

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CRIMINAL JUSTICE STANDARDS)	
AND TRAINING COMMISSION,)	
)	
Petitioner,)	
)	
vs.)	Case No. 96-1692
)	
PHYLLIS BLACKMON, n/k/a)	
PHYLLIS BLACKMON LEDBETTER,)	
)	
Respondent.)	
<hr/>)	

RECOMMENDED ORDER

A formal hearing was held by the Division of Administrative Hearings, before Administrative Law Judge, Daniel M. Kilbride, in Orlando, Florida, on April 1, 1997, and May 22, 1997. The following appearances were entered:

APPEARANCES

For Petitioner:	Richard D. Courtemanche, Jr., Esquire Assistant General Counsel Florida Department of Law Enforcement Post Office Box 1489 Tallahassee, Florida 32302
For Respondent:	Phyllis Blackmon Ledbetter 202 Dalton Drive Oviedo, Florida 32765

STATEMENT OF THE ISSUE

Whether the Respondent is guilty of gross incompetence and falsification of course sheets as alleged in the Administrative Complaint.

PRELIMINARY STATEMENT

Petitioner filed an Administrative Complaint against Respondent on March 21, 1993. On or about April 14, 1993, Respondent completed an Election of Rights form in which she disputed the allegations of fact and requested an administrative hearing pursuant to Section 120.57(1), Florida Statutes.

Petitioner filed an Amended Administrative Complaint against Respondent on June 27, 1995. Thereafter, the case was not forwarded to the Division of Administrative Hearings for formal proceedings until February 20, 1996. Following the completion of discovery, a formal hearing was conducted on April 1 and May 22, 1997.

During the hearing nine exhibits were admitted into evidence on behalf of the Petitioner. At the hearing, the Petitioner presented the testimony of five witnesses: Barbara Sue Bushnell, Georgette Thornton, Pamela Eckler, Laurie Simpson, and James Roach. The Respondent presented the testimony of five witnesses: Belinda Atkins, Terry Johnston, Robert Clark, Jacqueline Miller, and Burton Test. The Respondent also testified in her own behalf.

The transcripts of the proceedings were ordered by the Petitioner, and both transcripts were filed with Division of Administrative Hearings on June 9, 1997 and June 11, 1997, respectively. After the hearing, the parties were granted 10 days after filing of the transcripts in which to file a proposed

recommended order. Petitioner filed its proposed recommended order on June 23, 1997. Respondent has not filed proposed findings of fact as of the date of this order.

FINDINGS OF FACT

Based upon the exhibits received into evidence, the stipulation of the parties, and testimony of the witnesses at the hearing, the following findings of fact are made:

1. The Respondent was certified by the Criminal Justice Standards and Training Commission on April 1, 1987, as an instructor and was issued instructor certificate number 129487.

2. Respondent was employed at Central Florida Criminal Justice Institute located at the Mid-Florida Vocational Technical Institute, beginning in March 1989. During the relevant period, Respondent was employed as Program Director/Coordinator of advanced and specialized training. Respondent was also the Assistant Director of the Academy.

3. Respondent has prior experience as a corrections officer and as a certified probation officer. Respondent received a Masters degree in education and is a certified teacher.

4. In February of 1992, Ron Kazoroski was the Director of the Criminal Justice Institute at the Mid Florida Vo-Tech.

5. Respondent was responsible for initiating night courses at the Institute for the benefit of the officers who worked the second or third shifts. February 1992 was the second time that the Instructor Techniques class had been offered at night.

6. Respondent had planned to be more involved in the instruction of the Instructor Techniques course than she had been in the previous time the course was offered and had scheduled herself to teach several blocks of instruction. However, the week before the course was to start, Respondent was informed that she needed major surgery within two days.

7. Respondent spent Wednesday and Thursday trying to find instructors to cover for her, prior to her scheduled surgery on Friday. Respondent contacted Pam Eckler, an instructor at the academy, to assist her in locating qualified instructors who could teach on short notice. Respondent was trying to prevent the cancellation of the course.

8. On the first night of class Respondent was recuperating from the surgery. Respondent submitted six certificates of absence for the period of January 28 through February 26, 1992.

9. The Instructor Techniques course started on February 3, 1992, and finished on February 28, 1992. The course was scheduled in the evening from 5:30 p.m. to 9:30 p.m.

10. Florida Department of Law Enforcement regulations required the Instructor Techniques course to be 80 hours long, and the class was formatted for that many hours.

11. In February of 1992, Barbara Bushnell was a Corrections Officer employed by Orange County Corrections and assigned to the Training and Staff Development Department. Bushnell was assigned to the Academy prior to the Instructor Techniques class in February of 1992. Bushnell was certified as an instructor by the Criminal Justice Standards and Training Commission.

12. In February of 1992, Pamela Eckler was a Correctional Training Supervisor for Orange County Corrections, Department of Training and Staff Development. Eckler was also an instructor, certified by the Criminal Justice Standards and Training Commission.

13. Eckler was asked by the Respondent if she was interested in teaching the evening Instructor Techniques course in February of 1992. Eckler agreed, and was offered the opportunity to teach the classes of her choice. Eckler decided to teach Adult Learning Theory on February 3, 1992, from 7:30 p.m. to 9:30 p.m. and Liability and Ethics on February 4, 1992, from 5:30 p.m. to 9:30 p.m.. On February 21 and 25, 1992, Eckler was assigned to monitor the student presentations from 5:30 p.m. to 9:30 p.m.

14. On February 3, 1992, Eckler received a telephone call from the Respondent who had just had surgery on Friday, asking her to move her block from 7:30 p.m. to 5:30 p.m. Respondent also asked Eckler to give the class a short orientation to the

course. Eckler taught her two-hour segment and allowed the students to leave on February 3rd at 7:30.

15. On February 4, 1992, Eckler taught a four-hour block on Liability and Ethics. Eckler utilized the whole time period, and the students were not let out early.

16. On February 20, 1992, Respondent called Eckler and told her that she was not needed to teach on February 21 because the Respondent had given the class an off-campus assignment. Eckler did not teach the class on February 21, 1992.

17. Eckler was scheduled to monitor the students' presentations on February 25, 1992, from 5:30 p.m. to 9:30 p.m. Several students had a problem with the lesson plan development. Eckler characterized the problems with the lesson plans as major, with the problems being in different areas.

18. In February of 1992, Georgette Thornton, a Lieutenant with Orange County Corrections and a certified instructor by the Criminal Justice Standards and Training Commission, was asked if she was interested in teaching part of the Instructor Techniques course. Thornton called the Respondent who indicated that she needed an instructor for February 10, 11, and 12, 1992, as an emergency replacement. Thornton agreed to teach two hours on February 10, four hours on February 11, and four hours on February 12th.

19. Thornton found out from the students that it was the second week of class, and the students were not aware who the

Respondent was. The students did not know what their final project was. Thornton talked to the Respondent, explaining her observations. She asked her to speak to the class about their responsibilities for their final project.

20. Respondent appeared at the class on February 11th and told the class what their final project was. Respondent also covered part of the class material that Thornton was supposed to instruct. Thornton then elaborated on what Respondent had said.

21. Thornton did not have sufficient materials given to her by Respondent to fill up the four-hour time block she was scheduled to teach. She did not have an adequate opportunity to supplement the materials given to her by Respondent, since they were given to her on Friday and the class was on Monday. Respondent told Thornton in front of the class to cover the rest of the material and to allow the students to leave early.

22. Thornton covered everything that was in the guide and released the students at 7:30 p.m. on February 11th. Thornton also gave them a thorough review on the 12th of the items that they could expect on the exam. Thornton released the students at 7:00 p.m.

23. Thornton decided to write a memo to the director. Thornton was concerned about the poor organization of the class and the lack of guidance given the students by Respondent. Thornton did not feel that the students were getting the amount of instruction they deserved in the class.

24. A week or two before the class was scheduled to start, Bushnell was asked by the Respondent to teach a portion of the Instructor Techniques class being offered in February of 1992. Bushnell was asked to replace an instructor who had an emergency situation and could not teach.

25. Bushnell was asked to teach Lesson Plan Development on February 13 and 14, from 5:30 p.m. to 9:30 p.m. Bushnell had in her possession a copy of the goals and objectives of the Instructor Techniques course, which was part of the materials she previously had in her possession. She also had in her possession the FDLE Instructor Techniques Instructor Guide, which had all of the different areas to be covered in the course, including goals and objectives. Bushnell was given an ample amount of time to prepare for her block of instruction.

26. Bushnell taught the Instructor Techniques class from 5:30 p.m. to 9:30 p.m. on February 13, 1992. Bushnell placed posters on the wall showing the two types of outlines for lesson plan development. She was informed by the students that the Respondent had already told them that the outline format was not going to be used. Bushnell informed them that there were several different types of formats, and that she would be instructing them using the outline format. The outline format was taken from the Instructor Techniques Instructor Guide.

27. On February 14, 1992, Bushnell met with the Respondent prior to class to sign her contract for teaching the class. She

also discussed details concerning the expectations of the class. The Respondent told Bushnell that the students were used to having some time during lesson plan development to work on their lesson plan outside of class. She expected Bushnell to give the students an outside assignment.

28. Bushnell covered the materials in the outline and instructed her class until 9:30 p.m.

29. Bushnell did not have enough time to cover all of the material she was supposed to cover. The students stated that they were having trouble with the lesson plans and requested her help in their development. Bushnell offered to help them on their lesson plans during the time she was scheduled to teach.

30. Bushnell had concerns about how the class was being conducted and wrote a letter to Director Kazoroski, stating her concerns with the Instructor Techniques class. The students were upset due to a lack of direction being given by the Respondent. The students were also confused due to misunderstandings on how the lesson plan should be written.

31. In February of 1992, Jacqueline Miller was an instructor in the Instructor Techniques course offered that month that the Respondent coordinated. Miller was asked by the Respondent to critique the students making their presentations. Miller was not required to do any preparation to complete her instruction, since it only involved critiquing the students.

32. Miller contracted to critique the students for twelve

hours between February 24 and 27, 1992. Miller utilized the maximum amount of time allowed for each day that she was in class. Although the skill level of the students varied considerably, none received a failing grade.

33. On March 2, 1992, Eckler, Thornton, and Bushnell met with Kazoroski to discuss the problems with the class.

34. The students were confused because Bushnell had taught Lesson Plan Development using the guidelines from the Instructor Guide, but the Respondent instructed the class to do it differently. This inconsistency confused them. Respondent did not assist them in their lesson plan development.

35. The course was not well organized. The class was given a week to work on their lesson plans at home, with no one available to assist them, and they were confused about how to complete them.

36. The Respondent's instructor skills for this class were criticized. However, Respondent's skills were not evaluated.

37. On several occasions, the students were allowed to leave early from class. The Respondent would tell the class that they had assignments to do at home or out of class.

38. The instructor notes to the Instructor Guide state that

[T]his instructor guide was developed with the intention of providing the basic instructional material for this course. The individual instructor will find that only the minimum has been provided. None of the blocks of instruction provide the entire material for the topic being instructed. Each instructor is expected to use the provided material as a starting point and a reference source.

39. The instructor notes to the Instructor Guide state that [E]ight hours have been provided for lesson plan development in class. This block was provided to allow the instructor to assist the students in their individual development of lesson plans. This does not suggest that students will not be required to work outside the classrooms.

40. It was the policy of the Criminal Justice Institute to keep class documents, including the attendance sheets, from every class that was offered at the institute. The documents were kept in a file cabinet in the director's office and were supposed to be kept in a secure place. The attendance sheets were required for FDLE audits to show that each student attended the requisite number of hours for the class.

41. The records of the Instructor Techniques course offered at Mid-Florida Vo-Tech in February 1992, were reviewed including the overall attendance records for the Instructor Techniques class, which were signed by the Respondent. It was the policy of the Criminal Justice Institute that 50 minutes of instruction, with a 10 minute break, constitute 1 hour of credit.

42. The class was given credit for 80 hours attended. However, there were 16 hours of class cancelled by Respondent, including the class on February 28, 1992, when that class was cancelled by Respondent because the course was over. All of the students received credit for four hours on February 3, 1992, when Eckler allowed the students to leave after two hours. For February 11 and 12, 1992, Respondent gave each student credit for

four hours, although Thornton allowed the students to leave after two hours on February 11, and after three hours on February 12. The students were given credit for four hours for February 19, 20, and 21, 1992, for lesson plan development that was done outside the classroom.

43. The FDLE requirements are that the Instructor Techniques course allows for eight hours of lesson plan development in class. It was usual for an academy to have an instructor available during the lesson plan development to answer any questions or concerns of the students while they worked on their lesson plans in class.

44. FDLE rules stated that if a student missed over ten percent of the class, that student was deemed to have not successfully passed the class.

45. The early release hours and the out-of-class assignments given to the students were not reflected on the overall attendance sheet signed by the Respondent.

CONCLUSIONS OF LAW

46. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this cause, pursuant to Section 120.57(1), Florida Statutes.

47. Section 11B-20.001(1), Florida Administrative Code (1991), states that

[E]xcept as otherwise provided herein or by law, all persons who instruct Criminal Justice Standards and Training Commission approved courses at or through a certified criminal justice training school must be certified by the Commission.

48. Section 11B-20.0012, Florida Administrative Code (1991), establishes under what circumstances a CJSTC-certified instructor may lose his or her certification:

The certification of a criminal justice instructor shall be revoked if the instructor fails to maintain any of the requirements set forth in 11B-20.001(1), (3)(a)-(b), or, who:

(a) Willfully compromises the security and confidentiality of examinations or grading keys developed and utilized in Commission-approved criminal justice training courses.

(b) Willfully compromises or circumvents the trainee attendance requirements set forth in 11B-31.001, Florida Administrative Code.

(c) Willfully compromises or circumvents the trainee performance requirements set forth in 11B-31.002, Florida Administrative Code.

(d) Intentionally and materially falsifies criminal justice training documentation.

(e) Commits an act or acts establishing gross incompetence, as determined by the Commission.

(f) Commits an act or acts establishing a lack of good moral character as defined in Rule 11B-27.0011(4), Florida Administrative Code.

49. Section 11B-31.001(1), Florida Administrative Code, states that

[E]ach trainee shall be required to attend all sessions of any training course in which he/she is enrolled except for absences approved by the training center director. No trainee shall be considered to have successfully completed a training course if his/her absences exceed ten percent of the hours of basic recruit instruction, advanced or career development training courses.

50. Rule 11B-27.0011(4), Florida Administrative Code (1991), provides a definition of "good moral character" for purposes of implementation of disciplinary action upon Florida law enforcement, correctional, and correctional probation officers. The rule stated in pertinent part:

(4) For the purposes of the Commission's implementation of any of the penalties enumerated in Section 943.1395(6) or (7), F.S., a certified officer's failure to maintain good moral character, as required in Section 943.13(7), F.S., is defined as:

(c) The perpetration by the officer of an act or conduct which:

1. significantly interferes with the rights of others; or
2. significantly and adversely affects the functioning of the criminal justice system or an agency thereof; or
3. causes substantial doubts concerning the officer's moral fitness for continued service; . . .

51. Section 11B-27.005(3)(c), Florida Administrative Code (1991) listed certain acts or conduct that do not constitute a crime, but which are specifically included in Section 11B-

27.0011(4)(c), Florida Administrative Code (1991). One such act or conduct that is listed is "False Reports, Statements, or Falsification of Application."

52. In Florida Board of Bar Examiners RE: G. W. L., 364 So. 2d 454 (Fla. 1978), the Florida Supreme Court stated:

In our view a finding of a lack of 'good moral character' should not be restricted to those acts that reflect moral turpitude. A more appropriate definition of the phrase requires an inclusion of acts and conduct which would cause a reasonable man to have substantial doubts about an individual's honesty, fairness, and respect for the rights of others and for the laws of the state and nation.

See also White vs. Beary, 237 So. 2d 263 (Fla. 1st DCA 1970).

53. Black's Law Dictionary defines "Incompetency" as "Lack of ability, legal qualification, or fitness to discharge the required duty." Black's Law Dictionary further defines "Gross" as "out of all measure; beyond allowance; flagrant; shameful; as a gross dereliction of duty, a gross injustice, gross carelessness, or negligence. Such conduct as is not to be excused."

54. One of the few definitions of gross incompetence in the context of a professional license is found in Everett vs. Gillespie, et al., 63 So. 2d 903 (Fla. 1953), where the Florida Supreme Court stated that "[G]ross incompetence imports a lack of diligence or competence with reference to discharging legal or professional obligations or duties."

55. In Griffin vs. School Board of Dade County, 497 So. 2d 913, (footnote 1) (Fla. 3rd DCA 1986), the Third District Court

of Appeal produced a helpful definition in the context of an instructor/student relationship:

[I]ncompetence is the inability or lack of fitness to discharge the required duty as a result of inefficiency, i.e., the repeated failure on the part of the teacher to communicate with and relate to the children in the classroom to such an extent that pupils are deprived of minimal educational experience, or incapacity, i.e., the lack of emotional stability, adequate physical ability, general educational background or adequate command of the teacher's area of specialization.

56. This proceeding involves disciplinary action against Respondent's certification as an instructor. Therefore, the burden of proof to establish facts upon which the Petitioner seeks to discipline Respondent's certification is on the Petitioner. Balino vs. Dept. of Health and Rehabilitative Services, 348 So. 2d 349 (Fla. 1st DCA 1977). The charges must be proven by the Petitioner through the introduction of clear and convincing evidence. Ferris vs. Turlington, 510 So. 2d 292 (Fla. 1987).

57. In the instant case, clear and convincing evidence established that on or about January 29, 1992, Respondent was ordered by her doctor to have emergency surgery performed on the Friday before the Instructor Techniques class was to begin. Respondent called Eckler, a colleague who was already scheduled to teach part of the class. Respondent requested help in finding emergency replacements for herself, and Eckler recommended Bushnell and Thornton. Respondent contracted to have them teach within days of their first classes.

58. Respondent provided Thornton with the Instructor Guide outline. The Instructor Guide stated that the outline was a minimum, and instructors would have to provide additional information to complete their instructor. Since there was little time before the class began, Respondent told her to cover the minimum in the book and let the class go home early.

59. Respondent did the same thing for Eckler. Respondent called her on the day she was to teach the second half of the class and told her she was recovering from surgery. Respondent asked her to move her class up, cover the orientation material and Eckler's topic, then let the class go home early.

60. Respondent, as coordinator, was responsible with providing the students with an orientation, and providing them with what expectations they were responsible for. However, due to her recent surgery, it was the second week of class and at Thornton's request that Respondent made her first appearance in the class.

61. Bushnel was contracted to teach the Lesson Plan Development portion of the Instructor Techniques class. Bushnell used all of her eight hours of instruction, but spent part of her time "starting over," since the Respondent had already told the class that she wanted the outlines done a different way than Bushnell was teaching. Bushnell had no notice of this, and the Respondent's impromptu instruction the week before confused the

class to the point that it was a major factor for the rest of the class. This was not based on the inability of Bushnell, but on the conflicting information given by Respondent during a different part of the class. However, the evidence did not indicate if there was a "correct" outline form which must be followed.

62. The Respondent then decided that in order to give students time to prepare the lesson plan outlines, she cancelled two classes and permitted the students to work on them at home. Respondent did give the students credit for it on the attendance sheet. Although this practice was not favored, the evidence was not clear and convincing that the instructor was forbidden to follow this practice.

63. Respondent was responsible for keeping documentation for the Criminal Justice Standards and Training Commission. This is the relationship between training academies and the Commission; the academies are independent, but must provide documentation to the Commission to show that the Commission guidelines are met. The Instructor Techniques course was designated at 80 hours of instruction.

64. Respondent was not in a position to ensure that this requirement was met. Respondent hired several instructors at the last minute due to a medical emergency. When they said that they were unable to meet the time requirement because of a lack of preparation, she permitted them to let the students go early.

One-quarter of the 80 hours was cancelled either at the Respondent's direction or with her permission. The Respondent filed an attendance sheet, ostensibly for review and audit by the Commission, showing that all of the students had met the ten percent requirement. The fact that approximately 26 hours had been cancelled was not reflected on the attendance sheet. However, attendance records showed that eight students attended all 80 hours, and the least number of hours attended was 72, the exact minimum under Section 11B-31.001, Florida Administrative Code.

65. Respondent testified that she was sick and that she was never notified of the problems the class was experiencing. However, she knew or should have known that her lack of effort on this course affected its quality.

66. Paragraph 2(a) of the Administrative Complaint alleges that on or between February 2 and February 28, 1992, the Respondent, as coordinator of the Instructor Techniques course, committed an act or acts which constituted gross incompetence. The facts tendered to prove these allegations are insufficient to prove a violation of Section 11B-20.0012(1)(e), Florida Administrative Code. Respondent's handling of this class was certainly less than professional which resulted in a poor class experience. However, it does not rise to the level of "gross incompetence."

67. Paragraph 2(b) of the Administrative Complaint alleges that on or about March 12, 1992, Respondent knowingly falsified attendance documents by misrepresenting the course hours attended. The proof is not clear and convincing that these allegations are a violation of Section 11B-20.0012(1)(b), Florida Administrative Code, in that Respondent willfully compromised or circumvented the trainee attendance requirements as set forth in Section 11B-31.02, Florida Administrative Code. The evidence is insufficient to prove the allegations are also a violation of Section 11B-20.0012(1)(d), Florida Administrative Code, in that they were an intentional and material falsification of criminal justice training documentation.

68. The evidence is insufficient to prove that the allegations contained in Paragraph 2(b) of the Amended Administrative Complaint violate Section 11B-20.0012(1)(f), Florida Administrative Code, in that they indicate a failure to maintain good moral character as defined in Section 11B-27.0011(4), Florida Administrative Code.

69. Clear and convincing evidence was lacking to establish that the Respondent committed misconduct or gross incompetence and a lack of good moral character, under applicable case law and administrative rules.

RECOMMENDATION

Upon the foregoing findings of fact and conclusions of law,
it is

RECOMMENDED that the Respondent be found not guilty of
violations of Sections 11B-20.0012(1)(b), (d), (e), and/or (f),
Florida Administrative Code, and that the Amended Administrative
Complaint be dismissed.

RECOMMENDED this 31st day of July, 1997, at Tallahassee,
Leon County, Florida.

DANIEL M. KILBRIDE
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 31st day of July, 1997.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.