

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF LAW )  
ENFORCEMENT, DIVISION OF )  
CRIMINAL JUSTICE STANDARDS )  
AND TRAINING COMMISSION, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 98-4558  
 )  
DAVID BARNARD, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings, conducted the final hearing in Tampa, Florida, on May 20, 1999.

APPEARANCES

For Petitioner: Richard D. Courtemanche, Jr.  
Assistant General Counsel  
Department of Law Enforcement  
Post Office Box 1489  
Tallahassee, Florida 32302-1489

For Respondent: David Barnard, pro se  
Post Office Box 360971  
Melbourne, Florida 32936-0971

STATEMENT OF THE ISSUE

The issue is whether Respondent is guilty of failing to maintain good moral character and, if so, what penalty should be imposed.

### PRELIMINARY STATEMENT

As amended at the final hearing to correct an erroneous date and erroneous citation to a rule, the Amended Administrative Complaint, dated April 17, 1998, alleges that Respondent was a certified law enforcement officer, holding license number 102033.

The Administrative Complaint alleges that, on December 11, 1991, Respondent violated a domestic violence restraining order and, in so doing, failed to maintain good moral character, as required by Section 943.13(7), Florida Statutes, and thus violated Section 943.1395(6) and (7), Florida Statutes, and Rule 11B-27.0011(4)(c), Florida Administrative Code.

Respondent requested a formal hearing.

At the hearing, Petitioner called one witness and offered into evidence three exhibits, which were all admitted. Respondent called one witness and offered into evidence no exhibits.

The court reporter filed the Transcript on July 6, 1999.

### FINDINGS OF FACT

1. Petitioner issued Respondent law enforcement certificate number 102033 on December 3, 1989. Respondent has remained certified continuously since that date.

2. Respondent's law enforcement experience includes a related assignment while serving in the United State Marine Corps. He then worked as a deputy sheriff and police officer in Los Angeles, California.

3. In 1989, Respondent was employed by the Tampa Police Department for three or four months, and, in 1990, he was employed by the Cocoa Police Department for two years. For the last seven years, Respondent has been employed outside of law enforcement; currently, he is a sales manager at a Chevrolet dealership in Cocoa.

4. While working for the Cocoa Police Department, Respondent continued to reside in the Tampa area, where his wife and three children also resided. On November 20, 1991, pending the later entry of a final dissolution decree, a circuit judge in Tampa entered an Injunction for Protection from Domestic Violence. The injunction ordered Respondent and his then-wife "from entering the dwelling, or from entering upon the curtilage of the dwelling of the other . . . ." The injunction warned that an "intentional violation" of its provisions "shall constitute contempt of court, punishable by incarceration and/or fine." Respondent was six feet tall and 220 pounds, and his then-wife was five feet, three inches tall and 115 pounds.

5. On December 11, 1991, Respondent intentionally entered the driveway of the townhouse at which his then-wife was residing. A sheriff's deputy responding to a telephone call from Respondent's then-wife saw her in the driver's seat of her vehicle, parked in the driveway, and Respondent standing next to her holding the top of the door, so as to prevent her from closing the door. Respondent and his then-wife were arguing.

6. The deputy arrested Respondent. A judge revoked bail on various criminal charges arising out of an earlier altercation between Respondent and his then-wife. Respondent remained in jail for 18 months awaiting trial on these charges. At trial, he was acquitted of all but two charges--trespassing and battery for grabbing the hands of his then-wife--but the court withheld adjudication of guilt on these charges.

#### CONCLUSIONS OF LAW

7. The Division of Administrative Hearings has jurisdiction over the subject matter. Section 120.57(1), Florida Statutes. (All references to Sections are to Florida Statutes. All references to Rules are to the Florida Administrative Code.)

8. Section 943.13 imposes the requirement of "good moral character" upon all persons holding certificates as law enforcement officers.

9. Section 943.1395(6) and (7) provide:

(6) The commission shall revoke the certification of any officer who is not in compliance with the provisions of s. 943.13(4) or who intentionally executes a false affidavit established in s. 943.13(8), s. 943.133(2), or s. 943.139(2).

(a) The commission shall cause to be investigated any ground for revocation from the employing agency pursuant to s. 943.139 or from the Governor, and the commission may investigate verifiable complaints. Any investigation initiated by the commission pursuant to this section must be completed within 6 months after receipt of the completed report of the disciplinary or internal affairs investigation from the employing agency or Governor's office. A verifiable complaint shall be completed

within 1 year after receipt of the complaint. An investigation shall be considered completed upon a finding by a probable cause panel of the commission. These time periods shall be tolled during the period of any criminal prosecution of the officer.

(b) The report of misconduct and all records or information provided to or developed by the commission during the course of an investigation conducted by the commission are exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and, except as otherwise provided by law, such information shall be subject to public disclosure only after a determination as to probable cause has been made or until the investigation becomes inactive.

(c) When an officer's certification is revoked in any discipline, his or her certification in any other discipline shall simultaneously be revoked.

(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 a 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.

10. Rule 11B-27.0011(4)(c) provides that a failure to maintain good moral character includes:

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

1. Excessive use of force.
2. Misuse of official position, as defined by Section 112.313(6), F.S.
3. Having an unprofessional relationship with an inmate, detainee, probationer, or parolee, or community controllee. An unprofessional relationship is defined as:
  - a. Having written or oral communication that is intended to facilitate conduct which is prohibited by Rule Chapter 11B-27, F.A.C.
  - b. Engaging in physical contact which is prohibited by law or rule.
4. Sexual harassment involving physical contact or misuse of official position.
5. Engaging in sex while on duty.
6. False statements.
7. Conduct which violates the standards of test administration, such as communication with any other examinee during the administration of the examination; copying answers from another examinee, or intentionally allowing one's answers to be copied by another examinee during the administration of the examination pursuant with Rule 11B-30.009(3)(b), F.A.C.
8. Any other conduct which subverts, or attempts to subvert, the Criminal Justice Standards and Training Commission, criminal justice training school, or employing agency examination process pursuant to Rule 11B-30.009(2), F.A.C.

11. In 1991, Rule 11B-27.0011(4)(c) provided that a failure to maintain good moral character included:

The perpetuation by the officer of an act or conduct which causes substantial doubts concerning the officer's honesty, fairness, or respect for the rights of others or for the laws of the state and nation, irrespective of whether such act or conduct constitutes a crime.

12. The question whether a person has good moral character is a fact question. See, e.g., Albert v. Florida Department of

Law Enforcement, Criminal Justice Standards and Training Commission, 573 So. 2d 187 (Fla. 3d DCA 1991).

13. Petitioner must prove the material allegations by clear and convincing evidence. Department of Banking and Finance v. Osborne Stern and Company, Inc., 670 So. 2d 932 (Fla. 1996) and Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

14. Although the violation of a court order, especially one restraining domestic violence, is a grave matter, absence of good moral character would normally require examination of the circumstances of the violation and consideration of the violation in the context of the officer's professional career and life. However, Petitioner has established a lack of moral character with substantially less proof, based on Petitioner's reliance of the former rule that was in effect at the time in question.

15. Rule 11B-27.005(3) sets forth the disciplinary guidelines. Formerly, when the rule addressed the now-eliminated basis for proving a lack of moral character, on which Petitioner relies in this case, Rule 11B-27.005(3)(c) authorized any penalty from a reprimand through revocation.

16. There are no aggravating circumstances in this case. As already noted, the record is not especially detailed concerning the circumstances surrounding Respondent's violation of the court's injunction. Among other things, it is impossible to assess the credibility of Respondent's claim that his then-wife summoned him to her residence to cause him to violate the

injunction. Likewise, it is impossible to assess the extent to which a court may have found facts concerning Respondent's acts on the date that he violated the court injunction. Based on the present record and existing circumstances, the most severe penalty should be a reprimand.

RECOMMENDATION

It is

RECOMMENDED that the Criminal Justice and Training Commission enter a final order finding Respondent guilty of failing to maintain good moral character and reprimanding his certificate.



DONE AND ENTERED this 29th day of July, 1999, in  
Tallahassee, Leon County, Florida.

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ROBERT E. MEALE  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 29th day of July, 1999.

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 must be filed with the agency that will issue the final order in this case.