

PEACE OFFICER STANDARDS & TRAINING COMMISSION

May 19, 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 3, 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 Kimberly P. West
- Commissioner Michael Wynn

1. Call to Order

- The Chair recognized a quorum.

2. Approval of Minutes

a. May 3, 2022

- Commissioners Ellison and Kazarosian moved to approve the minutes from the May 3, 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 3, 2022 meeting.

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

- General Counsel Ravitz reviewed proposed regulations at 555 CM 7.00, *et seq.*, regarding the standards and processes for recertifying law enforcement officers.
- Commissioner Ellison asked whether the Commission is required to render a recertification decision on an officer’s application within a certain period of time. General Counsel Ravitz clarified that the proposed regulations did not contemplate such a deadline in order to maintain flexibility and because the regulations allow an officer to retain their certification while their recertification application is under consideration, but stated the Commission could consider adopting a supplemental policy setting relevant timelines.
- Commissioner Calderone raised concerns about the propriety of considering allegations that have previously been adjudicated or resolved by another authority in the officer’s favor. General Counsel Ravitz clarified that the “good moral

character and fitness,” standard is considered under a totality of the circumstances, which may include allegations resolved in an officer’s favor. He also stated the importance of the Commission retaining ultimate authority over a decision to recertify, as the Commission may ask questions or apply standards different from those of another adjudicator. The Chair stated the Commission would consider and address Commissioner Calderone’s concerns. Executive Director Zuniga clarified that even if a chief failed to attest to an officer’s good moral character based on an adjudicated allegation, the Commission still retains the ability to review the chief’s decision and render its own determination.

- Commissioner Wynn raised a concern that “successful completion of an exam,” was not specific enough, as students take many exams and quizzes throughout their time in the police academy. Commissioner West agreed.
- The Chair stated she expects the Commission will vote on revised recertification regulations at its next meeting. Executive Director Zuniga added that if adopted, the Commission would promulgate the regulations on an emergency basis so the regulations would become effective immediately, with public notice and comment to follow.

4. Executive Director Report – Enrique Zuniga

- Executive Director Zuniga stated that the Commission is nearly done aggregating and reconciling all data received on complaints against officers. However, the Commission will need to complete the last step of data validation prior to publishing the database, which requires at least two weeks to complete.
- Executive Director Zuniga stated the Commission will first publish data on officers who have been suspended, terminated, or resigned in lieu of termination. To date, there are 4,500 records on such officers. These types of records are prioritized for publication because the Commission has since promulgated regulations that do not require the submission of complaints relating to minor matters and because many officers have since retired.
- Executive Director Zuniga continues to meet with stakeholders to explain the recertification process. Executive Director Zuniga plans to publish periodic updates to answer questions on the recertification process.

5. Public Comment

- A member of the public asked whether the Commission’s website specifies which types of complaints are reportable to the Commission. Executive Director Zuniga stated the website does not, and explained that the Commission no longer requires police agencies to submit reports regarding minor complaints.
- A member of the public asked the Commission to explain recent updates to the recertification spreadsheet and instructions. Executive Director Zuniga explained that spreadsheet and instructions were updated to include the date of an officer’s hiring. Executive Director Zuniga encouraged agencies to use the updated template, even if they have already completed an old template, but stated the Commission would accept prior templates if it is too burdensome for an agency to fill out the updated template.
- A member of the public asked whether agencies would be informed of the Commission’s decision to post or not to post reports of complaints of misconduct, based on the Commission’s regulations regarding minor matters. Executive

Director Zuniga stated that the Commission would only contact those agencies from whom it requires information for data validation.

- A member of the public asked what kind of data requires validation. Executive Director Zuniga stated that data validation was often required when an agency failed to follow submission directions.
- A member of the public asked to see the other participants of the meeting. Mr. Myrie responded, stating that the Zoom webinar product does not allow participants to view other participants.
- A member of the public asked whether agencies that have submitted an officer's complete disciplinary history, including minor matters, are required to produce those same records in response to a public records request. Executive Director Zuniga stated that question must be determined by each local agency with the assistance of its counsel.
- A member of the public asked whether the Commission has access to an officer's questionnaire where they are determined to have good moral character and fitness. Executive Director Zuniga stated that the Commission is not requiring agencies to submit an officer's questionnaire where they satisfy the good moral character and fitness requirement, but stated that the Commission could potentially ask to see an officer's questionnaire.
- A member of the public asked when an officer may appeal a recertification decision to the courts. General Counsel Ravitz stated that an officer may seek judicial review after the officer has sought further review before the Executive Director and a further hearing before the Commission in accordance with Commission regulations.
- A member of the public asked who pays an uncertified officer. Mr. Povich responded that while an officer's recertification application is under review, they maintain their certification. In the event they are not certified, the question of payment and employment is one for the officer's employing agency.
- A member of the public asked whether the Commission is subject to any independent oversight. Mr. Povich responded that the Commission is an independent commission created by statute.
- A member of the public asked if an officer could be certified if an arbitration is being heard. General Counsel Ravitz responded that officers are reviewed on a case-by-case basis, and clarified that the Commission may still find an officer possesses good character and fitness, even if an arbitration is pending.
- A member of the public asked whether officers with last names A through H who have recently been certified are required to participate in the recertification process. Mr. Povich clarified that the current recertification process applies only to officers who were certified by statute, and that an officer's certification is valid for three years.
- A member of the public asked whether Commissioners are considered law enforcement officers who need to be certified. Mr. Povich stated that except for those Commissioners who are also law enforcement officers, Commissioners are not subject to certification.
- A member of the public asked how large the Commission body is when it hears an appeal from a single commissioner decision, and whether an officer and their

attorney is allowed to present their case at the appeal. General Counsel Ravitz stated that under statute, the Commission has a quorum of seven. Executive Director Zuniga clarified that it is within the discretion of the Chair to set the number of commissioners to hear an appeal.

- A member of the public asked whether an officer is ineligible for certification based on convictions of minor felonies or false convictions year ago. General Counsel Ravitz responded that the statute prevents an officer who has been convicted of a felony from being certified, regardless of when the conviction occurred.
- A member of the public asked whether waivers would be considered for recertification. Mr. Povich and Executive Director Zuniga stated that the statute does not provide for waiver, nor do the regulations currently contemplate a waiver process.
- A member of the public asked how agencies should respond to media requests for records provided to the Commission where the Commission has not yet published any such records. Executive Director Zuniga referred the question to a prior answer – that the question is left to local agencies and their counsel.
- A member of the public asked whether a complainant would be required to make their allegations against an officer under the pains and penalties of perjury, and whether the complainant would be made available for a deposition. Mr. Povich stated that the regulations approved by the Commission do not require allegations to be made under the pains and penalties of perjury, and that the regulations do not cover complainant depositions.
- A member of the public asked when the Mass. Chiefs of Police would receive a response to their letter recently sent to the Commission. The Chair responded that some of their questions have been addressed at this meeting, and that other portions of their letter would be addressed in future meetings and website updates in the near future.
- A member of the public asked what the sanctions are for failing to complete the questionnaire. Executive Director Zuniga stated that if an officer refuses to participate in the questionnaire, then they will not have met the standard requiring completion of an oral interview and the officer cannot be recertified (distinct from decertification). He stated, however, that if an officer declines to answer only some questions, the consequences may be different.
- A member of the public asked when the Commission would address a joint letter recently provided to the Commission regarding the validity of the questionnaire. Mr. Povich stated that as a letter relating to ongoing litigation, it does not call for an answer outside of litigation.
- A member of the public asked whether the Commission would consider eliminating or amending some of the questions viewed as beyond the scope of the Commission. No response was provided to this question as it is at issue in ongoing litigation.
- A member of the public asked how citizens could best assist the Commission. Executive Director Zuniga suggested submitting comments, asking questions, writing to the Commission, and if necessary, submitting complaints to law enforcement agencies or the Commission. Commissioner Ellison also suggested

citizens could pass along information about the Commission and its efforts to others.

- A member of the public asked whether the Commission could decertify an officer who had already completed arbitration prior to submission of records to the Commission. General Counsel Ravitz responded that the Commission had already addressed a similar question.
 - Commissioner Bluestone assured members of the public that the Commission takes its mission seriously, given the stakes of law enforcement.
6. Matters not anticipated by the Chair at the time of posting
- There was no new business.
7. 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.
- The Chair stated that the Commission would next take a vote to enter into executive session to discuss strategy in the *Hovsepian* litigation, and that the Commission would not reconvene in an open session after executive session.
 - Commissioners Bluestone, Calderone, Chéry, Ellison, Kazarosian, West, Wynn and the Chair voted to enter into executive session to discuss the *Hovsepian* litigation.