



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: Sergeant Benjamin West
Division of Corrections – Correctional Facility

DATE: April 15, 2013

FROM: George Recktenwald, Director
Department of Public Protection

FILE NO: DPP13-040

SUBJECT: Notice of Dismissal

REFERENCE: NOID-DPP13-030

Purpose: The purpose of this memorandum is to provide you with notice of dismissal from employment with the County of Volusia. This action is the result of your violation of Policy and Procedures during an Internal Affairs investigation from November, 2012-February, 2013. This action will be effective on Monday, April 15, 2013.

Background: You received my notice of intent to suspend on March 21, 2013. A meeting was requested by you via an email from your attorney, Erin Thompson, on March 25, 2013. A meeting to discuss the notice of intent to dismiss was scheduled in the Department of Public Protection Conference Room on March 28, 2013 at 1:30 and you and I met along Deputy Director Terry Sanders, Division Director Marilyn Chandler Ford, Captain David Vanis, County Attorney Nancye Jones and your legal representative, Erin Thompson, Esquire. I have considered the information provided by you at our meeting.

In our meeting you did show remorse over your actions, however, I am troubled that your decision to change your story and call Captain Vanis was a self serving attempt to protect your career. You were already upset about being "passed over" for a promotion and felt your statement against Captain Hunter would lead to your being "passed over" again. Your actions have interfered in another ongoing investigation and this illustrates the importance of giving accurate and truthful reports all of the time. I am therefore proceeding with the intended action to dismiss you.

Information: An Internal Affairs investigation was initiated based on a complaint filed by Officer Charles Cella (IA-2012-11-312) on Friday, November 9, 2012. You received notice of your being called as a witness in that investigation on November 13, 2012. During that investigation, you were interviewed under oath on two occasions and provided testimony, which you subsequently recanted in a telephone conversation on February 1, 2013. Based on the gravity of your retraction of statements made under oath, an Internal Affairs investigation was opened with you as the subject officer on February 1, 2013 (IA-213-02-315).

On November 20, 2012 Captain D. Vanis of the Department of Public Protection, Internal Affairs Unit, conducted a sworn witness interview with you in regards to a complaint filed against Captain Nina Hunter (IA case number 2012-11-312). During that interview, you testified that while you were in the shift commander's office at the Branch Jail on August 4, 2012, that, "I think she licked the back of his head." Later in that same interview, you stated, "[S]o I know when she licked his head I know it really made him mad...and I know he tensed up and his back was also hurting." These statements referenced your witnessing Captain Nina Hunter licking the back of Officer Charles Cella's head on August 4, 2012.

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During this interview you also stated you verbally reported the incident to your supervisor, Lieutenant S. McBride as you departed work for the hospital on August 4, 2012. You explained, "But it wasn't like I was report like you know this and that I was just like you know Cella's hurt she was kinda messing with him and you know how he is about germs and stuff and she licked him and he is really pissed. Something to that effect." Lt. McBride, in her sworn testimony contradicted you, stating you did not advise her of the incident, but only asked about employee injury-related paperwork. You did not prepare a written report of the unusual incident before departing duty on August 4, 2012 or at any subsequent time.

On January 23, 2013 you were re-interviewed by Captain Vanis in regards to the same complaint. Your statements during this interview were also made under oath. This second interview was made to address allegations brought up by Captain Hunter during her subject interview. At the end of this second interview you were asked by Captain Vanis to relate what you witnessed on August 4, 2012 in the shift commander's office at the Branch Jail. You stated, "I guess we were looking for it or whatever ahm is when I saw her...saw her lick his head or something like that and I was like man, what are you doing?" When asked by Captain Vanis to relate exactly what you did see, you responded, "I saw her lick I saw her lick the back of his head." To confirm what you said you witnessed, Captain Vanis asked, "Ok. And you're certain you saw her lick his head?" You responded, "Yeah." These statements again referenced your witnessing Captain Nina Hunter lick the back of Officer Charles Cella's head on August 4, 2012.

On February 1, 2013, at 1:02 p.m. you contacted Captain Vanis by telephone. You told the captain that you wanted to clear up things because you did not remember what you had testified to eight days earlier (Internal Affairs re-interview, January 23, 2013). You told Captain Vanis that you never witnessed Captain Hunter lick Officer Charles Cella on August 4, 2012, but that you did witness Captain Hunter give Officer Cella a "wet willie."

Later in the afternoon of February 1, 2013 Captain Vanis came to your residence and served you notice that an Internal Affairs investigation had been opened with you as the subject officer for contradictory statements you had provided in the Hunter-Cella investigation (IA-213-02-315). Captain Vanis reports he spoke with you for approximately five minutes and that you did not appear to be under the influence of alcohol or any narcotic. Your speech was very clear and you showed no other signs of impairment. You made an unsolicited statement to Captain Vanis, reporting that you wanted to be clear that you did not see Captain Hunter lick Officer Cella, which clearly contradicted your prior two sworn statements.

On February 15, 2013 you were interviewed by Captain Vanis about your retraction of statements made previously under oath. You were the subject officer; this was a sworn interview and you were represented by counsel (IA-213-02-315). In this interview, you reported that, on August 4, 2012, while you were getting paperwork in order in the shift commander's office at the Branch Jail, you witnessed Captain Hunter lick the back of Officer Charles Cella's head, but that you did not witness Captain Hunter give Officer Cella a "wet willie." When questioned as to the discrepancy between these statements and the ones made twice to Captain Vanis on February 1, 2013, you cited the fact you had been out of work since January 26, 2013 and had been "popping pain meds." You also claimed to have an unclear recollection of your telephone conversation with Captain Vanis. You stated that you did not recall telling Captain Vanis over the telephone that Captain Hunter did not lick Officer Cella or any statements like that. Your recollection was that you had expressed that you "had doubt" about witnessing Captain Hunter lick Officer Cella's head. You stated that you said this to Captain Vanis because you felt like you would be retaliated against since Hunter outranked you (captain versus sergeant). You stated you were confused because of the medications you were taking.

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You provided two prescription bottles; both were prescribed to you and filled on January 26, 2013. One prescription was for 500 mg Naproxen tablets and the other was for Cyclobenzaprine. The appropriate dose for the Naproxen was "1 tablet twice daily as needed," and for the Cyclobenzaprine, the dose was "1 tablet at bedtime." Naproxen is a non-steroidal anti-inflammatory drug (NSAID). It is also available in smaller dosages over-the-counter, and better known by its name brand, Aleve. Side effects include constipation, diarrhea, gas, sores in the mouth, excessive thirst, and drowsiness. Confusion is listed as a sign of overdose. Cyclobenzaprine is a prescription muscle relaxant. It is the generic form of Amrix and Flexeril. Possible side effects include drowsiness, dry mouth, dizziness, and upset stomach.

There are other discrepant statements made by you to your supervisors about your absence from work during this period. Specifically, the Division of Corrections "Supervisor's Documentation of Employee Call Outs" from January 27, 2013, completed by Lt. Luciano, shows you called out from your scheduled duty on Monday, January 28, 2013 saying that you hurt your back and that you had "a doctor's appointment and may also be out on January 29, 2013." (You were absent on January 29, 2013.) However, the physician's note provided by your attorney is dated on Thursday, January 31, 2013 and states, "No work 1/28-2/5. Seen in office today;" it was signed by S. Pradet, PA. It appears you did not go to the physician until 2-3 days after you had called out from duty, and not as you advised Lt. Luciano on January 27, 2013.

While your physician's note stated no work 1/28-2/5/13, you reported for duty on February 5, 2013. This was your regular day off, but you had been scheduled for a day of training. You attended the 8-hour training, which included both classroom and range (physically active) activities. The class covered use of the pepper ball launcher and quelling a simulated situation on the rec yard.

Also, on the day of your doctor's visit, Thursday, January 31, 2013, you called out to the Staff Scheduling Supervisor, Lt. Smith. Lt. Smith reports you called him stating you would not be in to work your regular shift for February 1, February 2, and February 3, 2013, and that it was unrelated to your previous leave earlier that same week (Monday and Tuesday, January 28 and January 29).

Lt. Smith reports he also advised you to pick up the FMLA paperwork and bring the necessary paperwork back on your next scheduled work day. Your FMLA paperwork submittal was not timely and its dates were inconsistent with the physician's excuse provided by your attorney relating to your absence from duty. In addition, your call out to Lt. Smith is problematic, because sworn staff have been instructed to contact the Shift Commander when calling about an absence from duty.

Your actions during the two Internal Affairs investigations, coupled with discrepant statements and evidence relating to your absence from duty and the failure to follow supervisory instructions violate the following County and Division of Corrections rules, policies and procedures:

Volusia County Merit Rules 86-453 (12): *Knowingly giving false statements to his supervisor, other officials or the public.*

Volusia County Merit Rules 86-453 (8): *Criminal, dishonest, or other conduct which interferes with effective job performance or has an adverse effect on the efficiency of county service.*

This also violates:

1. **Volusia County Division of Corrections Policy and Procedure: 102.09 (C):** *All staff shall make*
(continued)

or cause to be made accurate, complete and truthful reports and official records.

- 1. No staff member shall knowingly make or cause to be made any false report or falsify any official record.*
- 2. No staff member shall make or cause to be made any inaccurate, misleading, contradictory, or improper record/official record.*
- 2. Volusia County Division of Corrections General Post Orders #3:** *Enforce all rules, regulations and policies of the Division. It is the responsibility of all employees to report a violation of institutional rules as specified in Division Policies and Procedures, Administrative Directives, and Post Orders.*
- 3. Volusia County Division of Corrections General Post Orders #29:** *Notify their supervisor and make a complete written report of all unusual incidents that occur during a tour of duty or when off duty unusual incidents that pertain to the safety or security of the institution and its staff or inmates.*
- 4. Volusia County Division of Corrections General Post Orders #42:** *Promptly comply with and execute direct orders or instructions given by a superior officer, and shall not refuse to comply or execute such orders or instructions when the orders or instructions are lawful and proper.*

A review of your personnel file reveals the following past corrective and disciplinary actions:

02/07/02	Record of Counseling – <i>Late for work</i>
03/07/02	Record of Counseling – <i>Absenteeism</i>
01/28/03	Record of Counseling – <i>Absenteeism</i>
03/24/03	Letter of Reprimand – <i>Absenteeism</i>
02/23/05	Record of Counseling – <i>Absenteeism</i>
03/17/06	Letter of Reprimand – <i>Absenteeism</i>
08/03/09	Letter of Reprimand – <i>Use of force (not justified under Division policy)</i>

Your prior disciplinary history is relevant as it informs how you meet job performance expectations. Overall, your performance record is less than exemplary. As an officer with 14 years tenure you have the knowledge and experience to perform your duties. And as a supervisor yourself (sergeant), you should be well aware of, and follow, all Division policies, procedures, and instructions. Your failure to document the Hunter-Cella incident is disturbing. Your reliability in even reporting to your immediate supervisor is in question, as she clearly remembers conversation about injury-related paperwork and not the very unusual conduct you say you relayed – which is more memorable in its oddity.

Most importantly, however, are your contradictory statements. The discrepancies in your statements during the Internal Affairs investigations which were given under oath and/or to a sworn law enforcement officer have led to a loss of your credibility. Your discrepant statements and actions about your absence from work during this time period further underscore an issue of credibility. Veracity is a serious matter – indeed critical – in the justice arena. Corrections Officers may be called into court to testify about events, people, and situations. The accuracy of an officer's word/testimony must be beyond reproach. Not only is it imperative in court proceedings, it is imperative as a public servant. The public demands – and they deserve – to have ethical, trustworthy, and reliable employees.

(continued)

Sergeant B. West
Notice of Dismissal
April 15, 2013
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Based on the seriousness of your actions as described herein, and consistent with the recommendations of those within your chain of command, it is my intent to dismiss you. This action will be effective on Monday, April 15, 2013.

Action: In accordance with section 86-485 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 Human Resources Office, 230 N. Woodland Blvd., Suite 262, DeLand, FL. 32720.

Dismissals that are appealed are considered non-final administrative action. If you file a notice of appeal, you will be placed in a leave of absence without pay, pending the final decision of the County Manager at the conclusion of the appeal process.

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 Human Resources Director have reviewed this notice and concur with the proposed action.

GR/tb

cc: ___ Terry A. Sanders, Deputy Director, Public Protection ___ Tom Motes, Human Resources Director
 ___ Marilyn Chandler Ford, Director of Corrections ___ Tammy King, EEO Coordinator
 ___ Nancye Jones, Assistant County Attorney

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

Refused

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

Smith 605
Mason 404 - 04/15/2013

4.15.13

(Date of Signature)



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: Senior Officer Nathan Schneider
Division of Corrections – Branch Jail

DATE: April 15, 2013

FROM: George Recktenwald, Director
Department of Public Protection

FILE NO: DPP13-041

SUBJECT: Notice of Dismissal

REFERENCE: NOID- DPP13-032

Purpose: The purpose of this memorandum is to provide you with notice of dismissal from employment with the County of Volusia. This action is the result of your violation of Policy and Procedures during an Internal Affairs investigation from November, 2012-February, 2013. This action will be effective on Monday, April 15, 2013.

Background: You received my notice of intent to suspend on March 21, 2013. A meeting was requested by you via an email from your attorney, Erin Thompson, on March 22, 2013. A meeting to discuss the notice of intent to dismiss was scheduled in the Department of Public Protection Conference Room on March 28, 2013 at 11:00 and you and I met along Deputy Director Terry Sanders, Division Director Marilyn Chandler Ford, Captain David Vanis, County Attorney Nancye Jones and your legal representative, Erin Thompson, Esquire. I have considered the information provided by you in our meeting. While I recognize you were remorseful in that meeting, you also displayed difficulty in providing accurate and consistent answers when questioned. Progressive discipline is intended to change the behavior of an employee that has shown poor performance or has broken rules or procedures. Your actions, when we met, provide me with no confidence that you will change your behavior when faced with other stressful situations that commonly occur in this profession. I am therefore proceeding with the intended action to dismiss you.

Information: An Internal Affairs investigation was initiated based on a complaint filed by Officer Charles Cella (IA-2012-11-312) on Friday, November 9, 2012. You received notice of your being called as a witness in that investigation on November 14, 2012. During that investigation, you were interviewed under oath on two occasions and provided contradictory testimony. Based on the gravity of your discrepant statements made under oath, an Internal Affairs investigation was opened with you as the subject officer (IA-213-01-314) on January 9, 2013.

On November 20, 2012 at 9:46 a.m., Captain D. Vanis of the Department of Public Protection, Internal Affairs Unit, conducted a sworn witness interview with you in regards to a complaint filed against Captain Nina Hunter (IA case number 2012-11-312). During that interview, when questioned about what you had witnessed during an encounter between Capt. Hunter and Officer Cella, you responded you couldn't remember any specifics or that you couldn't recall. When you were asked specifically, "Did you see Captain Hunter lick Officer Cella's neck and head?" you responded, "No!" Captain Vanis read you part of the original complaint filed by Officer Cella, verbatim, to which you responded, "I don't remember her licking him...ah I really don't remember specifically that she flatuated on him. I mean that's...you know. I've seen her do it before. Not lick anybody ok (laughs) before but...but yeah." Thirty-three (33) minutes after the interview concluded on November 20, 2012, you contacted Ms. B.

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McClough, secretary in the Internal Affairs Unit, and indicated you had remembered something from your interview and would like to clarify your statement. Ms. McClough subsequently contacted Captain Vanis and he returned to the jail to speak with you. During this sworn interview, which occurred at approximately 11:00 a.m. that same day, you remembered Captain Hunter "saying something about him tasting salty and spitting it out so I'm pretty sure I do remember her licking him now." Captain Vanis asked for clarification whether you witnessed Captain Hunter lick Officer Cella, and you stated, "That I don't rem -- I think I did. I think he was sitting in the chair. I don't remember her licking his neck, though. I remember her licking like his head." This statement, given under oath, contradicted your sworn testimony from the earlier interview on November 20, 2012.

Although you were present during the encounter when the incident complained of by Officer Cella allegedly occurred, you did not verbally report this incident to a supervisor in your chain of command, nor did you prepare a written report of the unusual incident before departing duty on August 4, 2012 or at any subsequent time.

On January 9, 2013, Captain Vanis served you notice that an Internal Affairs investigation had been opened with you as the subject officer for giving false statements in the Hunter-Cella investigation (IA-2013-01-314).

On January 18, 2013, you were interviewed by Captain Vanis regarding your false statements. This was a sworn interview and you were represented by counsel. Captain Vanis asked you to relate what you witnessed on August 4, 2012 in the shift commander's office at the Branch Jail. You stated you saw Captain Hunter attempt to give Officer Cella a "wet-willie" or stick her finger in his ear. You also stated, "I did hear ah Captain Hunter say that Officer Cella tasted salty I did see and hear her spit into the trash can..."

Captain Vanis then asked you whether you saw Captain Hunter lick Cella's head or neck. You replied, "I did not physically see her lick him or her tongue touch his head or neck...no." This statement directly contradicted your 11:00 a.m. interview of November 20, 2012. You attempted to explain this by relating that when Captain Vanis read you a portion of Cella's complaint that you "[C]onected a dot in my own mind because that was all that made sense with her standing behind him and her stating that he tasted salty and her spitting into the trash can that like I said in my head the only thing that made sense was that she must have licked him..."

Captain Vanis asked you whether you thought your statement during the second interview on November 20, 2012 that, "I don't remember her licking his neck, though. I remember her licking like his head" was truthful. You eventually responded, "I'm going to have to say then 'No', but it was based upon an assumption and me putting together the dots." At the end of this interview, Captain Vanis asked you again whether your statement "I remember her licking like his head," was a truthful statement. You were very reluctant to answer this question. Captain Vanis eventually had to order you to provide a direct answer to the question. You then responded, "No" (that it was not a truthful statement).

In summary, on November 20, 2012 at 9:46 a.m. you denied witnessing Captain Hunter lick Officer Cella's head or neck. At 11:00 a.m. on the same day you stated that you had specifically observed Captain Hunter lick Officer Cella's head, but not his neck. You reported remembering Captain Hunter saying something about Cella tasting salty and spitting it out. You also definitively stated you saw Captain Hunter attempt to give Officer Cella a "wet-willie" or stick her finger in his ear. On January 18, 2013 you altered your testimony, reporting you heard Captain Hunter state, "Tasted salty," and saw her spit into a trash can, but you did not witness her lick Cella's head or neck.

(continued)

Your actions during the Internal Affairs investigation violate the following County and Division of Corrections rules, policies and procedures:

Volusia County Merit Rules 86-453 (12): *Knowingly giving false statements to his supervisor, other officials or the public.*

Volusia County Merit Rules 86-453 (8): *Criminal, dishonest, or other conduct which interferes with effective job performance or has an adverse effect on the efficiency of county service.*

This also violates:

1. **Volusia County Division of Corrections Policy and Procedure: 102.09 (C):** *All staff shall make or cause to be made accurate, complete and truthful reports and official records.*
 1. *No staff member shall knowingly make or cause to be made any false report or falsify any official record.*
 2. *No staff member shall make or cause to be made any inaccurate, misleading, contradictory, or improper record/official record.*
2. **Volusia County Division of Corrections General Post Orders #3:** *Enforce all rules, regulations and policies of the Division. It is the responsibility of all employees to report a violation of institutional rules as specified in Division Policies and Procedures, Administrative Directives, and Post Orders.*
3. **Volusia County Division of Corrections General Post Orders #29:** *Notify their supervisor and make a complete written report of all unusual incidents that occur during a tour of duty or when off duty unusual incidents that pertain to the safety or security of the institution and its staff or inmates.*

A review of your personnel file reveals the following past corrective and disciplinary actions:

10/14/02	Oral Reprimand – Absenteeism
10/15/02	Oral Reprimand – Dress & Appearance
11/04/04	Letter of Reprimand – Insubordination: refused to report to the Branch Jail after hospital duty was cancelled.
06/10/05	Letter of Reprimand – Use of force: avoid one-on-one confrontations
01/16/07	Letter of Reprimand – Insubordination – refused an order
02/28/07	Negative EPN – Took county-issued keys home
08/27/09	Negative EPN – Failure to provide proper documentation on a lockdown

For an officer with 10½ years tenure your past performance record is less than exemplary. Your false testimony in an Internal Affairs investigation is disturbing. Veracity is a serious matter -- indeed critical - in the justice arena. Corrections Officers may be called into court to testify about events, people, and situations. The accuracy of an officer's word/testimony must be beyond reproach. Not only is it imperative in court proceedings, it is imperative as a public servant. The public demands -- and they deserve -- to have ethical, trustworthy, and reliable employees.

(continued)

Senior Officer N. Schneider
Notice of Dismissal
April 15, 2013
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Based on the seriousness of your actions as described herein, and consistent with the recommendations of those within your chain of command, it is my intent to dismiss you. This action will be effective on Monday, April 15, 2013.

Action: In accordance with section 86-485 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 Human Resources Office, 230 N. Woodland Blvd., Suite 262, DeLand, FL 32720.

Dismissals that are appealed are considered non-final administrative action. If you file a notice of appeal, you will be placed in a leave of absence without pay, pending the final decision of the County Manager at the conclusion of the appeal process.

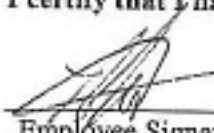
If you do not file your appeal by the time indicated, it will be assumed that you have waived this right.

Pursuant to Merit Rule 86-455, the Legal Department and the Human Resources Director have reviewed this notice and concur with the proposed action.

GR/tb

cc: ___ Terry A. Sanders, Deputy Director, Public Protection ___ Tom Motes, Human Resources Director
 ___ Marilyn Chandler Ford, Director of Corrections ___ Tammy King, EEO Coordinator
 ___ Nancye Jones, Assistant County Attorney

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



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

4-15-13
(Date of Signature)



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: Captain Nina Hunter
Division of Corrections - Branch Jail

DATE: May 8, 2013

FROM: George Recktenwald, Director
Department of Public Protection

FILE NO: DPP13-050

SUBJECT: Notice of Suspension

REFERENCE: DPP13-031, NOID

Purpose: The purpose of this memorandum is to provide you with notice of suspension for five (5) work days, which equates to 61.25 hours (five 12.25-hour shifts). This action is the result of your violation of Policy and Procedures that came to light as a result of an Internal Affairs investigation. The dates of your suspension without pay are listed below. The suspension days are to be served as noted below, and you are advised that there shall be no flexed schedule allowed in the pay periods to make up the time.

<u>Date of suspension</u>	<u>Date to return to work</u>
Sunday, May 19, 2013	Wednesday, May 22, 2013
Thursday, May 23, 2013	(see below for return date)
Monday, May 27, 2013	Tuesday, May 28, 2013
Friday, May 31, 2013	Saturday, June 1, 2013
Sunday, June 2, 2013	Wednesday, June 5, 2013

Background: You received my notice of intent to demote on March 21, 2013. A meeting was requested by you. A meeting to discuss the notice of intent to demote was scheduled in the Department of Public Protection Conference Room on April 5, 2013 at 11:00 a.m. and you and I met along Deputy Director Terry Sanders, Division Director Marilyn Chandler Ford, Captain David Vanis, Assistant County Attorney Nancye Jones and your legal representative, Joseph E. Blich Esquire. I have considered the information from that meeting and reviewed training videos you referenced/provided.

Based on all the information available, I have determined you demonstrated poor judgment and you also violated policy by using ethnic slurs and foul language. I am therefore amending my original Notice of Intent to Demote which you received on March 21, 2013 and will be proceeding with a five (5) day suspension.

Information: An Internal Affairs investigation was initiated based on a complaint filed by Officer Charles Cella (IA case number 2012-11-312) on Friday, November 9, 2012. The complaint alleged that, on August 4, 2012, you sexually harassed Cella in the workplace by taunting him; giving him a "wet willie," backing up to him and flatuating on him, and then licking the back of his head and neck. His complaint also alleged crude and sexually explicit language from you to him which he said had occurred between May and August 2012.

On Monday, November 12, 2012, you were notified that you were the subject officer in an Internal Affairs investigation (IA-2012-11-312) and, based on the nature of the allegations, you were immediately moved to administrative duties pending the completion of the investigation.

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On December 6, 2012, Captain D. Vanis of the Department of Public Protection, Internal Affairs Unit, conducted a sworn interview of you in regards to the allegations of Officer Cella. You denied that the incident alleged by Officer Cella to have taken place on August 4, 2012 occurred in the manner alleged. Other witnesses who were present at the time of the incident were also interviewed and, based on those interviews; the allegation of sexual harassment of Officer Cella was not sustained. However, there was evidence that you have engaged in unprofessional remarks and/or actions at other times while you were on duty.

When asked about the allegations of Officer Cella with regard to your use of crude and/or sexually explicit language, Officer Plotz reported overhearing you make sexually explicit comments "for a couple of seconds" to Officer Cella once or twice or maybe a half dozen times while they were working on the housing unit. Officer Plotz stated in his sworn interview that, "I can't even, I hate to say, I can't say word for word what she said, I mean you know, just a you know, 'I could rock your world, you know what I mean if if you weren't married', you know you know 'we could ah you know I could do this or that' or..." He also stated, "Ahm...context she was talking to him [referring to Cella] one day about giving blow jobs."

While you deny the very specific sexual comments that Officer Cella alleged, in your own sworn testimony you admitted to engaging in conversations in general in the shift commander's office, but you advised your comments were not directed towards any specific staff member. You stated you may have complained about not keeping a relationship and say, "I come with a paycheck and you know I don't get headaches..." You admitted to using profanity in the workplace ("F-- this, F -- that"), although you state you have curbed this language.

You also admitted to using inappropriate language in general during a training exercise you provided to your staff on shift about the Pro-Strait Chair. You stated, (in reference to what others may say about you) "...[E]verybody'll tell you, yeah she's man, I've heard some crap come out of her mouth but that's from my training issues it has nothing to do with talking to anybody directly."

During our meeting on April 5, 2013 you again denied the allegations of improper touching and inappropriate language, but admitted to coarse language during training exercises. You indicated you had video of such training exercises, and I requested to view it so that I might evaluate whether improper activity had occurred.

After reviewing the copy of the training video that you provided, I concluded that you exercised very poor judgment while conducting the training. Your decision to play the role of the inmate yourself is questionable, as was the decision to train new employees, some who were still Correction Officer Trainees (COTs) on Pro-Strait Chair techniques when they had not yet attended the Corrections Academy or were so new to the Division (i.e., had not demonstrated mastery the basics of correctional work). During your role play you used an ethnic slur, which can never be condoned in any professional context. Your language also was foul, which again stretches the bounds of propriety and professionalism by trying to excuse it as "training."

It has been determined that your actions, as outlined above, in both the training context and by your own admission to making certain unprofessional and inappropriate comments in general, violate the following County and Division of Corrections rules, policies and procedures:

1. Volusia County Merit Rules and Regulations 86-453 (8): "...[O]ther conduct which interferes with effective job performance..."

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2. Volusia County Merit Rules and Regulations 86-453 (10): "...Unsatisfactory performance of duties..."
3. Volusia County Division of Corrections Policy and Procedure: 102.09 (F): "The use of violent, profane, or provocative language is prohibited."
4. Volusia County Division of Corrections Policy and Procedure: 102.09 (A): "Each Correctional Officer (CO) shall adopt a professional attitude towards his/her particular job..."
5. Volusia County Division of Corrections Policy 102.09 (RR): "Division of Corrections personnel 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 county government, public officials, fellow employees, and themselves."
6. Volusia County Post Orders, #56: "Post Orders cannot be expected to cover every new problem or situation that may arise. Employees are expected to use good judgment..."

A review of your personnel file reveals the following past corrective and disciplinary actions:

07/01/02	Record of Counseling – Absent from duty without sufficient leave to cover
05/04/11	Negative EPN – Absenteeism
05/16/11	Letter of Reprimand – Horseplay: Involved unauthorized item (boxing gloves) used by you, resulted in injury to subordinate

Your prior disciplinary history is relevant because you were disciplined for horseplay approximately one year prior to this incident. As an officer with 20 years tenure you have the knowledge and experience to perform your duties. And as a supervisor yourself (captain), you should be well aware of, and follow, all Division policies, procedures, and instructions. Indeed, as the highest ranking officer on the night shift, it is imperative that you display leadership for staff and that your conduct be above reproach.

Your misconduct is serious and it has negatively impacted your subordinates, but it is balanced by your long career and nearly blemish-free record. However, you fail to realize that "training" is not a justification for ethnic slurs, profanity, crude or sexually charged language – the Division does not condone or accept conducting training in the manner you assert! Further, you fail to appreciate that such language is not acceptable even if made "in general" and not directed to someone specific. You fail to recognize that it may be offensive and its negative impact on the work environment for employees. Your minimization of your misconduct has compromised the confidence your superiors have in you.

Based on this, and consistent with the recommendation of those within your chain of command, I am issuing you this letter of notice of suspension for five (5) work days, which equates to 61.25 hours (five 12.25-hour shifts). The dates of your suspension without pay are listed below. The suspension days are to be served as noted below, and you are advised that there shall be no flexed schedule allowed in the pay periods to make up the time.

<u>Date of suspension</u>	<u>Date to return to work</u>
Sunday, May 19, 2013	Wednesday, May 22, 2013
Thursday, May 23, 2013	(see below for return date)

(Continued)

Captain N. Hunter
Notice of Suspension
May 8, 2013
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<u>Date suspended</u>	<u>Date return to work cont'd</u>
Monday, May 27, 2013	Tuesday, May 28, 2013
Friday, May 31, 2013	Saturday, June 1, 2013
Sunday, June 2, 2013	Wednesday, June 5, 2013

You are also directed to contact Volusia County Human Resources to schedule to attend the next available training class: Preventing Sexual Harassment and Other Terms of Discrimination, as well as, retake Ethics in the Workplace: Doing the Right Thing!, and Workplace Diversity: Valuing & Respecting Differences. I am also mandating you to contact the Employee Assistance Program (EAP) for an evaluation to identify any assistance (if recommended), you may need; for which you are required to comply.

Please know that any further violations of Division and/or County policy involving ethnic or racial slurs or any other inappropriate language *will* result in dismissal, and other types of misconduct may result in more severe discipline up to, and including dismissal. If there is anything I or Dr. Ford can do to assist you to improved performance, please let me know.

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 letter to request an appeal of this action through the County Personnel Board. Should you decide to exercise your right to appeal, submit your written request to the County Human Resources Director. If you do not contact the County Human Resources Director at 230 N. Woodland Blvd., Suite 262, DeLand, FL., 32720 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 Human Resources Director have reviewed this notice and concur with the proposed action.

GR/tb

cc: _____ Marilyn Chandler Ford, Director of Corrections
_____ Nancye Jones, Assistant County Attorney
_____ Tom Motes, Human Resources Director
_____ Tammy King, EEO Coordinator

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

Jim Hunter Hunter 341
Employee Signature (Or Witness, if Employee Refuses to Sign)

5-8-13
(Date of Signature)



INTER-OFFICE MEMORANDUM
Department of Public Protection
125 West New York Ave., Suite 183
DeLand, FL 32720
386-740-5120 – FAX 386-740-5123

TO: Captain Nina Hunter
Division of Corrections - Branch Jail

DATE: March 21, 2013

FROM: George Recktenwald, Director
Department of Public Protection

FILE NO: DPP13-031

SUBJECT: Notice of Intent to Demote

REFERENCE: NOID

Purpose: The purpose of this memorandum is to provide you with notice of intent to demote to you to the rank of Lieutenant. This action is the result of your violation of Policy and Procedures that came to light in an Internal Affairs investigation.

Background: This investigation was initiated based on a complaint filed by Officer Charles Cella (IA case number 2012-11-312) on Friday, November 9, 2012. The complaint alleged that, on August 4, 2012, you sexually harassed Cella in the workplace by taunting him, giving him a "wet willie," backing up to him and flatuating on him, and then licking the back of his head and neck. This incident was alleged to have occurred in front of witnesses while Cella was in your office filling out paperwork in reference to an on the job injury. His complaint also alleged crude and sexually explicit language from you to him which he said had occurred between May and August 2012.

On Monday, November 12, 2012, you were notified that you were the subject officer in an Internal Affairs investigation (IA-2012-11-312) and, based on the nature of the allegations, you were immediately moved to administrative duties pending the completion of the investigation.

Information: On December 6, 2012, Captain D. Vanis of the Department of Public Protection, Internal Affairs Unit, conducted a sworn interview of you in regards to the allegations of Officer Cella. You denied that the incident alleged by Officer Cella to have taken place on August 4, 2012 occurred in the manner alleged. Other witnesses who were present at the time of the incident were also interviewed and, based on those interviews, the allegation of sexual harassment of Officer Cella was not sustained. However, there was evidence that you engaged in some form of horseplay that day and that you have engaged in unprofessional remarks and/or actions at other times while you were on duty.

When asked about the allegations of Officer Cella with regard to your use of crude and/or sexually explicit language, Officer Plotz reported overhearing you make sexually explicit comments "for a couple of seconds" to Officer Cella once or twice or maybe a half dozen times while they were working on the housing unit. Officer Plotz stated in his sworn interview that, "I

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can't even, I hate to say, I can't say word for word what she said, I mean you know, just a you know, 'I could rock your world, you know what I mean if if you weren't married', you know you know 'we could ah you know I could do this or that' or..." He also stated, "Ahm...context she was talking to him [referring to Cella] one day about giving blow jobs." According to Officer Plotz, you did not make such comments to him because he was "happily involved" while Cella was going through a hard time with his wife at the time.

Officer Plotz stated that he and Cella did discuss at some point that, "there are many people who would take that kind of content as too far" but we concluded it was not sexual harassment so "we just kind of laughed it off." Officer Plotz stated that, in his conversations with Officer Cella about your remarks, Cella never said that the comments made him uncomfortable, "because if it did then we'd be subject to" report it. Officer Plotz reports having seen you have sexually explicit or personal conversations with other officers throughout his tenure and that your behavior with Cella was no different. Officer Plotz said that both he and Cella were surprised that a captain would say such things and that he thought that the sexually explicit comments were inappropriate for someone of your rank.

While you deny the very specific sexual comments that Officer Cella alleged, in your own sworn testimony you admit to using inappropriate language in general during a training exercise you provided to your staff on shift about the Pro-Straint Chair. You stated, "...[E]verybody'll tell you, yeah she's man, I've heard some crap come out of her mouth but that's from my training issues it has nothing to do with talking to anybody directly."

You also admit to engaging in conversations in general in the shift commander's office, but 'not directed at you [specific staff].' You state you may complain about not keeping a relationship and say, "I come with a paycheck and you know I don't get headaches..."

You admitted to using profanity in the workplace ("F-- this, F -- that"), although you state you have curbed this language. Finally, you admitted that you have flatuated "in general."

During your sworn interview, in response to questions about why you thought certain witnesses in the investigation would have testified against you, you speculated that it may be because you have had misgivings about certain staff behavior, including with regard to some uses of force. However, you have not reported your concerns to your own supervisors, and no written documentation exists for the concerns you raised. Notwithstanding, as a supervisor, you have the responsibility to ensure your staff acts in accordance with all policies and procedures, and to report deviations therefrom.

It has been determined that your actions, as outlined above, violate the following County and Division of Corrections rules, policies and procedures:

1. Volusia County Division of Corrections Policy and Procedure: 102.09 (A): Each Correctional Officer (CO) shall adopt a professional attitude towards his/her particular job. Officers shall be impartial and courteous at all times.

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2. Volusia County Division of Corrections Policy and Procedure: 102.09 (A): Each Correctional Officer (CO) shall adopt a professional attitude towards his/her particular job. Officers shall be impartial and courteous at all times.
3. Volusia County Division of Corrections Policy 102.09 (RR): Division of Corrections personnel 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 county government, public officials, fellow employees, and themselves.
4. Volusia County Division of Corrections General Post Orders #3: Enforce all rules, regulations and policies of the Division. It is the responsibility of all employees to report a violation of institutional rules as specified in Division Policies and Procedures, Administrative Directives, and Post Orders.
5. Volusia County Division of Corrections General Post Orders #29: Notify their supervisor and make a complete written report of all unusual incidents that occur during a tour of duty or when off duty unusual incidents that pertain to the safety or security of the institution and its staff or inmates.
6. Volusia County Division of Corrections General Post Orders #2: *Be alert and aware of his/her responsibility to the Division at all times. Employees shall be accountable for full knowledge of their duties and responsibilities as defined by the Post Orders and other directives from administration.*

A review of your personnel file reveals the following past corrective and disciplinary actions:

07/01/02	Record of Counseling – <i>Absent from duty without sufficient leave to cover</i>
05/04/11	Negative EPN - <i>Absenteeism</i>
05/16/11	Letter of Reprimand – <i>Horseplay: Involved unauthorized item (boxing gloves) used by you, resulted in injury to subordinate</i>

Your prior disciplinary history is relevant because you were disciplined for horseplay approximately one year prior to this incident. As an officer with 20 years tenure you have the knowledge and experience to perform your duties. And as a supervisor yourself (captain), you should be well aware of, and follow, all Division policies, procedures, and instructions. Indeed, as the highest ranking officer on the night shift, it is imperative that you display leadership for staff and that your conduct be above reproach.

I don't know what exactly transpired in the shift commander's office at the Branch Jail on August 4, 2012, but I do believe that it involved some form of horseplay and/or joking that never should have occurred. Your failure to learn from your prior misconduct is disturbing. So too are the reports of subordinates that they either witnessed you engage in, or they are not surprised to

(continued)

hear about, you engaging in sexually charged language, discussions with subordinates regarding your personal life, flatuation, or other conduct that is inappropriate for a supervisor and in the workplace.

Your misconduct is serious and it has negatively impacted your subordinates, but it is balanced by your long career and nearly blemish-free record. However, throughout your sworn interview you attempt to minimize your inappropriate remarks by attributing them to training exercises, or stating that remarks are just "in general" and not directed at anyone specifically. What you fail to realize is that "training" is not a justification for profanity, sexually charged language or other remarks -- the Division does not condone or accept conducting training in the manner you assert! Further, you fail to appreciate that crude, vulgar, profane, and provocative language is not acceptable even if made "in general" and not directed to someone specific. You fail to recognize that it may be offensive, can constitute sexual harassment and its negative impact on the work environment for employees. Your continued minimization of your misconduct as described above, as well as your failure to document and inform about perceived policy lapses, has compromised the confidence your superiors have in you.

Based on this, and consistent with the recommendation of those within your chain of command, it is my intent to demote you to the rank of Lieutenant. I am also mandating you to contact the Employee Assistance Program (EAP) for an evaluation as to the need for any assistance and, if recommended, you are required to comply. You are also directed to contact Volusia County Human Resources to schedule to attend the next available training class on Sexual Harassment.

Action: In accordance with section 86-455 (e) of the Merit System Rules and Regulations you may respond either orally or in writing within three (3) calendar days of receipt of this letter. If you wish to respond, such response will not be accepted after Monday, March 25, 2013, at 4:30 p.m. If you wish to meet with me in person, you must contact me within the time limit stated above. I may be reached at 386-740-5120 or by e-mail at: GRecktenwald@volusia.org. If you do not contact me by the time indicated, it will be assumed that you have waived this right. Should your response be inadequate or should you fail to respond in a timely manner, this action will proceed.

Pursuant to Merit Rule 86-455, the Legal Department and the Human Resources Director have reviewed this notice and concur with the proposed action.

GR/tb

cc: _____ Marilyn Chandler Ford, Director of Corrections _____ Tom Motes, Human Resources Director
_____ Nancye Jones, Assistant County Attorney _____ Tammy King, EEO Coordinator

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

Capt N. Hunter #821
Employee Signature (Or Witness, if Employee Refuses to Sign)

3.21.13
(Date of Signature)