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Vermont Police Academy**
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NOTICE OF HEARING

June 13, 2023

VCJC PRS Docket No. 20201OG and 2020SVX

RE: Hearing to consider imposition of sanctions, up to and including permanent revocation, against the Level III Vermont law enforcement officer certification held by Michael Malinowski.

Please take notice that pursuant to the authority vested in the Vermont Criminal Justice Council under 20 V.S.A. §§ 2401, 2405 and 2406 a hearing will be held before the Council **at the Vermont Fire Academy, 93 Davison Drive, Pittsford, Vermont 05763 and remotely via Microsoft Teams on July 18, 2023 at 9:00AM.**

The hearing will be held as a formal contested case hearing under the Vermont Administrative Procedure Act and will be held to consider the imposition of sanctions, up to and including permanent revocation, against the Vermont law enforcement officer certification held by Michael Malinowski for alleged unprofessional conduct pursuant to 20 V.S.A. § 2401(2) (Category B gross professional misconduct), 20 V.S.A. § 2404(a)(1)(A) (agency investigation of Category A or B conduct), 20 V.S.A. § 2405 (Council sanction procedure), 20 V.S.A. § 2406(a) (permitted Council sanctions), and 20 V.S.A. § 2407 (Limitations on Council sanctions) which are set forth and specified below along with other relevant authority.

- 20 V.S.A. § 2401(2) provides:

“Category B conduct” means gross professional misconduct amounting to actions on duty or under authority of the State, or both, that involve willful failure to comply with a State-required policy or substantial deviation from professional conduct as defined by the law enforcement agency's policy or if not defined by the agency's policy, then as defined by Council policy, and shall include:

- (A) sexual harassment involving physical contact or misuse of position;
- (B) misuse of official position for personal or economic gain;
- (C) excessive use of force under authority of the State, first offense;
- (D) biased enforcement;
- (E) use of electronic criminal records database for personal, political, or economic gain;
- (F) placing a person in a chokehold;
- (G) failing to intervene and report to a supervisor when the officer observes another officer placing a person in a chokehold or using excessive force.



- 20 V.S.A. § 2404(a)(1)(A) provides:

Agency investigations of Category A and B conduct.

(1)(A) Each law enforcement agency shall conduct a valid investigation of any complaint alleging that a law enforcement officer employed by the agency committed Category A or Category B conduct. An agency shall conclude its investigation even if the officer resigns from the agency during the course of the investigation.

- 20 V.S.A. § 2401(5) provides:

“Unprofessional conduct” means Category A, B, or C conduct.

- 20 V.S.A. § 2405:

Except as otherwise provided in this subchapter, the Council shall conduct its proceedings in accordance with the Vermont Administrative Procedure Act. This includes the ability to summarily suspend the certification of a law enforcement officer in accordance with 3 V.S.A. § 814(c).

- 20 V.S.A. § 2406(a) provides:

Generally. The Council may impose any of the following sanctions on a law enforcement officer’s certification upon its finding that a law enforcement officer committed unprofessional conduct:

(1) written warning;

(2) suspension, but to run concurrently with the length and time of any suspension imposed by a law enforcement agency with an effective internal affairs program, which shall amount to suspension for time already served if an officer has already served a suspension imposed by his or her agency with such a program;

(3) revocation, with the option of recertification at the discretion of the Council;
or

(4) permanent revocation.

- 20 V.S.A. § 2407:

(a) Category B conduct; first offense. If a law enforcement agency conducts a valid investigation of a complaint alleging that a law enforcement officer committed a first offense of Category B conduct, the Council shall take no action,

except that the Council may take action for a first offense under subdivision 2401(2)(C) (excessive use of force under authority of the State), 2401(2)(F) (placing a person in a chokehold), or 2401(2)(G) (failing to intervene and report to a supervisor when an officer observes another officer placing a person in a chokehold or using excessive force) of this chapter.

(b) “Offense” defined. As used in this section, an “offense” means an offense committed by a law enforcement officer during the course of his or her certification, and includes any offenses committed during employment at a previous law enforcement agency.

It is alleged in two separate complaints, PRS Nos. 20201OG and 2020SVX, that Michael Malinowski committed gross professional misconduct, Category B, second offense or subsequent, by violating multiple policies of the St. Albans Police Department after previously receiving notice of a Category B, first offense, violation finding¹. Specifically, it is alleged:

1. Michael Malinowski (referred to herein as “Malinowski” was employed as a Sergeant with the Saint Albans Police Department (SAPD) at the time of the unprofessional conduct complaints. He resigned from SAPD on January 11, 2021. He is not currently employed by a law enforcement agency in the State of Vermont.
2. Malinowski holds a Level III law enforcement certification from the Vermont Criminal Justice Council. He received his Level III certification on May 24, 2013.

¹ The alleged Category B unprofessional conduct described herein (PRS Docket Nos. 20201OG and 2020SVX) represent two subsequent cases considered after another case, PRS Docket No. 2020XPF, in which the VCJC Professional Subcommittee determined that Sgt. Malinowski engaged in Category B (first offense) due to gross professional misconduct as defined by 20 V.S.A. 2401(2). The conduct involved dishonesty during an internal investigation in violation of St. Albans Police Department’s General Rules of Conduct. Pursuant to VCJC Professional Regulation Subcommittee Procedures, § 8.1.1, the VCJC Executive Director delivered a notice letter, dated April 8, 2021, to Lt. Malinowski, via certified mail, return receipt requested, which was received by Sgt. Malinowski on May 24, 2021. The letter provided Sgt. Malinowski notice that the Subcommittee concluded that Category B unprofessional conduct had occurred due to a violation of St. Albans Police Department policy, but that because it was first offense, no sanction could be imposed by law. The matter in Docket No. 2020XPF was closed with no sanction. However, the April 8, 2021, notice letter specifically provided, in part: “Please be aware that any future instance of Category B conduct, or any other unprofessional conduct defined in 20 V.S.A. § 2401, may subject you to Council sanction, up to and including permanent revocation of your Vermont law enforcement officer certification, after notice and an opportunity for hearing.”

VCJC PRS Docket No. 20201OG (Category B, second offense)

3. On or about December 21, 2020, Chief Maurice Lamonthe requested that Lieutenant Benjamin Couture conduct an internal investigation concerning whether Malinowski had violated the K9 policy of the St. Albans Police Department when Malinowski attended a demonstration at the St. Albans City School with his canine a few days earlier.
4. In addition to the possible K9 policy violation, there was a concern that Malinowski was visiting a co-worker while on duty as evidenced by his cruiser being parked frequently at a certain location in St. Albans.
5. On or about December 17, 2020, Malinowski went to the St. Albans City School to assist Community Support Unit member Kaylie Cadorette with a K9 demonstration. Lt. Couture's investigation revealed that Malinowski attended the demonstration for approximately an hour and fifteen minutes. Neither the Community Support Unit supervisor, Lt. Paul Talley, nor the supervisor for the K9 unit, Lt. Jason Wetherby, were made aware of the demonstration prior to the event. The demonstration had not been approved by Lt. Wetherby nor any other Command Staff member.
6. After interviewing Malinowski about his awareness of the K9 policy, Lt. Couture ascertained that while Malinowski attended the St. Albans City School without approval from his supervisor, Malinowski had not received the final version of the department's K9 policy until after the school visit.
7. As such, Malinowski did not violate the K9 policy, but he did fail to request approval for the public appearance, and with that omission, violated Department Policy General Rules of Conduct; J; Public Appearances; "If an officer receives a request to make a public presentation or appearance, or publish an article concerning his duties, they shall apply for permission to the Chief of Police..."
8. In questioning Malinowski about the school visit, Lt. Couture asked Malinowski to explain why his cruiser was parked at 142 North Main Street, in the city of St Albans for approximately forty (40) minutes on four separate occasions in December of 2020, while Malinowski was on duty.
9. The address was particularly concerning as Lt. Couture was aware that Malinowski had admitted that he was having an extramarital affair with a woman who worked in the St.

Albans Police Department during a disciplinary meeting in October of 2020. Lt. Couture knew that the co-worker involved in that relationship lived in close proximity to 142 North Main St.; that her residence was four buildings away from the business located at 142 North Main St.

10. Malinowski had been advised by his direct supervisor at the October 2020 disciplinary meeting that Malinowski could not work with, supervise and/or personally engage with that specific co-worker while he was on duty.
11. When Lt. Couture asked Malinowski whether he was going over to his co-worker's apartment while on-duty, Malinowski denied the alleged behavior. When Lt. Couture reminded Malinowski that the department's cruisers have GPS and that Malinowski's cruiser's GPS put him in very close proximity to his co-worker's apartment, Malinowski responded that he parked at 142 Main St and did foot patrols on Main St. He then said that he parked at 142 North Main St. and watched traffic sometimes.
12. When Lt. Couture further questioned whether Malinowski was going over to his co-worker's residence when his car was parked at 142 North Main St., Malinowski responded, "I'm not going over to []'s house and fucking around. I'm not going to lose my career over god damn shit like that! I won't park there if that is what everyone is thinking it is."
13. At the end of the interview, Malinowski swore to the truth of his oral statement.
14. On December 29, 2020, approximately thirty minutes after the interview described above, Malinowski returned to Lt. Couture's office and stated: "I had lied to you earlier. I go over to []'s residence while working. I go over to her place about once a week. I'm really sorry for lying."
15. After being expressly informed by his supervisor that Malinowski was not to have contact with a specific co-worker while he was on duty, Malinowski, on at least four separate occasions, went to the same co-worker's apartment while on duty.
16. Malinowski's actions violated the following St. Albans Police Department policies:
 - a. General Rules of Conduct; G Duty; 9, "Officers while on duty shall constantly keep the dispatcher informed of their whereabouts...";
 - b. General Rules of Conduct; B; 4; Conflict of Order; "to permit effective supervision, direction, and control, employees should promptly obey any lawful order of a supervisor;"

- c. General Rules of Conduct; B; 9; False Statements; “On any official matter, whatsoever, members shall not knowingly make any false statements or misrepresentation of the facts;” and
 - d. General Rules of Conduct; D; 4; General Conduct; “Employees of the department will always display absolute honesty.”
17. When scheduling the internal investigation interview, Lt. Couture spoke with Malinowski on the morning of December 29, 2020. Lt. Couture knew that Malinowski had worked the prior night shift. Lt. Couture inquired whether Malinowski had slept yet. Malinowski responded that he had not slept yet, that he had bad insomnia, but that he had slept at the office last night for approximately 30-45 minutes.
18. By admittingly sleeping on duty, Malinowski violated Department Policy General Rules of Conduct; C; 3; I; “Sleeping on duty.”

VCJC PRS Docket No. 2020SVX (Category B, Third Offense)

19. On August 25, 2020, Lt. Couture received a citizen’s complaint from Jamie Abair alleging that Malinowski and two other St. Albans Police officers, Corporal Fuller and Officer Riley, had illegally searched his car on August 24, 2020.
20. Lt. Couture reviewed the incident reports from the night prior involving Mr. Abair. He interviewed Jamie Abair, Malinowski, Officer Riley and Corporal Fuller. Lt. Couture also reviewed body camera footage from the interaction between the St. Albans police officers and Mr. Abair.
21. Lt. Couture found as follows:
- a. Malinowski, Officer Riley and Corporal Fuller responded to a domestic disturbance on Bowles Lane. Dispatch advised that the husband was taking the wife’s belongings, that they had been arguing and that the husband had been drinking. Dispatch further advised that the man was leaving in a RAV4.
 - b. Malinowski was the first officer to arrive at the scene. He found a man, later identified as Jamie Abair, at the end of the driveway. Mr. Abair stated that he

wanted to leave. Malinowski asked whether Mr. Abair had been drinking. Mr. Abair asked to take a breathalyzer so that he could leave.

- c. Malinowski then spoke with the woman at the scene who had called dispatch about the disturbance. Later identified as Christine Abair, Ms. Abair explained that they were a married couple, that they had separated but were now back together. She further explained that they had been arguing throughout the day, that Mr. Abair had taken some of her belongings and that her property was in the car, the RAV4, that he was attempting to leave in.
- d. Officer Reilly and Corporal Fuller arrived at the scene while Malinowski was speaking with Ms. Abair. Officer Reilly administered a preliminary breath test to Mr. Abair; the results of which were a BAC of .029%. The officers did not observe that Mr. Abair showed any signs of impairment.
- e. The main issue at the scene was the removal of Ms. Abair's property from the car. Mr. Abair stated that he bought the items. Ms. Abair claimed that property was hers. When the officers discussed allowing Ms. Abair to remove the property from the car, Mr. Abair became upset. He began yelling and made clear that he did not want anyone searching his car.
- f. Malinowski believed that Mr. Abair was becoming elevated and possibly aggressive. Malinowski temporarily detained Mr. Abair in handcuffs.
- g. Mr. Abair repeatedly denied requests to enter his vehicle.
- h. Malinowski admitted during the internal interview that at the time Mr. Abair was detained in handcuffs, there was no longer an ongoing criminal investigation and that the situation had evolved into a civil matter regarding a property dispute.
- i. Malinowski asked where the keys to the car were located. Officer Reilly interpreted that question as an order to retrieve the car keys which were in Mr. Abair's back pocket. Officer Reilly knew the location of the car keys as Officer Reilly had returned the keys to Mr. Abair after Officer Reilly had performed a safety pat down of Mr. Abair prior to administering the breathalyzer test. Both Malinowski and Officer Reilly admitted that Mr. Abair did not provide consent to remove the car keys from Mr. Abair's pocket.

- j. Officer Reilly handed Malinowski Mr. Abair's car keys. Malinowski then handed the car keys to Ms. Abair. After Ms. Abair removed the disputed property from the car, Mr. Abair was released from his handcuffs. The officers cleared the scene soon after.
 - k. The officers never properly identified Ms. Abair at the scene, nor did they confirm whether she had any right to access the vehicle.
22. Malinowski detained Mr. Abair during a civil matter between husband and wife regarding property. Malinowski facilitated the removal of Mr. Abair's car keys from Mr. Abair's pocket and then he allowed Ms. Abair to remove property from Mr. Abair's vehicle. Malinowski's actions are a violation of St. Albans Police Department Policy regarding the Federal Civil Rights Act of 1964.
23. On April 4, 2007, then Chief Gary Taylor issued a department policy outlining expectations of officers to adhere to the Civil Rights, Title VI, Federal Civil Rights Act of 1964. The policy reads, in part, "This law makes it unlawful for State or local law enforcement officers to engage in a pattern or practice of conduct that deprives persons of rights protected by the Constitution or law of the United States. (42 U.S.C. S/S 14141). The types of conduct covered by this law include, among other things...searches or arrests...No Member of the St. Albans City Police Department will knowingly and intentionally engage in, participate in or otherwise act in a manner to violate the Federal or State Constitutional civil rights of another. No member of the St. Albans City Police Department will knowingly and intentionally use the "Color of his/her Authority" to unlawfully obtain property, favor or other consideration."

The Council shall determine whether such alleged violations set forth above re: VCJC PRS Docket Nos. 20201OG and 2020SVX did occur as specified herein.

The hearing shall be conducted by the Council in accordance with the Vermont Administrative Procedure Act (3 V.S.A. §§ 809-816). Pursuant to 3 V.S.A. § 809(c), you shall have an opportunity by yourself or through your attorney to appear at said hearing to present evidence and argument on all issues involved in this case and bring before the Council all pertinent facts that you believe will have a bearing on the issues involved in this case.

All correspondence and documents pertaining to this matter should be sent to the Vermont Criminal Justice Council, 317 Academy Road, Pittsford, Vermont, 05763, to my attention.

Dated June 13, 2023 at Pittsford, Vermont.

Vermont Criminal Justice Council

A handwritten signature in black ink that reads "Heather Simons". The signature is written in a cursive style with a large, prominent 'S' at the end.

Heather Simons
Executive Director