

On August 20, 2013, the Director filed a certificate of service certifying that his First Set of Requests for Admissions Directed to Respondent was served on Lorthridge's attorney on August 20, 2013. Lorthridge filed a certificate of service certifying that she served the Director with responses to the requests for admissions on October 28, 2013. Northridge did not seek leave to file her responses out of time.

On October 1, 2013, the Director filed a motion for summary decision ("the motion"). Our Regulation 1 CSR 15-3.446(6)¹ provides that we may decide this case without a hearing if the Director establishes facts that Lorthridge does not dispute and entitle the Director to a favorable decision.

In the motion, the Director argued that Lorthridge did not respond to the request for admissions. Under Supreme Court Rule 59.01, the failure to answer a request for admissions establishes the matters asserted in the request, and no further proof is required.² Such a deemed admission can establish any fact or any application of law to fact.³ Section 536.073⁴ and our Regulation 1 CSR 15-3.420(1) apply that rule to this case.

On October 16, 2013, Lorthridge filed an unopposed motion for extension of time to respond to the motion, which we granted by order dated October 17, 2013. On October 29, 2013, Lorthridge filed her response to the motion. She argues that she did not act "with criminal knowledge or intent and/or moral turpitude."

Because Lorthridge failed to file a timely answer to the complaint, without regard to the twenty additional days she requested, we may order that Lorthridge is deemed to have admitted

¹ 1 CSR 15-3.380(3). All references to the CSR are to the Missouri Code of State Regulations as current with amendments included in the Missouri Register through the most recent update.

² *Killian Constr. Co. v. Tri-City Constr. Co.*, 693 S.W.2d 819, 827 (Mo. App., W.D. 1985).

³ *Linde v. Kilbourne*, 543 S.W.2d 543, 545-46 (Mo. App., W.D. 1976).

⁴ RSMo 2000. Statutory references, unless otherwise noted are to the 2012 Supplement to the Revised Statutes of Missouri.

the facts pleaded in the complaint.⁵ Lorthridge failed to timely respond to the request for admissions, and thus the assertions were deemed admitted. Her responding after the thirty-day deadline does not change this because Lorthridge did not ask to withdraw her deemed admissions. A party must ask to withdraw or amend the admissions or they will be deemed admitted.⁶ The requests for admissions specifically asked Lorthridge to admit that she acted knowingly and that the acts involved moral turpitude, and by failing to timely respond, Lorthridge admitted these things.

Therefore, based on the failure to timely file an answer, and the failure to timely respond to the request for admissions and absence of a request to withdraw the deemed admissions, the following facts are undisputed.

Findings of Fact

1. Lorthridge is, and was at all relevant times, licensed by the Department of Public Safety as a peace officer. Her license has been current and active since March 5, 2009.
2. On July 3, 2010, Lorthridge was on active duty as a peace officer.

False Imprisonment

3. On July 3, 2010, Lorthridge knowingly, unlawfully, and without consent restrained S.L.⁷, substantially interfering with S.L.'s liberty. Lorthridge arrested S.L. for trespassing on private property without probable cause or reasonable suspicion.

Making a False Report

4. On July 3, 2010, after S.L.'s arrest, Lorthridge wrote a police report regarding the arrest.

⁵ 1 CSR 15-3.380(7).

⁶ *Dynamic Computer Solutions, Inc. v. Midwest Marketing Insurance Agency*, 91 S.W.3d 708, 715-17 (Mo. App., W.D. 2002).

⁷ While the Director's Request for Admissions used the full name of S.L. and another third person, we will not do so here to protect the confidentiality of such persons.

5. Lorthridge knowingly gave false information regarding S.L.'s arrest to another person for the purpose of implicating S.L. in a crime.

6. Lorthridge's police report contained the following false statements:

- a) S. L.'s arrest occurred at the intersection of Riverview Drive and Spring Garden Drive on Riverview Development's property;
- b) S.L. had been observed in this location several times previously by residents;
- c) S.L. was repeatedly asked by the management of Riverview Development not to trespass on this property;
- d) "No Trespassing" signs were posted around the location;
- e) Attempts to contact Riverview Development⁸ were to no avail; and
- f) R.D. was present and a witness to S.L.'s crime.⁹

7. Lorthridge prepared a Field Booking form for the arrest of S.L. and signed Sergeant Jason Albers' name to the form authorizing the booking, without authority or permission to do so.

Conclusions of Law

We have jurisdiction to hear this complaint.¹⁰ The Director has the burden of proving Lorthridge has committed an act for which the law allows discipline.¹¹

Lorthridge admitted facts and that those facts authorize discipline. But statutes and case law instruct us that we must "separately and independently" determine whether such facts constitute cause for discipline.¹² Therefore, we independently assess whether the facts admitted allow discipline under the law cited.

The Director argues there is cause for discipline under § 590.080.1, which states:

The director shall have cause to discipline any peace officer licensee who:

⁸ Request for Admission No. 19 referred to "Riverway Development." We believe this to be a typographical error, as all other references were to "Riverview Development."

⁹ R.D.'s name was taken from the St. Louis Metropolitan Police Department's computer system from a police report of a 2007 car accident.

¹⁰ Section 621.045.

¹¹ *Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

¹² *Kennedy v. Missouri Real Estate Commission*, 762 S.W.2d 454, 456-57 (Mo. App., E.D. 1988).

* * *

(2) Has committed any criminal offense, whether or not a criminal charge has been filed;

(3) Has committed any act while on active duty or under color of law that involves moral turpitude or a reckless disregard for the safety of the public or any person[.]

Criminal Offenses – Subdivision (2)

The Director asserts that Lorthridge committed the crime of false imprisonment under § 565.130:¹³

1. A person commits the crime of false imprisonment if he knowingly restrains another unlawfully and without consent so as to interfere substantially with his liberty.

and committed the crime of making a false report under § 575.080:

1. A person commits the crime of making a false report if he knowingly:

(1) Gives false information to any person for the purpose of implicating another person in a crime; or

(2) Makes a false report to a law enforcement officer that a crime has occurred or is about to occur; or

(3) Makes a false report or causes a false report to be made to a law enforcement officer, security officer, fire department or other organization, official or volunteer, which deals with emergencies involving danger to life or property that a fire or other incident calling for an emergency response has occurred or is about to occur.

Lorthridge's arrest of S.L. for trespassing on private property was without probable cause or reasonable suspicion. She committed the crime of false imprisonment. Lorthridge filed a police report of S.L.'s arrest replete with false statements, in order to implicate S.L. in a crime.

¹³ RSMo. 2000.

In so doing, she committed the crime of making a false report. Because Lorthridge committed criminal offenses, there is cause for discipline under § 590.080.1(2).

Act Involving Moral Turpitude – Subdivision (3)

Moral turpitude is:

an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowman or to society in general, contrary to the accepted and customary rule of right and duty between man and man; everything “done contrary to justice, honesty, modesty, and good morals.”¹⁴

Lorthridge was on active duty when she acted. We find that her actions – knowingly restraining a person without cause and falsifying a police report – were contrary to justice and honesty, and therefore involved moral turpitude. We find cause for discipline under § 590.080.1(3).

Summary

There is cause for discipline under § 590.080.1(2) and (3). We grant the motion for summary decision and cancel the hearing.

SO ORDERED on November 19, 2013.

\s\ Mary E. Nelson
MARY E. NELSON
Commissioner

¹⁴ *In re Frick*, 694 S.W.2d 473, 479 (Mo. banc 1985) (quoting *In re Wallace*, 19 S.W.2d 625 (Mo. banc 1929)).