



# POST Investigations Bulletin

State of Utah

## Department of Public Safety Peace Officer Standards and Training

December 6, 2010

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One of the duties of the Utah Council on Peace Officer Standards and Training 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. 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Please note that the actions taken by the POST Council are not binding precedent.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 published to provide insight into the Council's position on various types of officer misconduct.

On December 6, 2010, POST Council convened and considered 27 cases of officer discipline. The following is sample of some of the Council's rulings.

### Case #1

Officer A, a correctional officer responsible for supervising inmate workers at worksites outside the facility, was instructed by his supervisor that it was not permissible for employees to remove scrap material from assigned work sites and recycle the materials for personal gain. Officer A and another employee went to a government building renovation worksite, on their day off, and took scrap materials, consisting of aluminum, brass and copper. They then took the scrap materials to a recycling plant and sold it for approximately \$800.00. On a different date, Officer A and another employee went to the same worksite, on their day off, and took scrap materials consisting of aluminum. Officer A and the other employee took the scrap materials to a recycling plant and sold it for \$158.00. Officer A entered a plea in abeyance to third degree felony theft under Utah Code Ann. § 76-6-412. Officer A did not respond to POST's request to sign a consent agreement or to have the matter heard before an administrative law judge. Consequently an Order of Default was issued by the Administrative Law Judge. The POST Council disciplinary guidelines recommend revocation of Officer A's peace officer certification. The POST Council voted to adopt the recommendation for revocation.

### Case #2

Officer B, a law enforcement officer with a city police department was investigated for illegally purchasing prescription medication from a female who resided in a neighboring city. Officer B was also investigated for allegedly stealing "pills" from an evidence room. Officer B was interviewed by his agency and after being issued a *Garrity* warning, admitted to illegally obtaining prescription medication for a member of his family. Officer B was interviewed under *Garrity* by POST and admitted to illegally obtaining Percocet from

a female acquaintance. Officer B violated Utah Code Ann. § 53-6-211(1)(d) by engaging in conduct which is a state criminal offense, to wit: arranging to distribute a Schedule II controlled substance, as provided by Utah Code Ann. § 58-37-8(1)(a)(ii), a second degree felony. Officer B did not respond to POST's request to sign a consent agreement or to have the matter heard before an administrative law judge. Consequently an Order of Default was issued by the Administrative Law Judge. The POST Council disciplinary guidelines recommend revocation of Officer B's peace officer certification. The POST Council voted to adopt the recommendation for revocation.

### **Case #3**

Officer C, a law enforcement officer with a city police department engaged in a domestic dispute with his wife in the presence of a child. A Division of Child and Family Services (DCFS) investigation revealed Officer C was having a dispute with his ex-wife over custody issues. Officer D, after attending psychiatric testing, related to the custody dispute, became progressively agitated and twice threatened to kill himself. Officer D was transported and treated at a local medical facility. Officer C's agency required him to submit to a fitness for duty evaluation which concluded he was not fit for duty. Because the fitness for duty evaluation indicates Officer C has a mental disability affecting his ability to perform his duty, pursuant to Utah Code Ann. § 53-6-211(1)(b), Officer C's peace officer certification can be suspended for an indefinite time period until he is able to demonstrate that he is fit for duty. The POST Council disciplinary guidelines recommend indefinite suspension of Officer C's peace officer certification. The POST Council voted to adopt the recommendation for an indefinite suspension.

### **Case #4**

Deputy D, a deputy sheriff with a county sheriff's office, was involved in a sexual relationship with a female on felony probation under supervision of Adult Probation and Parole (AP&P). Deputy D went to the female's residence at least three times; each time hiding his vehicle in a gully to hide his appearance at her residence. Deputy D was given a *Garrity* warning by his agency and interviewed in an unrelated case. The case involved allegations that another deputy engaged in custodial sexual relations and Deputy D was a witness to this violation. During the interview Deputy D lied to his agency's investigators regarding the other deputy's relationship. The following day Deputy D met with his supervisor and admitted lying during the interview. Deputy D said he was aware the other deputy had sexual relations with the female. Deputy D, after admitting to lying under *Garrity* and believing he was going to lose his job, called the female he was involved with and invited her to his home they then engaged in sexual relations. Subsequently Deputy D was charged with two counts of custodial sexual relations, both 3<sup>rd</sup> degree felonies. Deputy D violated Utah Code Ann. § 53-6-211(1)(d) by engaging in conduct which is a state or federal criminal offense, to wit: custodial sexual relations as provided in Utah Code Ann. § 76-5-412, a 3<sup>rd</sup> degree felony and violated Utah Code Ann. § 53-6-211(1)(e) by refusing to respond or failing to respond truthfully, to questions after having been issued a warning issued based on *Garrity v New Jersey*, 385 U.S. 493(1967). Deputy D did not respond to POST's request to sign a consent agreement or to have the matter heard before an administrative law judge. Consequently an Order of Default was issued by the Administrative Law Judge. The POST Council disciplinary guidelines recommend revocation of Deputy D's peace officer certification. The POST Council voted to adopt the recommendation for revocation.

### **Case #5**

Officer E, a reserve officer with a city police department was also employed with an airport shuttle service. The shuttle owner discovered money was frequently missing from a deposit box located in the manager's office. The owner installed a covert camera system in the manager's office in order to discover who was taking the money. The camera eventually captured Officer E going into the manager's office and removing

money from the slot in the deposit box with a pair of needle-nose pliers. Officer E took the money, put it in his wallet and left the office. A criminal investigation was conducted and Officer E was interviewed. During the interview Officer E initially lied to the investigator, denying any involvement in the theft of the money. Officer E was informed that the theft had been captured on camera. Officer E then admitted to taking money from the deposit box between eight and ten times for a total of \$692. POST contacted Officer E by phone and he declined to meet with a POST investigator. Officer E was charged with 3<sup>rd</sup> degree felony burglary and class A misdemeanor theft. The burglary charge was dismissed and Officer E pled guilty to the theft charge. Officer E violated Utah Code Ann. § 53-6-211(1)(d) by engaging in conduct which is a state or federal criminal offense, to wit: he committed theft as provided by Utah Code Ann. § 76-6-404, a class A misdemeanor. Officer E signed a consent agreement for three and one half years suspension of his peace officer certification. POST Council rejected the consent agreement and citing the number of times Officer E had engaged in theft as an aggravating circumstance, voted to revoke Officer E's peace officer certification.

### **Case #6**

Deputy F, a deputy sheriff for a county sheriff's office was investigated for providing alcohol to a female who was under the age of 21. This violation allegedly occurred at a night club and also at a Christmas party at Deputy F's home. An internal affairs investigation revealed that Deputy F may have provided alcohol to another female, also under the age of 21, in 2008. The second female stated she was given alcohol from Deputy F's freezer after which Deputy F and another male engaged in sexual activities with her. Deputy F was given a *Garrity* warning and during the interview Deputy F denied providing alcohol to the female or engaging in any sexual conduct with the female. The following day Deputy F contacted a sergeant with his department and disclosed that he had not been honest in the previous interview. Deputy F stated the other male had "messed around sexually" with the female. POST conducted a *Garrity* interview with Deputy F and he admitted lying under *Garrity* to his department and also admitted to engaging in sexual conduct with the female. Deputy F denied providing alcohol to either of the females or seeing either of them drink alcohol. Clear and convincing evidence to establish that Deputy F provided alcohol to a minor was not obtained. Deputy F violated Utah Code Ann. § 53-6-211(1)(e) by failing to respond truthfully to questions after having been issued a warning issued based on *Garrity v. New Jersey*, 385 U.S. 493 (1967). Deputy F signed a consent agreement for a three year suspension of his peace officer certification. POST Council rejected the consent agreement and citing the multiple times Deputy F lied under *Garrity* as an aggravating circumstance voted to revoke Deputy F's peace officer certification.

### **Case #7**

Officer G, a correctional officer, contacted 911 and reported he had been assaulted and his home burglarized. Officer G prepared a witness statement detailing his recollection of the incident and a description of the suspect. The witness statement contained a warning notice indicating, "a falsified statement may be subject to criminal punishment as contained in Utah Code Ann. § 76-8-504, a class A misdemeanor." The investigating officer noted evidence that was inconsistent with the statements made by Officer G. During a followup interview Officer G admitted to the investigator that he had fabricated the incident. Officer G prepared another witness statement detailing the incident correctly. Officer G was charged with filing a false police report, a class A misdemeanor. Officer G entered a plea of guilty to a reduced charge of giving false personal identity to a peace officer, as provided in Utah Code Ann. § 76-8-507, a class C misdemeanor. POST conducted a *Garrity* interview with Officer G and he admitted falsifying the initial police witness statement. Officer G signed a consent agreement for a three year suspension of his peace officer certification. The POST Council voted to adopt the consent agreement and ordered a three year suspension of Officer G's peace officer certification.

### Case #8

Deputy H, a deputy sheriff for a county sheriff's office was investigated for having an on duty sexual relationship with another deputy. The investigation revealed that the sexual relationship occurred on duty, Deputy H was in uniform and in a public place. POST conducted a Garrity interview with Deputy H and she admitted to having sex on duty with another deputy. Deputy H signed a consent agreement for a three year suspension of her peace officer certification. The POST Council voted to adopt the consent agreement and ordered a three year suspension of Deputy H's peace officer certification.

### Case #9

Deputy I, a deputy sheriff with a County Sheriff's Office, responded to assist with an arrest of a male suspect involved in a domestic violence situation. After being placed into handcuffs, the suspect attempted to assault one of the other officers resulting in officers taking the suspect to the ground to regain control of the suspect. While the suspect was attempting to stand up, Deputy I placed his foot on the suspect's throat. The suspect was eventually allowed to stand and was escorted outside by the other officers to be placed in a patrol car. While walking, the suspect yelled obscenities and death threats at Deputy I for placing his foot on the suspect's throat. Deputy I responded by pushing the suspect backward using the blade of his hand on the suspect's throat. The suspect was then placed in a patrol vehicle and transported to jail. An internal investigation was conducted and it was discovered that Deputy I had put his foot on the suspect's throat in an effort to keep the suspect from standing up. Deputy I also appeared to be angry and at one point he bent down to simulate striking the suspect with a closed fist while stating, "I should punch you in the face." Deputy I also assaulted the suspect by grabbing his throat twice. POST interviewed Deputy I and after a Garrity warning he stated he used bad tactics by placing his foot on the suspect's throat. Deputy I stated once outside, he pushed the suspect one time on the throat after the suspect had "gotten in his face." The local district attorney's office declined to file any charges against Deputy I. Deputy I did not respond to POST's request to sign a consent agreement or to have the matter heard before an administrative law judge. Consequently an Order of Default was issued by the Administrative Law Judge. The POST Council disciplinary guidelines recommend a two year suspension of Deputy I's peace officer certification. The POST Council voted to adopt the recommendation for a two year suspension

### Case #10

Deputy J, a deputy sheriff with a county sheriff's office working as a county correctional officer, was operating a personally owned motor vehicle and was involved in a single car crash in a rural city. An investigation conducted at the scene resulted in Deputy J being charged with driving under the influence of a controlled substance and failure to operate a vehicle within one lane. Blood was drawn during the investigation and the subsequent toxicology screening, revealed Deputy J's blood tested positive for Zolpidem (Ambien). Deputy J was charged with driving under the influence and subsequently entered a plea of guilty to one count of reckless driving. Deputy J violated Utah Code Ann. § 53-6-211(1)(d) by engaging in conduct which is a state criminal offense, to wit: reckless driving, pursuant to Utah Code Ann. § 41-6a-528, a class B misdemeanor. Deputy J did not respond to POST's request to sign a consent agreement or to have the matter heard before an administrative law judge. Consequently an Order of Default was issued by the Administrative Law Judge. The POST Council disciplinary guidelines recommend a one year suspension of Deputy J's peace officer certification. The POST Council voted to adopt the recommendation for a one year suspension.

### **Case #11**

Officer K, a law enforcement officer with a city police department, was arrested by another city police department for solicitation of prostitution. A sting operation was conducted by the arresting city police department targeting men who patronized prostitutes. A female decoy posed as a prostitute and several internet ads were posted advertising her services. Officer K responded to the ads and arranged a date with the decoy. Officer K met the decoy in a hotel and agreed to pay her \$250.00 for sex at which time he was taken into custody. Officer K violated Utah Code Ann. § 53-6-211(1)(d) by engaging in conduct which is a state criminal offense, to wit: Sexual Solicitation as provided in Utah Code Ann. § 76-10-1313, a class B misdemeanor. POST conducted a *Garrity* interview with Officer K during which he admitted to soliciting a prostitute. Officer K signed a consent agreement for a one year suspension of his peace officer certification. The POST Council voted to adopt the consent agreement and ordered a one year suspension of Officer K's peace officer certification.

### **Case #12**

Officer L, a unememployed certified peace officer, was stopped at an administrative checkpoint by state troopers. A trooper made contact with Officer L and could smell an odor of an alcoholic beverage coming from the vehicle. The trooper asked Officer L to step out of his vehicle and perform standardized field sobriety tests. Officer L showed multiple signs during the test that would indicate he was under the influence of alcohol and was unsafe to operate a vehicle. Officer L was arrested for driving under the influence. Officer L submitted to an intoxilyzer test which showed Officer L had a breath alcohol content of .216. The trooper transported Officer L to a local county jail where he was booked for driving under the influence and having an open container of alcohol in the vehicle. Officer L pled guilty to the amended charge of Impaired Driving under Utah Code Ann. § 41-6a-502.5, a class B misdemeanor. The open container charge was dismissed. Officer L violated Utah Code Ann. § 53-6-211(1)(d) by engaging in conduct which is a state or federal criminal offense, to wit: Officer L operated a motor vehicle while impaired, as provided in Utah Code Ann. § 41-6a-502.5, a class B misdemeanor. Officer L signed a consent agreement for a one year suspension of his peace officer certification. The POST Council voted to adopt the consent agreement and ordered a one year suspension of Officer L's peace officer certification.

### **Case #13**

Deputy M, a deputy employed with a county sheriff's office, was investigated for disorderly conduct and destruction of personal property. Deputy M was involved in an argument with her husband over several serious personal and family issues. During the argument Deputy M threw a television remote control which broke a coffee pot. During the argument neither party touched the other nor was either party injured during the incident. Deputy M was subsequently charged and entered a plea in abeyance to criminal mischief. Deputy M violated Utah Code Ann. § 53-6-211(1)(d) by engaging in conduct which is a state criminal offense, to wit: criminal mischief, Utah Code Ann. §76-6-106, a class B misdemeanor. Deputy M signed a consent agreement for a three month suspension of her peace officer certification. The POST Council voted to adopt the consent agreement and ordered a three month suspension of Deputy M's peace officer certification.

## Case #14

Officer N, a law enforcement officer with a city police department, crashed his unmarked department vehicle into three parked vehicles in a residential neighborhood. The local police department responded to the scene to investigate. Officer N was identified by several witnesses as the driver. While talking to the investigating officer, Officer N stated he was sorry he ran into the parked cars. Investigating officers noticed Officer N's eyes were bloodshot and watery and they could smell the odor of alcohol coming from his breath. The investigating officer explained to Officer N that he suspected him of operating his vehicle while under the influence of alcohol and requested Officer N submit to the standardized field sobriety tests. At the request of the investigating officer's supervisor, Officer N was transported to a substation to conduct the sobriety testing. Officer N failed the tests and was arrested for driving under the influence of alcohol. Officer N submitted to a breath test which indicated his breath alcohol level was 0.153. Officer N entered a plea of guilty to an amended charge of Impaired Driving, under Utah Code Ann. § 41-6a-502.5, a class B misdemeanor and was placed on court probation. POST interviewed Officer N and after being issued a Garrity warning, Officer N admitted to driving under the influence and said he takes full responsibility for the crash. Officer N violated Utah Code Ann. § 53-6-211(1)(d) by engaging in conduct which is a state criminal offense, to wit: impaired driving, pursuant to Utah Code Ann. § 41-6a-502.5, a class B misdemeanor. Officer N signed a consent agreement for a two year suspension of his peace officer certification. The POST Council voted to adopt the consent agreement and ordered a two year suspension of Officer N's peace officer certification.