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Association With Known Criminals

"Department members shall not fraternize or associate with known criminals."

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Europe With a Mafia Don

Few things will upset a mayor or police chief more than reading a newspaper story about the friendship or close association of a police officer and a major drug dealer, an organized crime figure, or a violent gang member.

Reacting to the 1960 Summerdale scandal of police officers that were prosecuted for burglary, Chicago hired its first outside police chief to reform the police department. It was during that period that a police lieutenant was fired for taking a trip to Europe with a Chicago Mafioso, Anthony Accardo, aka "Joe Batters" and "Big Tuna." Accardo purportedly controlled as many as 10,000 bookie joints, but never spent a night in jail.

Accardo home in River Forest, Illinois

Management charged the lieutenant, a childhood friend of Accardo, with violating Rule 309: "No member or employee of the Department shall associate or fraternize with persons known to have criminal records."

He also was charged with violating Rule 374(5), by engaging in "conduct unbecoming a policeman in that he brought disgrace, disrepute and ridicule upon the police department by openly and flagrantly traveling from the United States to and through Europe with the said Accardo, who was alleged to be a person of ill repute in the community served by the Chicago Police Department."

On appeal, the lieutenant argued that it was unreasonable to prohibit a police officer from associating with another person when the only infraction was a few misdemeanor convictions, the latest of which was 26 years before the trip.

The Illinois Supreme Court agreed, writing:

> "Tested by these standards we are of the opinion that the rule is invalid. The very fact that the language of the rule is susceptible to the varying interpretations put upon it by the parties demonstrates its vagueness and we agree with the plaintiff that the rule is so vague that persons of common intelligence must necessarily guess at its meaning and differ as to its application."

The second charge, of conduct unbecoming, stuck. The Police Commissioner testified that Accardo's reputation was bad, and based his opinion upon police files and records, conversations with police officers, from newspaper items and commentators on radio and television. Moreover, Accardo had declined to answer 172 questions at a Senate committee hearing on the ground that his answers might incriminate him. He testified that the lieutenant's trip to Europe with Accardo

brought “disgrace, humiliation and disrespect to the Chicago Police Department and the city of Chicago.”

> • See, “Hearings Before the Special Committee to Investigate Organized Crime in Interstate Commerce in the United States Senate,” 81st Congress, 2nd Session, Jun. - Aug., 1950, Testimony of Virgil Peterson, p. 134.

The lieutenant admitted making the trip with Accardo, but testified that he paid all of his own, and his wife’s expenses for the trip. He denied knowing anything about Accardo’s reputation. He testified that he had read various newspaper accounts of a detrimental nature concerning Accardo but that he didn’t believe them.

The Supreme Court said it was the duty of a court to decide if the charges preferred against an officer are or are not so trivial as to be unreasonable or arbitrary. A court cannot substitute its judgment for that of a civil service commission.

Because the Civil Service Commission found that the plaintiff was guilty of conduct unbecoming a police officer by reason of his trip to Europe with Accardo, the justices concluded that “the finding of the Commission was not contrary to the manifest weight of the evidence.”

The lieutenant’s termination was upheld because of his misconduct, and not because he violated a “vague” rule against fraternization. DeGrazio v. Civil Service Commission, #38368, 31 Ill.2d 482, 202 N.E.2d 522 (Ill. 1964).

Detroit’s Rule Was More Specific

Nearly ten years later, the Detroit Police Commissioner was sustained after he charged several officers with conduct unbecoming an officer by association with a convicted criminal, in violation of Detroit Police Manual ch. 3, § 34(8) and neglect of duty by failing to timely report knowingly and intentionally having had contact with a convicted criminal in violation of the Detroit Police Manual, ch. 4, §73, and ch. 3, §34(10).

On appeal, a Detroit sergeant claimed that the regulation which prohibits association with convicted or suspected criminals, was unconstitutionally vague, citing DeGrazio v Chicago Civil Service Commission, The Michigan appellate court disagreed, writing:

> "Detroit Police Manual, ch. 3, §34(41), does not have the defects of uncertainty found in Rule 309 of the Chicago Police Department. The Detroit rule proscribes knowing and intentional association, except in the line of duty, with persons convicted, charged, or suspected of any crime other than traffic offenses and municipal ordinance violations. ...
>
> "Since only knowing and intentional associations are proscribed, it is readily apparent that the individual officer must know that the individual has been convicted of, is charged with, or is suspected of, some crime. ...
>
> "Therefore, it is our opinion that Detroit Police Manual, ch. 3, §34(41) gives police officers 'fair warning' of that conduct which it proscribes."

Sponick v. Detroit Police Dept., #15396, 49 Mich. App. 162, 211 N.W.2d 674 (Mich. App. 1973).

The IACP's Rule of Conduct for "Associations"

Prompted, in part, by internal investigation problems in the Detroit Police, the IACP's Research Division undertook a formalized compilation of disciplinary rules and accompanying court decisions. The IACP published the following rule:

> §1.27 Associations
>
> Officers shall avoid regular or continuous associations or dealings with persons who they know, or should know, are persons under criminal investigation or indictment, or who have a reputation in the community or the Department for present involvement in felonious or criminal behavior, except as necessary to the performance of official duties, or where unavoidable because of other personal relationships of the officers.
> - - - - -
> "Prototype Rules of Conduct," in *Managing for Effective Police Discipline*, International Assn. of Chiefs of Police, Inc., p. 143 (1976).

In the accompanying *Commentary*, the IACP urges some flexibility, "such as when the officer's spouse or child are included with the prohibited associations."

It also recognizes that persons of bad character "may have been rehabilitated" and association with them is not a problem.

Romantic Relationships

In 1984 the Supreme Court recognized a right to intimate association. Family relationships and marriage should be afforded greater protection from government interference than merely social ones. “Family relationships, by their nature, involve deep attachments and commitments to the necessarily few other individuals with whom one shares not only a special community of thoughts, experiences, and beliefs, but also distinctively personal aspects of one’s life.” Roberts v. U.S. Jaycees, 468 U.S. 609 (1984).

In one older case, an officer was wrongly terminated for dating the daughter of crime figure. He was awarded $324,429, which was reduced to $234,429 on appeal. The officer did not conceal the relationship, but said he would discontinue seeing the woman. He broke that promise and was fired. The appellate court said:

> We … align ourselves with recent cases holding that the first amendment freedom of association applies not only to situations where an advancing of common beliefs occurs, but also to purely social and personal associations.
>
> … we conclude that the relationship between Wilson and Susan Blackburn was protected under the first amendment freedom of association. .... Where two individuals seek to associate with each other, without any evidence of promulgating and advancing political or religious beliefs, they are protected under the freedom of association provision.

Here, the agency went too far and punished an officer for his association with the daughter of a crime figure. There was no proof that he had cultivated a relationship with the father, other than dating his daughter. Wilson v. Taylor, 733 F.2d 1539 (11th Cir. 1984); also see 658 F.2d 1021 (1981).

There are decisions to the contrary. For example, a federal court in New York upheld the termination of a deputy for dating crime figure’s wife. Baron v. Meloni, 602 F.Supp. 614 (W.D. N.Y. 1985) and 556 F.Supp. 796 (W.D. N.Y. 1983).

Direct relationships between an officer and a person that currently is, or previously was involved in criminal activities is not insulated by the First Amendment:

> * A DEA agent was properly terminated for maintaining a sexual relationship with a criminal informant. Rackers v. DoJ, #CH-0752-97-0218-I-1, 79 M.S.P.R. 262, 1998 MSPB Lexis 870 (1998).

* A California appellate court sustained the firing of a nontenured officer for consorting with a woman that he had arrested for drug possession. Riveros v. City of Los Angeles, 41 Cal.App.4th 1342, 49 Cal.Rptr.2d 238; modified at 1995 Cal.App. Lexis 138. Also see, Letter of 4/4/2000 of Martin Mayer, Counsel for the California State Sheriffs' Assn. and the California Police Chiefs' Assn. relating to this and related issues.

* An Illinois appellate court sustained the termination of a state police officer that married a convicted felon. Merrifield v. Illinois State Police Bd., 691 N.E.2d 191 (4th App. Dist. 1997).

* A California arbitrator affirmed the termination of a prosecutor's stenographer who was married to an active drug dealer. District Attorney, Riverside Co. and Public Employees Assn. (Lares), #D 9495-016, 33 (1624) G.E.R.R. (BNA) 951 (Rehmus, 1995).

Jails and Prisons

The Seventh Circuit upheld a county jail regulation that prohibits social involvement between corrections officers and inmates. Keeney v. Heath, 57 F.3d 579 (7th Cir. 1995). Judge Posner wrote that the subject of regulating relationships:

> "... must be answered in the first instance by people who are responsible for running jails, and not by judges. Judges should be cautious about disparaging disciplinary and security concerns expressed by the correctional authorities. American jails are not safe places, and judges should not go out of their way to make them less safe.
>
> "As long as the concerns expressed by correctional authorities are plausible, and the burden that a challenged regulation of jail or prison security places on protected rights a light or moderate one, the courts should not interfere."

In Pennsylvania, an arbitrator set aside the discharge of a correctional officer for violating a work rule prohibiting the forming of a romantic relationship with a prisoner. Their relationship had started 14 years prior to his incarceration.

The arbitrator did not excuse the conduct, and wrote that the grievant "should have notified the Warden of the relationship as soon as [her boyfriend] was incarcerated and should have sought instruction as to the appropriate course of action."

The punishment was reduced to a written reprimand. GEO Group/Wackenhut Corp. and Delaware Co. Prison Employees Ind. Union, 120 LA (BNA) 729, FMCS Case #04/05495 (Almenoff, 2004).

An Oregon federal court upheld the right of a corrections officer to share accommodations with an ex-felon. Reuter v. Skipper, 832 F.Supp. 1420 (D. Ore. 1993). The Ninth Circuit affirmed in an unpublished opinion, 4 F.3d 716 (9th Cir. 1993); cert. den., 114 S.Ct. 1397 (1994). The rule also was found "to punish her domestic partner from a crime for which he has already paid his debt..." The District Judge wrote that:

> "even assuming that a couple living together as husband and wife do not qualify as a 'family' and therefore are not entitled to the intermediate level of review, I find that defendant's evidence of the rule being rationally related to issues of public and officer safety and security is minimal. Defendant has failed to offer sufficient evidence to support his contention that the work rule of which plaintiff complains is rationally connected to defendant's duty of security and safety in its jails."

Penalty Usually Upheld

A New York appellate court sustained the termination of an officer who associated with a person she had reason to believe was engaged in criminal activity. Her argument that the penalty of dismissal is unduly harsh was without merit. Cottingham v. Kelly, #4266, 11 A.D.3d 285, 782 N.Y.S.2d 462 (N.Y. App.Div. 2004).

In D.C., a federal appeals court overturned an arbitration award that reinstated a Border Patrol Agent that bailed out a woman, who lived at his home, on a cocaine possession charge. The fact the woman was never convicted was not determinative. James v. Dale, #03-3030, 355 F.3d 1375 (Fed. Cir. 2004).

Discipline for Dummies? An arbitrator rejected the unusual defense that a terminated jail officer was only a high school graduate and therefore could not be expected to understand a rule prohibiting association with current and ex-inmates. A disparate punishment claim also was overruled. El Paso County Sheriff's Dept. and Individual Grievant, 117 LA (BNA) 1304, AAA Case #70-390-00110-01 (Moore, 2002).

A California Appeals Court upheld the termination of a clerk, at a police association's insurance office, for having an ongoing intimate relationship with a convicted felon. Access to officers' confidential files was incompatible with her behavior. Ortiz v. L.A. Police Relief Assn., #B148574, 98 Cal.App. 4th 1288, 120 Cal.Rptr.2d 670 (Cal.App.2d Dist. 2002).

A federal court in Mississippi refused to reinstate a police officer that was fired for his friendship with a murder suspect. Tillman v. City of West Point, 953 F.Supp. 145 (N.D.Miss. 1996).

And in Florida, a federal court upheld the termination of a trooper for association with a drug dealer. The trooper failed to prove a "familial" relationship that might be protected by the First Amendment. White v. Fla. Hwy. Patrol, 928 F.Supp. 1153 (M.D.Fla. 1996).

Officer's Defense: The "Self-Assigned" Undercover Investigation

There are many dedicated officers, who are career motivated and not dollar driven. They work unpaid overtime and perform volunteer community services. However, in the past, some officers have used their spare time to engage in illegal activities.

During 1968-1970, lawyers from Northwestern University's Police Legal Advisor Program assisted the Chief of Police in Gary, Indiana, with his efforts to remove corrupt officers from the department. In one such case, an off-duty sergeant was observed following a vehicle that was making pickups of bets and monies for a numbers game. It was surmised that he was providing the runner with security against a street robbery.

At the sergeant's civil service hearing, he claimed that he had been engaged in a self-assigned undercover investigation. Although off-duty, he said it was his public spirit that prompted him to work without additional pay -- and noted that his police powers continue while he is off-duty. The sergeant was acquitted.

Another Gary officer was arrested by the Chicago Police for possession of narcotics in his personal vehicle. Although assigned to the Patrol Bureau as a uniformed officer, he also claimed that he obtained the contraband as part of a self-assigned undercover investigation.

The Northwestern staff drafted a General Order on the subject of self-assigned undercover investigations.

- The contents of the 1969 General Order can be viewed here.

The underlying rationale was that a corrupt officer is unlikely to file such a report, and can be charged with dereliction of duty, should he later raise the defense that he was working a self-assigned undercover investigation.

"Developing Informants" Defense?

In Illinois, an appellate court overturned the termination of an assistant chief of police for conduct unbecoming by associating with a known addict.

The mayor alleged that the officer had contact repeatedly with the "Snow Queen," a local woman with a reputation for using and selling cocaine. The Board of Fire and Police Commissioners, appointed by the mayor, found that the association constituted conduct unbecoming an officer and terminated the accused.

Testimony revealed that after her arrest in 1987, the assistant chief had informed a State Police lieutenant that he was cultivating the woman as a confidential source. During the next six months the assistant chief received about 30 calls a week from the woman.

The assistant chief denied any misconduct and testified that he had cultivated other informants in the same manner, i.e., to "befriend a female informant suffering from psychological problems." He identified other specific instances in which he had successfully used this method.

A three-judge appellate court reversed, holding that the termination was "contrary to the manifest weight of the evidence."

The appellate court said that the whole area of how to properly deal with an informant is problematic and officers had considerable leeway. There was no departmental policy, procedure or directive on how to develop an informant.

During the pertinent six-month period, the assistant chief was not warned, reprimanded or instructed to change his relationship with the woman. The court noted that the "first hint of disapproval... did not occur until the mayor filed the instant complaint..."

The assistant chief was ordered reinstated, with back pay. Flosi v. Board of Fire & Police Cmsnrs. of Rock Falls, 582 N.E.2d 185 (Ill.App. 1991).

• Click link to view police procedures regarding the use of informants in Gladstone, MO, Syracuse, NY and Topeka, KS.

The above regulations, though useful in administering an informant program, do not provide specific guidance on the methods of cultivating informants.

• Click link to view the U.S. Attorney General's Guidelines Regarding the Use of Confidential Informants (2002).

References

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Note: *Employer Regulation of Employee Personal Relationships*, Jennifer L. Dean, 76 Boston Univ. Law Rev. 1051 (1996).

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