

## Allegation Policy and Procedure Attachment A

### Section 1 – Guidelines for Certification Sanctions

1. Sanction of officer certification may take one or more of the following forms:
  - a. Revocation of all certifications as defined in ARM 23.13.102(22).
    - i. POST may revoke only advanced certifications of an officer, leaving a basic certification intact, such that the officer may continue working.
  - b. Denial of certification. Denial of an officer's application for basic certification due to the officer's misconduct is equivalent to a revocation of the basic certification of an officer.
  - c. Suspension as defined in ARM 23.13.102(26).
    - i. POST may suspend only advanced certifications of an officer, leaving a basic certification intact, such that the officer may continue working.
    - ii. Suspension of any or all certificates may be based upon conditions similar to those outlines in 1.d. below.
    - iii. POST may suspend certification on an emergency basis pursuant to ARM 23.13.706. Such emergency suspension will be utilized sparingly and only in the most egregious of cases and only upon concurrence of the chair of the case status committee or the committee chair's designee.
  - d. Probation. Probation will be based upon conditions. The conditions of probation may include, but need not be limited to any of the following:
    - i. A requirement that the officer self-report any violation of Montana law, POST rules, POST policies, or any violation of additional probation conditions;
    - ii. A requirement that the officer's employing authority report any violation by the officer of Montana law, POST rules, POST policies, or any violation of additional probation conditions;
    - iii. Suspension of an officer's ability to apply for additional certifications;
    - iv. Suspension of a POST-certified instructor's ability to provide POST-approved training;
    - v. A requirement that the officer remain at a specific agency;
    - vi. Requirements for training;
    - vii. Requirements for treatment;
    - viii. If the probation is part of a stipulated agreement between POST and the officer, the officer must agree that he will not engage in the contested case process contained in MAPA;
    - ix. A requirement that the officer produce documentation of any training or treatment upon which probation has been conditioned; or
    - x. A requirement that the officer petition to the case status committee or POST for removal from probation.
2. The following factors may be considered in determining an appropriate sanction:
  - a. The gravity and nature of the ethical responsibility violated, including whether the responsibility is owed to the public, to the legal system, or to the profession;
  - b. The officer's mental state, if appropriate;
  - c. The length of time since the conduct occurred;
  - d. The actual or potential injury to the public, the legal system or to the profession;

- e. Any aggravating or mitigating factors;
  - f. The existence of prior offenses;
  - g. Sanctions imposed on other officers based upon similar conduct;
  - h. The employing authority's recommendation;
  - i. The officer's response to the allegations and any ongoing reaction to the allegations including the officer's interactions with POST during the course of its investigation;
  - j. Any additional information which tends to influence the officer's ability to perform the functions of a public safety officer with the highest standards of honesty, integrity, justice and morality.
3. Except in cases of an officer's wanton disregard for such violations, POST will not proceed with investigation or sanction of allegations which do not include an ethical violation or a failure to meet the minimum standards for appointment or certification. Such allegations need not be reported to POST by the employing authority unless a Notice of Termination is required to be submitted. Such allegations may include:
- a. Issues of insufficient training which may be remedied by the employing authority;
  - b. Policy violations which do not include violations of the public safety officer's code of ethics or the employing authority's ethics policies;
  - c. Violations of standard operating procedures which do not include any ethical violations, and which may be remedied through the criminal justice system. Such violations include, but may not be limited to: search warrant deficiencies, lack of probable cause or particularized suspicion, or other investigative deficiencies; or
  - d. Failure to complete an employing authority's probationary period for any issue which does not include a violation of the public safety officer code of ethics. This may include, but is not limited to: failure of firearms qualifications, failure of the Montana Physical Abilities Test, or an officer's general unsuitability for the chosen field or agency.

## **Section 2 – Sunset**

- 1. Except as provided in 2. below, POST will not proceed with investigation of any allegation of misconduct when the alleged misconduct occurred more than 5 years prior to POST's receipt of the allegation.
- 2. Exceptions to 1. could include, but may not be limited to the following:
  - a. Any felony conviction;
    - i. Dismissal of a conviction following a guilty finding shall not constitute a bar to sanction of an officer's certification for the conviction.
  - b. An ongoing pattern of conduct which began more than 5 years prior to POST's receipt of the allegation;
  - c. Failure to meet any of the minimum standards for appointment or certification found in ARMs 23.13.201 or 23.13.205;
  - d. Failure of a peace officer to meet any of the minimum standards for appointment found in 7-32-303, MCA;
  - e. Falsification of information which resulted in the appointment or certification of an officer when the officer would not have otherwise been appointed or certified absent the officer's falsification;

- f. Falsification of information during any legally authorized investigation;
- g. Conduct involving unlawful physical violence or unlawful sexual conduct whether the officer received a criminal conviction or not;
- h. Any sexual conduct which occurs while the officer is on duty or which the officer facilitates with public safety agency property; or
- i. Any other conduct which is so egregious in nature that POST's failure to take action could undermine the public's confidence in the integrity of the profession.

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