

Findings of Fact

4. Council staff received two unprofessional conduct complaints against Respondent on or about January 8, 2021 (PRS Docket No. 20201OG) and September 20, 2020 (PRS Docket No. 2020SVX).
5. The Council Professional Regulation Subcommittee (“Subcommittee”) reviewed and processed the complaint pursuant to 20 V.S.A. Chapter 151, Subchapter 2.
6. The Subcommittee determined that the facts established by the investigation of complaint PRS Docket No. 20201OG supported a finding of unprofessional conduct and, by vote on May 10, 2021, concluded that Respondent had engaged in Category B conduct (second offense).¹
7. Based on the Subcommittee’s determination, the State specifically alleges that, in PRS Docket No. 20201OG, in December of 2020, Respondent lied during an internal investigation, went to a co-worker’s apartment while he was on duty on at least four occasions even though he had been explicitly ordered to not associate with that co-worker while on duty, and slept while on-duty, in violation of the following St. Albans Police Department Policies: (1) General Rules of Conduct; G Duty; 9, “Officers while on duty shall constantly keep the dispatcher informed of their whereabouts...”; (2) General Rules

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.”

of Conduct; B; 4; Conflict of Order; “to permit effective supervision, direction, and control, employees should promptly obey any lawful order of a supervisor;” (3) 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;” (4) General Rules of Conduct; D; 4; General Conduct; “Employees of the department will always display absolute honesty;” and General Rules of Conduct; C; 3: I; “Sleeping on duty.”

8. The Subcommittee determined that the facts established by the investigation of complaint PRS Docket No. 2020SVX supported a finding of unprofessional conduct and, by vote on June 21, 2021, concluded that Respondent had engaged in Category B conduct (third offense).
9. Based on the Subcommittee’s determination, the State specifically alleges that, in PRS Docket No. 2020SVX, on or about August 25, 2020, Respondent had a person’s car keys removed from the person’s pocket without lawful authority and allowed another member of the public to remove property from the person’s car in violation of St. Albans Police Department’s Civil Rights Policy which reads, in part: “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.”

Conclusions of Law

10. Vermont law sets forth three categories of law enforcement officer unprofessional conduct: Category A, Category B and Category C. *See* 20 V.S.A. § 2401(1)-(3) (categories defined).

11. As relevant to this matter, Category B conduct is defined as “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.” *Id.* § 2401(2). That specifically includes the following: “(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; and (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.” *Id.* § 2401(2)(A)-(G).
12. The State alleges that Respondent engaged in prohibited Category B conduct by virtue of lying during an internal investigation, failing to follow a direct order from his supervisor, sleeping while on duty, and unlawfully assisting in the removal of property from a person. All alleged misconduct occurred while on duty.
13. Respondent acknowledges that if this matter were to proceed to a contested hearing, the State could satisfy its burden that Respondent engaged in prohibited Category B conduct. See 20 V.S.A. § 2401(2) (Category B conduct defined to include “gross professional misconduct amounting to actions on duty or under authority of the State, or both, that involve. . . substantial deviation from professional conduct as defined by the law enforcement agency’s policy”).

14. Consistent with Respondent's cooperation with the Council, Respondent acknowledges that if the State were to file charges, it could satisfy its burden at a hearing and a finding adverse to Respondent could be entered by the Council pursuant to 20 V.S.A. §§ 2401, 2405-2407 and 3 V.S.A. § 812.
15. In the interest of resolving this matter, the Respondent and the State agree to enter this Stipulation and Consent Order, in lieu of proceeding to hearing.
16. The Council adopts as its facts and conclusions in this matter Paragraphs 1 through 9 above, and Respondent agrees that this is an adequate basis for the Council actions set forth herein. Any representation by Respondent herein is made solely for the purposes set forth in this agreement.
17. Therefore, in the interest of Respondent's desire to fully and finally resolve the matter presently before the Council, Respondent has determined that Respondent shall enter into this agreement with the Council. Respondent enters no further admissions here, but to resolve this matter without further time, expense, and uncertainty Respondent has concluded that this agreement is acceptable and in the best interest of the parties.
18. Respondent agrees and understands that by executing this document Respondent is waiving any right to challenge the jurisdiction and continuing jurisdiction of the Council in this matter, to be presented with a specification of charges and evidence, to cross-examine witnesses, to offer evidence of his own to contest any allegations by the State or to appeal from this Stipulation and Consent Order.
19. Respondent is not under the influence of any drugs or alcohol at the time he signs this Stipulation and Consent Order

20. The parties agree that upon the Council's acceptance of this Stipulation and Consent Order, and pursuant to the terms herein, the above-captioned matter shall be resolved by the Council. Thereafter, the Council will take no further action as to this matter absent non-compliance with the terms and conditions of this document by Respondent.
21. This Stipulation and Consent Order is conditioned upon its acceptance by the Council. If the Council rejects any part of this document, the entire agreement shall be considered void. Respondent agrees that if the Council does not accept this agreement in its current form, Respondent shall not assert in any subsequent proceeding any claim of prejudice from any such prior consideration. If the Council rejects any part of this agreement, none of its terms shall bind Respondent or constitute an admission of any of the facts of the alleged misconduct, it shall not be used against Respondent in any way, it shall be kept in strict confidence, and it shall be without prejudice to any future unprofessional conduct disciplinary proceeding and the Council's final determination of any charge against Respondent.
22. Respondent acknowledges and understands that this Stipulation and Consent Order shall be a matter of public record, shall be entered in his permanent Council file, shall constitute an enforceable legal agreement, and may and shall be reported to other authorities, including the International Association of Law Enforcement Standards and Training National Decertification Index. In exchange for the actions by the Council, as set forth herein, Respondent expressly agrees to be bound by all terms and conditions of this Stipulation and Consent Order.

23. The parties therefore jointly agree that should the terms and conditions of this Stipulation and Consent Order be deemed acceptable by the Council, it may enter an order implementing the terms and conditions herein.

Order

WHEREFORE, on the basis of the foregoing Findings of Fact and Conclusions of Law, and on the basis of the consent of Respondent, it is hereby ORDERED that:

1. Respondent's Vermont law enforcement officer certification shall be PERMANENTLY REVOKED effective July 18, 2023, with no option of recertification.
2. Respondent shall provide a complete copy of this Stipulation and Consent Order to any Vermont law enforcement agency for which he works or to any prospective Vermont law enforcement agency to which he makes application for employment, as well as to any state regulatory body or other certification authority related to law enforcement officers in any location or jurisdiction where he may apply for law enforcement officer employment, for so long as this Stipulation and Consent Order remains in effect.
3. Respondent shall bear all costs of complying with the terms and conditions of this Stipulation and Consent Order.
4. Respondent agrees to be bound by all terms and conditions of this Stipulation and Consent Order.

DATED at South Burlington, Vermont this 10 day of July, 2023.

By:

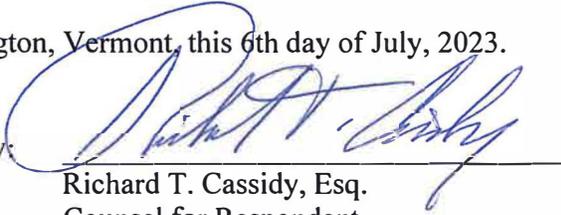


Michael Malinowski
Respondent

Approved as to Legal Form:

DATED at South Burlington, Vermont, this 6th day of July, 2023.

By:


Richard T. Cassidy, Esq.
Counsel for Respondent

DATED at Pittsford, Vermont, this 2 day of August, 2023.

By:


Heather Simons
Executive Director
Vermont Criminal Justice Council

Approved as to Legal Form:

DATED at Pittsford, Vermont this 2 day of August 2023.

By:


Kim McManus
Associate General Consul
Vermont Criminal Justice Council

