

Vermont Criminal Justice Council

PROFESSIONAL REGULATION REPORT

The Vermont Criminal Justice Council was legislatively tasked with the responsibility of Unprofessional Conduct as defined in Title 20, Chapter 151, Subchapter 2 which became effective July 1, 2018. The legislation took place prior to the formation of the current Council membership or VCJC staff. This newly created function of the Vermont Criminal Justice Council (VCJC) outlined the definitions of unprofessional conduct within three categories: A, B, and C. The law outlined the areas of responsibility to be determined by the Council as:

- Adoption by agencies of an effective internal affairs policy
- An agencies duty to report
- Agency / Council investigation process
- Permitted Council Sanctions
- Limitations on Council Sanctions
- Defined what an “invalid” investigation is
- Confidentiality parameters

Category A complaints- Criminal in nature

The complaint is directed back to the agency who will refer to another law enforcement authority for criminal investigation. The responsibility of the agency employing the officer remains to complete an Internal Affairs Investigation, once the criminal investigation is completed. Once the criminal investigation and internal affairs investigation have been completed and sent to the VCJC, it is reviewed by the subcommittee and voted upon. If a finding of no violation occurs, a notice is sent to the officer and employing agency. If there is a finding of misconduct, a notice of hearing is drafted and sent to the officer which provides a date for a hearing before the Council. Simultaneously, the subcommittee will work to draft a stipulation and consent order to include a sanction for review and potential acceptance between the officer involved and the Council.

Category B complaints- gross professional misconduct amounting to actions on duty or under authority of the State, or both:

The complaint is sent to the employing agency for an internal affairs investigation and completion. Agencies send the completed investigative file for review by the subcommittee. After review, the subcommittee votes on the case which results in a finding of either no violation, or a violation of category B. If the finding is of a category B, and it is a first offense, the officer is sent notice of the finding and offered the opportunity to meet with the subcommittee to present additional evidence or argument, with or without Counsel for the subcommittee to review. After consideration of additional facts, the subcommittee will render a decision. If the finding results in a category B violation, the officer and agency are notified by the subcommittee and the record is retained at the VCJC in the event there is

a future violation. Subsequent violations are reviewed after investigation, and if voted out as a category B violation (2nd or subsequent) it is set for a Notice of Hearing before the Council.

Category C complaints: Council process or a complaint involving the executive officer of the agency.

Complaints are investigated by a Council investigator who retrieves evidence, drafts a report, and forwards to the subcommittee for review. After review, the subcommittee votes on the information and if there is a finding of a violation of Category C, it is set for a hearing before the Council.

To process complaints to the VCJC of unprofessional conduct, the Council created a professional regulation subcommittee consisting of 5 members with varying backgrounds who would review each case, vote on whether or not misconduct had occurred, and forward to the Council for resolution or hearing if there was a violation of category A conduct, a second violation of category B conduct, or a violation of category C conduct. Each case reviewed has included Council staff and legal counsel.

VCJC Staff Process

After a complaint is received, the process by which cases move through the system to conclusion has several determining factors rather than one pathway. The complaint is entered into our database by date, assigned a case number, and assigned an investigative folder. Currently 35 data points are tracked with each case to monitor the process of all complaints. In category A and B cases, the VCJC communicates with the law enforcement agency to retrieve all related documents to criminal investigations, internal affairs investigations, audio and video files and all related digital media. In category C cases (Council process violations, or cases involving the agency executive), a Council assigned investigator will gather all relative documents, conduct an investigation, and prepare a report for review by the subcommittee. VCJC staff then coordinates completed investigations for review by the subcommittee who currently meets weekly for 2 hours per meeting complemented by VCJC staff and legal counsel. After review by the subcommittee and a determination of a finding, next steps are determined by vote. Category A and C offenses will be voted out for a hearing before the Council, subject to Notice of Hearing to the officer involved which must be served with minimum notice of 30 days. Category B offenses (1st offense) findings result in a letter sent to officer involved and their agency, notifying them of the finding and providing an opportunity for the officer to meet with the subcommittee with legal counsel to present additional evidence or argument relative to the facts reviewed. After completion of review of all facts, if the misconduct is still founded, notification to the officer is sent advising the violation has resulted in no action by the Council, however the record will remain with the Council in the event of any future complaints received. Staff processing consists of all information relative to receipt, filing, management of files, notification to all persons involved, communication with agencies and officers, scheduling of attorney availability for both representation of the Council and prosecution of the case, and finally, Council hearing dates. Staff processing continues through to completion of the hearing with the Council, or vote on a Stipulation and Consent Order, then the filing of the case results to the webpage of the Council, and any decertification notification to NDI (National Decertification Index). Continuity and length of each case varies due to the variables associated with each case such as:

- Criminal investigation- which puts on hold the internal affairs investigation

- Internal affairs investigation with interwoven employee protections
- Witness cooperation and interviews
- Competing court orders that may impact the investigation
- Attorney availability for review and drafting of documents
- Dismissal of or resignation of officer
- Hearing dates and availability of Council members to attend hearings

Professional Regulation Feedback

As the Council and professional regulation subcommittee work through cases of misconduct, we have identified areas of concern with process. Adding another profession, or including another sector of “law enforcement” in such a process will likely need close analysis of statutory language, procedural guidelines, as well as resourcing, understanding what the magnitude of the work entails to meet the legislative intent.