



POST Investigations Bulletin

State of Utah

Department of Public Safety Peace Officer Standards and Training

December 2013

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 and 53-6-309. 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Please note that the actions taken by the POST Council are not binding precedent.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 6, 2013, POST Council convened and considered nine cases of officer discipline.

Case 1

Officer A's small dog was attacked and killed by a pit bull. In an attempt to free his dog, Officer A struck the pit bull on the head with his fist and swung the pit bull into a wall until the pit bull dropped Officer A's dog. After the pit bull dropped the dog from its mouth, Officer A again grabbed the pit bull and swung it into a wall. The pit bull was later euthanized at the owner's request. Local police charged Officer A with cruelty to an animal, a class B misdemeanor. Officer A entered into a diversion agreement and was required to pay restitution. Officer A failed to fulfill the conditions of the diversion agreement and a warrant was issued. Officer A did not respond to the notice of agency action filed by POST and an order of default was signed by an administrative law judge. POST recommended Officer A's certification be suspended for six months. After hearing from POST, the Council ratified POST's recommendation and voted to suspend Officer A's certification for six months.

Cases 2 and 3

Officer B, Officer C and two other officers attended a party in connection with their secondary employment as security officers. During the party, one of the officers broke into a locked storage room. Officer B and Officer C, along with the other officers, removed a bottle of alcohol for themselves. The theft was discovered after a routine inventory and confirmed via security cameras. When confronted about the missing alcohol, Officer B, Officer C and the other officers each admitted to the theft and returned the unopened bottles. Subsequently, each of the officers resigned from their department. Both officers waived their right to a hearing before an administrative law judge. POST recommended the certification of Officer B and Officer C be suspended for one year. After hearing from POST, the Council ratified POST's recommendation and voted to suspend Officer B and Officer C's certification for one year.

Case 4

Officer D was working security at a party in connection with his secondary employment. The party was held for all employees and three of Officer D's co-workers, also officers, were in attendance. During the party, one of the officers broke into a locked storage room. Each of the officers removed a bottle of alcohol for themselves. Instead of stopping the theft, Officer D also selected a bottle of alcohol and asked the other officers to take his bottle and give it to him at a later time. The theft was discovered after a routine inventory and confirmed via security cameras. When confronted about the missing alcohol, Officer D and the other three officers admitted to the theft and returned the bottles. Officer D subsequently resigned from his department. Officer D waived his right to a hearing before an administrative law judge. POST recommended Officer D's certification be suspended for one year. After hearing from POST, the Council ratified POST's recommendation and voted to suspend Officer D's certification for one year.

Case 5

Officer E's supervisor became aware Officer E had several traffic stops recorded on his daily log that were not recorded on the dispatch log or on Officer E's dash camera. During a department internal affairs investigation *Garrity* interview, Officer E admitted he entered traffic stops and created warnings on his log when he did not actually make the stops. Officer E also admitted he stopped vehicles where two individuals were in a single vehicle, he would write a warning to both individuals, but his log would reflect two separate vehicle stops. POST opened an investigation for falsification or alteration of a government record, a class B misdemeanor. POST made several attempts to contact Officer E for an interview. Officer E did not respond to the notice of agency action filed by POST and an order of default was signed by an administrative law judge. POST recommended Officer E's certification be suspended for one year. After hearing from POST, the Council ratified POST's recommendation and voted to suspend Officer E's certification for one year.

Case 6

POST investigated and sustained several allegations against Officer F. These allegations included assault, threat of violence, electronic communications harassment and failing to respond truthfully after receiving a *Garrity* warning. Officer F exercised his right to a hearing before an administrative law judge. The administrative law judge ruled POST met its burden of proof of clear and convincing evidence regarding one count of assault while the other charges were dismissed. Officer F assaulted a male who was reportedly in a romantic relationship with Officer F's wife. The assault occurred after Officer F used his personal vehicle to force the victim off the road. Officer F then approached the victim's vehicle and attempted to strike him through the open window. POST recommended a two-year suspension of Officer F's certification. After hearing from POST and from Officer F, who was represented by an attorney, the Council ratified POST's recommendation and voted to suspend Officer F's certification for two years.

Case 7

Officer G, while working as a deputy constable, served a writ of execution and collected \$150.00 from a subject. Officer G never turned in the return of service or the \$150.00 and never billed the constable's office for the paper service. On another date Officer G collected \$300.00 bail from a subject on a cash only bench warrant. Officer G never turned in the return of service or the \$300.00 and never billed the constable's office for the paper service. When the constable's office asked Officer G for the \$300 bail, he asked for a pay advance in order to turn in the \$300.00. During a POST *Garrity* interview, Officer G could not explain why he did not turn in all of the required documents and money from these two cases as he has from other cases. Officer G did not respond to the notice of agency action filed by POST and an order of default was signed by an administrative law judge. POST recommended a two year suspension of Officer G's certification. After hearing from POST, the Council rejected POST's recommendation and voted to suspend Officer G's certification for three years.

Case 8

Officer H was driving a department owned vehicle on a public road while inhaling gas from a compressed gas can used for cleaning. The gas caused Officer H to lose consciousness which resulted in Officer H crashing the vehicle into a pole on the side of the road. Officer H was not initially arrested, but was later charged with DUI. In court, Officer H entered a guilty plea to impaired driving, a class B misdemeanor. However, Officer H was not criminally prosecuted for the abuse of psychotoxic chemical solvents. Officer H waived his right to a hearing before an administrative law judge. POST recommended a three year suspension of Officer H's certification. After hearing from POST, the Council ratified POST's recommendation and voted to suspend Officer H's certification for three years.

Case 9

A female contacted police, to report someone had sent seven unwanted text messages to her cell phone containing sexually explicit language. The victim said she found the text messages "very offensive" and wanted the incident investigated. The police department initiated a criminal investigation and determined Officer I was the owner of the cell phone number associated with the sexually explicit text messages. Sometime later, the female received additional sexually explicit text messages including the image of male genitalia. Officer I was charged with one count of electronic communication harassment, a class B misdemeanor. Officer I entered into a plea in abeyance to the charge. In two separate *Garrity* interviews conducted by his department, Officer I lied and refused to answer questions related to the department's administrative investigation. Officer I refused to participate in the POST investigation process. Officer I did not respond to the notice of agency action filed by POST and an order of default was signed by an administrative law judge. POST recommended revocation of Officer I's certification. After hearing from POST, the Council ratified POST's recommendation and voted for permanent revocation of Officer I's certification.

For reference we have included below Utah Code 53-6-211 and a portion of Administrative Rule R728-409. 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

R728-409-3. Definitions.

A. Terms used in this rule are defined in Section 53-6-102.

B. In addition:

3. "on duty" means that a peace officer is:

- a. actively engaged in any of the duties of his employment as a peace officer;
- b. receiving compensation for activities related to his employment as a peace officer;
- c. on the property of a law enforcement facility;
- d. in a law enforcement vehicle which is located in a public place; or
- e. in a public place and is wearing a badge or uniform, authorized by a law enforcement agency, which readily identifies the wearer as a peace officer;

6. “sexual conduct” means the touching of the anus, buttocks or any part of the genitals of a person, or the touching of the breast of a female, whether or not through clothing, with the intent to arouse or gratify the sexual desire of any person regardless of the sex of any participant; and