

Police Policy Committee Minutes February 20, 2014

The Police Policy Committee of the Board on Public Safety Standards and Training held a regular meeting on February 20, 2014 in the Governor Victor G. Atiyeh Boardroom of the Oregon Public Safety Academy. The meeting was called to order at 1:31p.m. by Mathew Workman.

Attendees

Policy Committee Members:

John Bishop, Oregon State Sheriffs' Association
Larry Blanton, Oregon State Sheriffs' Association
Michael Crebs, Portland Police Bureau (Designee for Chief Mike Reese)
Richard Evans, Oregon State Police, Superintendent
Craig Halupowski, Non-Management Law Enforcement
James Hunter, Oregon Association Chiefs of Police
Joel Lujan, Oregon State Police Command Staff Representative
Murray Rau, Non-Management Law Enforcement
Jeff Staples, Non-Management Law Enforcement
Mathew Workman, Oregon Association Chiefs of Police

Committee Members Absent:

Kent Barker, Chair, Oregon Association Chiefs of Police
Tom Bergin, Oregon State Sheriffs' Association
Glen Scruggs, Non-Management Law Enforcement
Mike Wells, Non-Management Law Enforcement

DPSST Staff:

Eriks Gabliks, Director
Todd Anderson, Training Division Director
Leon Colas, Professional Standards Coordinator/Investigator
Linsay Hale, Standards and Certification Manager
Sharon Huck, JTA Coordinator
Debbie Graves, Administrative Operations Supervisor
Tamara Atkinson, Telecommunications Training Coordinator
Debbie Anderson, Administrative Specialist
Julie Johnson, Private Security Compliance Coordinator
Tammera Hinshaw, Executive Support Specialist

Guests:

Sean Sothern, Portland Police Officer
Chris Denning, Lake Oswego Police Officer
John Funkhouser, Lake Oswego Police Officer
Steve Beck, Oregon Council of Police Association

1. Minutes of November 21, 2013 Meeting

Approve minutes from the November 21, 2013 meeting.

To see a complete record of the November 21, 2013 Police Policy Committee minutes, please go to:

<http://www.oregon.gov/dpsst/SC/docs/All%20Policy%20Committee%20Minutes/Police%20Policy%20Committee/112113%20PPC%20minutes.pdf>

James Hunter moved to approve the minutes from the November 21, 2013 Police Policy Committee meeting. Mike Crebs seconded the motion. The motion carried unanimously.

2. OAR 259-008-0010 and OAR 259-008-0011 – Proposed Rule Change

Fingerprint Procedure Changes presented by Sharon Huck

See Appendix A for details

These changes update the rules pertaining to fingerprint processes and requirements. The change revises wording to ensure rule consistency and housekeeping changes for clarity.

Craig Halupowski moved that the Police Policy Committee recommends to the Board filing the proposed language for OAR 259-008-0010 and 259-008-0011 with the Secretary of State as proposed rules and as permanent rules if no comments are received. Rich Evans seconded the motion. The motion carried unanimously.

It is the consensus of the committee there is no fiscal impact on small business.

3. John W. Slyter – DPSST #53108 – Medical Waiver

Presented by Debbie Anderson

Larry Blanton moved that the Police Policy Committee approves the medical waiver. Craig Halupowski seconded the motion. The motion carried unanimously.

4. John K. Crowder – DPSST# 43014

Presented by Leon Colas

See Appendix B for details

James Hunter moved that the Police Policy Committee adopts the Staff report as the record upon which its recommendations are based. Craig Halupowski seconded the motion. The motion carried unanimously.

By discussion and consensus, the committee identified the following behaviors by CROWDER being considered in this case as:

- Dishonesty

- His conduct surrounding sexual conduct with a reserve officer he supervised
- Being deceitful during the investigative interview
- His personal use of an agency vehicle

By discussion and consensus, the committee determined that CROWDER's behavior did involve Insubordination as defined in Administrative Rule based on Officer Crowder's position in the department as head of the reserve officers, he failed to disclose his relationship with the reserve officer prior to and subsequent to her being admitted to the reserve program.

Rich Evans moved that the Police Policy Committee finds that CROWDER's Insubordination does rise to the level to warrant revocation when considered alone. Joel Lujan seconded the motion. The motion carried with a vote of eight to two.

By discussion and consensus, the committee identified CROWDER's behavior did involve Misconduct as defined in Administrative Rule when CROWDER was involved in having sex while on duty and traveling a distance outside of his patrol area to have sex on duty.

Matt Workman moved that the Police Policy Committee finds that CROWDER's Misconduct does rise to the level to warrant revocation when considered alone. Craig Halupowski seconded the motion. The motion carried unanimously.

By discussion and consensus, the committee determined that CROWDER's behavior did involve Gross Misconduct as defined in Administrative Rule when CROWDER left the city to have sex while on duty, leaving the city unprotected and the fact that this behavior was repeated.

Craig Halupowski moved that the Police Policy Committee finds that CROWDER's Gross Misconduct does rise to the level to warrant revocation when considered alone. Rich Evans seconded the motion. The motion carried unanimously.

By discussion and consensus, the committee determined that CROWDER's behavior did involve Misuse of Authority as defined in Administrative Rule when CROWDER used the department vehicle for personal use, abusing the public trust and obtaining a benefit by not using his own personal vehicle, used his authority to direct the reserve officer to keep their relationship quiet, and manipulated the reserve by asking her to come on ride-a-longs.

Craig Halupowski moved that the Police Policy Committee finds that CROWDER's Misuse of Authority does rise to the level to warrant revocation when considered alone. Joel Lujan seconded the motion. The motion carried unanimously.

By discussion and consensus, the committee determined that CROWDER's behavior did not involve Disregard for the Rights of Others as defined in Administrative Rule.

By discussion and consensus, the committee identified CROWDER's behavior did involve Dishonesty as defined in Administrative Rule when CROWDER was dishonest with the chief

during several interviews only admitting the sexual relationship with the reserve when confronted with facts. After being confronted with the facts, CROWDER minimized the relationship to only happening once; compounding the lie.

John Bishop moved that the Police Policy Committee finds that CROWDER's Dishonesty does rise to the level to warrant revocation when considered alone. Mike Crebs seconded the motion. The motion carried unanimously.

By discussion and consensus, the committee identified the following Aggravating Circumstances:

- CROWDER tarnished the agency's reputation by his actions
- CROWDER was in a supervisory capacity; he should be an example, but instead used that to his advantage to manipulate the reserve officer

By discussion and consensus, the committee did not find any Mitigating Circumstances.

After considering the totality of the circumstances, Craig Halupowski moved that the Committee recommends to the Board that CROWDER's certifications be revoked. Rich Evans seconded the motion. The motion carried unanimously.

Rich Evans moved that the Committee recommends to the Board that CROWDER's Insubordination warrants an ineligibility period to reapply for certification of three years. Craig Halupowski seconded the motion. The motion carried unanimously.

Rich Evans moved that the Committee recommends to the Board that CROWDER's Misconduct warrants an ineligibility period to reapply for certification of seven years. Craig Halupowski seconded the motion. The motion carried unanimously.

Craig Halupowski moved that the Committee recommends to the Board that CROWDER's Gross Misconduct warrants an ineligibility period to reapply for certification of ten years. Rich Evans seconded the motion. The motion carried unanimously.

John Bishop moved that the Committee recommends to the Board that CROWDER's Misuse of Authority warrants an ineligibility period to reapply for certification of 10 years. Craig Halupowski seconded the motion. The motion carried unanimously.

Craig Halupowski moved that the Committee recommends to the Board that CROWDER's Dishonesty warrants an ineligibility period to reapply for certification of lifetime. John Bishop seconded the motion. The motion carried unanimously.

5. Sean C. Sothern – DPSST# 43014

Presented by Leon Colas

See Appendix C for Details

Mike Crebs recused himself from this case as he works with Officer Sothern at Portland Police Bureau.

Craig Halupowski moved that the Police Policy Committee adopts the Staff report as the record upon which its recommendations are based. Joel Lujan seconded the motion. The motion carried unanimously.

By discussion and consensus, the committee identified the following behaviors by SOTHERN being considered in this case:

- The DUII arrest, charged as a diversion
- Conduct toward the deputy, uncooperative
- Turning off the lights, revving of the engine, honking horn, flashing headlights
- Showing his badge
- Refusal of a breath test required obtaining a warrant
- Back-up officers required at the scene
- Reckless driving

By discussion and consensus, the committee determined that SOTHERN's behavior did not involve Insubordination.

By discussion and consensus, the committee identified SOTHERN's behavior did involve Misconduct as defined in Administrative Rule when he violated the law with the DUII arrest that concluded as a diversion, the reckless driving conviction, the display of the police credentials, and was uncooperative with the officer.

Craig Halupowski moved that the Police Policy Committee finds that SOTHERN's Misconduct does not rise to the level to warrant revocation.

Further discussion was had surrounding the severity of the situation. ***No second was received for the motion. The motion died.***

Rich Evans moved that the Police Policy Committee finds that SOTHERN's Misconduct does rise to the level to warrant revocation when considered alone. Larry Blanton seconded the motion. The motion carried five to four, with one abstention.

By discussion and consensus, the committee determined that SOTHERN's behavior did involve Gross Misconduct as defined in Administrative Rule by committing the crimes of DUII and Reckless Driving. SOTHERN was honking his horn and flashing his headlights while the officer was trying to perform his duties. The officer had two uncooperative people there that he had to keep track of. Mr. Sothern should have recognized that being a police officer, this was not a position he should have put another public safety professional in along with the items identified in the staff report.

John Bishop moved that the Police Policy Committee finds that SOTHERN's Gross Misconduct does rise to the level to warrant revocation when considered alone. Larry Blanton seconded the motion. The motion carried six to three with one abstention.

By discussion and consensus, the committee determined that SOTHERN's behavior did involve Misuse of Authority. Mr. Sothern displayed his police identification to the arresting officer when he detained his wife; seemingly to obtain a benefit or not be arrested.

Rich Evans moved that the Police Policy Committee finds that SOTHERN's Misuse of Authority does not rise to the level to warrant revocation when considered alone. Craig Halupowski seconded the motion. The motion carried unanimously with one abstention.

By discussion and consensus, the committee determined that SOTHERN's behavior did not involve Disregard for the Rights of Others as defined in Administrative Rule.

By discussion and consensus, the committee identified SOTHERN's behavior did not involve Dishonesty as defined in Administrative Rule.

By discussion and consensus, the committee identified the following Aggravating Circumstances:

- The totality of the stop
- The treatment of the officer

By discussion and consensus, the committee identified the following Mitigating Circumstances:

- SOTHERN was punished by his agency
- SOUTHERN complied with all court ordered stipulations and completed his diversion program
- SOTHERN has received a multitude of commendations about his character and abilities as a police officer
- This was off duty behavior and while not acceptable, this was not on duty behavior
- SOTHERN's wife was detained.

After considering the totality of the circumstances, Craig Halupowski moved that the Committee recommends to the Board that SOTHERN's certifications not be revoked. Murray Rau seconded the motion. The motion carried 5-4 with one abstention.

6. Ronald E. Swanson – DPSST# 19084

Presented by Leon Colas

See Appendix D for Details

James Hunter moved that the Police Policy Committee adopts the Staff report as the record upon which its recommendations are based. Craig Halupowski seconded the motion. The motion carried unanimously.

By discussion and consensus, the committee identified the following behaviors by SWANSON being considered in this case:

- SWANSON detained his wife by blocking her car and made contact with the subject in the driver's seat
- SWANSON made numerous calls/texts while on duty – several hundred a day
- SWANSON did not turn on his in-car video after being repeatedly told to do so
- SWANSON threatened to report his wife in a “gang database”
- SWANSON reported confidential information to people to begrudge his wife; paint a picture of his kids and family
- Personal gains through his employment;
- Improperly approved a report that contained probable cause

By discussion and consensus, the committee determined that SWANSON's behavior did not involve Insubordination.

By discussion and consensus, the committee identified SWANSON's behavior did involve Misconduct as defined in Administrative Rule when looking at the totality of this case. SWANSON unlawfully detained his wife, was stalking her, attempted to coerce, constant on-duty phone/email contact with wife after she had told him to quit contacting her.

Craig Halupowski moved that the Police Policy Committee find that SWANSON's Misconduct does rise to the level to warrant revocation when considered alone. Mike Crebs seconded the motion. The motion carried unanimously.

By discussion and consensus, the committee determined that SWANSON's behavior did involve Gross Misconduct as defined in Administrative Rule based on the staff report and the following identified behaviors by the committee:

- SWANSON detained his wife by blocking her car and made contact with the subject in the driver's seat
- SWANSON made numerous calls/texts while on duty – several hundred a day
- SWANSON did not turn on his in-car video after being repeatedly told to do so
- SWANSON threatened to report his wife in a “gang database”
- SWANSON reported confidential information to people to begrudge his wife; paint a picture of his kids and family
- SWANSON obtained personal gains through his employment
- SWANSON improperly approved a report that contained probable cause

- SWANSON's overall conduct with his wife
- SWANSON was not performing his duties for the efficient operation of his agency

Jim Hunter moved that the Police Policy Committee finds that SWANSON's Gross Misconduct does rise to the level to warrant revocation when considered alone. Craig Halupowski seconded the motion. The motion carried unanimously.

By discussion and consensus, the committee determined that SWANSON's behavior did involve Misuse of Authority as defined in Administrative Rule by using his authority as a police sergeant to attempt to manipulate others, detain his wife and the abuse of the public trust.

Craig Halupowski moved that the Police Policy Committee finds that SWANSON's Misuse of Authority does rise to the level to warrant revocation when considered alone. Joel Lujan seconded the motion. The motion carried unanimously.

By discussion and consensus, the committee determined that SWANSON's behavior did involve Disregard for the Rights of Others as defined in Administrative Rule. By illegally stopping and detaining his wife, he violated constitutional rights. He was not performing the duties he was paid for.

Larry Blanton moved that the Police Policy Committee finds that SWANSON's Disregard for the Rights of Others does rise to the level to warrant revocation when considered alone. James Hunter seconded the motion. The motion carried unanimously.

By discussion and consensus, the committee identified SWANSON's behavior did not involve Dishonesty as defined in Administrative Rule.

By discussion and consensus, the committee identified the following Aggravating Circumstances:

- SWANSON is a supervisor with a long career
- No personal statement to the committee, only a letter from his attorney
- The length of time over which this behavior occurred
- Failure to accept responsibility
- The sheer volume of contact with his wife while on duty was beyond reasonable

By discussion and consensus, the committee identified the following Mitigating Circumstances:

- SWANSON was dealing with a stressful personal matter
- Letter from coworker in support
- Prior to this incident, SWANSON has had a long, successful career as a Sergeant.

After considering the totality of the circumstances, Craig Halupowski moved that the Committee recommends to the Board that SWANSON's certifications be revoked. Mike Crebs seconded the motion. The motion carried unanimously.

Craig Halupowski moved that the Committee recommends to the Board that SWANSON's Misconduct warrants for an ineligibility period to reapply for certification of seven years. Mike Crebs seconded the motion. The motion carried unanimously.

Craig Halupowski moved that the Committee recommends to the Board that SWANSON's Gross Misconduct warrants an ineligibility period to reapply for certification of 10 years. Jeff Staples seconded the motion. The motion carried unanimously.

Larry Blanton moved that the Committee recommends to the Board that SWANSON's Misuse of Authority warrants an ineligibility period to reapply for certification of 10 years. Rich Evans seconded the motion. The motion carried unanimously.

Rich Evans moved that the Committee recommends to the Board that SWANSON's Disregard for the Rights of Others warrants an ineligibility period to reapply for certification of 15 years. James Hunter seconded the motion. The motion carried unanimously.

7. Staff Updates

Lindsay Hale thanked the committee for their patience and flexibility while DPSST hones the denial and revocation process. She expressed confidence that this is the right direction for the Board, the Department and for the constituents.

At the last meeting, the Board requested that staff convene a workgroup to review the minimum standards for individuals who have been previously certified but have left their certified position for a certain length of time. Earlier this month an email went out to all of you requesting volunteers for this workgroup. Representing police will be Rich Evans, Craig Halupowski, Larry Blanton, Joel Lujan and Mike Healy from Mt. Angel Police Department. The time commitment for this workgroup has not been determined but April 24, 2014 will be the first meeting date; directly following the Board meeting.

Lindsay will be looking for 12-15 volunteers to participate in the Job Task Analysis for the police discipline. The group will require representatives who have experience to rate frequency of job tasks and consequences of inadequate performance. Representatives will be sought from state, local, and county agencies.

Todd Anderson reported there are two Basic Police classes in session. There will be a Blue Courage course held at DPSST March 11-12, 2014. The Supervision and Mid-Management courses are in process now.

Eriks Gabliks welcomed new members Jeff Staples, Murray Rau and John Bishop.

There are no present delays in enrollment. State Police is looking to recruit and hire a number of new troopers and Portland Police Bureau has started recruiting. We are working

with them to evaluate numbers, but there are currently no spikes that could affect statewide constituents.

Next month, DPSST will be hosting six police officers from Lagos, Nigeria. The group will train with DPSST for two weeks. Partner agencies will assist in providing ride-alongs at night so they can observe Oregon law enforcement.

Eriks reported there is no truth in the rumor that Basic Police would increase to 20 weeks. There is no such plan, and if so, the Police Policy Committee would be the first to hear of it.

The Brady workgroup is trying to develop a plan for a consistent application of the Brady law statewide.

The Law Enforcement Memorial is May 6, 2014. There are two names to be added this year. At the last meeting, the committee approved the addition of Oregon City Officer Robert Libke, and a historic addition from Jackson County that was approved last year.

Last month DPSST held a Train-the Trainer course on Stress First Aid for law enforcement. The course is based on the Marine Corp and Navy model of combat operational Stress First Aid but this course gives supervisors and co-workers additional tools for peer support. This course was also included in the Supervision course last week.

Larry Blanton asked for information on the Crisis Intervention Training (CIT) rollout. Todd reported that DPSST has "Lines of Life" working directly with the mental health presentation in the Basic Police course and are also introducing a one day CIT refresher course March 18-19, 2014 at DPSST.

Rich Evans expressed concern about the lack of consistency from agency to agency regarding pre-employment background investigations for police and reserve officers. Staff was asked to gather historical information relating to background investigation standards for presentation and discussion at the April 24 Board meeting.

Eriks reported that DPSST will make a request during the 2015-17 legislative session for the addition of two dedicated training specialists for public safety mental health training. One based at the academy, and one to deliver the training regionally.

8. Next Police Policy Committee Meeting – May 15, 2014 at 1:30 p.m.

Appendix A

**Department of Public Safety Standards and Training
Memorandum**

Date: February 20, 2014
To: Police Policy Committee
From: Sharon Huck
Rules Coordinator
Subject: OAR 259-008-0010 and OAR 259-008-0011 – Proposed Rule Change
Fingerprint Procedure Changes

Issue: Current rule requires that all Oregon public safety officers be fingerprinted upon employment as a public safety officer. Due to advances in technology, DPSST's rules regarding submitting applicant fingerprint cards are outdated. This proposed rule change updates the rule to reflect current fingerprint card processes and requirements.

Further, this proposed rule change also revises the wording in both 259-008-0010 and 259-008-0011 to ensure rule continuity and consistency. Finally, it eliminates obsolete language and provides minor housekeeping changes for clarity.

The text contains additions (**bold and underlined**) and deletions (~~strikethrough text~~).

259-008-0010

Minimum Standards for Employment as a Law Enforcement Officer

(3) Fingerprints. ~~On or~~ **W**ithin 90 days ~~prior to~~ **of** the date of employment **in a certifiable position**, each police, corrections, or parole and probation officer must be fingerprinted on **a** standard applicant fingerprint cards.

(a) The hiring agency is responsible for fingerprinting and must forward ~~two (2)~~ **one** cards to the Oregon State Police Identification Services Section for processing and **the** assignment of **an** identification number.

~~(a) Applicant's fingerprints will be retained and kept on file with the Oregon State Police Identification Services Section.~~

~~(b) The Oregon State Police Identification Services Section will notify the Department and the employing agency of any criminal record disclosed through processing the applicant's fingerprint card.~~

~~(b)e~~ If any procedural change is made by either the Federal Bureau of Investigation or the Oregon State Police Identification Services Section, the Department must comply with the most current requirements.

(c) Applications for certification will not be processed until an applicant's fingerprints have cleared Oregon State Police Identification Services.

~~(d) If the fingerprint clearance has not been obtained prior to submission of the application for certification, a criminal history affidavit provided by the Department must be completed and returned to the Department by the applicant pending fingerprint clearance.~~

259-008-0011

Minimum Standards for Employment as a Telecommunicator and Emergency Medical Dispatcher

(1) Fingerprints. ~~On or before~~ **Within 90 days** of the date of employment **in a certifiable position**, each telecommunicator and emergency medical dispatcher must be fingerprinted on **a** standard applicant fingerprint cards.

(a) ~~If the~~ The hiring agency **is**, if a public agency, **it** is responsible for fingerprinting and ~~will forward~~**ing two (2) one fingerprint** cards to the Oregon State Police Identification Services Section for processing and ~~the~~ assignment of **an** identification number.

(b) If the hiring agency is a private agency, it is responsible for fingerprinting and ~~will forward~~**ing two (2) one fingerprint** cards to the Department along with the appropriate fee.

~~(A) Applicant's fingerprints will be retained and kept on file with the Oregon State Police Identification Services Section.~~

~~(B) The Oregon State Police Identification Services Section will notify the Department and the employing agency of any criminal record disclosed through processing the applicant's fingerprint card.~~

(c) Applications for certification will not be processed until an applicant's fingerprints have cleared Oregon State Police Identification Services.

~~(d)~~ If any procedural change is made by either the Federal Bureau of Investigation or the Oregon State Police Identification Services Section, the Department will comply with the most current requirements.

~~(D) If the fingerprint clearance has not been obtained prior to submission of the application for certification, a criminal history affidavit provided by the Department will be completed and returned to the Department by the applicant pending fingerprint clearance.~~

ACTION ITEM 1: Determine whether to recommend filing the proposed language for OAR 259-008-0010 and OAR 259-008-0011 with the Secretary of State as a proposed rule.

ACTION ITEM 2: Determine whether to recommend filing the proposed language for OAR 259-008-0010 and OAR 259-008-0011 with the Secretary of State as a permanent rule if no comments are received.

ACTION ITEM 3: Determine whether there is a significant fiscal impact on small businesses.

Appendix B

**Department of Public Safety Standards and Training
Memorandum**

DATE: February 20, 2014

TO: Police Policy Committee

FROM: Leon S. Colas
Professional Standards Investigator/Coordinator

SUBJECT: Crowder, John K. DPSST #43014
Basic Police Certification
Enterprise Police Department

OVERVIEW: In June 2013, DPSST received a personnel form F-4 showing that Crowder had resigned effective May 30, 2013, during an investigation. DPSST obtained the investigation from the agency and learned that Crowder had been found to have engaged in an inappropriate relationship with a female reserve officer, including sexual conduct while on duty, and had been untruthful about it during the time he was recruiting her for the reserve position and during the internal investigation.

At issue in this case is Crowder's violation of agency policies related to the inappropriate relationship with the reserve officer, including sexual conduct while on duty, and his untruthfulness during her recruitment and during the internal investigation.

STAFF ANALYSIS: After reviewing the internal investigation, staff has identified by a preponderance of evidence that Crowder engaged in misconduct involving an inappropriate relationship with a reserve police officer and that he was untruthful when he recruited her and during the internal investigation. Staff has determined that the misconduct involves **Insubordination, Misconduct, Gross Misconduct, Misuse of Authority, Disregard for the Rights of Others and Dishonesty**. The committee will make its own determinations based on all of the evidence presented.

Insubordination: Includes a refusal by a public safety professional or instructor to comply with a rule or order, where the order was reasonably related to the orderly, efficient, or safe operation of the agency, and where the public safety professional's or instructor's

refusal to comply with the rule or order constitutes a substantial breach of that person's duties.

When Chief Kilgore several times asked Crowder to let him know if there were any potential negative factors related to the reserve applicant being brought in to the reserve program, Crowder did not tell the Chief about his personal relationship with her. These requests were implicitly orders, and were related to the orderly and efficient operation of the agency. As the officer in charge of the reserve program, Crowder's failure to properly answer the Chief's requests and fully disclose his relationship with the reserve applicant constituted a substantial breach of Crowder's duties. This conduct involves Insubordination as defined above. (Ex. A7, p. 14, p. 27)

Misconduct: Misconduct includes conduct that violates the law, practices or standards generally followed in the Oregon public safety profession.

By recruiting a reserve officer with whom he was having a personal relationship and being untruthful about it, having sex on duty, and being untruthful during the internal investigation, Crowder violated numerous agency policies and his Code of Ethics. This conduct violated the practices and standards generally followed in the Oregon public safety profession and so involves Misconduct as defined above. (Ex. A7)

Gross Misconduct: Means an act or failure to act that creates a danger or risk to persons, property, or to the efficient operation of the agency, recognizable as a gross deviation from the standard of care that a reasonable public safety professional or instructor would observe in a similar circumstance.

By bringing into the reserve program a reserve officer with whom he was having a personal relationship, Crowder would likely have shown favoritism to her. By having sex on duty, sometimes outside of his designated jurisdiction and/or normal route of travel, Crowder was not available to quickly respond to emergencies or other calls for assistance, or otherwise fulfill the duties for which he was paid. This conduct created a risk to the efficient operation of the agency recognizable as a gross deviation from the standard of care that a reasonable public safety professional or instructor would observe in a similar circumstance. Crowder's conduct involved Gross Misconduct as defined above. (Ex. A7)

Misuse of Authority: Includes abuse of public trust, obtaining a benefit, avoidance of detriment, or harming another, and abuses under the color of office.

Crowder was able to have the woman as a ride-along observer and later to bring her into the reserve program by virtue of his position as a police officer. He traveled to her home outside of his area of responsibility at times in a city-owned police vehicle. The public whom Crowder was supposed to be serving was denied the service for which they paid. All of this conduct abused the public trust and was for Crowder's personal benefit. Crowder also told the reserve officer to not reveal their relationship to other reserve officers because of the consequences to him, as well as to her, and so used his authority to avoid a detriment. Crowder's conduct involved Misuse of Authority as defined above. (Ex. A7)

Disregard for the Rights of Others: Includes violating the constitutional or civil rights of others, and conduct demonstrating a disregard for the principles of fairness, respect for the rights of others, protecting vulnerable persons, and the fundamental duty to protect or serve the public.

By having sex on duty, sometimes outside of his designated jurisdiction and/or normal route of travel, Crowder was not available to quickly respond to emergencies or other calls for assistance, or otherwise fulfill the duties for which he was paid. By this conduct Crowder failed in his fundamental duty to protect and serve the public, and so demonstrated Disregard for the Rights of Others as defined above. (Ex. A7)

Dishonesty: Includes untruthfulness, dishonesty by admission or omission, deception, misrepresentation, falsification.

Crowder was dishonest by omission for not telling his Chief about his relationship with the woman when she was applying for the reserve program, and Crowder admitted this was

dishonesty by omission. He lied when he told the Chief he had not had sex with the woman while on duty, and when he stated that during the internal investigation as well. Crowder also lied when he initially told the Chief he had had sex with the reserve just once as a “one night fling” but later admitted the relationship had been going on for a long time. During the same conversation Crowder stated he had not had sex with the woman while on duty, but later Crowder acknowledged that he did have sex with her while on duty. Crowder’s conduct constituted Dishonesty as defined above. (Ex. A7, p. 8, 9, 10, 14)

*A copy of the staff analysis was provided to Crowder for the purposes of facilitating mitigation. He did not provide any information for the committee’s consideration.

COMMITTEE DISCUSSION:

I. Review the investigation and supporting documentation in its entirety and review and amend staff analysis as necessary. By consensus, identify misconduct specific to each moral fitness category.

II. Identify any aggravating or mitigating circumstances surrounding the misconduct.

CASE SUMMARY:

Misconduct that is specific to this case, considered by the Committee:

The identified conduct *did/did not* involve **Insubordination**.

The identified conduct *did/did not* involve **Misconduct**.

The identified conduct *did/did not* involve **Gross Misconduct**.

The identified conduct *did/did not involve* **Misuse of Authority**.

The identified conduct *did/did not* involve **Disregard for the Rights of Others**.

The identified conduct *did/did not* involve **Dishonesty**.

Identified aggravating circumstances:

Identified mitigating circumstances:

ACTION ITEM 2:

By vote, determine if Crowder’s conduct rises to the level to warrant the revocation of his certification. Recommend to the Board that this certification *be revoked/not be revoked*.

ACTION ITEM 3 (required only if the Committee recommends to the Board that certification be denied or revoked):

Using the following ineligibility grid and the categories of identified misconduct, by vote determine and recommend to the Board an initial minimum period of ineligibility to reapply for certification:

- Insubordination (3 years to 7 years)
- Misconduct (3 years to 7 years)
- Gross Misconduct (5 years to 10 years)
- Misuse of Authority (5 years to 10 years)
- Disregard for Rights of Others (5 years to 15 years)
- Dishonesty (5 years to Lifetime)

Appendix C

**Department of Public Safety Standards and Training
Memorandum**

DATE: February 20, 2014

TO: Police Policy Committee

FROM: Leon S. Colas
Professional Standards Investigator/Coordinator

SUBJECT: Sothern, Sean C. DPSST #43014
Basic Police Certification
Portland Police Bureau

OVERVIEW: In August 2013, DPSST received information via newspaper clippings that Sothern had been arrested in Tillamook County for Attempting to Elude a Police Officer, DUII, and two counts of Recklessly Endangering Another. We opened a file and began monitoring the case. We obtained the police reports on the incident, but took no action pending the outcome of the charges. In May 2012 OJIN showed that Sothern had entered into a DUII diversion program, but the other charges were still on for trial, set for June 2012. The diversion program was scheduled to be in effect through November 23, 2012, so we continued monitoring the case.

In June 2012, the remaining charges were resolved. Sothern pled No Contest to Reckless Driving, and the remaining charges were dismissed. In November 2012, the DUII charge was dismissed upon Sothern's successful completion of his diversion program. Thereafter, DPSST waited for the Portland Police Bureau's internal investigation process to complete before bringing the case to the Police Policy Committee. DPSST received the final report of the Bureau's internal investigation in October 2013.

At issue in this case is Sothern's conduct surrounding his arrest for the criminal traffic charges and conviction for Reckless Driving, ORS 811.140, as well as violation of agency policies based on the conduct during the incident leading to his arrest.

STAFF ANALYSIS: After reviewing the police reports, the court documents and the agency's internal investigation, staff has identified by a preponderance of evidence that Sothern engaged in misconduct involving traffic crimes and violations of agency policies related to Professional Conduct and Misuse of Official Position or Identification. Staff has determined that the

misconduct involves **Misconduct, Gross Misconduct, and Misuse of Authority**. The committee will make its own determinations based on all of the evidence presented.

Insubordination: Includes a refusal by a public safety professional or instructor to comply with a rule or order, where the order was reasonably related to the orderly, efficient, or safe operation of the agency, and where the public safety professional's or instructor's refusal to comply with the rule or order constitutes a substantial breach of that person's duties.

Staff did not find evidence that Sothern's conduct involves Insubordination as defined above.

Misconduct: Misconduct includes conduct that violates the law, practices or standards generally followed in the Oregon public safety profession.

Sothern violated the law by committing, at a minimum, the crimes of Driving Under the Influence of Intoxicants and Reckless Driving. Violating the law constitutes Misconduct as defined above. Additionally, Sothern violated agency policies related to professional conduct when he flashed his vehicle's headlights and honked the horn, causing the deputy's attention to be divided during a difficult situation, and when he called the deputy a derogatory term. Sothern was so uncooperative throughout the incident that the deputy called for assistance from other law enforcement officers. As a police officer, Sothern should understand the difficult and dangerous situation in which he placed the arresting deputy. Sothern's conduct violated the practices and standards generally followed in the Oregon public safety profession and so constitutes Misconduct as defined above. (Ex. A5 through A10; A5 p. 7; A 9 p. 107; A10 p. 4)

Gross Misconduct: Means an act or failure to act that creates a danger or risk to persons, property, or to the efficient operation of the agency, recognizable as a gross deviation from the standard of care that a reasonable public safety professional or instructor would observe in a similar circumstance.

The crimes of Reckless Driving and DUI are presumed Category IV Gross Misconduct offenses under OAR 259-007-0080(4)(b) based on the elements of the crimes. Both crimes create a danger or risk to persons and property. Also, when the arresting deputy was detaining Sothern's wife, Sothern began flashing his vehicle's headlights and honking the horn, which distracted the deputy and caused him to have to divide his attention between two uncooperative people. This created a danger to the deputy, which Sothern should have recognized, being a police officer

himself, and so that conduct is recognizable as a gross deviation from the standard of care that a reasonable public safety professional or instructor would observe in a similar circumstance. Sothern's conduct constitutes Gross Misconduct as defined above. (Ex. A5 through A10; A5 p. 7; A9 p. 107, p. 209)

Misuse of Authority: Includes abuse of public trust, obtaining a benefit, avoidance of detriment, or harming another, and abuses under the color of office.

Sothern displayed his police identification to the arresting deputy when the deputy detained Sothern's wife. He did this to try to influence the course of the deputy's interactions with his wife, thus attempting to gain a benefit or avoid a detriment. Sothern's conduct constitutes Misuse of Authority as defined above. (Ex A5 p. 8; A9 p. 93 – 94, p. 210; A10 p. 3)

Disregard for the Rights of Others: Includes violating the constitutional or civil rights of others, and conduct demonstrating a disregard for the principles of fairness, respect for the rights of others, protecting vulnerable persons, and the fundamental duty to protect or serve the public.

Staff did not find evidence that Sothern's conduct constitutes Disregard for the Rights of Others as defined above.

Dishonesty: Includes untruthfulness, dishonesty by admission or omission, deception, misrepresentation, falsification.

Staff did not find evidence that Sothern's conduct constitutes Dishonesty as defined above.

*A copy of the staff analysis was provided to Sothern for the purposes of facilitating mitigation.

COMMITTEE DISCUSSION:

I. Review the investigation and supporting documentation in its entirety and review and amend staff analysis as necessary. By consensus, identify misconduct specific to each moral fitness category.

II. Identify any aggravating or mitigating circumstances surrounding the misconduct.

CASE SUMMARY:

Misconduct that is specific to this case, considered by the Committee:

The identified conduct *did/did not* involve **Insubordination**.

The identified conduct *did/did not* involve **Misconduct**.

The identified conduct *did/did not* involve **Gross Misconduct**.

The identified conduct *did/did not involve* **Misuse of Authority**.

The identified conduct *did/did not involve* **Disregard for the Rights of Others**.

The identified conduct *did/did not involve* **Dishonesty**.

Identified aggravating circumstances:

Identified mitigating circumstances:

ACTION ITEM 2:

By vote, determine if Sothern's conduct rises to the level to warrant the revocation of his certification. Recommend to the Board that this certification *be revoked/not be revoked*.

ACTION ITEM 3 (required only if the Committee recommends to the Board that certification be denied or revoked):

Using the following ineligibility grid and the categories of identified misconduct, by vote determine and recommend to the Board an initial minimum period of ineligibility to reapply for certification:

- Insubordination (3 years to 7 years)
- Misconduct (3 years to 7 years)
- Gross Misconduct (5 years to 10 years)
- Misuse of Authority (5 years to 10 years)
- Disregard for Rights of Others (5 years to 15 years)
- Dishonesty (5 years to Lifetime)

Appendix D

**Department of Public Safety Standards and Training
Memorandum**

DATE: February 20, 2014

TO: Police Policy Committee

FROM: Leon S. Colas
Professional Standards Investigator/Coordinator

SUBJECT: Swanson, Ronald E. DPSST #19084
Basic, Intermediate, Advanced and Supervisory Police Certifications
Eugene Police Department

OVERVIEW: In April 2013, DPSST received a form F-4 Personnel Action Report showing that Swanson had retired during an internal investigation. We opened a file and requested the investigation from the agency. The investigation consisted of several independent internal investigations that were combined for the purposes of discipline. The intended discipline was termination of Swanson's employment, but Swanson retired before that discipline was imposed.

At issue in this case is Swanson's conduct over a long period of time in which he was repeatedly made unwanted contact with his estranged wife via e-mail, cell phone calls and texts, and personal contact, often while on duty. One of the personal contacts involved Swanson using his police vehicle to block his estranged wife's vehicle and then contacting her male passenger. Some of the messages involved Swanson threatening to use his authority as a police officer to put his estranged wife's name on a "gang database" and have her activities monitored by a federal gang task force because of a man on her Facebook friends list. All of this conduct occurred to such an extent that the Oregon State Police were called to conduct a criminal investigation, and an Assistant District Attorney stated that Swanson's conduct possibly fit the definition of the crimes of Telephonic Harassment, ORS 166.090 and Coercion, ORS. 163.275. The Eugene Police investigator noted that Swanson's conduct could also fit the definition of the crime of Stalking, ORS 163.732.

The crime of Coercion is a Class C felony, a conviction for which would result in a mandatory revocation of certifications. The crime of Stalking, even if the conviction is a misdemeanor, would also result in mandatory revocation. Swanson was not charged with any criminal offense as a result of his conduct.

The Eugene Police Department's sustained findings on department policy violations were based on the above conduct and on Swanson's other improper cell phone texting while on duty, having improperly shared confidential information obtained through the course of his employment, using his position as a police officer to try to gain personal benefits, improperly approving a subordinate's faulty police report, and failure to use the agency's in-car video system as required by policy. Throughout the investigations, Swanson deflected and otherwise failed to accept responsibility for any of his conduct, and ultimately claims the Chief of Police targeted him for being a "whistleblower."

STAFF ANALYSIS: After reviewing the agency's internal investigation, staff has identified by a preponderance of evidence that Swanson engaged in misconduct as noted above. Staff has determined that the misconduct involves **Insubordination, Misconduct, Gross Misconduct, Misuse of Authority, and Disregard for the Rights of Others.** The committee will make its own determinations based on all of the evidence presented.

Insubordination: Includes a refusal by a public safety professional or instructor to comply with a rule or order, where the order was reasonably related to the orderly, efficient, or safe operation of the agency, and where the public safety professional's or instructor's refusal to comply with the rule or order constitutes a substantial breach of that person's duties.

Swanson failed to use the agency's In Car Video/Audio Recording System (ICV) for over two years after its implementation by the agency. After he was counseled about it, he used it some, but then repeatedly failed to use the ICV as required. Swanson's conduct involves Insubordination as defined above. (Ex. A6 p. 68-87; A7 p. 212)

Misconduct: Misconduct includes conduct that violates the law, practices or standards generally followed in the Oregon public safety profession.

There is sufficient evidence to show that Swanson violated the law by committing the crimes of Telephonic Harassment, Stalking and Coercion, even though he has not been charged with those crimes. Violating the law constitutes Misconduct as defined above. Additionally, Swanson engaged in personal activities while on duty to such an extent that he substantially neglected the duties for which he was paid. He released confidential information for non-law enforcement purposes, used his position as a police officer to try to gain personal advantage, and unlawfully stopped, detained and identified a subject, all violating the practices and standards generally followed in the Oregon public safety profession. Swanson's conduct constitutes Misconduct as defined above. (Ex. A6 through A9)

Gross Misconduct: Means an act or failure to act that creates a danger or risk to persons, property, or to the efficient operation of the agency, recognizable as a gross deviation from the standard of care that a reasonable public safety professional or instructor would observe in a similar circumstance.

Swanson engaged in personal activities while on duty to such an extent that he neglected his duties, revealed confidential information and failed to use the required In Car Video system for more than two years, even after being counseled to use it. Swanson also failed to properly review a subordinate's police report, causing the unlawful detention of a subject for 17 days when there was not appropriate probable cause established in the police report. Individually and collectively, this conduct created a risk to the efficient operation of the agency, recognizable as a gross deviation from the standard of care that a reasonable public safety professional or instructor would observe in a similar circumstance. Swanson's conduct constitutes Gross Misconduct as defined above. (Ex. A6 through A9)

Misuse of Authority: Includes abuse of public trust, obtaining a benefit, avoidance of detriment, or harming another, and abuses under the color of office.

Swanson stopped his police vehicle behind his estranged wife's vehicle in the parking lot of her business, unlawfully keeping her from leaving, and he opened the passenger door of her vehicle to unlawfully contact and detain her male passenger. He acted as a police officer in a situation in which he had no police authority. Swanson also used or attempted to use his position as a police officer to try to influence an employee of the Department of Youth Services regarding Swanson's son, and he threatened to place his estranged wife's name on a non-existent "gang database" to persuade her to stop associating with a male acquaintance of hers. These acts were abuse under the color of office. Swanson's conduct constitutes Misuse of Authority as defined above. (Ex. A6 through A9)

Disregard for the Rights of Others: Includes violating the constitutional or civil rights of others, and conduct demonstrating a disregard for the principles of fairness, respect for the rights of others, protecting vulnerable persons, and the fundamental duty to protect or serve the public.

Swanson unlawfully stopped and detained his estranged wife and her male passenger, and unlawfully identified the male passenger, in violation of their constitutional rights. While Swanson was engaged in his personal activities to the extent he was, he was not performing police duties for which he was being paid, and so he failed in his fundamental duty to protect or serve the public. Swanson's conduct constitutes Disregard for the Rights of Others as defined above. (Ex. A6 through A9)

Dishonesty: Includes untruthfulness, dishonesty by admission or omission, deception, misrepresentation, falsification.

Staff did not find sufficient evidence that Swanson's conduct constitutes Dishonesty as defined above.

*A draft of the staff analysis was provided to Swanson for the purposes of facilitating mitigation. Swanson provided a response through his attorneys.

COMMITTEE DISCUSSION:

I. Review the investigation and supporting documentation in its entirety and review and amend staff analysis as necessary. By consensus, identify misconduct specific to each moral fitness category.

II. Identify any aggravating or mitigating circumstances surrounding the misconduct.

CASE SUMMARY:

Misconduct that is specific to this case, considered by the Committee:

The identified conduct *did/did not* involve **Insubordination**.

The identified conduct *did/did not* involve **Misconduct**.

The identified conduct *did/did not* involve **Gross Misconduct**.

The identified conduct *did/did not* involve **Misuse of Authority**.

The identified conduct *did/did not* involve **Disregard for the Rights of Others**.

The identified conduct *did/did not* involve **Dishonesty**.

Identified aggravating circumstances:

Identified mitigating circumstances:

ACTION ITEM 2:

By vote, determine if Swanson’s conduct rises to the level to warrant the revocation of his certification. Recommend to the Board that this certification *be revoked/not be revoked*.

ACTION ITEM 3 (required only if the Committee recommends to the Board that certification be denied or revoked):

Using the following ineligibility grid and the categories of identified misconduct, by vote determine and recommend to the Board an initial minimum period of ineligibility to reapply for certification:

- Insubordination (3 years to 7 years)
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- Misuse of Authority (5 years to 10 years)
- Disregard for Rights of Others (5 years to 15 years)
- Dishonesty (5 years to Lifetime)