

Professional Compliance Bulletin from Criminal Justice Standards and Training Commission



Professional Compliance Bulletin Issue 30 - May & August 2007



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 10, and August 9, 2007.

Case # 23922 Animal Cruelty

The respondent resigned while under investigation for animal cruelty. On October 5, 2005, a sheriff's deputy responded to the Humane Society regarding a complaint of a beaten dog. Humane Society officials informed the deputy that they responded to a call a few days prior. They stated that the caller witnessed a vehicle parked on the side of the road and that he saw a man exit the woods wearing blue gloves and carrying a baseball bat. Subsequently, the caller recorded the man's tag number, and proceeded to enter the woods where he found a severely beaten bulldog puppy. As a result of severe head trauma, the puppy had to be euthanized. A check of the vehicle's tag number revealed that it was registered to the respondent. The respondent stated to the deputy that the puppy had run away and that he did not know anything about the beating of the dog. During a follow up interview with investigators, the respondent stated that the puppy attacked his wife's cat and killed it and that he was fearful that the dog would become aggressive toward his wife and children. He also confessed that he took the dog out to the woods and beat him with the baseball bat. On June 8, 2006, the respondent entered a plea of nolo contendere to a lesser misdemeanor charge of Cruelty to Animals. Adjudication was withheld and he was placed on probation for one year. He was also ordered to complete 150 hours of community service, to pay \$60 in restitution to the Lake City Humane Society, and to pay \$300 in additional fines.

Penalty Guideline: Suspension to revocation

Staff recommended revocation as a penalty in this case.

Disciplinary Action by the Commission: The Commission accepted staff's recommendation and revoked the respondent's certifications.

Case # 23420 Retail Theft (2 counts)

The respondent resigned subsequent to his arrest on charges of retail theft. On September 3, 2005, a local retailer observed the respondent and his wife taking items and concealing them inside a bag. The respondent exited the store with two bags of merchandise for which he had not paid. Store security stopped him as he approached his (the respondent's) marked patrol unit. When asked for a receipt for the merchandise, the respondent stated that he was going to smoke and that he had not yet paid for the merchandise. He was arrested and charged with retail theft. During the investigation, other items were discovered inside of his vehicle, which appeared to have been taken from other similar stores in the area. The respondent stated to officials that he suffers from a psychological disorder. He subsequently entered into a Deferred Prosecution Agreement with the State Attorney's Office on November 7, 2005. During staff review of this case, it was discovered that the respondent had been arrested in February of 2001 for retail theft after it was determined that he was observed shoplifting from a retailer in Greenacres, Florida. The respondent's employing agency determined that his actions were caused by an adverse reaction to pain medication in combination with a psychological disorder. He also entered into a Deferred Prosecution Agreement with the State Attorney's Office in this case.

Penalty Guideline: Suspension to revocation (each count)

Staff recommended that the Commission impose a ten-month retroactive suspension, a six week prospective suspension, followed by a one-year period of probation. Additionally, staff recommended that the respondent undergo a "fitness for duty" examination by a licensed clinical psychologist prior to the end of the probationary period.

Disciplinary Action by the Commission: Accepted staff recommendation.

Case # 23693 Trespass in an Occupied Structure or Conveyance

The respondent resigned as a result of an investigation into charges of a domestic disturbance and burglary. On April 14, 2006, the respondent went looking for his ex-girlfriend at her apartment. Upon finding her there with another male companion, he pounded on the door, shouted for her, and called her cell phone number. When she did not respond, he pulled off the screen to her window, opened the window by breaking off the thumb screw locks on both sides of the window. He pulled up the blinds and proceeded to argue with his ex-girlfriend. He then threw the screen a short distance away as the argument continued. She stated that she was terrified of him due to his past criminal behavior, abuse of power, and history of retaliation. She was reluctant to pursue any criminal charges in this case; however, the State Attorney's Office filed a charge for Trespass in a Structure or Conveyance. Because the victim was reluctant to assist in the case, the State Attorney's Office and the respondent reached an agreement stipulating that in exchange for his resignation, the case would be dropped, but records would be kept should the respondent seek reemployment as an officer.

Penalty Guideline: Probation to suspension

Staff recommended a one-year retroactive suspension, ten-day prospective suspension and one-year period of probation and provide Commission staff with proof of successful completion of anger management training course prior to the completion of the probationary period.

Disciplinary action by the Commission: Accepted staff recommendation.

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

We have received many inquiries regarding recent legislative changes to the Officers Bill of Rights under Section 112.532(6), Florida Statutes. These changes became effective July 1, 2005. This section of the statute addresses the limitation period for disciplinary action against an officer and reads as follows:

(6) LIMITATIONS PERIOD FOR DISCIPLINARY ACTIONS

- (a) Except as provided in this subsection, no disciplinary action, demotion, or dismissal shall be undertaken by an agency against a law enforcement officer or correctional officer for any act, omission, or other allegation of misconduct if the investigation of such allegation is not completed within 180 days after the date the agency receives notice of the allegation by a person authorized by the agency to initiate an investigation of the misconduct. In the event that the agency determines that disciplinary action is appropriate, it shall complete its investigation and give notice in writing to the law enforcement officer or correctional officer of its intent to proceed with disciplinary action, along with a proposal of the action sought. Such notice to the officer shall be provided within 180 days after the date the agency received notice of the alleged misconduct, except as follows:
1. The running of the limitations period may be tolled for a period specified in a written waiver of the limitation by the law enforcement officer or correctional officer.
 2. The running of the limitations period shall be tolled during the time that any criminal investigation or prosecution is pending in connection with the act, omission, or other allegation of misconduct.
 3. If the investigation involves an officer who is incapacitated or otherwise unavailable, the running of the limitations period shall be tolled during the period of incapacitation or unavailability.

4. In a multijurisdictional investigation, the limitations period may be extended for a period of time reasonably necessary to facilitate the coordination of the agencies involved.
5. The running of the limitations period may be tolled for emergencies or natural disasters during the time period wherein the Governor has declared a state of emergency within the jurisdictional boundaries of the concerned agency.
 - (b) An investigation against a law enforcement officer or correctional officer may be reopened, notwithstanding the limitations period for commencing disciplinary action, demotion, or dismissal, if:
 1. Significant new evidence has been discovered that is likely to affect the outcome of the investigation.
 2. The evidence could not have reasonably been discovered in the normal course of investigation or the evidence resulted from the predisciplinary response of the officer.
 Any disciplinary action resulting from an investigation that is reopened pursuant to this paragraph must be completed within 90 days after the date the investigation is reopened.

If you have questions regarding the application of these limitation periods during your agency internal investigation, we recommend that you consult your agency's legal counsel. Neither the Florida Department of Law Enforcement nor the Criminal Justice Standards and Training Commission can offer legal assistance in these types of matters.

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

Case # 23527 Introduction of Contraband into a Correctional Institution

The respondent was terminated subsequent to an internal investigation which sustained a charge of introduction of contraband into a correctional institution. On March 12, 2006, a Correctional Search Team discovered a weapon, ammunition, and alcoholic beverages inside the respondent's vehicle while conducting a contraband interdiction operation. The vehicle was on state property inside the secured perimeter of the facility.

Penalty Guideline: Revocation

Staff recommended revocation of respondent's correctional certification.

Disciplinary Action by the Commission: Accepted staff recommendation.

Case # 24330 Failure to Make a Use of Force Report

The respondent received a Letter of Counseling as a result of a sustained allegation that he failed to report a use of force incident. On February 3, 2006, the respondent observed another officer during an incident where force was used against an inmate. The inmate claimed that the officer grabbed him around the neck. A medical examination showed that the inmate had four small red marks on the side of his neck. When interviewed, both officers indicated that they did not think the incident involved a use of force; therefore, they did not write a report. The video of the incident seemed to contradict the officers' statements.

Penalty Guideline: Probation to suspension

Staff recommended a five-day prospective suspension.

Disciplinary action by the Commission: Accepted staff recommendation.

Case # 22177 Battery (2 counts)

The respondent received a written reprimand subsequent to his arrest for two counts of battery. On February 28, 2004, a complaint was made alleging that the respondent pushed her to the ground, hit her in the face, and bruised her arms during a physical altercation. On March 20, 2004, another complainant alleged that the respondent punched him in the stomach and pushed him during a verbal altercation between him (the victim) and his ex-girlfriend. On June 30, 2004, the respondent entered into a twelve month deferred prosecution agreement with the State Attorney's Office. He agreed to perform sixteen hours of community service, to complete an anger management course, and to pay \$50 in court costs.

Penalty Guideline: Suspension (each count)

Staff recommended a thirty-day prospective suspension followed by a one-year period of probation following the completion of the suspension and provide proof of successful completion of anger management counseling prior to the end of the probationary period.

Disciplinary action by the Commission: Accepted staff recommendation.

Case # 24010 Theft of Utility Services

The respondent resigned subsequent to his arrest for theft of utility services. On August 8, 2006, a meter reader noticed that the meter seal was cut and observed a 14 gauge copper wire inserted through the bottom of the glass cover stopping the rotation wheel, which notes the kilowatts used per hour. According to estimates by the utility company, the respondent stole approximately \$2,097.35 in utility services. On October 24, 2006, he pled no contest to the charge of theft of utility services and adjudication was withheld. He was placed on probation for one year and was ordered to make restitution and to pay court costs.

Penalty Guideline: Probation to suspension

Staff recommended an eleven month retroactive suspension and a six month prospective suspension followed by a one-year period of probation.

Disciplinary action by the Commission: Rejected staff recommendation and imposed an eleven month retroactive suspension and a two year probationary period.

Case # 24260 Petit Theft

The respondent was terminated pursuant to a sustained allegation for petit theft. On September 7, 2006, a loss prevention officer in a grocery store observed the respondent placing items in a bag and subsequently leaving the store without paying for the items. The items were recovered and the respondent was placed into police custody. The total value of the items was \$82.47. When asked why he stole the items, he stated that he wanted to see if he could get away with it. On October 3, 2006, he pled no contest to petit theft and adjudication was withheld. He was sentenced to six months probation.

Penalty Guideline: Suspension to revocation

Staff recommended a thirty day prospective suspension immediately followed by a one year probationary period and provide staff with proof of successful completion of ethics training.

Disciplinary action by the Commission: Accepted staff's recommendation.



**The PBA
"Support Law Enforcement"
tags are here!**



The Florida PBA "Support Law Enforcement" license tags are now available for purchase at your county tax offices. The proceeds from the sale of this tag go into the Florida PBA Heart Fund to help fallen officers and their families—and it's tax-deductible. So help your fellow law enforcement officers and families out (and show your support for the PBA) by purchasing one or more of these license tags for your vehicle or vehicles.

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

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