



POST Investigations Bulletin

State of Utah

Department of Public Safety Peace Officer Standards and Training

December 2012

One of the duties of the Peace Officer Standards and Training Council is to establish and enforce rules of conduct for certified peace officers and certified dispatchers throughout the state. During each POST Council Meeting, the Council reviews cases investigated by the POST Investigations Bureau and rules on the suspension or revocation of these peace officers in accordance with Utah Code 53-6-211. The decisions the council makes help to define acceptable and unacceptable conduct for Utah peace officers.

Please note that the actions taken by the POST Council are not binding precedent. The POST Council makes every effort to be consistent in its decisions, but each case is considered on its own individual facts and circumstances. The *POST Investigations Bulletin* is a sample of the cases heard by the POST Council and is published to provide insight into the Council's position on various types of officer misconduct.

On December 3, 2012, POST Council convened and considered nine cases of officer discipline.

Case #1

Officer A, a correctional officer was involved in a traffic incident. Officer A pulled his vehicle in front of another vehicle and stopped in the travel lane, forcing the other vehicle to stop. Officer A exited his vehicle, approached the female driver of the other vehicle and proceeded to yell at her for the way she was driving. This incident was observed by a city police officer. The city police officer approached and gave Officer A verbal commands to return to his vehicle. Officer A returned to his vehicle and was subsequently cited for disorderly conduct, an infraction. Officer A entered a guilty plea to be held in abeyance to disorderly conduct, an infraction. During an administrative interview with POST investigators, in which Officer A was issued a *Garrity* warning, he admitted to his disorderly conduct. Officer A signed a consent agreement recommending a Letter of Caution. POST Council ratified POST's recommendation and voted to issue Officer A a Letter of Caution.

Case #2

Officer B, a correctional officer, was involved in a verbal altercation with her estranged husband over custody issues involving their young son. The altercation occurred while Officer B and her estranged husband were exchanging custody of their son for visitation purposes. During the exchange, Officer B became angry and struck her husband's vehicle with her open hand. There was no damage to the vehicle. The police were called to the scene and Officer B was subsequently charged with disorderly conduct. Officer B pled guilty to disorderly conduct, an infraction, which was amended from a class C misdemeanor. During an administrative interview with POST investigators, in which Officer B was issued a *Garrity* warning, she admitted to striking her estranged husband's vehicle once or twice. Officer B signed a consent agreement recommending a Letter of Caution. POST Council ratified POST's recommendation and voted to issue Officer B a Letter of Caution.

Case #3

Officer C, a law enforcement officer with a county agency, sent 49 anonymous text messages to another deputy all in one day. The texts claimed the deputy's wife was having an extramarital affair with the sender. This claim was untrue, but was intended to cause stress for the deputy. The deputy filed a complaint with a local police agency. Officer C, after learning of the criminal investigation eventually confessed to the deputy. Officer C was charged with electronic communications harassment a class B misdemeanor. Officer C entered a plea of nolo contendere (no contest), to be held in abeyance. During an administrative interview with POST investigators, in which Officer C was issued a *Garrity* warning, he admitted sending the texts to the other deputy. Officer C signed a consent agreement recommending a one year suspension of his peace officer certification. The POST Council ratified POST's recommendation and voted to suspended Officer C's peace officer certification for one year.

Case #4

Officer D, a correctional officer, was training cougar tracking dogs and the dogs accidentally killed a cougar. Officer D transported the cougar to his residence, stored it in his freezer and attempted to find someone with a cougar permit to tag the animal. Officer D admitted to investigators he knew his actions were illegal, but he wanted the cougar to count towards the quota of legally killed cougars established by UDWR, for that area and not "go to waste". Officer D was charged with wanton destruction of protected wildlife, a class B misdemeanor and entered a guilty plea to be held in abeyance. During the Internal Affairs (IA) investigation, Officer D admitted his dogs accidentally killed the cougar and he transported the cougar to his residence and placed it in the freezer with the intent of finding someone with a tag. During an administrative interview with POST investigators, in which Officer D was issued a *Garrity* warning, he admitted the same information he disclosed during his department IA and the criminal investigation. Officer D signed a consent agreement recommending an 18 month suspension of his peace officer certification. POST Council ratified POST's recommendation and voted to suspended Officer D's peace officer certification for 18 months.

Case #5

Officer E, an unemployed law enforcement officer, was arrested for DUI. Officer E. submitted to an intoxilyzer test and had a breath alcohol content of .238. Officer E plead guilty to the charge of impaired driving, a class B misdemeanor. Officer E came to POST sometime later and explained he had been out of law enforcement for a period of time and wanted to know what he had to do to reactivate his certification. During the conversation, Officer E told POST he was arrested for DUI after he had obtained peace officer certification, but that he was not working as a peace officer at the time of his arrest. POST informed Officer E that a POST investigation needed to be conducted due to his DUI arrest. During an administrative interview with POST investigators, in which Officer E was issued a *Garrity* warning, he admitted to being in control of his vehicle while he was intoxicated. Officer E admitted he was seated in the driver seat with the engine running. Officer E signed a consent agreement recommending an 18 month suspension of his peace officer certification. POST Council ratified POST's recommendation and voted to suspend Officer E's peace officer certification for 18 months.

Case #6

Officer F, a law enforcement officer with a county agency, was at a bar off-duty, where consumed several alcoholic beverages. Officer F, after bothering several female patrons, was escorted to the door and asked to leave the bar. Officer F remained outside the bar in the parking lot area until closing time when he approached a pickup truck and began a conversation with the passenger. For no apparent reason and without provocation, Officer F punched the passenger in the face. An altercation ensued and the police

were notified. Officer F was subsequently charged criminally with assault and intoxication. Officer F resigned from his agency prior to an administrative investigation. Officer F entered a guilty plea to be held in abeyance to Assault, a class B misdemeanor and Intoxication, a class C misdemeanor. POST investigators attempted multiple times to contact Officer F for interviews, however, Officer F would not respond. Due to Officer F's failure to participate in the POST investigative process, POST sought a default order. An Order of Default was signed by the Administrative Law Judge. POST recommended a three year suspension of Officer F's peace officer certification. The POST Council ratified POST's recommendation and voted to suspend Officer F's peace officer certification for three years.

Case #7

Officer G, a law enforcement officer with a police department, notified his department he was taking a sick day off as he had the flu. When Officer G reported back to work he was asked for evidence that he had been to the doctor. Officer G was unable to provide proof of the doctor's visit. An internal investigation was conducted. The IA investigation disclosed Officer G was misusing his sick time. During a department *Garrity* interview, Officer G was not truthful regarding his whereabouts on the day he called in sick. Officer G resigned his position with his agency. POST investigators attempted multiple times to contact Officer G for interviews, however, Officer G would not respond. Due to Officer G's failure to participate in the POST investigative process, POST sought a default order. An Order of Default was signed by the Administrative Law Judge. POST recommended a three year suspension of Officer G's peace officer certification. The POST Council ratified POST's recommendation and voted to suspend Officer G's peace officer certification for three years.

Case #8

Officer H, a law enforcement officer with a police department, was placed on paid administrative leave pending a fitness for duty evaluation. Officer H was instructed to return his patrol vehicle and equipment to the department. Officer H refused and told his department he lived in a crime infested neighborhood and the police car was going to get vandalized. The following morning the police vehicle was discovered vandalized by Officer H's wife. Officer H called the local police to report the damage. Officer H was not cooperative in the criminal investigation or when he was questioned about the damage in the department internal affairs investigation. POST investigators attempted multiple times to contact Officer H for interviews, however, Officer H would not respond. Due to Officer H's failure to participate in the POST investigative process, POST sought a default order. An Order of Default was signed by the Administrative Law Judge. POST recommended revocation of Officer H's peace officer certification. The POST Council ratified POST's recommendation and voted to revoke Officer H's peace officer certification.

Case #9

Officer I, a law enforcement officer with a county agency, was off-duty and reported to his administration he had shot at a fleeing suspect outside of his home. Officer I's agency conducted an Internal Affairs (IA) investigation which included a *Garrity* interview. During the interview, Officer I stated he observed an armed suspect that had just been involved in a shooting in his neighborhood. Officer I stated he identified himself as a police officer and fired two rounds at the fleeing suspect. During the criminal and IA investigation, it was determined there had been a shooting in Officer I's neighborhood, however there was no evidence to corroborate Officer I's statement that he had fired at the fleeing suspect. In a separate *Garrity* interview, Officer I admitted he did not fire his weapon during the incident. POST investigators attempted multiple times to contact Officer I for interviews, however, Officer I would not respond. Due to Officer I's failure to participate in the POST investigative process, POST sought a default order. An Order of Default was signed by the Administrative Law Judge. POST recommended revocation of Officer I's

peace officer certification. The POST Council ratified POST's recommendation and voted to revoke Officer I's peace officer certification.

For reference we have included below Utah Code 53-6-211. Please direct any questions regarding the statute or the POST investigation process to support@utahpost.org

53-6-211. Suspension or revocation of certification -- Right to a hearing -- Grounds -- Notice to employer -- Reporting.

- (1) The council has authority to suspend or revoke the certification of a peace officer, if the peace officer:
 - (a) willfully falsifies any information to obtain certification;
 - (b) has any physical or mental disability affecting the peace officer's ability to perform duties;
 - (c) is addicted to alcohol or any controlled substance, unless the peace officer reports the addiction to the employer and to the director as part of a departmental early intervention process;
 - (d) engages in conduct which is a state or federal criminal offense, but not including a traffic offense that is a class C misdemeanor or infraction;
 - (e) refuses to respond, or fails to respond truthfully, to questions after having been issued a warning issued based on *Garrity v. New Jersey*, 385 U.S. 493 (1967);
 - (f) engages in sexual conduct while on duty; or
 - (g) is dismissed from the armed forces of the United States under dishonorable conditions.

- (2) The council may not suspend or revoke the certification of a peace officer for a violation of a law enforcement agency's policies, general orders, or guidelines of operation that do not amount to a cause of action under Subsection (1).

- (3)
 - (a) The division is responsible for investigating officers who are alleged to have engaged in conduct in violation of Subsection (1).
 - (b) The division shall initiate all adjudicative proceedings under this section by providing to the peace officer involved notice and an opportunity for a hearing before an administrative law judge.
 - (c) All adjudicative proceedings under this section are civil actions, notwithstanding whether the issue in the adjudicative proceeding is a violation of statute that may be prosecuted criminally.
 - (d)
 - (i) The burden of proof on the division in an adjudicative proceeding under this section is by clear and convincing evidence.
 - (ii) If a peace officer asserts an affirmative defense, the peace officer has the burden of proof to establish the affirmative defense by a preponderance of the evidence.
 - (e) If the administrative law judge issues findings of fact and conclusions of law stating there is sufficient evidence to demonstrate that the officer engaged in conduct that is in violation of Subsection (1), the division shall present the finding and conclusions issued by the administrative law judge to the council.
 - (f) The division shall notify the chief, sheriff, or administrative officer of the police agency which employs the involved peace officer of the investigation and shall provide any information or comments concerning the peace officer received from that agency regarding the peace officer to the council before a peace officer's certification may be suspended or revoked.
 - (g) If the administrative law judge finds that there is insufficient evidence to demonstrate that the officer is in violation of Subsection (1), the administrative law judge shall dismiss the adjudicative proceeding.

- (4)
 - (a) The council shall review the findings of fact and conclusions of law and the information concerning the peace officer provided by the officer's employing agency and determine whether to suspend or revoke the officer's certification.
 - (b) A member of the council shall recuse him or herself from consideration of an issue that is before the council if the council member:

- (i) has a personal bias for or against the officer;
- (ii) has a substantial pecuniary interest in the outcome of the proceeding and may gain or lose some benefit from the outcome; or
- (iii) employs, supervises, or works for the same law enforcement agency as the officer whose case is before the council.

- (5) (a) Termination of a peace officer, whether voluntary or involuntary, does not preclude suspension or revocation of a peace officer's certification by the council if the peace officer was terminated for any of the reasons under Subsection (1).
 - (b) Employment by another agency, or reinstatement of a peace officer by the original employing agency after termination by that agency, whether the termination was voluntary or involuntary, does not preclude suspension or revocation of a peace officer's certification by the council if the peace officer was terminated for any of the reasons under Subsection (1).
- (6) A chief, sheriff, or administrative officer of a law enforcement agency who is made aware of an allegation against a peace officer employed by that agency that involves conduct in violation of Subsection (1) shall investigate the allegation and report to the division if the allegation is found to be true.

Repealed and Re-enacted by Chapter 313, 2010 General Session