

## MARCH 11, 2004 - NIC TRAINING - EMPLOYMENT LAW CONSIDERATIONS

### CASE LAW EXAMPLES

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(Copies of cases are available upon request.)

#### **Garrity Issues**

State v. Chavarria, 131 N.M. 172, 33 P.3d 922 (N.M. App. 2001). A corrections officer was placed on administrative leave pending investigation of alleged sexual misconduct with an inmate. The officer was informed, by his supervisor and an employee handbook, that if he did not cooperate with the police and take a polygraph test, he would be terminated. The officer filed a motion to suppress a self-incriminating statement and polygraph results because they were made under fear of losing his employment. The trial court granted his motion to suppress the evidence and the court of appeals affirmed, holding that the officer reasonably believed that he had no choice but to make statement to police as part of the internal investigation. The court noted that the State can either compel answers to job related questions as a part of an internal investigation, which then cannot be used in criminal investigation, or choose to prosecute, in which case it cannot terminate an employee for failure to answer job-related questions.

#### **No Contact Policies**

*Compare*

Keeney v. Heath, 57 F.3d 579 (7<sup>th</sup> Cir. 1995). Plaintiff guard at a county jail who had been forced to resign from her job when she married a former inmate sued, alleging that the county jail regulation forbidding employees to become socially involved with inmates in or out of jail violated her constitutionally protected right to marry. The court held that as long as the concerns supporting the no contact policy were reasonable, the rule would withstand constitutional scrutiny.

Ross v. Clayton County, 173 F.3d 1305 (11<sup>th</sup> Cir. 1999). Demotion of a corrections officer who had allowed his probationer brother to live with him did not violate the officer's free association rights.

*with*

Via v. Taylor, 224 F. Supp.2d 753 (D.Del. 2002), appeal dismissed, 85 Fed. Appx. 874 (3d Cir. 2003). Plaintiff was a corrections officer who was responsible for supervising the work of inmates in the commissary on prison grounds. At one point, she supervised Mr. Via. Via was later released, and the plaintiff took him into her home as a boarder and later engaged in an

intimate relationship with him. Her association with Via violated the correctional institution's code of conduct, which prohibited personal contact with a non-incarcerated offender. The court evaluated the intimate relationship and determined that it deserved protection from State intrusion. The court held that the regulation was unconstitutional, because, among other reasons, it did not relate to an important government interest. (Note: this trial court case is very much at odds with the two court of appeals cases cited above.)

### **Surveillance/Search Cases**

*Compare*

Sacramento County Deputy Sheriff's Association v. County of Sacramento, 51 Cal. App.4th 1468 (1996), cert. denied, 520 U.S. 1124 (1997). County jail employees sued for 4<sup>th</sup> Amendment violations after discovering they had been subjected to video surveillance in the release office of the county jail, which was off limits to inmates. A concealed video camera without audio capacity had been installed in this office following almost a dozen incidents of inmates' money being reported missing. The court held that the employees had no objectively reasonable expectation of privacy while in the release office, especially given that they had accepted employment in a prison setting, and that the institution's security concerns were high on the other side of the balance.

*with*

Los Angeles Police Protective League v. Gates, 907 F.2d 879 (1990), further appeal on other grounds, 995 F.2d 1469 (9<sup>th</sup> Cir. 1993). A police department violated 4<sup>th</sup> Amendment rights of a police officer in attempting to engage in an administrative search of his garage and home and firing him when he refused to submit.

*and*

McDonell v. Hunter, 809 F.2d 1302 (8<sup>th</sup> Cir. 1987). The court held that a correctional institution must have reasonable individualized suspicion, based on specific objective facts, before subjecting correctional facility employees suspected of smuggling contraband to strip searches. The court further held that employees who have regular contact with prisoners could be subjected to urinalysis drug testing by uniform or systematic random selection, provided that selection was not arbitrary or discriminatory. Individually targeted employee drug testing could only be conducted on the basis of reasonable suspicion of drug use within the past 24 hours. Employee vehicles parked where they were accessible to inmates could be searched without cause, provided such searches were done uniformly or by systematic random selection, but employee vehicles not accessible to inmates could only be searched on the basis of reasonable suspicion that they contained contraband.

## **Discrimination**

English v. Colorado Department of Corrections, 248 F.3d 1002 (10th Circ. 2001). An African American correctional supervisor was fired following an investigation into allegations of sexual misconduct with an inmate. The investigation concluded that there was sufficient evidence for termination, based on DNA evidence, witness statements, and a polygraph test. The officer filed suit, alleging race discrimination. In support of his claim, he pointed to evidence including the replacement of an African American investigating officer with a white officer, the failure to reinstate the plaintiff after criminal charges were dropped, the fact that a white officer facing similar accusations was not terminated, and the existence of a general atmosphere of racial intolerance.

The trial court granted summary judgment to the employer and the court of appeals affirmed, holding that the replacement of the investigating officer was based on legitimate conflict of interest issues, the dismissal of criminal charges had no bearing on the evidentiary results of the internal investigation, the white officer who had not been terminated involved a factually dissimilar situation and two white officers facing analogous accusations had been terminated, and no nexus had been shown between the circumstantial evidence of racial hostility and the termination decision.

## **Defamation**

O'Connell v. County of Northampton, 79 F. Supp. 2d 529 (E.D. Penn. 1999). A prison warden accused of sexually harassing a corrections officer was asked to resign by two county officials, which he did a few days later. Nine months after the warden resigned, an article detailing the sexual misconduct charge appeared in the paper. The warden filed suit, claiming a violation of his due process rights as a result of "effectively forcing him to resign, and a violation of his liberty interest in being free from imposed stigma as a result of the newspaper article. The court ruled for the employer on summary judgment, rejecting both claims.

## **Community Corrections**

Campbell v. Hamilton County, 78 F. Supp. 2d 713 (S.D. Ohio 1999), aff'd, 23 F. Appx. 318 (6<sup>th</sup> Cir. 2001). The court ruled on summary judgment for an employer in a case in which a white male probation officer was fired for engaging in a sexual relationship with a probationer and making racist comments about the judge before which the probationer was to appear. The former probation officer charged that his employer had discriminated against him on the basis of race and had violated his due process and First Amendment free speech rights. The court found no evidence of discrimination where black officers had received the same discipline for similar offenses, and held that the probation department's interest in ensuring the loyalty of its officers to the court system outweighed plaintiff's free speech rights.

## **Due Process**

Macklin v. Huffman, 976 F. Supp. 1090 (W.D. Mich. 1997). A prison food service employee was accused by a third party witness of sexual misconduct with an inmate. The employee was suspended without pay for two weeks pending investigation, and then reinstated with full back pay after the investigation concluded with the accusation left unsubstantiated. The employee then sued, alleging violation of his due process rights because no hearing was conducted prior to his suspension. The court held that the employee was not entitled to a hearing prior to his suspension where the suspension was temporary and lost wages were insubstantial, and the prison's interest in the investigation and in the safety of both the employee and the accuser warranted the suspension.