

# IDAHO PEACE OFFICER STANDARDS & TRAINING PROCEDURE

## 12.27 DECERTIFICATION PROCESS

### A. General

This procedure covers Peace Officer Standards and Training (POST) Council and employee authority, responsibilities and decision-making processes leading to officer decertification following investigation of alleged misconduct. POST procedure 12.25 Opening Decertification Investigations covers the decisions leading to opening a decertification investigation; POST procedure 12.26 Conducting Decertification Investigations covers investigation activities.

The POST Council has the duty to decertify any Idaho certified officer who violates IDAPA rule 11.11.01.110.01, Mandatory Decertification, and may decertify any Idaho certified officer who violates IDAPA 11.11.01.057, Code of Ethics/Standards of Conduct or any section of IDAPA 11.11.01.110.02, Discretionary decertification.

For good cause shown, the POST Division Administrator (POST DA) may extend POST process timelines.

### B. Definitions

“Officer” means any person who has been certified in Idaho to be an officer (peace, adult detention, adult correction, reserve, adult misdemeanor probation or felony probation and parole; juvenile detention, juvenile correction or juvenile probation; or emergency communications).

### C. Decertification

1. Decertification action is initiated after the investigation and review process outlined in POST procedure 12.26 Conducting Decertification Investigations is concluded with a recommendation for decertification.
2. All actions and timelines for the decertification process are carried out under the due process requirements of IDAPA rule 11.11.01.112, Decertification Proceedings.
3. All written communication between POST and the subject of a decertification action is by certified mail to the officer’s last known address, return receipt requested. Exceptional circumstances may preclude this method of delivery. Other methods, including email, counsel, or non-traditional delivery means may be required. In this case, all efforts of communication with the subject of an investigation should be thoroughly documented.
4. The Office of Professional Responsibility (OPR) manager prepares the *Notice of Intent to Decertify* letter, attaching a copy of IDAPA rule 11.11.01.112 titled, “Exhibit A” and a blank stipulation form:
  - a. the notice and attachments are mailed to the officer;
  - b. the OPR Manager confirms receipt;
  - c. the officer may sign and return the stipulation form;
  - d. the officer may fail to respond;
  - e. the officer may respond in writing, giving reasons why the intended action should not be taken; or
  - a. the officer may request to meet with the POST DA to present a rebuttal.

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### D. Officer Signs and Returns Stipulation Form

When the officer signs and returns the stipulation form, the OPR manager follows the process for closing a case based upon a signed stipulation, set forth in POST procedure 12.26 Conducting Decertification Investigations, section D. Stipulation

### E. Officer Fails to Respond

1. When the 14-day period to respond to the Notice of Intent to Decertify letter passes without a response from the officer, the OPR manager:
  - a. prepares a POST DA decision letter to the officer, advising:
    - 1) when the *Notice of Intent to Decertify* letter was delivered;
    - 2) what the allegations were;
    - 3) that there was a 14-day period to respond;
    - 4) that the POST DA concludes the conduct occurred and warrants decertification; and
    - 5) that a final determination is made to decertify the officer;
  - b. the OPR Manager sets 14 day tickler from the date of the decision letter.
2. If the officer fails to respond to the POST DA decision letter, the OPR manager requests the management assistant (MA) prepare a Final Order for the POST DA's signature and mails it to the officer certified mail. After the 28 days, in which no response or appeal to the district court of appeals is received, the OPR manager updates the case file and prepares and scans all relevant documents into the digital OPR repository. The MA updates the appropriate officer records regarding revocation of all certifications held and enters the information into the National Decertification Index.

### F. Officer Makes a Written Response

1. When the officer responds in writing within the 14-day time period, the POST DA considers the information provided and responds to the officer with a POST DA's decision letter within 28 days of receipt of the letter:
  - a. if the decision is not to pursue decertification, the case is closed and the file is prepared for secure storage; and a notification letter is sent to the officer.
  - b. if the decision is to pursue decertification, the letter informs the officer of the right to appeal the decision to a hearing officer in accordance with IDAPA rule 11.11.01.112;
  - c. if the officer does not appeal the POST DA's decision within 14 days, a Final Order letter is prepared and the process in item E.2 above is followed.
2. If the officer appeals the POST DA's decision within the 14-day period, a decertification hearing is scheduled as set forth in Section H. The Decertification Hearing, of this procedure.

### G. Officer Requests to Meet With the POST Division Administrator

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1. When the officer requests to meet with the POST DA to present oral or written documentation as to reasons why the decertification action should not be taken, the OPR manager:
  - a. confirms, in writing, the officer's request for a meeting;
  - b. schedules/coordinates an acceptable meeting time to occur no sooner than 14 days from the confirmation;
  - c. informs the officer of the meeting date, time and location.
2. The OPR manager provides the officer and/or his attorney (if applicable) with copies of the decertification investigation record.
3. After the meeting occurs, or if the officer fails to appear for the meeting, the POST DA responds to the officer with a POST DA's decision letter within 28 days:
  - a. if the decision is not to pursue decertification, the case is closed and the file is prepared for secure storage; and a notification letter is sent to the officer.
  - b. if the decision is to pursue decertification, the letter informs the officer of the right to appeal the decision to a hearing officer in accordance with IDAPA rule 11.11.01.112;
  - c. if the officer chooses not to appeal the POST DA's decision within 14 days, a Final Order is prepared and the process in item E.2. above is followed.
4. When the decision is to pursue decertification and the officer fails to respond to the POST DA decision letter within the 14 day appeal period, the OPR manager follows the process in section H.11. The Decertification Hearing, below, and notifies the MA.
5. The MA updates the appropriate officer records regarding revocation of all certifications held by the officer; and enters the information into the National Decertification Index.

### H. The Decertification Hearing

1. When a decertification hearing is requested, the OPR manager coordinates with the MA to schedule a hearing officer and meets with the designated Deputy Attorney General (DAG) to brief the case.
2. The MA:
  - a. contacts a hearing officer and coordinates hearing proceedings;
  - b. prepares a letter to both counsels (copied to the hearing officer) identifying the hearing officer;
  - c. provides decertification documentation to the DAG and officer (and counsel if appropriate); and
  - d. works with the hearing officer to facilitate pre-hearing and hearing logistics, such as scheduling the date, meeting room, and court reporter
3. The hearing officer hears the case and may:
  - a. request further briefs or prepares an order for the POST Council recommending the officer either retain certifications or have certifications revoked,
  - b. provide the recommended order to the officer, the designated DAG and the MA.
4. The officer may appeal the recommendation to the council within 28 days of receipt of the recommended order.
5. If the officer does not respond within 28 days, the order becomes final without further procedural action.
6. If the officer appeals the decision to the council, the MA:
  - a. schedules the hearing officer's recommended order for a vote of the council after the 28-day appeal deadline has passed;
  - b. provides all relevant materials to the council; and
  - c. provides notices of the hearing to all parties.
7. The council deliberates and votes on the recommended order:
  - a. based on the recommended order without further input from the parties;

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- b. after allowing oral argument not to exceed 15 minutes and without new testimony; or
  - c. after holding a hearing and allowing the parties to call additional witnesses.
8. The council may:
- a. uphold the hearing officer's recommended decision;
  - b. overturn the hearing officer's recommended decision; or
  - c. remand the case.
9. When the council upholds or overturns the hearing officer's decision, the MA provides the final order of the council to all parties involved, including the officer's employing or former employing agency head and the agency's local prosecutor's office.
10. The officer may appeal the council's decision to the district court of appeals within 28 days of the date of service.
11. The OPR manager:
- a. closes the case;
  - b. updates the file and all records; and
  - c. prepares the file for secure storage.

