristi Gordon
Bureau of Professional Development | 4. Bureau Chief Glen Hopkins
Bureau of Standards |
| 5. Training & Research Manager Terry Baker
Bureau of Standards (Field Services and Records Section) | 6. Training & Research Manager Stacy Lehman
Bureau of Standards (Professional Compliance) |
| 7. Training & Research Manager Roy Gunnarsson
Bureau of Training (Research and Assessment) | 8. Operations Analyst Cheryl Taylor
Bureau of Standards (Commission Support) |
| 9. Research & Training Specialist Kay Pafford
Bureau of Professional Development | 10. Operations Consultant Joyce Gainous-Harris
Bureau of Standards (Commission Operations/Secretary) |
| 11. Field Specialist Dawn Radick
Bureau of Standards | 12. Field Specialist Nicole Blanco
Bureau of Standards |
| 13. Field Specialist Chuck Reaume
Bureau of Standards | 14. Field Specialist Kathy Myers
Bureau of Standards |
| 15. Field Specialist Joni Livingston
Bureau of Standards | 16. Research & Training Specialist Erica Bradham
Bureau of Standards (Professional Compliance) |
| 17. Field Specialist Donna Suereth
Bureau of Standards | 18. FDLE Counsel Linton Eason
Office of General Counsel |
| 19. Field Specialist Wayne Graves
Bureau of Standards | 20. FDLE Counsel Jeff Dambly
Office of General Counsel |
| 21. Research & Training Specialist Sara Clausen
Bureau of Training | 22. FDLE Counsel Weston Petkovsek
Office of General Counsel |
| 23. Field Specialist Michelle Sparks-Raymond
Bureau of Standards | 24. FDLE Counsel Rebecca Cambria
Office of General Counsel |
| 25. Research & Training Specialist Craig O'Connell
Bureau of Standards (Professional Compliance) | 26. Research & Training Specialist Judson Butler
Bureau of Training |

SUNSHINE LAW

Commission Attorney Clark Jennings stated that the Sunshine Law applies to agenda items on the Business Agenda and Commission members shall not have conversations with another Commission member or in the presence of another Commission member about agenda items currently pending before the Commission. Commission members may discuss agenda items with another Commission member during the Commission meeting and may have conversations with Commission staff and other individuals about agenda items prior to the Commission meeting.

APPROVAL OF THE MAY 2015 COMMISSION MEETING AGENDA

Chairman Hutching asked if there were any amendments to the May 7, 2015 Commission Meeting Agenda. Commission Secretary Joyce Gainous-Harris read the following amendments into the Commission record, submitted on April 16th, 23rd, and 27th, 2015: **(1)** Agenda Item 9, Officer Discipline Penalty Guidelines Task Force (ODPGTF), issue page and supporting information were emailed to Commission and Task Force members; **(2)** Agenda Item 8F, Request for a Waiver of Rule 11B-27.002(4), F.A.C., by Captain Gregory L. Foster of the Nassau County Sheriff's Office on behalf of Daniel R. Hanna, III; **(3)** Agenda Item 8G, Request for a Permanent Waiver of Rule 11B-30.0062(1), Rule 11B-35.009(3), and Rule 11B-35.009(6), F.A.C., by Director Bill Bierbaum of the Florida Criminal Justice Selection Center Directors' Association on behalf of 53 candidates; and **(4)** Special Agent William Sheldon of the United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives was added to the agenda as an officer killed in the line of duty.

RECOMMENDATION: Chairman Hutching requested a motion to approve the amended agenda. **COMMISSION ACTION:** *Commissioner Turner moved that the Commission approve the amended agenda; seconded by Commissioner Arzon; motion carried.*

APPROVAL OF THE FEBRUARY 2015 COMMISSION MEETING MINUTES

Chairman Hutching asked if there were amendments to the February 2015 Commission meeting minutes. Commission Secretary Joyce Gainous-Harris stated there were no amendments. **RECOMMENDATION:** Chairman Hutching requested a motion to approve the February 2015 Commission meeting minutes. **COMMISSION ACTION:** *Commissioner Steinberg moved that the Commission approve the minutes; seconded by Commissioner Courtney; motion carried.*

RESOLUTIONS

Resolutions were presented to the following individuals:

Training & Research Manager Linda Adams began working with the State of Florida in December of 1988, and as a member of the Florida Department of Law Enforcement from July 22, 2002 until her retirement on May 8, 2015. Ms. Linda Adams performed a significant role in the development of a new law enforcement basic recruit training program. Since 2009, Ms. Adams served as the Training and Research Manager of the Curriculum Development Section.

Sheriff John H. Rutherford represented the Jacksonville Sheriff's Office as a member of the Commission from April 7, 2009 to June 30, 2015.

Colonel David H. Brierton, Jr., represented the Division of the Florida Highway Patrol as a member of the Commission from March 2, 2011 to May 31, 2015.

Deputy Secretary Timothy H. Cannon represented the Florida Department of Corrections and served on the Commission from May 11, 2012 to February 5, 2015.

Commissioner Cannon and Ms. Adams were not present; however, Commission staff agreed to deliver the resolutions to them.

RECOMMENDATION: Commission staff recommended the Commission adopt the resolutions as presented. **COMMISSION ACTION:** *Commissioner Williams moved that the Commission adopt staff's recommendation; seconded by Commissioner Arzon; motion carried.*

Christopher Depaolis, Jon Dubler, Wayne Fultz, Christopher Harper, Jason Jennings, Julius Rich, Thomas Ryan and Angel Serrano.

Petitioner wishes to waive paragraphs 11B-35.009(3), F.A.C., and 11B-35.009(6), F.A.C., on behalf of: Lorenzo Bell, Roland Kelley, James Moore, Ivan Gray, Joan Santiago Rivera, Elizabeth Turner, Yarelis Perez, Anthony Williams, Naomi Williams, Angel Valentin, Kylie Works, Crystal Woodard and Michael Gomez.

RECOMMENDATION: Commission staff recommended the Commission approve the permanent waivers as requested. **COMMISSION ACTION:** Discussion was held, and ***Commissioner Harriss moved that the Commission adopt staff's recommendation; seconded by Commissioner Courtoy; motion carried.***

AGENDA ITEM 9: OFFICER DISCIPLINE PENALTY GUIDELINES TASK FORCE (ODPGTF) BRIEFING

Commission Vice-Chairman Griffin also served as the 2015 ODPGTF Chairman. He provided a briefing of the proposed CJSTC rule revision in Rule Chapter 11B-27, F.A.C., which was discussed during the meetings of the Officer Discipline Penalty Guidelines Task Force on January 21, 2015 and March 24, 2015. Vice-Chairman Griffin asked Bureau Chief Glen Hopkins to present an overview, specifically the proposed CJSTC rule revision in Rule Chapter 11B-27.004, F.A.C. This issue and the Task Force's decision were discussed during the May 6, 2015 Commission Workshop. **The proposed new language is indicated by underlining.**

At the initial meeting of the 2015 Penalty Guidelines Task Force held on January 21, 2015, language was presented in Rule 11B-27.004(11), F.A.C., related to the Commission's ability to discipline an officer after an arbitrator overturned the sustained findings of an agency's internal investigation. The Task Force voted against adopting the proposed language and directed staff to create language related to cases involving an arbitrator overturning the agency findings when the officer had been placed on a pretrial diversion or intervention program.

During the March 2015 Task Force meeting, Commission staff presented the following recommendation:

- Amends Rule 11B-27.004, F.A.C. – Probable Cause Determination. **To add the following language:**
 - (11)(a) If administrative or judicial review results in a final disposition of the respondent's termination or discipline, the case shall no longer be held in abeyance and Commission staff shall review the case for the issuance of a Letter of Acknowledgment, if applicable, or for presentation to the Commission for Commission action.
 - (b) 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 that 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.
 - (c) 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, and where the criminal proceedings arising from the same underlying facts result in the dismissal or *nolle prosequi* of all charges after the successful completion of a pretrial diversion or intervention program, or a pretrial treatment-based drug court program, Commission staff shall present the case to a Probable Cause Panel to determine whether or not probable cause exists to file an administrative complaint pursuant to Section 120.60(5), F.S., charging a violation of Chapter 943, F.S., or Rule Chapter 11B-27, F.A.C. This provision shall not supersede the requirements of Commission staff under Section (12)(a) of this Rule.

Task Force Action (on the proposed language) during the March 2015 Task Force meeting: Discussion was held, and **Commissioner Hobbs moved that the Task Force accept the proposed new language to amend Rule 11B-27.004(11), F.A.C.; seconded by Chief Pearson; motion failed 10-2, with two (2) affirmatives by Commissioner David Hobbs and Chief Jeff M. Pearson.**

Task Force Vote during the March 2015 Task Force meeting: Discussion was held, and **Commissioner Nicholas Marolda moved that no changes be made to the current rule at this time; seconded by Sergeant Mick McHale; motion carried 10-2, with two (2) oppositions by Sheriff David Hobbs and Chief Jeff M. Pearson.**

RECOMMENDATION: Commission staff recommended the Commission: **1) Approve the Task Force's decision to reject the proposed rule revision as presented; and 2) Support the Task Force's vote to NOT make any changes to Rule 11B-27.004(11), F.A.C., at this time. COMMISSION ACTION: Commissioner Arzon moved that the Commission adopt staff's recommendation; seconded by Commissioner Williams; motion carried 10-4-2.**

Note: Commission members offered additional comments and expressed strong opposition to taking authority from the Commission when considering if an officer's certification should be maintained.

ANNOUNCEMENT

Vice-Chairman Griffin recognized Major Allen C. Williams, Putnam Correctional Institution, seated in the audience; he thanked him for attending the Commission Business Meeting.

UNAGENDAED ITEMS

Bureau Chief Hopkins presented two unagendaed items to the Commission.

- The FDLE is in the process of going through an audit with the Office of Program Policy Analysis and Government Accountability. Three of the auditors were seated in the audience and expressed interest in reaching out to individual Commission members to discuss the officer discipline process. Commission attorneys Clark Jennings and Nick Cox have advised that this is acceptable. Chairman Hutching thanked them for attending the Commission Meeting and for their efforts in taking care of Florida's fiscal responsibilities. Mr. Jennings reminded Commission members NOT to violate the Sunshine Laws by discussing Commission business together with the auditors. The interviews must be conducted individually.
- Commission staff asked the Commission for input related to potential new rule language. This language would be intended to address situations involving officers who have conducted themselves in a manner that is not in line with the Commission's moral character standards due to their affiliation with controversial organizations. After a lengthy discussion, the Commission decided not to address the issue at this time.

BUSINESS MEETING ADJOURNED

Chairman Hutching requested a motion to adjourn the business meeting. **Commissioner Williams moved to adjourn the business meeting; seconded by Commissioner Hobbs; motion carried.**

Arbitration Rule Timeline

Current Rule 11B-27.004, F.A.C. – Probable Cause Determination. (effective 11/30/2004)

(10) (b) 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.

May 5, 2014- Commission staff received a letter from the Broward County Sheriff's Office outlining their concerns with a discipline case that was "no caused by staff" based on Commission Rule 11B-27.004, F.A.C. The case involved an arbitrator's decision overturning the findings of the agency's internal investigation. Following discussions by the Commission and guidance from FDLE Legal Counsel, the issue was added to the agenda of the January 2015 Penalty Guidelines Task force.

January 21, 2015-The following language was presented at the Penalty Guidelines Task Force meeting:

Rule 11B-27.004, F.A.C. – Probable Cause Determination.

(11)(b) In cases subject to review by the Commission 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 on the merits of the case 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 that 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.

TASK FORCE ACTION: Discussion was held and the issue was rejected by a vote of 10-2. However, the Task Force directed staff to create language for arbitration cases when the officer was involved in a diversionary program for criminal charges.

February 5, 2015- Results of the January 21, 2015, Task Force meeting were presented during the Commission's workshop and business meeting. Commission members offered comments on the proposed change to the arbitration rule. Some expressed strong opposition to taking authority from the Commission when considering if an officer's certification should be maintained. It was further suggested that the Task Force reconvene in an open session (prior to the May 2015 Commission meeting) to discuss alternative rule language crafted to address issues related to arbitration.

March 25, 2015- The following language was presented at the Penalty Guidelines Task Force meeting:

11B-27.004, F.A.C. – Probable Cause Determination.

(11)(b) 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 that 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.

(c) 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, and where the criminal proceedings arising from the same underlying facts result in the dismissal or *nolle prosequi* of all charges after the successful completion of a pretrial diversion or intervention program, or a pretrial treatment-based drug court program, Commission staff shall present the case to a Probable Cause Panel to determine whether or not probable cause exists to file an administrative complaint pursuant to Section 120.60(5), F.S., charging a violation of Chapter 943, F.S., or Rule Chapter 11B-27, F.A.C. This provision shall not supersede the requirements of Commission staff under Section (12)(a) of this Rule.

TASK FORCE ACTION: Discussion was held and the issue was rejected by a vote of 10-2.

May 7, 2015- The results of the March 25, 2015, Task Force meeting were presented during the Commission's workshop and business meeting. During the business meeting the Commission voted to adopt the Task Force's recommendation that the rule change be rejected.

January 16, 2019- The following language will be presented to the 2019 Task Force:

- 11B-27.004, F.A.C. – Probable Cause Determination.

(10)(b) 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.~~

Arbitrator Overturned Agency Findings-January 2015 to Present

Case	Date No Caused by Staff
33593	1/21/2015
37250	1/23/2015
34414	3/13/2015
39300	4/21/2017
41604	9/20/2017
41545	10/2/2017
37881	8/2/2018
38029	12/10/2018