

VI. Discipline and Selection of Law Enforcement Employees: Character and Reputation Considerations; Sample Policy

by William L. Flink (see Section I, *supra*, and * note on p. 29).

A. *Discipline and Employment Considerations Related to Character and Reputation*

Introduction

Many of the toughest challenges confronting law enforcement administrators today come from within their own department. Near the top of the list of such challenges, is the charging of disciplinary action against a subordinate officer. The legal complexities inherent to discipline, can bring about "gut wrenching" feelings, especially, when the action to invoke discipline is overturned during a formal administrative hearing, or through subsequent administrative or court reviews. Not only do such occurrences cloud the internal authority of the administrator, they also impair management's

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resolve in pursuing claims of officer misconduct and perpetuate a loss of public confidence in management's ability to carry forward the honorable, professional perception of the department.

Unless allegations of misconduct are clear and apparent, undeniable, or of the nature where an officer is caught in the act, there is a fair possibility that administrative litigation will occur when discipline is pursued by management. If an officer is compelled to seek legal assistance in defending him/herself, chances are good that legal counsel will attempt to divert management's efforts by challenging the process under which such action has been initiated. **Creating a belief of uncertainty, in the success of management's case, is a fundamental tactic that officer's counsel will use in subverting the case.** The adage, "if you can't beat

the evidence, challenge the process" is commonplace in litigation, and this includes the legalities of the process by which the management's disciplinary actions are brought forth. **An initial challenge against the administrative process supporting management's goal, would be to denounce the alleged violations as being vague and nonapplicable.** The "vagueness argument" can be overcome with foresight and mastering the affairs of policy development.

It is to foster integrity within our criminal justice institutions, that leads us to examine two, commonly-used terms in bringing forth claims of unprofessional conduct against law enforcement officers, "good moral character" and "moral turpitude." The uniqueness of these terms to the courts of law, and their **misunderstanding among some law enforcement administrators,** make it a necessity for developing a clear understanding of their legal usage. Once we have described the legal parameters for these terms, administrators may be more at ease with their choices in developing written guidance in support of management's authority to implement personnel discipline.

Almost every state and local law enforcement agency has adopted specific regulations or policies to uphold the professional standards of law enforcement officers. These regulations or policies establish minimum provisions to be observed by officers while performing their official duties and in preserving their personal/professional reputations. In some states, legislatures have enacted statutory language incorporating the terms "good moral character" or "moral turpitude" to standardize law enforcement professionalism. The problem arising from the use of these terms by our governments is **that there is seldom written direction or defini-**

tion provided advising what these terms shall mean to the public, or to the administrators who have been charged with enforcing their standards upon the officers whom these terms can affect.

A primary obstacle when seeking to discipline an officer for failing to maintain "good moral character" or engaging in an act of "moral turpitude," may come from a pleading by officer's counsel. **Counsel will argue that the term creating the cause of action has been used in an overly-broad manner, that a decision rendering the term "void for vagueness" should be applied, and, thus, just cause for discipline is nonexistent.** The United States Supreme Court has established a test by which "vagueness" can be determined. The Court held vagueness exists if the term or clause used is "so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application."¹ Unfortunately, concepts such as 'moral character' [have] shadowy rather than precise bounds,"² and the "borderline of 'moral turpitude' is not an easy one to locate."³ Depending upon the circumstances surrounding an event, an act or crime may, or may not, violate exclusive, moral standards or rise to turpitude.⁴ **For these reasons, the language used in our policies, regulations and laws should be carefully considered and, at the very least, include clarification through definition or commentary before management takes administrative action affecting an officer's or non-sworn person's employment .**

Good Moral Character

Determining what "good moral character" means, is not always a simple task. One of the first issues to consider is the make-up of the community which the department serves. If it is a small, highly religious community, a definition of "good moral character" may have many differences from great cities with large, diverse populations. The term can often be tempered towards political outcomes and the powers of the affected parties, including local police unions/benevolent groups. However, if a definition has been structured in law or policy, and includes a clearly defined purpose or commentary, "good moral character" can be a resilient tool in forging public trust or taking corrective action against unprofessional conduct.

A key factor in determining what is and is not "good character," relies on associating the behavior displayed to the "job-relatedness" of the character issue.⁵ **As with many employment issues, the "job-relatedness" of the employment requirement is deemed to be directly connected to the ability to perform the job.** For instance, an act of theft would clearly be an act converse or in opposition to the job of apprehending a thief. As is telling a lie, hypocritical, of one who must have a reputation for honesty in swearing to tell the truth. Character issues are many, and **the purpose for the department in recognizing required character attributes, is to define them as job requirements and, in doing so, provide "fair notice" of their definition to all affected by the requirement.**

It is well established, "a state can require high standards of qualification for a profession such as good moral character, as long as it has a rational connection to the applicant's fitness or capacity (especially when discussing a "true profession" like law, medicine or law enforcement where ethics should be the most minimal of qualifications)."⁶

As examples, the following are provided: (1) in Michigan, "good moral character," when used as a requirement for an occupation or professional license, is defined by the "Good Moral Character Act,"⁷ and means **"the propensity on the part of the person to serve the public in the licensed area in a fair, honest, and open manner."** However, the Michigan Act only applies to applicants for licenses, and does not mandate discharge of persons already hired for a lack of good moral character;⁸ (2) in comparison, the Florida Division of Beverage defines the term "good character" as meaning, **"not only the ability to distinguish between right and wrong, but the character to observe the difference; the observance of the rules of right conduct, and conduct which indicates and establishes the qualities generally acceptable to the populace for position of trust and confidence;"**⁹ and (3) the Idaho Peace Officer Standards and Training Council has undertaken what appears to be a very formal, pro-active administrative process to insure that newly hired officers meet standardized criteria regarding character and reputation. Their procedure requires that **"[g]ood moral character' must be determined by a favorable report following a comprehensive background investigation cover-**

ing school and employment records, home environment, personal traits and integrity." Consideration is to be given to "any and all law violations, including traffic and conservation law convictions as indicating a lack of good character." The Idaho process includes seventeen recommended criteria for completing the character and reputation inquiry. While these criteria are not mandated upon law enforcement administrators, they provide a guideline as to what the state considers to be the minimum standard for conducting an adequate background investigation into an individual's character and reputation attributes for law enforcement employment.¹⁰

The requirement to "[b]e of good moral character as determined by a thorough background investigation," has been a standard entry-level law enforcement requirement among the 50 states, since 1974.¹¹ The states, under the umbrella of public safety, have a "legitimate concern for maintaining high standards of professional conduct [that] extends far beyond the initial [certification or] licensing."¹² Officers who are convicted of a felony, specific integrity-related or injurious misdemeanor offenses may have their state certification or license to perform as law enforcement officers revoked or suspended.¹³

The Florida Criminal Justice Standards and Training Commission is just one of 38 state standards and training agencies that share the concern for maintaining law enforcement professional standards through a formal decertification process. The Commission defines "moral character" by administrative rule,¹⁴ providing notice of conduct that is determined to be in violation of "good moral character." Such violations include, but are not limited to, any felony and specific misdemeanor crimes—whether criminally prosecuted or not;¹⁵ violations in the administration of (training) examinations; testing positive for controlled substances; and unprofessional relationships with inmates, detainees, probationers, parolees or community controlees, under conditions which include, in part, excessive use of force, misuse of official position, sexual harassment, false statements, and engaging in sex on-duty.

Whether someone possesses good moral character is a somewhat subjective question and the answer may vary from time to time. However,

qualities of truth-speaking, a high sense of honor, granite discretion, strict observance of fiduciary responsibility, have, throughout the centuries, been a historic requisite of fitness.¹⁶ Good moral character has also been determined through evidence showing the individual to be a "responsible and trustworthy person . . . a source of reliable information."¹⁷

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It is imperative to our system of government, that agencies with statutory responsibilities for enforcing minimum law enforcement employment standards (employers or certification/licensing agencies) be able to demonstrate that individuals allowed to enforce the law are competent, honest, responsible, reliable, obedient to the law,¹⁸ with a history of demonstrable good judgment and integrity—collective traits of good character. Having character traits illustrative of "good moral character necessarily implies that [an individual] will conform to the moral standards of his profession and provided by law, by the oath of office, and the code of ethics of the . . . profession."¹⁹

Whenever alleged ethical violations occur, a key factor to determine is whether the conduct alleged is criminal in nature. Criminal violations are prima facie evidence of a violation of "good character." Almost every state prohibits individuals with felony convictions to become or remain employed as law enforcement officers.²⁰

Several states have stepped forward to statutorily define convictions of certain misdemeanors as disqualifiers from law enforcement employment.²¹ However, in some states, exceptions exist to the felony exclusion which primarily affect those individuals who have been granted an expungement of their criminal record. Conversely, a few progressive legislatures, concerned about integrity requirements and the public trust bestowed upon law enforcement officers, have enacted laws providing authority to the state law enforcement standards and training agency or local law enforcement employers to consider expunged crimes when determining suitability for law enforcement employment.²²

Nevertheless, issues of discipline are responsibilities of the employer, and not always within the immediate certification or licensing authority of the state standards and training agency.²³ The disciplinary action to be taken in a criminal matter, then, rests upon the nature of the criminal activity. While a law enforcement officer who has been convicted of a felony cannot retain his office, we should be mindful that many officers charged with felony offenses receive reduced charges or lenient sentencing during plea bargaining with prosecutors. **Misdemeanor convictions or sentencing as a misdemeanant does not, automatically, mean an officer remains qualified to serve the public.**

A department's disciplinary inquiry should look to the individual's character based upon the actual conduct, regardless of labels which the law has placed on his conduct. The mere fact that an [individual] has been arrested has very little probative value in showing that he/she has engaged in any misconduct.²⁴ An arrest shows nothing more than someone suspected the individual apprehended of an offense. **However, an exception for law enforcement officers may be applicable.**²⁵ Indeed, conduct which is not the subject of a conviction may yet be relevant for the purpose of examining the [officer's] moral character, and conduct which has earned a criminal penalty may not be indicative of bad moral character. "The inquiry is fact-sensitive," and should be conducted in the light of the appointment as a law enforcement officer.²⁶

A law enforcement officer's "good character," whether analyzed under a department's decision to terminate employment or a statutory decertification procedure, must be viewed in the context of its affect on the occupation. Finally, "questions of "good character" are seldom easily resolved where no criminal conviction has been forthcoming. Although some guidance may be present under state statutory guidelines, it is likely that each case will be evaluated on an individual basis to reach the determination of whether "good character" has been compromised."²⁷

Moral Turpitude

The term "moral turpitude" has been applied to the law for many centuries.²⁸ It is a term which has been the subject of many court decisions and court definitions.²⁹ **Yet, the definition of "moral**

turpitude" has not gained in clarity from its many reviews. In some respects, "moral turpitude" is like the term "reasonable doubt." No matter how often we describe conduct within its definition, clarity of the term evades the repetition of its use.³⁰

The United States Supreme Court has reviewed actions of alleged moral turpitude many times and it has been stated that "what the government seeks, and what the Court cannot give, is a basic definition of 'moral turpitude' to guide administrators and lower courts."³¹ In discussing the meaning of "moral turpitude," Justice Jackson has written, "[i]f we go to the dictionaries, the last resort of the baffled judge, we learn little except that the expression is redundant, for turpitude alone means moral wickedness or depravity and moral turpitude seems to mean little more than morally immoral."³² Immoral usually refers to the breaking of laws or the violation of values; it is wrong and it is acknowledged and recognized as wrong.³³

Webster's International Dictionary (2nd Edition) defines "turpitude" as: "[i]nherent baseness or vileness of principle, words or actions; depravity." Black's Law Dictionary (4th Edition) defines "moral turpitude" as: "[a]n act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow man, or to society in general, contrary to the accepted and customary rule of right duty between man and man."

"Moral turpitude" is derived from common law, and has a "natural law" element to it, trying to distinguish something which is "*malum in se*," or evil in itself, from the concept of "*malum prohibitum*," something which is legislated evil. The "consensus of opinion—statute or no statute—deduces from the commission of crimes *malum in se*, [that] the perpetrator is depraved in mind and is without moral character . . ."³⁴ **Moral turpitude often involves the question of intent. As a general rule, if the intent to commit the act or crime is not present, then moral turpitude probably does not exist.** The term does not refer to a legal standard, but to changing moral standards. Since morals change from time to time and at different places, the concept of moral turpitude depends to some extent on the state of public morals, and the common sense of the community.³⁵

We can review moral turpitude within the law enforcement profession in much the same manner as it has been reviewed for other professions, within or outside of criminal justice. Whether the discussion revolves around the judiciary, members of state bar associations, elected or appointed officials, teachers, etc., it can apply equally to each and their responsibilities to public service, the law, and the citizenry.

Moral turpitude, as represented through existing caselaw, is often defined in relation to the character of the person. Issues of truth and veracity relate to "moral turpitude," as do convictions for lying, cheating or stealing, which are a sample of primary acts related to "moral turpitude."

Primary acts establish moral turpitude on their face, and include crimes that necessarily involve: (1) an intent to defraud; (2) intentional dishonesty for personal gains, such as: theft, embezzlement,³⁶ willfully diverting electricity,³⁷ knowingly transporting stolen property,³⁸ perjury or subornation of perjury;³⁹ making a false statement;⁴⁰ bribery; and misrepresenting the reason why a bank failed to honor a check drawn on insufficient funds; or (3) behavior particularly repugnant to acceptable moral standards such as: standing naked in a window masturbating and waving to attract attention—ruled to be moral turpitude by the Indiana courts,⁴¹ a homosexual proposition in a public place; lewdness and prostitution.⁴²

Other crimes defined as "moral turpitude," but which were not clearly recognized, as such, before a decision by the courts, include: various drug possession and or distribution violations (emphasis placed on the fact that drug abuse has been a scourge upon today's society);⁴³ failing to appear in court after receiving a summons, necessitating issuance of a bench warrant;⁴⁴ leaving the scene of an accident;⁴⁵ felony evading police;⁴⁶ driving while intoxicated with possession of marijuana and hashish—the claim of moral turpitude was not the result of the possession of marijuana alone, or any one of the acts, but the result of consideration of all three offenses,⁴⁷ and more.⁴⁸

There are crimes that do not meet the elements of moral turpitude. Most traffic offenses do not involve moral turpitude. In Alabama, driving while intoxicated "is not the kind of offense which

signifies an inherent quality of baseness, vileness, and depravity, denoting moral turpitude."⁴⁹ **Other offenses may or may not involve moral turpitude, and thus a conviction of other offenses is not a ground for discipline (under moral turpitude) without additional proof of the circumstances surrounding the offense.**⁵⁰ "An isolated unlawful act or acts of indiscretion wherever committed do not necessarily establish bad moral character. But . . . repeated acts in violation of law wherever committed and generally condemned by law abiding people, over a long period of time, reveal the sort of mind and establishes the sort of character" that legislatures should not leave in positions requiring public trust.⁵¹

A conviction for a crime of moral turpitude can have a dramatic consequence to the job-relatedness of a law enforcement officer. The nexus between crimes of moral turpitude and law enforcement employment is created between the written law and the law enforcement officer's oath (*to support and defend the Constitution and the laws of the state*). **Because law enforcement officers are required to testify in the courts of law, their credibility, honesty and integrity is an essential function of the position of law enforcement officer.**

While it is common-place for a felony conviction to result in termination from employment, **many officers have received misdemeanor convictions and remained in law enforcement.** However, evidence of a conviction for a misdemeanor involving moral turpitude is admissible to impeach the credibility of a witness, whether a law enforcement officer or not.⁵² Thus, **if an officer has been convicted of a misdemeanor involving moral turpitude, the testimony provided by the officer could be ruled inadmissible before the courts,** dashing any attempt by the state or local jurisdiction to succeed in a criminal or civil case brought on, or defended by, the officer.

Misdemeanor acts of moral turpitude may, in fact, breach the established minimum standards established by the state agency responsible for law enforcement standards and training and the *Law Enforcement Code of Ethics*, thereby greatly diminishing public trust in the competence and reliability of a law enforcement officer.⁵³ The Mississippi Board on Peace Officer Standards and

Training has approved, and placed into administrative rule, a definition for moral turpitude meaning “any conduct or pattern of conduct contrary to justice, honesty, honor, modesty or good morals that would tend to disrupt, diminish or otherwise jeopardize public trust and fidelity in law enforcement.”⁵⁴ State provisions such as Mississippi’s, and the legal decisions brought forth from challenges to those provisions, set a precedence for local jurisdictions within that state’s boundaries.

Summary

If your department utilizes the terms “good moral character” or “moral turpitude” within its policy or regulatory scheme, reviews should be conducted on the decisions of your state and federal courts to gain the requisite knowledge in maintaining an effective disciplinary process. If not already established through the courts, it is important to reach a definition of the term(s) and, furthermore, determine the object of the policy or regulation.

Some states have met this challenge within their court systems, such as the California Supreme Court which held: “the paramount purpose of the ‘moral turpitude’ standard is not to punish but to protect the public, the courts and the profession against unsuitable practitioners.”⁵⁵ Statements such as California’s turn the focus of the policy or regulation away from discipline or claims of retaliation, placing them squarely in the realm of public safety.

“Instruction in things moral is most necessary to the making of the highest type of citizenship.”⁵⁶ Using terms which elude specific definitions requires action to clarify their meaning within the department. **Having the foresight to manage your policymaking can bring about infinite benefits to your department through increased morale, a heightened sense of leadership in command, fair notice to those who are subject to such policies, and a predetermined plan for handling those tough disciplinary challenges.** A department’s policies are a mirror of the administrator’s vision and leadership. If given the proper attention, they will provide a significant defense to meet the future challenges of the department.

Endnotes:

1. *Connally v. General Construction Co.*, 269 U.S. 385 (1926), at 391; 46 S.Ct. 122, at 127.
2. *Schware v. Board of Bar Examiners*, 353 U.S. 249, 77 S.Ct. 752, at 761 (1957).
3. *Quilodran-Brau v. Holland*, 232 F.2d 183, 184, (3d Cir. 1956); see *Tseung Chu v. Cornell*, 247 F.2d 929 (9th Cir. 1957) (“We are not unmindful of the myriad decisions sponsoring various concepts of moral turpitude [but][t]hey offer no well settled criteria.”)
4. *In re Chase*, 299 Or. 391, 398-400, 702 P.2d 1082, 1086-87 (Or. 1985).
5. William C. Smith, “Of Conduct And Good Character: Miscellaneous Legal Considerations In The Decertification Of Law Enforcement Officers,” IADLEST, Salt Lake City, Utah, May 1990, p. 5.
6. *Dixon v. McMillian*, 527 F. Supp. 711, at 721, (N.D. Texas 1981); *Schware v. Board of Bar Examiners*, 353 U.S. 249, 77 S.Ct. 752, at 761 (1957).
7. 1974 PA 381, as amended, MCL 338.41(1).
8. See, e.g., *Bajis v. City of Dearborn*, 151 Mich. App. 533 (1986).
9. *Zemour, Inc. v. State Division of Beverage*, 347 So.2d 1102, 1105 (Fla.App. 1977).
10. IDAPA 11, Title 11, Chapter 01, (11.11.01), Rules of the Idaho Peace Officer Standards and Training Council, Section 056. Character and Reputation.
11. Leonard Territo, C.R. Swanson, Jr., and Neil C. Chamelin, *The Police Personnel Selection Process*, The Bobbs-Merrill Company, Inc., 1977, pp. 4-6.
12. *Id. Dixon*, at 721; *Barsky v. Board of Regents of N.Y.*, 347 U.S. 442, at 451, 74 S.Ct. 650, at 655, 98 L.Ed. 829 (1953).
13. *IADLEST 1997 Executive Summary of the Sourcebook*, International Association of Directors of Law Enforcement Standards and Training, edited by CJ DATA/Flink & Associates, Richmond, Va., 1997, p. 93.
14. Rule 11B-27.0011, Florida Administrative Code.
15. Enumerated crimes include: *driving under the influence; fleeing and attempting to elude an officer; public assistance fraud; assault; battery; stalking; culpable negligence with injury; carrying concealed weapon; improper exhibition of a weapon/firearm; possession or sale of a firearm with altered serial number; failure to report sexual battery; prostitution/lewdness; unnatural or lascivious act; exposure of sexual organs; false report of fires; criminal mischief; trespass in a structure or conveyance; petty theft; retail theft; theft of utilities/cable service; removal or altering property identification marks; false report of a crime; sale of counterfeit controlled substance; fraudulent urine drug test; child abuse; negligent treatment of children; prescription fraud; manufacture of counterfeit controlled substance; passing worthless checks; perjury, not in official proceedings; false report to law enforcement; false official statements; refusal to serve arrest warrant; resisting an officer*

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without violence; obstruction by disguised person; refusal to aid law enforcement officer; unlawful use of police badges or other indicia of authority; pornography offenses; loitering or prowling; affrays and riots; controlled substances violations; witness tampering; malicious battery on a prison inmate; false reports concerning use of force on an inmate; acceptance of unauthorized compensation from an inmate; dealing or barter with prisoners; and interference with prisoners. Source of information: Florida DCJST Addendum to Technical Memorandum 95-34.

16. *Id. Schware* at 761.
17. *People v. Melchor*, 237 Cal.App.2d 685; 47 Cal.Rptr. 235 (1965).
18. *Id. Dixon* at 721.
19. *Barnes v. Clayton*, 590 N.E.2d 112, at 115, (Ind.App. 3 Dist. 1992), quoting *Matter of Lawrence*, 579 N.E.2d 32 (Ind. 1991).
20. *Id. Sourcebook*, p. 19.
21. *Id. Sourcebook*, p. 19.
22. For example: §53-6-211.(2), Utah Code Annotated, "(a) Notwithstanding any expungement statute or rule of any other jurisdiction, any conviction obtained in this state or other jurisdiction may be considered for purposes of this section . . . [and] (b) . . . 'conviction' includes a conviction that has been expunged, dismissed or treated in a similar manner to either of these procedures." §19.2-392.3, Code of Virginia, Disclosure of expunged records, subsection (B). "Upon a verified petition by the attorney for the Commonwealth alleging that the record is needed by a law-enforcement agency for purposes of employment application as an employee of a law-enforcement agency . . . the court may enter an ex parte order, without notice to the person, permitting such access. An ex parte order may permit a review . . ."—Subsection (A) of this statute prohibits disclosure of the reviewed expunged information, to another person, without an order from the court which ordered the record expunged.
23. § 15.1-131.8(3) Code of Virginia (1950), as amended.
24. Arrest, by itself, is not considered competent evidence at either a criminal or civil trial to prove that a person did certain prohibited acts. Cf. Wigmore, Evidence, §980. *Id. Schware* at 757 (n6).
25. Mich. Comp. Laws §37.201 *et. seq.*; N.Y. Consol. Laws, Exec. Law §296.
26. *Barnes v. Clayton*, 624 N.E.2d 24 (Ind.App. 5 Dist. 1993).
27. *Smith, supra*, n. 5.
28. *State v. Malusky*, 230 N.W. 735, 737, 59 N.D. 501, 71 A.L.R. 190; *Bartos v. U.S. District Court for the District of Nebraska*, 19 F.2d 722, 724 (1927); *U.S. ex rel. Manzella v. Zimmerman*, 71 F.Supp. 534, 537 (D.Pa.).
29. *In re Bartos*, 13 F.2d 138, 139 (D.Neb.1926); *In re Jacoby*, 57 N.E.2d 932,936, 74 Ohio App. 147 (1943).
30. *Ref. Jacoby*, at 936.
31. *Jordan v. DeGeorge*, 341 U.S. 223, 71 S.Ct. 703, 709, 95 L.Ed 886 (1951) (dissenting opinion).
32. *Jordan v. DeGeorge*, 341 U.S. 223, 71 S.Ct. 703, 709, 95 L.Ed. 886 (1951) (dissenting opinion).
33. Linda and Richard Eyre, *Teaching Your Children Values*, Simon & Schuster, 1993, p. 142.
34. *Id. Bartos*, at 936.
35. *Portaluooopi v. Shell Oil Co.*, 684 F. Supp. 900 (E.D.Va. 1988), referencing *United States v. Zimmermann*, 71 F.Supp. 534 (E.D.Pa. 1947).
36. *Cirniigliaro v. Florida Police Standards & Training Commission*, 409 So.2d 80, at 84, (Fla.App. 1982).
37. *Kenai Peninsula Board of Education v. Brown*, 691 P.2d 1034 (Alaska 1984).
38. *Pawtucket School Comm. v. Board of Regents*, 513 A.2d 13 (R.I. 1986).
39. *Matter of Kerr*, 548 P.2d 297, 302; 86 Wash.2d 655 (1976).
40. *C. & O. Ry. So. v. Hanes, Adm'r*, 196 Va. 806, 86 S.E.2d 122 (1955).
41. *In re Levinson*, 444 N.E.2d 1175 (Ind. 1983).
42. *Corstvet v. Boger*, 757 F.2d 223 (10th Cir. 1985).
43. *Portaluooopi, supra*, n. 35.
44. *In re Schaumann*, 446 N.E.2d 1304 (Ind. 1983).
45. *Frederickson v. Superior Court In and For County of Maricopa, Ariz.*, 928 P.2d 697, 698 (Ariz.App. 1996); *People v. Bautista*, 217 Cal.App.3d 1, 265 Cal.Rptr. 661 (1990); *State v. Horton*, 271 S.C. 413, 248 S.E.2d 263 (1978).
46. *People v. Dewey*, 49 Cal.Rptr.2d 537, 540, (Cal.App. 1996).
47. *Matter of Jones*, 464 N.E.2d 1281 (Ind. 1984).
48. *McKenzie v. New Orleans Police Dept.*, 487 So.2d 534 (La.App. 1986) (police officer removed for civil rights violations); *Watson v. Schwenker*, 8 Ohio App.3d 294, 456 N.E.2d 1243 (1982) (forgery and cashing of stolen blank money orders; no proof of theft irrelevant); *City of Parkersburg v. Skinner*, 346 S.E.2d 803 (W.Va. 1986) (police officer who illegally stopped ex-wife's boyfriend's car and threatened and frisked him could be dismissed since violations of departmental rules were not inadvertent or trivial).
49. *Diamond v. State*, 49 Ala.App. 68; 268 So.2d 850, at 853, (Ala. 1972).
50. *Schaumann, supra*, n. 44.
51. *Id. Zemour*, at 1105.
52. *Parr v. Commonwealth*, 198 Va. 721, 724, 96 S.E.2d 160, 163, (1957).
53. *Board of Law Enforcement Officer Standards and Training v. Butler*, 672 So.2d 1197, 1198 (Miss. 1996).
54. *Id.* at 1200.
55. *Hallinan v. Committee of Bar Examiners*, 65 Cal.2d 447, 417-472, 55 Cal.Rptr. 228, 421 P.2d 76 (Cal. 1966); *In Re Rothrock*, 16 Cal.2d 449, 454, 106 P.2d 97, 101, (Cal. 1940).
56. Quote attributed to Theodore Roosevelt.

SAMPLE POLICY ON CHARACTER AND REPUTATION

B. *Sample Policy on Character and Reputation of Sworn and Non-Sworn Employees** (see * note on p. 29 before reading).

POLICE/SHERIFF'S DEPARTMENT	RULES AND REGULATIONS
SUBJECT: CHARACTER AND REPUTATION OF SWORN AND NON-SWORN EMPLOYEES	NUMBER: 1-20
EFFECTIVE DATE: January 1998	REVIEW DATE:
AMENDS/SUPERSEDES:	APPROVED: _____ Chief of Police
CALEA STANDARDS: 26.1; 31.1; 31.5-7; 32.1-3, 5-7	

NOTE: This rule or regulation is for internal use only, and does not enlarge an officer's civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violations of this directive, if proven, can only form the basis of a complaint by this department, and then only in a non-judicial administrative setting.

Index Words:

Employee Selection
Employee Discipline
Good Moral Character
Moral Turpitude
Training

I. Policy:

It is the policy of the [your agency] to employ sworn and non-sworn employees with high moral standards. To that end, the department shall practice a regimented, rigorous procedure to obtain and maintain individuals demonstrating high moral character which shall be implemented through the selection, career development, training and disciplinary procedures of the department. This procedure shall simultaneously afford equal opportunity to everyone regardless of race, creed, color, sex, national origin, or age. The department does not discriminate against people with disabilities and affords them the same access to employment provided to all citizens. Where possible, the department provides reasonable accommodation to the known disabilities of qualified people.

II. Purpose:

The purpose of this order is to outline minimum standards for character and reputation conducted through employment selection requirements

for sworn police officers and non-sworn support staff, and to establish guidance for training and disciplinary policies within the department which shall be the basis of maintaining the minimum character and reputation standards.

III. Definitions:

A. **Good Moral Character:** The term "good moral character" as used herein, shall mean the character attributes of a department employee that enhance an employee's value to the department and to public service which include, but shall not be limited to: honesty; integrity; truthfulness; obedience to the law; obedience to the oath of office; obedience to the law enforcement code of ethics (as specified in this department's policy); respect for authority; respect for the rights of other individuals, regardless of their age, race, gender, religion, disabilities, sexual preference, political beliefs, or attitudes towards the conduct and responsibilities of law enforcement.

B. **Moral Turpitude:** The term "moral turpitude" as used herein, shall mean an intentional act or behavior displayed in words or actions, committed by a department employee, on-duty or off-duty, which violates public morals or the common sense of the community, whether criminally prosecuted or not, that involves the

intent to defraud; intentional dishonesty for personal gains; lying; perjury; subornation of perjury; cheating; bribery; unlawful possession or distribution of controlled substances; unlawful acts of sexual conduct; sexual harassment involving touching, intercourse, or the threat of loss of employment; excessive use of force that rises to the level that shocks the conscience of police administrators and the public; or other conduct, determined through formal due process, that meets the standard of moral turpitude.

IV. Training:

A. All department employees, sworn or non-sworn, shall receive department approved training developed specifically to identify, discuss and promote good moral character, and which shall examine conduct detrimental to employee performance or in violation of acceptable character standards. Employees receiving such training shall successfully complete a written examination based upon the training, or receive retraining until satisfactory completion of the written examination can be accomplished.

B. Training shall include, but not be limited to, presentations and discussions on the following topics:

1. attributes of good moral character;
2. the oath of office;
3. the law enforcement code of ethics;
4. moral turpitude; and
5. real-life incidents or circumstances, involving or affecting criminal justice professionals, which demonstrate or promote the training concepts described in subsections (1) through (4) above.

V. Requirements:

A. Good moral character during employment selection must be determined by a favorable report following a comprehensive personal history investigation covering school and employment records, home environment, personal traits and integrity. Consideration will be given to any and all law violations, including traffic and conservation law convictions as indicating a lack of good character.

B. An oral interview must be conducted by the department during the employment selection

process to determine such things as the applicant's appearance, demeanor, attitudes and ability to communicate.

C. All employees, sworn or non-sworn, are required to maintain the professional character standards defined as "good moral character" while employed by the department.

D. Employees who intentionally fail to maintain the professional character standards defined as "good moral character" or who shall intentionally engage in conduct defined as "moral turpitude" shall be subject to the employee disciplinary policies and procedures of the department.

VI. Character and Reputation Selection Procedures for Employment as a Sworn Police Officer:

A. The applicant applying for a sworn police officer position within the department shall be required to complete and submit to the department a comprehensive application and personal history form.

B. After the applicant has been determined to be otherwise qualified, the department shall conduct a personal interview with the applicant, using the application form for interview questions, to ascertain personal character and reputation attributes not identified by the applicant on the application. The department shall ask specific questions about the possession, use, criminal arrest, or criminal convictions related to intoxicants, narcotics and drugs; domestic violence; and shall inquiry about the applicant's physical, mental, and emotional history; family problems; moral outlook and habits; financial transactions, etc. During the oral interview, the department shall take into consideration the applicant's personal appearance, mannerisms, judgment, maturity and resourcefulness.

(The department's character and reputation interview shall comply with the Americans with Disabilities Act and its Regulations promulgated by the Equal Employment Opportunity Commission and their effect upon the employment selection process.

SAMPLE POLICY ON CHARACTER AND REPUTATION

C. Under the direction of an experienced investigator, the department shall conduct a thorough personal history investigation into the character and reputation of the applicant. The applicant's morality, integrity, reputation, honesty, dependability, qualifications, experience, associations, emotional stability, prejudice, loyalty, etc., should be explored.

D. The department's personal history inquiry and investigation described in subsections A. through C. above, must resolve all doubts. Recommended sources of investigation may include the following:

1. Verify birth and/or naturalization records to determine age and citizenship;
2. Review military records and verify discharge, if applicable;
3. A criminal history records check into all arrests; convictions; convictions dismissed with prejudice or treated in some similar manner; and, if applicable under state law, expunged arrests and convictions; to include the following:
 - (i) fingerprint criminal history records check to include records maintained by the Federal Bureau of Investigation and the state criminal history records exchange.
 - (ii) Check local police files;
 - (iii) Check police files in all cities where the applicant has lived or worked;
4. Interview teachers and fellow students;
5. Check previous employers to determine work habits, attendance, etc.;
6. Verify marital status and interview spouse to determine the attitude towards law enforcement occupational aspirations;
7. Interview past and present landlords, neighbors, references, and social acquaintances to determine applicant's character, abilities and reputation in the community;
8. Spouse and close relatives should be checked through appropriate files to determine whether they have criminal records, are in prison, or are in any status or position which might adversely affect the applicant's obligation as a police officer;

9. Check credit bureau files in all places of residence or employment within the past five years;

10. If the applicant lives, or has lived in a distant community, a letter should be sent to the local law enforcement agency requesting that an investigation be conducted in that locality;

11. Any other course of information which previous contacts show to be important; and
12. The final step in the character and reputation investigation should be an interview with the applicant's present employer following permission from the applicant.

E. All results of the personal history investigation should be considered confidential and processed accordingly.

F. The results of the personal history investigation should ultimately be evaluated by the department administrator and/or the hiring authority to determine whether the applicant is suitable for employment with the department. All doubts in personnel suitability matters should be resolved in favor of the department.

VII. Character and Reputation Considerations Applicable to Employee Performance Evaluations:

A. Minimum character and reputation standards shall be criteria for performance evaluation during the employee's annual performance review.

VIII. Character and Reputation Considerations Applicable to the Department's Employee Disciplinary Policy:

A. For purposes of the department's employee discipline policy, the following are to be considered in determining whether a violation of the department's minimum standards on character and reputation has occurred, and, if such conduct has occurred, it shall be grounds for the administration of appropriate discipline:

1. Engaging in acts of moral turpitude or conduct in violation of good moral character, on-duty or off-duty, whether criminally prosecuted or not, that undermines the effectiveness of the agency's activities

within the community, tends to diminish or jeopardize the public trust in the professionalism of the employee or department, or otherwise affects the employee's performance within the agency.

2. Any other conduct in disobedience to the law, the oath of office, or the law enforcement code of ethics (as set forth in department policy).

* This policy and procedure may be used with the permission of the author, William L. Flink. Mr. Flink can be contacted by writing or calling him at the address and phone numbers

listed in Section I, Notes From the Editor, *supra*. This policy and procedure is neither endorsed nor recommended by the publishers of the *Law Enforcement Legal Defense Manual*, but is presented here merely as an example for consideration and review. An agency or person wishing to adopt any part of this policy and procedure must tailor it to the provisions or limitations of existing federal law and the law of its particular state or jurisdiction. The laws will vary from state to state and even among jurisdictions within a state and sometimes are also impacted by collective bargaining agreements. Every policy and procedure must be reviewed and approved by the legal counsel or advisor for the agency or person before it is adopted or implemented.

VII. Discipline Update: No Right to Lie in Internal Affairs Investigations

In *LDM* #97-4, p. 31, we noted the case of *King v. Erickson*, No. 96-1395, then pending before the United States Supreme Court. In this case *LDM* publisher, James P. Manak, filed an *amicus curiae* brief on behalf of law enforcement management interests to the effect that due process does not provide governmental employees with a protected right to lie when required to respond to questions narrowly and directly related to their employment.

The case has now been decided by the U.S. Supreme Court and our argument prevailed (please note the change of name in the case):

L.A. Chance, Acting Director, Office of Personnel Management v. Erickson, 118 S.Ct. 753, No. 96-1395 (1998).

The Federal Circuit Court of Appeals, 89 F.3d 1575, 92 F.3d 1208 (Fed. Cir. 1996) had ruled that a federal government agency could not, consistent with the Fifth Amendment's Due Process Clause, charge an employee with both employment-related misconduct and making a false statement concerning the alleged misconduct based on the employee's denial of the charge or the facts underlying the charge. The court, relying on previous federal circuit precedent in *Grubka v. Department of Treasury*, 858 F.2d 1570 (Fed. Cir. 1988), held that the "right to lie" in such circumstances is guaranteed by the Due Process Clause of the Fifth Amendment.

In a unanimous decision of the United States Supreme Court and an opinion written by the Chief

Justice, the Court reversed, ruling that **neither the Fifth Amendment's Due Process Clause nor the Civil Service Reform Act, 5 U.S.C. § 1100 et seq., precludes a federal agency from sanctioning an employee for making false statements to the agency regarding his alleged employment-related misconduct.** He said that a citizen may decline to answer a government question, or answer it honestly, **but cannot with impunity knowingly and willfully answer it with a falsehood.** There is no right to falsely deny charged conduct in § 7513 (a), which authorizes a federal agency to impose penalties "for such cause as will promote the efficiency of the service," and then gives the employee four carefully delineated procedural rights, *i.e.*, advance written notice of the charges, a reasonable time to answer, legal representation, and a specific written decision. **Due process, the heart of which is the right to notice and a meaningful opportunity to be heard, does not accord a right to lie.**

Even if the employees had a protected property interest in their employment, a "meaningful opportunity to be heard" does not include a right to make false statements with respect to the charged conduct.

Any claim that employees who are not allowed to make false statements might be coerced into admitting misconduct, whether they believe that they are guilty or not, in order to avoid the more severe penalty of removal for falsification, was deemed frivolous. **If answering an agency's investigatory question could expose an employee to a criminal prosecution, he can exercise his Fifth**