**Professional Compliance Bulletin**

**Issue #64**

**May 2016**

The Criminal Justice Standards and Training Commission has as its mission “to ensure that the citizens of the State of Florida are served by the most qualified, well trained, competent and ethical criminal justice officers in the nation”. The Commission meets quarterly in an open forum to address issues relating to criminal justice. As a part of these quarterly meetings, cases regarding officer misconduct are reviewed and action is taken against the officer’s criminal justice certification. Disciplinary action is based on the facts of each case and is guided by both Florida Statute and Florida Administrative Code. The following is a sample of the cases the Commission heard at its meeting held on May 5, 2016.

**Case #38866- Misuse of Official Position**

The respondent resigned from the Fort Myers Police Department while under investigation for misusing several of the agency’s electronic databases. On September 16, 2014, the Fort Myers Police Department received a citizen complaint alleging the respondent made DAVID inquiries on the complainant for reasons outside her official duties as a law enforcement officer. The complainant provided a report she had obtained which confirmed the respondent ran a driver’s license inquiry and photo lineup of the complainant on January 20, 2014. The complainant could not provide any explanation for the respondent running her information. On September 18, 2014, in her sworn statement, the complainant stated she was currently engaged to the respondent’s ex-boyfriend. The complainant and the respondent’s ex-boyfriend began dating shortly after the respondent’s relationship with the boyfriend ended. According to the complainant, the respondent did not handle the break up well and tried to do things to win him back such as sending him pictures, emails, and text messages. The complainant explained that the respondent somehow found out her name and started following her through social networking, which allowed the respondent the ability to read anything the complainant posted. On January 18, 2014, and January 19, 2014, the respondent and the complainant engaged in a dialogue through the social networking site regarding their relationship with the boyfriend. The DAVID report indicated that the next day, the respondent logged into the terminal and ran the complainant in DAVID system. The respondent resigned without providing a statement.

**Penalty Guideline**: Probation to Suspension

FDLE Prosecution requested a 10 day prospective suspension; 6 month probation to begin at the conclusion of the suspension period; provide staff with proof of successful completion of a Commission-approved ethics course prior to the end of the probationary period.

**Disciplinary Action by the Commission:** The Commission accepted the requested penalty.

**Case # 38962-** **Any Overt, Conspicuous, or Public Act of a Sexual or Simulated Sexual**

 **Nature which is Likely to be Observed by Others**

The respondent was terminated from the Manatee County Sheriff’s Office (MCSO) subsequent to an internal investigation which sustained the charges of Conduct Unbecoming, Insubordination, and Neglect of Duty. The internal investigation did not sustain the charge of Unlawful Conduct. On April 6, 2015, a sergeant from MCSO was informed of allegations that the respondent was observed by an emergency room nurse having sex with his girlfriend at a hospital. On April 4, 2015, the respondent was visiting his girlfriend in the emergency room of a hospital while she was being treated for injuries she sustained near the respondent’s residence. A nurse technician observed over video surveillance the respondent and his girlfriend having sex and informed a nurse. The nurse walked into the room occupied by the respondent and his girlfriend, observed them having sex, and asked the respondent what he was doing. When the respondent moved away from his girlfriend, the nurse observed the respondent’s exposed penis. An officer from the Tampa Police Department was working an off-duty detail at the hospital and was asked to report to the girlfriend’s room. In a sworn interview, the officer stated he confronted the respondent with the accusation that he was observed having sex with his girlfriend. The respondent did not deny the allegation and was apologetic. The officer stated the respondent’s girlfriend informed him that she was in a semiconscious state when the respondent tried to have sex with her, but she was a willing participant. In a sworn interview, the respondent said he did not have sex in the hospital, did not attempt to have sex, and did not have his penis exposed. The respondent claimed he was at the foot of the bed with his hands on his girlfriend’s thighs to soothe her pain when the nurse came in. The respondent denied ever speaking with the off-duty officer at the hospital and claimed he was not interviewed by anyone on April 4, 2015. The respondent’s girlfriend claimed she never informed the off-duty officer that the respondent attempted to have sex with her, the respondent never penetrated her, he never exposed himself to her, and the respondent was not trying to have sex with her. The State Attorney’s office declined to prosecute the charge of exposure of sexual organs.

**Penalty Guideline**: Suspension to Revocation

FDLE Prosecution requested a 15 day prospective suspension; 1 year probation to begin at the conclusion of the suspension period; provide staff with proof of successful completion of a Commission-approved ethics course prior to the end of the probationary period.

**Disciplinary Action by the Commission:** The Commission rejected the requested penalty and voted to revoke the respondent’s certification.

**Case # 38279 Improper Exhibition of a Dangerous Weapon or Firearm**

 **Discharging a Firearm in Public**

The respondent was terminated from the Graceville Correctional Facility subsequent to an internal investigation which sustained two agency policy violations. On July 6, 2013, a deputy with the Santa Rosa County Sheriff’s Office was dispatched to a residence in reference to a firearm complaint. Upon arrival, several witnesses advised that the respondent was firing his weapon in the direction of occupied dwellings during a family gathering. The witnesses advised that when they went to the respondent’s home to explain that his discharged ammunition was hitting family members, he began brandishing his firearm in one hand, while holding a beer in the other hand. The respondent argued with them, became very angry, and recklessly fired his weapon into the air in front of them. The deputy then made contact with the respondent who advised that nothing unusual occurred that evening and that he was outside shooting his rifle in the backyard. The deputy explained to the respondent that he was at his home because neighbors were being hit by pellets that they believed came from the respondent’s property. The respondent advised that he has had problems with a set of neighbors, saying they harass him constantly and sometimes follow him home. The deputy could smell the odor of alcoholic beverages emitting from the respondent’s person, noticed his speech was slurred, that he hesitated when speaking, and noticed him stagger several times. When asked, the respondent admitted to having consumed alcohol that evening. The respondent was arrested for Improper Exhibition of a Dangerous Weapon or Firearm, Discharging a Firearm in Public or on Residential Property, and Using a Firearm while Under the Influence of Alcoholic Beverages, Chemical Substances or Controlled Substances. On November 6, 2013, the respondent entered into a pretrial diversion program which required the respondent to complete a substance abuse evaluation, complete a firearms safety course, complete fifty hours of community service, submit to random urinalysis testing, and the payment of various court costs and fines.

**Penalty Guideline**: Probation with Training; Probation to Suspension

FDLE Prosecution requested a 60 day prospective suspension; 1 year probation to begin at the conclusion of the suspension period; provide staff with proof of successful completion of Commission-approved remedial firearms training prior to the end of the probationary period.

**Disciplinary Action by the Commission:** The Commission accepted the requested penalty.

**Case # 37944-** **Resisting an Officer without Violence**

 **Trespass in an Occupied Structure or Conveyance**

 **Carrying a Concealed Weapon**

The respondent was terminated from the Department of Corrections subsequent to an internal investigation which sustained charges for Resisting an Officer without Violence, Trespass on Property after Warning, and Carrying a Concealed Weapon. On October 9, 2014, deputies were working an off-duty law enforcement detail at a local establishment. They were wearing agency uniforms and stood near a clearly visible patrol vehicle. One of the deputies observed a male, later identified as the respondent, in a verbal argument with two males and a female. The establishment’s security informed the deputy that he wanted the respondent removed from the property because he was causing a disturbance and trying to start fights with random people. The deputy told the respondent to leave the property and not to return. The respondent exited and walked away from the property. Approximately five minutes later, the deputy observed the respondent standing in line to get back into the establishment. The respondent was standing with an unknown male who had also been kicked out for fighting approximately ten minutes earlier. Two deputies approached the respondent and informed him he needed to leave immediately. The respondent refused to move. The deputies repeated themselves and told the respondent he was now trespassing. The respondent responded by asking the deputies if they were going to use force. A deputy responded they would if he did not leave. The respondent turned around and placed his hands behind his back. The deputy asked the respondent if his actions meant he was not going to leave the property. The respondent replied that he was not leaving the property. The deputy gave the respondent verbal commands to keep his hands behind his back and informed him he was under arrest. As the deputy grabbed the respondent’s wrists, the respondent immediately pulled one of his arms away from the deputy while spinning around to try to escape. The deputy gave him verbal commands to stop resisting as the respondent continued to pull away. Another deputy assisted in taking the respondent to the ground in order to gain control of him for handcuffing. While on the ground, the respondent continued to pull away and yell. Once the deputies began to place handcuffs on him, the respondent yelled that he was just joking and stated he was a correctional officer. The deputies were finally able to get him secured. While searching the respondent, the deputy located a leather knife sheath attached to the right side of his belt. It contained an approximately four inch knife that the deputy recognized to be an offensive style weapon. Since the knife had been concealed under the respondent’s shirt, the deputy asked the respondent if he had a concealed weapons permit and he confirmed that he did. The deputy was not able to locate a concealed weapons permit in the respondent’s wallet. The deputy conducted a FCIC/NCIC query of the Florida concealed weapons permit system and it returned no results. The manager of the establishment completed a sworn statement and indicated he wanted to prosecute the respondent for trespassing. While still on scene, the respondent continued to yell from the back seat of the patrol car and attempted to kick out the patrol car window at least five times. On January 5, 2015, the respondent entered into a plea agreement. The respondent pled Nolo Contendere to Trespass in an Occupied Structure (Refusal to Leave) and the charges of Resisting an Officer without Violence and Carrying a Concealed Weapon were dismissed. The respondent was sentenced to one day in jail with credit for one day served; placed on probation for 360 days; required to perform 50 hours of community service; ordered not possess, carry, or own firearms, unless authorized; successfully complete anger management training; and pay various court costs and fines.

**Penalty Guideline**: Probation to Suspension; Probation to Suspension; Probation to Suspension

FDLE Prosecution requested a 60 day prospective suspension; 1 year probation to begin at the conclusion of the suspension period; provide staff with proof of successful completion of Commission-approved anger management prior to the end of the probationary period.

**Disciplinary Action by the Commission:** The Commission accepted the requested penalty.

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

Section 943.1395(7)(a)-(e), F.S., authorizes the Criminal Justice Standards and Training Commission to impose disciplinary action against an officer’s certification ranging from the issuance of a reprimand to revocation of certification. The Commission has established general and specific penalty guidelines under Rule 11B-27.005(5), Florida Administrative Code, for felony offenses, specific enumerated misdemeanor offenses, non-criminal offenses, and violations involving the unlawful use of controlled substances. The Commission uses these penalty guidelines to determine appropriate disciplinary recommendations regarding the certification of sworn officers in the state of Florida. Additionally, Section 943.1395(8)(b)2 states:

On or before July 1 of each odd-numbered year, the Commission shall conduct a workshop to receive public comment and evaluate disciplinary guidelines and penalties. The commission chair shall appoint a 12-member advisory panel, composed of six officers and six representatives of criminal justice management positions, to make recommendations to the commission concerning disciplinary guidelines.

The Commission plans to conduct this workshop as a Penalty Guidelines Task Force meeting during the early part of 2017. If you have any issues that you would like to be considered by this group, please forward them to R. Stacy Lehman, Professional Compliance Section Manager in the Bureau of Standards, at the Florida Department of Law Enforcement, P.O. Box 1489, Tallahassee, Florida 32302 or via e-mail at: stacylehman@fdle.state.fl.us.