



TO: James Ryan, Deputy Director
Department of Public Protection

FROM: Nikki Dofflemyer, Captain
Department of Public Protection
Internal Affairs Unit

DATE: October 12, 2011

SUBJECT: Case # IA-2011-09-297, Captain Richard Gardner, Beach Safety

References:

- R-1 Memo from Deputy Director Ryan to Internal Affairs Captain Nikki Dofflemyer 9/22/2011, directing an internal affairs investigation inquiring into allegations of specific, inappropriate relationships among several current/former employees of the Beach Safety Division as presented in an undated, anonymous letter.
- R-2 Allegations of misconduct against Captain Richard Gardner, Beach Safety Division(BSD), and other employees as presented in an undated, anonymous letter to Department of Public Protection Director, Mike Coffin, post marked 9/14/2011.
- R-3 Transcript of sworn statement dated 9/23/2011 by BS Probationary Law Enforcement Officer (LEO) Elizabeth P. Winters.
- R-4 Transcript of sworn statement dated 9/29/2011 by BS LEO Cara Gittner.
- R-5 Transcript of sworn statement dated 10/3/2011 by BS LEO Captain Mindy Greene.
- R-6 Transcript of sworn statement dated 10/6/2011 by Captain Richard Gardner.
- R-7 Phone records for county cell issued to Captain Richard Gardner, number 386-547-6819 for 3/2011-8/2011.
- R-8 Florida Department of Law Enforcement (FDLE) Criminal Justice Professionalism Program Global Profile Sheet for LEO Winters indicating LEO certificate was activated by Beach Safety on 7/8/201.
- R-9 Volusia County Division of Beach Safety employees schedule for 8/6/2011-8/19/2011.

Background:

Based on an undated anonymous letter provided to the Director of the Department of Public Protection, the Internal Affairs Unit was directed to initiate an investigation into allegations of specific, inappropriate relationships among several current/former employees of the Beach Safety Division. (R-1, 2) This investigation will focus solely on allegations regarding Captain Richard Gardner.

Complaint/Allegation:

The following list of allegations presented in the anonymous letter allege inappropriate relationships and unprofessional conduct specifically involving Captain Gardner, and is intended to provide an overview for the more detailed investigative facts and findings that follow:

1. Gardner engaged in a sexual relationship with LEO Winters who is a probationary employee.
2. Gardner secured the duty service weapon of an individual he was romantically involved with due to her mental instability.
3. Gardner engaged in a sexual relationship while on duty with an officer who is vying for an investigator position and he has nominated the employee for officer of the year for 2 years.
4. Gardner gained access to an officer's personal Facebook account without her permission.
5. Gardner concealed evidence or information associated with complaints against Beach Safety Officers.
6. Gardner gained access to an officer's personal banking account information.

Information

Based on the anonymous letter, and documents submitted by Volusia County Beach Safety Division, interviews were conducted to determine if the allegations as presented were valid. (R-2-9)

On 9/23/2011 Officer E. Winters was interviewed and confirmed that she had been involved in an intimate relationship with Gardner. The relationship began the week of August 8, 2011 and ended sometime in 9/2011. Winters says she did not engage in any physical or sexual contact with Gardner while either was on duty and she did not use any county property to engage in any type of contact either verbal or physical with Gardner. Winters reported she became a certified law enforcement officer in 7/2011 and is currently a probationary employee. Gardner has not been assigned as her direct supervisor on a day-to-day basis. (R-3, 7)

On 9/29/2011 Officer C. Gittner was interviewed and confirmed that she is currently involved in a romantic relationship with Gardner which began in 2/2009. She denied having any sexual or unprofessional contact with Gardner while either party was on duty or using any county equipment to facilitate the relationship. She has sent work related text messages to Gardner's county-issued cell phone. Gittner stated she kissed Gardner while he was in his county vehicle when he was off-duty and leaving work. Gittner confided in Beach Safety Captain Mindy Greene regarding her relationship with Gardner although the relationship was not reported to any other supervisor. (R-4, 5, 6, 7)

In October or November of 2010 Gittner claims Gardner accessed her facebook account without her permission; which was denied by Gardner. At no time did he indicate he was using county equipment for the purpose of reviewing the account and he did not access her bank account information. (R-4, 6)

Gittner advised she would meet Gardner on a regular basis while he was assigned special details at the Ocean Walk parking garage and stayed a couple of hours during each visit. While she was there, he would provide instruction on law enforcement investigative tools and procedures. She denied any unprofessional conduct took place when she would visit Gardner and other night shift employees had seen her during the visits. (R-4)

Gittner said Gardner did not nominate her for Officer of the Year and it was her understanding that she nominated by Chief Sweat. Gittner reported she has not received any special favors, assignments or positions due to her relationship with Gardner. (R-4)

Early morning on August 7, 2011 Gittner was upset and called Gardner on his personal cell phone. She said she was frustrated and wanted to leave Beach Safety and made the comment, "Come get my gun", and she contends that Gardner took it to mean she was going to do harm to herself. Gittner said she never intended for it to appear that she was planning to harm herself. Gardner arrived at her residence and indicated she was upset but thought her call was just a ploy for attention to get him to her residence so they could discuss the relationship. He secured her service weapon and her personal weapon. She said he was at the residence for approximately 15 minutes. The next morning she met Gardner, they spoke about their relationship, and he returned the weapons to her possession without any evaluation of Gittner's fitness for duty. Further, Gardner made no report of this incident to his supervisors although he was assigned as the on-call Deputy Chief for the Division that day. (R-4, 6, 9)

On 10/3/2011 Captain M. Greene provided a sworn statement and reported Gittner had told her Gardner was treating her unfairly by being rude to her on the

radio. Greene said Gittner did not want to make a formal complaint, she just appeared to be annoyed by Gardner's actions. Captain Greene reported this information to Division Chief Petersohn. (R-5)

Gittner confided in Captain Greene approximately 2 weeks after this incident occurred and told her she was upset and had told Gardner to take her weapon. Greene was aware that Gardner secured Gittner's service weapon. She said Gittner never indicated the weapon was taken because she intended to bring harm to herself and did not report the incident to any other supervisor within her chain of command. (R-5)

Gardner provided a sworn statement on 10/6/2011 to address the allegations as presented. Gardner confirmed that he was involved in an intimate relationship with Winters beginning sometime in 8/2011 and the relationship lasted approximately 2 to 3 weeks. He was aware she was a probationary employee and denied engaging in any unprofessional contact while either was on duty or using any county equipment to facilitate the relationship. He was never her direct supervisor and did not show her any favoritism because of the relationship. Gardner did not report the relationship to anyone in his chain of command. (R-6, 7)

Gardner reported he has been involved in a romantic relationship with Gittner since 8/2009. He said he ended the relationship shortly after being advised of the impending internal affairs case. He denied using any county property to facilitate the relationship and says he did not engage in any unprofessional conduct while on duty. He has met Gittner on his way home from work while in his county vehicle and talked and when he was leaving they would kiss. (R-4, 6, 7)

He did not promise or provide any special privileges or show favoritism toward Gittner because of their relationship and has not been her direct supervisor. Gardner said he did not nominate Gittner for Officer of the Year in 2010 or 2011 and did not vote for her. He did not influence the selection made to fill a vacant investigator position in an attempt to have Gittner moved to an investigator position. Gardner reported Beach Safety LEO Kyle McDaniel received the position.

During 2009 and early 2010 Gardner said Gittner would visit him while he was working the parking garage as a special detail. He said that he did not ask her to visit while he was working and thought that she was reviewing the posted schedule and when he was assigned to over-time she would call him and ask to visit. The romantic relationship began sometime in May or June of 2009. He denied any physical or sexual contact took place during the visits. Gardner said she first started visiting because she wanted information regarding on how to go about becoming a police officer and was very interested in what he did. He showed her different computer techniques and systems. He did not report the relationship to anyone in his chain of command. (R-4, 6, 7)

Gardner denied accessing Gittner's Facebook account or her personal banking information. He believed she thought he accessed the Facebook account because he had previously set up her Mobile Me account and had her account password and she assumed that he was accessing her Facebook account. (R-6)

On 8/7/2011 Gardner was the dayshift acting Deputy Chief and was contacted by Gittner who was off-duty. She sounded upset and advised she wanted to resign from her current position with Beach Safety and stated, "I am quitting my job, come get my guns". Gardner reported it was approximately 0100 hours and even though he thought it was a ploy to get him to come over to her house to discuss reconciliation of their relationship, he went to her residence, retrieved her service weapon and also took her personal weapon based on her request. While at the residence, Gittner did not give him any indication she intended on bringing harm to herself but he did ask her if she had thoughts of self-harm prior to leaving. He said she advised she had no intention of harming herself. Gardner was contacted the next morning by Gittner and advised that she wished to resume her employment. At an off-county site, he met her and returned the weapons to her. He did not report the incident to any person in his immediate chain of command advising he did not want to embarrass her. (R-4, 6, 9)

Gardner testified he has never attempted to cover up any administrative violation or criminal violation for another Beach Safety employee. (R-6)

Investigative facts:

The allegations were presented to the Department of Public Protection in the form of an undated anonymous letter. Gardner admitted to previously having a romantic relationship with an employee (BS LEO Winters) who is currently on probation until 12/31/2011. He did not directly supervise Winters during the relationship. Information provided by the Beach Safety Director shows Winters was in her field training phase during the relationship and was supervised by different Field Training Officers depending on the functional area. The FTOs are supervised by Captain Mike Berard. (R-3, 6, 8)

Gardner denied engaging in any sexual relationship with any employee while on duty. The allegation was not substantiated regarding Gardner accessed personal (Facebook and bank account) information associated with Gittner. (R-6)

Gardner admits he was in a romantic relationship with BS LEO Gittner and did take possession of Gittner's service weapon and personal weapon on 8/7/2011 and subsequently returned the weapons to the officer without notifying any party in his chain of command. (R-6, 9)

No evidence is present to substantiate Gardner has concealed evidence or information involving administrative or criminal violations by Beach Safety staff or

attempted to influence or did influence promotion, recognition or special assignment for a person with whom he was romantically involved. Gittner has not received a commendation for Officer of the Year and was not assigned to an investigator position. (R-5, 6)

Based on testimony, information obtained during this investigation and admission by the subject officer, allegations 1, and 2 as listed previously in the complaint are sustained and violate the following:

1. Unprofessional Conduct

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*

Sec.86-453. Reasons for disciplinary action.

(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.*

2. Acting outside scope of official duties

Division of Beach Safety Policy and Procedure - Gifts and Gratuities.

11.01 Supervisors, in addition, must avoid placing themselves in a position which could interfere with, or create the impression of interfering with, the objective evaluation and directing of their subordinates; 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.

Finding:


Based on the information contained in the supporting documents to this investigation and sworn testimony, the finding of officer misconduct associated only with allegations 1 and 2 is sustained.

Concluding Statement:

No difficulties or unforeseen delays were encountered during the conduct of this investigation.

Unless otherwise directed, this investigation is considered closed, and is submitted for review and action as deemed appropriate. The original attachments of interviews and other documents pertaining to this investigation remain on file with the Internal Affairs Unit.

"I, the undersigned, do hereby swear, under penalty of perjury, that, to the best of my personal knowledge, information, and belief, I have not knowingly or willfully deprived, or allowed another to deprive, the subject of the investigation of any of the rights contained in ss.112.532 and 112.533, Florida Statute."


Signature

N.A. DORRLEMYER
Name (printed)