

**BEFORE THE ALABAMA  
STATE PERSONNEL BOARD  
IN THE MATTER OF**

**FRANK PARLER,** )  
 )  
 **Appellant,** )  
 )  
 **v.** )  
 )  
 **ALABAMA DEPARTMENT OF** )  
 **CORRECTIONS,** )  
 )  
 **Appellee.** )

**Case No: 21-09-JJW**

**RECOMMENDED ORDER TO THE STATE PERSONNEL BOARD**

The employment termination of Frank Parler (hereinafter “Parler”) by the Alabama Department of Corrections (hereinafter “DOC”) gives rise to this Recommended Order. DOC charges that Parler, who in 2020 was employed as a Lieutenant at the Tutwiler Correctional Facility (“Tutwiler”), violated its Administrative Regulation (hereinafter “AR”) 208 Sections V.A. 2, 4, 7, and 8; and AR 208, Annex H Numbers 13, 18, 29, 31, and 33; and AR 235 Section V. A-C Fraternization Policy Additionally, DOC charges Parler violated State Personnel Board Rule 670-X-19-.01, Sections (a)(8), (b)(10) and (b)(13).

On August 11, 2020, DOC, at the conclusion of an investigation, determined that Parler had sent inappropriate pictures of his private area to a subordinate female employee. Parler admitted to having an inappropriate “flirtatious” relationship with

a subordinate in his direct supervisory command. The appointing authority dismissed Parler from his employment with DOC.

Parlor contends his punishment is “too severe.” He says the activity was “consensual,” that his subordinate sent him a picture of her breast and “brushed up” against him. The testimony of his subordinate disputes the characterization as “consensual” and says Parler pressured her to send him pictures of her breast, but, she did not, sending instead a picture from “porn hub” off the internet of a generic breast.<sup>1</sup>

Based on observation of the witnesses, the testimony, and the documentary evidence, the undersigned recommends the termination of Parler’s employment with DOC be upheld.

On June 17, 2021, the undersigned conducted a *de novo* hearing (‘the hearing’) at the State Personnel Department Board Room in the Folsom building in Montgomery, Alabama, during which *ore tenus* and documentary evidence was received. Bart Harmon, Esq. appeared on behalf of DOC and Julian McPhillips, Esq. represented Parler.

At the beginning of the hearing, DOC introduced, without objection, DOC Exhibits 1-6. Parler offered Employee Exhibits A-Z 2, which were admitted. The undersigned informed the parties, without objection, that Parler’s personnel file at

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<sup>1</sup> Parler Exhibit Z 2.

the Alabama State Personnel Department would be included in the record as evidence in this matter.

DOC called as witnesses:

1. Warden III Deidre Wright, Tutwiler Correctional Facility;
2. Warden II Lagreta McClain, Tutwiler Correctional Facility;
3. Correctional Sergeant Doris Blakes; and
4. Appellant Parler.

Parler called:

1. Shamona Parler, his wife; and
2. Parler testified on his own behalf.

## **I. PROCEDURAL HISTORY AND CHARGES**

DOC hired Parler as a Correctional Officer on June 19, 1999. Parler progressed through the ranks and was a Correctional Lieutenant at Tutwiler Correctional Facility when DOC dismissed him effective November 7, 2020.<sup>2</sup> The dismissal letter signed by the appointing authority, DOC Commissioner Jefferson Dunn, is dated November 13, 2020.<sup>3</sup>

Parler timely appealed his dismissal to the Alabama State Personnel Board, pursuant to ALA. CODE § 36-26-27(a) (1975). At the pre-hearing conference held

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<sup>2</sup> DOC Exhibit 1.

<sup>3</sup> DOC Exhibit 1.

on December 8, 2020, the appeal hearing was scheduled for February 22, 2021. The hearing was rescheduled twice and ultimately set by the undersigned for June 17, 2021.

In its Statement of the Facts, DOC alleged, in pertinent part:

...

“On Tuesday, August 11, 2020, at the conclusion of an investigation, it was discovered that Frank Parler did send inappropriate text messages of his private area to a subordinate female employee. Mr. Parler admitted to having an inappropriate relationship with his subordinate, in which he described as “flirtatious.

Following a review of the administrative hearings and consideration of the aggravating circumstances in this case the Commissioner found Parler guilty of violating the following standards under Administrative Regulation 208, Employees Standards of Conduct and Discipline:

1. Employees shall render full, efficient, and industrious service.
- ...
2. Employees shall exercise courtesy and tact. ...
3. Employees shall observe all laws, rules and regulations. ...
4. Employees shall uphold, with integrity, the public’s trust involved in their position. ...

Additionally, Sections V. A-C of Administrative Regulation 235, Fraternization Policy, provide:

- A. All personal relationships between supervisors and an employee in his/her chain of command are prohibited.
- B. All personal or social relationships are prohibited if they:
  5. Create an actual or clearly predictable adverse impact on discipline, authority, morale, or the ability of the ADOC to accomplish its mission.
- C. Disclosure of Personal Relationships by Supervisors
  1. Supervisors, including Executive Staff must disclose

immediately the existence of any relationship with an employee in his/her chain of command that has progressed or is likely to progress beyond a professional or social relationship to a personal relationship.

In determining the appropriate corrective action for the above violations, the Commissioner considered the following infraction(s):

1. Disagreeable behavior, including lack of cooperation and insubordination. ...
2. Serious violations of rules, policies, procedures, regulations laws, or reasonable conduct expectations. ...
4. Harassment or discrimination as defined in AR 206, Harassment and Discrimination Policy. ...
5. Fighting, assault, physical violence or disruptive behavior. ...
6. Conduct that is disgraceful, on or off the job that does adversely affect an employee's effectiveness on the job. ...

Mr. Parler's conduct also violated Alabama State Personnel Board's Employee Work Rules, 670-X-19-.01, with respect to the following provisions:

- (1) In addition to any special rules issued by the various appointing authorities for the guidance of their employees, the following standard general work rules shall apply to all classified employees:
  - (a) Violations that normally result in disciplinary actions of increasing severity:
    8. Violation of specific department rules.
  - (b) More serious violations that may result in suspension or discharge on the first offense.
    10. Serious violation of any other department rule.
    13. Conduct unbecoming a state employee.

A review of Mr. Parler's service record reflects the following active and inactive corrective actions:

Warning	Noncompliance with policies, procedures and regulations. (7/16/20)	Pending
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Written Reprimand	Reprimand Failure to follow supervisor's instructions, noncompliance with policies and procedures. (1/2/20)	3/12/20
Warning	Minor violations of Departmental or institutional rules, policies, or procedures that do not result in serious consequences. (1/2/20)	1/09/20
Written Reprimand	Failure to perform job properly, not resulting in actual consequence, Violation of safety/security regulations/procedures when the consequences are serious, but the consequences do not occur. (10/16/19)	12/27/19
Warning	Minor violations of institutional rules, policies, or procedures that do not result in serious consequences. (11/21/19)	11/27/19
Written Reprimand	Serious violations of rules, policies, procedures, regulations, Laws, or reasonable conduct expectations. (5/23/19)	7/9/19
Warning	Noncompliance with policies, procedures and regulations. (10/22/18)	11/9/18

Having reviewed the Warden's Notice of Intent to Recommend Dismissal including associated documents and Parler's overall work record,

the Commissioner of the Alabama Department of Corrections ordered Parler's dismissal for the good of the service to be effective at the close of business November 7, 2020. ..."

## I. FACTUAL BACKGROUND

Having reviewed the documentary evidence, having heard the testimony presented at the hearing and having observed the witnesses' demeanor and assessed their credibility, the undersigned finds the greater weight of the evidence supports the following findings of fact.<sup>4</sup>

### A. Employee's Personnel File<sup>5</sup>

Parler's annual performance appraisals while at DOC reflect:

Date	Total Score	Category
08/01/20	24	Meets Standards
08/01/19	29	Exceeds Standards
08/01/18	31	Exceeds Standards
08/01/17	30	Exceeds Standards
08/01/16	28	Exceeds Standards
08/01/15	33	Exceeds Standards
08/01/14	24	Meets Standards
10/15/13 <sup>6</sup>	28	Exceeds Standards
07/01/12	36	Exceeds Standards
07/01/11	31	Exceeds Standards
07/01/10	31	Exceeds Standards

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<sup>4</sup> All references to exhibits and testimony are intended to assist the State Personnel Board in considering this Recommended Order and are not necessarily the exclusive sources for such factual findings.

<sup>5</sup> See generally State Personnel Board Rule 670-X-18-.02(5) (employee's work record, including performance and disciplinary history, considered in dismissing employee).

<sup>6</sup> 6-month probationary appraisal as Correctional Lieutenant.

07/01/09	31	Exceeds Standards
07/01/08	23 (FMLA)	Meets Standards
07/01/07	30	Exceeds Standards
07/01/06	30	Exceeds Standards
09/04/05 <sup>7</sup>	30	Exceeds Standards
11/01/04	30	Exceeds Standards
11/01/03	30	Exceeds Standards
11/01/02	30	Exceeds Standards
11/01/01	30	Exceeds Standards
11/01/00	28	Exceeds Standards
12/18/19 <sup>8</sup>	26	Meets Standards

**B. State Personnel Board General Work Rules and DOC Policies/  
Procedures Forming the Basis of the Charges**

**State Personnel Board Rule 670-X-19-.01(1) General Work Rules**

provides, in pertinent part:

- (1) In addition to any special rules issued by the various appointing authorities for the guidance of their employees, the following standard general work rules shall apply to all classified employees:
- (a) Violations that normally result in disciplinary actions of increasing severity:
- ....
2. Employees shall render full, efficient, and industrious service
- ...
4. Employees shall exercise courtesy and tact.
- ...

<sup>7</sup> 6-month probationary appraisal as Correctional Officer II.

<sup>8</sup> 6-month probationary appraisal as Correctional Officer I.



7. Employees shall observe all laws, rules and regulations.

8. Violation of specific department rules.

(b) More serious violations that may result in suspension or discharge on the first offense.

...

10. Serious violation of any other department rule.

...

13. Conduct unbecoming a state employee.

...

(2) The listing of violations above is not meant to be all inclusive and does not imply that discipline may not be imposed for other sufficient reasons nor does it mean that termination cannot occur for the first violation.

**State Personnel Board Rule 670-X-18-.02 Dismissals** provides, in pertinent

part:

(1) An appointing authority may dismiss a classified employee whenever he considers the good of the service will be served thereby, for reasons which shall be stated in writing, served on the affected employee and a copy furnished to the Director, which action shall become a public record.

...

(5) In all cases, before dismissing a permanent employee, the appointing authority shall consider the previous disciplinary and performance history of the employee and any progressive discipline received.

**DOC Administrative Regulation 208** provides, in pertinent part:

...

**V. PROCEDURES**

A. All ADOC employees shall adhere to the following standards:

...

2. Render full, efficient, and industrious service.

...

6. Protect and conserve funds, property, equipment, and materials.

7. Observe all laws, rules and regulations.

8. Uphold, with integrity, the public's trust involved in their position.

...

13. Report all instances when the ability to supervise a subordinate employee is affected by a personal and/or non-working relationship with that employee.

...

N. Nothing in this regulation is intended to abrogate authority granted the Commissioner under Section 36-26-27, Code of Alabama, 1975, and 670-X-18-.02, Rules of the State Personnel Board.

O. The Annex H table, Table of Infractions/Level of Discipline, is intended to promote consistent discipline within the ADOC and guide supervisors at all levels when the imposition of discipline becomes necessary. At times, there are mitigating or aggravating circumstances surrounding the infraction, and as such, the appropriate level of discipline may be increased or decreased in relation to the table. To maintain consistency, the imposition of discipline that does not correspond with the table must be fully justified in writing and submitted to the ADOC Personnel Director who shall confer with the appropriate Deputy Commissioner. The Warden/Division

Director requesting this variance shall be notified by the ADOC Personnel Director of the decision.

...

## **DOC Administrative Regulation 206 – HARRASSMENT AND DISCRIMINATION POLICY**

...

### **II. POLICY**

The ADOC:

- A. Strictly prohibits any form of harassment whether based on sex, race, color, religion, national origin, age, sexual orientation, ancestry, or disability.
- B. Strictly prohibits any form of discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment on the basis of sex, race, color, religion, national origin, age, sexual orientation, ancestry, or disability.

...

- D. Strictly prohibits any form of reprisal or retaliation against complainants under this regulation.

### **III. DEFINITION(S) AND ACRONYM(S)**

- A. Harassment: Any discriminatory and unwelcome conduct that is based on an individual's race, color, religion, age, sex, national origin, sexual orientation, ancestry, or disability.
- B. Sexual Harassment: Any unwelcome conduct of a sexual nature, including advances, requests for favors, remarks, sounds, gestures, physical contact, and display or circulation of material, that is subjectively or objectively offensive.

...

- F. Individual: Employees, contractors, volunteers, vendors, customers, visitors, and other persons involved with the ADOC.

...

## **DOC Administrative Regulation 228 – EMPLOYEE SEXUAL MISCONDUCT AND SEXUAL HARASSMENT**

...

### **II. POLICY**

It is the policy of the ADOC to ensure that sexual misconduct or harassment by any employee is prohibited.

### **III. DEFINITION(S) AND ACRONYM(S)**

- A. Employee: For purpose of this policy only, an individual with the ADOC in a full-time, part-time, or temporary position in the state's classified or unclassified service. All other persons such as contractors, vendors, and volunteers are also subject to the ADOC's Standards of Conduct and this regulation and failure to adhere to these regulations may result in being removed and/or barred from an ADOC facility.
- B. Sexual Misconduct: Any behavior or act of a sexual nature directed towards any individual by an employee, volunteer, visitor, or agency representative.
- C. Sexual Harassment: Unwelcome or unsolicited sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature.

...

### **V. PROCEDURES**

...

- D. Examples of sexual harassment can include, but are not limited to, the following:

...

5. Conversations filled with sexually suggestive innuendoes or double meanings.
6. Display or transmittal of sexual suggestive images, objects, messages, or gestures.
7. Suggestions, requests for, or demands for acts of an intimate nature.

...

## **DOC Administrative Regulation 235 – FRATERNIZATION POLICY**

...

### **II. POLICY**

It is the policy of the ADOC that employees must maintain a professional work environment where clear boundaries are established between employees' personal and work interactions and that their actions maintain ADOC workplace integrity.

### **III. DEFINITIONS(S) AND ACRONYM(S)**

- A. Chain of Command: An official hierarchy of authority and supervision that dictates the activities and operations of the ADOC.
- B. Employee: Any person employed by ADOC as a full-time, part-time, conditional, or temporary employee and all other persons such as contract employees, authorized service providers, vendors, and volunteers with any contact with ADOC.
- C. Executive Staff: For the purposes of this AR, Commissioners, Associate/Deputy Commissioners, Division Directors, and Wardens.
- D. Inappropriate Relationships: Relationships of whatever nature that compromise the integrity of supervisory authority or the chain of command; cause partiality or unfairness; involve the improper use of rank or position for personal gain; are

exploitative or coercive in nature; create an actual or clearly predicable adverse impact on discipline, authority, morale or the ability of the ADOC to accomplish its mission.

- E. Personal Relationships: Association between employees that includes, but is not limited to, dating, sharing living accommodations, or intimate sexual relationships.
- F. Professional Relationship: Relationship that is formed at work that serves a critical role in the success of an employee, the employee's career, or the ADOC.
- G. Social Relationship: Association between employees that occurs in the context of community organizations, religious activities, athletic teams and events, social functions, or family gatherings. This also includes relationships that may begin or evolve from a Professional Relationship.

...

- J. Workplace Integrity: Involves moral judgment and character, honesty, and leadership values. Individuals who show integrity in the workplace not only understand right from wrong, but they practice it in all they do.

#### **IV. RESPONSIBILITIES**

- A. Wardens/Division Directors shall be responsible for the implementation of this AR.
- B. All ADOC employees share the responsibility for maintaining professional relationships. All employees are responsible for the proper adherence to this AR and Institutional SOPs.

#### **V. PROCEDURES**

- A. All Personal Relationships between supervisors and an employee in his/her chain of command are prohibited.

B. All Personal or Social Relationships are prohibited if they:

1. Cause actual preference or unfairness;
- ...
3. Are unethical or threatening in nature; or
4. Engage in inappropriate physical contact while on state property or during that employee's scheduled work hours; or
5. Create an actual or clearly predicable adverse impact on discipline, authority, morale, or the ability of the ADOC to accomplish its mission.

C. Disclosure of Personal Relationships by Supervisors

1. Supervisors, including Executive Staff, must disclose immediately the existence of any relationship with an employee in his/her chain of command that has progressed, or is likely to progress, beyond a Professional or Social Relationship to a Personal Relationship.
2. Disclosure at the institutional or divisional level shall be made to his/her Warden or Division Director. If the supervisor is part of the Executive Staff, disclosure shall be made to the ADOC EEO or the ADOC Inspector General.
3. Disclosure should be in writing but may be verbal as well. The first report of this disclosure shall be documented by the designated person receiving the report.
4. The receiver of the report will then take reasonable steps to mitigate the situation to remove any conflict of interest or potential conflict that may exist.
5. Failure of a supervisor to voluntarily disclose the existence of any such relationship and allow the ADOC to take reasonable steps to

mitigate the situation shall be subject to corrective action pursuant to Administrative Regulation 208, *Employee Discipline*.

...

- E. All employees shall be accountable for violations of this regulation. Violations of this policy will be subject to corrective action in accordance with AR 208.

...

**DOC Administrative Regulation 208, Annex H**, provides, in pertinent part:

...

- 13. Disagreeable behavior, including lack of cooperation and insubordination (First Offense: Written Reprimand; Second Offense: 2 days suspension; Third Offense: 3 days suspension; Fourth Offense: Dismissal)

...

- 18. Serious violations of rules, policies, procedures, regulations, laws, or reasonable conduct expectations. (First Offense: Written Reprimand; Second Offense: 2 days suspension; Third Offense: 3 days suspension; Fourth Offense: Dismissal)

...

- 29. Failure to report violation of safety/security rules that result in injury to persons or significant damage to property (First Offense: 3 day suspension; Second Offense: Dismissal)

...

- 31. Harassment or discrimination as defined in Administrative Regulation 206, *Harassment and Discrimination Policy*. (First Offense: 3 days suspension; Second Offense: Dismissal)

...

- 33. Conduct that is disgraceful, on or off the job that does adversely affect an employee's effectiveness on the job.



(First Offense: 3 days suspension; Second Offense: Dismissal)

...

## **B. Facts Forming the Basis of Dismissal**

Parler began employment at DOC in 1999. In 2020, he was a Correctional Lieutenant at Tutwiler supervising and making shift assignments to keep the institution operational. Parler's job was critical and required his full attention, professional focus and his best efforts.

In his testimony Parler admits he acted unprofessionally and inappropriately. He contends his involvements with Sgt. Blakes were "consensual." By virtue of Sgt. Blakes being under his direct supervision a "consensual" personal relationship with her was impossible and violated extant DOC policies and procedures. Parlor was a long term, seasoned employee who certainly knew how inappropriate the sending of a picture of his genitalia to his subordinate employee was.

According to Sgt. Blakes, Parler "sexually harassed" her since she came under his supervision on the third shift at Tutwiler.<sup>9</sup> She says, "on numerous occasions" Parler sent pictures of his "nude penis" to her. Sgt. Blakes claims Parler "bullied" and "belittled" her. He asked her for a picture of the "twins" referring to her breasts. Sgt Blakes asked to move off the third shift and away from Parler's supervision.<sup>10</sup>

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<sup>9</sup> DOC Exhibit 6.

<sup>10</sup> DOC Exhibit 6.

Parler suggests “this is an incident of fraternization, between two consenting employees.” The testimony, facts and documentary evidence do not support that.<sup>11</sup> Sgt. Blakes filed a complaint Form 206 against Parler on July 17, 2020, indicating she did not want to work under Parler. Sgt. Blakes was reassigned to the Tutwiler Structured Living Unit at Tutwiler on July 17, 2020.<sup>12</sup>

On August 11, 2020, Warden II Lagreta McClain advised Parler she had been assigned to investigate Sgt. Blakes’ allegations against him at the facility level. Parler admitted to sending pictures of his private parts to Sgt. Blakes.<sup>13</sup> During that conversation Parler and Warden McClain discussed Parler’s revelation to his EAP counselor that he “the last place he would rather be is around a bunch of guns. ... I have no desire to hurt anyone, but if placed under certain circumstances I may.”<sup>14</sup>

During his testimony, Parler indicated he had a prior diagnosis of PTSD, which he discussed with his EAP mental health counselor. Parler said he was uncomfortable around guns at times and had expressed his feelings to Warden McClain. Parler was placed on mandatory leave by DOC.

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<sup>11</sup> DOC Exhibit 6.

<sup>12</sup> DOC Exhibit 6.

<sup>13</sup> DOC Exhibit 6.

<sup>14</sup> DOC Exhibit 6.

Sgt. Blakes testified by video conference. She is currently employed by DOC at Tutwiler and has been employed for six years. She indicated she had complained about Parlor's conduct toward her. She testified about the "unwanted" pictures he sent to her and about asking him to stop. She testified about Parlor's request for a picture of the "twins" referring to her breasts. She ultimately sent him a generic picture of a breast from the internet site porn-hub. She denied doing anything to encourage Parlor. She felt "pressured" by Parlor. She received no discipline. She just wanted Parlor's conduct toward her to stop.

Warden II McClain testified concerning her investigation of Blakes complaint against Parler. She said Parler admitted sending pictures of his privates to Sgt. Blakes. Warden McClain determined the interchange between Parler and Blakes was not "consensual." Warden McClain shared Parler's expression of "concerns" that under certain conditions he might harm others.

Warden III Deidra Wright testified she recommended that Parler be dismissed. She conducted his pre-dismissal conference. She expressed "her need to be able to have trust and confidence in her Lieutenants, who are shift commanders." She expects them to set the tone and to lead by example. Tutwiler is a female correctional institution and is under close scrutiny of the United States Department of Justice with regard to how prisoners are treated. For one of her Lieutenants to engage in the type of behavior ascribed to Parler is unacceptable.

Parler is married to Lieutenant Shamona Parler, who is currently a DOC correctional Lieutenant at Tutwiler. She has been married to Parler for eight years. She has forgiven Parler for any mistakes he has made in this matter. She thinks he has earned his retirement and that he should not be terminated. She thinks the punishment is too severe.

The preponderance of the credible, relevant evidence supports the DOC determination that Parler's employment should be terminated.

## II. ISSUE

Did DOC produce by a preponderance of the evidence a proper basis to sustain Parler's dismissal based upon violations of the State Personnel Board Rules and DOC rules, regulations, policies and procedures?

## III. DISCUSSION

The purpose of the administrative appeal is to determine if the termination of the employee's employment is warranted and supported by the evidence. *Kucera v. Ballard*, 485 So. 2d 345 (Ala. Civ. App. 1986); *Thompson v. Alabama Dept. of Mental Health*, 477 So. 2d 427 (Ala. Civ. App. 1985); *Roberson v. Personnel Bd. of the State of Alabama*, 390 So. 2d 658 (Ala. Civ. App. 1980). In *Earl v. State Personnel Board*, 948 So. 2d 549 (Ala. Civ. App. 2006), the Alabama Court of Civil Appeals reiterated:

“[D]ismissal by an appointing authority ... is reviewable by the personnel board only to determine if the reasons stated for the dismissal are sustained by the evidence presented at the hearing.”

*Id.* at 559, quoting *Johnston v. State Personnel Bd.*, 447 So. 2d 752, 755 (Ala. Civ. App. 1983).<sup>15</sup>

In determining whether an employee's dismissal is warranted, the departmental agency bears the burden of proving the charges warrant termination by a “preponderance of the evidence.” The law is well settled that a “preponderance of the evidence” standard requires a showing of a *probability* that the employee is guilty of the acts as charged. There must be more than a mere possibility or one possibility among others that the facts support the disciplinary action at issue. The evidence must establish that *more probably than not*, the employee performed, or failed to properly perform, as charged. *See Metropolitan Stevedore Co. v. Rambo*, 521 U.S. 121, 117 S.Ct. 1953, 138 L.Ed. 2d 327 (1997), holding that a “significant possibility” falls far short of the Administrative Procedure Act's preponderance of the evidence standard. *See also Wright v. State of Tex.*, 533 F.2d 185 (5<sup>th</sup> Cir. 1976).<sup>16</sup>

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<sup>15</sup> The Alabama Court of Civil Appeals went further to hold: “both this court and the circuit court must take the administrative agency's order as ‘prima facie just and reasonable’ and neither this court nor the circuit court may ‘substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.’” *Id.* at 559, citing ALA. CODE § 41-22-20(k) (1975); *State Dept. of Human Res. v. Gilbert*, 681 So. 2d 560, 562 (Ala. Civ. App. 1995).

<sup>16</sup> In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir.1981), the Eleventh Circuit adopted as binding precedent all Fifth Circuit decisions handed down prior to the close of business on September 30, 1981.

An administrative agency must act within its constitutional or statutory powers, supporting its decision with substantial evidence. “Substantial evidence has been defined as such ‘relevant evidence as a reasonable mind might accept as adequate to support a conclusion,’ and it must be ‘more than a scintilla and must do more than create a suspicion of the existence of a fact to be established.’” *Alabama Alcoholic Beverage Control Bd. v. Tyson*, 500 So. 2d 1124, 1125 (Ala. Civ. App. 1986).

The undersigned has carefully observed and carefully considered the witnesses’ demeanor, testimony, and all the documentary evidence in this case and finds that the preponderance of the evidence establishes Parler knowingly violated multiple DOC policies regarding anti-fraternization and sexual misconduct. Further, he grossly misused his supervisory authority. Parler’s conduct was disgraceful, and unbecoming of a state employee.

DOC Commissioner Jefferson Dunn wrote in the dismissal letter, “Having reviewed the Warden’s Notice of Intent to Recommend Dismissal including associated documents and your overall work record, I do hereby order your dismissal for the good of the service to be effective the close of business November 7, 2020.” State Personnel Board Rule 670-X-18-.02 unambiguously states, “An appointing authority may dismiss a classified employee whenever he considers the good of the service will be served thereby.” DOC AR 208 ratifies this principle under Section

V.N. which reads, “Nothing in this regulation is intended to abrogate authority granted the Commissioner under Section 36-26-27, Code of Alabama, 1975, and 670-X-18-.02, Rules of the State Personnel Board.”

Parlor believes his long tenure, performance record, and lack of extensive disciplinary history should outweigh his violations and mitigate his punishment, but these factors were not persuasive to those at DOC charged with making the decision regarding appropriate discipline for him and are not considered mitigating by the undersigned given the totality of Parler’s violations.

DOC followed its own extant rules and procedures and those of the State Personnel Board and established to the satisfaction of the undersigned that the preponderance of the available direct, circumstantial and testimonial evidence supports Parler’s dismissal.

Done, this the 8<sup>th</sup> day of July 2021.



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JAMES JERRY WOOD  
Administrative Law Judge  
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