

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PINELLAS COUNTY SHERIFF'S)
OFFICE,)
)
Petitioner,)
)
vs.) Case No. 08-2834
)
JILL CASEY,)
)
Respondent.)
_____)

RECOMMENDED ORDER

On October 21 through 23, 2008, an administrative hearing in this case was conducted in Largo, Florida, before William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Benjamin R. Welling, Esquire
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For Respondent: Joseph M. Ciarciaglino, Esquire
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STATEMENT OF THE ISSUE

The issue in this case is whether Jill Casey (Respondent) violated personnel rules adopted by the Pinellas County

Sheriff's Office (Petitioner), and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

In June 2008, the Petitioner notified the Respondent of the imposition of an employment disciplinary action based on violations of certain personnel rules. Specifically, the Respondent was accused of violating the Petitioner's sexual harassment policy and of making comments towards subordinates that were "disrespectful, discourteous, and unprofessional." The disciplinary action included a seven-day suspension, demotion and transfer from the employment position, and completion of "sensitivity training." The Respondent filed a Notice of Appeal. The Petitioner forwarded the appeal to the Division of Administrative Hearings, which scheduled and conducted the administrative hearing.

At the hearing, the Petitioner presented the testimony of 16 witnesses and had Exhibits numbered 1 through 12 admitted into evidence. The Respondent testified on her own behalf, presented the testimony of 17 witnesses and had Exhibits 1, 3, 4, 6, 7, 8, 10, 13 through 17, and 19 admitted into evidence.

A Transcript of the hearing was filed. The parties filed Proposed Recommended Orders that have been reviewed in the preparation of this Recommended Order.

FINDINGS OF FACT

1. At all times material to this case, the Respondent has been employed as a supervisor within the Petitioner's Child Protection Investigations Division (CPID).

2. She was initially employed in 1991 as a detention deputy at the county jail. She became an investigator with the CPID in 1999 and became a supervisor in 2001.

3. In 2002, the Respondent was admonished by Captain Dennis Fowler regarding a complaint of "inappropriate touching" that had been voiced against the Respondent by Kelly Johnson (Ms. Johnson), a CPID field trainer.

4. The Respondent was Ms. Johnson's supervisor. Ms. Johnson had been the acting supervisor of the unit prior to the Respondent's assignment.

5. Ms. Johnson testified at the hearing that the Respondent was a "touchy-feely person in general" and that there were routine shoulder touches during greetings. She also testified that the Respondent would routinely stand behind her and lean over the Respondent's desk at which time the Respondent's breasts would press against Ms. Johnson's back.

6. Ms. Johnson also testified that the Respondent had inappropriately placed her hand on Ms. Johnson's thigh in 2002. She testified that as the two women sat in rolling office chairs across from each other to discuss a case Ms. Johnson was

handling, the Respondent placed the Respondent's hand on Ms. Johnson's inner thigh within a few inches of her groin and left it there for up to 30 seconds.

7. Ms. Johnson shared the office space with four or five other employees and testified that one employee, a male, was in the office at the time of the alleged incident and was seated and facing towards the wall.

8. Ms. Johnson testified that she also discussed the thigh incident with various Sheriff's Department officials and with her husband. She also testified that she reported her concerns about the Respondent's physical behavior, including the thigh-touching allegation, to another CPID supervisor, Jayne Johnson, who apparently relayed at least some portion of the complaint to Captain Fowler.

9. Ms. Johnson testified that she directly reported the allegations to Captain Fowler, but she did not file an official complaint about any of her allegations.

10. Captain Fowler testified that he was unable to recall the conversation with Ms. Johnson.

11. At the hearing, the Respondent denied that she touched Ms. Johnson's thigh.

12. Although Ms. Johnson testified that she believed the thigh-touching incident was intentional and that she was extremely uncomfortable with the situation, she made no attempt

to stop the Respondent at the time or to seek assistance from the other employee who was allegedly present in the room at the time. Ms. Johnson's testimony regarding the thigh-touching incident is not credible and is rejected.

13. Ms. Johnson testified that at a time when the office furniture was being re-arranged to accommodate another desk, she positioned her desk so as to have her back towards the wall in an effort to prevent the Respondent from standing behind the witness. She testified that she would also pull out the writing tray on her desk and place her trash can under the writing tray to block the Respondent from coming around behind her. She testified that despite her efforts, the Respondent would sometimes push the writing tray into the desk and sit down on the trash can to meet with her.

14. Captain Fowler testified that after talking with Jayne Johnson, he understood the complaint to involve the Respondent leaning over Ms. Johnson and physically placing her body against Ms. Johnson's. Captain Fowler was unable to recall discussing the matter with Ms. Johnson. He testified that there may have been "some other specific references to inappropriate touching," but that he was unable to recall particular details.

15. It is reasonable to presume that had the complaints relayed to Captain Fowler included the allegation that the Respondent had placed her hand on Ms. Johnson's inner thigh

within a few inches of her groin and left it there for upwards of 30 seconds, Captain Fowler would have recalled the information.

16. Captain Fowler testified that he discussed the matter with the Respondent and recalled that the Respondent was cautioned about the failure to recognize personal boundaries of other employees. Captain Fowler believed that the Respondent understood that such behavior was not appropriate in the workplace.

17. Neither Ms. Johnson's verbal complaint nor Captain Fowler's meeting with the Respondent was documented. The Respondent's job performance evaluations did not make any reference to the complaint or to its disposition.

18. Ms. Johnson subsequently transferred out of the Respondent's unit.

19. Rebecca Wilkinson was an employee of the CPID working in the same office building as did the Respondent.

20. Ms. Wilkinson testified that, in 2002, as she stood in a copy room punching holes in paper, the Respondent passed through the copy room and intentionally "rubbed" Ms. Wilkinson's buttocks as she passed by. Ms. Wilkinson did not know who the Respondent was at that time.

21. Because the copiers were located in an area between offices, employees often passed through the area as they moved

between offices. Ms. Wilkinson testified that there was sufficient room in the area to pass without physical contact.

22. Ms. Wilkinson testified that when the incident occurred, she reacted by stating "did you just fucking grab my ass?" Ms. Wilkinson testified that the Respondent did not reply, but smiled or "smirked" at Ms. Wilkinson and exited the area.

23. Ms. Wilkinson testified that she was very uncomfortable with the contact. Despite her alleged discomfort that an apparent stranger inside the CPID offices had rubbed her buttocks, she did not report the incident at that time to anyone.

24. The Respondent denied that the incident occurred.

25. Ms. Wilkinson also testified that, at some point between May and August of 2006, the Respondent stood behind Ms. Wilkinson, who was seated at her desk, leaned against Ms. Wilkinson and pressed her breasts into Ms. Wilkinson's back. Ms. Wilkinson apparently was aware of the Respondent's identity by this time. Ms. Wilkinson testified that as she shifted to move away from the Respondent, the Respondent moved with her and maintained the contact, leading Ms. Wilkinson to believe that the contact was intentional. Although Ms. Wilkinson testified that she was "amazingly shocked" with the contact, to the extent

that she was unable to tell the Respondent to stop, she did not report the incident at that time.

26. At all times material to this case, Wandahka Goodridge was employed as a CPID Supervisor in a position similar to that of the Respondent. Ms. Goodridge has known and worked with the Respondent for approximately 15 years.

27. Ms. Goodridge testified that the Respondent would routinely touch people during greeting, but that there were other incidents of "vivid and significant" physical contact with which Ms. Goodridge said she was uncomfortable.

28. Ms. Goodridge recalled an incident "four or five years ago" where, as she stood with her back approximately one to one and one-half feet from an office wall, the Respondent passed between Ms. Goodridge and the wall, brushing her chest against Ms. Goodridge's back as she passed, even though there was sufficient space in front of Ms. Goodridge for the Respondent to pass without contact. Ms. Goodridge testified that she felt uncomfortable with the circumstances of the incident, believing it to be sexual in nature, and began to question her perception of the Respondent's routine physical contact.

29. Ms. Goodrich also testified to an incident "prior to a year and a half ago but less than three and a half years ago" where the Respondent intentionally brushed by Ms. Goodridge in a hallway in a manner that Ms. Goodridge described as "much more

. . . intense than the first body contact." Ms. Goodridge testified that the Respondent contacted Ms. Goodridge's buttocks with her "pelvic area," which she interpreted as a sexual advance.

30. Ms. Goodridge testified that she thereafter began to attempt to "protect herself" from the Respondent by avoiding being in confined areas with the Respondent and keeping her back towards the wall if the Respondent was present. Ms. Goodridge thereafter perceived a lack of personal acknowledgement from the Respondent and testified that she felt angry because she believed that the Respondent was not speaking to her.

31. The Respondent denied making any sexual advance or engaging in any such behavior towards Ms. Goodridge.

32. Despite Ms. Goodridge's belief that the alleged physical contact was intentional and sexual in nature, she failed to report either incident at the times they allegedly occurred.

33. It would be reasonable to expect that Ms. Goodridge, a supervisor within a law enforcement unit assigned the responsibility for conducting child protection investigations, would have noted the alleged behavior at the time it occurred and would have taken appropriate action to document the behavior or to verbally report the behavior to appropriate department

authorities. Ms. Goodridge's testimony as to the alleged incidents was not credible and is rejected.

34. In January of 2008, the CPID was engaged in changing shift assignments through a seniority-based bidding system. On the morning of January 24, 2008, Ms. Wilkinson and Ms. Goodridge were in the office together and were discussing the impending changes in shift assignments.

35. Ms. Wilkinson was unhappy with the proposed alteration of her work shift assignment from day shift to night shift.

36. She had discussed the issue with her sergeant (Hunchel), who called the Respondent and asked whether the Respondent was willing to trade shifts with Ms. Wilkinson. The Respondent declined to do so.

37. Approximately two hours after the call from the sergeant to the Respondent, Ms. Wilkinson, crying, directly telephoned the Respondent to ask if the Respondent was willing to trade shifts. The Respondent again declined to do so.

38. Ms. Wilkinson and Ms. Goodridge both testified that during their January 24th conversation, they discussed their discomfort with the Respondent's physical contact and alleged rumors of the Respondent's alleged behavior towards other employees.

39. After the conversation ended, Ms. Goodridge took her car keys, left the office, entered her car, and began to drive

around the office parking lot in an apparent panic. As she drove, she called a co-worker, Joan Trifilo, and reported the alleged conversation with Ms. Wilkinson. Then, without exiting from the parking lot, Ms. Goodridge returned her car to a parking space and saw Jayne Johnson exiting from her vehicle.

40. Ms. Goodridge began questioning Jayne Johnson as to whether she was aware of allegations of inappropriate touching by the Respondent. The two women returned to the office building, whereupon Ms. Goodridge went to Lieutenant George Steffen's office and reported her complaint to him.

41. Shortly thereafter on the afternoon of the same day, Ms. Wilkinson was summoned to the office of Lieutenant Steffen to discuss the Respondent's alleged behavior. Both Ms. Goodridge and Ms. Wilkinson provided written statements to Lieutenant Steffen on January 25, 2008, and the Respondent became aware on that date of the investigation into the allegations.

42. The investigation eventually resulted in the dispute at issue in this proceeding.

43. At the hearing, various other employees credibly testified that the Respondent pressed her chest against their backs as the employees were seated at their workspaces and materials on the desktop or computer screen were reviewed.

44. While some of the witnesses, but not all, perceived the contact as intentional and sexual in nature, there was sufficient credible testimony to establish that the Respondent committed such contact with regularity after the 2002 meeting between Captain Fowler and the Respondent.

45. CPID Investigator Viangelie Rodriguez was one of the additional witnesses who testified that the Respondent pressed her chest against the witness' back as the witness was working at her desk. Ms. Rodriguez also testified, credibly, that during a conversation regarding placement of a child for which Ms. Rodriguez was responsible, the Respondent told her that she was "fucking placing the child in the home" as directed by the Respondent. Ms. Rodriguez was offended by what she considered to be the Respondent's unprofessional language in dealing with the situation.

46. CPID Investigator Sarah Pierce testified that, after dyeing her hair a different color, Ms. Pierce passed an office where the Respondent sat with another CPID supervisor and that the Respondent saw her and loudly stated that her new hair color made her "look like a slut." Ms. Pierce heard the other supervisor speak to the Respondent and heard the Respondent indicate that she was permitted to make the statement.

47. Ms. Pierce, who testified that the incident made her feel "degraded" and "belittled," reported it to her supervisor,

Ms. Trifilo, and to Sergeant Robert Mosley. Rather than file an official complaint, Ms. Pierce decided to address the matter directly with the Respondent, and the two women subsequently discussed the incident. Ms. Pierce testified that the Respondent apologized to her during the discussion.

48. Sergeant Mosley also discussed the incident with the Respondent and advised her it had been inappropriate, a conclusion with which the Respondent admittedly concurred.

49. Nonetheless, the Respondent was again verbally abusive towards Ms. Pierce when, during a later discussion related to case management, the Respondent called Ms. Pierce a "stupid shit." The discussion was conducted on a speakerphone and other CPID employees were present and involved.

50. Ms. Pierce reported the comment to Sergeant Mosley and, thereafter, filed a formal complaint. The Petitioner's investigation into the complaint formed the basis for a portion of the dispute at issue in this proceeding.

51. The Respondent admitted the verbal incidents about which Ms. Pierce testified.

52. Jesteen Stewart testified that on more than one occasion, the Respondent passed the witness and made contact with the witness' body. Such contact included the Respondent's arm being placed on Ms. Stewart's waist and the Respondent's hands being placed on Ms. Stewart's hips.

53. Ms. Stewart also testified that the Respondent rubbed the witness' buttocks and pressed her body against the witness while passing in a hallway, at which time the witness, who previously believed the contact to have been accidental, became convinced it was intentional and sexual in nature. She reported her concern to Ms. Trifilo, who testified that Ms. Stewart was distraught during the conversation.

54. Although the Respondent denied rubbing her hands on any employee's buttocks, she stated that she may have placed her hands on someone to move them out of the way so that she could pass through a doorway.

55. The evidence establishes that the Respondent inappropriately placed her hands on Ms. Stewart's buttocks to force Ms. Stewart to move, a gesture that for reasons personal to Ms. Stewart, was interpreted by her as sexual in nature.

56. There is no evidence to suggest any reason that the Respondent could not have requested that Ms. Stewart move from the Respondent's path if Ms. Stewart blocked passage.

57. Ms. Stewart subsequently minimized her interaction with the Respondent and would route her travel through the building to avoid passing near the Respondent's office. At times, she called in sick to avoid working with the Respondent and, eventually, was transferred to another shift to eliminate the contact with the Respondent.

58. Pamela Wright, a child protective investigator who has worked with the Respondent, testified that at some time in 2000, while she was eating grapes, the Respondent picked up some of the grapes and threw them towards Ms. Wright's chest, in an attempt to toss them inside Ms. Wright's shirt. Ms. Wright believed the behavior to be sexual in nature because the grapes were thrown towards her breasts. She reported the incident to Laurie Gray, her supervisor. The Respondent could not recall the grape-tossing incident involving Ms. Wright.

59. Ms. Wright also testified that the Respondent would sometimes massage her shoulders or rub her back, and the contact made her sufficiently uncomfortable to cause Ms. Wright to make various efforts to minimize being in the vicinity of the Respondent, but she did not file a complaint against the Respondent about the physical contact.

60. Samantha Krenek, who has been employed for the Petitioner as a child protective investigator for about four years, testified that shortly after beginning her employment, she approached the Respondent, seeking to either have a document signed or notarized, at which time the Respondent placed her hand on Ms. Krenek's hip and left it there for a few seconds. Ms. Krenek believed the contact to be somewhat sexual and intentional because there was no need for the contact to have occurred.

61. Ms. Krennek was uncomfortable with the contact and thereafter attempted to reduce her interactions with the Respondent by locating other supervisors to perform certain tasks, or by maintaining physical distance from the Respondent if there were no other supervisors available.

62. At the hearing, the Respondent generally denied that she made sexual advances or had sexually harassed any of the testifying employees of the CPID.

63. The Respondent testified that she was not aware that she was pressing her chest against the backs of seated employees while reviewing their work with them at their desks and attributed the contact to the limited space in the office.

64. It is not plausible to believe that the Respondent's chest and breasts would be pressed against the back of another employee without the Respondent's knowledge, or that the entire office was so small as to preclude reviewing materials or computer screens with seated employees without making physical contact with them. The Respondent's testimony explaining the reason for the contact was not credible and is rejected.

65. The Respondent engaged in a pattern of physical contact and behavior directed towards some CPID employees. The Respondent was cautioned about such contact in 2002 based on the complaint of another employee and, thereafter, was presumably aware that some employees were offended or intimidated by the

behavior. Nonetheless, the Respondent continued to make physical contact with other employees, at least some of whom were offended or intimidated by the behavior.

66. The evidence also establishes that the Respondent spoke disrespectfully to several employees, including Ms. Rodriguez and Ms. Pierce, and did so even after having been warned that her behavior was inappropriate.

CONCLUSIONS OF LAW

67. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2008).

68. The Petitioner has the burden of proving by a preponderance of the evidence the allegations underlying the disciplinary action at issue in this proceeding. Florida Dept. of Transportation v. J.W.C. Company, Inc., 396 So. 2d 778 (Fla. 1st DCA 1981).

69. Pinellas County Sheriff's Office General Order 3-1.1, Rule and Regulation 5.16, provides as follows:

Sexual Harassment and Discrimination--No member of this agency or member of the public shall be subjected to unsolicited and unwelcome conduct by another member which includes references to that member's religion, color, race, national origin, age, disability, gender, pregnancy, sexual orientation, marital, or any protected status. The Pinellas County Sheriff's Office prohibits any offensive physical, written, or spoken conduct regarding any of

these items including conduct of a sexual nature, as defined in paragraphs B, 1 and 2 of the definition of sexual harassment in General Order 3-4, Discrimination, Sexual Harassment, and Hostile Work Environment. Additionally, no member shall engage in or knowingly be a party to the creation of, or continuation of a hostile work environment, as defined in General Order 3-4, Discrimination, Sexual Harassment, and Hostile Work Environment.

70. The referenced definition of "discrimination" states as follows:

Any and all slurs, insults, ridicule, epithets, anecdotes, or jokes, whether verbal, by gesture, or written, pertaining to religion, race, national origin, gender, age, pregnancy, disability, sexual orientation, marital, or any protected status whether made in the course of general conversation or specifically directed at one or more members. This includes comments about national origin, race, age, body, disability, or appearance where such comments go beyond mere courtesy; i.e. telling "dirty jokes" or making offensive sexually oriented comments, innuendoes, or other epithets slurs, negative stereotypes, or similar statements or actions that are unwanted and considered offensive.

71. The referenced definition of "sexual harassment" states as follows:

1. All unwelcome or unwanted advances; including sexual advances or unwanted sexual attention, whether between person(s) of the opposite or same sex. This includes, but is not limited to, leering, touching, patting, brushing against, hugging, kissing, fondling, or any other similar physical contact, or quid pro quo arrangements (i.e. a situation in which an employee is forced

to engage in unwanted sexual conduct in order to protect or advance his/her job).

2. Unwelcome requests or demands for favors, including sexual favors. This consists of subtle or blatant expectations, pressures, or requests for any type of favor, including sexual favor, including unwelcome requests for dates, whether or not the request is accompanied by an implied or stated promise or preferential treatment or negative consequences.

3. Inappropriate third party comments or one time comments made which do not constitute a hostile work environment, language not directed at the offended member, jokes (spoken, printed or drawn) that are not directed at the offended member or joint banter of a sexual or offensive nature in which the offended member may or may not be a party. (Emphasis supplied)

72. The referenced definition of "hostile work environment" states as follows:

Behavior that has the purpose or effect of unreasonably interfering with the members work performance which creates an intimidating, hostile or offensive work environment. Factors may include but not [be] limited to frequency of the discriminatory act, severity, whether it is physically threatening or humiliating, and whether it was sufficiently severe or pervasive to alter the member's work environment.

Creating a work environment that is intimidating, hostile, abusive, or offensive because of unwanted conversations, suggestions, requests, demands, physical contacts or attentions, whether sexually oriented or otherwise related to a prohibited form of harassment.

The distribution, display, or discussion of any written or graphic material, including calendars, posters, cartoons, or names slandering character or reputation, show hostility or aversion toward an individual or group because of race, color, religion, age, sex, pregnancy, national origin, disability, marital, or other protected status.

Factual assessment of a member's skills, abilities, or performance by a training officer, supervisor, or member of a chain of command, does, not constitute the creation of a hostile work environment. (Emphasis supplied)

73. Violation of Pinellas County Sheriff's Office General Order 3-1.1, Rule and Regulation 5.16, is classified as a "Level Five" violation.

74. The evidence establishes that the Respondent committed acts of sexual harassment and created a hostile work environment by pressing her chest against the backs of seated coworkers as she leaned over them to review materials on their desks or computer screens. The evidence establishes that the Respondent was warned of the behavior in 2002 by Captain Fowler and that she nonetheless continued the behavior.

75. The fact that not all employees were uncomfortable with physical contact with the Respondent (including the chest-pressing and hip-touching behavior) and that some believed it to be more a form of personal greeting rather than sexual in nature, does not establish that those employee who felt

otherwise had no reasonable basis for their personal reaction to the behavior. The Respondent clearly had reason to know that the physical gestures were not welcomed by all CPID employees.

76. The evidence establishes that the Respondent committed an act of sexual harassment by placing her hands on Ms. Stewart's buttocks. Such behavior created a hostile work environment because the contact affected Ms. Stewart's ability to freely perform the responsibilities of her employment.

77. The evidence establishes that the Respondent committed an act of sexual harassment by placing her hand on Ms. Krenek's hip. The behavior also created a hostile work environment because the contact affected Ms. Krenek's ability to freely perform the responsibilities of her employment.

78. The Respondent testified at the hearing that she was unaware until the internal investigation in this matter that some employees felt she routinely invaded personal space. The Respondent testified that she believed the behavior was an attempt to compensate for an alleged hearing loss. The testimony is not credible and is rejected.

79. Although there is no evidence that the Respondent's hearing loss does not exist, to accept the Respondent's assertion that her hearing loss was sufficient to prevent her from hearing normal office conversation, it would be reasonable to expect that the Respondent would have frequently moved around

a room so as to be close to whichever person was speaking, but there is no evidence that the Respondent did so.

80. Pinellas County Sheriff's Office General Order 3-1.3, Rule and Regulation 3.5, provides as follows:

Conduct towards Superior and Subordinate Officers and Associates--Members shall treat supervisors, subordinates, and associates with respect and candidness. They shall be courteous and civil at all times in their relationships with one another. When on duty, and particularly when in the presence of the public, deputies should be referred to by rank.

81. Violation of Pinellas County Sheriff's Office General Order 3-1.3, Rule and Regulation 3.5, is classified as a "Level Three" violation.

82. The evidence establishes that the Respondent failed to treat coworkers courteously, civilly, and respectfully, specifically as to the statements made to Ms. Rodriguez and Ms. Pierce and the tossing of grapes at Ms. Wright's chest.

83. The Respondent suggested several motives for the various persons involved in filing or prosecuting the complaints against her.

84. The Respondent testified her role in resolving a "missing cases" situation within the unit supervised by Wanda Goodridge in 2001 was the underlying reason for Ms. Goodridge's involvement in this case, but the reason for Ms. Goodridge's

involvement is immaterial because her allegations have not been credited.

85. Similarly, the Respondent suggested that her assignment in 2001 as supervisor for the backlog unit where Ms. Johnson was employed, who had been the acting supervisor and who was allegedly unhappy with the Respondent's level of supervision, explained why Ms. Johnson voiced her complaint in 2002. Ms. Johnson's accusation that the Respondent touched her thigh has been rejected. Ms. Johnson's complaint about the Respondent's routine chest-to-back contact is clearly supported by other evidence.

86. Further, the incidents that the Respondent cites as precipitating the Goodridge and Johnson participating in the investigation at hand preceded the initiation of this dispute by approximately seven years.

87. The Respondent suggested that she has a strong personality as do other employees within the CPID and that personality clashes were the reason this matter had been pursued. Although there are clearly personal issues between various CPID employees, the reason for the imposition of discipline in this case is not personality differences, but the Respondent's violations of the Petitioner's employment policies.

88. Finally, the Respondent, an openly gay female, asserted that this disciplinary action was the result of

homophobia by certain employees within the CPID. The evidence fails to support the assertion. Knowledge of the Respondent's orientation appeared to be widespread and of long-standing. It is reasonable to assume that such homophobia, assuming its existence, would have resulted in the filing of complaints long ago, since the activities about which credible evidence was presented have extended over a period of years.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the disciplinary action taken by the Petitioner against the Respondent be sustained.

DONE AND ENTERED this 6th day of February, 2009, in Tallahassee, Leon County, Florida.

William F. Quattlebaum

WILLIAM F. QUATTLEBAUM
Administrative Law Judge
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Filed with the Clerk of the
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this 6th day of February, 2009.

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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.