2001-365.1

San Diego County
SHERIFF'S DEPARTMENT

NOTICE OF PROPOSED DISCIPLINARY ACTION

TO: William B. Kolender, Sheriff		DATE: 05-21-2002	
It is recommended that the following disciplinary action be administered to the below named employee:			
EMPLOYEE'S NAME:	Antonio Smith #2643	TITLE:	Deputy Sheriff
DEPARTMENT POLICY AND / OR PROCEDURE SECTION(S) VIOLATED:	2.3 Violation of Rules	~~2.4 Conduct Unbecoming~~ THIS IS CORRECT	
	2.5 Immoral Conduct	~~2.6 Conformance to Law~~	
	2.27 Neglect of Duty	2.30 Failure to Meet Standards	
RECOMMENDED DISCIPLINE:	TERMINATION		
SECOND LEVEL SUPERVISOR:	J. Nolan, Lieutenant J. Nolan, LT.	DATE:	05/21/2002
LIST PRIOR RELATED OFFENSE(S) WITHIN LAST FIVE YEARS WITH DATE & ACTION	None		

I have been advised of the above charges and recommended discipline:

EMPLOYEE'S SIGNATURE: 2643 DATE: 5-21-02

2nd LEVEL SUPERVISOR SIGNATURE: J. Nolan, LT. DATE: 5-21-2002

3rd LEVEL SUPERVISOR SIGNATURE: ACTING CAPT DATE: 5/22/02

COMMENTS:

REVIEWED BY INTERNAL AFFAIRS: DATE: 6/3/02

4th LEVEL SUPERVISOR SIGNATURE: Alan Truitt, Commander DATE: 7-22-02

COMMENTS:

ADDITIONAL REVIEW: T.A. Zoll, Assistant Sheriff DATE: 7/23/02

ADDITIONAL REVIEW: John M. Drown, Undersheriff Review for JM Drown DATE: 07/24/02

ADDITIONAL REVIEW: William B. Kolender, Sheriff DATE: 7-24-02

INTERNAL AFFAIRS SECTION

☐ WRITTEN REPRIMAND BY:	DATE:	
☑ NOTICE OF INTENT AND CHARGES: D. Yahrling SET	DATE:	6/10/02
☒ ORDER SERVED: Sergeant D. Jopes	DATE:	07-26-2002
☒ CIVIL SERVICE NOTIFIED: P. Lorenz, AdminSec II	DATE:	08-01-2002
☐ PAYROLL NOTIFIED:	DATE:	
FINAL ACTION TAKEN: TERMINATION	DATE:	07-24-2002

IA-2 5/00 (PREVIOUS AS 1/3)

RELEASED FROM I.A. FILES TO

CIVIL SERVICE COMMISSION

COUNTY OF SAN DIEGO

In the Matter of the Appeal of **Antonio Lee Smith** from an Order of Termination and Charges from the Sheriff's Department	FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

The matter of the appeal of Antonio Lee Smith, from a written Order of Termination and Charges from his class and position of Deputy Sheriff (Class No. 5746) in the Sheriff's Department, was presented to the Civil Service Commission. The Commission appointed Gordon Austin, one of its members, to hear the appeal and submit findings and recommendations to the Civil Service Commission. Thereafter, the matter was duly noticed and came on for hearing on October 21, 2002.

The following were present at the hearing: Gordon Austin, Hearing Officer; Larry Cook, Executive Officer, assisting the Hearing Officer; William Smith, Senior Deputy County Counsel (on call as legal advisor); Antonio Lee Smith, Appellant; and Robert Faigin, Esq., assisted by Sergeant Dan Jopes, representing the Appointing Authority.

The official file of the proceedings shows that the Order of Termination and Charges was dated July 24, 2002, signed by William B. Kolender, Sheriff, and that the causes of discipline were:

CAUSE I

You are guilty of unbecoming conduct of an officer of the County of San Diego as set forth under Section 7.2 (m) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure **Section 2.3 - Violation of Rules, 2.4 - Unbecoming Conduct.** On December 26, 2001, you responded to a call of a 242 P.C., Battery at the home of [redacted]. While at the residence

you engaged in five separate acts of oral sex and one act of sexual intercourse with [redacted] who was the suspect of the investigation. [redacted] reported the incident as a sexual assault. Your conduct reflected poorly on the Sheriff's Department and on you as a Deputy Sheriff.

CAUSE II

You are guilty of immorality as set forth under Section 7.2 (f) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure **Section 2.3 - Violation of Rules, 2.5 - Immoral Conduct.** On December 26, 2001 while on duty, you engaged in five separate acts of oral sex and one act of sexual intercourse with the suspect of a crime while at her residence. You failed to maintain a level of moral conduct required by the standards of the San Diego County Sheriff's Department. Your conduct has compromised and impaired your ability to perform your duties as a Deputy Sheriff.

CAUSE III

You are guilty of *failure of good behavior** as set forth under Section 7.2 (r) of Rule VII of the Rules of the Civil Service Commission as it as it relates to Sheriff's Policy and Procedure **Section 2.3 - Violation of Rules.** On December 26, 2001 while on duty, you engaged in five separate acts of oral sex and one act of sexual intercourse with the suspect of a crime while at her residence. The victim stated she was unable to prevent the sexual assault because of her state of intoxication. Based on statements by you and the victim, the preponderance of the evidence clearly indicates you violated section 261 (a) (3) P.C.

CAUSE IV

You are guilty of *negligence resulting in harm or significant risk of harm to the public or public service** as set forth under Section 7.2 (q) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure **Section 2.3 - Violation of Rules.** On December 26, 2001 while on duty, you engaged in five separate acts of oral sex and one act of sexual intercourse with the suspect of a crime while at her residence. During this time, you were unavailable for routine calls for service, support or "back up" for other deputies, emergencies, major incidents or disasters.

CAUSE V

You are guilty of incompetency as set forth under Section 7.2 (a) of Rule VII of the Rules of the Civil Service Commission as it as it relates to Sheriff's Policy and Procedure **Section 2.3 - Violation of Rules, 2.30 - Failure to Meet Standards.** On December 26, 2001 while on duty, you engaged in five separate acts of oral sex and one act of sexual intercourse with the suspect of a crime while at her residence. Your duty and responsibility was to investigate the 242 P.C., not to engage in sexual activity with the suspect of this investigation. You failed to properly perform and assume the duties of your position.

CAUSE VI

You are guilty of acts which are incompatible with and/or inimical to the public service as set forth under Section 7.2 (s) of Rule VII of the Rules of the Civil Service Commission of the County of San Diego. Also, you are guilty of acts which are incompatible with the San Diego County Sheriff's Department Executive Order and the Mission, Vision, Values and Goals. Your conduct constituting such acts inimical to the public service is that set forth under Cause I through Cause V.

**Language corrected at the Commission hearing.*

FINDINGS AND CONCLUSIONS

1. Antonio Lee Smith, hereinafter referred to as "Employee" was a Reserve Officer for four (4) years, and a Deputy Sheriff for five (5) years prior to his termination in July, 2002.

2. At the beginning of the Commission hearing, Employee admitted to all charges in the Order of Termination, except for the Charges under Cause III and Cause VI (as it relates to Cause III).

3. Following Employee's admission of charges, the undersigned Hearing Officer consulted with counsel and returned to the hearing with a statement that he was inclined to recommend to the Civil Service Commission that the termination be affirmed with or without the charges under Cause III.

4. Robert Faigin, Esq., representing the Sheriff's Department, informed the undersigned that during the above-referenced consultation with counsel, he and Employee entered into a verbal stipulation. The parties stipulated that Employee acknowledged admission of charges as referenced above, and that Mr. Faigin would not attempt to prove the charges under Cause III.

5. Following a statement from Employee that Cause III was his primary issue and that he did not expect to get his job back, the hearing was closed.

6. Based on the above Findings and Conclusions, all charges were proven except for those contained under Cause III and Cause VI (as it relates to Cause III).

7. Employee is guilty of Cause I, conduct unbecoming an officer of the County of San Diego; Cause II, immoral conduct; Cause IV, negligence resulting in harm or significant risk of harm to the public or the public service; Cause V, failure to meet standards; and Cause VI, acts which are incompatible with and/or inimical to the public service. Employee is not guilty of Cause III, failure of good behavior.

RECOMMENDATIONS

Based on the Findings and Conclusions set forth above, I hereby recommend the following decision:

1. That the Order of Termination and Charges be affirmed; and

2. That the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Date: November 20, 2002

GORDON AUSTIN
Hearing Officer

/Reports/Reports 2002/RULE VII 2002/Smith.FDG.doc

CIVIL SERVICE COMMISSION

COUNTY OF SAN DIEGO

In the Matter of the Appeal of)
Antonio Lee Smith from an Order) DECISION
of Termination and Charges from)
the Sheriff's Department)

The matter of the appeal of Antonio Lee Smith, from a written Order of Termination and Charges from his class and position of Deputy Sheriff (Class No. 5746) in the Sheriff's Department was presented to the Civil Service Commission. The Commission appointed Gordon Austin, one of its members, to hear the appeal and submit findings, conclusions, and recommendations to the Civil Service Commission. However, before the matter could be heard, representatives of the two parties involved entered into a verbal Stipulation.

The Hearing Officer has reported back to the Commission his Findings, Conclusions and Recommendations; and Proposed Decision, a copy of which is attached hereto and incorporated herein, and the Commission hereby adopts and approves the Findings and Proposed Decision that the Hearing Officer has submitted.

ACCORDINGLY, IT IS ORDERED:

1. That the Order of Termination and Charges be affirmed;

2. That the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

3. Any exhibit introduced in this proceeding may be returned to the party to whom it belongs at any time after the effective date of this Decision and the expiration of the time provided for judicial review which is governed by Code of Civil

Procedure Section 1094.6 as more fully set forth below under the paragraph entitled "Notice." The party seeking return of the exhibits shall file with this Commission a written request for the return of the exhibits accompanied by proof of mailing a copy thereof to the other party, who may have ten (10) days from the date of mailing to object to the return of said exhibit(s). If no objection is filed, the Executive Officer of the Commission may return the exhibit(s) to the party requesting it.

4. Upon approval of this Decision, a copy thereof, together with the Findings, Conclusions and Proposed Decision incorporated by reference, be certified and served on the parties and their representatives.

NOTICE

The time within which judicial review of this decision must be sought is governed by the Code of Civil Procedure Section 1094.6 which has been made applicable in the County of San Diego by Civil Service Rule VII, Section 7.13(f). Any petition or other papers seeking judicial review must be filed in the appropriate court not later than the ninetieth (90th) day following the date on which this decision becomes final. However, if within ten (10) days after this decision becomes final, a request for the record of the proceedings is filed, the time within which such petition may be filed in court is extended to not later than the thirtieth (30th) day following the date on which the record is personally delivered or mailed to the party, or his attorney of record. A written request for the preparation of the record of proceedings shall be filed

with the Executive officer of the Civil Service Commission of San Diego County, 1600 Pacific Highway, San Diego, California 92101. A deposit sufficient to cover the estimated cost of preparation of such record shall be filed with the written request for the record of the proceedings.

Approved by the Civil Service Commission on the 20th day of November, 2002.

AYES: Austin, Newman, Pate, Brummitt, Sandstrom

NOES:

ABSENT:

ABSTENTIONS:

FROM THE OFFICE OF

INTERNAL AFFAIRS – CONFIDENTIAL

August 1, 2002
IA# 2001-365.1

TO: Civil Service Commission

FROM: Gary A. Cantrell, Lieutenant
Internal Affairs Unit

The Order of Termination and Charges dated 05-07-2002 filed against Antonio Smith has been received by the Civil Service Commission on: 8/5/02
Date

Commission Response:

[X] The above individual **HAS** appealed the Order of Termination and Charges.

[ ] The above individual **HAS NOT** appealed the Order of Termination and Charges.

Please return this form to the Sheriff's Internal Affairs Unit (MS-O41) as soon as possible.

Thank you.

Gary A. Cantrell, Lieutenant
Internal Affairs Unit
(858) 974-2065

Attachment

FROM THE OFFICE OF

INTERNAL AFFAIRS – CONFIDENTIAL

August 1, 2002
IA# 2001-365.1

TO: Civil Service Commission

FROM: Gary A. Cantrell, Lieutenant
Internal Affairs Unit

The Order of Termination and Charges dated 05-07-2002 filed against Antonio Smith has been received by the Civil Service Commission on: _____
Date

Commission Response:

[ ] The above individual **HAS** appealed the Order of Termination and Charges.

[ ] The above individual **HAS NOT** appealed the Order of Termination and Charges.

Please return this form to the Sheriff's Internal Affairs Unit (MS-O41) as soon as possible.

Thank you.

Gary A. Cantrell, Lieutenant
Internal Affairs Unit
(858) 974-2065

Attachment

RECEIPT OF MATERIALS

EMPLOYEE: ANTONIO SMITH #2643
Case # 2001-365.1

DESCRIPTION OF DOCUMENT	EMPLOYEE RECEIVED (DATE & INITIAL)	APPOINTING AUTHORITY (Date & Sign)
Order of Termination and Charges to Antonio Smith dated 07-24-2002	A Smith 7-26-02	Don W Jones 7-26-02
Skelly Conference by Captain Cooke dated 07-12-2002		
Declaration/Acknowledgement of Personal Service		

RECEIPT OF MATERIALS

EMPLOYEE: ANTONIO SMITH #2643
Case # 2001-365.1

DESCRIPTION OF DOCUMENT	EMPLOYEE RECEIVED (Date and Initial)	APPOINTING AUTHORITY (Date and Sign)
Notice of Proposed Disciplinary Action to Antonio Smith dated 2001-365.1		
Notice of Intent to Terminate and Charges to Antonio Smith dated 06-04-2002		
Discipline Recommendation/Rationale to Sheriff Kolender from Lieutenant Nolan dated 05-14-2002	6-10-02	6/12/02
Investigative Reports by Sergeant Jopes dated 03-14-2002 and attachments		
Skelly Conference Letter to Antonio Smith		D. Holmes, Sgt.
Order Not to Disclose Materials to Antonio Smith		
Declaration/Acknowledgement of Personal Service		

FROM THE OFFICE OF

INTERNAL AFFAIRS – CONFIDENTIAL

DECLARATION/ACKNOWLEDGEMENT OF PERSONAL SERVICE

I, the Undersigned, certify that I am over 18 years of age and a resident of the County of San Diego, and that I served the

[ ] **NOTICE OF INTENT OF PAY-STEP REDUCTION AND CHARGES**
[ ] **NOTICE OF INTENT TO SUSPEND AND CHARGES**
[ ] **NOTICE OF INTENT TO TERMINATE AND CHARGES**
[ ] **NOTICE OF INTENT TO REMOVE CORPORAL PREMIUM AND CHARGES**

[ ] **ORDER OF PAY-STEP REDUCTION AND CHARGES**
[ ] **ORDER OF SUSPENSION AND CHARGES**
[X] **ORDER OF TERMINATION AND CHARGES**
[ ] **ORDER OF REMOVAL OF CORPORAL PREMIUM AND CHARGES**

of which a true copy is attached hereto, by delivering a copy thereof to Antonio Smith personally at Vista on 1-26-02.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 26 day of July, 2002, at Vista, California.

Dan Wilkes
Signature of person making personal service

ACKNOWLEDGEMENT OF SERVICE

I do hereby acknowledge receipt of the above noted document.

Executed this 26 day of July, 2002.

SIGNED

San Diego County Sheriff's Department

Post Office Box 429000 • San Diego, California 92142-9000

William B. Kolender, Sheriff

John M. Drown, Undersheriff

July 24, 2002

Antonio Smith
[redacted]

Dear Deputy Smith;

ORDER OF TERMINATION AND CHARGES CASE # 2001-365.1

I hereby order that you be terminated from your position as a Deputy Sheriff (Class #5746) in the Sheriff's Department and the Classified Service of the County of San Diego for each and all of the following causes:

CAUSE I

You are guilty of Unbecoming Conduct of an officer of the County of San Diego as set forth under Section 7.2 (m) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure **Section 2.3 – Violation of Rules, 2.4 – Unbecoming Conduct.** On December 26, 2001, you responded to a call of a 242 P.C., Battery at the home of [redacted]. While at the residence you engaged in five separate acts of oral sex and one act of sexual intercourse with [redacted] who was the suspect of the investigation. [redacted] reported the incident as a sexual assault. Your conduct reflected poorly on the Sheriff's Department and on you as a Deputy Sheriff.

CAUSE II

You are guilty of Immorality as set forth under Section 7.2 (f) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure **Section 2.3 – Violation of Rules, 2.5– Immoral Conduct.** On December 26, 2001 while on duty, you engaged in five separate acts of oral sex and one act of sexual intercourse with the suspect of a crime while at her residence. You failed to maintain a level of moral conduct required by the standards of the San Diego County Sheriff's Department. Your conduct has compromised and impaired your ability to perform your duties as a Deputy Sheriff.

~~**CAUSE III**~~

~~You are guilty of Conformance to Law as set forth under section 7.2 (r) of Rule VII of the Rules of the Civil Service Commission as it as it relates to Sheriff's Policy and Procedure **Section 2.3 – Violation of Rules, 2.6 – Conformance to Law**. On December 26, 2001 while on duty, you engaged in five separate acts of oral sex and one act of sexual intercourse with the suspect of a crime while at her residence. The victim stated she was unable to prevent the sexual assault because of her state of intoxication. Based on statements by you and the victim, the preponderance of the evidence clearly indicates you violated section 261 (a) (3) P.C.~~

CAUSE IV

You are guilty of Neglect of Duty as set forth under Section 7.2 (q) of Rule VII of the Rules of the Civil Service Commission as it as it relates to Sheriff's Policy and Procedure **Section 2.3 – Violation of Rules, 2.27 – Neglect of Duty.** On December 26, 2001 while on duty, you engaged in five separate acts of oral sex and one act of sexual intercourse with the suspect of a crime while at her residence. During this time, you were unavailable for routine calls for service, support or "back up" for other deputies, emergencies, major incidents or disasters.

CAUSE V

You are guilty of Incompetency as set forth under Section 7.2 (a) of Rule VII of the Rules of the Civil Service Commission as it as it relates to Sheriff's Policy and Procedure **Section 2.3 – Violation of Rules, 2.30 – Failure to Meet Standards.** On December 26, 2001 while on duty, you engaged in five separate acts of oral sex and one act of sexual intercourse with the suspect of a crime while at her residence. Your duty and responsibility was to investigate the 242 P.C, not to engage in sexual activity with the suspect of this investigation. You failed to properly perform and assume the duties of your position.

CAUSE VI

You are guilty of acts which are incompatible with and/or inimical to the public service as set forth under Section 7.2 (s) of Rule VII of the Rules of the Civil Service Commission of the County of San Diego. Also, you are guilty of acts which are incompatible with the San Diego County Sheriff's Department Executive Order and the Mission, Vision, Values and Goals. Your conduct constituting such acts inimical to the public service is that set forth under Cause I through Cause V.

Order of Termination I.A. Case # 2001 365.1
Deputy Antonio Smith
July 24, 2002

Your attention is directed to Sections 904.1, 904.2, 909, 909.1, 910.1(k), and 910 (k)(l) of the Charter of the County of San Diego and Rule VII of the Civil Services Rules. If you wish to appeal this order to the Civil Service Commission of the County of San Diego, you must file such an appeal and an answer in writing with the Commission within ten (10) calendar days after this order is presented to you. Such an appeal and answer must be in writing and delivered to the Civil Service Commission at its offices at 1600 Pacific Highway, Room 458, San Diego, California 92101, within such ten (10) calendar day period. An appeal is not valid unless it is actually received by the Commission within such ten (10) calendar day period. A copy of such appeal and answer shall also be served, either personally or by mail, by the employee on the undersigned within the same ten (10) calendar day period.

Sincerely,

William B. Kolender, Sheriff

WBK:dwj

COUNTY OF SAN DIEGO

INTER-DEPARTMENTAL CORRESPONDENCE

July 12, 2002

TO: William B. Kolender, Sheriff

FROM: Jim Cooke, Captain
Lemon Grove Station

VIA: Internal Affairs Unit

SKELLY CONFERENCE FOR DEPUTY ANTONIO SMITH, I.A. CASE # 2001-365.1

COMMAND RECOMMENDATION:

Lieutenant Jim Nolan has recommended that Deputy Smith be terminated from employment.

SYNOPSIS:

During the early morning hours of December 26, 2001, Deputy Antonio Smith was working patrol in the city of Vista when he received a radio call regarding a reported battery at a residence on [redacted] Avenue. Upon his arrival, Deputy Smith encountered a family who was attempting to control a female adult who was extremely inebriated and whose behavior was described as being violent and "out of control." Deputy Smith is accused of encouraging the family members to leave the female alone with him at her residence, then engaging in five separate acts of oral copulation and one act of sexual intercourse with her while she was too intoxicated to resist these acts.

This incident was initially investigated as a violation of California Penal Code section 261 (a) (3) (rape of a person prevented from resisting by any intoxicating substance) by detective personnel assigned to the Vista Sheriff's Station. It was ultimately taken over by the Sheriff's Internal Affairs Unit. The case was submitted to the District Attorney's Office, which declined to issue a criminal complaint against Deputy Smith. The subsequent administrative review of the incident resulted in sustained allegations of violations of the following San Diego County Sheriff's Department Policy and Procedures sections:

2.3 Violation of Rules
2.4 Unbecoming Conduct
2.5 Immoral Conduct
2.6 Conformance to Laws
2.27 Neglect of Duty
2.30 Failure to Meet Standards

CONDUCT OF THE CONFERENCE:

The Skelly conference, which was tape recorded, was conducted in my office at the Lemon Grove Sheriff's Station at 0950 hours on Tuesday June 25, 2002. Present were Deputy Smith, his attorney Everett Bobbitt and me. Prior to commencing, I informed Deputy Smith and Mr. Bobbitt that during my review of the I.A. investigation, I realized that I was acquainted with the female who claimed to have been victimized by Deputy Smith. In 1987, I was one of two training officers assigned to the 77th Sheriff's Academy. [redacted], whose name at the time was [redacted], was an open enrollee cadet in that academy class. I explained that I have not seen nor spoken with this individual since 1987 and that being acquainted with her would in no way hinder my ability to be unbiased. Neither Mr. Bobbitt nor Deputy Smith objected to me continuing my role as the Skelly Hearing Officer despite this disclosure.

I then proceeded to ensure that all of Deputy Smith's procedural "Skelly Rights" had been adhered to prior to the hearing. Deputy Smith and Mr. Bobbitt acknowledged that they had:

1. Received the Notice of Proposed Disciplinary Action
2. Received the Notice of Intent to Terminate and Charges
3. Received copies of all investigative reports and other relevant material concerning this matter
4. Were aware that this hearing was their opportunity to respond to the charges and recommended discipline

In preparation for this conference I reviewed the following:

1. Notice of Proposed Disciplinary Action
2. Notice of Intent to Terminate and Charges
3. Declaration and Acknowledgment of Personal Service
4. Skelly Conference Letter
5. Complete Internal Affairs file and investigation on case # 2001-365.1

RESPONSE TO CHARGES:

Deputy Smith started by saying that there is no chance anything like this incident would happen again in his career. He explained that during the month prior to the incident, his relationship with his fiancé was deteriorating. This situation had been very stressful and led him to be in a state of depression. On Christmas night, Smith felt that, due to his state of depression, he was not mentally fit to work the C-shift in patrol at the Vista Station. He decided to do so however, because the shift was already extremely short handed.

Deputy Smith then proceeded to describe the events that took place involving [redacted] during the early morning hours of December 26, 2001, at her residence in Vista. The account he provided was virtually the same as the statements he provided during his interview with the investigators from Internal Affairs.

Deputy Smith reiterated that [redacted] had initiated the sexual encounters and that he believed the encounters were completely consensual and not a violation of any law. He accepted full responsibility for his actions stating that he "allowed it to happen" and admitted to having made a "horrible judgment call." Deputy Smith further stated that while engaged in sexual intercourse with [redacted] he felt ashamed and "knew that I was in trouble."

Deputy Smith said that during his entire nine-year career with the Sheriff's Department he has been a model employee. He claimed that he has had no citizen's complaints, been involved in no vehicle collisions, never used excessive force, been involved in several COPPS projects, and been a role model to other deputies. Referring to the incident involving [redacted] Deputy Smith said "one thing that I do, that I take full responsibility for, ruins everything." He went on to say that he realizes that he deserves to receive discipline and that he will accept any sanctions short of termination of employment.

Deputy Smith stated that in his mind he has already been severely punished for his conduct. He said that he has suffered the humiliation of being placed on administrative assignment at the front counter of the Vista Station, which has cost him about $400.00 a month in lost earnings. Moreover, the stigma of being suspected by his co-workers of committing a sexual assault while on duty has placed him under enormous stress. [redacted].

Deputy Smith concluded by saying he realizes he deserves to be disciplined and that in his eyes he already has been. He reiterated that he would accept any discipline other than termination. He said, "I did it, I'm not trying to hide anything. My story has been the exact same thing since day one. That's exactly what happened there. I had consensual sex with a woman at a house. I made a very bad judgment call and I got caught. I haven't lied about anything. I told the truth and I've committed no crime."

Once Deputy Smith had concluded his statement, Mr. Bobbitt stated that there is no doubt having consensual sex on duty with a woman during a call for service is a serious matter. He continued that the only concern he had in terms of the "notice" was the conformance to laws allegation. He stated that during his career as a peace officer he had been a sex crimes investigator and that, in his opinion, what occurred between Deputy Smith and [redacted] in its worst light, did not amount to a crime. He claimed that [redacted] knew far too many details of what had occurred to be so intoxicated that the statute would apply. For that to have been the case, the victim virtually had to be unconscious and that the perpetrator had to know that the victim was incapable of understanding what was going on around her. Mr. Bobbitt said that his interpretation of [redacted] experiencing blackouts no one realized she is having, equates to a loss of memory the day following her being inebriated and did not amount to a loss of consciousness or a condition wherein she was not of her own free will at the time. He continued that the loss of memory described by [redacted] is a symptom of a server alcoholic, but does not equate to an individual being less than fully conscious and aware of what is going on around them.

Mr. Bobbitt stated that, as expressed by Deputy Smith, any discipline short of termination would not be appealed. He continued that this matter is not a "bullshit" case and that what Deputy Smith did was wrong. He continued that Deputy Smith's actions could not be justified nor be blamed on [redacted]. Mr. Bobbitt concluded by saying in his opinion perhaps the most important aspect of the case was the fact that Deputy Smith understood what he did was wrong and the enormity of the wrongdoing.

The conference was concluded at 1015 hours.

DISCUSSION:

The only matter of contention that was presented during the Skelly Conference dealt with Cause III pertaining Sheriff's Policy and Procedures Sections 2.3 – Violation of Rules and 2.6 - Conformance to Laws. To clarify that issue, I telephoned Deputy District Attorney Kerry Wells who reviewed this case and elected not to issue criminal charges against Deputy Smith. The call was made on July 1, 2002 at 1055 hours. Ms. Wells said that in her opinion, Deputy Smith's conduct did constitute a violation of section 261 (a) (3) of the Penal Code, but that because of the factors articulated in her "Complaint Request Evaluation" dated March 15, 2002, she felt that it would be very difficult proving Deputy Smith was guilty beyond a reasonable doubt.

It is my opinion that even though the evidence in this case pertaining to the criminal allegation of rape may not meet the "beyond a reasonable doubt" standard required by the District Attorney's Office for issuance of criminal charges, the facts are more than sufficient to meet the "preponderance of evidence" standard. I base this belief on two factors. First, [redacted] had consumed a considerable amount of alcohol prior to her encounter with Deputy Smith. By many accounts, her behavior was violent and "out of control." This type of behavior is not consistent with an individual in complete control or her faculties or capable of making rational decisions.

Second, in his interview with Internal Affairs investigators, Deputy Smith stated that he perceived [redacted] as being a possible candidate for a 5150 W&I commitment. For an individual to be subjected to such an involuntary commitment by a law enforcement officer, the individual must constitute a danger to himself or others, or be "gravely disabled." Deputy Smith's assessment of [redacted] being a candidate for this type of commitment leads me to conclude that he believed she was impaired and, to some degree, incapable of caring for herself. Based upon these factors, I believe [redacted] ability to make sound, rational decisions was certainly impaired and that Deputy Smith knew, or should have known that to be the case.

CONCLUSIONS:

I am confident that Deputy Smith's Skelly rights have been upheld. This investigation has established that during the incident at issue, his behavior was utterly inexcusable. [redacted] family entrusted an impaired loved one's well being to his care and he willingly and knowingly violated their trust. He failed to fulfill his moral obligation and sworn duty to protect a vulnerable woman and instead took advantage of her vulnerability by engaging in multiple sex acts. His conduct was a violation of law, Department Policy and completely contrary to the values of the Sheriff's Department.

The fact that Deputy Smith may or may not have been a model employee prior to this incident is irrelevant. There is nothing that can mitigate the severity of this incident or make him a viable candidate for retention; not previous performance reports, not commendations, not COPP's projects, nothing. In my opinion the severity of his misconduct cannot be overstated and under no circumstances should he ever again be entrusted to fulfill the duties of a peace officer.

RECOMMENDATION:

I concur with the all of the findings sustained by the Internal Affairs Unit that have been documented in the Notice of Intent and Charges Report. Furthermore, I believe that termination from employment is the appropriate level of discipline as recommend and approved by the Vista Station Command. Therefore it is my recommendation that the termination of Deputy Smith's employment with the Sheriff's Department be upheld.

Submitted by:

Thomas J. Cooke

Jim Cooke, Captain
Lemon Grove Station

Attachment: (1) Cassette tape

Alan Truitt, Commander
Law Enforcement Operations – Northern

X Approve ____ Disapprove

Date 7-22-02

Comments: _____

_____

_____

T. A. Zoll, Assistant Sheriff
Law Enforcement Services

X Approve ____ Disapprove

Date 7/23/02

Comments _____

_____

_____

R. Reich for J. M. Drown [ ] Approve [ ] Disapprove
John M. Drown, Undersheriff

Date 07/24/02

Comments _____

_____

_____

W. B. Kolender

William B. Kolender, Sheriff

[X] Approve [ ] Disapprove

Date 7-24-02

Comments _____

_____

_____

FROM THE OFFICE OF

INTERNAL AFFAIRS – CONFIDENTIAL

DECLARATION/ACKNOWLEDGEMENT OF PERSONAL SERVICE

I, the Undersigned, certify that I am over 18 years of age and a resident of the County of San Diego, and that I served the

[ ] **NOTICE OF INTENT OF PAY-STEP REDUCTION AND CHARGES**
[ ] **NOTICE OF INTENT TO SUSPEND AND CHARGES**
[X] **NOTICE OF INTENT TO TERMINATE AND CHARGES**
[ ] **NOTICE OF INTENT TO REMOVE CORPORAL PREMIUM AND CHARGES**

[ ] **ORDER OF PAY-STEP REDUCTION AND CHARGES**
[ ] **ORDER OF SUSPENSION AND CHARGES**
[ ] **ORDER OF TERMINATION AND CHARGES**
[ ] **ORDER OF REMOVAL OF CORPORAL PREMIUM AND CHARGES**

of which a true copy is attached hereto, by delivering a copy thereof to

ANTONIO SMITH personally at VISTA, CALIFORNIA on 6/10/02.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 6 day of JUNE, 2002, at VISTA, California.

D. Yoshonis, Sgt.
Signature of person making personal service

ACKNOWLEDGEMENT OF SERVICE

I do hereby acknowledge receipt of the above noted document.

RELEASED FROM I.A. FILES TO

Executed this 6 day of JUNE, 2002.

SIGNED

San Diego County Sheriff's Department

Post Office Box 429000 • San Diego, California 92142-9000

William B. Kolender, Sheriff

John M. Drown, Undersheriff

June 4, 2002

Antonio Smith
[redacted]

Dear Deputy Smith;

NOTICE OF INTENT TO TERMINATE AND CHARGES, CASE # 2001 – 365.1

Please take notice that it is my intention to recommend to the Sheriff that you be terminated from your position as a Deputy Sheriff (Class #5746) in the Sheriff's Department and the Classified Service of the County of San Diego for each and all of the following causes;

CAUSE I

You are guilty of Unbecoming Conduct of an officer of the County of San Diego as set forth under Section 7.2 (m) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure **Section 2.3 – Violation of Rules, 2.4 – Unbecoming Conduct.** On December 26, 2001, you responded to a call of a 242 P.C., Battery at the home of [redacted] While at the residence you engaged in five separate acts of oral sex and one act of sexual intercourse with [redacted] who was the suspect of the investigation. [redacted] reported the incident as a sexual assault. Your conduct reflected poorly on the Sheriff's Department and on you as a Deputy Sheriff.

CAUSE II

You are guilty of Immorality as set forth under Section 7.2 (f) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure **Section 2.3 – Violation of Rules, 2.5– Immoral Conduct.** On December 26, 2001 while on duty, you engaged in five separate acts of oral sex and one act of sexual intercourse with the suspect of a crime while at her residence. You failed to maintain a level of moral conduct required by the standards of the San Diego County Sheriff's Department. Your conduct has compromised and impaired your ability to perform your duties as a Deputy Sheriff.

CAUSE III

You are guilty of Conformance to Law as set forth under section 7.2 (r) of Rule VII of the Rules of the Civil Service Commission as it as it relates to Sheriff's Policy and Procedure **Section 2.3 – Violation of Rules, 2.6 – Conformance to Law**. On December 26, 2001 while on duty, you engaged in five separate acts of oral sex and one act of sexual intercourse with the suspect of a crime while at her residence. The victim stated she was unable to prevent the sexual assault because of her state of intoxication. Based on statements by you and the victim, the preponderance of the evidence clearly indicates you violated section 261 (a) (3) P.C.

CAUSE IV

You are guilty of Neglect of Duty as set forth under Section 7.2 (q) of Rule VII of the Rules of the Civil Service Commission as it as it relates to Sheriff's Policy and Procedure **Section 2.3 – Violation of Rules, 2.27 – Neglect of Duty.** On December 26, 2001 while on duty, you engaged in five separate acts of oral sex and one act of sexual intercourse with the suspect of a crime while at her residence. During this time, you were unavailable for routine calls for service, support or "back up" for other deputies, emergencies, major incidents or disasters.

CAUSE V

You are guilty of Incompetency as set forth under Section 7.2 (a) of Rule VII of the Rules of the Civil Service Commission as it as it relates to Sheriff's Policy and Procedure **Section 2.3 – Violation of Rules, 2.30 – Failure to Meet Standards.** On December 26, 2001 while on duty, you engaged in five separate acts of oral sex and one act of sexual intercourse with the suspect of a crime while at her residence. Your duty and responsibility was to investigate the 242 P.C, not to engage in sexual activity with the suspect of this investigation. You failed to properly perform and assume the duties of your position.

CAUSE VI

You are guilty of acts which are incompatible with and/or inimical to the public service as set forth under Section 7.2 (s) of Rule VII of the Rules of the Civil Service Commission of the County of San Diego. Also, you are guilty of acts which are incompatible with the San Diego County Sheriff's Department Executive Order and the Mission, Vision, Values and Goals. Your conduct constituting such acts inimical to the public service is that set forth under Cause I through Cause V.

You have until 4:30 p.m. on 6/17/02, to respond either orally, in writing, or both, regarding the above proposed charges and discipline. The Sheriff will consider your response before final action is initiated. Upon receipt of this notice you will be provided with all documents possessed by this department upon which this proposed action is based. If you have any questions of said documents, please contact Lieutenant Cantrell of the Internal Affairs Unit.

If you wish to respond to the above charges and discipline, please contact Internal Affairs at (858) 974-2065 and you will be provided the name of a Skelly Officer. You should then contact the Skelly Officer without delay, as the conference must be held within ten days, unless waived by mutual agreement. If there are extenuating circumstances precluding you from staying within this time limit, contact Internal Affairs immediately.

If you fail to respond, or if your response is unsatisfactory, an order of Termination and Charges will be served upon you and the discipline initiated.

Sincerely,

WILLIAM B. KOLENDER, SHERIFF

Earl Wentworth, Captain
Vista Station

WBK:EW:dwj

FROM THE OFFICE OF

INTERNAL AFFAIRS - CONFIDENTIAL

ORDER NOT TO DISCLOSE MATERIALS

Pursuant to Department Policy, materials are being furnished to you upon which your proposed discipline is based. These materials are reproductions and are a part of the confidential employee personnel records of the San Diego Sheriff's Department. Dissemination of this information is restricted to a need and a right to know.

You are ordered not to disclose, release, or copy these materials to or for anyone, other than your attorney and/or association representative, without the written authorization of the Internal Affairs Lieutenant. Materials include all written documentation, tape recordings, and videotapes.

Any unauthorized release of information contained in these documents compromises the confidentiality of your personnel file, and may impede the Department's ability to protect your confidentiality in future discovery motions. This could subject you and the County to unnecessary liability and criticism, to which the Department may be required to defend in a public forum.

You are strongly encouraged to destroy or return these materials when they no longer serve a useful purpose. Should you desire to review material related to your discipline at a later time, you may make arrangements with the Internal Affairs Unit.

Failure to abide by this order could result in a charge of insubordination, and subject you to disciplinary action up to and including termination.

I have received a copy of this order.

Antonio Smith

I.A. Case # 2001-365.1

FROM THE OFFICE OF

INTERNAL AFFAIRS - CONFIDENTIAL

Skelly Conference Letter
Case # 2001-365.1

As indicated on the "Notice of Intent" to discipline which you are receiving, disciplinary action against you is being considered. If you wish to invoke your right to a pre-disciplinary due process hearing on this matter (*Skelly Conference*), you must make the request within **five (5) regular business days**. The Skelly Conference is a relatively informal hearing, not an adversarial evidentiary trial. The final date to request a hearing is indicated on your "Notice of Intent". Your request should be made by calling the Internal Affairs Unit at (858) 974-2065.

If you do not request the conference within that time, your right to a Skelly Conference will have been waived, and the recommended discipline may be imposed.

Your Skelly rights are:

1. To receive a written "Notice of Intent" to discipline, which may be served upon you either in person or by mail. That notice will include the level of proposed discipline, the charges, and a brief explanation of the reason for the discipline.

2. To receive a copy of the materials upon which the proposed discipline is based, including reports, tape recordings, photographs, etc. Any item certified as confidential and withheld from you by the department cannot be used as a basis for discipline.

3. To have sufficient time to review the supporting materials so that your response can be prepared.

4. To respond orally, in writing, or both to the proposed discipline and charges.

5. To a hearing officer who is not in your chain of command.

6. To have a representative or attorney present at the hearing.

7. To receive copies of all materials prepared as a result of the Skelly Conference.

8. To receive a new Skelly Conference for any new charges or increased discipline which arise from the Skelly Conference.

I have read and understand my Skelly rights.

RELEASED FROM I.A. FILES
TO

6-10-02
Antonio Smith — Date

D. Yoshimura, Sgt — 6/10/02
Witness — Date

COUNTY OF SAN DIEGO

INTER-DEPARTMENTAL CORRESPONDENCE

May 14, 2002

TO: William B. Kolender, Sheriff

FROM: J. Nolan, Lieutenant
Vista Patrol Station

VIA: Chain of Command

RECOMMENDATION FOR DISCIPLINE ACTION - I. A. CASE # 2001.365.1

ACCUSED: Antonio Smith #2643, Deputy Sheriff – Law Enforcement

On April 15, 2002, I was directed to evaluate the attached Internal Affairs investigation, and to make any necessary disciplinary recommendations. I have since reviewed the entire case, including the attachment documents.

I concur with Internal Affairs Investigator Sergeant Dan W. Jopes of his findings and conclusions reference violations of San Diego County Sheriff's Department Policy and Procedure sections:

2.3 - Violation of Rules
2.4 - Unbecoming Conduct
2.5 - Immoral Conduct
2.6 -Conformance to Law
2.27 - Neglect of Duty
2.30 - Failure to Meet Standards

are sustained.

RECOMMENDATION:

I recommend that Deputy Sheriff Antonio Smith's employment with the San Diego County Sheriff's Department be **TERMINATED.**

RATIONALE:

On May 14, 2002, at approximately 1332 hours, I met with Deputy Antonio Smith and his Attorney Everett. Bobbitt. They were allowed to review the entire investigation including the attachments.

After a review of the Internal Affairs file #2001-365.1 by Deputy Smith and his attorney, Everett Bobbitt stated it would not be appropriate for an offering of mitigation at this point without additional time to thoroughly review the internal affairs investigation. Attorney Bobbitt speaking for Deputy Smith acknowledged the fact it was not appropriate for Deputy Smith to have sex on duty. He concluded his statement by indicating that Deputy Smith would accept any discipline in this matter short of termination.

Deputy Smith speaking on his own behalf admitted he "stepped in it" regarding this matter, and that he has been a "good deputy" for nine years never receiving a complaint. He further acknowledged he made a "very bad judgment call" and would be willing to accept any discipline other then termination. Deputy Smith noted he was truthful to Internal Affairs regarding this investigation and knew what he did was wrong. He concluded his statement by saying he understands it would be hard to "stand up for him" in regards to the facts of this case.

The meeting with Deputy Smith and his attorney of record Everett Bobbitt was concluded at 1340 hours.

In Internal Affairs investigation case number 2001-365.1, there is no dispute that Deputy Antonio Smith, #2643, was in uniform and on duty, dispatched to investigate a battery, removed all of the witnesses from the residence, and had sexual intercourse with the female suspect in the battery case that he was originally sent to investigate.

The investigation sustains violations of the following San Diego County Sheriff's Department's Policy and Procedures sections:

2.3 - Violation of Rules
2.4 - Unbecoming Conduct
2.7 - Immoral Conduct
2.8 -Conformance to Law
2.28 - Neglect of Duty
2.30 - Failure to Meet Standards

The immorality implications of this act, as described in the County of San Diego Civil Service Rules, are so serious that the Unbecoming Conduct (2.4), Immoral Conduct (2.7), and Failure to Meet Standards (2.30) sections each *independently* support a recommendation of termination. Deputy Smith's statements and subsequent actions immediately after the event indicate that he knew the act was so serious as to be job threatening.

The Conformance to Law (2.6) section may invite dispute over whether or not a rape occurred to the victim. The Penal Code section clearly states that where a person is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused is guilty of "Rape." Multiple witnesses, as well as the female complainant state that she was intoxicated to the point of "blacking out." Deputy Smith disputes these statements claiming the female was "coherent." This District Attorney's Office declined to prosecute for violation of Penal Code section 261(a)(3); however, after reviewing the facts of the case with Deputy District Attorney Kerry Wells, Internal Affairs investigator Sergeant D. Jopes concluded: "The issue was not whether a crime has been committed, but could the District Attorney prove Deputy Smith knew the victim was too intoxicated to consent to having sex." The District Attorney in declining to move forward with criminal prosecution stated: "This behavior by a law enforcement officer was disgusting, inappropriate, and took advantage of a vulnerable citizen. It comes as close to criminal behavior as it can come. Unfortunately we decline to issue criminal charges because of the difficulty of proving rape beyond a reasonable doubt."

In the absence of the criminal prosecution of Penal Code section 261(a)(3), the District Attorney's Office has been placed in a compromising position of possibly providing [redacted] name and address as "Brady Material" to the defense as it relates to the conduct of Deputy Smith. This material could be utilized to impeach the testimony of Deputy Smith during any and all future criminal proceedings. The District Attorney's Office further elaborated, "Any act rising to moral turpitude is relevant to impeachment on credibility." This has a tremendous effect on Smith's ability to perform his duties rendering him ineffective in a significant and important portion as to the duties of a Deputy Sheriff. The quality of "efficiency" is cited in the County of San Diego Civil Service Rules, Rule VII, section 7.2(b).

A check and subsequent review of Deputy Smith's Internal Affairs record reveals that he has no prior similar incidents on file.

Deputy Antonio Smith seriously violated the trust placed in him by the public, and brought the San Diego Sheriff's Department into disrepute. His actions and conduct are incompatible with public service. The maintenance of integrity by law enforcement in

general, and specifically by the San Diego County Sheriff's Department require Deputy Antonio Smith's separation from employment. I believe that terminating his employment is the appropriate recourse.

J. Nolan, LT.

J. Nolan, Lieutenant
Vista Patrol Station

ENDORSEMENTS:

S. D. McClintock, Captain
Vista Patrol Station

(✓) Approve ( ) Disapprove

5/14/02
Date

Comments: _____

_____

_____

_____ ( ) Approve ( ) Disapprove

Alan Truitt, Commander
Law Enforcement Operations – Northern Command _____
Date

Comments: _____

_____

_____

_____ ( ) Approve ( ) Disapprove

T. Zoll, Assistant Sheriff
Law Enforcement Services Bureau _____
Date

Comments: _____

_____

_____

_____ ( ) Approve ( ) Disapprove
J. M. Drown, Undersheriff

_____
Date

Comments:_____
_____
_____

_____ ( ) Approve ( ) Disapprove
William B. Kolender, Sheriff

_____
Date

Comments:_____
_____
_____

San Diego County Sheriff's Department

Post Office Box 429000 • San Diego, California 92142-9000

William B. Kolender, Sheriff

John M. Drown, Undersheriff

June 12, 2002

Everett L. Bobbitt, Esq.
Law Offices of Bobbitt & Pinckard
8388 Vickers Street
San Diego, CA 92111

Re: Antonio Smith

Dear Mr. Bobbitt:

Your discovery request was received in the Internal Affairs Unit on June 12, 2002.

With regard to your discovery request in the matter of Deputy Antonio Smith, Deputy Smith was provided copies of all materials upon which the proposed action is based. Pursuant to this letter, I will direct my staff to prepare copies of the audio tapes. As soon as these tapes are ready, your office will be contacted.

A copy of Sheriff's Policy and Procedure, Section 2 (Rules of Conduct) is enclosed, containing the policy sections charged in this case. I spoke with the investigator, Sergeant Dan Jopes, and he did not retain any notes during the preparation of the investigation.

Sincerely,

WILLIAM B. KOLENDER, SHERIFF

Gary A. Cantrell, Lieutenant
Internal Affairs Unit

2.1 RULES OF CONDUCT FOR MEMBERS OF THE SAN DIEGO COUNTY SHERIFF'S DEPARTMENT

All employees shall conform to Federal, State, and Local laws, as well as to the policies of this Department. It shall be the responsibility of all employees to familiarize themselves and comply with all such policies, orders, directives, rules and regulations of this Department.

2.2 Applicability

These Rules of Conduct apply to all classifications of employees, including Reserve and Volunteer employees, except when a rule, by its very nature, does not apply to a given classification of employee.

2.3 Violation of Rules

Employees shall not commit or omit any acts which constitute a violation of any of the rules, regulations, directives, orders or policies of this Department, whether stated in these Rules of Conduct or elsewhere. Employees shall be responsible for their own acts, and they shall not shift to others the burden, or responsibility, for executing or failing to execute a lawful order or duty.

2.4 Unbecoming Conduct

Employees shall conduct themselves at all times, both on and off duty, in such a manner as to reflect most favorably on this Department. Unbecoming conduct shall include that which tends to bring this Department into disrepute or reflects discredit upon the employee as a member of this Department, or that which tends to impair the operation and efficiency of this Department or employee.

2.5 Immoral Conduct

Employee shall maintain a level of moral conduct in their personal and business affairs which is in keeping with the highest standard of the law enforcement profession. Employees shall not participate in any incident involving moral turpitude which tends to impair their ability to perform their duties or causes this Department to be brought into disrepute.

2.6 Conformance to Laws

Employees shall obey all laws of the United States, of this state, and of local jurisdictions.

The acts of employees giving rise to an indictment, information or complaint, filed against an employee, or a conviction for violating any law, including a conviction following a plea of nolo contendere, may be cause for disciplinary action, temporary or permanent reassignment (excluding minor traffic).

Employees shall immediately inform their immediate supervisor of any and all circumstances where non-conformance to laws has been, or may be, alleged by any law enforcement agency. Notification to be immediate.

2.12 Alcoholic Beverages in Sheriff's Office Facilities

Employees shall not bring into or store alcoholic beverages in any Sheriff's facility or County vehicle except those being held as evidence or for an approved instructional program.

2.13 Use of Alcohol/on Duty

Employees shall not drink intoxicating beverages while on duty except in the performance of official duties. Employees shall not appear for duty, or be on duty, while under the influence of intoxicants or any degree whatsoever, or have an odor of intoxicants on their breath.

2.14 Use of Alcohol/off Duty

Employees, while off duty, shall refrain from consuming intoxicating beverages to the extent that it results in unlawful impairment (such as driving under the influence or being unable to care for their own safety or the safety of others), public intoxication, or obnoxious or offensive behavior in public which would tend to discredit them or this Department, or render the employee unfit to report for their next regular tour of duty.

2.15 Insubordination

Insubordination is the willful refusal to obey a reasonable and lawful order given and understood. A reasonable and lawful order given to a subordinate shall be followed regardless of the method of conveyance. The willful failure to obey orders constitutes grounds for discipline (including termination).

2.16 Conflicting or Illegal Orders

Employees who are given an otherwise proper order which is in conflict with a previous order, regulation, directive or manual, shall respectfully inform the supervisor issuing the order of the conflict. If the supervisor issuing the order does not alter or retract the conflicting order, the order shall stand. Under these circumstances, the responsibility shall be upon the supervisor. Employees shall obey the conflicting order and shall not be held responsible for disobedience of the order previously issued. However, employees shall not obey any order which they reasonably believe would require them to commit any illegal act. If in doubt as to the legality of the order, employees shall request that the person issuing the order confer with higher authority or clarify the order.

2.17 Public Appearances and Statements

Employees shall not publicly criticize or ridicule this Department, its policies, or employees, by speech, writing or other expression, where such expression is defamatory, obscene, unlawful, tends to undermine the effectiveness of this Department, interferes with the maintenance of discipline, or is made with reckless disregard for truth or falseness. This rule is not intended to apply to political activities by a candidate for public office. Such activity is fully covered under Policy and Procedure Section 2.43 (Political Activity).

Employees shall not address public gatherings, appear on radio or television, prepare any articles for publications, act as correspondents, release or divulge investigative information, or any other matter of this Department, while holding themselves out as having an official capacity in such matters without having obtained official sanction or authority.

2.22 Courtesy

Employees shall be courteous to the public and fellow employees. They shall be tactful in the performance of their duties, shall control their tempers, exercise patience and discretion and shall not engage in argumentative discussions even in the face of extreme provocation. In the performance of their duties, employees shall not use coarse, violent, profane or insolent language or gestures.

2.23 Request for Assistance

When any person requests assistance or advice, or makes complaints or reports, either by telephone or in person, all pertinent information will be obtained in an official and courteous manner, and will be properly and judiciously acted upon consistent with established Department procedures.

2.24 Reporting for Duty

Employees shall report for duty at the time and place required by assignment or orders and shall be physically and mentally fit to perform their duties. They shall be properly equipped and cognizant of information required for the proper performance of duty so that they may immediately assume their duties. Judicial subpoenas and training assignments shall constitute an order to appear under this section.

2.25 Sleeping on Duty

Employees shall remain awake while on duty. If unable to do so, they shall so report to their immediate supervisor who shall determine the proper course of action.

2.26 Meals

Sworn employees assigned to uniformed patrol or detentions shall be permitted to suspend patrol or other assigned activity, subject to immediate call at all times, for the purpose of having meals during their tours of duty, but only for such period of time, and at such time and place, as established by Departmental procedures.

2.27 Neglect of Duty

Employees shall not read, play games, watch television or movies or otherwise engage in entertainment while on duty, except as may be required in the performance of duty. They shall not engage in any activities or personal business which would cause them to neglect or be inattentive to duty.

2.28 Telephones, Names, Addresses

Sworn employees shall have telephones in their residences, and all employees shall immediately report any changes of telephone numbers, names, or addresses to their supervisor and to such other persons as may be required by this Department (use Form AS 1/25).

Employees should be aware that, under certain circumstances, they are subject to call back to ensure the efficient operation of the Department.

bail bond agencies, or (4) work for an employer who has been convicted of a felony or who openly associates with convicted felons.

Reference Section 3.7 "Outside Employment", of the Department Policy and Procedure Manual.

2.34 Carrying of Firearms

Employees who are authorized to carry firearms shall carry them in accordance with the law and established Department policy and procedure. Sworn Peace Officers (830.1 P.C.) and Court Service Officers (830.36) who are authorized to carry a firearm, may (optional) carry a firearm, when off duty, except:

When consuming intoxicating beverages.

When under a doctor's care for a mental or physical illness which requires the officer to ingest any medication that would impair his normal reactions.

While suspended from duty or during the loss of police powers.

Firearms shall be concealed from public view when the employee is wearing civilian attire.

Employees are responsible for securing firearms left in unattended vehicles to minimize theft/loss.

Aside from using Department-installed locking devices, the preferred method of securing a handgun in an unattended vehicle is locked in the glovebox. If this is not possible, handguns and firearms shall be locked in the trunk.

2.35 Operation of Vehicles

Employees shall operate official vehicles in a careful and prudent manner, and shall obey all laws of the state and all Departmental orders pertaining to such operation. Employees shall set a proper example for other persons by their operation of official vehicles. Loss or suspension of an employee's driver's license shall be reported to the Department immediately and may be cause for reassignment, suspension, or termination. When employees drive any vehicle requiring other than a regular driver's license (Class C) they shall possess the required class endorsement.

2.36 Use of Department Equipment

Employees shall utilize Department equipment only for its intended purpose, in accordance with established Departmental procedures and shall not abuse, damage or lose Department equipment. All Department equipment issued to employees, including manuals, shall be maintained in proper order.

2.37 Dissemination of Information

Employees shall treat the official business of this Department as confidential. Information regarding official business shall be disseminated only to those for whom it is intended, in accordance with established Departmental procedures. Employees may remove or copy official records or reports from any law enforcement installation only in accordance with established Departmental procedures. Employees shall not divulge the identity of persons giving confidential information, except to their supervisors.

- *Actively engage in any non-partisan political functions;*
- *Sign political petitions as individuals;*
- *Make financial contributions to political organizations;*
- *Serve as election judges or clerks in performance of non-partisan duties as prescribed by state or local laws;*
- *Hold membership in a political party and participate in its functions to the extent consistent with the law and consistent with this section;*
- *Participate fully in public affairs to the extent that such endeavors do not impair efficient performance of official duties, or create real or apparent conflicts of interest.*

Employees are prohibited from:

- *Using their official capacity to influence, interfere with or affect the results of an election;*
- *Directly or indirectly, using, promising, threatening or attempting to use any official influence in aid of any political activity, or to affect the result of any election to political office, or upon any other corrupt condition or consideration;*
- *Engaging in political activity of any kind while in uniform prescribed for any employee of the County of San Diego or during any hours in which they have been directed to perform their assigned duties, or in any Sheriff's facility or on any property leased or controlled by the Sheriff's Department. (Govt. Code ' '3206, 3207.)*

2.44 Labor Activities

Employees shall have the right to join labor organizations, but nothing shall compel this Department to recognize or to engage in collective bargaining with any such labor organizations, except as provided by law.

Employees shall not engage in any strike. "Strike" includes the concerted failure to report for duty, willful absence from one's position, unauthorized holidays, sickness unsubstantiated by a physician's statement, the stoppage of work, or the abstinence in whole or in part from the full, faithful and proper performance of the duties of employment for the purposes of inducing, influencing or coercing a change in conditions, compensation, rights, privileges or obligations of employment.

2.45 Use of Polygraph, Medical Examination, Photographs, Lineups

Polygraph Examinations

Employees may voluntarily submit to polygraph examinations when the examinations are specifically directed and narrowly related to a particular investigation being conducted by this Department (see Section 3307 Government Code).

Medical Examinations; Tests; Photographs; Lineups

Upon the order of the Sheriff or the Sheriff's designee, employees shall submit to any medical, ballistics, chemical or other tests, photographs, or lineups. All procedures carried out under this

Examples of discriminatory acts which will not be tolerated include the use of verbal derogatory comments, slurs, or jokes, derogatory pictures, cartoons or posters and actions which result in a person being treated unequally.

2.54 Sexual Harassment

Employees shall not participate in or allow behaviors or situations that they know or should know, constitute sexual harassment as outlined in state and federal law. Employees shall take swift action to stop the offensive behavior or correct the situation. Employees shall not retaliate in any way against a complaining party or witness involved in sexual harassment allegations. (08-18-97)

2.55 NON-BIASED BASED POLICING

A. All investigative detentions, traffic stops, arrests, searches, and seizures of property by employees will be based on a standard of reasonable suspicion or probable cause as required by the Fourth Amendment of the U.S. Constitution and relevant statutory authority. Employees must be able to articulate specific facts and circumstances, which support probable cause or reasonable suspicion for an arrest, traffic stop, investigation, detention or search.

B. Except as provided in this procedure, employees shall not consider race, ethnicity, religion, national origin, sexual orientation, gender, or lifestyle in establishing either reasonable suspicion or probable cause.

Appropriate consideration of race, ethnicity, origin, sexual orientation, and gender shall be used for purposes of housing, classification, transportation or any other matters affecting an inmate's status when necessary for the safety and security of the inmate or the institution. Consideration of the above-mentioned personal characteristics shall not be used for purposes of discipline.

C. Employees may take into account a reported descriptor such as race, ethnicity, religion, national origin, sexual orientation, gender, or lifestyle of a specific suspect or suspects based on credible, reliable and locally relevant information that links a person(s) of a specific descriptor to a particular criminal incident(s). Race, ethnicity, religion, national origin, sexual orientation, gender, or lifestyle can never be the sole factor in establishing reasonable suspicion or probable cause, but can, in the restricted circumstances described above, be one factor of the totality of the circumstances.

BOBBITT & PINCKARD
A Professional Corporation
Everett L. Bobbitt
Richard L. Pinckard
Bradley M. Fields

Annette Burstein
Legal Administrator

8388 Vickers Street
San Diego, California 92111
(858) 467-1199
Fax [redacted]
coplaw.org

DSA Branch Office
13881 Danielson Street
Poway, California 92064

June 12, 2002

Sheriff William B. Kolender
P.O. Box 429000
San Diego, CA 92142-9000

VIA FACSIMILE
[redacted]

Dear Sheriff Kolender:

Our office represents Deputy Antonio Smith for the purpose of responding to the notice of intent to terminate and charges served him recently. Deputy Smith denies the allegations on which this action is based and requests an opportunity to respond orally to these allegations at the earliest opportunity. Everett Bobbitt will be representing Deputy Smith during all pre-disciplinary ("Skelly") hearings and any post-disciplinary proceedings.

Prior to any disciplinary proceeding our client is entitled to any relevant information related to the proposed discipline. Relevant information includes evidence that has any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action, or the truthfulness of a witness's testimony or of a declarant's hearsay statement. (See evidence code sections 210, 780, 1202). Penal Code section 135.5[1] has expanded the nature of information that must be provided to a public safety officer during any disciplinary proceeding. It is now unlawful to **conceal** any relevant evidence during the disciplinary process. **Concealment** would include knowingly not providing any relevant evidence. I recognize some information that may not be relevant to the appointing authority in order to make a decision on discipline of a public safety officer would be relevant to my client to disprove the allegations or mitigate the facts or level of discipline. Therefore, I have provided a list of information that we consider relevant to defending our client from the allegations alleged in the proposed notice of discipline. Relevant evidence also includes evidence, which may assist in mitigation of the level of discipline. Please keep in mind the information we are requesting is in addition to that information that must be provided pursuant to Skelly v State Personnel Board.

In behalf of our client we request the following information:

[1] Penal Code 135.5 states "Any person who knowingly alters, tampers with, **conceals**, or destroys relevant evidence in any disciplinary proceeding against a public safety officer, for the purpose of harming that public safety officer, is guilty of a misdemeanor.

1. A current copy of all policies and procedures alleged to have been violated by our client.
2. All written reports prepared as a result of the allegations against our client.
3. All investigator notes.
4. A copy of all radio transmissions related to this investigation.
5. All written or recorded statements of any potential witness.
6. All prior criminal history of any known potential witness related to this investigation.
7. All information that could lead to or tends to mitigate the conclusions as set forth in the proposed notice of discipline. Information includes any information known to members of your agency whether in a written form or merely within the knowledge of members of your staff.
8. All statements or utterances by our client, oral or written, however recorded or preserved, whether or not signed or acknowledged by our client.
9. The names and addresses of any witness who may have knowledge of the events that caused the discipline to be proposed.
10. An opportunity to examine all physical evidence obtained in the investigation against our client.
11. All laboratory, technician, and other reports concerning the testing and examination of any physical evidence.
12. All reports of experts made in conjunction with the case, involving the results of physical or mental examinations, scientific tests, experimental, or comparisons which relate to the allegations as set forth in the notice of proposed discipline.
13. All photographs, motion pictures, or videotapes taken during the investigation.
14. Any exculpatory or mitigating evidence in the possession of your agency.
15. Any information relevant to the credibility of any witness.
16. Any potential rebuttal evidence in the possession of your agency.
17. Any and all relevant evidence known or in the possession of your agency.
18. Any recommendations from supervisory or management staff that differ or contradict the current conclusions or recommendation of discipline.
19. Please treat this request as a continuing request until this matter has been settled or adjudicated.

Thank you for your anticipated cooperation.

Sincerely,

Annette Burstein

Annette Burstein

/rab

cc: via facsimile - Internal Affairs

BOBBITT & PINCKARD

A Professional Corporation
8388 Vickers Street
San Diego, California 92111

Everett L. Bobbitt
Richard L. Pinckard
Bradley M. Fields

Annette Burstein
Legal Administrator

Telephone (858) 467-1199
Facsimile [redacted]
email: [redacted]

facsimile transmittal

To:	SDSO/IA	**Fax:**	[redacted]
From:	Annette Burstein	**Date:**	6/12/2002
Re:	Antonio Smith	**Pages:**	3
CC:			

☐ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **Please Recycle**