

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

FLORIDA DEPARTMENT OF LAW )  
ENFORCEMENT, CRIMINAL JUSTICE )  
STANDARDS AND TRAINING COMMISSION, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 98-4977  
 )  
KEITH R. DELANO, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on March 11, 1999, at Fort Lauderdale, Florida, before Claude B. Arrington, a duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Karen D. Simmons, Esquire  
Office of the General Counsel  
Florida Department of Law Enforcement  
Post Office Box 1489  
Tallahassee, Florida 32302-1489

For Respondent: C. Michael Cornely, Esquire  
Hartman and Cornely, P.A.  
10680 Northwest 25th Street, Suite 200  
Miami, Florida 33172

STATEMENT OF THE ISSUES

Whether Respondent, a certified law enforcement officer, failed to maintain good moral character as alleged in the Amended Administrative Complaint.

PRELIMINARY STATEMENT

On December 19, 1995, Petitioner filed an Administrative Complaint against Respondent that contained certain factual allegations pertaining to sexual misconduct with his adult daughter and, based on those factual allegations, charged that Respondent had failed to maintain good moral character. Respondent timely denied the allegations of the Administrative Complaint. On November 6, 1998, the matter was referred to the Division of Administrative Hearings. On March 8, 1998, Petitioner moved for leave to amend the Administrative Complaint to correct certain scrivener's errors, which did not change the material allegations of the Administrative Complaint. The motion was granted without objection.

The Administrative Complaint, as amended, charged that Respondent violated the provisions of Sections 943.1395(6) and/or (7), Florida Statutes, and Rule 11b-27.0011(4)(a) and/or (b) and/or Rule 11b-20.0012(1)(f), Florida Administrative Code, by failing to maintain the qualifications established in Section 943.13(7), Florida Statutes, which requires a certified law enforcement officer to have good moral character.

At the formal hearing, Petitioner presented the testimony of Shannon Delano and Detective Deborah Cox. Ms. Delano is Respondent's daughter. Detective Cox is employed by the Broward County Sheriff's office in its sex crimes unit. Petitioner offered four exhibits, two of which were accepted into evidence

and two of which were rejected. Respondent testified on his own behalf and presented the additional testimony of David Ward, the owner of an private investigative and security company that employs Respondent. Respondent presented one composite exhibit, which was accepted into evidence.

A transcript of the proceedings has been filed. The Petitioner and Respondent filed proposed recommended orders, which have been duly-considered by the undersigned in the preparation of this Recommended Order.

#### FINDINGS OF FACT

1. Respondent was certified by the Petitioner on April 2, 1982, and was issued Law Enforcement and Instructor Certificate Number 124699.

2. Respondent was employed by the Miami Dade Police Department from April 2, 1982, until his employment was terminated as a result of the incident at issue in this proceeding. Respondent had a good record while working for the Miami Dade Police Department. He earned several commendations and received performance evaluations of satisfactory or above.

3. Respondent is the biological father of Shannon Delano, a female born March 10, 1973.

4. Shannon's parents divorced when she was four, and her mother was awarded primary custody of Shannon and of Shannon's twin sister. In 1981, Respondent moved to Florida. As a consequence of the divorce and of Respondent's move to Florida,

Shannon seldom saw her father while she was growing up. Shannon maintained periodic telephone contact with him over the years and visited him in Florida in 1992, while she was on Spring break. They had a pleasant visit on that occasion.

5. After he moved to Florida, Respondent married for the second time to a woman named Patrice. Respondent and Patrice had a son named Sean.

6. Shannon joined the United States Air Force on October 15, 1992. Her permanent assignment was as a member of the military police at Langley Air Force Base in Virginia. In 1993, she was temporarily assigned to duty in the United Arab Emirates (UAE) as a support person for Desert Storm. While in the UAE, Shannon talked to Respondent occasionally by telephone.

7. While she was in the UAE, Shannon and Respondent agreed that she would visit Respondent and Sean when she returned to the United States from the UAE. Respondent and Patrice had divorced by that time and Respondent was living alone in a two-bedroom apartment in Broward County, Florida. Their visit began on January 8, 1994. Respondent paid for Shannon's roundtrip airline ticket from Virginia to Florida.

8. The visit was uneventful until the evening of January 12, 1994.

9. Respondent worked his usual hours on January 12, 1994, and thereafter returned to the two-bedroom apartment at approximately 6:00 p.m. Respondent and Shannon had made plans to

go out to eat dinner and then go to a comedy club that night. Respondent and Shannon were alone in the apartment.

10. Respondent and Shannon engaged in a conversation in the living room area of the apartment. Because Shannon thought Respondent was despondent about his child custody fight over his son and his relationship with Shannon's twin sister, she hugged him and began to rub his back. There is a conflict in the evidence as to what happened next.

11. The record establishes clearly and convincingly that Respondent thereafter preformed oral sex on Shannon, that he placed his mouth and tongue in her vaginal area, that he penetrated her vagina with his finger, and that he penetrated her anus with his finger.

12. The conflict is whether Shannon was a willing participant in this sexual encounter. According to her testimony, Respondent forced her to the floor using a police take-down technique; he forcibly removed her clothing, and he held her down with his body and with one arm while he performed the sexual acts on her. She testified that she asked him to stop, but that she was too stunned to physically fight him.

13. Respondent testified that Shannon was a willing participant and that the sexual encounter was consensual.

14. Shannon and her father went to the comedy club that night, she subsequently rode with him on patrol where she met several of his colleagues, and she stayed with him at his

apartment until her scheduled return flight to Virginia. Shannon returned to active duty in Langley, Virginia, as scheduled without reporting the incident. Approximately two weeks after the incident, she reported the incident to her superiors. She thereafter contacted the Broward County Sheriff's office, who assigned Detective Deborah Cox to conduct an investigation.

15. As part of her investigation, Detective Cox had Shannon engage in a telephone conversation with Respondent that Detective Cox monitored and taped. Detective Cox also had Patrice engage in a telephone conversation with Respondent that Detective Cox monitored and taped.

16. In his telephone conversation with Patrice, Respondent categorically denied that he touched Shannon and lamented that he was being falsely accused.

17. Although there are statements made by Respondent contained in his telephone conversation with Shannon that substantiate his position that the sexual encounter was consensual,<sup>2</sup> the following excerpts establish that Respondent did what he thought Shannon wanted him to do, not what she consented for him to do:

Shannon: I guess I just need to understand why you felt the need to touch me that way.

Respondent: I find, to be perfectly honest, I thought you had the need for it, believe me it's nothing I wanted, it's nothing I ever thought about, it's not something I consider

to be normal thing between a father and a daughter.

Shannon: I mean if I had the need to have that touch, why did it have to come from you, I mean -

Respondent: It's something I thought you asked for, or it's something you wanted, believe me it's not something I want to do, it's not something I thought about, something that I looked forward to or thought about afterwards as being something good. Do you think you've had sleepless night over it, I had from that day forward. It's bothered me, it's upset me, it's bothered me a lot since then. I never would have believed that I could have done that , all I've ever tried to be is what you needed at the time. Obviously what you needed or what I thought you needed wasn't what you think you need now. Whether it was or it wasn't then, I really can't tell you. I, from what you said, from what you did, from the way you acted, felt, truly believed that's what you wanted and what you felt you needed. . . .

19. The conflict in the testimony is resolved by finding that while she did not physically resist the sexual encounter, she did not implicitly or explicitly consent to the sexual encounter.

20. Detective Cox turned over the results of her investigation to the State Attorney's office, who prosecuted Respondent on felony charges of sexual battery and on misdemeanor charges of committing Unnatural or Lascivious Acts. Based on the sexual encounter of January 12, 1994, Respondent was convicted of five misdemeanor counts of committing Unnatural or Lascivious Acts. He was acquitted of the felony sexual battery charges.

CONCLUSIONS OF LAW

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

22. Petitioner has the burden of proving by clear and convincing evidence the allegations against Respondent. See Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987); Evans Packing Co. v. Department of Agriculture and Consumer Services, 550 So. 2d 112 (Fla. 1st DCA 1989); and Inquiry Concerning a Judge, 645 So. 2d 398 (Fla. 1994). The following statement has been repeatedly cited in discussions of the clear and convincing evidence standard:

Clear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the evidence must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact the firm belief of [sic] conviction, without hesitancy, as to the truth of the allegations sought to be established. Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

23. Section 943.13(7), Florida Statutes, establishes that good moral character is a minimum qualification for law enforcement officers in the State of Florida.

24. In Zemour, Inc. v. Division of Beverage, 347 So. 2d 1102, 1105 (Fla. 1st DCA 1977), an applicant for a beverage license was denied the same after an administrative finding that



the applicant was not of good moral character. The court's defined moral character as follows:

Moral character as used in this statute means not only the ability to distinguish right and wrong, but the character to observe the difference; the observance of rules of right conduct, and conduct which indicates and establishes the qualities generally acceptable to the populace for positions of trust and confidence.

25. Similarly, in Florida Board of Bar Examiners Re: G.W.L., 364 So. 2d 454, 458 (Fla. 1978), the Florida Supreme Court, in a case involving admission to the bar stated that a finding of good moral character:

should not be restricted to those acts that reflect moral turpitude, but rather extends to acts and conduct which would cause a reasonable man to have substantial doubts about an individual's honesty, fairness, and respect or the rights of others and for the laws of the state and nation.

26. The position of law enforcement officer is one of great public trust. There can be no more basic public expectation than that those persons who enforce the laws must themselves obey the law. City of Palm Bay v. Bauman, 475 So. 2d 1322 (Fla. 5th DCA 1989).

27. Rule 11B-27.0011(4), Florida Administrative Code, defines good moral character for the purposes of imposing disciplinary action upon Florida law enforcement officers, and represents the applicable standard in effect at the time Respondent allegedly committed the violations set forth in the Administrative Complaint. Among the acts that constitute the

failure to maintain good moral character is the following, found at Rule 11B-27.0011(4)(c)4., Florida Administrative Code:

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

\* \* \*

(b) The perpetration by the officer of an act which would constitute any of the following misdemeanor or criminal offenses, whether criminally prosecuted or not:  
Sections . . . 800.02 . . . .

28. Section 800.02, Florida Statutes, provides that it is a second degree misdemeanor for a person to commit an unnatural and lascivious act.

29. Petitioner established by clear and convincing evidence that Respondent committed unnatural and lascivious acts, thereby establishing that Respondent failed to maintain good moral character.

30. Petitioner also established by clear and convincing evidence that Respondent failed to maintain good moral character as that term has been defined by Florida courts. Respondent's acts against his daughter were contrary to fundamental notions of good moral character, whether her participation was consensual or non-consensual. The conclusion is inescapable that Respondent used his position of influence over Shannon for his own sexual gratification.

31. Section 943.1395(7), Florida Statutes, provides that:

Upon a finding by the Commission that a certified officer has not maintained good moral character . . . the Commission may enter an order imposing . . . penalties which include revocation, suspension, probation and/or a reprimand.

32. Rule 11B-27.005(5), Florida Administrative Code, provides certain disciplinary guidelines, including circumstances that may be considered aggravating and mitigating. Although those guidelines have been reviewed, there is no specific guideline that governs the disposition of this matter. In making the recommendation that follows, the undersigned has concluded that Respondent's Exhibit 1, which reflects his performance ratings and the commendations he earned while employed as a police officer, and the testimony of Mr. Ward,<sup>3</sup> are insufficient to mitigate the serious acts that underpin this proceeding.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Petitioner enter a final order that adopts the findings of fact and conclusions of law contained herein; finds Respondent guilty of failing to maintain good moral character; and revokes his certification as a Law Enforcement Officer and Instructor (Certificate Number 124699).

DONE AND ENTERED this 12th day of May, 1999, in Tallahassee,  
Leon County, Florida.

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CLAUDE B. ARRINGTON  
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 12th day of May, 1999

ENDNOTES

1/ In reaching the conclusion that the sexual encounter was not consensual, the undersigned has considered Shannon's behavior following the incident and the evidence that she had, on two prior occasions, had sexual encounters that she believed the male involved had taken liberties with her. Also considered was the evidence that Shannon had been in counseling subsequent to this incident.

2/ Mr. Ward, the owner of Respondent's present employer, testified that he believed Respondent to be of good moral character.

COPIES FURNISHED:

Karen D. Simmons, Esquire  
Office of the General Counsel  
Florida Department of Law Enforcement  
Post Office Box 1489  
Tallahassee, Florida 32302-1489

C. Michael Cornely, Esquire  
Hartman and Cornely, P.A.  
10680 Northwest 25th Street, Suite 200  
Miami, Florida 33172

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

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.