

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF LAW ENFORCEMENT, )  
CRIMINAL JUSTICE STANDARDS AND )  
TRAINING COMMISSION, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 98-2918  
 )  
MICHELLE MANN, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on January 25, 1999, by video teleconference at Fort Lauderdale, Florida, before Susan B. Kirkland, a duly designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: James D. Martin, Esquire  
Department of Law Enforcement  
Post Office Box 1489  
Tallahassee, Florida 32302

For Respondent: No appearance at hearing.

STATEMENT OF THE ISSUES

Whether Respondent violated Sections 943.1395(6), (7), and 943.13(7), Florida Statutes, and Rules 11B-27.0011(4)(c) and 11B-20.0012(1)(f), Florida Administrative Code.

PRELIMINARY STATEMENT

On December 8, 1997, Petitioner, Department of Law

Enforcement, Criminal Justice Standards and Training Commission (Department), served Respondent, Michelle Mann (Mann), with an Administrative Complaint, alleging that Mann engaged in an unprofessional relationship with a community controllee in violation of Sections 943.1395(6) and (7) and 943.13(7), Florida Statutes, and Rules 11B-27.0011(4)(c) and 11B-20.0012(1)(f), Florida Administrative Code. Mann filed an Election of Rights form, stating that she disputed the allegations contained in the Administrative Complaint and requested an administrative hearing. The case was forwarded to the Division of Administrative Hearings for assignment to an Administrative Law Judge on July 1, 1998.

The final hearing was scheduled for October 19, 1998. On October 14, 1998, Petitioner filed a Motion for Continuance, which was granted, and the final hearing was rescheduled for January 25, 1999.

Respondent was provided notice of the final hearing by Order Granting Continuance and Rescheduling Hearing dated November 9, 1998. Neither Respondent nor a representative for Respondent appeared at the final hearing.

At the final hearing, Petitioner called Dorothy Belcher and Dwight Williams as its witnesses. Petitioner's Exhibit 1 was admitted in evidence.

The transcript was filed on February 24, 1999. On March 4, 1999, Petitioner filed its Proposed Recommended Order which has been considered in rendering this Recommended Order. Respondent

did not file a proposed recommended order.

#### FINDINGS OF FACT

1. Respondent, Michelle Mann (Mann), was certified by the Petitioner, Department of Law Enforcement, Criminal Justice Standards and Training Commission (Department) on October 11, 1991, and was issued Correctional Probation Officer Certificate Number 122933 and Instructor Certificate Number 595-40-7895.

2. Mann was employed by the Florida Department of Corrections as a correctional probation officer in December 1994 until her resignation in February 7, 1997.

3. Dwight Williams, aka Dwight Moment is an inmate with the Florida Department of Corrections.

4. In December 1994, Dwight Williams was on probation with the Florida Department of Corrections for the charge of conspiracy to traffic cocaine. Mann was assigned as Mr. Williams' probation officer on December 18, 1994. This was the first time that Mr. Williams and Mann had met.

5. From December 1994 through December 1996, Mann was Mr. Williams' supervising probation officer.

6. Between December 1994 and November 27, 1996, Mann initiated and engaged in a physical relationship with Mr. Williams, which included hugging, kissing, and sexual relations. During this time, Mann and Mr. Williams went to hotel rooms and had sexual relations between fifteen and twenty times.

#### CONCLUSIONS OF LAW

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

8. The Department has the burden to establish the allegations in the Administrative Complaint by clear and

convincing evidence. Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

9. Section 943.13(7), Florida Statutes, requires that correctional officers have good moral character.

10. Rule 11B-27.0011(4), Florida Administrative Code, defines "good moral character" for the purposes of implementation of disciplinary action against Florida correctional officers. This rule section was in effect at the time the Mann was alleged to have had a sexual relationship with Mr. Williams. The rule provides:

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

\* \* \*

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

\* \* \*

3. Having an unprofessional relationship with an inmate, detainee, probationer, or parolee, or community controllee. An unprofessional relationship is defined as:

\* \* \*

b. engaging in physical contact which is prohibited by law or rule.

11. Rule 33-4.002, Florida Administrative Code, sets for the rules of conduct for Department of Correction employees. Subsection (27) provides:

(27) Employees shall maintain a professional relationship with all persons in the custody or under the supervision of the Department, and their immediate family or visitors. No personal or business relationships are permitted. Marriages between employees and inmates are not permitted.

12. Mann engaged in a personal relationship with Mr. Williams which was prohibited by Rule 33-4.002(27), Florida Administrative Code. Her relationship was unprofessional as defined by Rule 11B-27.0011(4), Florida Administrative Code. Petitioner has established by clear and convincing evidence that Mann has failed to maintain good moral character within the meaning of Section 943.13(7), Florida Statutes, and Rule 11B-27.0011(4)(c), Florida Administrative Code.

13. Rule 11B-20.0012(1)(f), Florida Administrative Code, provides that the certification of a criminal justice training instructor shall be revoked if the instructor "commits an act or acts establishing a 'lack of good moral character' as defined by Rule 11B--27.0011(4), F.A.C."

14. Section 943.1395(7), Florida Statutes, provides:

(7) Upon a finding by the commission that a certified officer has not maintained good moral character, the definition of which has been adopted by rule and is established as a statewide standard, as required by s. 943.13(7), the commission may enter an order imposing one or more of the following penalties:

- (a) Revocation of certification.
- (b) Suspension of certification for a period not to exceed 2 years.
- (c) Placement on probationary status for a period not to exceed 2 years, subject

to terms and conditions imposed by the commission. Upon the violation of such terms and conditions, the commission may revoke certification or impose additional penalties as enumerated in this subsection.

(d) Successful completion by the officer of any basic recruit, advanced, or career development training or such retraining deemed appropriate by the commission.

(e) Issuance of a reprimand.

15. Rule 11B-27.005(5), Florida Administrative Code, sets forth the range of penalties for violations committed by a certified officer. The recommended penalty for a unprofessional conduct with an inmate or probationer is revocation of the officer's certification.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED a Final Order be entered revoking Michelle F. Mann's Correctional Probation Certificate Number 122933 and Instructor Certificate Number 595-40-7895.

DONE AND ENTERED this 22nd day of March, 1999, in Tallahassee, Leon County, Florida.

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SUSAN B. KIRKLAND  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675 SUNCOM 278-9675  
Fax Filing (850) 921-6847  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings

this 22nd day of March, 1999.

COPIES FURNISHED:

A. Leon Lowry, II, Program Director  
Division of Criminal Justice  
Professionalism Services  
Department of Law Enforcement  
Post Office Box 1489  
Tallahassee, Florida 32302

Michael Ramage, General Counsel  
Department of Law Enforcement  
Post Office Box 1489  
Tallahassee, Florida 32302

James D. Martin, Esquire  
Department of Law Enforcement  
Post Office Box 1489  
Tallahassee, Florida 32302

Michelle Mann  
1556 Northwest 5th Street  
Fort Lauderdale, Florida 33311

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.