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TENNESSEE BOARD OF PROBATION AND PAROLE v. VALARIE SWEATT, Grievant

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BEFORE THE CIVIL SERVICE COMMISSION OF THE STATE OF TENNESSEE

IN THE MATTER OF: **TENNESSEE BOARD OF PROBATION AND PAROLE** **v.** **VALARIE SWEATT** ***Grievant***	**DOCKET NO: 26.41-110811J**

INITIAL ORDER

This matter was heard on August 10 and 12, 2011, before Ann M. Johnson, Administrative Judge. The State was represented by Amanda J. Fisher, Staff Attorney with the Tennessee Board of Probation and Parole. Jonathan Stephens, Staff Attorney with the Tennessee State Employees Association, represented the Grievant.

The issue in this matter concerned the appeal of a 30-day suspension imposed upon the Grievant by the Board of Probation and Parole. After consideration of the record and the arguments of the parties, it is determined that the suspension should be upheld. This decision is based upon the following.

SUMMARY OF THE EVIDENCE

Witnesses called by the Petitioner included Valarie Sweatt, the Grievant; Janet Page, Deputy District Director of the Board of Probation and Parole; John Hardin,

Probation and Parole Manager; and Helen Ford, Deputy Director of Field Services. Valarie Sweatt, the Grievant, testified on her own behalf.

Documents admitted into evidence include the following:

EXHIBIT 1	Intent to Suspend Letter;
EXHIBIT 2	Letter, August 18, 2010;
EXHIBIT 3	Letter, September 17, 2010;
EXHIBIT 4	Letter, November 29, 2010;
EXHIBIT 5A	Monthly Reporting Form, M. Harris;
EXHIBIT 5B	Contact History, M. Harris;
EXHIBIT 6A	Monthly Reporting Form, J. Harris;
EXHIBIT 6B	Contact History, J. Harris;
EXHIBIT 7	Contact History, Lopez;
EXHIBIT 8	Contact History, Watkins;
EXHIBIT 9	Contact History, McClean;
EXHIBIT 10	Contact History, Anglin;
EXHIBIT 11	Contact History, Ellison;
EXHIBIT 12	Contact History, Gutierrez;
EXHIBIT 13A	Monthly Reporting Form, Jordan;
EXHIBIT 13B	Contact History, Jordan;
EXHIBIT 14	Contact History, Johnson;
EXHIBIT 15	Contact History, Litchfod;
EXHIBIT 16A	Contact History, Malone;
EXHIBIT 16B	Change of Status Report, Malone;
EXHIBIT 17	Contact History, Rice;
EXHIBIT 18	Contact History, Anderson;
EXHIBIT 19	Letter re. FMLA;
EXHIBIT 20	Letter, April 1, 2010;
EXHIBIT 21	Letter, November 20, 2009;
EXHIBIT 22	Letter, February 24, 2010;
EXHIBIT 23	Oral Warning Memorandum, August 14, 2009;
EXHIBIT 24	Compliance Reports;
EXHIBIT 25	Employee Access Request;
EXHIBIT 26	Administrative Policy, #704.06;
EXHIBIT 27	Corrective Action List;
EXHIBIT 28	Interim Review, January 29, 2010;
EXHIBIT 29	Annual Performance Document;
EXHIBIT 30	Interim Review, October 4, 2010;
EXHIBIT 31	Email, May 6, 2010;
EXHIBIT 32	Administrative Policy, #701.05;
EXHIBIT 33	Administrative Policy, #704.01;
EXHIBIT 34	Standards of Offender Supervision;
EXHIBIT 35	Administrative Policy, #706.01;
EXHIBIT 36	Administrative Policy, #706.04

EXHIBIT 37 Administrative Policy, #706.03;
EXHIBIT 38 Contact Notes Manual;
EXHIBIT 39 Probation Order;
EXHIBIT 40 Administrative Policy, #707.20;
EXHIBIT 41 Administrative Policy, #707.21;
EXHIBIT 42 Intensive/Enhanced Operation Manual;
EXHIBIT 43 Administrative Policy, #202.01;
EXHIBIT 44 Personnel Rules, Disciplinary Action;
EXHIBIT 45 Interim Review Form, April 16, 2010;
EXHIBIT 46 Payable Time Detail; and
EXHIBIT 47 Supervision Plan.

FINDINGS OF FACT

1. The Grievant Valarie Sweatt has been an employee of the Tennessee Board of Probation and Parole (BOPP) since August of 2006, when she started as a Probation and Parole Officer 2 (PPO2). In September of 2008, the Grievant received a promotion to Probation and Parole Officer 3 (PPO3).

2. As a PPO3, the Grievant is responsible for supervising felony probationers on intensive/enhanced probation. The duties include monitoring behavior, conducting home visits, verifying employment, administering drug screens, entering and updating the offender's data in the computer database, discussing corrective action needed with the officer's supervisor to ensure compliance with BOPP policy, and monitoring the arrest histories of offenders to ensure compliance with court rules and the law.

3. According to BOPP policy, each offender must be supervised according to the risk level of the offender. The policy directs the officer on what tasks must be performed and in what time period. These standards are necessary to protect the public and the offender so that every offender receives the type and level of supervision that is dictated by his or her risk to the community.

4. The Tennessee Offender Management Information System (TOMIS) is a comprehensive computer system for managing data about inmates and offenders, and is the repository for the official record on each offender. It is imperative that officers document contact with each offender on TOMIS to maintain a current and accurate status, thereby ensuring compliance with parole or probation requirements.

5. According to BOPP policy, each PPO must enter Contact Notes on TOMIS to provide an accurate history of the offender: "Contact Notes begin at the time of the first collateral contact regarding the offenders or initial meeting with the offender. Entries of that and subsequent entries shall be made in TOMIS within seven (7) working days of the occurrence. . . ." Exhibit 37.

6. Contact Codes are TOMIS abbreviations used to represent certain contacts with offenders; the officer enters the Contact Code on TOMIS and then explains more fully in the "Comments" section. If an offender reports an arrest to the PPO, this officer is required to document this information on TOMIS. For example, for a positive arrest check the officer would put "ARRP" in for the Contact Code and then enter the relevant information in the "Comments" section as required by the BOPP Contact Notes Manual. Contact Code "ARRN" represents a negative arrest check, meaning that the officer has checked the offender's arrest history and has found that the offender has not been arrested. If a PPO has a conversation with a judge about an offender, this information must also be documented on TOMIS. When a PPO files a violation report, signifying that the offender has violated terms of probation, the PPO must enter the "VRPT" contact code on TOMIS and in the "Comments" section, the PPO must describe in detail the

nature and circumstance of the violation. The PPO is never permitted to wait until the new arrest is disposed of in court before taking action.

7. Monthly compliance scores are generated from TOMIS and are used to evaluate whether the officers are complying with the supervision requirements for each offender and whether the PPO has entered contact notes as required by policy. An offender's non-compliance with probation does not negatively affect the officer's scores if the officer takes the appropriate remedial action to address the situation, documenting the action on TOMIS. The officer can enter X-codes on TOMIS that signify that a certain condition was not able to be verified; then the officer must explain in the "Comments" section why the requirement was not satisfied and what corrective action will be taken. Compliance scores are merely a guide to assist the officers, who must continue to follow the supervision standards mandated by the Board and must check their files to ensure correct monitoring. It would not be sufficient for a PPO to use the Compliance Report as the only manner of supervising the caseload. If the PPO does not ensure the proper supervision requirements are entered into TOMIS, then the information and the offenders' case may not appear, or may be inaccurate, on the monthly compliance report. Therefore, the PPO is accountable for all of the files assigned to him or her, whether or not they are listed on the compliance report.

8. If an officer scores below 90% for two consecutive months on his or her compliance scores, the officer's supervisor takes corrective action, beginning with a minimum of an oral warning. However, if additional significant casework non-compliance is discovered, the amount of discipline may increase.

9. Less than a year before the events in the current case arose, the Grievant was disciplined for low compliance scores. The Grievant was given an oral warning on August 14, 2009, for compliance scores of less than 90% for two consecutive months. At that time, the Grievant was notified that failure to maintain compliance scores above 90% would result in further disciplinary action.

10. Less than a year later, the Grievant's compliance scores once again fell to unacceptable levels: in February 2012, the score was 22.9%; in March 2010, the score was 66.2%; and in April 2010, the score was 76.8%.

11. Because of the Grievant's low compliance scores, her supervisor ordered an arrest check audit of the Grievant's caseload in the spring of 2010. During that audit, numerous arrests were discovered in which the Grievant failed to take action against the offenders. As a result of these failures, the Grievant was suspended for 30 days. The Grievant appealed the suspension, resulting in the instant case.

12. One of the most important duties of a PPO is to monitor the felony offenders for new arrests. According to the BOPP Standards of Supervision, offenders that are placed on intensive/enhanced supervision require monthly arrest checks. Officers have several methods available to complete an arrest check: (1) the PPO can request an arrest report from one of the authorized BOPP staff; (2) the PPO can check the "N drive" for daily arrests from the Metro Police Department; (3) the PPO can search the Davidson County Sheriff's website; and (4) the PPO can access the Davidson County Criminal Court Clerk's website. Additionally, there is a PPO stationed at the Davidson County Clerk's Office who has access to judgments and basic information about arrests; that PPO is available to assist other officers in obtaining information about the offenders.

13. Frequently, offenders themselves disclose arrests, a disclosure that is required by the terms of probation. Offenders must fill out monthly Report Forms when they complete their required office visits each month. On that form, offenders must indicate any new arrests and/or contact with law enforcement. If the PPO receives knowledge of an arrest or contact with law enforcement, that officer is required to investigate that information and to document it in TOMIS.

14. The PPO drafts a probation violation report for any suspected violations of probation. The PPO files the violation report with the court, and the court determines if the offender is in violation of probation. For any possible violations of probation, the PPO is required to conduct a thorough investigation and gather all of the facts.

15. All infractions are classified as "technical" except a new arrest, indictment, or conviction; these are classified as "criminal." It is mandatory for a PPO who has knowledge of any criminal violation to file a violation report with the court within 30 days. A violation report is mandatory for new Class A and Class B felony offenses, crimes against persons, acts that threaten or cause physical harm to the person of another, conviction of any new felony, and driving while intoxicated arrests. For technical violations, the PPO has 60 days to file a violation report. Violation reports are also mandatory for probation absconders whose whereabouts are unknown and for offenders who fail to report.

16. Along with the violation report, the officer is required to submit an affidavit and a request for a warrant to the court. Even if an offense would fall within a discretionary category and if there is no violation report filed, the PPO is still required to document the incident on TOMIS and inform the Court of the possible violation.

17. According to BOPP policy, new arrests involving violence must be reported on a probation violation report as soon as possible, but no later than 30 days after the PPO becomes aware of the arrest. The Grievant admitted that she is aware of the BOPP policy requiring mandatory violation reports for domestic violence arrests. This policy is necessary to protect the public and any potential victims. While the ultimate decision to revoke probation lies with the Court, officers are still required to file the violation report and to document discussions with the court. If a PPO does not inform the court about potential probation violations, the court remains unaware of the danger. Therefore, it is imperative that the PPO presents all of the information concerning the alleged violations to the court and, in particular, complies with policies regarding mandatory violation reports.

18. As previously noted, an arrest check audit was ordered on the Grievant's caseload after her compliance scores were low for three consecutive months.

19. The arrest check audit report included 15 offenders assigned to the Grievant's caseload where there were serious noncompliance issues.

a. Although offender M.H. disclosed his arrest for felony forgery on his monthly reporting form, the Grievant failed to file a violation report or warrant, or to document the arrest in TOMIS contact notes until over one year later.

b. During the time the Grievant supervised J.H., the offender was arrested five times, including once for domestic assault. Even though J.H. listed this arrest on his monthly reporting form, the Grievant failed to take action on this domestic assault arrest until over five months later, when she was instructed to do

so by her supervisor. The Grievant also failed to document a positive arrest check in the TOMIS contact notes. By the time the Grievant took action on the domestic assault charge, the offender had been arrested or cited for four additional charges. The court revoked the offender's probation after the violation report was finally submitted.

c. The offender M.L. was in Absconder status for nearly a year during the time the Grievant supervised him. As a result, a probation violation warrant was served. Even though M.L. had two new charges at that time, one for domestic assault and one failure to appear on charges for contributing to the delinquency of a minor, the Grievant failed to amend the warrant to include the new charges. The Grievant admitted that she documented negative arrest checks on TOMIS despite the fact that she had not actually conducted or requested an arrest check.

d. Offended B.W. was on probation for Schedule II drug convictions. While on the Grievant's caseload, the offender was arrested for altering registration/tags and possession of a controlled substance. He was subsequently arrested for Aggravated Assault. The Grievant failed to enter contact notes for a five month period, and failed to document these new arrests until after she was instructed to do so by her supervisor.

e. Offender P.M. was on probation for Robbery convictions; while on probation the offender was arrested twelve times: eleven times for State citations and one time for Possession of a Controlled Substance. The Grievant failed to adequately note the arrests on TOMIS. Furthermore, the Grievant failed

to document the felony drug arrest on TOMIS or take any action against the offender until instructed to do so by her supervisor.

f. Offender R.A., who was on probation for a Schedule II drug conviction, received two new drug charges, as well as a Domestic Assault charge. The Grievant failed to document the felony drug charges and did not take any action against the offender. The Grievant did document the domestic charge as "ARRP" (positive arrest check), and informed the offender that a violation report would be filed against him; however, the Grievant failed to file a violation report until instructed to do so over one year after the arrest. The Grievant also admitted to entering the negative arrest check code for at least four months despite the fact that she did not conduct an arrest check. Between the time of the domestic assault arrest and the violation report, a period of about a year and a half, the offender had two new arrests. The Grievant failed to document or take action on those two arrests.

g. Offender A.E. was on probation for Facilitating Aggravated Robbery. The Grievant failed to enter contact notes for several months. Additionally, the offender was arrested three times for Driving on a Suspended License, but the Grievant failed to document these new charges, conduct proper arrest checks as required, or take action against the offender.

h. Offender C.J. was on probation for voluntary Manslaughter. During the probationary period, there were two new arrests for Public Intoxication and Controlled Substance in a School Zone. Although the Grievant was aware of these arrests, she failed to take action on the charges.

i. Offender K.L. was on probation for Forgery. During the probationary period he was arrested for Public Intoxication, Aggravated Assault, and Vandalism. The Grievant became aware of these charges, but failed to take required action.

j. While Offender C.M. was on probation for a Schedule VI Drug conviction, he had a new drug arrest for Felony Drug Possession-Cocaine. The Grievant did not conduct arrest checks or document the arrest in a timely manner. The Grievant noted in TOMIS that she was previously unaware of the arrest, although other documentation revealed that she had known about it at least one month earlier. The Grievant stated that she documented the case in that manner because she was trying to "cover" herself after she learned of the file audit.

k. While Offender R.R. was on probation for a Schedule II Drug conviction, he was arrested multiple times, including three charges of Assaulting a Police Officer. Although the Grievant filed a violation report for several of these arrests, she failed to take action on two new arrests for Public Intoxication and Theft of Property.

l. While Offender K.A. was on probation for Theft of Property, he was arrested several times. Although the Grievant conducted an arrest check and located one of the charges, she failed to take required action for the others.

m. While Offender L.G. was on probation for a Schedule II Drug conviction, she received additional citations for Driving on a Suspended License. The Grievant failed to conduct arrest checks and did not document these new charges as required on TOMIS.

n. Offender K.L. was on probation for Forgery, and was subsequently convicted for Public Intoxication, Aggravated Assault, and Vandalism. Although at some point the Grievant became aware of these charges, she failed to action as required.

o. Offender C.M. was on probation for a Schedule VI Drug conviction, and received new arrests for multiple charges. The Grievant became aware of at least some of the charges, but failed to file an accurate violation report.

20. In the relevant time period before the Grievant's suspension, the Grievant failed to perform her duties in numerous cases to which she was assigned: there were at least 47 arrests of probationers which the Grievant failed to document and/or report properly. Even more seriously, at least six of these arrests were for violent crimes, such as Domestic Assault, and there were multiple arrests for felonies. Most of the offenders were arrested multiple times. Had the Grievant acted according to the requirements of her job, these arrests might have been prevented.

21. The Grievant received yearly training in BOPP policies and procedures; the training emphasizes that domestic violence requires immediate action by the PPO.

22. The Grievant indicated that she does not always take domestic violence seriously. When asked if a domestic violence arrest would be a problem for a probationer, she replied that it would not, depending upon the circumstances of the case.

23. In May 2012, after the arrest check audit, fifteen warrants had to be filed against offenders due to new arrests while the offenders were on probation and under the Grievant's supervision.

24. The Grievant was aware of these arrests and failed to take necessary action until after the arrest check audit, when she was given a corrective action list, requiring that her assigned cases be brought up to date.

25. The scope of the problem with the files was so severe that other PPOs, as well as the supervisor, had to help to alleviate the issues, in addition to performing their own jobs.

26. The Grievant explained that she was unable to complete her required duties for a variety of reasons. First, she stated that her serious health condition required her to be absent for extended periods of time. The Grievant explained that while she was away from work, her responsibilities continued to accumulate and were not assigned to other probation officers.

27. The BOPP has a contingency plan for extended absences of PPOs:

> Each District Director and Supervisor shall have a "work backup plan" for their location(s) to provide ongoing supervision of offenders in the event of vacant officer positions, extended or short term officer leave or the absence of an officer for any other reason.

28. There was no "work backup plan" implemented to cover the Grievant's caseload when she was absent; a backup plan was not put into place until August of 2010. Although other PPOs normally accepted monthly reports from offenders assigned to the Grievant, it was the practice of the other PPOs to place these reports on the Grievant's desk without conducting interviews, entering case notes, or taking other action.

29. According to Janet Page, Deputy District Director, a backup plan is usually implemented if a PPO is absent for more than ten consecutive days; however, this decision is a judgment call, depending upon the circumstances. If a PPO notifies the supervisor that a critical action needs to be taken while the PPO is absent, that task will

be reassigned. PPOs are required to make sure their work is done even if they are temporarily absent, particularly in the case of vital tasks such as filing violation reports after learning of arrests.

30. Even had a backup plan been implemented, other PPOs would have been unable to assume supervision of the Grievant's cases because her files were in a state of disarray. Not only were the files lacking required information, but there were piles of loose papers and excess manila folders, both in the files and on the Grievant's desk. The Grievant's supervisor Mr. Hardin counseled her about this issue, but no improvement was noted. Because of the extent of disorganization, another PPO would have been unable to work the files in the Grievant's absence.

31. Although the Grievant stated that she had extended absences, and therefore was unable to complete her work, and even though her supervisor noted excessive absences in her review, the evidence shows that the Grievant was not absent for large periods of time. According to her leave records between January of 2009 and August of 2012, the Grievant was paid for the vast majority of the time, excluding the months of March of 2009, November of 2009, and February of 2010, when she was absent multiple days in each month. For the remaining 16 months of that time period, the Petitioner was absent an average of only 1.3 days each month.

32. When the Grievant had to miss work for health reasons, she was allowed to come in to work alternative times so that her compensation would not be decreased. The Grievant applied for and was granted intermittent family medical leave in April, 2010, but she did not take any of this leave until October, 2010, after the action was taken against her.

33. In addition to her health, the Grievant also stated that she failed to perform all of her job responsibilities because she was assigned an excessive caseload which required her to attend two different courts; other POs generally were assigned to only one court . Since she supervised intensive/enhanced cases, the caseload recommendation was a maximum of 25 probationers. According to the Petitioner's compliance report for February 2010, the Petitioner had 70 cases assigned to her.

34. Janet Page, Deputy District Director, explained that this number is misleading since some of the cases should have been transferred to another PPO, since the offenders were no longer intensive/enhanced cases. but could not be transferred because they were out of compliance. However, files cannot be transferred if they are out of compliance, as some of these were. Consequently, the large caseload was due in part to the Petitioner's own negligence, as evidenced by the fact that the Grievant's caseload decreased after the arrest check audit when she was required by her supervisor to bring all her cases into compliance.

35. The Grievant also tried to excuse her lack of performance by stating that she was trained in a manner contrary to BOPP policy, particularly regarding policies on TOMIS documentation and violation reports. However, both of her supervisors during the relevant time period contradicted this assertion. For example, each supervisor stated that it would never be appropriate for a PPO to document a negative arrest check ("ARRN") when the offender previously told the PPO that he had been arrested. The evidence clearly showed that documentation of a negative arrest check should never happen if an arrest check was not actually conducted.

36. The Grievant asserted that she could have been more efficient in her work had she been granted access to Host on Demand, which provides probation officers with access to the BOPP data system to enter contact notes into case files. The Grievant requested permission to use this system, but the BOPP refused.

37. According to Ms. Page, access to Host on Demand has been granted only once or twice in the past few years, so it is not something that is normally done. While it would have allowed the Grievant to enter case history notes away from the office, if she had relevant files and other documentation with her at the time, she still would not have been able to perform many of the PO's most vital responsibilities, such as filing violation reports or warrant requests, or performing arrest checks.

38. The Grievant could have requested help from her supervisor, but she did not do so, even though she knew this help was available to her. For example, she admitted that, upon learning of a serious arrest that she did not have time to investigate, she could have flagged it for the supervisor to perform or to reassign the task.

39. Although the Grievant claimed she asked her supervisor for help, this testimony was contradicted by her supervisor at the time, John Hardin. Mr. Hardin stated that he would have been happy to help the Grievant with her case file compliance issues if he had known about them; "I can't help if I don't know what they need." The Grievant did not ask for help from Mr. Hardin.

40. While Mr. Hardin was not involved in the decision of the BOPP to suspend the Grievant, he does not believe discipline was warranted, calling the disciplinary action "bogus."

41. Deputy District Director Janet Page recommended the 30-day suspension, which was then approved by the central office of the BOPP. Ms. Page believes the term of the suspension is appropriate discipline, given the extent and serious nature of the Grievant's offenses.

42. Additionally, Ms. Page explained that she had been involved in cases of other PPOs with similar problems where a 30-day suspension was imposed, and she felt consistency was important.

43. Deputy Director Helen Ford also supported the imposition of a 30-day suspension, because the Grievant's conduct endangered the safety of others. Ms. Ford explained her reasoning:

> [The suspension was justified] [b]ecause of the severity of [the conduct]. There is a, our whole mission is public safety, and there is a zero tolerance when an offender threatens the life and liberty of another. And we take immediate action, and she took no action. And it's one thing not to know, but it's another one to know and not to, and her knowingly not to act and causing other people to be hurt is an issue.

44. Even though the Petitioner had not received significant prior discipline, it was the opinion of Ms. Ford that going through the steps of progressive discipline was not appropriate in this case because of the severity of the violations and their consequences to public safety.

RELEVANT LAW

1. The Department, as the party "seeking to change the present state of affairs," has the burden of proof under Rule 1360–4–1–.02(7) of the Uniform Rules of Procedure for Hearing Contested Cases before State Administrative Agencies, TENN. COMP. R. & REGS. ch. 1360–4–1 (June 2004 (Revised)), to prove by a preponderance of the evidence that the discipline imposed was appropriate under state law and regulations.

2. The BOPP charged that the Grievant violated the following rules of the Tennessee Department of Human Resources:[1]

> 1120-10-.06 **EXAMPLES OF DISCIPLINARY OFFENSES.** The following causes are examples of those considered for disciplinary action and should not be considered the only causes of action.
>
> (1) Inefficiency or incompetency in the performance of duties.
> (2) Negligence in the performance of duties.
>
> . . .
>
> (4) Failure to maintain satisfactory and harmonious working relationships with the public and fellow employees.
>
> . . .
>
> (8) . . . conduct unbecoming an employee in the State service.
>
> . . .
>
> (12) Participation in any action that would in any way seriously disrupt or disturb the normal operation of the agency, institution, department or any other segment of the Sate service or that would interfere with the ability of management to manage.
>
> . . .
>
> (15) Acts that would endanger the lives and property of others.

Emphasis in original.

3. The Grievant was also charged with the violation of BOPP Code of Ethics Policy 202.01:

> The Board has resolved to abide by and require agency employees to abide by the highest standards of professional conduct. The written code of ethics contained herein prohibits employees from using their official positions to secure privileges for themselves or others and from engaging in activities that constitute a conflict of interest. Likewise any violation or appearance of violation or attempt to cause a violation of the public trust is prohibited. (Section V.)
>
> . . .
>
> This policy shall be interpreted and enforced to protect the public interest. . . . It is further intended that the public trust in the conduct of the Board and its employees be ensured by conduct being above reproach. (Section VI.A.1.)

[1] In May, 2011, the personnel rules were revised and are now referenced as the Rules of the Tennessee Department of Human Resources. Since the previous rules (Rules of the Tennessee Department of Personnel, ch. 1120-06 (May, 1999)) were in effect at the time this action arose and formed the basis for the charges against the Grievant, those rules will be referenced herein.

4. T.C.A. Section 8-30-330 contains the following relevant provisions:

> (a) The supervisor is responsible for maintaining the proper performance level, conduct, and discipline of the employees under the supervisor's supervision. When corrective action is necessary, the supervisor must administer disciplinary action beginning at the lowest appropriate step for each area of misconduct.
>
> . . .
>
> (c) When corrective action is necessary, the supervisor must administer disciplinary action beginning at the step appropriate to the infraction or performance. Subsequent infractions or poor performance may result in more severe discipline in accordance with subsection (a).

5. Progressive discipline steps are outlined and described in Department of Personnel Rule 1120-10-.07, which states, in relevant part:

> (1) The supervisor is responsible for maintaining the proper performance level, conduct and discipline of the employees under his supervision. When corrective action is necessary, the supervisor must administer disciplinary action beginning at the appropriate step as described.
>
> (2) Oral Warning.
>
> (3) Written Warning.
>
> (4) Suspension Without Pay.
>
> (5) Dismissal.

6. The Rules of the Tennessee Department of Personnel provide the overall policy for imposing disciplinary action in Rule 1120-10-.02:

> POLICY. A career employee may be warned, suspended, demoted or dismissed by his appointing authority whenever just or legal cause exists. The degree and kind of action is at the discretion of the appointing authority, but must be in compliance with the intent of the provisions of this rule and the Act. . . .

ANALYSIS and CONCLUSIONS OF LAW

The Department has carried its burden of proof, to show by a preponderance of the evidence that the 30-day suspension is warranted in this case. It is concluded that the

Grievant violated most of the Department of Personnel rules with which she was charged, as well as the BOPP Code of Ethics.

Specifically, the Grievant is clearly guilty of inefficiency or incompetency in the performance of duties. She was seriously derelict in her responsibilities to keep her files organized and updated. More significantly, she is guilty of willful inaction even after learning of serious arrests; she was the only employee of the BOPP who knew anything about these arrests, and yet she did nothing. She is also guilty of negligence in the performance of duties. She failed to notify the court or supervisors of serious violations on the part of probationers under her supervision, or to file violation reports. Neither the Grievant's absences, nor any other excuse she offered, warranted the serious inaction on her caseload. The Grievant is guilty of conduct unbecoming an employee in the state service. With multiple infractions of BOPP policies, she put the probationers under her supervision and the general public at risk. Her violations resulted in additional crimes that could have been prevented had she fulfilled her responsibilities. The Grievant also participated in action that seriously disrupted the normal operation of the department. As a result of her failures, other employees had to be assigned additional work to complete the responsibilities that she did not perform. Finally, the Grievant clearly endangered the lives and property of others since her inaction resulted in additional crimes by probationers she supervised.

The Grievant also violated the BOPP Code of Ethics. As a probation officer, the Grievant was held to a high professional standard of conduct, but fell far short. The failure to follow mandatory policies which were designed to ensure the safety of the community was a violation of the public's trust.

The proof did not support the charge that the Grievant failed to maintain harmonious working relationships. Although it is logical to assume that her coworkers could be resentful of the additional work caused by the Grievant's failure to adequately perform her job, there was no evidence to show that this was indeed the case.

The Grievant willfully and negligently violated BOPP policy by engaging in conduct that endangered the safety of others. Her failures were detrimental to the offenders because they committed additional crimes at a time when they should have been placed back into custody on a violation warrant, thereby inhibiting the offenders' success at rehabilitation.

In addition to the offenders, the general public was also put at risk by the Grievant's actions. The Board's mission is public safety, and yet the Grievant acted in direct contravention to that mission. When an offender on probation threatens the life and well-being of another person, such as through arrests for domestic violence or other felonies, officers are required to take immediate action. Failure to do so is inexcusable because, as in several of these cases, the failure can create more victims.

Although the Grievant offered multiple excuses for her job failures, these are not supported by the evidence. The facts in this case do not present a situation of excusable neglect by an overworked officer who took excessive sick leave. An officer who is absent remains responsible for the assigned caseload, either by completing the tasks herself or asking for help from a supervisor. The Grievant did neither. Furthermore, the proof showed that the Grievant was granted flexible hours to make up missed time, thereby allowing her to maintain the majority of her compensation, as well as time to complete her work. The evidence also revealed that the Grievant carried a large caseload

largely because of her own negligence. Even had she been granted access to Host on Demand, as she requested, this access would not alleviate the serious infractions with arrest checks and violation warrants. All of these explanations are merely excuses, an attempt to place blame for her own failures on someone else.

In addition to lack of factual support for the Grievant's explanations, the Grievant's credibility is in serious question. Although the Grievant stated that she asked for help, testimony from supervisors revealed that she did not. She claimed that she was absent for extended periods, and yet time and attendance records contradict this statement. She noted in the TOMIS system, the official record, that multiple arrests checks were negative, and yet she never performed the arrest check at all. These examples illustrate a lack of reliability, as do inconsistencies in her testimony and contradictions between her statements and those of her supervisors. For all these reasons, it is determined that the Grievant was not credible.

The severity of the Grievant's conduct cannot be discounted. The public relies upon officers to properly supervise probationary felons, thereby ensuring public safety. Failures in this area can leave dangerous felons at large in the community to commit additional crimes, which happened repeatedly in this case. The Grievant's failure to adhere to BOPP policies, especially the willful refusal to take action against felony offenders who committed additional crimes, merits a suspension of 30 days.

Based upon this analysis, it is **ordered** that the Grievant's 30-day suspension is hereby **upheld**.

This Initial Order entered and effective this 16th day of March, 2012.

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Ann M. Johnson
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 16th day of March, 2012.

Thomas G. Stovall, Director
Administrative Procedures Division