

PEACE OFFICER STANDARDS & TRAINING COMMISSION

June 1, 2022

8:30 AM

**Peace Officer Standards and Training Commission
Remote Participation**

PUBLIC MEETING MINUTES

Documents Distributed in Advance of Meeting:

- Draft Meeting Minutes of May 19, 2022
- Proposed Regulations at 555 CMR 7.00, *et seq.*

In Attendance:

- Chair Margaret R. Hinkle
- Commissioner Hanya Bluestone
- Commissioner Lawrence Calderone
- Commissioner Clementina M. Chéry
- Commissioner Larry Ellison
- Commissioner Marsha Kazarosian
- Commissioner Charlene Luma
- Commissioner Kimberly P. West
- Commissioner Michael Wynn

1. Call to Order

- The Chair recognized a quorum.

2. Approval of Minutes

a. May 19, 2022

- Commissioner Kazarosian moved to approve the minutes from the May 19, 2022 meeting. Commissioner Chéry seconded the motion. Commissioners Bluestone, Calderone, Chéry, Ellison, Kazarosian, West, Wynn and the Chair voted to approve the minutes from the May 19, 2022 meeting. Commissioner Luma abstained as she was not present on May 19, 2022.

3. Executive Director Report – Enrique Zuniga

- The Commission continues to receive questions and comments on the recertification process, and in particular, on the questionnaire. Executive Director Zuniga stated that the staff is responding to these inquiries and emphasized that the questionnaire is not designed to be punitive.
- To date, 127 agencies have started the recertification process. Of those agencies, 50 agencies have submitted applications for recertification. Of those, 20 agencies' submissions have been cleared by the Division of Standards, meaning their applications are complete and ready for review.
- Executive Director Zuniga announced that agencies may request an extension in the recertification process. In order to request an extension, agencies must submit

with their request a roster of individuals to be recertified. This submission must be made through the Commission's recertification portal.

- To address any further questions on the recertification process, the Commission will host virtual office hours on June 1 at 11:00 am and June 7 at 10:00 am.
- Commissioner Bluestone asked the Chair how the Commission plans to respond to a letter from the Massachusetts Police Association regarding the questionnaire. The Chair stated the Commission would address the letter later in the meeting.

4. Recertification Regulations (Proposed) 555 CMR 7.00 – General Counsel Ravitz

- General Counsel Ravitz reviewed changes to the proposed regulations since the Commission's last meeting. The majority of revisions are intended to promote clarity and consistency.
- Mr. Povich stated that if the Commission approved the regulations today, the Commission would promulgate the regulations on an emergency basis so the regulations would become effective immediately, with public comment to follow.
- Commissioner Bluestone assured members of law enforcement that the Commission is acting in their best interests.
- Commissioner Calderone expressed his disfavor for voting on the regulations today so they public has greater opportunity to provide its feedback.
- Commissioner Ellison asked General Counsel Ravitz to clarify how officers whose last names do not begin with the letters A-H are affected by the recertification process. Executive Director Zuniga clarified that the certification of officers whose last names are not A-H are not affected by the 2022 recertification cycle because their certifications expire on either July 1, 2023 or July 1, 2024.

5. Public Comment

- A member of the public raised a concern that the regulation do not define "good moral character and fitness." General Counsel Ravitz responded that the regulations list a number of characteristics that should be taken into account, as well as a number of sources to be consulted, when assessing an officer's good moral character and fitness.
- A member of the public raised a concern that they could not view the other participants in attendance at the meeting. Mr. Myrie stated that the Zoom webinar format prevents participants from viewing other participants.
- A member of the public asked whether union posts and news could be considered offensive, even though such posts and news are protected under federal law. General Counsel Ravitz stated that union posts and news are not related to any provision of the recertification regulations.
- A member of the public asked whether the Commission could break down data on interactions on an officer level. Executive Director Zuniga stated that if the question relates to data about an officer's disciplinary history, the public can ascertain that information based on an officer's employment with a particular agency.
- A member of the public asked whether an officer's union advocacy could be considered as a basis for decertification. No further response was required, as General Counsel Ravitz had previously answered a similar question.

- A member of the public asked whether the Commission will issue guidance on use of force regulations in relation to sections 12 and 35. Executive Director Zuniga stated that the Commission is considering the issue and may address it in a future clarification or guidance.
- A member of the public asked how constables in need of bridge academy training could receive such training. Executive Director Zuniga advised the individual to speak with the Municipal Police Training Committee.
- A member of the public asked whether an officer's refusal to answer the questionnaire would leave them uncertified without police powers. Mr. Povich responded that until an officer's certification is finally determined, that officer continues to be certified with full police powers.
- A member of the public asked whether the 2400 hour work experience rule is limited by a certain period of time. Assistant General Counsel Melander from the Executive Office of Public Safety and Security stated that the rule is not time limited.
- A member of the public asked whether an officer on military leave whose last name is within A-H should be included in the spreadsheet submitted with the request for an extension. Executive Director Zuniga stated that the officer should be included in the spreadsheet, but that an agency should note that officer is on leave. Executive Director Zuniga further stated that an officer in that scenario would be conditionally recertified, and would have 90 days after returning to meet certification requirements.
- A member of the public raised a concern that the Municipal Police Training Committee has not responded to their question about constable training. Mr. Povich again referred the question to the Municipal Police Training Committee.
- A member of the public asked when the database of disciplinary records would be made public. Executive Director Zuniga responded that the Commission is still in the process of undertaking final data validation.
- State Senator Nicholas Collins addressed the Commission and expressed his concerns that the questionnaire may have a chilling effect on agencies' ability to recruit candidates, further compounding agencies' existing difficulties recruiting minority candidates. He underscored the need to be precise when implementing the questionnaire. The Chair thanked the Senator for his comments and reiterated the Commission's commitment to implementing the law and meeting its statutory requirements in ways that respect the rights of all officers.
- John Scheft, an attorney representing the Massachusetts Police Association, addressed the Commission and encouraged the Commission to consider modifying the questionnaire to assuage concerns from law enforcement that the questionnaire may be overreaching. Commissioner Bluestone thanked Mr. Scheft and the members of the Massachusetts Police Association for providing their public comment and questions.
- John Nelson addressed the Commission and expressed concerns that if the Commission were to vote on the recertification regulations today, the public would not have adequate time to provide public comment. He also asked whether the recertification decision is made a single commissioner, or the full commission. General Counsel Ravitz stated that the initial recertification decision is made by

Commission staff on behalf of the Commission. If an officer would like to seek review of the initial recertification decision, an officer can obtain review by Executive Director Zuniga, and ultimately a hearing before the full Commission. General Counsel Ravitz added that Commission staff are always able to seek guidance and input from senior members of Commission staff. Mr. Nelson then asked whether an officer has a right to access the Commission's decision making process. General Counsel Ravitz clarified that officers are provided an opportunity to respond when their employing agency does not attest to their good moral character.

- Attorney Alan Shapiro addressed the Commission and expressed concerns that the good moral character and fitness standards go beyond what is required and impose a "boy scout" standard on police officers. General Counsel Ravitz explained that the factors considered when making a determination of good moral character and fitness are derived from judicial decision interpreting the requirement in the context of admission to the bar. The Chair suggested amending the use of "shall" to "may." Mr. Shapiro expressed his agreement with the amendment.
- Frank Frederickson expressed concerns that the questionnaire may exacerbate stress already experienced by officers. General Counsel Ravitz stated that the questionnaire is intended to aid in the administration of an oral interview by the Commission and to aid in the assessment of an officer's good moral character and fitness, both of which are set by statute as minimum standards for certification.
- A member of the public asked how often the Commission meets. Executive Director Zuniga stated the Commission meets at a minimum every month, but may meet as frequently as every two weeks.
- A member of the public asked when the Commission plans to meet in person. Executive Director Zuniga stated the Commission has no plans to meet in person, but will provide an update when it does so.
- A member of the public asked when the Commission would respond to the Massachusetts Chiefs of Police Association letter regarding the questionnaire. Executive Director Zuniga stated the Commission has already made clarifications in its instructions on the questionnaire based on the letter, and would respond to the letter in full.
- A member of the public asked whether an officer is within their rights to ask for Carney warnings prior to answering the questionnaire. General Counsel Ravitz stated the Commission was unable to advise officers on their Carney warnings.
- A member of the public asked whether the Supervisor of Public Records has made a determination that responses to the questionnaire are public records. General Counsel Ravitz stated he was not aware of any determination by the Supervisor on the questionnaire.
- A member of the public asked what the Commission's timeline for processing recertification applications is. Executive Director Zuniga stated that applications are evaluated on a case-by-case basis.
- A member of the public asked whether Commissioners who are not already members of law enforcement are required to answer the questionnaire. Mr.

Povich stated that Commissioners who are not already member of law enforcement are not required to answer the questionnaire.

- A member of the public asked whether the Commission could set aside certain parts of its enabling statute to send back to the legislature for review or revisions. Mr. Povich stated the Commission is obligated to follow the statute as enacted by the legislature, and promulgate regulations consistent with such legislation.
- A member of the public raised concerns that promulgating the recertification regulations on an emergency basis was overly aggressive and that the public should have the opportunity to provide public comment prior to promulgation. No response was required.
- A member of the public asked how a Town Manager signs off on an officer's questionnaire. Executive Director Zuniga clarified that only Chiefs are required to have their questionnaires reviewed by their appointing authority.
- A member of the public raised concerns about how an officer can mount a defense in the recertification process, if they are unable to review the questionnaire. General Counsel Ravitz stated that the new regulations incorporate previously approved regulations on adjudicatory processes, which provide rules around hearings regarding decertification.
- A member of the public asked how an officer's recertification application should be completed if an officer will not have completed their bridge academy training by June 15. Executive Director Zuniga advised that the agency should answer "yes, with exceptions" to questions 2 and 15 and note the officer's specific circumstances in the comment box.
- A member of the public asked how an officer can meet the standards of good moral character and fitness if their chief does not attest to the same. Executive Director Zuniga stated the question would be addressed by recertification regulations, which the Commission would discuss next.

6. Vote on Recertification Regulations (Proposed) 555 CMR 7.00

- The Chair proposed voting to approve the recertification regulations, with an amendment that the requirement that reviewing officers take into account certain characteristics going towards good moral character be changed from "shall" to "may."
 - Commissioner Kazarosian so moved. Commissioner West seconded the motion.
- Commissioner Bluestone suggested the Commission undertake another round of revisions prior to voting to approve the regulations for promulgation, particularly with respect to the characteristics going towards good moral character. General Counsel Ravitz responded that the Commission could construe the language as it deemed warranted. Commissioner West advocated for keeping the proposed language, stressing the police officers should be held to a higher standard than members of the bar because of their interaction with the public. Commissioner Ellison added that such language was standard with many police departments. Commissioner Calderone expressed his agreement with Commissioner Bluestone, and stated his opposition to voting to approve the regulations today. Commissioner Wynn also expressed his hesitation on approving the regulations today, given earlier public commentary. Commissioner Luma expressed her

agreement with Commissioners Wynn and Calderone, and suggested the Commission take the public's comments under advisement.

- The Commission took a vote to approve the proposed recertification regulations with the Chair's oral amendment. Commissioners Kazarosian, West and the Chair voted in favor of approving the regulations. Commissioners Calderone, Chery, Ellison, and Wynn voted against approving the regulations. Commissioners Bluestone and Luma abstained.
 - Commissioner Wynn suggesting tabling the regulations, with the understanding that the Commission would schedule another meeting to discuss the recertification regulations. Executive Director Zuniga suggested the Commission meet next week to discuss revisions to the recertification regulations.
 - Commissioner Calderone made a motion to amend language in the regulations regarding the requirement that reviewing officers take into account certain characteristics going towards good moral character from "shall" to "may." Commissioner Kazarosian seconded the motion. Commissioner Calderone withdrew his motion, based on the understanding that the Commission would vote on all revisions to the regulations at a later time.
7. Matters not anticipated by the Chair at the time of posting
- There was no new business.
8. Executive Session to discuss strategy with respect to litigation, specifically *Scott Hovsepian, et al. v. Massachusetts Peace Officer Standards and Training Commission*, No. 2284CV00906, Suffolk Superior Court, and *New England Police Benevolent Association, Inc. et al. v. Massachusetts Peace Officer Standards and Training Commission*, No. 2285CV00555, Worcester County Superior Court.
- The Chair stated that the Commission would next take a vote to enter into executive session to discuss strategy in the two pending litigation matters, and that the Commission would not reconvene in an open session after executive session.
 - Commissioner Kazarosian moved to enter into executive session to discuss strategy in the two pending litigation matters. Commissioner Luma seconded the motion. Commissioners Bluestone, Calderone, Chéry, Ellison, Kazarosian, Luma, West, Wynn and the Chair voted to enter into executive session to discuss the two pending litigation matters.