



## LEGAL QUESTION ANSWERED

**"Employees shall not post any material or comments that bring discredit or may adversely affect the efficiency, professionalism, or integrity of the department."**

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**QUESTION:** The question asked of the Legal and Liability Risk Management Institute was “A concerned citizen has made our department aware of an officer who has posted nude photos of themselves on the internet. Department internet policy states: “Employees shall not post any material or comments that brings discredit or may adversely affect the efficiency, professionalism, or integrity of the department.” Is there case law available that has determined that the department can take action against the employee? Nowhere on this site does the employee identify themselves as a police department employee. Does the employee have a first amendment right to post things of this nature? My personal opinion is that she is in violation of our policy. Again, just wanting to know if there has been any current (or old case law) regarding such.”

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**ANSWER:** You are correct! This activity by a public employee falls in the area of “Conduct Unbecoming.” There are numerous cases that address this issue. The leading case is *City of San Diego v. John Roe*<sup>1</sup>. In this case a sergeant noticed that one of his officers was selling videos of himself on EBay masturbating while wearing an undistinguished police uniform. He was ordered to stop, but continued and was terminated. While the 9<sup>th</sup> Circuit ruled in his favor, the U.S. Supreme Court found otherwise.

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- His expression was widely broadcast
- Linked to his status as an officer
- Designed to exploit the image of his employer, and
- Detrimental to the mission and functions of his employer.

In a case arising out of Florida, *Thaeter v. Palm Beach County Sheriff's Office*<sup>ii</sup>, three deputies were found to be actors in a group sex video being sold by one of the deputy's wives. The 11<sup>th</sup> Circuit in that case found that the activity was contrary to the Officer Code of Ethics that states, "Officers shall maintain an unsullied personal life as an example to all."

In a subsequent case to *Roe*, the 9<sup>th</sup> Circuit this time ruled in *Dible*<sup>iii</sup> that the termination of a police officer was reasonable. This officer made videotapes of himself and his wife engaging in sex and a company distributed them. There was no mention or indication that he was a police officer. How it came to the attention of the department was that he told another officer about it and suggested he do the same. A female officer testified that she was approached by a citizen and asked whether she made tapes like this one. It had now become common knowledge. The Court decision reflected the posture of most of these cases when it wrote, "In addition, it can be seriously asked whether a police officer can ever disassociate himself from his powerful public position sufficiently to make his speech (and other activities) entirely unrelated to that position in the eyes of the public and his superiors."

The social network is new to not only police departments, but also the courts. The courts are still ruling in favor of demanding that public employees are judged differently than other citizens. The only area in this new social media arena where there have been some rulings against public agencies has been when an agency attempts to discipline a public employee who talks disparaging about supervisors or management. In a union agency this has been ruled as a discussion about "wages, hours and working conditions." But this would have no applicability to your question about posing nude photos on the internet.

**Note: Court holdings can vary significantly between jurisdictions. As such, it is advisable to seek the advice of a local prosecutor regarding questions on specific cases. This answer is not intended to constitute legal advice on a specific case.**

## **CITATIONS:**

<sup>i</sup> San Diego v. John Roe, 543 U.S. Supreme Court. 77 (2004)

<sup>ii</sup> Thaeter v. Palm Beach County Sheriff's Office, et al.; 2006 U.S. App. LEXIS 13308 (11th Cir)

<sup>iii</sup> Dible v. City of Chandler  
2008 U.S. App LEXIS 2249 (9<sup>th</sup> Cir)