

Professional Compliance Bulletin from Criminal Justice Standards and Training Commission



Professional Compliance Bulletin Issue 35 - October 2008



The Criminal Justice Standards and Training Commission has as its mission "to ensure that the citizens of the State of Florida are served by the most qualified, well trained, competent and ethical criminal justice officers in the nation." The Commission meets quarterly in an open forum to address issues relating to criminal justice. As a part of these quarterly meetings, cases regarding officer misconduct are reviewed and action is taken against the officer's criminal justice certification. Disciplinary action is based on the facts of each case and is guided by both Florida Statute and Florida Administrative Code. The following is a sample of the cases that were heard by the Commission at its meetings held on October 30, 2008.

Case # 26275 – Assault; Battery

The respondent was given an eighty hour suspension without pay by the Polk County Sheriff's Office pursuant to a sustained investigation of allegations of conduct unbecoming, competency, job knowledge and proficiency, and commission of misdemeanors injurious to the Sheriff's Office. On October 21, 2007, the respondent returned property to his former girlfriend. While doing so, he and his former girlfriend got into an altercation. He was with his father at the time, and the former girlfriend was with a friend. He allowed his former girlfriend to get inside the pickup truck, which they both owned. As she exited the truck, she took a screwdriver out of her back pocket and scratched the paint on the truck from the rear fender to the passenger door. The respondent, who was standing on the other side of the truck, vaulted into the bed of the truck and then out onto the other side, where he started toward her with his fists closed. The former girlfriend's friend, fearing for the former girlfriend's safety, stepped between them. The respondent then pushed the woman away and in doing so injured her thumb. He was still advancing and shouting obscenities, when his father grabbed him and put him into a headlock. Shortly after, both the respondent and his father left the scene. During sworn interviews, both the former girlfriend, her friend, and two neighbors testified that the respondent seemed about to attack. His former girlfriend testified that she was afraid he would hurt her. Her friend also testified that she stepped between them solely to prevent her friend from being injured. Both neighbors testified that they heard the respondent shouting threats of physical violence, but that was not corroborated by the former girlfriend, her friend, or the respondent's father. The respondent and his father both testified that he never touched his former girlfriend's friend, but that is contradicted by the testimony of the two women and the two neighbors who had observed the altercation. The case was brought to the State Attorney's Office, but it was declined due to estimation that the charges could not be proven beyond a reasonable doubt.

Penalty Guideline: Suspension (each count) — Staff recommended an eighty hour retroactive suspension and a five day prospective suspension.

Disciplinary Action by the Commission: The Commission rejected staff's settlement agreement with the respondent and dismissed the administrative complaint.

Case # 23929 – Dealing in Stolen Property; Petit Theft

The respondent was terminated from the Manatee County Sheriff's Office subsequent to his arrest for two counts of dealing in stolen property. On August 28, 2005, an undercover investigation was initiated to look into activities involving Manatee County Sheriff's Office employees at a local adult entertainment business. The investigation revealed that the respondent participated in the purchase of reportedly stolen alcohol from an undercover investigator. The respondent was charged with two counts of dealing in stolen property. On December 12, 2006, the respondent entered into a plea agreement in which he pled no contest to two counts of petit theft and adjudication was withheld. As part of the plea, the respondent agreed to twelve months of probation, to pay court fees and cost of prosecution, and to testify truthfully against all co-defendants in this case.

Penalty Guideline: Suspension to revocation (each count) — Staff recommended that the Commission impose a one year retroactive suspension, a six month prospective suspension, and a one-year period of

probation. Additionally, staff recommended that the respondent complete an ethics course prior to the end of the probationary period.

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

Case # 24734 – Attempting to Elude an Officer

The respondent resigned from the Hillsborough County Sheriff's Office after being arrested by the New Port Richey Police Department for fleeing and eluding and reckless driving. On September 21, 2006, a New Port Richey Police Officer observed a green motorcycle traveling north on U.S. Hwy 19 at 81 mph in a 45 mph zone. The green motorcycle was traveling on one wheel with one wheel in the air. When the green motorcycle observed the police car, the driver made a U-turn. A second officer was advised that the green motorcycle was now traveling south on U.S. Hwy 19 and clocked the motorcycle with radar at 110 mph in a 45 mph zone. As the second officer accelerated, the motorcycle was slowing down for a red light. The second officer observed the motorcycle switch lanes without using his turn signal. The officer was pursuing the green motorcycle with lights and sirens active. The motorcycle failed to stop at a stop sign. The driver, later identified as the respondent, of the motorcycle continued to drive on various roads in the area, failing to stop. The driver rode into some bushes and drove on. The driver proceeded to a road behind some townhomes where the first officer blocked the motorcycle's exit. At this point the driver was placed under arrest. On March 12, 2007, the respondent entered a plea of nolo contendere and was adjudicated guilty of resisting arrest without violence. He was sentenced to 12 months probation, 50 hours of community service, driver's license suspended for six months, and was ordered to pay various fees including court costs.

Penalty Guideline: Suspension to revocation — Staff recommended that the Commission impose a thirty day prospective suspension followed by a one year probationary period and provide staff with proof of successful completion of an ethics course.

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

Case # 23530 – Battery on a Law Enforcement Officer

The respondent was terminated from the Florida Department of Corrections subsequent to his arrest for Aggravated Battery and Aggravated Assault on a Law Enforcement Officer. On February 5, 2006, officers responded to the respondent's residence in reference to a call of vandalism. During the incident one of the responding officers gave verbal orders to the respondent to not leave the residence. He failed to comply with the orders and proceeded to leave via his vehicle. The officer approached the respondent's vehicle in an attempt to stop him. However, the respondent ran over the officer's foot and the front bumper struck the officer. The respondent continued to leave the scene. Another officer was present at the time and witnessed the incident as well as a neighbor. On February 8, 2006, the respondent was located and arrested. On March 7, 2006, the State Attorney's Office dismissed the charges against the respondent.

Penalty Guideline: Prospective suspension to revocation — Staff recommended that the Commission impose a sixty day prospective suspension and a one year probationary period and provide staff with proof of successful completion of anger management training prior to the end of the probationary period.

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

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

The Criminal Justice Standards and Training 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 in determining appropriate disciplinary recommendations regarding the certification of sworn officers in the state of Florida. Section 943.1395(7)(a)-(e), Florida Statutes authorizes the Commission to impose disciplinary action ranging from the issuance of a reprimand to revocation.

In order to ensure consistency by the Commission when determining penalties for various offenses, legislation was passed requiring the Commission to evaluate these disciplinary guidelines. Section 943.1395 (8)(b)2, Florida Statutes requires the Criminal Justice Standards and Training Commission to conduct a workshop on or before July 1 of each odd-numbered year to receive public comment and to evaluate disciplinary guidelines and penalties concerning certified officers and/or certified instructors.

The Commission plans to conduct this workshop as a Penalty Guidelines Task Force meeting on February 17, 2009 at the Sawgrass Marriott Resort, 1000 PGA Tour Boulevard, Ponte Vedra Beach, Florida. The following members have been appointed to serve on the task force: Director Ralph Kiessig, Florida Department of Corrections; Chief Brian Tooley, Sanford Police Department; Chief Gerald Monahan, Port Orange Police Department; Officer Nelson Cuba, Jacksonville Sheriff's Office; Detective Kevin Durkin, Tampa Police Department; Chief Edward Overman, Deland Police Department; Sergeant John Rivera, Miami-Dade Police Department; Sergeant Mick McHale, Sarasota Police Department; Chief Richard Perez, Wilton Manors Police Department; Captain James Mann, Office of the Attorney General; Officer Belinda Murvin, Palm Beach County Sheriff's Office; Chief Rick Davis, Madison Police Department.

If you have any issues that you would like to be considered by this group, please forward them to Glen W. Hopkins, 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 glenhopkins@fdle.state.fl.us.

For many years the Florida PBA's newsletter has carried reports on the standards of discipline adopted and used by the Criminal Justice Standards and Training Commission to discipline law enforcement, correctional and correctional probation officers who have allegedly engaged in misconduct. Recently, the CJSTC has started a quarterly bulletin designed to inform officers of the types of misconduct cases the Commission is reviewing and the punishment taken against officers engaging in the misconduct.

The Florida PBA wants to thank the Commission for agreeing to permit the Association to republish the bulletin in the *Roll Call*. Officers should understand the Commission's penalty rules provide a range of discipline as a guide and the penalty taken against the officer will vary depending on the individual circumstances of the case.

—Hal Johnson
Florida PBA
General Counsel

“And in the end, it's not the years in your life that count. It's the life in your years.”

~ Abraham Lincoln

Questions and comments concerning the Professional Compliance Bulletin can be directed to:

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