

ST. LUCIE COUNTY FIRE DISTRICT

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TO: Fire Board Commissioners
FROM: Kim Sabol, Fire District Attorney *KS*
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RE: Burden of Proof and Legal Standard for Misconduct

The employment agreements for the Fire Chief and District Attorney solely use §443.036(29) to substantiate a finding of misconduct. Misconduct is a legal standard and Florida courts put the burden of proof on the employer. Barchoff v. Shells of St. Pete Beach, Inc., 787 So.2d 935,936 (Fla. 2d DCA 2001). That means the Board must substantiate that finding with facts:

1. The Board must identify the specific conduct on the record.
2. The Board must tie that conduct to a subsection of §443.036(29) for the record.
3. The Board must show willfulness or conscious disregard – not a good-faith mistake, not an isolated lapse, and not a policy disagreement.
4. The Board must commit that finding to writing for future defense of any claims.

What the statute and case law require:

- **Conscious disregard of the employer's interests:** Actions demonstrating an intentional, deliberate, willful, or wanton disregard of the employer's interests or explicit defiance of a written rule.
- **Deliberate Policy Violations:** A proven history of intentionally violating or disregarding standards; Carelessness/negligence so repeated, or so severe, that it rises to the level of culpability or wrongful intent; or
- **Culpable Carelessness or Negligence:** Recurrent carelessness or negligence of such a high degree that it manifests wrongful intent; or
- **Criminal or Dishonest Behavior:** Theft of employer/customer property, willful damage to employer property, or criminal assault or battery on the job; or
- **Warned, Chronic Absenteeism:** Excessive unauthorized absences or tardiness that continues in deliberate violation of a known policy after the employee has received a written warning; or
- **Sanctionable Regulatory Violations:** A willful violation of state regulations by an employee of a licensed or certified facility that directly causes the employer to face state sanctions or license suspension.

Two rules from the applicable case law matter most:

1. Being able to fire someone is not the same as misconduct. "An employee's actions sufficient to justify discharge from employment do not necessarily constitute misconduct." Boyd Brothers, Inc. v. Fla. Unemployment Appeals Comm'n, 41 So.3d 419, 420 (Fla. 1st DCA 2010).

2. An isolated error is not enough. Inefficiency, unsatisfactory conduct, good-faith errors in judgments, and ordinary negligence in isolated instances are not misconduct. Frazier v. Home Shopping Club LP, 784 So.2d 1190, 1191 (Fla.2d DAC 2001). Courts look for repeated violations of known rules after warning.

What does not constitute misconduct:

- **Isolated Procedural Imperfections:** Single, distinct instances of failing to follow a rule or policy do not constitute misconduct. Barchoff v. Shells of St. Pete Beach, Inc., 787 So.2d 935,936 (Fla. 2d DCA 2001). Isolated process imperfections or good-faith professional advice; Courts consistently require willfulness or a high degree of culpability. Fourth DCA cases do not treat a corrected process error as disqualifying misconduct.
- **Inefficiency and Incapacity:** Unsatisfactory conduct or a failure to perform well due to a lack of training, ability or incapacity.
- **Union No Confidence Vote:** The union may lawfully take that vote. It is speech. It may carry political pressure, but it has no legal force. It does not prove a statutory element of misconduct. It creates no contractual cause for termination. The union vote does not carry the Board's burden.
- **Public Pressure:** Public comment, social media pressure, a loud gallery, or the Board's desire for different leadership.
- **Disagreement** with legal advice, investigation sequencing, or public-records decisions.
- **Process critiques or isolated procedural imperfections** in an outside report that stop short of finding conscious disregard.
- **Back-channel demand** (text messages) that the district remove named officials as the price of settling others.

The distinction has legal ramifications:

The Board may separate a contract executive. That power is not the question. The question is the label. Terminating a multi-year employment contract for cause without establishing a factual basis that meets this high legal standard constitutes a breach of contract. This can turn a lawful paid separation in accordance with the terms of a negotiated and binding employment agreement into a breach of contract/wrongful termination case the district will have to defend. Frazier v. Home Shopping Club LP, 784 So.2d 1190, 1191 (Fla.2d DAC 2001) requires a liberal statutory construction in favor of the employee. A Board that uses this definition to strip a contractual benefit should expect a court in the 19th Circuit to apply that same construction.

Guidance moving forward:

Although it is legally permissible to add an agenda item, taking action to terminate or separate the employment of the Fire Chief or the District Attorney at the September 19, 2026, should be handled with caution. Personnel action toward contract executives belongs on a publicly noticed agenda. Florida AGO 03-53 and the Government in the Sunshine Manual strongly recommends against taking formal action on controversial or high-public interest items that were not previously noticed. Best practice is to defer formal action so the item can be properly noticed for a future meeting.