



COPY

INTER-OFFICE MEMORANDUM
Department of Public Protection
125 West New York Ave., Suite 183
DeLand, FL 32720
386-740-5120 – FAX 386-740-5283

TO: Richard Gardner
Lifeguard Supervisor

DATE: January 13, 2012

FROM: George Recktenwald, Interim Director *JGR*
Department of Public Protection

FILE NO: DPP12-007

SUBJECT: Notice of Dismissal

REFERENCE: IA 2011-09-297

Purpose: The purpose of this memorandum is to provide you notice of your dismissal as the result of your actions documented in IA 2011-09-297.

Background: You received a notice of Intent to Dismiss on October 19, 2011, from Mike Coffin, former Public Protection Director. To address concerns raised in your October 24, 2011 response to the Notice of Intent to dismiss, the county chose to re-open the investigation. After reviewing the information obtained during the course of this investigation I have decided to proceed with the intended action.

Information: You are being dismissed as the result of your actions documented in IA 2011-09-297. After reviewing the information obtained during the course of this investigation your pattern of conduct demonstrates a prolonged failure of judgment which as documented is intolerable to the organization, most especially given your position as a senior supervisor and law enforcement officer. This is evidenced in the investigation by your decision to engage in an inappropriate relationship with a trainee and a long standing intimate relationship with a subordinate; your obvious favoritism extended to that subordinate; your failure to take appropriate action as a supervisor with regard to the fitness for duty of your paramour; your knowledge that the relationships and your actions resulting from these relationships was in fact improper; your refusal of a direct order to produce phone records and your blatant disregard for directives cautioning against and discouraging unprofessional conduct in this manner.

Your admitted relationships with Officers Gittner and Winters demonstrate an egregious lack of judgment that has compromised your credibility and effectiveness as an impartial supervisor and law enforcement investigator. Both officers confirm that the relationships took place. Work schedules and records indicate these two officers did work either under your supervision as the acting deputy chief or assisting you on investigations you were supervising. There is no doubt you were viewed as a senior captain and a member of the supervisory team within the division. Additionally, you received training in the county's supervisory classes and in recent sexual harassment classes given to all members of your division that cautioned about inappropriate relationships in the workplace, and the potential issues that may occur as a consequence. You have admitted knowledge of the practice of separating co-workers dating within the division, yet you failed to bring your relationship forward to your supervisor.

I find it unacceptable that as a key senior supervisor and experienced investigator, that when you were asked the direct question regarding your involvement with Officer Gittner, you would take the position that because you were not seeing her at that moment you were answering that question honestly. If you were technically truthful, you certainly were aware this was a concern of the division director, and yet

you failed to inform him of your past involvement or the resumed relationship. Additionally, you failed to notify your supervisor of the incident involving Officer Gittner on August 7, 2011 where you observed behavior in her that caused you to secure both her service weapon and personal weapon. You also subsequently began a new relationship with Officer Winters while she was still on probation and failed to report this ignoring the concerns of your director.

Sworn statements from other officers indicate you spent an inordinate amount of time and attention on Officer Gittner, routinely (as much as twice per week by one account) requesting her assignment to assist you on investigations at a much higher rate than other officers, giving her the appearance of a training and experience advantage. You participated in physical fitness training with Officer Gittner daily, and you were seen often with her on off duty details. From these statements and others provided from your fellow officers, even those close to you, your impartiality in dealing with Officer Gittner was definitely in question throughout the division, undermining your credibility and your effectiveness as a supervisor and law enforcement officer.

Your mishandling of the aforementioned incident over the weekend of August 6-7, 2011 involving Officer Gittner and her service weapon not only demonstrated poor judgment and favoritism, but a disregard for Officer Gittner's safety, and safety of those with whom she might be in contact. By this action you displayed a blatant disregard for your responsibilities and a willingness to place your personal interests ahead of your professional duty. Your determination that you knew more than your supervisors and health care professionals when you returned the weapons to her without reporting the incident or seeking a fitness for duty evaluation exemplifies arrogance and self-serving rationalization.

Officer Winters' statement indicates you discussed keeping your relationship with her a secret because sometimes you were acting deputy chief. Other statements in the report demonstrate you knew that your handling of the gun incident was wrong or that you would at least be "in trouble" for how it was handled. These actions indicate you did in fact know that what you were doing was improper at best.

These actions along with others cited in IA 2011-09-297 violate the following Volusia County Merit Rules and Regulations and Division of Beach Safety Policies and Procedures:

Sec. 86-453. Reasons for disciplinary action.

(5) Violation of any reasonable or official order, refusal to carry out lawful and reasonable directions given by a supervisor, or other acts of insubordination.

(8) ...or other conduct which interferes with effective job performance or has an adverse effect on the efficiency of county service;

(10) ...unsatisfactory performance of duties;

(12) Knowingly giving false statements to supervisors...;

(13) Any conduct, on or off duty, that reflects unfavorably on the county as an employer, and

(21) Any other conduct or action of such seriousness that disciplinary action is considered warranted.

Sec. 86-45. Conduct of employees.

a) Code of conduct. Employees of the county government are employed to provide service to the citizenry of the county and the public in general and are expected to conduct themselves in a manner that

will reflect credit on the county government, public officials, fellow employees and themselves. Employees must avoid any action which might result in or create the impression of using public office for private gain, giving preferential treatment to any person, or losing impartiality in conducting public business; and

Division of Beach Safety Policy and Procedure- Neglect of Duty

11.01.05 Neglect of duty offenses include any act, failure to act or instance wherein an employee ignored, paid no attention to, disregarded, failed to care for, give proper attention to or carry out the duties and responsibilities of their position whether through carelessness, oversight or neglect.

This investigation brought to light a pattern of behavior and decisions that is not acceptable for an employee of this organization and especially a supervisor or a law enforcement officer. You hold a position that requires clear and impartial judgment. Your actions have compromised the trust of your fellow officers and subordinates as well as the public you serve. These actions also reflect unfavorably on the Division of Beach Safety and Volusia County Government. Although your record indicates a good performance throughout your sixteen years of service as a Beach Safety Law Enforcement Officer, your actions over the time period covered in IA 2011-09-297 leave me no choice but to dismiss you from employment.

Action:

In accordance with section 86-485 (a)(3) of the Merit System Rules and Regulations you have ten (10) working days from receipt of this notification (or effective date of the dismissal) to appeal this action through the County Personnel Board. Should you decide to exercise your right to appeal, submit your written request to the County Personnel Office, 230 N. Woodland Blvd., Suite 262, DeLand, FL. 32720.

If you do not file your appeal by the time indicated, it will be assumed that you have waived this right.

Pursuant to Merit Rule 86-455, the legal department and the personnel director have reviewed this notice and concur with the proposed action.

cc: ___ Joseph Pozzo, Deputy Director Public Protection ___ Nancye Jones, Assistant County Attorney
 ___ Kevin Sweat, Director, Beach Services ___ Tom Motes, Personnel Director
 ___ Chandra Gordon, EEO Coordinator

I certify that I have read this notification and acknowledge receipt of the original copy.

Employee Signature (Or Witness, if Employee Refuses to Sign)

Date and Time Received