

**IN THE SUPREME COURT OF OHIO**

STATE OF OHIO

Plaintiff/Appellee

V.

DAVID GRAHAM, et. al.

Defendant/Appellants

Case No.: 2012-0338

On Appeal from the Court of Appeals,  
Twelfth Appellate District, Brown County,  
Ohio, Case Nos.: CA2010-10-016,  
CA2010-10-017, CA2010-10-018,  
CA2010-10-019, CA2010-10-020

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**BRIEF ON BEHALF OF APPELLEE STATE OF OHIO**

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## **I. STATEMENT OF THE CASE AND FACTS**

### **A. STATEMENT OF THE CASE**

On April 2, 2010, Defendant/Appellant David Graham (“Graham”), Defendant/Appellant James Lehman (“Lehman”), Defendant/Appellant Michelle Ward-Tackett (“Ward-Tackett”), Defendant/Appellant Todd Haines (“Haines”), and Defendant/Appellant Randy Miller (“Miller”), were each separately indicted on one count of Obstructing Justice, a violation of R.C. 2921.32(A)(6), a felony of the fifth degree, and one count of Complicity to Obstructing Justice, a violation of R.C. 2923.03(A)(2), a felony of the fifth degree. (Hereafter Defendants/Appellant collectively shall be referred to as “Appellants.”) On April 5, 2010, Appellants appeared on their summons, were arraigned, and bond was set for each at \$10,000 O.R.

On April 29, 2010, Graham filed a motion to dismiss on the basis of *Kastigar v. U. S.*, 406 U.S. 441, 92 S.Ct. 1653, 32 L.Ed. 2d 212 (197), *State v. Jackson*, 125 Ohio St. 3d 218, 2010-Ohio-621, 927 N.E. 2d 574 (20120), and *Garrity v. New Jersey*, 385 U.S. 493, 87 S.Ct. 616, 17 L.Ed. 2d 562 (1967). On May 4, 2010, the State/Appellee (“State”), filed a motion to join the Appellants for trial pursuant to Crim. R. 13. The trial court granted the motion for joinder.

On May 4, 2010, Graham filed a motion for an *in camera* inspection of grand jury testimony pursuant to *Jackson*. On May 6, 2010, Lehman filed a motion to suppress/dismiss, a motion for *in camera* inspection of grand jury testimony, and an amended motion to dismiss/suppress, under *Kastigar*, *Jackson*, and *Garrity*. On May 12, 2010, Lehman filed a motion for a *Kastigar* hearing. On May 12, 2010, Miller filed motions to dismiss, suppress, and *in camera* inspection of grand jury testimony pursuant to *Kastigar*, *Jackson*, and *Garrity*. On May 13, 2010, Ward-Tackett filed a motion to suppress/dismiss under *Kastigar*, *Jackson*, and

*Garrity*. On May 17, 2010, Haines filed a motion to suppress/dismiss under Kastigar, Jackson, and *Garrity*. On May 20, 2010, Ward-Tackett filed a motion for *in camera* review of the grand jury testimony. On May 24, 2010, Graham also filed a motion to suppress pursuant to *Garrity*. The State filed timely memorandums in opposition to Appellants' collective motions pursuant to *Kastigar*, *Jackson*, and *Garrity*.

On June 14, 2010, the State filed a motion to quash the subpoena issued to Inspector General Thomas P. Charles, which was granted by the trial court on June 18, 2010.

A hearing was set on the Appellants' collective motions on August 4, 2010, however, it was continued until September 2, 2010, on the motion of Ward-Tackett.

On September 2, 2010, an evidentiary hearing was held on the Appellants' collective motions. The State called three witnesses: Arnold Schropp ("Schropp"), First Deputy Inspector General, Bret Benack ("Benack"), Ohio Department of Natural Resources Labor Relations Administrator, and Ron Nichols ("Nichols"), Deputy Inspector General. The issue before the trial court was whether or not *Garrity* applied to the Appellants' statements made to the Deputy Inspector General Nichols during the course of an investigation in which Appellants' were not the subjects. On October 4, 2010, the Court filed its judgment entry finding that *Garrity* applied, granting Appellants' motion to suppress, and ordering the State to prepare transcripts of the grand jury testimony. (Judgment Entry Appx. p. A-1)

On October 5, 2010, the State filed a timely appeal with the Twelfth Appellate District. On January 17, 2012, the Twelfth District filed their decision and opinion. The majority opinion as well as the dissenting opinion found the trial court's ruling was not supported by competent, credible evidence. Although the dissenting opinion would have remanded for an evidentiary hearing to "flush out" whether the Appellants believed they would be terminated if they refused

to answer Ohio Inspector General (“OIG”) questions, the majority opinion reversed the trial court’s decision and held *Garrity* was not applicable outside of an administrative/internal investigation where the Appellants’ were not forced to incriminate themselves to prevent job loss.

**B. STATEMENT OF FACTS**

At the September 2, 2010 suppression hearing, Schropp testified concerning the duties and operations of the OIG. (Tr. 16-80) The OIG is a cabinet level independent body charged with the duty to ensure integrity in State government. (Tr. 19). Thomas P. Charles, the Inspector General, is appointed by the governor. (Tr. 19) Enabled by Revised Code 121.41 *et. sq.*, the OIG investigates State agencies (“subject agencies”) for fraud, waste, and abuse. (Tr. 19.) The OIG may initiate an investigation upon a complaint from an outside source, or on its own initiative. (Tr. 21)

Although not a law enforcement agency, nor an agent for subject agencies or prosecuting attorneys, (Tr. 20, 22), the OIG operates in a “unique position” between law enforcement and internal agency administrative investigations. (Tr. 23.) The OIG does not conduct internal subject agency administrative investigations, (Tr. 21, 110), nor does it act in any way on behalf of any subject agency or the governor. (Tr. 22). No employee of the OIG has arrest powers, or the ability to detain or restrain anyone. (Tr. 20, 30, 31)

When an investigation is opened by the OIG, it is given a case number and assigned to a deputy inspector general who then starts the normal investigative process. (Tr. 24) This process includes contacting people, gathering documents, issuing subpoenas, and/or having employees of the subject agency come in for interviews. (Tr. 24)

Although an employee can be subjected to an administrative subpoena, (Tr. 25), normally when an employee of a subject agency needs to be interviewed, the deputy inspector general contacts the employee's supervisor to have them come to the OIG office. (Tr. 24) Prior to commencement of the interview, the deputy inspector places the employee under oath. (Tr. 28) (State's Ex. 6, Appx. p. A- 6) These employees have a duty to co-operate with the investigation pursuant to R. C. 121.45, but are free to terminate an interview and leave. (Tr. 25, 31) Although not informed of a right to counsel pursuant to R. C. 9.84, (Tr. 29), the employee may have any attorney present if they so desire. (Tr. 70)

If during the course of an interview, an employee refuses to answer a question, the deputy inspector general can do nothing more to the employee than move on to the next question. (Tr. 31, 204) If an employee invokes his or her Fifth Amendment Right, the interview is "done." (Tr. 32) The OIG has no authority to make any threat to compel the employee to give up their Fifth Amendment Right. (Tr. 33) The OIG has no authority to hire, fire, or give adverse discipline to uncooperative employees. (Tr. 26, 27, 31, 111)

At the conclusion of an investigation, if the OIG makes a finding of wrongdoing, referrals are made to the proper prosecutorial authorities or the ethics commission. (Tr. 36) The OIG cannot request certain people be prosecuted. (Tr. 36)

Also at the conclusion of an investigation, the OIG gives a report to the subject agency, which includes recommendations on how the subject agency can make improvements. (Tr. 37) The subject agency is not required to follow the OIG recommendations, but the subject agency must respond back to the OIG. (Tr. 37) The OIG cannot dictate policy or discipline to the subject agency. (Tr. 38)

Bret Benack (“Benack”), Ohio Department of Natural Resources (“ODNR”) Labor Relations Administrator testified on behalf of the State concerning the duties and operations of ODNR. (Tr. 82 – 139) ODNR and the Division of Wildlife (“Wildlife”) are organized as depicted in State’s Exhibits 1, 2, & 3. (Appx. p. A7-A9, Tr. 87) Graham was the Chief of the Division of Wildlife. (Tr. 87) Lehman was an ODNR administrator over the Law Enforcement Program. (Tr. 88) Ward-Tackett was the Human Resources manager for the Division of Wildlife. (Tr. 88, 89) Haines was the Wildlife District 5 manager. (Tr. 89) Miller was the Deputy Chief of the Wildlife Division. (Tr. 89) None of the Appellants were covered under a collective bargaining agreement. (Tr. 89)

When an employee of ODNR is suspected of wrongdoing, ODNR management is to follow the governor’s executive order requiring ODNR management to report the suspected wrongdoing to the governor’s office and “look for direction.” (Tr. 90) ODNR can do one of two types of investigations into the wrongdoing: criminal or administrative. (Tr. 90) An administrative investigation is done when it is believed that policies or rules have been violated. (Tr. 90, 91) A criminal investigation is done when it is believed that laws have been violated. (Tr. 91) An administrative investigation is normally conducted by someone within ODNR, usually in exempt management. (Tr. 91)

When an ODNR employee is either the subject of an administrative investigation or a witness in an administrative investigation, he or she is given a form identified as “Department’s Notice of Investigatory Interview” (Tr. 96, State’s Ex. 20, Appx. p. A- 29), which the employee is to sign. (Tr. 100, 101) During the course of an ODNR administrative investigation, the investigator has the authority to decide if *Garrity* rights are read to the employee. (Tr. 95) The investigator then reads *Garrity* from a form described as “Department’s Internal Investigation

Warning” (State’s Ex. 21, Appx. p. A - 30) and the employee signs the form in acknowledgment. (Tr. 100).

Nichols testified on behalf of the State concerning specific factual matters central to this case. (Tr. 140 – 208) On November 3, 2009, the OIG sent a letter to Sean Logan, director of the ODNR, advising of a complaint concerning alleged wrongdoing in Brown County, Ohio, by a Wildlife officer named Allan Wright (“Wright”). (Tr. 142, State’s Ex. 7, Appx. p. A-21). In the letter, the OIG requested ODNR to investigate the allegations and provide the OIG with a copy of the investigation when it was completed. (Tr. 143) Nichols was assigned to lead the investigation. (Tr. 145)

On December 10, 2009, ODNR sent a response letter to the OIG concerning the Wright wrongdoing. (Tr. 144, State’s Exhibit 8, Appx. p. A-22). The response letter also included a copy of the investigation into the accusation and what discipline was taken. (State’s Ex. 8, Appx. p. A- 22) Nichols was not satisfied with ODNR’s response because ODNR did not address the issue of Wright’s criminal conduct, (Tr. 167, 196, 197), and the OIG initiated an investigation. (Tr. 144, 145) The subject of the investigation was Wright. (Tr. 145, 198)

During the course of the investigation into Wright, the Appellants were interviewed by Nichols. (Tr. 145) At the time each of the Appellants were interviewed by Nichols, they were not the subjects of the OIG investigation, nor were they suspected of wrongdoing. (Tr. 146, 148, 168) Furthermore, there is no evidence the Appellants were the subject of or witnesses in an ODNR administrative investigation at the time they were interviewed by Nichols. (Tr. 101, 108) When specifically asked whether or not the Appellants were the subject of an ODNR administrative or internal investigation between 2007 and March 15, 2010, Benack testified that he “didn’t believe so.” (Tr. 101)

Furthermore, there were no ODNR “Notice of Investigatory Interview” or “Department’s Internal Investigative Warning” forms produced with any dates or signatures of any of the Appellants. (Tr. 104) Benack further testified that as of the time ODNR surrendered its notes to the OIG, ODNR had not even opened a file on the matter. (Tr. 104) Benack testified that at some point in time, the Appellants were given a “Notice of Investigatory Interview,” but not an “Internal Investigative Warning,” previously referred to as a “*Garrity*” warning. (Tr. 100, 108) Benack testified that he “believed” that the “Notice of Investigatory Interview” was given to Appellants but he didn’t know when. (Tr. 104, 105, 106)

As of September 2, 2010, the day of the Suppression hearing, the Appellants had still not been interviewed in the course of an internal ODNR administrative investigation. (Tr. 109)

Nichols’ interview protocol was the same for all Appellants. (Tr. 146) Nichols phoned each of the Appellants and requested them to appear at the OIG office. (Tr. 146, 147). Appellants were not under subpoena, but were placed under oath. (Tr. 147, 148, State’s Ex. 9, 10, 11, 12, & 13, Appx. p. A-24 – A -28) Lehman was interviewed twice by Nichols, on December 22, 2009, and on January 19, 2010. (Tr. 145) Ward-Tackett was interviewed on January 20, 2010. (Tr. 145) Haines was interviewed on January 27, 2010. (Tr. 145) Graham was interviewed on February 1, 2010. (Tr. 145) Miller was interviewed on December 29, 2009. (Tr. 146) (Each interview was transcribed and made part of the record of the September 2, 2010 Suppression Hearing.) (Tr. 153, State’s Ex. 14, 15, 16, 17, 18, & 19)

Prior to and during the course of Appellants’ interviews, Nichols was not carrying or displaying a firearm, nor did he make threats to or restrain the movement of Appellants in any way. (Tr. 147, 148) Nichols specifically testified that at no time, before or during the interview, did he threaten the Appellants with discipline or tell Appellants they would lose their jobs if they

asserted their Fifth Amendment Rights. (Tr. 152) Appellants were free to leave at any time. (Tr. 148).

The ODNR Disciplinary Policy in effect prior to and during the course and time of Appellants' interviews with Nichols was identified as State's Ex. 5. (Tr. 113, Appx. p. A-15) It became effective February 1, 2008. Benack testified that under this policy, if an ODNR employee committed conduct that constituted "interfering with, failing to cooperate with, or lying during an official investigation or inquiry," the employee could be subject to discipline under the grid "Failure of Good Behavior," and be subjected to an oral reprimand all the way up to removal. (Tr. 115, 116, 117, 118, State's Ex. 5, Appx. p. A-17). However, suspension or removal was not automatic under this policy; it was only a range of discipline that could happen. (Tr. 117)

On March 10, 2010, the OIG issued the report on the Wright investigation. (Tr. 164) On April 1, 2010, well after the Appellants' interview with Nichols, ODNR revised its policy to include a specific disciplinary grid under Insubordination for "interfering with, failing to cooperate with, or lying during an official investigation or inquiry." (Tr. 112, 114, State's Ex. 4, Appx. p. A-10) Benack testified that this specific conduct was added as a specific disciplinary category to make it "a little more clean, a little less subjective." (Tr. 118, 119)

## II. LAW AND ARGUMENT

### Proposition of Law No. 1:

Any public employee who is NOT compelled by threat of job termination to participate in an investigation by the Ohio Inspector General is NOT entitled to *Garrity* protection.

- A. The Appellate Court Properly Focused on the Inability of the OIG to Impose Job Sanctions on Appellants.

In *Garrity*, 385 U.S. 493, 87 S.Ct. 616, 17 L.Ed. 2d 562, the U.S. Supreme Court determined that the state cannot use for criminal purposes statements that were taken from employees during an internal investigation after the employee was assured that if he refused to answer the questions, he would be terminated from employment. The U.S. Supreme Court held that once employees were threatened as such, “the choice imposed on [the employee is] on between self-incrimination or job forfeiture,” and such statements are therefore coerced. *Id.* at 496, 87 S.Ct. 616, 17 L.Ed.2d 562. In the absence of express *Garrity* rights or express threats of job loss, a defendant “must have in fact believed [his] statements to be compelled on threat of loss of job and this belief must have been objectively reasonable.” *United States v. Friedrich* 842 F.2d 382, 395 (D.C. Cir. 1988). In this case, there is no competent, credible evidence Appellants in fact believed their statements were compelled on threat of job loss, and assuming *arguendo* they in fact believed their statements were compelled, their belief was not objectively reasonable. Accordingly, Appellants statements to the OIG are not immunized by *Garrity* and should be admissible in a criminal proceeding.

In Appellants’ brief, it is asserted that Appellants are “high ranking employees of the Division of Wildlife,” Appellants’ Br. at 1, 2, who were aware of ODNR policies “and state law.” Appellants’ Br. at 5. If they did know ODNR policy and state law as their counsel has argued, they would have also known Deputy OIG Nichols could not fire them for refusing to make incriminating statements.

There is no evidence anywhere in the record Appellants were the subject of an ODNR administrative/internal investigation when they were interviewed by the OIG. There is no evidence in the record they were in fact told by their employer or ANY State actor they would be terminated if they didn’t make incriminating statements to Deputy OIG Nichols.

Furthermore, under the disciplinary policy in effect when Appellants were interviewed by Nichols, “interfering with, failing to cooperate with, or lying during an official investigation or inquiry” was not listed as specific bad conduct listed on the discipline grid and would have fallen under the category of “failure of good behavior,” for which discipline can range from an oral reprimand up to removal. (Tr. 115, 116, 117, 118, State’s Exhibit 5, admitted Tr. 210, Appx. p. A-15). Suspension or removal was not automatic under this policy, it is only a range of discipline that could happen. (Tr. 117) Appellants “could” have received an oral reprimand or they “could” have be removed. There is no evidence that any of their superiors advised them they would receive any discipline at all.

Furthermore, there is no evidence Appellants subjectively believed they were going to lose their jobs if they didn’t give up their Fifth Amendment Right during their “non-administrative” interview with Nichols. In fact, in Appellants’ statements to Nichols, they clearly knew ODNR Wildlife Officer Wright violated a *criminal* law for which others are prosecuted, and they only gave Wright an oral reprimand under the very same “failure of good behavior” on the policy grid. (State’s Exhibits 14-19 admitted T.r. 210)

Although R.C. 121.45 mandates state employees “cooperate with and provide assistance to, the inspector general, \* \* \*” this statute does not provide for termination of the employee’s employment for non-compliance. However, if knowledge is imputed to the Appellants of the mandates of R.C. 121.45, then the knowledge of the specific remedy granted to the Inspector General for non-compliance should also be imputed. Found in R.C. 121.43, the remedy provides that if an employee refuses to answer questions, then the Inspector General may apply to the court of common pleas for a contempt order. Whether or not a court would threaten a state employee with job loss on a contempt order is complete speculation.

**B. The Appellate Court Properly Understood the Nature of the "Coercion" Necessary to Trigger *Garrity v. New Jersey*.**

In its decision, the Twelfth District cited as persuasive authority a New Hampshire Supreme Court case *State v. Litvin*, 794 A.2d 806 (N.H. 2002) that is directly on point. In *Litvin*, the New Hampshire Supreme Court held the department rules that provided dismissal of any officer for refusing to obey the lawful order of a superior was insufficient to create coercion because such policy did not require dismissal, it only permitted it.

Appellants' argue in their brief that because ODNR Labor Relations Administrator Bret Benack testified it would be "reasonable" for all Appellants to expect termination for failing to cooperate with an official investigation or inquiry, (Appellants' Br. at 16), Appellants' were in fact "coerced." Appellants' also argue in their brief that "it is uncontroverted that ODNR had a written policy which compelled appellants to cooperate or face dismissal." (Appellants' Brief at 19). These arguments are without merit. Benack testified that termination was not automatic, nor was even suspension automatic, it was only in the "range" of discipline for "failure of good behavior." (Tr. 117) It was only AFTER Appellants were interviewed by Deputy OIG Nichols that ODNR policy was amended to add "interfering with, failing to cooperate with, or lying during an official investigation or inquiry" as specific conduct on the disciplinary grid. Benack testified the policy was amended to make it "a little more clean, a little less subjective." (T.r. 118, 119)

If failing to cooperate with an official investigation was not even on the policy discipline grid, and Appellants "would be aware of the ODNR and Division of Wildlife discipline policies" (Judgment Entry Appx. p. A-3), how could Appellants be coerced by threat of job loss by a policy that didn't exist yet? The policy was amended BECAUSE it was subjective, not objective. The Twelfth District properly found Appellants were not coerced.

**C. *Garrity* Does Not Need To Be Expanded To OIG Investigations In Order To Avoid Prosecutions From Being Compromised Or To Protect The Rights of State Employees.**

The OIG is not a law enforcement agency, nor does it conduct criminal investigations, nor do its agents have police powers, nor can its agents detain persons.<sup>1</sup> (Tr. 49, 147) Besides the authority to subpoena witnesses into court for non-compliance, the OIG can exercise no authority over subject agency employees.<sup>2</sup> The danger for an OIG investigator to obtain coerced confessions by overreaching is non-existent.

“To demonstrate compulsion under *Garrity*, a public employee must show (1) that he subjectively believed his statements were compelled by the threat of job loss, and (2) the belief was objectively reasonable.” *Fredrick*, 842 F.2d 382, 395 (1988). This is a completely workable test for Ohio courts to follow.

In *U. S. v. Vangates*, 287 F.3d 1315 (11<sup>th</sup> Cir. 2002), the court employed this two part test and held the defendant’s belief was not objectively reasonable because there was no statute, regulation, or policy requiring her to forego her Fifth Amendment rights in a civil proceeding even though she was under subpoena and required to be in uniform and was on county time. “The general directive to cooperate was not sufficiently coercive to create an objectively reasonable belief that Vangates would be sanctioned if she invoked her Fifth Amendment rights.” *Id.* at 1324.

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<sup>1</sup> In Appellants’ Brief, counsel argued that OIG investigations can become criminal investigations and it is within the mission of the OIG to conduct criminal investigations. (Appellants’ Br. at 6) That is not exactly correct. Appellants’ counsel asked First Deputy OIG Schropp: “\* \* \* But the fact that you do have police powers and, in fact, you do conduct criminal investigations, do you not?” (Tr. 48) To this Schropp answered: “We do not.” (Tr. 49).

<sup>2</sup> In its’ Amicus Curiae brief, the FOP states: “To say that [Appellants] were free to leave the interview at any time is dishonest.” Amicus Brief at 2. This argument is not founded on any evidence in the record and is meritless. The testimony of Nichols established he was 27 year veteran of the State Highway Patrol and retired in 2004 at the rank of Sergeant Assistant Commander, Tr. 140, 141, and testified without contradiction that Appellants were free to leave. Tr. 148.

Under the trial court's application of *Garrity*, a State agency can, by means of vague policies and procedures, grant automatic immunity to its employees for any statements made during any "official" investigation, not just investigations related to job employment. This would include not only the OIG, but any public entity authorized by statute to conduct investigations, such as the State Auditor's Office, the State Ethics Commission, local Boards of Elections, the State Department of Taxation, and the Internal Revenue Service to name a few.

*Garrity* was not intended to destroy the public's right to integrity in State government, but to protect public employees from making coerced confessions of wrongdoing related to their employment. There is no evidence in the record anywhere that any ODNR employee was ever terminated because they refused to cooperate with an investigation of the OIG. The object of Appellants is clear: to stop prosecutions derivative of OIG investigations. To expand Garrity, as Appellants are asking this Court to do, will kill the only true independent State agency charged with the duty to ensure integrity in State government.<sup>3</sup>

**Proposition of Law No. 2:**

**The failure or refusal to provide a public employee *Garrity* warnings by an agency conducting an administrative investigation does not obviate a public employee's Fifth Amendment rights established by *Garrity*, as those rights are self-executing.**

In the absence of express *Garrity* warnings or express threats of job loss, a defendant "must have in fact believed [his] statements to be compelled on threat of loss of job and this belief must have been objectively reasonable." *Friedrick* 842 F.2d 382, 395 (D.C. Cir. 1988).

The State/Appellee submits this is the correct test in absence of express *Garrity* warnings.

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<sup>3</sup> In its' Amicus Curiae Brief, the FOP argues the OIG should have put Appellants on notice once Nichols realized that the investigation was moving in the direction of possible criminal charges. Amicus Brief at 5. If this becomes the law of the land, investigations of public corruption will be completely eviscerated.

“Yet, public employees can be required to answer potentially incriminating questions, so long as they are not asked to surrender their constitutional privilege against self-incrimination.”

*Lefkowitz v. Cunningham*, 431 U.S. 801, 806, 97 S.Ct. 2132, 53 L.Ed. 2d 1 (1977).

Unless the government seeks testimony that will subject its giver to criminal liability, the constitutional right to remain silent absent immunity does not arise. An individual therefore properly may be compelled to give testimony, for example, in a noncriminal investigation of himself. *See, e.g., Gardner v. Broderick*, 392 U.S. 273, 278 (1968). Unless a witness objects, a government ordinarily may assume that its compulsory processes are not eliciting testimony that he deems to be incriminating. Only the witness knows whether the apparently innocent disclosure sought may incriminate him, and the burden appropriately lies with him to make a timely assertion of the privilege. If, instead, he discloses the information sought, any incriminations properly are viewed as not compelled.

*Garner v. United States*, 424 U.S. 648, 655, 96 S.Ct. 1178, 47 L.Ed. 2d 370 (1976).

**Proposition of Law No. 3:**

**When considering a motion to suppress, a trial court is in the best position to resolve factual questions and evaluate the credibility of the witnesses so long as the trial court’s findings are supported by competent credible evidence.**

Appellate review of a motion to suppress presents a mixed question of law and fact. When considering a motion to suppress, the trial court assumes the role of trier of fact and is therefore in the best position to resolve factual questions and evaluate the credibility of witnesses. *State v. Mills* (1992), 62 Ohio St.3d 357, 366, 582 N.E.2d 972. Consequently, an appellate court must accept the trial court's findings of fact if they are supported by competent, credible evidence. *State v. Fanning* (1982), 1 Ohio St.3d 19, 1 OBR 57, 437 N.E.2d 583. Accepting these facts as true, the appellate court must then independently determine, without deference to the conclusion of the trial court, whether the facts satisfy the applicable legal standard.

*State v. Burnside*, 100 Ohio St.3d 152, 154-155, 797 N.E. 2d 71 (2003).

- a. **The trial court’s finding that Appellants’ did in fact receive State’s Exhibit 20 in relation to the OIG investigation from ODNR that Appellants were the subject of an administrative investigation styled “Notice of Investigatory Interview” was not based on competent, credible, evidence.**

In the Judgment Entry granting Appellants' motion to suppress, (Judgment Entry Appx. p. A-1), the trial court specifically made the finding that Appellants received a "Notice of Investigatory Interview" (State's Exhibit 20, admitted Tr. 210, Appx. p. A-29) prior to the March 10, 2010 date the OIG report came out, ( Appx. p. A-3) and specifically made the finding that Appellants received this "Notice of Investigatory Interview" before they submitted to their interviews with Nichols. (Judgment Entry Appx. p. A-3) The trial court went on to conclude that because Appellants were issued the "Notice of Investigatory Interview" they were "on notice that there was an investigation and that failure to answer questions completely and accurately may lead to disciplinary action up to and including termination." (Judgment Entry Appx. p. A-5). The trial court certainly relied on this finding in its decision because it further concluded "[Appellants] knew by law they had to cooperate. [Appellants] were told by State's Exhibit 20 they had to answer fully and truthfully or risk disciplinary action up to and including termination." Id.

However, these findings by the trial court are not supported by competent, credible evidence. Appellants were interviewed during the period between December 22, 2009, and February 1, 2010. (Tr. 145, 146) On direct exam by the State, Benack was asked whether the "Notice of Investigatory Interview" (State's Exhibit 20) was given to Appellants prior to the March 10, 2010 issuance of the OIG's report. (Tr. 105) Benack testified that he believed it was given to Appellants but he "can't swear to it." (Tr. 105). At that point, counsel for Appellants jointly objected to this answer. (Tr. 105, 106) The trial court then stated that "we're not in the business of guessing" and he sustained the objection and stated "that answer will be stricken from the record." (Tr. 106) Despite being under subpoena to bring Appellants' personnel files, Benack could in no way verify when Appellants received the "Notice of Investigatory Interview"

and could not verify that Appellants had received it prior to their interviews with Nichols. (T.r. 101-109) Furthermore, **no one** produced a “Notice of Investigatory Interview” that was signed and dated by Appellants.

The record is devoid of any evidence whatsoever that proves Appellants had received the “Notice of Investigatory Interview” before they were interviewed by Nichols or even if they had it prior to the March 10, 2010 issuance of the OIG report. Furthermore, Benack testified confidently that Appellants did not receive the ODNR “Internal Investigation Warning,” which advises the employee that their compelled statements cannot be used against them in a criminal matter. (Tr. 100, 108) Clearly the trial court relied on testimony that was stricken from the record on the objection of Appellants.

**b. The trial court’s finding Nichols did not give *Garrity* warnings to Appellants because he feared that would interfere with subsequent criminal charges is not based on competent, credible evidence.**

In its decision, the trial court stated: “It seems equally clear that Mr. Nichols did not give *Garrity* warnings because he feared that would interfere with subsequent criminal charges as he noted in one of his interviews.” (Judgment Entry A-5) The State/Appellee is unable to precisely locate in the record any evidence that supports this conclusion of the trial court. The trial court did find:

Mr. Nichols repeatedly testified that at the time of the interviews with each [Appellant] he did not believe the [Appellants] had committed a crime. As incredulous as this seems to the Court, Mr. Nichols testified only after all the interviews were concluded did he believe the [Appellants] had committed crimes...

(Judgment Entry Appx. p. A-4) The trial court could possibly have made a tenuous inference from Nichols interviews with Appellants in which Appellants admitted they knew what *Garrity* warnings were and how they were used. However, it is an inference upon an inference for the

trial court to conclude Nichols did not apprise Appellants of their *Garrity* rights because he feared that would interfere with subsequent criminal charges. Accordingly, the conclusion of the trial court is not based on competent credible evidence.

In their brief, Appellants argue the trial court did not base its decision on a “bad foundation” as did the court of appeals. (Appellants’ Brief at 27) The rationale for the Twelfth District’s rejection of Benack’s testimony was:

Benack’s testimony contained several inconsistencies and also it was, on at least one occasion, declared by the court to be pure speculation. Benack’s testimony also contained many qualifiers, such as ‘I can’t swear to that,’ ‘if I remember correctly,’ ‘I can’t remember,’ ‘I believe,’ and ‘I think.’ Benack’s testimony was frequently not founded on personal knowledge or direct contact with any of the [Appellants] and was very general in nature. His testimony never addressed any of [Appellants] individually and as such, the testimony contributed little substance to help resolve the issues at hand.

(Decision of Twelfth District Appellants’ Brief Appx. p. p. 10).

The Twelfth District properly characterized Benack’s testimony and properly concluded it did not provide a competent, credible basis for the trial court’s finding that “[Appellants] knew by law they had to cooperate” or “knew ODNR Policies and that not cooperating or following state law could result in the [Appellants] dismissal.” (*Id.* at Appellant’s Br. Appx. p. 11).

Appellants also argue the since the State/Appellee did not challenge the foundation on which Benack relied on to come to his conclusion that all Appellants “knew the DOW and ODNR policies and procedures, as well as state laws applicable to their job duties...” (Appellants’ Br. at 24)<sup>4</sup>, the trial court had “every right to accept the testimony as direct or circumstantial evidence and draw all reasonable inferences therefrom.” *Id.* at 25. However, the

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<sup>4</sup> ODNR policy also requires Appellants to report criminal activity to their director, which Appellants failed to do. Tr. 168, 172.

appellate court has the equal right to find that testimony unsupported by personal knowledge is not competent or credible.

### III. CONCLUSION

The State/Appellee prays this Court affirms the decision of the Court of Appeals, Twelfth Appellate District, and finds Garrity does not mandate suppression of the direct or derivative use of Appellants voluntary statements given to Deputy Inspector General Nichols.

Respectfully submitted,



Jessica A. Little #0076423  
Brown County Prosecuting Attorney  
Counsel for Appellant

### CERTIFICATION OF SERVICE

I hereby certify that I have forwarded a copy of the above by regular U.S. Mail, this 15<sup>th</sup> day of August, 2012, upon counsel for Appellants:

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## APPENDIX

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ODNR Administration (State's Exhibit 2)	A-8
ODNR Division of Wildlife (State's Exhibit 3)	A-9
ODNR Disciplinary Policy, April 1, 2010 (State's Exhibit 4)	A-10
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OIG Oath (State's Exhibit 6)	A-20
OIG Letter to ODNR (State's Exhibit 7)	A-21
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ODNR Notice of Investigatory Interview (State's Exhibit 20)	A-29
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ODNR Procedure 71 (Defendant's Exhibit C)	A-31

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CLERK OF COURTS



IN THE COURT OF COMMON PLEAS  
CRIMINAL DIVISION  
BROWN COUNTY, OHIO

STATE OF OHIO : CASE NOS. 2010-2049, 2010-2050  
 : 2010-2051, 2010-2052 &  
 Plaintiff, : 2010-2053  
  
 vs. : (JUDGE SCOTT T. GUSWEILER)  
  
 DAVID GRAHAM : JUDGMENT ENTRY  
 JAMES LEHMAN :  
 MICHELE WARD-TACKETT :  
 TODD HAINES :  
 RANDY MILLER :  
  
 Defendants. :

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This matter came before the Court this 2<sup>nd</sup> day of September 2010 for hearing on Defendant David Graham's Motion to Dismiss filed April 29, 2010, his Motion to Suppress filed May 4, 2010 and Motion for In-Camera Inspection of Grand Jury Testimony filed May 5, 2010; Defendant Michele Ward-Tackett's Motion to Suppress/Dismiss filed May 13, 2010 and Motion for In-Camera Inspection of Grand Jury Testimony filed May 20, 2010; Defendant Todd Haines' Motion to Suppress/Dismiss filed May 17, 2010; Defendant Randy Miller's Motion to Suppress, Motion to Dismiss and Motion for In-Camera Inspection of Grand Jury Testimony filed May 12, 2010; and Defendant James Lehman's Motion to Suppress/Dismiss with Supporting Memorandum, his Motion for In-Camera Inspection of

429/338

A-1

Grand Jury Testimony filed May 6, 2010 and Motion for *Kastigar* Hearing filed May 12, 2010, with counsel for all defendants present and the State of Ohio present. These cases were consolidated for purposes of hearing on these motions and trial. The purpose of this hearing was to determine the applicability of "*Garrity* Rights," and the case law interpreting same, to the respective defendants, all of whom are public employees at the Ohio Department of Natural Resources ("ODNR") who were questioned by the Ohio Inspector General's Office ("OIG") and ultimately indicted by the Brown County Prosecutor's Office.

The testimony established that the OIG, created by O.R.C. § 121.42, is an independent investigative office with the authority to perform investigations on all executive agencies. Mr. Schropp characterized the OIG as somewhere between law enforcement and agency internal affairs. O.R.C. § 121.45 establishes a duty on the part of state agencies and their employees to cooperate in any investigation conducted by the OIG. The OIG does not have the ability to discharge or discipline an employee of another state agency. During the interview process, the employee is free to leave or terminate the interview at any time. At the conclusion of an investigation, the OIG makes recommendations to the agency to remediate any problems or if criminal wrongdoing, referral is made to law enforcement or ethics commission, though in this case the report was submitted to the Brown County Prosecutor's Office. The testimony established that, while O.R.C. § 9.84 requires advising any witness of an agency investigation of their right to counsel, the OIG did not comply with O.R.C. § 9.84 during this investigation. Mr. Schropp was of the opinion O.R.C. § 9.84 did not apply to OIG. Ron Nichols was unaware of the existence of the statute.

The testimony revealed the defendants had been with the ODNR, Wildlife Division of ODNR, or state employee for many years. Brett Benack, Labor Relations Administrator for ODNR, testified if an employee refused to answer questions in an investigation after being apprised of "*Garrity Rights*," the employee could be disciplined for insubordination anywhere from suspension to removal.

Further, each employee, including the defendants, would be aware of the ODNR and Division of Wildlife discipline policies. The higher the authority of the employee the higher that is expected of them, and the higher the discipline should they violate ODNR policies or the law. Further, the defendants did receive State's Exhibit 20 in relation to the OIG investigation from ODNR that the defendants were the subject of an administrative investigation styled "Notice of Investigatory Interview." This notice informed the defendants that failure to answer questions completely and accurately may lead to disciplinary action up to and including termination. This was given prior to the date of the OIG Report dated March 15, 2010. Mr. Benack also testified the defendants would know that by law, the defendants must answer questions, and, that failure to follow an order to cooperate or failure to follow state law could subject the defendant to dismissal.

Ron Nichols testified that on September 30, 2009 the OIG received a complaint from a confidential source regarding Alan Wright. The OIG sent a letter to ODNR requesting they perform an investigation and send the results back to the OIG. ODNR complied and sent the results, which did not satisfy the OIG due to not addressing the criminality of Wright's conduct. The OIG then initiated an investigation as to the criminality of Wright's conduct. Mr. Nichols interviewed all the named defendants, all of whom are now facing criminal charges. Mr. Nichols did not threaten the defendants, restrain the movement of defendants,

did not threaten job loss, nor advise the defendants of the right to counsel. Mr. Nichols administered an oath that included an understanding that answering untruthfully could subject the defendant to criminal sanctioning. Mr. Nichols repeatedly testified that at the time of the interviews of each defendant he did not believe the defendants had committed a crime. As incredulous as this seems to the Court, Mr. Nichols testified only after all the interviews were concluded did he believe the defendants had committed crimes; specifically the defendants collectively failed to follow ODNR Policy, the executive order of the governor and failure to report a violation of law by Defendant Wright. Mr. Nichols then sent the report to the Brown County Prosecutor's Office.

At the conclusion of the evidence, the Court admitted State's Exhibit 1 -21 and defendant's Exhibit A - I into evidence, which the Court has reviewed.

In *Garrity v. New Jersey* (1967) 385 U.S. 493, the Supreme Court of the United States held the protection against self-incrimination prohibits use in later criminal proceedings of statements made under threat of removal from office. *Kastigar v. United States* (1972) 406 U.S. 441 clarified "*Garrity*" and held that in a criminal proceeding against a public employee, the state may not make direct or derivative use of an employee's statement that was compelled under threat of the employee's removal from office. These cases were applied by the Ohio Supreme Court in *State v. Jackson* (2010) 125 Ohio St.3d 218, 2010-Ohio-621, and by the Twelfth Appellate District in *State v. Kirk* (3/29/10 Ohio CA 12) CA2009-09-015, 2010-Ohio-1287. To demonstrate compulsion under *Garrity* a public employee must show (1) that he subjectively believed his statements were compelled by the threat of job loss, and, (2) the belief was objectively reasonable. *United States v. Fredrick* (1988) 842 F.2d

382. The absence of "*Garrity*" warnings does not indicate a lack of reasonableness. See, *Fredrick* at 395-6.

In this case, the defendants were state employees of long standing. The law clearly required the defendants to cooperate in the OIG investigation pursuant to O.R.C. § 121.45. The defendants were further issued State's Exhibit 20, which placed the defendants on notice that there was an investigation and that failure to answer questions completely and accurately may lead to disciplinary action up to and including termination.

Despite Mr. Nichols testimony, it is clear from the tenor of all the defendants' interviews that OIG was investigating who decided to handle Defendant Wrights' transgressions administratively as opposed to criminally. It seems equally clear that Mr. Nichols did not give "*Garrity*" because he feared that would interfere with subsequent criminal charges as he noted in one of the interviews. Whether at the time of the interviews Mr. Nichols thought the defendants had committed the crime is not the issue.

The defendants knew by law they had to cooperate. The defendants were told by State's Exhibit 20 they had to answer fully and truthfully or risk disciplinary action up to and including termination. The law in the State of Ohio requires them to cooperate under O.R.C. § 121.45. Mr. Benack made clear the defendants knew ODNR Policies and that not cooperating or following state law could result in the defendants' dismissal. That is the essence of "*Garrity*." It is evident that defendants believed their statements were compelled by threat of job loss and this belief was objectively reasonable.

The State has argued public policy considerations and that the Court on that basis should overrule defendants' motions. The constitutional rights of these defendants and all citizens of the United States trump public policy 100% of the time.

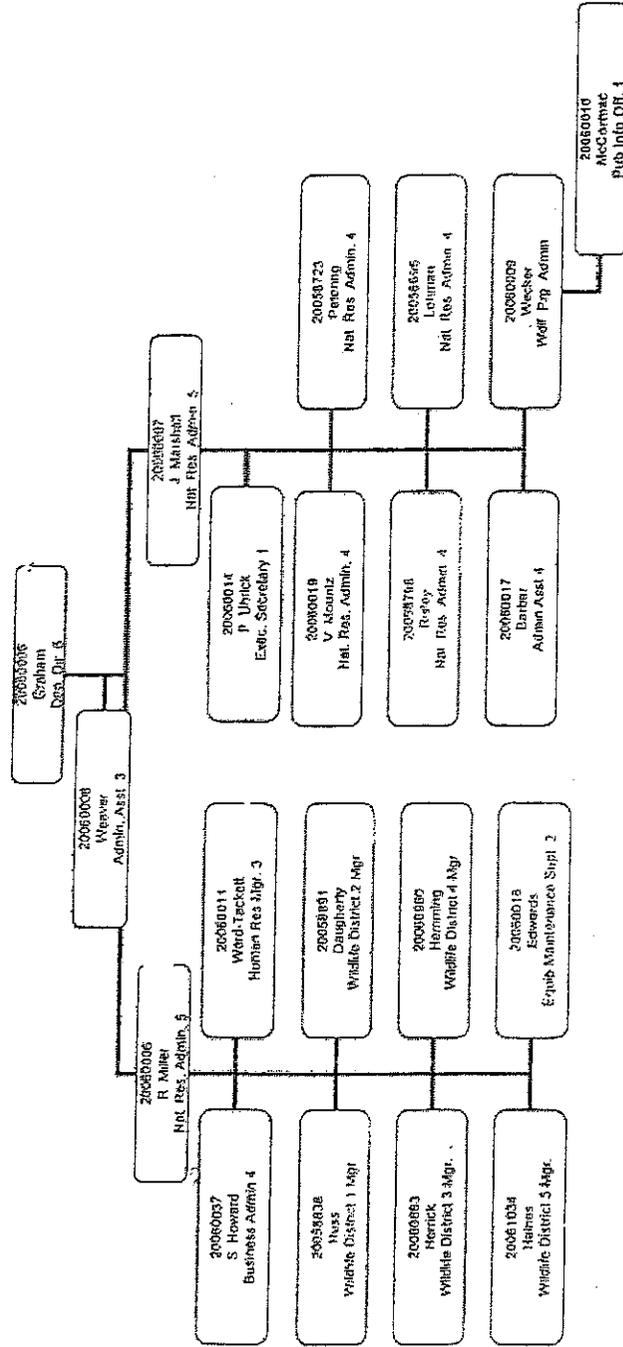




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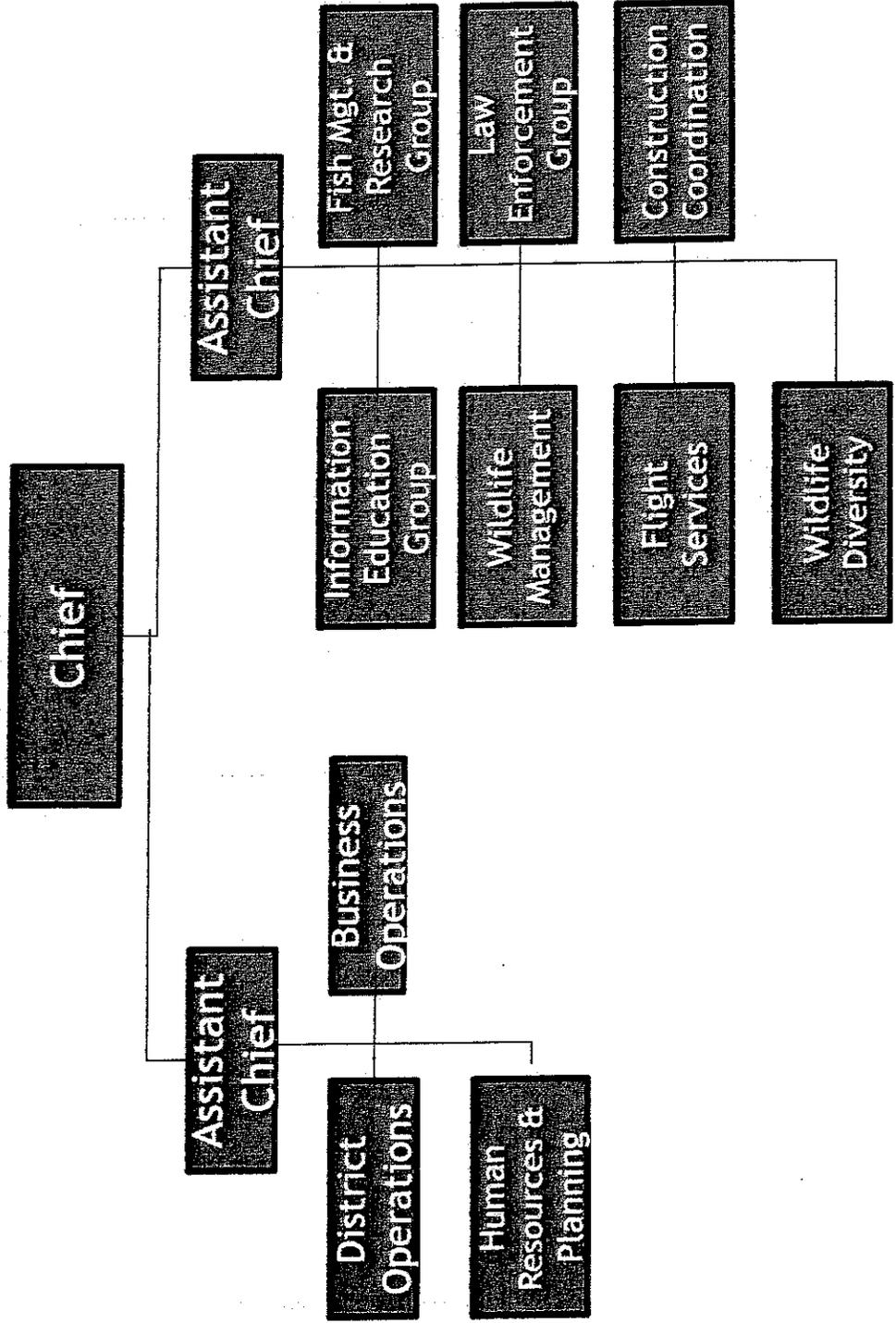
# ADMINISTRATION



March 31, 2009



# Division of Wildlife Ohio Department of Natural Resources Table of Organization



## DISCIPLINARY POLICY

Jobs

Benefits **Effective** April 1, 2010Education **Purpose** To outline general guidelines regarding disciplinary action taken against exempt and non-exempt employees.

Policy Manual

**Authority** ORC 124.34  
 OAC 123:1-31-01, et seq.  
 OCSEA Article 24  
 FOP Article 19

Forms

State HR Links

HR Home **Reference** State Personnel Board of Review  
 OAC 124  
 OCSEA Article 25  
 FOP Article 20  
 Minimum Fitness Standards Directive  
 Suspected Illegal Activity Policy

**Resource** Department labor relations officers, Division/Office personnel coordinators

## GENERAL

Employees of the Ohio Department of Natural Resources (ODNR) should maintain high standards of behavior, conduct, and work performance befitting the trust and responsibility imposed on them as public servants. Employees who fail to abide by standards established herein may be subject to appropriate disciplinary action initiated in accordance with ORC Section 124.34, Department of Natural Resources policies, the Collective Bargaining Agreements or any other appropriate procedures governing discipline. When implementing discipline as corrective action, each ODNR Division/Office shall undertake disciplinary measures for the purpose of correcting an offending employee's inappropriate conduct.

Conviction of a felony is a separate basis for reduction in pay or position, suspending or removing an employee, even if the employee has already been reduced in pay or position, suspended or removed for the same conduct that is the basis of the felony.

It is the intent of this policy to refer to all Departmental/Divisional/Office policies, procedures, and directives when using the generic term "policy".

## RESPONSIBILITIES

Supervisors are responsible for the appropriate and consistent application of the work rules, policies, procedures and directives of the Department and/or laws of the State of Ohio. Supervisors are also responsible for initiating the request for disciplinary action as soon as they are aware of a potential situation.

Employees are responsible for complying with and adhering to all work rules, policies, procedures and directives of the Department and/or laws of the State of Ohio. Employees are expected to conduct themselves in a manner both on and off duty that does not adversely affect the ability of the employee to perform the duties of their position. (i.e. Nexus). Illegal conduct on the part of any employee, whether on or off duty, is not only unlawful, but reflects poorly on the integrity of the Department and betrays public trust.

In the event any ODNR employee is convicted of any felony the employee shall within ten (10) days, notify the ODNR Labor Relations Office. Failure to notify the Labor Relations Office may subject the employee to discipline up to and including removal.

## FORMS OF DISCIPLINE

**Reprimands**

Oral Reprimand - Memorandum to the employee with a copy to the Labor Relations Office and corresponding Union (if appropriate) documenting the nature of the oral admonishment. The memorandum should include the time, date and nature of the violation in addition to the proper course of behavior and future consequences if the behavior is not corrected.

Written Reprimand - Memorandum to the employee with a copy to the Labor Relations Office and corresponding Union (if appropriate) documenting the nature of the written admonishment. The memorandum should include the time, date and nature of the violation in addition to the proper course of behavior and future consequences if the behavior is not corrected.

**Suspensions**

Suspension - Loss of scheduled work day without pay.

Working Suspension - Used in lieu of suspension for any violation covered by this policy. A working suspension possesses the same effect as a suspension without pay for purposes of progressive discipline; however, the employee is required to report to work as normally scheduled and is paid for all hours worked.

Fine (five days or less) -

- EXEMPT/FOP-Used in lieu of a suspension for any violation covered by the policy. Fines are calculated according to the guidelines established by the Ohio Department of Administrative Services and promulgated by the Office of Collective Bargaining.
- OCSEA- Utilized per A/S 24.02 of the Collective Bargaining Agreement

Leave Reduction - Used in lieu of suspension for any violation covered by this policy. Rather than have the employee serve the suspension or have a fine deducted, the employer may offer the employee the option of utilizing his/her accrued personal, vacation and/or compensatory leave hours.

**Reduction/Demotion/Removal**

Reduction of one step - An employee may receive a step reduction as a form of progressive discipline. This form of discipline shall only be imposed as an alternative to termination and shall not interfere with the employee's normal step anniversary.

Demotion - Movement of an employee from one position to a vacant position which is assigned to a different classification and a lower pay range or lower salary where pay ranges do not exist.

Removal - Involuntary termination of employment from ODNR.

**DISCIPLINARY GUIDELINES**

Disciplinary actions should be imposed with the intent of giving the employee the opportunity to correct his/her behavior. If such correction does not occur, the level of discipline should become more severe. Certain offenses, by their nature, may warrant more severe disciplinary action up to and including removal, irrespective of issuance of prior discipline.

The following list of offenses and their penalties is a guideline. Other factors considered in applying the appropriate penalty for an infraction include but are not limited to the severity of the offense, the employee's disciplinary record and mitigating or aggravating circumstances. For progressive discipline purposes, the infraction/discipline does not require an offending employee violate the same/similar rule infraction except as noted below. This list of offenses and their penalties is merely illustrative and is not meant to be all inclusive. The form of discipline listed with these offenses only provides a suggested range of appropriate action. Other forms of discipline may be utilized if deemed more appropriate.

Note: The ODNR disciplinary guidelines establish Performance/Behavior Based offenses for both non-commissioned and commissioned staff, and Weapons Qualifications offenses for commissioned staff only. Violations of these two sections of the policy shall be treated separately for the purposes of progressive discipline until active discipline reaches three or more days for either section. Thereupon, both sections shall be considered as one for purposes of progressive discipline.

**Performance/Behavior-Based Violations**

A.	Insubordination	1st Offense	2nd Offense	3rd Offense	4th Offense
	1. Interfering with, failing to cooperate with, or lying during an official investigation or inquiry.	Suspension-Removal	Removal		
	2. Willful disobedience of a direct order by a superior.	Suspension-Removal	Removal		
	3. Failure to follow the written policies of the Director/Division/Office.	Oral-Suspension	Suspension - Removal	Removal	
B.	Dishonesty	1st Offense	2nd Offense	3rd Offense	4th Offense
	1. Dishonesty.	Written-Removal	Removal		
	2. Willfully falsifying or removing any official document.	Suspension-Removal	Removal		
	3. Intentional misuse of federal or state funds.	Suspension-Removal	Removal		
	4. Accepting bribes in course of carrying out assigned duties.	Removal			
	5. Theft.	Removal			
C.	Neglect of Duty	1st Offense	2nd Offense	3rd Offense	4th Offense
	1. Neglect of Duty-Minor.	Oral-Suspension	Suspension	Suspension-Removal	Removal
	2. Neglect of Duty-Major-Endangers life, property or public safety.	Suspension-Removal	Removal		

3. Sleeping on duty.		Written-Suspension	Suspension	Removal	
4. Exercising poor judgment.		Written-Suspension	Suspension	Suspension-Removal	Removal
5. Failure to perform the duties of the position or perform at sub-standard levels. (e.g. continue to not meet performance standards)		Written-Removal	Suspension-Removal	Removal	
6. Reporting to work under the influence of any intoxicant (alcohol or illegal drug), other than required for medical reasons.		Suspension-Removal	Removal		
7. Failure to pass an alcohol or drug test.		Removal			
8. Commission of acts that impair or compromise the ability to carry out his/her duties as a public employee effectively, (e.g. allowing licensure to expire, be suspended or revoked; failing to obtain or maintain certification licenses, etc.).		Written-Removal	Suspension-Removal	Removal	
9. Failure of supervisor to appropriately manage employee(s) or enforce work rules.		Written-Removal	Suspension-Removal	Removal	
D. Failure of Good Behavior		1st Offense	2nd Offense	3rd Offense	4th Offense
1. Failure of good behavior.		Oral-Removal	Suspension-Removal	Removal	
2. Engage in disruptive or abusive acts/language toward an employee or member of the general public.		Oral-Suspension	Suspension-Removal	Removal	
3. Acts of discriminatory or offensive conduct towards any individual based upon their protected status.		Written-Removal	Suspension-Removal	Removal	
4. Misuse of and/or carelessness with state property and equipment. (e.g. phones, fax machines, keys, internet service, installation of software)		Oral-Removal	Suspension-Removal	Suspension-Removal	Removal
5. Unauthorized use of a state vehicle.		Written-Suspension	Suspension-Removal	Removal	
6. Misuse of state vehicle including violation of traffic code.		Oral-Suspension	Suspension-Removal	Suspension-Removal	Removal
7. Immoral or indecent conduct, or any act that brings discredit to the employer.		Written-Removal	Suspension-Removal	Removal	
8. Engaging in political activities as prohibited by Ohio Revised code 124.57.		Suspension-Removal	Removal		
9. Strike or threaten physical harm to another employee or the public or commit any act that constitutes workplace violence.		Suspension-Removal	Removal		
10. Deliberate destruction, damage and/or theft of state property, property of visitors to department facilities or property of another employee during working hours.	Minor	Suspension-Removal	Removal		
	Major	Removal			
11. Participation in a work stoppage, strike, sit out, or any other activity that would interfere with the operation of a department facility, installation or program.		Suspension-Removal	Removal		
12. Participation in an illegal strike (non-exempt employees only)		Removal			

	13. Any felony conviction.	Suspension-Removal			
	14. Violation of Ohio Revised Code Section 124.34.	Discipline shall be commensurate with the offense.			
	15. Post or display offensive, abusive or obscene material.	Oral-Suspension	Suspension-Removal	Removal	
	16. Engage in unauthorized soliciting or collection of money or circulation of petitions while on the job or on State property.	Oral-Suspension	Written-Removal	Suspension-Removal	Removal
	17. Engage in employment (including self-employment) that may constitute a conflict of interest.	Suspension-Removal	Removal		
	18. Violation of Ohio Ethics Laws and related statutes ORC 102 and 2921.	Suspension-Removal	Removal		
	19. Intentional misuse or disclosure of confidential information or material.	Written-Removal	Removal		
E.	Attendance	1st Offense	2nd Offense	3rd Offense	4th Offense
	1. Absence without official leave (AWOL)				
	a. Less than a day.	Written	Suspension	Removal	
	b. One day to less than four days	Suspension	Suspension-Removal	Removal	
	c. Four (4) days or more.	Removal			
	2. Unexcused tardiness (over four (4) times in a ninety (90) day period.	Oral-Written	Written-Suspension	Suspension	Removal
	3. Misuse of approved leave.	Oral-Removal	Suspension-Removal	Removal	
	4. Failure to return from an approved leave of absence.	Suspension-Removal	Removal		
	5. Extending a break or lunch period without authorization.	Oral-Written	Written-Suspension	Suspension	Removal
	6. Fail to timely notify supervisor or designee of absence or tardiness (one-half hour after start time).	Oral-Written	Written-Suspension	Suspension	Removal

Commissioned Officers Only (Including plain clothes officers)

A.	Law Enforcement	1st Offense	2nd Offense	3rd Offense	4th Offense
	1. Violation of Uniformed Officer's Code of Conduct	Oral-Removal	Suspension-Removal	Removal	
	2. Leaving firearm unattended	Written-Suspension	Removal		
	3. Loss of firearm through negligence—Includes loss of firearm used specifically for training purposes	Suspension-Removal	Removal		
	4. Failure to properly safeguard firearm while not on duty, causing injury or death to another person	Suspension-Removal	Removal		
	5. Possession of unauthorized weapons in addition to or in the place of authorized weapons while on duty	Suspension	Suspension-Removal	Removal	
	6. Use of unauthorized ammunition	Written-Suspension	Suspension-Removal	Removal	

7. Failure to report removal of firearm from holster	Oral-Suspension	Suspension-Removal	Removal	
8. Removal of firearm from holster without just cause	Suspension-Removal	Removal		
9. Failure to report discharge of firearm for any reason except qualifications firing practice or competition	Oral-Written	Suspension	Removal	
10. Discharge weapon without just cause	Suspension-Removal	Suspension-Removal	Removal	
11. Firearms negligence	Written-Removal	Suspension-Removal	Removal	
12. Failure to meet the requirements of the ODNR Minimum Fitness Standard Directive	Removal			

## Weapons Qualification Violations

B. Weapons Qualification	1st Offense	2nd Offense	3rd Offense	4th Offense	5th Offense
1. Failure to qualify with weapon	Verbal				
2. Failure to qualify with weapon after authorized retrain/retest program		Written	3 day suspension	5 day suspension	Removal

Note: Commissioned officers who fail to qualify pursuant to the DNR Firearms Qualifications Course Directive shall receive discipline in accordance with these guidelines unless they have active discipline of a 3-day suspension, fine, or leave reduction or more, as noted above.

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Welcome to Disciplinary Policy

Offices

Help for HR Professionals

DISCIPLINARY POLICY- PROCEDURE

Jobs	
Benefits	<b>Effective</b> February 1, 2008
Education	<b>Purpose</b> To outline general guidelines regarding disciplinary action taken against exempt and non-exempt employees.
Policy Manual	<b>Authority</b> ORC 124.34 OAC 123:1-31-01, et seq. OCSEA Article 24 FOP Article 19
Forms	
State HR Links	
HR Home	<b>Reference</b> State Personnel Board of Review OAC 124 OCSEA Article 25 FOP Article 20 Minimum Fitness Standards Directive

**Resource** Department labor relations officers, Division/Office personnel coordinators

GENERAL

Employees of the Ohio Department of Natural Resources (ODNR) should maintain high standards of behavior, conduct, and work performance befitting the trust and responsibility imposed on them as public servants. Employees who fail to abide by standards established herein may be subject to appropriate disciplinary action initiated in accordance with ORC Section 124.34, Department of Natural Resources policies, the Collective Bargaining Agreements or any other appropriate procedures governing discipline. When implementing discipline as corrective action, each ODNR Division/Office shall undertake disciplinary measures for the purpose of correcting an offending employee's inappropriate conduct.

Conviction of a felony is a separate basis for reduction in pay or position, suspending or removing an employee, even if the employee has already been reduced in pay or position, suspended or removed for the same conduct that is the basis of the felony

RESPONSIBILITIES

Supervisors are responsible for the appropriate and consistent application of the work rules, policies, procedures and directives of the Department and/or laws of the State of Ohio. Supervisors are also responsible for initiating the request for disciplinary action as soon as they are aware of a potential situation.

Employees are responsible for complying with and adhering to all work rules, policies, procedures and directives of the Department and/or laws of the State of Ohio. Employees are expected to conduct themselves in a manner both on and off duty that does not adversely affect the ability of the employee to perform the duties of their position. (I.e. Nexus). Illegal conduct on the part of any employee, whether on or off duty, is not only unlawful, but reflects poorly on the integrity of the Department and betrays public trust.

In the event any ODNR employee is convicted of any felony the employee shall within ten (10) days, notify the ODNR Labor Relations Office. Failure to notify the Labor Relations Office may subject the employee to discipline up to and including removal.

FORMS OF DISCIPLINE

Reprimands

Oral Reprimand - Memorandum to the employee with a copy to the Labor Relations Office and corresponding Union (if appropriate) documenting the nature of the oral admonishment. The memorandum should include the time, date and nature of the violation in addition to the proper course of behavior and future consequences if the behavior is not corrected.

Written Reprimand - Memorandum to the employee with a copy to the Labor Relations Office and corresponding Union (if appropriate) documenting the nature of the written admonishment. The memorandum should include the time, date and nature of the violation in addition to the proper course of behavior and future consequences if the behavior is not corrected.

Suspensions

Suspension - Loss of scheduled work day without pay.

Working Suspension - Used in lieu of suspension for any violation covered by this policy. A working suspension possesses the same effect as a suspension without pay for purposes of progressive discipline; however, the employee is required to report to work as normally scheduled and is paid for all hours worked.

Fine (five days or less) - Used in lieu of a suspension for any violation covered by the policy. Fines are calculated according to the guidelines established by the Ohio Department of Administrative Services and promulgated by the Office of Collective Bargaining.

Leave Reduction - Used in lieu of suspension for any violation covered by this policy. Rather than have the employee serve the suspension or have a fine deducted, the

employer may offer the employee the option of utilizing his/her accrued personal, vacation and/or compensatory leave hours.

**Reduction/Demotion/Removal**

**Reduction of one step** - An employee may receive a step reduction as a form of progressive discipline. This form of discipline shall only be imposed as an alternative to termination and shall not interfere with the employee's normal step anniversary.

**Demotion** - Movement of an employee from one position to a vacant position which is assigned to a different classification and a lower pay range or lower salary where pay ranges do not exist.

**Removal** - Involuntary termination of employment from ODNR.

**DISCIPLINARY GUIDELINES**

Disciplinary actions should be imposed with the intent of giving the employee the opportunity to correct his/her behavior. If such correction does not occur, the level of discipline should become more severe. Certain offenses, by their nature, may warrant more severe disciplinary action up to and including removal, irrespective of issuance of prior discipline.

The following list of offenses and their penalties is a guideline. Other factors considered in applying the appropriate penalty for an infraction include but are not limited to the severity of the offense, the employee's disciplinary record and mitigating or aggravating circumstances. For progressive discipline purposes, the infraction/discipline does not require an offending employee violate the same/similar rule infraction. This list of offenses and their penalties is merely illustrative and is not meant to be all inclusive. The form of discipline listed with these offenses only provides a suggested range of appropriate action. Other forms of discipline may be utilized if deemed more appropriate.

A.	Insubordination	1st Offense	2nd Offense	3rd Offense	4th Offense
	1. Refusal to carry out a work assignment.	Oral-Suspension	Suspension	Removal	
	2. Willful disobedience of a direct order by a superior.	Suspension-Removal	Removal		
	3. Failure to follow the written policies of the Director/Division/Office.	Oral-Suspension	Suspension - Removal	Removal	
B.	Dishonesty	1st Offense	2nd Offense	3rd Offense	4th Offense
	1. Dishonesty.	Suspension-Removal	Removal		
	2. Willfully falsifying any official document.	Written-Removal	Removal		
	3. Intentional misuse of federal or state funds.	Suspension-Removal	Removal		
	4. Accepting bribes in course of carrying out assigned duties.	Removal			
	5. Theft.	Removal			
C.	Neglect of Duty	1st Offense	2nd Offense	3rd Offense	4th Offense
	1. Neglect of Duty-Minor.	Oral-Written	Suspension	Suspension-Removal	Removal
	2. Neglect of Duty-Major-Endangers life, property or public safety.	Suspension-Removal	Removal		
	3. Sleeping on duty.	Written-Suspension	Suspension	Removal	
	4. Exercising poor judgment.	Written-Suspension	Suspension	Suspension-Removal	Removal
	5. Failure to perform the duties of the position or perform at sub-standard levels. (e.g. continue to not meet performance standards)	Written-Removal	Suspension-Removal	Removal	
	6. Reporting to work under the influence of any intoxicant (alcohol or illegal drug), other than required for medical reasons.	Suspension-Removal	Removal		
	7. Failure to pass an alcohol or drug test.	Removal			
	8. Commission of acts that impair or compromise the ability to carry out his/her duties as a public employee effectively, (e.g.	Written-Removal	Suspension-Removal	Removal	

allowing licensure to expire, be suspended or revoked; failing to obtain or renew certification licenses, etc.).					
9. Failure of supervisor to discipline employee (s) as provided in this policy.		Oral-Removal	Suspension-Removal	Removal	
D. Failure of Good Behavior		1st Offense	2nd Offense	3rd Offense	4th Offense
1. Failure of good behavior.		Oral-Removal	Suspension-Removal	Removal	
2. Engage in disruptive or abusive acts/language toward an employee or member of the general public.		Oral-Suspension	Suspension-Removal	Removal	
3. Intentional acts of discrimination or insult on the basis of race, color, sex (including sexual harassment) age, religion, national origin, sexual orientation or disability.		Oral-Suspension	Suspension-Removal	Removal	
4. Misuse of and/or carelessness with state property and equipment. (e.g. phones, fax machines, keys, internet service, installation of software)		Oral-Removal	Suspension-Removal	Suspension-Removal	Removal
5. Unauthorized use of a state vehicle.		Written-Suspension	Suspension-Removal	Removal	
6. Misuse of state vehicle including violation of traffic code.		Oral-Suspension	Suspension-Removal	Suspension-Removal	Removal
7. Immoral or indecent conduct.		Written-Removal	Suspension-Removal	Removal	
8. Engaging in political activities as prohibited by Ohio Revised code 124.57.		Suspension-Removal	Removal		
9. Strike or threaten physical harm to another employee or the public or commit any act that constitutes workplace violence.		Suspension-Removal	Removal		
10. Leave work area without permission of supervisor.		Oral-Written	Written-Suspension	Suspension	Removal
11. Deliberate destruction, damage and/or theft of state property, property of visitors to department facilities or property of another employee during working hours.		Minor	Suspension-Removal	Removal	
		Major	Removal		
12. Participation in a work stoppage, strike, sit out, or any other activity that would interfere with the operation of a department facility, installation or program.		Suspension-Removal	Removal		
13. Participation in an illegal strike (non-exempt employees only)		Removal			
14. Any felony conviction.		Suspension-Removal			
15. Violation of Ohio Revised Code Section 124.34.		Discipline shall be commensurate with the offense.			
16. Post or display offensive, abusive or obscene material.		Oral-Suspension	Suspension-Removal	Removal	
17. Engage in unauthorized soliciting or collection of money or circulation of petitions while on the job or on State property.		Oral-Suspension	Written-Removal	Suspension-Removal	Removal
18. Engage in employment (including self-employment) that may constitute a conflict of		Suspension-Removal	Removal		

	interest.				
	19. Violation of Ohio Ethics Laws and related statutes ORC 102 and 2921.	Suspension-Removal	Removal		
	20. Intentional misuse or disclosure of confidential information or material.	Written-Removal	Removal		
E.	Attendance	1st Offense	2nd Offense	3rd Offense	4th Offense
	1. Absence without official leave (AWOL)				
	a. Less than a day.	Oral	Suspension	Removal	
	b. Between one day & three (3) days	Suspension	Suspension-Removal	Removal	
	c. Four (4) days or more.	Removal			
	2. Unexcused tardiness (over four (4) times in a ninety (90) day period.	Oral-Written	Written-Suspension	Suspension	Removal
	3. Misuse of approved leave.	Oral-Removal	Suspension-Removal	Removal	
	4. Failure to return from an approved leave of absence.	Suspension-Removal	Removal		
	5. Leave work area or extend a break or lunch period without authorization.	Oral-Written	Written-Suspension	Suspension	Removal
	6. Fail to timely notify supervisor or designee of absence or tardiness (one-half hour after start time).	Oral-Written	Written-Suspension	Suspension	Removal

Commissioned Officers Only (Including plain clothes officers)

A.	Law Enforcement	1st Offense	2nd Offense	3rd Offense	4th Offense
	1. Violation of Uniformed Officer's Code of Conduct	Oral-Removal	Suspension-Removal	Removal	
	2. Leaving firearm unattended	Written-Suspension	Removal		
	3. Loss of firearm through negligence—Includes loss of firearm used specifically for training purposes	Suspension-Removal	Removal		
	4. Failure to properly safeguard firearm while not on duty, causing injury or death to another person	Suspension-Removal	Removal		
	5. Possession of unauthorized weapons in addition to or in the place of authorized weapons while on duty	Suspension	Suspension-Removal	Removal	
	6. Use of unauthorized ammunition	Written-Suspension	Suspension-Removal	Removal	
	7. Failure to report removal of firearm from holster	Oral-Suspension	Suspension-Removal	Removal	
	8. Removal of firearm from holster without just cause	Suspension-Removal	Removal		
	9. Failure to report discharge of firearm for any reason except qualifications firing practice or competition	Oral-Written	Suspension	Removal	
	10. Discharge weapon without just cause	Suspension-Removal	Suspension-Removal	Removal	
	11. Failure to qualify with firearm after authorized retrain/retest program	Oral-Written	Suspension	Removal	

12. Firearms negligence	Written-Removal	Suspension-Removal	Removal	
13. Failure to meet the requirements of the ODNR Minimum Fitness Standard Directive	Removal			

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# OFFICE OF THE INSPECTOR GENERAL



## OATH

FILE ID NO. \_\_\_\_\_

Pursuant to O.R.C. 121.43, you are being administered the following oath to affirm your truthfulness about all information you are providing to the Office of the Inspector General.

**I SWEAR TO TELL THE WHOLE TRUTH AND NOTHING BUT THE TRUTH IN ALL MATTERS WE DISCUSS TODAY.**

I understand that by affirming my truthfulness under oath, I am subject to criminal sanctions if I provide false information.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Inspector General Deputy Inspector General

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Time



State of Ohio  
**Office of the Inspector General**

THOMAS P. CHARLES, Inspector General

November 3, 2009

Sean D. Logan, Director  
Ohio Department of Natural Resources  
2045 Morse Road, Bldg. D-3  
Columbus, OH 43229-6693

**RE: IG File ID No. 2009340**

Dear Mr. Logan:

We have received a complaint alleging that an Ohio Department of Natural Resources employee, Ohio Wildlife Officer Allan Wright, assisted his nonresident friend, South Carolina Wildlife Officer Eric R. Vaughn, in obtaining a resident Ohio hunting license. The complainant asserted that Officer Wright permitted Mr. Vaughn to use his (Wright's) home address as his own.

We request you investigate these allegations and provide the Office of Inspector General with a copy of your investigation when it is completed.

If you have additional information or questions regarding this matter, please feel free to contact Deputy Inspector General Ron Nichols at 644.9110. Thank you for your assistance.

Sincerely,

Thomas P. Charles  
Inspector General

TPC/jac



## Ohio Department of Natural Resources

INSPECTOR GENERAL

TED STRICKLAND, GOVERNOR

SEAN D. LOGAN, DIRECTOR

2009 DEC 16 AM 10:13

December 10, 2009

Mr. Thomas Charles  
Inspector General  
Office of the Inspector General  
30 East Broad Street, Suite 2940  
Columbus, Ohio 43215

Re: IG File ID no. 2009340

Dear Mr. Charles:

We have received your letter of November 3, 2009 regarding File No. 2009340, accusations against ODNR Division of Wildlife Officer Allan Wright.

In July 2008, the Division of Wildlife (DOW) law enforcement supervisor, James Lehman received a similar accusation from the U.S. Fish and Wildlife Service regarding Officer Wright (letter enclosed). He assigned Paul Kurfis the DOW District 2 law enforcement supervisor to conduct an investigation into the accusations. The investigation is enclosed including the discipline taken by the Division.

Prior to these allegations, the chief of DOW circulated a March 14, 2008 memo reminding division employees who participate in out-of-state hunting, fishing and trapping activities of the Governor's Executive Order regarding ethics. They were instructed of the need to purchase out-of-state licenses and tags when participating in these activities. In addition, all local and state laws were to be adhered to (memo enclosed).

Subsequent to the investigation regarding Officer Wright, the chief again circulated a memo on October 1, 2008 (enclosed) not only reminding employees about purchasing non-resident licenses when hunting, fishing or trapping out-of-state, but added language that reiterated the requirement for out-of-state visitors to purchase out-of-state licenses and tags in Ohio.

Mr. Thomas Charles  
December 10, 2009  
Page 2

The enclosed documents including the full investigation and attachments along with the disciplinary action taken by the division should provide you with the information you are seeking. If you have any questions or need further clarification, please feel free to contact Deputy Director Tony Celebrezze at 614-265-6888. We look forward to your response.

Sincerely,



Sean D. Logan  
Director

Enclosures

SDL/ajc

STATE'S EXHIBIT

9

# OFFICE OF THE INSPECTOR GENERAL



## OATH

FILE ID NO. 2009340

Pursuant to O.R.C. 121.43, you are being administered the following oath to affirm your truthfulness about all information you are providing to the Office of the Inspector General.

**I SWEAR TO TELL THE WHOLE TRUTH AND NOTHING BUT THE TRUTH IN ALL MATTERS WE DISCUSS TODAY.**

I understand that by affirming my truthfulness under oath, I am subject to criminal sanctions if I provide false information.

  
\_\_\_\_\_  
Signature

  
\_\_\_\_\_  
Inspector General/Deputy Inspector General

\_\_\_\_\_  
Witness

2-1-10                      1:50 PM  
Date                                      Time

A-24

STATE'S EXHIBIT

10

OFFICE OF THE INSPECTOR GENERAL



OATH

FILE ID NO. 2009340

Pursuant to O.R.C. 121.43, you are being administered the following oath to affirm your truthfulness about all information you are providing to the Office of the Inspector General.

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I understand that by affirming my truthfulness under oath, I am subject to criminal sanctions if I provide false information.

Randy A. Mully 12/29/09 1:27pm  
Signature

Ron A. Hill  
Inspector General/Deputy Inspector General

\_\_\_\_\_  
Witness

12-29-09 1:27 PM  
Date Time

**STATE'S EXHIBIT**

11

# OFFICE OF THE INSPECTOR GENERAL



## OATH

FILE ID NO. 2009340

Pursuant to O.R.C. 121.43, you are being administered the following oath to affirm your truthfulness about all information you are providing to the Office of the Inspector General.

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I understand that by affirming my truthfulness under oath, I am subject to criminal sanctions if I provide false information.

Signature

Inspector General/Deputy Inspector General

Witness

12-22-09

Date

0912

Time

**STATE'S EXHIBIT**

1a

**OFFICE OF THE INSPECTOR GENERAL**



**OATH**

FILE ID NO. 2009340

Pursuant to O.R.C. 121.43, you are being administered the following oath to affirm your truthfulness about all information you are providing to the Office of the Inspector General.

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I understand that by affirming my truthfulness under oath, I am subject to criminal sanctions if I provide false information.

*Todd Hanner*

Signature

*[Signature]*

Inspector General/Deputy Inspector General

Witness

1-27-10  
Date

1052  
Time

**STATE'S EXHIBIT**

13

**OFFICE OF THE INSPECTOR GENERAL**



**OATH**

FILE ID NO. 2009340

Pursuant to O.R.C. 121.43, you are being administered the following oath to affirm your truthfulness about all information you are providing to the Office of the Inspector General.

**I SWEAR TO TELL THE WHOLE TRUTH AND NOTHING BUT THE TRUTH IN ALL MATTERS WE DISCUSS TODAY.**

I understand that by affirming my truthfulness under oath, I am subject to criminal sanctions if I provide false information.

Michael B. Wood-Johnson  
Signature

Ron All  
Inspector General/Deputy Inspector General

\_\_\_\_\_  
Witness

1-19-10                      1:00PM  
Date                                      Time



# Ohio Department of Natural Resources Notice of Investigatory Interview

**STATE'S  
EXHIBIT**

20

To: \_\_\_\_\_  
Name/Title Division/Office

From: \_\_\_\_\_  
Name/Title Division/Office

Date: \_\_\_\_\_

You are being advised that you are the  subject of /  witness in an administrative investigation. This administrative investigation is being conducted as a result of the following:

The investigatory interview will be held with you at \_\_\_\_\_  AM  PM on \_\_\_\_\_  
Time  
\_\_\_\_\_ at \_\_\_\_\_  
Date Location

This interview is part of an official investigation and failure to answer questions, completely and accurately, may lead to disciplinary action up to and including termination. You are not to discuss the investigation with anyone except an authorized representative until you have been notified by your employer there has been a final disposition of this investigation. As the **subject** of an administrative investigation, bargaining unit employees have the right to a union representative present during questioning.

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# Ohio Department of Natural Resources Internal Investigation Warning

You are advised that you are being questioned as part of an official investigation by the Ohio Department of Natural Resources. You will be asked questions specifically directed and narrowly related to the performance of your official duties or fitness for duty. You are entitled to all rights and privileges guaranteed by the laws of the Constitution of the State of Ohio and the Constitution of the United States, including the right not to be compelled to incriminate yourself. Bargaining unit employees have the right to a union representative present during questioning.

Refusal to testify or to answer questions truthfully relating to the performance of your official duties or fitness for duty may subject you to departmental charges which could result in removal from your position. Any statements you provide cannot be used against you in any subsequent criminal proceeding. However, any statements you provide may be utilized in subsequent administrative or disciplinary actions.

I have read the above and understand my rights and responsibilities:

--	--	--

Printed Name of Interviewee

Signature of Interviewee

Date

--	--	--

Printed Name of Interviewer

Signature of Interviewer

Date

**COMPLAINT AGAINST DIVISION EMPLOYEE PROCEDURE**

This procedure is intended to serve as a guideline for employees of the Division of Wildlife and to clarify ground rules for the investigation of complaints made against Division employees. It also sets forth the steps that supervisors will take in order to see that such complaints are dealt with in a fair and equitable manner.

NOTE: This procedure does not supersede, abate, or rescind the laws of the state of Ohio, the rules of the Department of Administrative Services, or any labor contracts between the state of Ohio and recognized unions.

**Disciplinary Action**

Disciplinary action shall not be imposed upon an employee except for just cause. Any and all complaints will be investigated in order to determine if there is any validity to the charge before any necessary action is taken.

**Supervisory Intimidation**

Knowledge of an event giving rise to the imposition of discipline shall not be used to intimidate, harass, or coerce an employee. Any necessary discipline will be imposed quickly and fairly.

**Confidentiality**

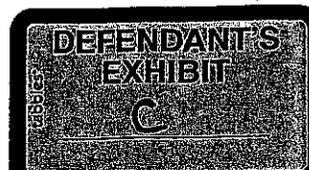
All matters related to the investigation of a complaint on an employee are confidential. Investigation documents and correspondence shall be sealed in envelopes and marked "Confidential." All discussions and interviews shall be conducted in offices with doors closed. Personnel who deal with the investigations or investigatory documents and correspondence are to keep any knowledge of these investigations in the strictest confidence.

FORM: 104 - Law Enforcement Investigation Report

**REFERENCES:**

- ODNR Labor Relations Policy No. 2
- Appropriate Labor Contracts

Division Employee	Action
<p>Situation</p> <p>Has witnessed or has personal knowledge of an illegal activity of a Division employee</p>	<p>Promptly notify the director of the Department.</p>
<p>Complaint received from person outside Division of Wildlife against a Division employee</p> <p>Special note: Oral complaints are not to be ignored but handled according to the situation. All such complaints must be discussed immediately with the next in command.</p>	<p>Advise complainant to put complaint in writing and sign it. Advise complainant to forward complaint to district manager or chief, Division of Wildlife, preferably in the above order. (All complaints are to be forwarded to the chief immediately regardless of who receives them.) Statement should include nature of complaint, time, date, place of infraction, and name of all persons involved, with addresses if known.</p>



District Manager/Lake Erie Enforcement Supervisor

Situation	Action
Written and signed complaint received	Review, assign exempt supervisor to investigate, and forward <u>immediately</u> to wildlife chief. In cases where an out-of-district investigation is warranted, send request to chief with justification.  Send letter to complainant acknowledging receipt of complaint.
Complaint received with instructions from wildlife chief or designee.	Assign the appropriate supervisor to conduct thorough, prompt investigation and report findings on Form 104. In cases where an out-of-district investigation is warranted, send request to chief with justification.
Receives the completed investigation from the investigating supervisor.	Forward two (2) copies of the completed investigation with attached cover memo which includes recommended disposition, be it disciplinary action or absolution, to wildlife chief.

Effective date: June 30, 1998

Investigating Supervisor

Situation	Action
Assigned to conduct investigation of Division employee based upon complaints made against the employee	Conduct the investigation immediately. Send correspondence to employee advising that he/she is the subject of a complaint and outline the nature of the complaint. Personally contact complainant when possible. During the investigation, keep supervisor informed of progress. Send completed report to district manager or Lake Erie enforcement supervisor of employee being investigated.

Wildlife Chief

Situation	Action
Complaint received from outside source	Review and discuss complaint with assistant chief and the appropriate administrators. If illegal activities of an employee are suspected (i.e., theft in office) the director or his/her designee must be notified immediately.
Complete investigation received (2 copies)	<p>If investigation is deemed necessary, give to assistant chief, who will forward complaint to district manager with instructions to investigate promptly.</p> <p>Review and discuss investigation results and the action to be taken with assistant chief, personnel administrator, and executive administrator of section where employee is assigned or district manager.</p> <p>Provide one copy to personnel administrator and one copy to Law Enforcement Group.</p>

Assistant Chief

Situation	Action
Complaint received from chief	Forward to district for investigation assignment and follow-up.
Receives completed investigation from district	Discuss with chief, appropriate administrator, and personnel administrator to determine appropriate discipline if deemed necessary. Forward to personnel administrator for action.

Personnel Administrator

Situation	Action
Completed complaint received from chief	Review and make a recommendation for appropriate disciplinary action or exoneration.  Prepare correspondence for chief/assistant chief's signature if supervisor is to issue reprimand.  Prepare correspondence for chief/assistant chief's signature to complainant and accused employee advising outcome.
Suspension or removal is recommended	Present evidence at pre-disciplinary hearing.

1. When an employee is to be interviewed or questioned concerning a complaint or allegation of misconduct, the employee shall be informed of, prior to the interview, the nature of the investigation and whether the employee is the subject of the investigation or a witness in the investigation. If the employee is the subject of investigation, the employee shall also be informed of each complaint or allegation against him or her. Administrative investigations involving Unit 2 members shall be pursuant to the appropriate labor contract.
2. Refusal by involved employee(s) to answer questions completely and accurately during an administrative investigation interview, will subject the involved employee(s) to disciplinary action, up to and including dismissal.