



ADMINISTRATIVE RULES OF MONTANA

23.13.703 PROCEDURE FOR MAKING AND RECEIVING ALLEGATIONS OF OFFICER MISCONDUCT AND FOR INFORMAL RESOLUTION OF THOSE ALLEGATIONS BY THE DIRECTOR

- (1) The POST Council will create, maintain, and adopt in public meetings a policy and procedure for processing and responding to allegations. The policy and procedure will be posted on POST's web site and made publicly available. It will comply with these rules and offer the director further guidance regarding the specific steps that the director and POST staff will take when responding to allegations.
- (2) Any allegation made against a public safety officer that states potential grounds for denial, sanction, suspension, or revocation of POST certification must initially be provided to the appointing authority of the officer in question for review and recommendation, unless the appointing authority is making the allegation. All allegations must be made in writing unless the director initiates the allegation. Anonymous allegations will not be considered unless the director determines that public safety may be threatened if POST takes no action on an anonymous allegation.
- (3) Except as provided in this section, POST will not proceed with an allegation unless the individual making the allegation or POST staff has notified the appointing authority of the allegation. This requirement does not apply if the allegation has been made against the highest-ranking officer in the agency, who would otherwise constitute the appointing authority, or there is some reason to believe that the investigation or public safety would be put in danger by such a notification.
- (4) Within 30 days of being notified of the allegation, or in making its own allegation of misconduct, the appointing authority must give POST a notice of the appointing authority's investigation, action, ruling, finding, or response to the allegation, in writing, which must include a description of any remedial or disciplinary action pending or already taken against the officer regarding the allegation in question, and which may contain a recommendation from the appointing authority regarding whether POST should impose a sanction. If the appointing authority recommends POST impose a sanction, the appointing authority must state what sanction the appointing authority deems reasonable. POST shall consider but is not bound by the recommendation of the appointing authority. If available, a copy of the initial allegation made to the appointing authority and the appointing authority's written response must be forwarded to the director. The appointing authority may make a written request to the director for additional time to respond. Such a request must provide good cause as to the reason more time is required. The director may grant or deny requests for additional time at the director's discretion.
- (5) After the appointing authority has been notified and given the opportunity to act, the director or POST staff may accept an allegation to be presented to the case status committee. If an allegation is received from an appointing authority, the executive director may, if appropriate under the circumstances, send a "Letter 1" (as described in the POST Council's policy and procedure adopted

under (1)) to the officer prior to consultation with the case status committee, provided the director notify the committee of the Letter 1 as soon as practicable.

- (a) Any allegation submitted to the council must be submitted to the director or POST staff and may not be submitted to the full council or any individual member of the council.
 - (b) The allegation must provide at least the following information:
 - (i) the name, address, and telephone number of the individual making the allegation, which the director may keep confidential if the individual or public safety would be harmed by disclosure;
 - (ii) the name and appointing authority of the officer;
 - (iii) a complete description of the incident;
 - (iv) the remedy sought;
 - (c) A person making an allegation must use the allegation form available from POST staff or submit an allegation in substantially similar format.
 - (d) An appointing authority or a public safety agency which provides or oversees a public safety officer basic course may submit a written allegation on the agency's letterhead with supporting documents that the agency deems appropriate.
- (6) The director may initiate an allegation, based on good cause and reliable information, and must follow the procedure set forth in this rule as if initiated by any other individual, including but not limited to submitting the complaint to the appointing authority.
- (7) After an allegation has been received or has been initiated by the director, the director, in consultation with the case status committee and contested case counsel for POST, will determine whether to dismiss the allegation, or open a preliminary investigation and correspond with the respondent in writing.
- (a) All such correspondence must be copied to the appointing authority, unless the exception noted in (3) applies.
 - (b) The policy provided in (1), will outline the number and nature of these letters.
 - (c) The purpose of this correspondence is to allow the officer to respond to the allegation, allow the Case Status Committee, the director, and contested case counsel to gather more information, and allow the parties to reach an informal resolution.
- (8) After an allegation is made by or filed with the director, and upon a majority vote of the case status committee, the director, contested case counsel for POST, or other POST staff or designees will conduct a preliminary investigation of the complaint.
- (9) Following the review and preliminary investigation of an allegation, communication with the respondent, communication with the appointing authority, and consultation with counsel for POST, and based upon a majority vote of the case status committee, the director may take any appropriate action, including but not limited to the following:
- (a) engage in informal negotiations and settlement discussions and enter into a stipulation or memorandum of understanding with the officer or the officer's counsel, or otherwise informally resolve the complaint. An informal resolution reached before the MAPA

contested case hearing stage under this subsection is not subject to approval by the council, but must be approved by a majority vote of the Case Status Committee;

- (b) accept the voluntary surrender of a certificate;
 - (c) make one of the following findings, upon a majority vote of the Case Status Committee:
 - (i) No finding: The investigation cannot proceed for reasons that include but are not limited to: the complainant failed to disclose promised information to further the investigation; the complainant wishes to withdraw the complaint; or the complainant is no longer available for clarification. This finding may also be used when the information provided is not sufficient to determine the identity of the officer(s) involved.
 - (ii) Not sustained: POST's review or investigation failed to discover sufficient evidence to prove or disprove the allegations.
 - (iii) Sustained: POST's review or investigation disclosed a preponderance of evidence to prove the allegation(s).
 - (iv) Unfounded: POST's review or investigation disclosed that the complainant made a false allegation, the subject of the complaint was not involved in the incident, or the incident did not occur.
 - (v) Exonerated: POST's review or investigation disclosed that the incident occurred, but the subject of the complaint acted lawfully and in a manner consistent with the agency's policy and procedures.
 - (d) issue the appropriate denial, sanction, suspension, or revocation of a certificate upon a majority vote of the Case Status Committee;
 - (e) if a denial, sanction, suspension, or revocation is imposed, the director must provide a notice of agency action in writing to the officer, satisfying the notice required by 2-4-601, MCA. Such notice must be mailed to the officer's last known mailing address, unless the officer consents to receiving email notification;
 - (f) the officer may request contested case proceedings pursuant to 44-4-403, MCA and MAPA, as outlined in ARM 23.13.704.
- (10) If a review of the conduct of an officer is pending before any court, council, tribunal, or agency, the director may, as a matter of discretion, stay any proceedings for denial, sanction, suspension, or revocation pending before the council, no matter what stage or process they have reached, until the other investigation or proceeding is concluded. If the case has already been assigned to a hearing examiner, the hearing examiner must grant a stay based on an application by the director or counsel for POST. The director will notify the case status committee of the stay as soon as practicable.
- (11) In all cases in which a written allegation is submitted which does not culminate in a MAPA contested case hearing, the director must file a written report in the officer's POST file setting forth the circumstances and resolution of the case. All written correspondence with the officer and the officer's appointing authority must also be maintained in the officer's POST file.

Authorizing statute(s): 2-4-201, 2-15-2029, MCA

Implementing statute(s): 2-4-201, 2-15-2029, 44-4-403, MCA

History: NEW, 2008 MAR p. 1587, Eff. 8/1/08; AMD, 2014 MAR p. 2951, Eff. 12/12/14; AMD, 2017 MAR p. 1953, Eff. 10/28/17; AMD, 2018 MAR p. 2518, Eff. 12/22/18; AMD, 2020 MAR p. 580, Eff. 3/28/20; AMD, 2021 MAR p. 616, Eff. 5/29/21; AMD, 2022 MAR p. 1835, Eff. 9/24/22; AMD, 2024 MAR p. 607, Eff. 3/23/24; AMD, 2026 MAR, Notice No. 2025-413, Eff. 2/7/26.