

Anti-Fraternization Polices and their Utility in Preventing Staff Sexual Abuse in Custody

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In April 2013, federal authorities indicted thirteen female correctional officers who were involved in a conspiracy led by a prison gang to smuggle contraband into the Baltimore City Detention center. The prison gang members sustained their operations by developing long-term sexual relationships with female correctional officers. Female correctional officers routinely had sexual relations with gang members inside the detention center. The lead defendant fathered five children with four correctional officers, and two officers tattooed his name on their bodies. These sexual relationships facilitated a dangerous drug operation, and compromised officer safety and overall facility security. Similar stories have echoed in countless other facilities over the years.¹

To combat the problems that sexual and familial relationships between inmates and correctional workers can raise, including security breaches and the reputation of the agency, correctional authorities have created and implemented anti-fraternization policies to regulate relations between correctional staff and inmates, both within and outside the correctional environment. These policies prohibit employees from engaging in relationships, romantic, financial, or otherwise, with current or former inmates and their families.² These policies are also prevalent in juvenile and jail settings.³ Correctional agencies most often justify these policies based on security and safety concerns. Many of these policies permit limited relationships, especially

¹ *Jail Guard Accused of Trading Cookies for Sex*, MSN NEWS (Mar. 11, 2013) (reporting that a Washington state corrections officer was charged with first degree sexual misconduct for trading homemade chocolate chip cookies and other items for sexual favors from a twenty-two year-old female inmate); *Prison Escape Foiled, DA Says*, THE BOSTON GLOBE, A1 (Nov. 26, 2008) (noting that a correctional nurse was charged after attempting to assist an inmate escape, by smuggling in saw blades and a handcuff key); Mark Gunderman, *Leja Found Guilty of Murder*, CHIPPEWA HERALD (Jan. 12, 2012) (narrating the story of a female correctional officer who became romantically involved with a male inmate, and was later entrenched in a murder plot as a result).

² For examples of anti-fraternization policies, please visit: <http://www.wcl.american.edu/endsilence/policies.cfm>

³ See, e.g., ALASKA DEP'T OF JUVENILE JUSTICE, POLICY NO. 307, PROHIBITED ACTS 29 (2001), available at http://www.wcl.american.edu/endsilence/juvenile_policies.cfm (prohibiting "Personal interactions or engagements (such as dates or sexual relations), resulting from employment with the Division of Juvenile Justice, with family members of residents or former residents who are under the jurisdiction of the Department of Health and Social Services)



those that predated the inmate or youth's contact with the justice system, but require that the staff member provide notice to the agency of the relationship.⁴

Correctional employees who seek to maintain relationships with current or former inmates or youth and wish to retain their employment, most commonly challenge anti-fraternization policies using the First Amendment right to freedom of association. The First Amendment of the United States Constitution states that "[c]ongress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."⁵ Employees who have been disciplined or terminated for association with a current or former inmate assert that these punitive measures violate their constitutional right to freedom of association or privacy.

Courts, however, rarely find that anti-fraternization policies violate employees' constitutional rights, and most courts have held that correctional facilities' interests in preserving security and order outweigh employees' interest in romantic relationships. These decisions generally permit correctional employers to either limit or prohibit relationships between correctional staff and inmates or former inmates. Courts will strike down anti-fraternization policies when the facility does not adequately justify the security and safety needs underlying the policy.⁶

Below is a case law digest, detailing how courts across various jurisdictions have analyzed employees' challenges to anti-fraternization policies. Although the cases below only cover adult institutions, the tension between staff relationships and anti-fraternization policies persists in juvenile agencies as well. Agencies should be mindful that these policies can have a greater impact for female staff; note that of the twenty-six cases below, only nine implicate male staff. The impact of anti-fraternization policies seems to fall more heavily on female staff because of the

⁴ See, e.g., *Reuter v. Skipper*, 832 F.Supp. 1420 (D. Or. 1993) (holding that it was unconstitutional for a correctional agency to retroactively apply a policy prohibiting relationships with inmates).

⁵ U.S. CONST. amend I.

⁶ *Via v. Taylor*, 224 F.Supp. 2d 753 (D. Del. 2002) (holding that the facility did not adequately explain why policy prohibiting all relationships between staff and former offenders was appropriate in light of security concerns); *Reuter v. Skipper*, 832 F. Supp. 1420 (D. Or. 1993) (striking down an anti-fraternization policy that was not narrowly tailored to meet security concerns); *Zicarelli v. Leake*, 767 F.Supp. 1450 (N.D. Ill. 1991) (finding that an unwritten policy prohibiting officers from testifying on a criminal defendant's behalf did not further facility safety).

greater number of male inmates. As one court specifically noted, “since the ratio of male prisoners to female guards is vastly higher than the ratio of female prisoners to male guards, there is no doubt that an anti-fraternization policy . . . will impair the marital prospects of women far more than those of men.”⁷

⁷ Keeney v. Heath, 57 F.3d 579, 582 (7th Cir. 1995).



Cases Upholding Agency Anti-Fraternization Policies

1st Circuit (Maine, Massachusetts, New Hampshire, Rhode Island, Puerto Rico)

Poirier v. Massachusetts Dept. of Correction, 558 F.3d 92 (1st Cir. 2009):

A female correctional officer employed at the Massachusetts Department of Corrections (MDOC) developed a relationship with a male inmate, although investigations could not substantiate allegations about the relationship. Upon the inmate's release, the officer reported to correctional authorities that she would have continuing contact with him. Correctional authorities denied the officer's request for the inmate to reside with her, and later fired the officer for unauthorized contact. The officer claimed that the MDOC and its commissioner violated her Fourteenth Amendment right to intimate association. The court granted the MDOC's motion for summary judgment, and found the MDOC did not violate the officer's rights, giving great deference to the maintenance of prison security and order.

2nd Circuit (Connecticut, New York, Vermont)

Fisher v. Goord, 981 F.Supp. 140 (W.D.N.Y. 1997): A female inmate alleged several male correctional officers raped her while she was in custody. She also alleged correctional officials violated her First Amendment rights when they punished her for sending love letters to correctional officers. She requested that the court grant a preliminary injunction to move her to another facility to vindicate these rights. The court dismissed her motion for preliminary injunction, because inmates do not have a First Amendment right to write love letters to correctional officers, and correctional officials have a legitimate interest in prohibiting and punishing such conduct. The court also noted that "sexual interactions between corrections officers and inmates, no matter how voluntary, are totally incompatible with the order and discipline required in a prison setting." Furthermore, the court found that even if the inmate could prove the correctional officers had violated her First Amendment rights, transfer to another facility would not be an appropriate remedy.

Baron v. Meloni, 602 F.Supp. 614 (W.D.N.Y. 1985): The male deputy sheriff at the Monroe County Sheriff's Department developed a relationship with the estranged wife of an organized crime member. She, herself, was never convicted of a crime, but had past associations with organized crime figures. The Chief of Detectives ordered the deputy not to associate with her. After the order, the deputy was seen with the wife on three different occasions and was again told not to associate with

her. Although officials held a disciplinary hearing, they took no further action against the deputy. Later, the wife was injured in a car accident while she was driving the deputy's car. After this incident, officials charged the deputy with insubordination, consorting with persons of ill repute, and conduct discrediting the department. At a hearing, the sheriff discharged the deputy for insubordination. The deputy brought suit, claiming First and Fourteenth Amendment violations. The court found that his termination was proper, given that the department was currently investigating organized crime, and the deputy was romantically involved with someone with ties to organized crime members.

Laspisa v. Mahoney, 198 A.D.2d 279 (N.Y.A.D. 1993): The Sheriff at Suffolk County Jail terminated a female correctional officer for violating the agency's policies by fraternizing with a male inmate and continuing a relationship with him after his release. The court affirmed the correctional officer's dismissal, finding that "[a] police force is a quasi-military organization demanding strict discipline," and that internal discipline of employees should be given great deference. The court held that termination was proportionate to the officer's conduct, as a relationship with an inmate poses a serious threat to security.

Vega v. Department of Correctional Services, 186 A.D.2d 340 (N.Y.A.D. 1992): A female correctional officer received a notice of discipline that referenced her marriage to a former male inmate. The disciplinary note also listed her "covert and unauthorized conduct in developing and maintaining an apparent close relationship with an inmate and parolee." The officer challenged her dismissal as arbitrary and capricious, and claimed the dismissal violated a state law, which prohibited employers from dismissing an employee based on the employee's marital status. The court found that she was not dismissed for her marital status, but for violating the Employees' Manual rule prohibiting employees from having a "relationship with any inmate, former inmate, [or] parolee in any manner or form which is not necessary or proper for the discharge of the employee's duties," and requiring the employee to make a report of such behavior. The court found that agency did not discipline the employee for her marriage, but for violating agency rules governing anti-fraternization.

3rd Circuit (Delaware, New Jersey, Pennsylvania)

Lord v. Erie County, 476 Fed. Appx. 962 (3d Cir. 2012): The former roommate of a male correctional officer was arrested on misdemeanor simple assault and

disorderly conduct, and spent forty-eight hours at the Erie County Prison, and received twenty-one months of probation. The officer informed the warden of this incident, and the warden advised the officer to stay away from his friend in light of the agency's anti-fraternization policy, which stated that "[e]mployees shall not develop a personal relationship with inmates during, or for at least one year after, the inmate's incarceration. (Examples of personal relationships include romance, co-habitation, business dealings or the provision of legal assistance)." The officer continued the friendship with his former male roommate, against the facility's anti-fraternization policy and the warden's orders to stay away from the felon. Another employee saw the officer and his friend out at a bar, and the warden asked the employee to resign. The officer refused to resign and was terminated. The officer brought an action alleging violation of his First Amendment association rights and procedural due process rights. The court found that the anti-fraternization policy did not violate his First Amendment rights, as mere friendships do not merit constitutional protection.

Lape v. Pennsylvania, No: 05–1094, 157 Fed. Appx. 491 (3d Cir.2005): A female counselor at the Pennsylvania Department of Corrections (PA DOC) brought suit challenging her termination for marrying a former inmate. The pair met while the inmate was under the counselor's care. The inmate was transferred because of unsubstantiated allegations that the counselor and inmate had developed a relationship. After his transfer, the inmate telephoned the counselor at home and sent her correspondence, and the counselor may have sent him a Christmas card. Shortly after the inmate was paroled, the two were married. The counselor added her husband to her medical coverage. A year later, he was readmitted as a parole violator. While he was housed within a community corrections facility, he filed a form requesting permission to operate his wife's motor vehicle.

The PA DOC code of ethics stated that "[t]here shall be no fraternization or private relationship of staff with inmates, parolees, or members of their families," and that "[e]mployees will promptly report to their supervisor any information which comes to their attention and indicates violation of the law, rules, and/or regulations of the [DOC] by either an employee or an inmate . . ."

The PA DOC terminated the counselor for violating the code of ethics. The female officer brought a claim alleging violations of her First Amendment right of free association. The court noted that the PA DOC did not terminate the counselor for marrying a parolee, but for having unauthorized conduct with an inmate and

parolee, and failing to disclose that conduct. The court granted summary judgment for the defendants, noting that “fraternization between guards and prisoners would not only increase the risk that contraband could be introduced into the facility, but would also compromise the respect and authority that must be commanded by correctional officers by giving inmates a basis to question their impartiality.”

Gardner v. Barry, 1:10-CV-0527, 2012 WL 719005 (M.D. Pa. Mar. 1, 2012): A female probation officer and a male probationer under her direct supervision entered into an intimate relationship. The female officer subsequently left her position. Once the probation department learned of the relationship, they forbid the probationer from having contact with the officer. The officer and the probationer then married, and brought action alleging their First and Fourteenth Amendment associational rights were violated. The court granted summary judgment for the probation department, recognizing the compelling state interests in rehabilitation and protecting the integrity of the probation system.

King v. Department of Corrections, 2008 WL 4876082 (N.J. Super. A.D., November 13, 2008): A female nurse who was employed by a private contractor and working at the New Jersey State Prison met a male inmate in the course of her employment. The inmate requested a transfer to another facility, where the nurse then visited him on three occasions. Officers who searched the inmate’s cell found letters and \$300 the nurse had given the inmate to use in the commissary. Officials banned the nurse from that facility and the contractor fired her. The inmate was disciplined for violating a provision in the inmate handbook which stated that “[a]ny inmate who participates in, or engages in, any unauthorized contact, interaction, or relationship with a staff member or volunteer shall be subject to disciplinary action.” The court affirmed the inmate’s discipline, finding that the nurse fit the handbook provision’s definition of employee, as “her services as a nurse within a state prison were clearly part and parcel of the Department of Correction’s delivery of medical care to inmates.” The court further reasoned that, “[t]he constraints on undue fraternization should not evaporate when a prisoner is transferred to a different building within the State penal system, given the regular movement of prisoners and personnel to and from the various institutions.”

Leek v. New Jersey Dept. of Corrections, 2008 WL 2026428, (N.J. Super. A.D., May 14, 2008): A male correctional officer at the New Jersey Department of Corrections (NJ DOC) who also worked part-time as an associate pastor at a local church, met a male criminal defendant facing the possibility of incarceration. The

criminal defendant came to the correctional officer for spiritual guidance. The correctional officer wrote a letter to the court on the defendant's behalf, and appeared with him in court. While he was in court, he wore a T-shirt with a corrections department insignia. The NJ DOC conducted a disciplinary hearing and gave the correctional officer a thirty-day suspension. The Administrative Law Judge (ALJ) found the officer had engaged in conduct unbecoming of an officer by breaking department rules concerning undue familiarity with inmates, and reporting of all prior relationships with inmates. The court deferred to the agency's interpretation of its own regulation that the criminal defendant could be considered an inmate, as breaches of security, loss of morale, and blackmail are still possible even before confinement. The court affirmed the ALJ's decision, finding that in writing a leniency letter and attending court with a criminal defendant, the officer became unduly familiar with an inmate, and he failed to report it. The court also denied the officer's claim of violation of his First Amendment rights, as the NJ DOC's right to ensure security and safety in its facilities outweighed the officer's First Amendment rights.

4th Circuit (Maryland, North and South Carolina, Virginia, West Virginia)

Wolford v. Angelone, 38 F.Supp. 2d 452 (W.D. Va. 1999): A female correctional officer began working with the Virginia Department of Corrections (VDOC) in 1992. She began living with her husband in 1995. The couple had a child in 1996. In 1997, the correctional officer's husband was convicted of multiple felony and misdemeanor offenses. The two married after his conviction, and two months later he started serving his sentence in the VDOC. The VDOC's anti-fraternization policy stated that, "[i]mproprieties or the appearance of improprieties, fraternization, or other non-professional association by and between employees and inmates, probationers, or parolees or families of inmates, probationers, or parolees shall be discouraged." The agency would typically terminate those who violated this policy. The plaintiff contended that, on April 23, 1997, the state investigator and the assistant warden interviewed her concerning her relationship with her husband and told her she could either resign or be fired. The officer brought a § 1983 action alleging that the VDOC, claiming that the anti-fraternization policy violated her First Amendment freedom of association right and her Fourteenth Amendment right to marry. The court applied the rational relation standard and concluded that the anti-fraternization policy of firing a state prison employee for her intimate relationship with an inmate is rationally related to the goal of maintaining prison security, and therefore does not violate the First or Fourteenth Amendments.

5th Circuit (Louisiana, Mississippi, Texas)

Mississippi Dept. of Corrections v. Maxwell, 913 So.2d 1013 (Miss. App., May 10, 2005): A female corrections counselor was working with a male inmate under her care. The inmate sent her a letter indicating he was depressed due to the holiday season. The counselor replied with a note, signed "your mom." The counselor claimed she was using a therapy known as "client-therapy relationships." The Mississippi Department of Corrections (MDOC) claimed this was against the correctional policy prohibiting relationships between employees and inmates. The agency recommended termination, however, the Employee Appeals Board reinstated the counselor, finding that termination was too harsh a remedy. The MDOC appealed her reinstatement. The court reversed the counselor's reinstatement, finding MDOC did not act in an arbitrary or capricious manner.

Tillman v. City of West Point, 953 F.Supp. 145 (N.D. Miss. 1996): A male police officer maintained a friendship with a male inmate in the Mississippi State penitentiary. The officer's inmate friend was under investigation as a potential murder suspect. The Mississippi Department of Corrections became aware of officer's friendship, and asked the officer to submit to a polygraph examination. The examination revealed that the officer had not been truthful regarding the extent of his friendship. The department terminated the officer, and the officer filed suit alleging violations of his First Amendment right to free association. The court found that because the officer and the suspect were merely friends, the relationship was not enough to invoke a constitutionally protected associational right under the First Amendment.

6th Circuit (Kentucky, Michigan, Ohio, Tennessee)

Akers v. McGinnis, 352 F.3d 1030 (6th Cir. 2003): The Michigan Department of Corrections (MDOC) had a rule on "Improper Relationships with Prisoners, Parolees or Probationers, Visitors or Families." Two female correctional officers brought suit against MDOC, alleging that this rule violated their rights to freedom of association.

The first plaintiff, a Wayne County probation officer, was contacted by a man she had dated before becoming an MDOC employee. At the time he contacted her, he was serving a life sentence without parole in a prison outside her jurisdiction. She exchanged several letters with him. When the supervisor realized that she was in

violation of the department's rule on anti-fraternization, she approached her supervisor about the matter. Four months later, Wayne County terminated her for the rule violation.

The second plaintiff was a bookkeeper at a correctional facility in Chippewa County. She befriended a male inmate who worked as a clerk in the facility. Shortly after the inmate's release, the bookkeeper gave him a ride in her car to a job interview. MDOC terminated her for this rule violation.

The Sixth Circuit held that the MDOC's regulation easily met the rational basis test. The court found that MDOC had a legitimate interest in preventing fraternization between its employees and offenders and their families, and that the rule was a rational means for advancing that interest. Consequently, the rule withstood the constitutional challenge.

West v. Facility Governing Bd. of Stark Cty. Community Corrections, No. 2010CA00212, 2011 WL 2436605 (Ohio App. 5 Dist. Jun. 13, 2011): A male resident supervisor at Stark Regional Community Corrections Center (SRCCC) became romantically and sexually involved with a former female resident. The relationship began one to two weeks after the former resident left the facility. Subsequently, she became pregnant. SRCCC terminated the supervisor, due to its policy that expressly forbade employees from fraternizing with a former client for a period of one year after the client leaves the facility. The supervisor challenged his dismissal on the grounds that SRCCC's policy violated his constitutional right to privacy. The court found that the supervisor did not have a fundamental right to engage in a private, consensual sexual relationship with a former client of the correctional facility. Applying the rational basis test, the court determined that SRCCC's policy was reasonably related to its interest in "insuring the impartiality of correctional employees." The court based its decision on testimony from SRCCC's director, who stated that the aim of the policy was to protect SRCCC's integrity and reputation, as those released from SRCCC have continued contact with the facility, with more than 50% on intensive supervision for one year after release.

Clark v. Alston, 442 F. Supp. 2d 395 (E.D. Mich. 2006) A female applicant interviewed for a position as a probation officer. The interviewing judge withdrew her employment offer after learning she was married to a former inmate. The applicant stated that she left her employment with the Michigan Department of Corrections (MDOC) after an inmate alleged she instigated an improper

relationship. She claimed that although she exchanged letters with and accepted gifts from the inmate, she did not begin a relationship with him until after she resigned. The MDOC, however, reported that she engaged in the relationship while the inmate was in custody, and later married him. The applicant alleged the judge violated her First Amendment right to freedom of intimate association. The court granted the judge's motion for summary judgment, finding that the judge's decision not to hire the applicant was not an "undue" intrusion into plaintiff's marital relationship." The court found that the judge was justified in denying employment to a former correctional officer who engaged in a personal relationship with an inmate. The court also found that "even assuming arguendo that Plaintiff could establish that Defendant's conduct was an 'undue intrusion' into her marriage relationship, Plaintiff has failed to establish that her marital relationship was a substantial motivating factor in Judge Alston's decision not to hire her."

7th Circuit (Illinois, Indiana, Wisconsin)

Keeney v. Heath, 57 F.3d 579 (7th Cir. 1995): A female correctional officer became acquainted with a male inmate. Agency official suspected that the officer and inmate had begun an inappropriate relationship and transferred the inmate to another facility. The officer and inmate continued correspondence, and the officer began to visit the inmate. The captain questioned the officer about these visits, and she admitted she had a relationship with the inmate and planned to marry him. The captain told her to resign or give up her relationship, due to the agency policy forbidding employees from becoming "become involved socially with inmates in or out of the [jail]." She resigned and brought a § 1983 claim against county and jail officials alleging that the policy violated the Fourteenth Amendment due process right to marry. The Seventh Circuit held that rules which prohibit a correctional officer from dating an inmate who is in or out of jail do not violate the Fourteenth Amendment Due Process Clause. The court reasoned that the burden on the officer's right to marry was light, or at most moderate. Indiana has a unitary system of prisons and jails, and inmates frequently move among these facilities. Therefore an officer who is romantically involved with an inmate could facilitate unlawful communication or give favored treatment. Also, the court noted that this would give male inmates an incentive to romance female correctional officers, and inmates could claim any differences in treatment were due to an improper relationship. The court stated that "since the ratio of male prisoners to female guards is vastly higher than the ratio of female prisoners to male guards, there is

no doubt that an anti-fraternization policy...will impair the marital prospects of women far more than those of men."

Merrifield v. IL St. Police Bd., 691 N.E.2d 191 (App. 1997): The Illinois State Police Department had a policy that stated: "Except as necessary to the performance of official duties, or where unavoidable because of other family relationships of the officer, officers will avoid regular or continuous associations or dealings with persons *whom they know, or should know, are persons under criminal investigation or indictment, or who have a reputation in the community or the Department for present or past involvement in felonious or criminal behavior.*" A male officer began dating a woman who was subsequently convicted on felony drug charges in another jurisdiction. The two moved in together after her release from custody, pending an appeal. The Department learned of this relationship, and when they questioned the officer, he lied about his knowledge of her criminal conviction, and indicated he had canceled their wedding plans. The officer later married the woman, and the Board recommended the officer's termination for the relationship and for lying during the investigation. The circuit court reversed, finding that the pending appeal was not criminal investigation within the meaning of the policy, and implemented a 30-day suspension for lying during the investigation. The Appellate Court reinstated the Board's decision of termination, as the officer's wife had a criminal reputation within the Department, as at least 11 officers in the area knew of her conviction.

8th Circuit (Arkansas, Iowa, Minnesota, Missouri, Nebraska, North and South Dakota)

Wieland v. City of Arnold, 100 F. Supp. 2d 984 (E.D. Mo. 2000): A male officer had an on-going, off-duty, personal relationship with a female felony probationer. While off-duty, the officer brought the probationer to a ribbon cutting ceremony, where the two posed for a picture that was published in the local newspaper. The officer was ordered to terminate his relationship, pursuant to a department policy forbidding officer's from "knowingly associating, on or off duty, with convicted criminals or lawbreakers under circumstances which could bring discredit upon the Department or impair an Officer in the performance of his duty." He brought an action alleging violation of his right to freedom of association and right to privacy. The court held that the department did not violate the officer's rights. The court found that it would be a closer case had the two been married, but the dating relationship was not sufficient to invoke a First Amendment claim. The officer's

interest in dating the probationer did not outweigh the city's interest in maintaining order in its police force.

Department of Corrections v. Derry, 510 S.E.2d 832 (Ga. App. 1998): A correctional officer filed a disciplinary report against an inmate, and the inmate asked a second correctional officer whether he thought the report was harassing. The second officer replied that he believed the report was meant to harass. The second officer was terminated from his position for violating the Department of Corrections rule that stated "Employees shall not, without the express written approval of the appropriate Deputy Commissioner, maintain personal association with, engage in personal business or trade with, or engage in non-job related correspondence with, or correspond in behalf of or for, known inmates...." The State Personnel Board upheld his termination, while the Superior Court reversed the ruling and reinstated the officer. The appellate court reversed the Superior Court's decision, and upheld the officer's termination. The court stated it was giving great deference to the Department's policy, and held that the interest in safety and efficient operations outweighed the officer's interest in expressing his personal opinion of another officer to an inmate.

9th Circuit (Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, Guam, Northern Mariana Islands)

Bautista v. County of Los Angeles, 190 Cal.App.4th 869, 118 Cal.Rptr.3d 714 (Cal.App. 2 Dist. 2010): A male police officer became associated with a known prostitute. He gave her rides in his car to a methadone clinic and to her home. On two occasions other police officers spotted the officer with the same woman, and advised him not to associate with her as she was a known prostitute and an active heroin user. The officer and the woman both indicated that they were not dating and that the officer was only helping her. The officer and the woman eventually moved in together, and later married. The sheriff's department had a policy that stated "[m]embers shall not knowingly maintain a personal association with persons who are under criminal investigation or indictment and/or who have an open and notorious reputation in the community for criminal activity, where such association would be detrimental to the image of the Department, unless express written permission is received from the member's unit commander." After a hearing, the agency terminated the officer for violating the prohibited association policy, and failing to report his relationship. The court upheld the officer's termination. The court found that the county sheriff's department's policy "was

rationality related to a legitimate interest in regulating officers' behavior to minimize conflicts of interest and protect the department's credibility and integrity, and thus the policy did not violate the intimate associational rights of a deputy sheriff who was terminated for violating the policy by engaging in a relationship with a known prostitute and heroin addict."

11th Circuit (Alabama, Florida, Georgia)

Burke-Fowler v. Orange County, 447 F.3d 1319 (11th Cir. 2006): A female correctional officer met a male inmate serving a life sentence while he was assigned to her facility pending an appeal of his conviction. The two had direct contact on at least twenty occasions, but the officer asserted the interactions were always strictly professional. After the inmate was transferred to another facility, a mutual acquaintance delivered a letter from the inmate to the officer. The two continued corresponding, and the officer visited the inmate, and eventually married him. She continued this contact until he was paroled. Shortly after his parole, the county terminated the officer for violating the agency's anti-fraternization policy. The officer brought an action alleging racial discrimination and violation of Florida's civil rights act based on her marital status. The court upheld the district court's decision to grant summary judgment for the defendants. First, the officer claimed that white correctional officers who violated the agency's policy were not terminated for their conduct. The court found that the white officers who violated the policy either began their relationships before their partners were inmates, or that their conduct did not progress to the same level. The court, therefore, dismissed the officer's claim of racial discrimination. Second, the officer claimed a violation of the Florida state civil rights act, which prohibited employers from discharging employees based on marital status. The court found that County did not terminate the officer for her marital status, but for fraternizing with an inmate.

Williams v. Miami-Dade County, 969 So.2d 389 (Fla. App. 3 Dist., July 25, 2007): Miami-Dade had a policy that prohibited employees from "maintain[ing] or develop[ing] close, personal, intimate or sexual relationships, with inmates that the employees become acquainted with while the inmates are in the Department's custody." A second policy covered association with former inmates, and stated that "[a]ssociation with ex-inmates (regardless of whether or not they were found guilty, sentenced, served time, etc.) does not automatically constitute a conflict which would require an end to the contact. However, the professional relationship

standards applicable to current inmates applies to known or alleged ex-inmates, especially if they are, or appear to be, involved in criminal activity on a full time, part time, or an occasional basis.” Miami-Dade County terminated a female correctional officer living with her boyfriend, a former felon, for violating these rules. The court found the officer’s boyfriend was not an “inmate” within the meaning of the statute prohibiting developing personal relationships with inmates, and that her conduct had not violated the policy cautioning against association with former inmates. The court found that “no reasonable person could review the provisions at issue and know that cohabitating with a former felon—especially absent evidence that the employee knew that the former felon was involved in criminal activity—would be a cause for automatic termination.”

Cases Not Upholding Agency Anti-Fraternization Policies

3rd Circuit (Delaware, New Jersey, Pennsylvania)

Via v. Taylor, 224 F. Supp. 2d 753, 758 (D. Del. 2002): A female correctional officer in the Delaware Department of Corrections (DDC) became acquainted with a male inmate under her care. The inmate entered a work release program and was then paroled. Upon his release, he moved in with the correctional officer. She reported this living arrangement, and was terminated for violating the agency’s anti-fraternization policy. The policy stated “No staff person shall have any personal contact with an offender, incarcerated or non-incarcerated, beyond that contact necessary for the proper supervision and treatment of the offender. Examples of types of contact not appropriate include, but are not limited to, living with an offender . . . Any sexual contact with offenders is strictly prohibited. Contact for other than professional reasons with the offenders outside of the work place shall be reported in writing to the employee[']s supervisor.”

The officer sued the Commissioner of Corrections, the former Commissioner of Corrections, the personnel director, and prison warden alleging her termination in accordance with agency policy violated of her First and Fifth Amendment rights to freedom of association and privacy. The court applied intermediate scrutiny, and found that the policy was unconstitutional as applied to the officer, in that it was not substantially related to ensuring discipline and security. The court went further, and struck down the policy for vagueness and overbreadth, as the policy would “prohibit all relationships with former inmates or parolees, even those that did not impact on security or operations.” The court also noted that the rule was not

uniformly instituted. No applicants had been rejected due to a pre-existing relationship with an offender, and DDC did not track how many new employees had these prior relationships.

7th Circuit (Illinois, Indiana, Wisconsin)

Zicarelli v. Leake, 767 F.Supp. 1450 (N.D. Ill. 1991): The Cook County Department of Corrections (CCDC) had an **unwritten** policy that prohibited officers from testifying about any job related matters, unless they were served with a subpoena, and either the assistant director or the executive director evaluated that subpoena. A correctional officer testified on behalf of a defendant in a death penalty hearing. The CCDC terminated the correctional officer for failing to report that he would be testifying. CCDC claimed that this policy was necessary to “ensure the safety of correctional officers who guard inmates and to ensure correctional officers are not indiscriminately making court appearances to testify about their jobs.” The court held that the correctional officer’s testimony was a matter of public concern, and therefore protected under the First Amendment, and that the CCDC’s unwritten policy violated the officer’s rights. The court found that the CCDC had not adequately justified the rationale behind the policy, as the officer’s testimony did not jeopardize safety or security.

9th Circuit (Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, Guam, Northern Mariana Islands)

Reuter v. Skipper, 832 F. Supp. 1420 (D. Or. 1993): A female correctional officer became involved with a former inmate, and reported this relationship to her supervisor. The Sheriff’s office later issued a new rule making it a presumptive conflict of interest for a correctional officer to associate with any person who was imprisoned or convicted of a felony within the past ten years. The officer was terminated from her position, pursuant to this new rule.

The officer brought a § 1983 action seeking a declaration that the First Amendment protected her association with the former inmate, and that the county sheriff’s work rules were constitutionally overbroad. The court granted the officer’s motion for summary judgment. The court determined that “a couple living together as husband and wife constitutes a ‘family’ in today’s society.” Therefore, the new rule prohibiting association with former inmates intruded on the family unit, and the court chose to apply intermediate scrutiny to the rule. The state asserted its interest in maintaining “security and protection of the jail facility,” but the court found that the rule was not narrowly tailored to meet this interest. In finding that

the rule was not narrowly tailored, the court found it violated Oregon's state constitution because it continued to punish ex-inmates for association. Further, the rule was not applied consistently, as it permitted employees with a family member in jail to visit and communicate with that family member. Finally, the rule was overbroad in that it prohibited association of employees with anyone who might have at one time been convicted of a crime.

The court distinguished this from other cases, and specifically noted that the officer and the inmate had developed an intimate relationship that predated the enactment or implementation of the sheriff's rules.

