



# POST Investigations Bulletin

State of Utah

## Department of Public Safety Peace Officer Standards and Training

March 2013

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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Please note that the actions taken by the POST Council are not binding precedent.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 3, 2012, POST Council convened and considered nine cases of officer discipline.

### Case #1

Officer A, a law enforcement officer, with a state agency, was investigated by his agency for fraudulently documenting traffic stops. During an Internal Affairs (IA) *Garrity* interview, Officer A admitted he intentionally accessed and used driver license information maintained by the Bureau of Criminal Identification (BCI) in order to fabricate vehicle traffic stops. Officer A admitted he made false entries to the department's electronic citation system to create fictitious warning citations. Officer A said he did this to bolster his performance statistics. POST made multiple attempts to contact Officer A for an interview without success. Due to Officer A's failure to participate in the POST investigative process, POST sought an order of default. An Order of Default was signed by the Administrative Law Judge. POST recommended a two year suspension of Officer A's peace officer certification. The POST Council ratified POST's recommendation and voted to suspend Officer A's peace officer certification for two years.

### Case #2

Officer B, a correctional officer cadet, with a state agency, while attending the Training Academy, submitted an amendment to his POST application. The amendment stated Officer B, while working at a local grocery store, sent multiple sexually explicit text messages to several women he worked with. These messages were not welcomed by the women and the women asked him to stop sending the messages. Officer B continued to send these harassing messages to the women, which ultimately resulted in his termination from the grocery store. The victims in this matter never filed a complaint with any police agency even though Officer B's conduct constituted a Class B misdemeanor. During an administrative interview with POST investigators, in which Officer B was issued a *Garrity* warning, he admitted sending the explicit message to the women. Officer B waived his right to a hearing before an Administrative Law

Judge. POST recommended a one year suspension of his peace officer certification. POST Council ratified POST's recommendation and voted to suspend Officer B's certification for one year.

### **Case #3**

Officer C, an unemployed law enforcement officer, was arrested for DUI. Officer C, failed the Standardized Field Sobriety Tests (SFST's) and submitted to an intoxilyzer test. Officer C had a breath alcohol content of .077. Officer C plead no contest to an amended charge of impaired driving, a class B misdemeanor. During an administrative interview with POST investigators, in which Officer C was issued a *Garrity* warning, she admitted to driving her vehicle after consuming several alcoholic beverages. Officer C waived her right to a hearing before an Administrative Law Judge. POST recommended a one year suspension of her peace officer certification. POST Council ratified POST's recommendation and voted to suspend Officer C's certification for one year.

### **Case #4**

Officer D, a law enforcement reserve officer, with a city agency, was arrested for offering a bribe to another officer. Officer D approached another officer who had arrested a friend for DUI and requested the arresting officer not appear at a driver license hearing, in exchange for money. After being informed of the results of his friend's blood alcohol test Officer D offered additional money to the arresting officer. Officer D was convicted of a 3<sup>rd</sup> degree felony, bribery or offering a bribe. Due to Officer D's failure to participate in the POST investigative process, POST sought an order of default. An Order of Default was signed by the Administrative Law Judge. POST recommended that Officer D's certification be revoked. The POST Council ratified POST's recommendation and voted to revoke Officer D's peace officer certification.

### **Case #5**

Officer E, a law enforcement officer with a county agency, was cited for intoxication and disorderly conduct. Officer E became intoxicated while at his apartment and became despondent over recent personal issues. Officer E began yelling obscene words and throwing his personal belongings inside the apartment. Officer E's neighbors became concerned for his safety and notified the local police agency. Officer E was subsequently issued a citation for disorderly conduct and intoxication. Officer E was convicted of intoxication, which was reduced to an infraction, and the disorderly conduct was dismissed. During an administrative interview with POST investigators, in which Officer E was issued a *Garrity* warning, he admitted to being intoxicated, disorderly, and damaging his personal property in his apartment. Officer E waived his right to a hearing before an Administrative Law Judge. POST recommended a letter of caution. POST Council rejected POST's recommendation and voted to suspend Officer E's certification for six months.

### **Case #6**

Officer F, a law enforcement officer, with a city police department, was arrested for DUI. Officer F failed the Standardized Field Sobriety Tests (SFST's) and submitted to an intoxilyzer test. Officer F had a breath alcohol content of .177. Officer F plead guilty to DUI. During an administrative interview with POST investigators, in which Officer F was issued a *Garrity* warning, he admitted to driving his vehicle under the influence of alcohol. Officer F waived his right to a hearing before an Administrative Law Judge. POST recommended an 18 month suspension of his peace officer certification. POST Council rejected POST's recommendation and voted to suspend Officer F's certification for one year.

### **Case #7**

Officer G, a correctional officer with a state agency, was cited for retail theft. Officer G entered a discount department store and draped two jackets the handle of his cart. Officer G pushed the cart through the store

to the mattress area where he stopped briefly. Officer G then pushed his cart to the other side of the store, picked up the jackets from the cart, and walked back to the mattresses area. Officer G put one jacket on and left the second jacket on a stack of mattresses. Officer G then picked up a mattress and carried it to the cart he had left on the opposite side of the store. Officer G proceeded to the checkout area while still wearing the jacket. Officer G used the self-check option where he paid for the mattress, but not the jacket. When Officer G attempted to leave the store, he was confronted by the Loss Prevention Officer. Officer G explained he had “forgotten” to pay for the jacket. Officer G was cited for shoplifting. Officer G entered a plea of not guilty. The case was settled through a diversion agreement. During an administrative interview with POST investigators, in which Officer G was issued a *Garrity* warning, he admitted to not paying for the jacket. Officer G waived his right to a hearing before an Administrative Law Judge. POST recommended a one year suspension of his peace officer certification. POST Council ratified POST’s recommendation and voted to suspend Officer G’s certification for one year.

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](mailto: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