

Professional Compliance Bulletin from Criminal Justice Standards and Training Commission



Professional Compliance Bulletin Issue 33 - May 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 May 8, 2008.

Case # 25130 Perjury in an Official Proceeding

The respondent was terminated from his employment with the Marion County Sheriff's Office subsequent to a sustained investigation for dereliction of duty and untruthfulness. On March 30, 2007 an inmate's parents filed a complaint alleging two instances of abuse against their son. The investigation determined that on March 23, 2007 the inmate was standing in the doorway of his cell arguing with another officer about an upcoming disciplinary hearing. The respondent went to assist the other officer, and told the inmate to back away from the door. The inmate complied, and the respondent entered the cell where he proceeded to push the inmate onto a bunk and also proceeded to draw his Taser and apply it to the inmate's chest in two locations. During another encounter with the same inmate on March 30, 2007 the respondent ordered him to come down from upstairs because of the fact that he was causing a disturbance during head count. The inmate complied with this order, and the respondent grabbed the inmate's left arm up behind his back and lifted it up. The respondent then pushed the inmate into a wall, causing his head, chest, and shoulder to impact the wall. The inmate reported this incident to his parents. The respondent failed to file a use of force report in both incidents. On April 2, 2007 an investigator questioned the respondent under oath about the incidents. The respondent denied pushing the inmate onto his bunk or cycling his Taser during the first incident. Two other officers testified that they witnessed the respondent pushing the inmate onto the bunk and that they heard the Taser cycling. The respondent also denied using any pain compliance on the inmate during the second encounter and denied that he pushed the inmate into a wall. Both acts were witnessed by a correctional officer, a correctional assistant, and thirty-one inmates. Photographs of the inmate revealed two red marks on his chest, consistent with the discharge of a Taser. The pictures also showed bruising and redness on his chest, forehead, and shoulder. The download of the Taser data showed that the respondent had cycled the Taser on March 23, 2007 without the cartridge attached, even though he testified that he had not.

Penalty Guideline: Prospective suspension to revocation Staff recommended a six-month retroactive suspension, a sixty day prospective suspension, a one year probationary period, and required respondent to provide staff with proof of successful completion of approved ethics and use of force training prior to the completion of the probationary period.

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

Case # 25308 Sex on Duty

The respondent resigned from the Bradenton Police Department as a result of a sustained investigation for conduct unbecoming and sexual conduct. On May 22, 2007 the department initiated an informal inquiry into allegations that officers were having improper relationships with a known prostitute. The prostitute indicated that she had engaged in sexual relations with another officer on five separate occasions in which money and rock cocaine were exchanged. She also indicated that another officer had sex with her friend at the same time. She stated that this officer gave her friend twenty dollars for the sexual encounter. The first prostitute also indicated that she engaged in oral sex with the respondent during this same time period and that he gave her food and ten dollars. The respondent admitted during an interview that he did pick the prostitute up prior to going off duty and that she performed oral sex on him. He further admitted that he purchased food for her following the sex act. He also stated that she later told him that she needed some money so he gave her ten dollars.

Penalty Guideline: Suspension to revocation Staff recommended that the Commission impose a two month retroactive suspension and a one-year period of probation. Additionally, staff recommended that the respondent complete ethics training prior to the end of the probationary period.

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

Case # 22333 Stalking, Aggravated Stalking, and Misuse of Public Position (3 counts)

The respondent was terminated from the Tampa Police Department subsequent to an internal investigation which sustained charges of stalking, misuse of authority, and other agency policy violations. On February 7, 2005, the department received a complaint from an individual alleging that she was being stalked by the respondent. The investigation revealed that the complainant was the respondent's former girlfriend and that she ended the relationship in July of 2004. The complainant stated that the respondent continuously harassed her via telephone and text messages and that he used demeaning and offensive language to her in public and in private. The investigation determined that he violated an injunction that was filed by the complainant on one occasion. This harassment took place over a period of several months. The respondent was criminally charged with stalking, where he pled nolo contendere to this charge, and adjudication was withheld. He was also placed on probation for twelve months, was ordered to undergo a psychological evaluation, and was ordered to have no contact with the victim.

Penalty Guideline: Probation to suspension; Suspension to revocation; Suspension (each count) Staff recommended a six month prospective suspension and one year period of probation and provide Commission staff with proof of successful completion of an approved officer fitness for duty psychological evaluation performed by a licensed psychiatrist prior to any future employment as a criminal justice officer in the state of Florida.

Disciplinary action by the Commission: The Commission rejected the Stipulation and Settlement Agreement. Staff is currently working on another settlement agreement to take back to the Commission.

Case # 25430 Battery (2 counts), Witness Tampering (4 counts), Official Misconduct (4 counts)

The respondent was terminated from the Hillsborough County Sheriff's Office subsequent to sustained allegations of battery, witness tampering, official misconduct, and other agency policy violations. On December 8, 2006, several juvenile inmates became involved in an altercation in the recreation yard. Two of the inmates complained that afterwards the respondent and two other correctional officers struck them several times without provocation. One of the inmates stated that the respondent and another officer struck him numerous times in the face with an open hand. The respondent admitted to slapping the inmate first with an open hand and that another officer pushed him in the chest causing him to fall into a laundry cart. He also stated that at no time did the inmate offer any resistance during the incident. He advised that he and the other officer entered the cell of another inmate and that he put his hand on the inmate's face and pushed him, causing the inmate to fall onto his bed. The respondent also admitted to participating in this type of behavior in the past with other juvenile inmates by slapping them in the face. He also admitted to hitting other juvenile inmates on the arm with shower slides. The respondent further admitted to investigators that he and the other officers conspired to provide false testimony during the internal investigation. Several other inmate witnesses stated that the respondent approached them with yellow pieces of paper and dictated to them what to write regarding this incident. The respondent admitted giving them paper to write their statements; however, he denied telling them what to write. He also admitted that he read these statements and acknowledged that the contents were false but that he submitted them anyway as true witness statements in order to protect himself and the other officers.

Penalty Guideline: Suspension (each count), Suspension to revocation (each count), Suspension to revocation (each count) Staff recommended revocation in this case.

Disciplinary Action by the Commission: The Commission accepted staff's recommendation. One of the other officers voluntarily relinquished his certification, and the third officer requested a formal hearing to have his case heard in front of an administrative law judge.

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

The following is a synopsis of new rules under Rule 11B-27, F.A.C. that went into effect on June 9, 2008 as they relate to officer discipline issues:

- Rule 11B-27.0011(4)(b), F.A.C. was amended to allow Commission staff to charge an officer who has pled guilty to one of the enumerated misdemeanor charges or where a verdict of guilty was rendered after a criminal trial involving one of these misdemeanors, notwithstanding any suspension of sentence or withholding of adjudication.
- Section 316.1935, FS (Fleeing or attempting to elude a law enforcement officer) was removed from the list of enumerated misdemeanor charges since all violations under this section are now felony offenses.
- Section 810.14, FS (Voyeurism) was added to the Commission's list of enumerated misdemeanor charges.
- Section 837.055, FS (False information to law enforcement during investigation) was added to the Commission's list of enumerated misdemeanor charges.
- Rule 11B-27.0011(4)(c)(1), F.A.C. was amended as follows: *Excessive use of force, defined as use of force on a person by any officer that is not justified under Sections 776.05 or 776.07, FS, or a use of force on*

an inmate or prisoner by any correctional officer that would not be authorized under Section 944.35(1)(a), FS. The Recommended Response to Resistance and Levels of Resistance, form CJSTC-85, revised February 7, 2002, hereby incorporated by reference, is a reference tool to evaluate use of force.

- Rule 11B-27.004(9)(d), F.A.C. was added and states that Commission staff shall not issue a Letter of Acknowledgement to a respondent if the penalty guidelines of subsection 11B-27.005(5), F.A.C., specify prospective suspension to revocation as the guideline penalty for the offense.
- Multiple revisions to the penalty guidelines under Rule 11B-27.005(5), F.A.C. You can access all rules in their entirety at the following website address: www.flrules.org.

If you have any issues that you would like to see addressed in upcoming bulletins, 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

CJSTC Compliance Bulletin - Notice of Correction

Editor's Note: The June, 2008 issue of the *Roll Call* contained a reprint of the February 2008 CJSTC *Professional Compliance Bulletin*. Since that time it has been brought to our attention that the fact summary relating to Case No. 20902 was incorrect and the case summary has been retracted by FDLE. As a result, the fact summary relating to Case No. 20902 found in the printed version of the *Roll Call* should be considered as factually incorrect and in error. This case summary has also been removed from the website version of the *Roll Call*. The Association appreciates this error having been brought to our attention.

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