



Idaho Peace Officer Standards and Training Policies and Operating Procedures

Section # 6	Office Of Professional Responsibility	Origination Date: 12 February 2013
Procedure # 1	Subject: Decertification Investigations	
Reference:	Idaho Code	19-5109(c); 9-340C (8)
	IDAPA Rule	11.11.01.063, 11.11.01.091, 11.11.01.092
	ISP Policy	N/A
	IPOST Policy	
Commentary:	<p>POST administrative investigations are very sensitive actions conducted by the Idaho Peace Officer Standards and Training Council and Idaho Division of Peace Officer Standards and Training. Primarily, POST administrative investigations are conducted to determine whether allegations of violations of the POST Council’s Code Ethics or other standards of professional conduct by certified peace officer, correction officers, juvenile officers, misdemeanor probation officers or dispatchers are valid or invalid. The investigations are sensitive because they involve law enforcement personnel, personal reputations, law enforcement agencies, community reputations, and the potential for civil or criminal liability.</p> <p>POST administrative investigations influence public confidence in state government, and the fairness, impartiality, and professionalism of the investigations must be maintained at all times. It is extremely important that the investigations demonstrate the state’s commitment and respect of all parties involved in providing information or evidence, or the collateral affects the investigations may have upon otherwise innocent parties associated by circumstances or personal relationships to such investigations. For these reasons and more, the following policy and procedures have been established; to protect the innocent and provide the expected due process, as required by law.</p> <p>The following is effective immediately:</p>	
Policy:	<p>It is the policy of the Idaho Division of Peace Officer Standards and Training (POST) to conduct professional and unbiased administrative investigations whenever an allegation is made of alleged unprofessional misconduct through a violation of the POST Council’s Code of Ethics, criminal behavior or other conduct outlined by IDAPA rule displayed by personnel certified by the Peace Officer Standards and Training Council.</p>	



4. Basis for Initiation of a Decertification Investigation

The POST Council Chairman or the POST Administrator may authorize an investigation based upon receipt of allegations of misconduct from the department head for whom the officer works (or worked), from the department head of another law enforcement agency, from another law enforcement officer, or from any credible and attributable source as approved by the POST Council or POST Administrator.

A. Sources of Credible and Attributable Information may include:

- i. POST separation/change in status form employment form that indicates:
 1. termination of an employee for cause or resignation or
 2. retirement of an employee pending investigation or discipline that could have led to decertification.
- ii. Written letter or memorandum from the officer's employing agency requesting or indicating officer conduct in violation of POST Council standards.
- iii. Notification from an officer indicating another officer's arrest for a felony or misdemeanor criminal violation.
- iv. Notification from a state or local agency representative about an officer's alleged conduct in violation of POST Council professional standards.
- v. Notification from the public about an officer's alleged conduct in violation of POST Council professional standards.
- vi. Other sources as determined by the POST Administrator after consultation with legal counsel.
- vii. Anonymous allegations shall only be accepted as a cause for investigation if the allegation is deemed or verified as a credible allegation by the officer's employing agency head or his/her designee, or, if the certified individual is not currently employed, by the POST Administrator.

B. In cases where POST appears to be the first recipient of information relating to criminal conduct alleged against an officer, POST will refer the allegation to the employing agency and/or local prosecutor's office.



- C. In cases where POST has evidence or allegations of an officer committing a felony, or conduct amounting to violence, deceit, on-duty sexual conduct, or drugs other than alcohol, will result in an automatic POST investigation, not subject to the provisions of contested cases in Section 5 or Section 11 below, other than consultation with the employing agency head.

5. Misconduct Information or Allegations - Agency Inquiry

- A. Upon receipt of information regarding alleged misconduct by an officer, the Manager of OPR will determine if the allegations constitute:
 - i. a felony or conduct that involves violence, deceit, on-duty sexual conduct or drugs other than alcohol.
 - ii. a misdemeanor or other unethical conduct as defined in IDAPA 11.11.01.091.3 & .11.11.01.091.4.
- B. If the information is within the standards of subsection A. above, the OPR Manager will complete an Officer Conduct Information Report regarding the allegation(s) and submit the report to the POST Administrator. The report shall indicate the name of the officer, the employing agency (if employed), the alleged date(s) of the officer conduct, the source of the information; and contact information for any person who provided the allegation. The POST Council Chairman or POST Administrator will sign the report, acknowledging approval or disapproval to initiate an investigation based on the allegation(s).
- C. Unless otherwise indicated by the nature of the allegation of misconduct, POST Council prefers investigations involving a criminal violation(s) of law to be investigated after the criminal investigation or prosecution of the matter concludes. Exceptions to this provision may be made by the POST Administrator on a case by case basis; or if the facts appear to be a clear violation of POST standards and the time before a criminal prosecution occurs is expected to be exceed a reasonable period of time.
- D. If an investigation is approved, the OPR Manager will conduct an inquiry into the information with the head of the employing agency where the officer is, and/or employing agency head where the officer was, employed during the time of the alleged misconduct. The agency inquiry is a “common courtesy” to inform the agency head of the allegations made to POST, and allow for the agency head to provide POST with information that may justify, nullify, or result in an advisory of subsequent POST action.



- E. If the information is within the standards of subsection A. above, and the officer is still employed by the agency wherein the conduct occurred, the following shall occur:
- i. If the employing agency head confirms the alleged conduct, and no objection is indicated to a POST decertification investigation being conducted, the OPR Manager will initiate a POST investigation into the alleged misconduct by the officer.
 - ii. If the employing agency head confirms the alleged conduct, but indicates that POST should not conduct an investigation into the alleged misconduct, the OPR Manager shall inform the agency head to submit a written request that there not be a POST investigation into the matter, and submit the request to the POST Administrator. The agency head's written request should include specific information as to why POST should not proceed with an investigation in the matter. The written request should be received by POST within fifteen (15) working days after the OPR Manager's inquiry with the employing agency into the officer's alleged conduct.
 - iii. At the end of the fifteen (15) working days, if the employing agency head has not responded with a written request, the POST Administrator shall inquire with the employing agency head as to his/her intentions to respond to the POST decertification investigation. An agency head's request for an extension of time to respond will be honored by the POST Administrator.
 - iv. If the agency head does not **intend** to submit a written request for POST not to proceed with an investigation within the allotted time, the POST investigation shall proceed.
 - v. If the employing agency head does submit a written request as to why POST should not conduct an investigation, the POST Administrator shall consider the facts presented in the employing agency's request and make a determination whether the conduct and employing agency's action thereafter warrant further POST action in the matter.
 - vi. If after considering the employing agency head's request, the POST Administrator determines a POST investigation is still warranted due to past Hearing Board and POST Council or Hearing Board decisions, the POST



Administrator shall submit the employing agency's written request and a request to override the employing agency's written request to a POST Investigation Review Panel for decision to investigate, or not, the information of alleged misconduct.

- vii. The POST Investigation Review Panel shall make the final determination whether or not to investigate the matter. If the decision is to investigate, POST will conduct an investigation into the matter. If the decision is not to investigate, POST will end its action regarding the matter.

- F. Once a decision is made, the chair of the POST Investigation Review Panel shall make written notification to the POST Administrator, the officer and the head of the agency for which the officer is employed.

See Attachment #1 – POST Investigation Decision Process

6. Investigative Process

A. Investigators

The POST Administrator may engage the services of contract investigators to investigate allegations of misconduct by certified officers. All contract investigators will sign a contract for their services with POST and will be bound by the terms of the contract language and as provided in POST Policy 6.3.

At all times during decertification investigations, investigators shall conduct themselves in a professional manner. Investigators will dress in appropriate attire, will create and maintain necessary reports, logs, and other documentation, and will report the progress of investigations as necessary to the POST Council, the POST Administrator, the OPR Manager, and/or to the Office of the Attorney General as appropriate.

Violations of generally accepted standards of conduct, including dishonesty, untruthfulness, or other unprofessional behavior may result in the termination of the investigator's contract with POST

Individuals conducting decertification investigations are agents of the POST Council and are authorized to conduct investigations as set out at Idaho Code Section 19-5113, including powers of subpoena, administering oaths, taking depositions, and interviewing witnesses.



7. Confidentiality of Information

At all times, individuals having access to information related to decertification investigations shall consider this information as confidential and shall not disseminate or allow such information to be disseminated to unauthorized individuals or organizations.

Confidentiality of information is also regulated by the Idaho Public Writings Act [Idaho Code section 9-340C (8)], which sets out the limitations and exemptions on release of certain information obtained from personal records obtained pursuant to statutory licensing requirements.

All reports and documents containing information related to the investigation will be kept in locked and secured spaces.

8. Report of Investigation

At the conclusion of the investigation, the investigator will compile a report summarizing information gathered during the course of the investigation. The purpose for this report is to provide information pertaining to the alleged misconduct of the officer in a written fashion for the use of the POST Administrator, the Hearing Board, the Office of the Attorney General, and the POST Council in making their decisions. This report will, at a minimum, contain the following in this order:

- A. Cover Page: This page will include the name, Social Security Number, date of birth, the department for which the officer works (or worked), the name of the investigator, and the date of the report
- B. Findings Page: This page will identify alleged instances of misconduct and will report the investigator's conclusion of whether the misconduct can be characterized by one of the following categories:
 - i. Exonerated – The acts that provided the basis for the allegations of misconduct did occur, but were justified, lawful, and proper.
 - ii. Unfounded – The investigation proved that the alleged act or acts complained of did not occur. This also applies when individuals named were not involved in the alleged misconduct.
 - iii. Sustained – The investigation discloses by a preponderance of evidence that the alleged misconduct occurred.
 - iv. Not Sustained – The investigation failed to discover sufficient evidence to clearly prove or disprove the



misconduct alleged.

- v. No Finding – The investigation cannot proceed because:
 - 1. The complainant failed to disclose promised information to further the investigation, or
 - 2. The complainant wished to withdraw the complaint, or
 - 3. The complainant is no longer available for clarification.
 - 4. This finding may also be used when the information provided is not sufficient to determine the identity of the officer involved.

C. Table of Contents

D. Report of Decertification Investigation. This report will include a summary of the statutes, codes, policies and/or procedures violated by the officer, in addition to other information obtained from the investigation that will assist the POST Hearing Board and the POST Council in making their recommendations regarding possible decertification.

E. Approvals Page. On this page the investigator, the OPR Manager, and the POST Administrator all make recommendations as to whether or not the officer should be decertified, or whether the matter should be referred to a Hearing Board for their recommendation.

F. List of Exhibits contained within the report

G. Copies of all documents, photographs, or recordings considered necessary for the P.O.S.T Hearing Board or Council to review

H. Any other information requested by the POST Hearing Board or Council, the POST Administrator of POST, the Office of the Attorney General, or other authorized officials, or any information believed by the investigator to be pertinent to the investigation or which the investigator believes may be useful to those who review the report.

9. Investigative Reports

A. Upon completion of the investigative report, the investigator will indicate his/her recommendation for action on the approvals page.

B. The report will then be submitted to the OPR Manager who will review the report for accuracy and format and will add his recommendation for action.

C. The OPR Manager will present the investigation to and discuss



the findings with the POST Administrator.

- D. After review of the report, the POST Administrator may determine whether:
 - i. Insufficient cause exists for decertification; or
 - ii. The matter should be referred back to the investigator for further investigation, or
 - iii. Cause of action exists to refer the officer to Summary or Non-Summary Hearing for decertification.
- E. If the POST Administrator believes sufficient cause exists under IDAPA Rule 11.11.01.063 or 11.11.01.091, the POST Administrator shall proceed with administrative action under IDAPA Rule 11.11.01.092.
- F. If the POST Administrator determines that the conduct of the officer under investigation does not merit decertification, the POST Administrator will notify POST Council in a follow-up report of his opinion.
- G. At the conclusion of the adjudication of the matter, the report of investigation shall be returned to the OPR Manager for placement into storage. All documentation entered into evidence during the adjudication of the matter shall be filed with the POST Council Management Assistant and locked in secure storage.

10. Stipulation

- A. At any time during the course of the investigation, the officer under investigation may elect to voluntarily stipulate to the following points:
 - i. Waiver of rights of hearing, review, and appeal;
 - ii. Agreement to his or her decertification as an Idaho Peace Officer;
 - iii. Surrender of any interest and possession of any POST certificate;
 - iv. Forfeiture of right to be a peace officer within the State of Idaho; and
 - v. Acknowledgement that signing the stipulation is a voluntary act, and he/she has not been coerced into signing the stipulation.
 - 1. After the initial investigative interview with the officer under investigation, should the facts of the investigation show clearly that the officer has violated the provisions amounting to a recommendation for decertification, the investigator shall offer the officer under investigation an



opportunity to waive further administrative action through the use of a signed stipulation for decertification. If the officer voluntarily signs the Stipulation (consent agreement), the investigator will immediately notify the Manager of OPR and send his/her investigative report and signed Stipulation to POST/OPR.

2. If the officer under investigation has signed a stipulation for his/her decertification, OPR will forward the report to the office of the Attorney General for review and approval of the stipulation.
3. If the officer signs a stipulation, voluntarily surrendering his certification, the stipulation will be presented to the POST Council for ratification.
4. The investigative report will then be returned to the OPR Manager for storage and closure of the case.
5. If the officer under investigation declines to sign a stipulation, and the POST Administrator believes the investigation should proceed, the case investigation will continue until completed.
6. The investigative report shall be forwarded to OPR for preparation of a complaint, for additional investigation if necessary, and administrative processing of the decertification.
7. Upon filing of the Notice To Decertify or Notice of Intent To Decertify, the officer may elect to appear in person or make a written response to the POST Administrator. The POST Administrator will then make a determination as to the evidence offered by the officer based upon a finding of facts, conclusions of law. The POST Director shall render a decision and notify the affected officer of such decision.

11. Investigation Findings

- A. Officer Not Employed: If the officer under POST investigation is not employed by an Idaho law enforcement agency, a sustained investigative finding shall be referred to the POST Administrator for administrative action under IDAPA 11.11.01.092.05.
- B. Officer Employed - Employing Agency Review: Upon completion of the POST investigation, and after review by POST legal counsel, if the alleged conduct constitutes felony or involves violence, deceit, on-duty sexual conduct or drugs other than alcohol, or a misdemeanor or other unethical conduct as defined in a violation of IDAPA 11.11.01.091.03 or 11.11.01.091.04, the POST Administrator shall meet with the employing agency head



or his/her designee(s) to conduct an Employing Agency Review and inform the employing agency of the findings of the POST investigation.

- i. The POST Administrator shall leave a copy of the POST investigation with the employing agency head or his/her designee for review by the employing agency.
 - ii. A second meeting shall be established within 15 working days of the first meeting as provided in subsection (1) above, to continue the discussion on the POST investigative findings, wherein the employing agency can provide the POST Administrator with any conclusions that would clarify, nullify, add to, or correct the POST investigative record.
 - iii. If the POST investigation includes information not known to the employing agency regarding alleged misconduct by the affected officer(s), POST shall afford the employing agency an opportunity to act on such new information within the boundaries of the employing agency before further POST action. The employing agency shall notify POST upon the completion of any further employing agency administrative action against the affected officer(s).
- C. Upon conclusion of the Employing Agency Review, after the POST Administrator has considered all information provided by the employing agency, if the POST Administrator believes decertification action is warranted in the matter, the employing agency shall be informed, in writing, of the pending administrative action by POST.
- i. If after 15 working days, the POST Administrator has not received notice from the employing agency regarding POST's pending decertification action, the POST Administrator shall contact the employing agency administrator to inquire about his/her POST response. An agency head's request for an extension of time to respond will be honored by the POST Administrator.
 - ii. If the employing agency head has decided not to file a contested action in the matter, the POST Administrator shall file a "Notice of Intent to Decertify" with the affected officer, in accordance with IDAPA 11.11.01.092.05.
 - iii. Contested Decertification Action - If the employing agency head wishes to contest any further administrative action by POST in the matter, the employing agency head may request, in writing, that further decertification action by POST not be taken.
 1. The written request shall provide specific reasons or



evidence as to why decertification action against the affected officer(s):

- a. does not constitute a felony or involve violence, deceit, on-duty sexual conduct or drugs other than alcohol;
- b. does not constitute a misdemeanor or other unethical conduct as defined in a violation of IDAPA 11.11.01.091.03 or 11.11.01.091.04; or
- c. is not in the best interest of the law enforcement profession in Idaho.

2. The contested decertification action written request shall be filed with the POST Administrator within 15 working days of receiving the POST Administrator's notice of pending POST decertification action.

3. The employing agency's written request of contested decertification action shall be considered by the POST Administrator. If after considering the employing agency's contested position, the POST Administrator believes the investigation still warrants decertification action, the POST Administrator shall reconvene the POST Investigation Review Panel for determination in the matter.

D. Final Decision Of POST Investigation Review Panel: The POST Investigation Review Panel shall make the final determination in contested decertification actions. If the decision is to initiate further proceedings, POST will initiate proceedings under IDAPA 11.11.01.092.05. If the decision is not to proceed with decertification, POST will end its action regarding the matter.

E. Once a decision is made, the chair of the POST Investigation Review Panel shall make written notification to the POST Administrator, the officer and the head of the agency for which the officer is employed.

12. Notice for Decertification

In all instances in which the investigation alleges a violation of the POST Council's Code of Ethics or other standards of professional conduct and the officer has refused to sign a stipulation, the POST Administrator will prepare and provide to the officer a "Notice of Intent To Decertify. This notice will enumerate the factual allegations of misconduct, will set forth the "Causes of Action" and will seek decertification of the officer.

13. POST Investigation Review Panel

The POST Council shall establish a group of nine members that includes



three (3) representatives designated by the Idaho Sheriffs Association, three (3) representatives designated by the Idaho Chiefs of Police Association, and three (3) representatives of state agencies who employ POST certified officers, to be available to fulfill the responsibilities of the POST Investigation Review Panel as provided in these rules. Each panel shall include three (3) members of the group of nine members, to sit and hear contested investigative matters as identified in Section 5 and Section 11 above. Each panel will include one (1) representative designated by the Idaho Sheriffs Association, one (1) representative designated by the Idaho Chiefs of Police Association, and one (1) state representative member.

14. Security And Storage Of Reports

Prior to the investigative report being placed in storage it shall be electronically scanned into a secure database. Electronically scanned reports and documents pertaining to decertification investigations are to be maintained in a restricted database on the POST computer network, to which only authorized employees will have access. The hard copy of the report and any attachments shall be stored in long-term, secure storage and retained according to applicable State records retention guidelines.

15. Retention of Records by Independent Contractor Investigators

Independent contract investigators who conduct decertification investigations for POST will, at their several places of business, keep all documents, reports, and other material pertaining to these investigations in a locked and secure manner in order to prohibit access to them by unauthorized persons.

Upon completion of the investigative and adjudicative processes all information pertaining to the case will be deleted from the investigator's computer and all hard documents will be returned to the OPR Manager for storage or disposal.

Approving Authority	POST Council	Chairman Blair Olsen	 Council Chairman	2/12/2013 Date
Operational Authority	POST Staff	Division Administrator	 Division Administrator	2/12/2013 Date
Revision Dates:				Last Revision:



POST Investigation Decision Process

