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Integrity in Jail Operations: Addressing Employee/Inmate Relationships

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Addressing Employee/ Offender Relationships[1]

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Jails often struggle with how to ensure the integrity of operations by establishing policies aimed at governing employee relationships with ex-offenders and/or individuals who are under the supervision of a criminal justice agency. Agencies need to balance their legitimate interests with employees' basic rights to associate with whomever they please. These "association" rights or issues become more complicated when inmates, ex-offenders, probationers, or parolees, are employees' family members or friends.

This article discusses existing case law from around the country on relationships between correctional staff and offenders/ex-offenders[2]—incarcerated, in the community, and on probation and parole. In discussing each case, we have provided the exact policies or rules in question in endnotes.[3] We have also made recommendations about how to construct your agency's policies in this area.

Briefly stated, most federal courts permit correctional employers to limit relationships between correctional employees and offenders/ex-offenders. These courts have held that correctional policies that prohibit these relationships and/or require employees to report them do not violate employees' First Amendment rights of freedom of association and privacy or Fourteenth Amendment rights to substantive due process.

In order to determine the constitutionality of governmental restrictions on employee associations, courts must first determine the appropriate standard to apply to evaluate the conduct. The Supreme Court has laid out three standards for analyzing governmental conduct that restricts or prohibits rights guaranteed by the U.S. Constitution, in this case the right to intimate association under the First Amendment of the Constitution:[4] (1) rational relation: (2) intermediate scrutiny; and (3) strict scrutiny.[5]

The lowest standard to satisfy is the rational relationship standard, where no fundamental interest is involved and the most difficult to satisfy is the strict scrutiny standard where fundamental interests like the right to marry or conceive are involved. The intermediate level, clear from its name, is in the middle. The cases discussed in this article demonstrate how courts have applied these standards.

The Fourth Circuit[6]

In *Wolford* v. *Angelone*,[7] a state corrections officer brought a §1983[8] action alleging that the Virginia Department of Correction's (VDOC) anti-fraternization policy[9] violated her First Amendment freedom of association right and her Fourteenth Amendment right to marry an offender. The plaintiff-correctional employee began living with her husband in 1995, three years *after* she was hired by the VDOC. In June, 1996, the couple conceived a child. In January 1997, the husband was convicted of multiple felony and misdemeanor offenses. The couple married in February 1997, after the birth of their child. On April 3, 1997, while the employee was still on maternity leave, her husband was incarcerated. The plaintiff returned to work on April 19, 1997, and was interviewed by the state investigator and the assistant warden concerning her relationship. That same day she submitted her resignation.

The court's determination of constitutionality focused first on Wolford's voluntary resignation. Involuntary resignation deprives a person of a property interest—her employment—which is protected by the Fourteenth Amendment of the Constitution.[10] The Fourth Circuit has previously held that if an employee resigns voluntarily, then that employee cannot claim that the state deprived her of a property interest. In this case, the court ruled that plaintiff had not presented sufficient evidence to show that her resignation was obtained by coercion. The court also determined that VDOC's anti-fraternization policy did not sufficiently impact the fundamental right to marry. Given that it did not affect marriage, the court applied the rational relation standard rather than the higher strict scrutiny standard and concluded that the policy of firing a state prison employee for her intimate relationship with an inmate is rationally related to the legitimate goal of maintaining prison security.

The court essentially said that since Wolford could marry anyone else but her husband and still keep her job, her right to marry was intact. The court reasoned that if the VDOC's policy had completely obstructed Wolford's employment opportunities or imposed absolute restrictions on the right to marry, the result would have been different. The court found that VDOC's two alternatives—marry the ex-felon and lose employment or not marry the ex-felon and maintain employment—were constitutionally permissible.

The Sixth Circuit[11]

In *Akers* v. *McGinnis*,[12] two female employees challenged the Michigan Department of Corrections (MDOC) rule[13] on "Improper Relationships with Prisoners, Parolees or Probationers, Visitors or Families." This rule strictly prohibited "improper or overly familiar[14] conduct with offenders or their family members or visitors." Violations of this rule "subjected an employee to disciplinary action up to and including dismissal."[15] Some of the prohibited actions included: exchange of letters, money or items; cohabitation; being at the home of an offender for reasons other than an official visit without reporting the visit; and sexual contact of any nature.

In *Akers*, plaintiff Loranger, then a Wayne County probation officer, was contacted by a man she had dated before becoming an MDOC employee. The man was serving a life sentence without parole in a prison outside Michigan. She exchanged several letters with him. When Loranger realized that she was in violation of the rule, she informed her supervisor. Four months later, she was terminated for the rule violation.

Plaintiff Akers, while a bookkeeper at a correctional facility in Chippewa County, Michigan, befriended a prisoner clerk. Shortly after the prisoner's release, Akers gave him a ride in her car to a job interview. Like Loranger, Akers was terminated by MDOC for this rule violation. Although unlike Loranger, Akers had not previously notified her supervisor. Previously, both women had received positive evaluations from their supervisors and in neither case was there an allegation that their conduct had adversely affected the function of the MDOC.

The Sixth Circuit held that MDOC's regulation easily met the rational basis test.[16] The court found that MDOC had a legitimate interest in preventing fraternization between its employees and offenders and their families, and that its rule was a rational means for advancing that interest—which included, for example, life safety issues. Consequently, MDOC's termination of the two employees was permissible and withstood constitutional challenge.

In, *Weiland* v. *City of Arnold*,[17] a senior police officer was dating a felony probationer. On one occasion, he brought the ex-offender to an official gathering. The District Court for the Eastern Division of Missouri, held that the city had an interest in order and efficiency that outweighed the officer's associational and/or privacy interest in continuing his dating relationship with the felony probationer. The court found that the rule was neither vague nor overly broad.[18] The court gave the nod to agency rule because of

the department's interest in regulating the behavior of its police officers. The court also found that the senior officer's relationship with the probationer had the potential to erode respect for his authority by junior officers.

The court deferred to the department's interest by applying what they termed a "Modified Pickering Test."[19] This test "involves balancing the employee's right to free speech against the interest of the public employer."[20] Courts can apply this test when the government employer claims a special interest in regulating its employees' rights—in order to avoid the disruption of public functions—here the proper functioning of the police department.[21]

The Seventh Circuit[22]

In *Keeney* v. *Heath*, a captain in an Indiana county jail[23] became suspicious of a relationship between a female officer and an inmate and had the inmate transferred to state prison. The officer visited the inmate in the other prison while she was employed by the jail and told the captain that she and the inmate planned to marry. The captain told the officer to end the relationship or lose her job for violating the rule[24] that employees cannot become involved socially with inmates in or out of the jail. The officer voluntarily resigned, married the inmate and later alleged that the rule forced her to choose between her job and marriage, thereby infringing on her constitutional right to marry.

The Seventh Circuit held that rules which prohibit a jail "guard" from dating an inmate who is in or out of jail do not violate the Fourteenth Amendment Due Process Clause. The court reasoned the burden that the regulation imposed on Keeney's right to marry was light or at most moderate. The court also reasoned that Indiana's unitary system of prisons and jails, where prisoners were shuttled among these facilities, created a risk that a "guard" who became romantically involved with an inmate could facilitate unlawful communication and provide favored treatment. The court speculated that male inmates would be motivated to "romance" their female officers, and prisoners not in these types of relationships would attribute any differences in treatment to the romantic relationships—thus disrupting prison security.

The Ninth Circuit[25]

In *Reuter* v. *Skipper*,[26] a female corrections officer brought a §1983[27] action seeking a declaration that her association with an ex-felon was protected by the First Amendment and that the county sheriff's work rules were unconstitutionally overbroad. The plaintiff orally reported the status of her relationship to the agency when she learned that her boyfriend was an ex-inmate and later filed a written report.

The *Reuter* court applied the intermediate level of scrutiny to the sheriff's work rule and ruled in favor of the female correctional employee. The court reasoned that "a couple living together as husband and wife constitutes a 'family' in today's society" and that the prison regulations intruded on the family unit. The court found the state's professed interest maintaining the security of the sheriff's office"[28] unpersuasive and ruled that the jail's efforts to achieve this interest were not tailored in a reasonable manner.

The court found that the jail rule violated Oregon's state constitution[29] because it continued to punish the ex-convict for his association with other citizens. Additionally the court found that the rule was inconsistent because it allowed employees with a family member in jail to visit and communicate with that family member while prohibiting plaintiff's conduct. Finally, the rule was unique because not only did it prohibit inmates and department employees from associating with offenders, it also prohibited employees from associating with anyone who might have at one time been convicted of a crime.

Agencies should interpret *Reuter* carefully because it is factually distinct from most, if not all, other anti-fraternization cases. First, the challenged agency rules[30] did not prohibit the employee's conduct at the time she began her relationship with the ex-felon. Second, the court explicitly noted that Oregon, unlike other states, did not have a law criminalizing sexual relations between staff and offenders at the time this case was decided. That important fact changed in 2005 with the enactment of Oregon's law criminalizing sexual abuse of persons in custody.[31]

Reuter relied heavily on another Ninth Circuit case, *Thorne* v. *City of El Segundo*.[32] In Thorne, the plaintiff was a typist for defendant police department. She ranked highly in an examination for persons desiring to become police officers. Following an extensive pre-employment examination, which included a polygraph, the agency learned that the plaintiff had engaged in an affair with an officer in the police department. The polygraph also inquired into a failed pregnancy of the applicant, to determine whether the officer was the father and whether the failed pregnancy was the result of a miscarriage or an abortion. Upon learning about the past relationship, the defendant refused to hire Thorne. Plaintiff filed an action against the defendants, alleging that they had violated her privacy rights under 42 U.S.C. § 1983 and had discriminated against her in violation of Title VII.[33]

The court held that the evidence presented was sufficient to find that Thorne was rejected because of intentional discrimination in violation of Title VII. "A refusal to hire a woman because of a sex-stereotyped view of her physical abilities is the kind of invidious discrimination that violates Title VII."[34] "Similarly, application of a standard of moral integrity that is not applied equally to men and women violates Title VII."[35]

The court also determined that if the private, off-duty, personal activities do not have an impact upon on-the-job performance or upon narrow regulations within specific policies, then rejecting an applicant for employment based on these private non-job related activities violated the applicant's protected constitutional interests. The court also determined that rejecting the applicant for the reasons stated above could not be justified under any level of constitutional scrutiny.[36] In other words, absent an articulation of how these relationships affect an employee's work performance, or having more narrowly drawn regulations, the state did not meet any constitutional test.

Thorne is factually distinct from the Reuter case. In Thorne, the relationship which caused the disciplinary

action was between two correctional employees, and not between an employee and offender/ex-offender. A correctional agency's interests in prohibiting relationships between correctional officers and ex-offenders are clearly distinguishable from its interest in prohibiting staff-staff relationships. Moreover, the Thorne court's main reason for finding for the plaintiff was based on her Title VII discrimination claim.[37]

In another Ninth Circuit case, *Fugate* v. *Phoenix Civil Service Board*,[38] police vice officers engaged in sexual activities with prostitutes and may have paid for some services with public money. The police department fired the officers and the officers appealed alleging that their First Amendment rights had been violated.

The Court of Appeals found in favor of the city because the constitutional right of privacy did not extend to this type of sexual behavior, since the conduct occurred while the officers were on duty and was perhaps paid for with public money. The court found that city regulations prohibited the police officers from engaging in conduct unbecoming an officer and contrary to the general orders of the police department. The court found that this broad regulation was intended to protect the legitimate interests of the police force from employee behavior that was potentially damaging to both the mission and reputation of the agency.

The open, notorious nature of the conduct, where staff and offenders knew about the relationship, was critical to the court's decision in Fugate. This open behavior posed a threat to the agency by damaging its reputation and credibility with staff, offenders, and the public. The credibility of any paramilitary organization is critical to its effectiveness. This open behavior also exposed the officers to blackmail and sent the message that they were willing to break rules that they were supposed to enforce. Finally, from a common sense point of view, it is unlikely that sex on the job paid for with public money is ever going to be unobjectionable. Taking into consideration these surrounding circumstances and that the regulation operated as part of the city's method of organizing its police force, the court held the regulation to be presumptively valid.

In *Fleisher* v. *City of Signal Hill*[39] a probationary police officer engaged in sexual conduct with a fifteen-year-old girl prior to being hired. The officer and the youth had been Explorer Scouts with the police department. Plaintiff was terminated after he admitted that he had engaged in sexual conduct with the minor prior to his hiring. At the time the sexual conduct occurred, the officer was nineteen and the conduct constituted statutory rape. The police officer sued for damages pursuant to 42 U.S.C. § 1983 alleging violation of his right of privacy under the First Amendment of the Constitution.

The court held that the department did not violate Fleisher's right of privacy by terminating him. The court stated that this conduct was "illegal, and inappropriate in an individual who aspired to become an officer on the department's police force, and detrimental to the department as a whole. The illegality of Fleisher's behavior creates a substantial barrier to successfully asserting a privacy claim..."[40]

In adopting a standard for analyzing the freedom of association cases, the Ninth Circuit has determined that the relationship between the correctional officer and the ex-inmate/inmate must affect the officer's on-the-job performance, morale, and reputation of the department, or security of the correctional agency. If the state can articulate legitimately that the employee relationship affects the agency, then the policy does not violate the employee's constitutional or other rights by prohibiting the relationship or terminating or refusing to hire the employee.

The court found that plaintiff's relationship with the parolee was a personal association that warranted a higher degree of protection from state intrusion and applied intermediate scrutiny.[43] The court found that the agency's policy was not constitutional because it was not substantially related to ensuring discipline and security within the prisons.

Exceptions to the Majority Rule

There are, however, decisions that are inconsistent with the majority view. For example, in *Via* v. *Taylor*,[41] a Delaware case, the plaintiff, a former corrections department employee, sued alleging that she was wrongfully fired from her job in violation of her First and Fifth Amendment rights to freedom of association and privacy as a result of her off-duty relationship with a parolee. The employee's relationship with the parolee violated the department's conduct code.[42]

The court found that plaintiff's relationship with the parolee was a personal association that warranted a higher degree of protection from state intrusion and applied intermediate scrutiny.[43] The court found that the agency's policy was not constitutional because it was not substantially related to ensuring discipline and security within the prisons.

For example, the rule did not disqualify an individual from employment because of his or her relationship with an offender, yet it purported "to prohibit all relationships with former inmates or parolees, even those that did not impact on security or operations."[44] Additionally, the rule was not uniformly enforced. Defendants admitted that they were not aware of a single applicant who had been rejected because of a pre-existing relationship with an offender. The department did not even keep track of how many new employees had prior relationships with offend-

ers. When employees reported "prohibited relationships," the department's only action was to train employees about the dangers of associating with offenders. Given this, the court found that applying the rule violated the employee's constitutional rights and was both unconstitutionally vague and overbroad.

A closer reading of *Via*, however, shows that the court decided this case using reasoning similar to that used in *Thorne* and *Reuter*. The *Via* court found that the contested relationship did not affect the officer's job performance, did not have a security impact, did not adversely affect the institution, and the relationship itself resembled a family relationship which deserved heightened scrutiny. What was controlling in each case was the courts' view that the enforcement of the restrictions was a pretext for other prohibited government conduct—namely sex discrimination. This seemed even more likely given that each of the plaintiffs was female: that agencies had not taken additional security measures as a result of these relationships; had tolerated the relationships for months before terminating the employees; and had selectively enforced the rules.

Conclusion

The discussion above makes it clear that while the case law is very fact-specific, the large majority of decisions support agency prohibitions on correctional employees forming personal, love relationships with inmates, probationers, parolees, and ex-offenders. However, several recurring themes emerge in the case law that provides guidance in drafting or evaluating your own institutional policies.

1. **Draft Clear Policies that Provide Notice:** Jurisdictions should draft narrowly tailored policies only as broad as necessary to protect agencies' legitimate interests in security, performance and reputation which provide notice to employees regarding prohibited behavior or relationships. Policies should be in place prior to discipline. Relationships that predate the implementation of the policy may be managed and monitored, but agencies may not have the ability to totally prohibit them if they do not clearly affect safety and security. For example, an employee with an incarcerated spouse could be prohibited from working in the same institution, but probably could not be prohibited from employment if the relationship predated the enactment of the rule and there was no security or performance interest at stake. Note however, that rules which require employees to inform agencies of relationships with inmates/ex-inmates are constitutional. Failure to inform or provide notice can justify sanctions or termination.
2. **Enforce/Apply Policies Uniformly:** Agencies must ensure that policies are applied and enforced consistently and uniformly to all similarly situated employees. Failure to do so makes agencies vulnerable to claims of discrimination, put the agency at risk for civil liability, and can endanger the viability of the entire policy.
3. **Policies Should Restrict Behaviors which Affect Important Agency Interests:** Policies should address relationships and behavior which affect agencies' legitimate interests. These interests include: safety and security; employees' on-the-job performance; the reputation of the agency; the impact on discipline; and respect for the chain of command.
4. **Examine the Relationship You are Presented with:** In determining whether behavior affects job performance, agencies should examine the nature of the relationship and determine whether: (a) behavior is truly private; (b) behavior is likely to affect operations of the agency or the behavior of the employee; or (c) BEHAVIOR affects job performance.
5. **Policies Should have a Legitimate Penological Purpose:** Any rule prohibiting staff-offender relationships must have a legitimate penological purpose There must be some connection between the rule and the harm it seeks to address. Examples of the harm the rule might seek to address include: safety, security, integrity, and morale of the department. When the rule reasonably and legitimately addresses one or a combination of these harms, courts are likely to uphold the rule as constitutional.
6. **Design a Procedure Which Requires Reporting and Evaluation on a Case-by-Case Basis:** Courts are likely to analyze the nature of the relationships and the correctional policies on the relationships on a case-by-case basis. As such, agencies should have procedures which require reporting and evaluation and response to these relationships on a case-by-case basis. This procedure will help prevent due process challenges in court.
7. **Monitor the Policy at a High Management Level:** Finally, effective implementation of these policies require monitoring and consistent implementation of policies at a high management level.

We hope that this article provides guidance to you in your efforts to address the issue of employee/offender relationships. If you would like a copy of the full-length memorandum addressing anti-fraternization in correctional settings, please contact Nairi Simonian or Brenda V. Smith at nicresearch@wcl.american.edu. As always, you should consult your organization's legal advisor as you review, evaluate, or modify your policies.

Endnotes

1. Thanks to Susan W. McCampbell of the Center for Innovative Public Policy, who assisted in editing this article, and to Professor Susan Carle, American University, Washington College of Law, whose initial research we relied on in writing this article.
2. We use the term offender to cover a broad range of individuals under correctional supervision. We understand that persons in jails settings may or may not be offenders, but may be pretrial or immigration detainees.
3. We advise you to read the precise language of the rules and policies at issue in these cases in order to determine which rules or policies courts deemed constitutional and as a reference for developing your own policy. Be aware however that law differs from circuit to circuit.
4. *Pickering* v. *Board of Education of Tp. High School Dist.* 205, Will County, Illinois, 391 U.S. 563 (1968).

5. The rational relation standard requires that the rule and/or prohibition implemented by the government be rationally related to the government's stated interest. The strict scrutiny standard requires that the rule and/or prohibition be narrowly tailored to serve a compelling government interest.
6. The Fourth Circuit covers: Maryland, North Carolina, South Carolina, Virginia, and West Virginia.
7. *Wolford* v. *Angelone* 38 F. Supp. 2d 452 (W.D. Va. 1999).
8. Section 1983 prohibits violation of federal or state law by persons acting under color of state law. 42 U.S.C §1983 (2005)
9. Rule 5-22.7 provides that: "Improprieties or the appearance of improprieties, fraternization, or other non-professional association by and between employees and inmates, probationers, or parolees or families of inmates, probationers, or parolees shall be discouraged. Associations between staff and inmates, probationers, or parolees which may compromise security or which undermine the employee's effectiveness to carry out his responsibilities may be treated as a Group III offense under the Standards of Conduct and Performance (Procedure 5-10). Wolford at 455. "The referenced 'Group III offenses' are explained in the 'Standards of Conduct,' where they are described to 'include all acts and behavior of such a serious nature that a first occurrence should normally warrant removal." *Id.*
10. The Fourteenth Amendment provides that, no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. U.S. Const. amend. XIV, §1.
11. The 6th Circuit includes Kentucky, Michigan, Ohio, and Tennessee.
12. *Akers* v. *McGinnis* 352 F.3d 1030 (6th Cir. 2003).
13. Presently Rule 46 provides that:
    Employees are prohibited from:
    • Engaging or attempting to engage in sexual misconduct or sexual harassment with an offender.
    • Engaging in overfamiliarity with an offender, or a family member, or listed visitor of an offender. . .
    An employee shall not make any contact with an offender outside the regular performance of the employee's job except as provided in rule #26, "Improper Entry into a Correctional Facility." Further, an employee shall not make any contact with any family member of an offender, or a listed visitor of an offender, outside the regular performance of the employee's job unless approval has been granted in writing by the director or applicable deputy director or designee...
    If an unavoidable contact is made with an offender, a family member of an offender or a listed visitor of an offender, such contact must be reported verbally to the employee's immediate supervisor by the end of the employee's next regularly scheduled workday. Such reporting is not required if a written exception has been granted as to a family member or a listed visitor. The supervisor will determine whether an unavoidable contact warrants a written report, and if so determined, a copy will be sent to the employee's warden, regional prison administrator or central office administrator, as applicable, within five calendar days.
    An employee shall not live with, nor provide lodging for, an offender, except if the offender is a family member of the employee, including a spouse where the employee's marriage to the offender existed prior to the employment date or where the spouse became an offender after the employment date. In all cases where the employee lives with or provides lodging to an offender who is a family member, this must be immediately reported in writing to the employee's warden, regional prison administrator, field operations administration regional administrator or central office administrator, as applicable.
    Unless an exception has been granted pursuant to this rule, examples of behavior which presume overfamiliarity include, but are not limited to:
    • Giving or receiving letters, money, personal mementos or telephone numbers to or from an offender or a family member, or a listed visitor of an offender.
    • Being at the residence of an offender or a family member or listed visitor of an offender.
    • Non-work related contact or visits with an offender, or a family member, or listed visitor, of an offender without authorization.
    Failure to report unauthorized contact until such contact is detected shall be considered an aggravating factor for determining the level of discipline issued. An employee who is discharged for violation of this rule or who resigns in lieu of termination during an investigation for sexual misconduct, sexual harassment, overfamiliarity, other conduct prohibited by policies established pursuant to these topics or failure to report a violation of department policy or work rules in these areas will not be eligible for rehire with the department. *Id* at 1034, 1045.
14. The rule was originally known as Rule 12 and also required reporting of "any contact made with an offender, or their family member(s), outside the regular performance of an employee's job." Id. at 1034. Rule 12 was repromulgated as Rule 24 then was replaced by a substantially identical Rule 46. Finally, "Rule 46 was revised to clarify the definitions of family member and visitor and recognize the power of the MDOC to grant individual employees limited exemptions to the Rule. To receive such an exemption allowing contact with offenders' visitors or family members, but not offenders themselves, an employee would have to submit a misleadingly titled "Offender Contact Exception Request" form and await approval from the Director of the MDOC or a designee." *Id.* >From the creation of the exception procedure, 226 exceptions had been sought and of these 223 had been granted. *Id* The appellate court determined that even in the absence of an exemption procedure, the Rule would still be constitutional. *Id* at 1041
15. *Id* at 1034 (alteration in original).
16. The court dismissed applying intermediate level of scrutiny because the employee's associations with the inmates and all the associations alleged to have been discouraged by the Rule, did not touch on matters of public concern. *Id.* at 1038. In other words, the associations were "purely private matters of little or no concern to the community as a whole." *Id.* When the restraint on government employee association affects purely private matters, the Supreme Court has ruled that a lower level of scrutiny is applied, that of rational relation. "Under rational basis review, a 'proferred explanation for the statute need not be supported by an exquisite evidentiary record; rather we will be satisfied with the government's 'rational speculation' linking the regulation to a legitimate purpose, even 'unsupported by evidence or empirical data.'" *Id.* at 1039 n.3 (citation omitted).
17. *Weiland* v. *City of Arnold*, 100 F.Supp. 2d 984 (E.D. Mo. 2000).

18. "Knowlingly associating, on or off duty, with convicted criminals or lawbreakers under circumstances which could bring discredit upon the department or impair an officer in the performance of his duty." *Id.* at 987.
19. *Id.* at 988.
20. *Id.* (citation omitted)
21. *Id.*
22. The Seventh Circuit covers: Illinois, Indiana, Wisconsin.
23. *Keeney* v. *Heath*, 57 F.3d 579 (7th Cir. 1995).
24. The regulation of the jail forbade employees from becoming "involved socially with inmates in or out of the jail." *Id.* at 580.
25. The Ninth Circuit covers California, Oregon, Washington, Arizona, Montana, Idaho, Nevada, Alaska, Hawaii, Guam, and the Northern Mariana Islands
26. *Reuter* v. *Skipper* 832 F. Supp. 1420 (D. Or. 1993).
27. Section 1983, *supra* note 8.
28. *Reuter* at 1423.
29. Oregon's state constitution states, "Laws for the punishment of crime shall be founded on the principles of reformation, and not vindictive justice." Art. I, Sec. 15. *Reuter* at 1424–25.
30. The rule was amended after plaintiff began her relationship with the ex-inmate. "The amended work rule provides, in part:
    (a) Presumptive Conflicts of Interest. A prohibited conflict of interest is presumed to exist where a member engages in an ongoing and continuous business, social or non-marital sexual relationship with another person, when:
    (b) the other person has been imprisoned for or convicted of a felony within the past ten years.
    (c) If a presumptive conflict of interest is shown to exist, the burden shall be upon the member to show their activity or relationship with the other person is unavoidable and would not endanger safety and security of sheriff's office operations or facilities, negatively impact the member's job performance, or create an unfavorable public perception of the sheriff's office." *Reuter* at 1421–22
31. S. 89, 2005 Leg. (Or. 2005), available at http://www.capitolonramp.com/cor/guests/viewbill.asp?Bill=SB0089.
32. *Thorne* v. *City of El Segundo* 726 F.2d 459 (9th Cir. 1983).
33. Title VII of the Civil Rights Act of 1964 makes it an unlawful employment practice for an employer to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin. 42 U.S.C. § 2000e-2(a)(1).
34. *Thorne*, *supra* note xxix at 468.
35. *Id.*
36. The court notes that the defendants never attempted to show evidence that Thorne's affair with a police officer affected or could affect her job performance. The affair was also not public knowledge and therefore could not diminish the department's reputation. Finally, the affair was not grounds for discipline, nor had any disciplinary measures against the male officer involved been attempted. *Id.* at 471.
37. "The trial court found that the city had no authority to discipline the officer involved for his role in the affair. The fact that the affair, nonetheless, was an actual reason for the decision not to hire Thorne, a woman, is grounds for an inference that different moral standards were applied to women and men." *Id.* at 467.
38. *Fugate* v. *Phoenix Civil Service Board* 791 F.2d 736 (9th Cir. 1986).
39. *Fleisher* v. *City of Signal Hill* 829 F.2d 1491 (9th Cir. 1987).
40. *Id.* at 1498.
41. 2004 U.S. Dist. LEXIS 11246 (2004); 224 F.Supp. 2d 753 (D.Del. 2002)
42. The portion of the Code that was at issue in litigation states: "Trafficking with incarcerated offenders is prohibited. No staff person shall have any personal contact with an offender, incarcérated or non-incarcerated, beyond that contact necessary for the proper supervision and treatment of the offender. Examples of types of contact not appropriate include, but are not limited to, living with an offender, offering an offender employment, carrying messages to or from an offender, social relationships of any type with an offender, and physical contact beyond that which is routinely required by specific job duties. Any sexual contact with offenders is strictly prohibited. Contact for other than professional reasons with the offenders outside of the work place shall be reported in writing to the employee's supervisor." *Via* v. *Taylor*, 224 F.Supp. 2d at 759.
    The term "offender" is defined in the Code "as 'any person committed by a court to the care, custody, or control of the department.'" *Id.* The prohibition also "does not distinguish between types or degrees of officer/inmate relationships and on or off duty relationships." *Id.* Finally, the Code contains no disciplinary standards and "defendants make a case-by-case determinations as to whether and what degree of discipline should be imposed as a result of a violation of the Code." *Id.*
    "The stated purpose of the Code is to: set out high moral and ethical standards for correctional employees to assure unfailing honesty, respect for dignity and individuality of human beings and a commitment to professional and compassionate service." *Id.* at 758.
43. The court's conclusion was based on plaintiff inviting Mr. Via into her home on a personal basis, and not for business-type reasons, and that the intimate relationship developed during off-duty hours. *Id.*
44. *Id.* at 770.

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