

TITLE 79 – LAW ENFORCEMENT-- POLICE STANDARDS ADVISORY COUNCIL

CHAPTER 9-REVOCATION OF LAW ENFORCEMENT OFFICER CERTIFICATION

001 Purpose - To prescribe procedures for revocation of law enforcement certificates as issued by the Council to law enforcement officers, reserve officers, and tribal law enforcement officers by the State of Nebraska.

002 Scope - This chapter is applicable to law enforcement certificates or licenses as identified in Neb. Rev. Stat. §81-1401, §81-1403 and any certifications issued by the Council pursuant to the provisions of Title 79 of the Nebraska Administrative Code and as provided in state statute.

003 Defined Terms: All terms used in this chapter will have their statutory definitions applied, if such definitions exist, except as follows:

003.01 Informal Complainant: any individual(s) or organization(s) or department(s) or agency or agencies filing a report, complaint, or other information with the Commission alleging that a law enforcement officer comes within the purview of Neb. Rev. Stat. §81-1403(6)

003.02 Respondent: any individual law enforcement officer who shall be alleged to be within the purview of Neb. Rev. Stat. §81-1403(6)

003.03 Petitioner: a party to the formal revocation proceeding representing the State of Nebraska in filing the formal complaint and in presenting the evidence against the respondent.

003.04 Formal Complaint: the written allegation(s) and charge(s) against the respondent alleging that the respondent comes within the purview of Neb. Rev. Stat. §81-1403(6) and/or Section 004 of this chapter.

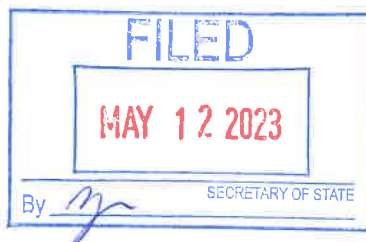
003.05 Formal Hearing: refers to the proceedings before the Council.

003.06 Agency: each board, commission, department, officer, division, or other administrative office or unit of the state government authorized by law to make rules and regulations, except the Adjutant General's office as provided in Chapter 55 of the Nebraska Revised Statutes, the courts

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including the Nebraska Workers' Compensation Court, the Commission of industrial Relations, the Legislature and the Secretary of State with respect to the duties imposed by the Administrative Procedure Act.

003.07 Contested case: a proceeding before an agency in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after an agency hearing.

003.08 Hearing officer: the person or persons conducting a hearing, contested case, or other proceeding pursuant to the Administrative Procedure Act, whether designated as the presiding officer, administrative law judge, or some other title designation.

003.09 Ex parte communication: an oral or written communication which is not on the record in a contested case with respect to which reasonable notice to all parties was not given. Ex parte communication does not include communications which do not pertain to the merits of a contested case; communications required for the disposition of ex parte matters as authorized by law; communications in a ratemaking or rulemaking proceeding; and communications to which all parties have given consent.

004 Authority & Grounds for Revocation- Neb. Rev. Stat. §81-1403(6) provides that the Council may revoke certificates or diplomas for reasons which shall include, but not be limited to: final conviction of or pleading guilty or nolo contendere to a felony violation of state or federal law, a misdemeanor crime of domestic violence or a misdemeanor violation of state or federal law, if the violation has a rational connection with the officer's fitness or capacity to serve as a law enforcement officer, serious misconduct or a violation of the officer's oath of office, code of ethics, or statutory duties. This section shall serve as further grounds for revocation. The following grounds may also serve as justifications for revocation:

004.01 Upon a final adjudication of malfeasance in office;

004.02 Willfully providing false information in connection with obtaining certification, maintaining or reactivating certification status;

004.03 The revocation or relinquishment, denial of renewal or suspension of the officer's law enforcement certificate or license by another state or

jurisdiction for such grounds that would constitute grounds for revocation or denial in this state. A certified copy of the record of revocation, relinquishment denial or suspension shall be conclusive evidence of such administrative action;

004.04 Mental or physical incapacitation that is permanent or is reasonably likely to be permanent and which substantially impairs the officer's abilities to perform the duties of a law enforcement officer as evidenced by a legal adjudication or as determined by a licensed psychiatrist or physician and for which no reasonable accommodation can be made.

005 Subject to review and approval of the Nebraska Commission on Law Enforcement and Criminal Justice, the Council shall revoke certificates pursuant to its authority under Neb. Rev. Stat. §81-1403.

006 Automatic Revocation based upon Final Convictions of Enumerated Offenses.

006.01 If the Director of the Nebraska Law Enforcement Training Center receives notice that the respondent has been convicted of a felony, a misdemeanor crime of domestic violence or a misdemeanor violation of state or federal law, if the violation has a rational connection with the officer's fitness or capacity to serve as a law enforcement officer, and the conviction is final, the Director will:

006.01A Take reasonable efforts to notify the respondent within 30 days of the receipt of the information pertaining to the conviction. The notification procedure outlined in section 007.07 will constitute reasonable notice.

006.01B The notification will include a summary of the designated conviction(s) and notice of the opportunity to be heard when the respondent believes that the conviction is not final or concerns someone other than the respondent.

006.02 The respondent will have 30 days from receipt of the Director's notice to file his or her intent to appear. If no intent to appear has been filed, then the respondent's law enforcement license/certificate(s) shall be automatically revoked without any further action by the Council or Commission. The Director will cause the respondent's permanent officer file to reflect that his or her license/certification has been revoked.

006.03 In the event that the respondent files notice of his or her intent to appear, the Director will forward the officer's permanent file and the certified conviction packet to the Council for review and subsequent action. The review hearing will occur no later than sixty days after the receipt of the intent to appear. The Council will provide to the respondent notice of the review hearing date and time.

006.03A If the respondent fails to appear before the Council, either personally or electronically, then the respondent's certificate will be automatically revoked as outlined in section 006.02

006.03B The only issues that may be raised by the respondent are that the conviction is not final and/or the conviction did not involve the respondent as the defendant.

006.03C Upon competent proof of the final conviction, the Council will enter an order recommending revocation of the respondent's law enforcement certificate(s) and forward the matter to the Commission for final review and approval.

006.04 The provisions of sections 008 through 012 of this chapter will not apply to cases of automatic revocation procedures for final convictions identified in section 006.01.

007 Initiation of an Informal Complaint Leading to Revocation of Certification

007.01 Notification by a law enforcement agency. A written informal complaint will be filed with the Executive Director of the Nebraska Commission on Law Enforcement and Criminal Justice (hereinafter Commission) when an agency has reason to believe that it knows of an officer who falls within the purview of Neb. Rev. Stat. §81-1403(6) and/or section 004 of this chapter.

007.02 Notification by the Public. When an individual has reason to believe that there is an officer who falls within the purview of Neb. Rev. Stat. §81-1403(6) and/or section 004 of this chapter, that individual must file a written informal complaint with the Executive Director of the Commission.

007.03 Initiation of a Complaint by the Director of the Law Enforcement Training Center. Pursuant to his/her duties as specified in Neb. Rev. Stat. §81-1404, the Director may commence revocation proceedings when the Director becomes aware of grounds constituting revocation proceedings as outlined in this chapter.

007.04 The informal complaint will be in writing and signed by the complainant or authorized representative if complainant is a department or organization.

007.05 The informal complaint, whenever possible, will contain the following information:

1. Full name, address and telephone number of the complainant;
2. Full name, address, and telephone number, if known, of the officer who is the subject of the complaint;
3. A concise statement of the facts which the complainant believes brings the officer within the purview of Neb.Rev.Stat. §81-1403(6) and/or section 004 of this chapter together with supporting documentation, if any.

007.06 When completed, informal complaints will be delivered to the Nebraska Commission on Law Enforcement and Criminal Justice, 301 Centennial Mall South, P.O. Box 94946, Lincoln, Nebraska 68509. Upon receipt, each informal complaint will be assigned a number and reviewed by the Executive Director.

1. The Executive Director will review every informal complaint. If the allegations of the informal complaint describe conduct which, even if true, would not constitute grounds for revocation, the matter will be rejected. The complainant will be notified of such rejection.
2. If there is a question as to the merits of the informal complaint, the individual who has requested revocation may be required to supply additional information to the Executive Director. The Executive Director may also ask that the officer who is the subject of the informal complaint (hereinafter respondent) to provide information as outlined in this chapter.

007.07 A summary of the allegations will be sent to the respondent by United States mail, certified mail, return receipt requested.

007.08 The respondent is allowed fifteen (15) days from the date of mailing of the informal complaint to informally respond to the allegations of the complaint. The response will be in writing and delivered to the Executive Director in person or by United States mail, certified mail, return receipt requested.

008 Initial Inquiry. The informal complaint along with any supporting documentation and the informal response by the respondent, if submitted, will be reviewed by the Executive Director in order to determine appropriate disposition of the informal complaint. Disposition may include one of the following: rejection of the informal complaint, assigning the informal complaint for investigation, or setting the informal complaint for formal hearing.

008.01 Rejection of the Informal Complaint. If the Executive Director makes a determination that the informal complaint should be rejected, a report will be made to the Commission summarizing the facts and giving the basis for the rejection of the informal complaint. Unless further inquiry is directed by two thirds of the Commission present at the quarterly meeting, the matter will be deemed closed and a letter summarizing the position of the Commission will be sent to the complainant and the respondent. If further inquiry is ordered, the Executive Director will review the subsequent findings in order to determine if cause for revocation exists. In the event that the Executive Director determines that there is no cause for revocation, then the matter will be deemed closed.

008.02 Investigation. If the Executive Director deems it necessary, the informal complaint, the respondent's response and all other additional documentation and information will be forwarded to a designated law enforcement agency or qualified individual for investigation of the allegations.

008.03 Upon completion of the investigation, the designated agency or individual will make a recommendation as to whether revocation grounds

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exist. Said recommendation will be based upon probable cause that either the statutory grounds or the grounds identified within section 004 of this chapter have been established. In the event that additional grounds are uncovered during the investigation, the investigator may include those grounds as part of the investigation and recommendation. All reports and relevant materials will be turned over to the Executive Director for further processing of the complaint.

008.04 If, after review of all documents, informal complaints, responses to the initial inquiry, and results of any investigation, the Executive Director makes the determination that the respondent falls within the purview of Neb.Rev.Stat. §81-1403(6) or section 004 of this chapter, the Executive Director will cause a formal complaint to be filed with the Council regarding revocation of the respondent's certification.

009 Formal Complaint and Notice of Hearing. A formal complaint and notice of hearing before the Council will be served on the respondent by mailing a copy of it by certified mail, return receipt requested, to the respondent's last known address or as otherwise provided by law, which may include personal service. The notice will comport with the requirements of Neb.Rev.Stat. §84-913. The hearing will be held within sixty (60) days from the date of the filing of the formal complaint, unless a continuance is granted for good cause by the Council or the presiding officer.

009.01 There will be a notice in large type or some other manner so as to be noticeably different from the type face of the rest of the complaint and hearing notice that failure to appear for a requested prehearing conference will result in sanctions being levied against the party failing to appear. Such sanctions may include, but are not limited to, a levy of costs incurred up to that point in the case and the entry of order recommending revocation of the respondent's certificate.

009.02 All proceedings will be conducted in accordance with the Administrative Procedure Act, Neb. Rev. Stat. §84-901 et seq. and with Title 79 of the Nebraska Administrative Code, Chapter 4, as they relate to the pleadings, notice, ex parte communications, prehearing conferences, discovery and the progression of the actual contested case at hearing.

010 Answer. The respondent will have twenty (20) days from the date of service to file an answer.

010.01 The answer will contain the following information:

1. Name and address of the respondent
2. Specific statements regarding any and all allegations in the complaint and notice which will be in the form of admissions, denials, explanatory remarks, or statements of mitigating circumstances and any additional facts or information the respondent deems relevant and which may be of assistance in the ultimate determination of the case.

010.02 The answer may contain the following:

1. A waiver of a contested hearing
2. A request for a formal hearing before the Council
3. Request for a closed hearing, along with a statement showing good cause for the request
4. Request for a continuance, along with a statement showing good cause for the continuance
5. Request for a prehearing conference

010.03 If no answer is filed within the limited time, or if the answer raises no issue of fact or law, the matter may be disposed of by the Council as set out in section 010.08 of this chapter.

011 Prehearing Conference. Not fewer than thirty (30) days before the date set for hearing, a prehearing conference may be held. The Chairperson or an individual so designated by the Council will serve as the hearing officer and will preside over this hearing and may make any rulings consistent with this section. The request for a prehearing conference may be brought by either party or by the hearing officer. The prehearing conference may be held electronically. The hearing officer may direct the parties to appear at a specified place and time to:

- a. Simplify the issues
- b. Amend the complaint and/or answer
- c. Exchange lists of witnesses
- d. List, number, and review exhibit

- e. Stipulate to agreed facts, if any
- f. Enter into other stipulations as may be necessary
- g. Request a continuance, upon a showing of good cause
- h. Make requests for witnesses to be subpoenaed
- i. Make such requests as deemed appropriate regarding discovery as allowed under Neb.Rev.Stat. §84-914 et seq. to the Commission

The hearing officer will act on the requests and forward to the Executive Director of the Commission any and all requests for subpoenas. The hearing officer will summarize the prehearing conference in an order. The order will be mailed to petitioner and respondent and any counsel of record.

012 Hearing Procedure in a Contested Case

012.01 The Council will act as the Hearing Board in the matter. The Council sitting as the Hearing Board will have a legal representative to rule on all questions of law that may arise in the course of the prehearing conference and the hearing and to assist in the preparation of the findings of fact and conclusions of law to be transmitted to the Commission.

012.02 The Commission will designate an attorney to present the case for the revocation on behalf of the petitioner. The designated counsel will prosecute the case through the administrative process. In the event that an appeal is taken before the Nebraska courts, the Commission will request that the Attorney General appoint a member of that office to represent the Commission.

012.03 The petitioner and respondent will have all rights and responsibilities afforded each party in a contested case under Neb.Rev.Stat. §84-901 et seq., the Administrative Procedures Act and Title 53 of the Nebraska Administrative Code, Chapter 4.

012.04 The officer in question is entitled to be represented by counsel at his or her own expense at the hearing. Counsel for the respondent will enter a written notice of appearance at the earliest opportunity. Retention of, or representation by, an attorney less than ten (10) days prior to the formal hearing will not constitute good cause for a continuance without a showing of extenuating circumstances.

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012.05 The proceedings of the formal hearing will be recorded by mechanical or electronic means. The recordings of the proceedings will be kept for at least (4) years from the date of the final decision of the Commission.

012.06 Default Procedure. A failure to appear at a formal hearing will be deemed to be an admission of the facts alleged in the complaint. The Council upon submission of evidence by the petitioner will render its findings of fact, conclusions of law and recommendation upon the evidence submitted by the petitioner. Such evidence may include, but is not limited to, affidavits stating relevant information, investigative reports, and pleadings filed in the case.

012.07 A revocation of a certification by the Commission which is based on a default will be set aside only by a showing of good cause regarding the respondent's failure to appear at the scheduled formal hearing.

012.08 After receiving all evidence and hearing all testimony in the case, the Council will make a recommendation regarding revocation and will make written findings of fact and conclusions of law. Exhibits relied upon or referred to in the Findings of Fact and Conclusions of Law will be forwarded to the Commission as part of the reported findings. The findings and recommendation will be submitted to the Commission for final review at its next quarterly meeting.

012.09 At the quarterly meeting of the Commission following submission of the Council's findings, the hearing transcript, exhibits and hearing file, the Commission will, concomitant with Neb.Rev.Stat. §81-1403, either dismiss the complaint to revoke the certification or revoke the certification upon a finding by clear and convincing evidence that the certificate should be revoked. The Commission will be bound by its normal rules of operation as defined by Neb.Rev.Stat. §81-1415 et seq. The Commission's review of the Council's action will be de novo on the record.

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013 The Commission will reduce its decision to writing, to include its findings of fact and conclusions of law and send a copy of its decision to the respondent via certified or registered mail, return receipt requested, to the respondent's last known address. Copies of the decision will be sent to the attorneys representing the petitioner and the respondent. The decision shall be sent within sixty (60) days after it is filed by the Commission.

014 Appeal Process. Appeals will be filed in accordance with Neb. Rev. Stat. §84-901 et seq. and Title 53 of the Nebraska Administrative Code, Chapter 4.

015 Voluntary Surrender of Certificate. Once an informal complaint has been filed with the Executive Director or a formal complaint has been filed before the Council, the respondent may voluntarily surrender his or her law enforcement certificate.

015.01 The voluntary surrender of certificate will state in writing that the respondent knowingly admits or knowingly does not challenge or contest the truth of the information alleged in either the informal or formal complaint and waives all proceedings against him or her in connection therewith and waives all notice of such proceedings.

015.02 Upon receipt of the voluntary surrender of certificate, the matter will be placed before the Council for its consideration at the next available meeting. The Council will either accept or reject the surrender of certificate based upon the appropriate provisions of this chapter and Neb. Rev. Stat. §81-1403(6). The matter will then be submitted to the Commission for further action.

015.03 If the voluntary surrender of certificate is accepted by the Council and Commission, then the respondent will no longer meet the requirements set out in Neb. Rev. Stat. §81-1401.

015.04 A voluntary surrender of certificate will not terminate the revocation process unless an appropriate order is entered by the Commission. An order accepting the voluntary surrender of certificate will have the same force and affect as an order revoking the respondent's

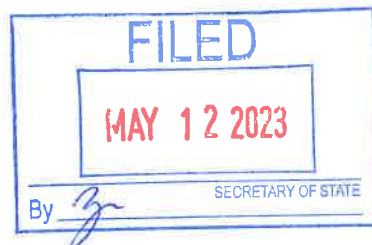
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certificate.

016 If any section of this act or any part of any section is declared invalid or unconstitutional, such declaration will not affect the validity or constitutionality of the remaining portions thereof.

017 The Director will report any revocation, relinquishment or suspension of any Nebraska Law Enforcement certificate to a national recognized decertification data base(s) as approved by the federal Department of Justice.

Effective Date:



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