

Quarterly Meeting Minutes December 2012

The quarterly meeting of the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) was held on December 5 and 6, 2012.

Wednesday, December 5, 2012

On Wednesday, December 5, 2012, at 3:00 p.m. the meeting was at the TCLEOSE headquarters building, 6330 East Hwy 290, Ste 200, Austin, Texas.

1. The meeting was called to order by Presiding Officer Joel Richardson. The commissioners then went into executive session to discuss matters authorized by Texas Government Code section 551.071 *et seq.*, including pending litigation, attorney-client consultation, and the executive director's performance evaluation.
2. The commissioners returned from Executive Session and there were no items on which to report, discuss, or take further action.
3. The meeting was adjourned.

Thursday, December 6, 2012

The quarterly meeting of the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) was held on Thursday, December 6, 2012, at 9:30 a.m. The meeting was held at the J.J. Pickle Research Campus, The Commons Learning Center, 10100 Burnet Road, Bldg 137, Austin, Texas.

Commissioners attending included Sheriff Joel W. Richardson, Presiding Officer; Mr. Steve Griffith, Assistant Presiding Officer; Dr. Johnny E. Lovejoy II, Secretary; Constable Ron Hood; Mr. James Oakley; Senior Police Officer Joe Pennington; Ms. Patt Scheckel-Hollingsworth; Chief Ruben Villegas; and Mr. Randy Watson.

Also attending were Raymond Winter and Veena Mohan from the Office of the Attorney General. TCLEOSE staff in attendance included Executive Director Kim Vickers, Director John Helenberg, Legal Counsel John Beauchamp, Director Brian Roth, Laurie Abernathy, Lynn Beard, Larry Capps, Thurman Felder, Lisa Fontenot, Dennis Graffious, Richard Gutierrez, Mike Hobbs, Carey McKinney, Kenneth Merchant, Derry Minor, Ken Mobley, James Oswalt, Candice Simon, Doug Staudt, Kaye Wilson, and Nicole Yoakum.

Agenda item #1 Call to order

Presiding Officer Richardson called the meeting to order. The flags were presented by the members of the Trinity University Police Department Color Guard. Members of the Color Guard included Police Sgt. Charles Lopez, Police Sgt. Mark Vallejo, Security Sgt. Joe Hernandez, Police Officer David Estrada, and Police Officer John Santellan. Commissioner Pennington led the pledge of allegiance to the United States flag and to the Texas flag. Executive Director Vickers gave the invocation. Kaye Wilson called the roll and announced that all commissioners were present. Presiding Officer Richardson welcomed all in attendance.

Agenda item #2 Reading of Line of Duty Deaths since the September meeting

Ken Mobley read the names of those officers that have died since the September commission meeting.

Sgt. Paul Hernandez, Texas Department of Public Safety
End of Watch: Thursday, October 4, 2012

Sgt. Hernandez suffered a fatal heart attack while participating in physical readiness training.

Police Officer Jonathan Molina

End of Watch: Friday, October 5, 2012

Officer Molina died from injuries suffered 10 days earlier in an altercation with a suspect.

Agenda item #3 Approval of the minutes of the September 6, 2012, Commission meeting at Austin, Texas.

Commissioner Griffith made a motion to approve the minutes of the September 6, 2012 meeting. Commissioner Lovejoy seconded the motion. The motion passed unanimously.

Agenda item #4 Presiding Officer's Report. Take action, if necessary.

Presiding Officer Richardson announced the dates for the 2013 commission meetings. The meetings will be held on March 21, June 6, September 5, and December 5, all at the J.J. Pickle Research Campus, The Commons Learning Center.

Agenda item #5 Receive Executive Director's Report. Take action, if necessary.

Executive Director Vickers noted that the report was included in the meeting information that the commissioners received prior to the meeting. He noted that additional funds have been received for the Texas Peace Officers' Memorial which included \$7,000 from the Panhandle Area Peace Officer's Association and over \$14,000 from the 2nd annual Friends of the Texas Peace Officers'

Memorial golf tournament sponsored and facilitated by the Texas Municipal Police Association. Commissioner Hollingsworth offered thanks to TMPA for facilitating a successful golf tournament and to the Panhandle Area POA for the outstanding job they did at their luncheon and silent auction. Presiding Officer Richardson challenged other areas of the state to sponsor similar activities to raise funds for the restoration of the memorial.

Executive Director Vickers said there were approximately 600 attendees at this year's training coordinator's conference. He has received positive feedback from the attendees, noting that they especially enjoyed the new format and the new events. Commissioner Hollingsworth said that by far this is the best training coordinator's conference she has attended in 10 years and that the success was due to staff's hard work and the speakers addressing items that were important to the trainers in attendance.

The commission's newest staff member, Mike Antu, manager of special services was introduced and welcomed.

Agenda item #6 Take action to enroll officers in the Texas Peace Officers' Memorial. If necessary, waive the requirement for induction at a separate Commission meeting, and take action to induct officers into the Texas Peace Officers' Memorial who were enrolled today.

Police Sgt. Charles Lopez with the Trinity University Police Department read the names to be enrolled and inducted into the Texas Peace Officers' Memorial.

Commissioner Griffith made a motion to enroll the officers in the Texas Peace Officers' Memorial, waive the requirement for induction at a separate meeting, and take action to induct these officers into the Texas Peace Officers' Memorial. Commissioner Hollingsworth seconded the motion. The motion passed unanimously.

Agenda item #7 Discuss and take action on applications to be an approved law enforcement academy, contractual training provider or academic alternative provider.

- a. Cedar Hill Police Department – contract training provider
Director Helenberg stated that the application from Cedar Hill has been reviewed and meets the requirements for a contract training provider.

Chief Steve Rhodes and Sgt. Earnest Jenkins appeared before the commissioners. They noted the location of Cedar Hill and spoke of the partnerships that they have with the surrounding agencies.

Commissioner Oakley made a motion to approve the application of the Cedar Hill Police Department. Commissioner Griffith seconded the motion noting that this was the most complete and comprehensive

application that he has seen come before the commission. The motion passed with Commissioner Hollingsworth abstaining.

- b. Texas Drug Abuse Resistance Education (D.A.R.E.) Program Inc. – contract training provider
Director Helenberg stated that the application had been reviewed and it meets the requirements for a contract training provider.

Commissioner Hollingsworth made a motion to table the vote until more documents could be received concerning the application. Commissioner Griffith seconded the motion. The motion passed unanimously. George Little with Texas D.A.R.E. addressed the commissioners noting that South San Antonio ISD Police Department would be used to store the records and that D.A.R.E. would participate in a joint conference with the Texas Association of School Resource Officers.

- c. Professional Law Enforcement Training (PLET) - contract training provider
Director Helenberg stated that the application had been reviewed and it meets the requirements for a contract training provider.

Byron Boston, representing PLET, addressed the commission. He has presented training to officers in 40 states and PLET has previously presented classes through Texas providers. They currently offer 13 specialized training courses in Texas, mostly narcotics-related courses. PLET would like to teach mandated courses for the Intermediate, Advanced, and Master certificates. They are also interested in teaching through academic partnerships which will involve five universities in Texas including Lamar University, University of Texas Pan American, Texas A&M Corpus Christi, and University of Texas Permian Basin. The mandated courses would be offered tuition free. Commissioner Lovejoy asked if the association with academic partners would be through regionally accredited universities. Mr. Boston replied that he has not investigated if the universities are accredited.

Commissioner Griffith made a motion to approve the Professional Law Enforcement Training as a contract training provider. Commissioner Lovejoy seconded the motion. The motion passed with Commissioner Hollingsworth abstaining.

Agenda item #8 Discuss and take action on proposed orders of amendments to existing TCLEOSE rules.

- 13_18_217.7 Reporting Appointment and Separation.
- 13_19_221.29 Sexual Assault/Family Violence Investigator Certificate.

- 13_20_221.41 Court Security Specialist Certificate.
- 13_21_223.2 Administrative Penalty Schedule

Mr. Beauchamp reviewed each proposed rule change.

217.7 will change the appointment reporting deadline from thirty to seven days. The 30 day deadline was due to most appointments being reported by paper via U.S. mail. Almost all reporting is now conducted electronically so a seven day deadline is reasonable. It will prohibit an agency from submitting an F-5 Report on a licensee prior to the exhaustion of administrative appeals available to the licensee. The commission may reject and return a premature report to the agency pending the appeal's outcome. Commissioner Lovejoy asked if there is a provision in case of electronic failure. Mr. Beauchamp responded that one is not in place at this time, but a policy will be ready to implement. Commissioner Hollingsworth asked if a person is terminated, how will this rule, specifically subsection (h) affect the individual. Mr. Beauchamp noted that often when an administrator believes that the termination will be appealed, the administrator will submit the F-5 for a General or Dishonorable Discharge so that the form will be in file. Mr. Vickers acknowledged that this has been a problem for quite some time. With the new language in the rule, the commission may return an F-5 that has been submitted if the discharge is appealed.

221.29 is the same rule that was proposed at the September meeting with the exception of the title change. The agency received two public comments, one asking if those holding the certificate could be "grandfathered" and the other objected to changing the name of the certificate. Commissioner Hollingsworth asked if the courses for certificate renewal have been determined to which Director Helenberg noted that the chief administrator and the training coordinator will choose the courses that meet the agency's needs. Commissioner Lovejoy asked that the commission issue a letter or send a new certificate with the new name to current certificate holders.

221.41 creates a court security specialist proficiency certificate. Qualification for the certificate requires licensure and completion of required courses. This rule limits certificate validity to two years. Keeping the certificate requires an update course or primary assignment as a court security practitioner every two years. Commissioner Lovejoy asked if the commission communicated with the jail standards over the creation of this certificate to which Executive Director Vickers responded that input from jail standards was not sought.

Representatives from an association for court security officers approached the commission about offering the certification and even created courses to qualify for the certificate. They were wanting more professionalization for court officers. Commissioner Oakley noted that he has visited with Sheriff Gary Painter of Midland County, and Sheriff Painter is interested in the certification. Randy Harris, a member of the Texas Marshal's Association, and currently serving as city marshal for San Angelo, addressed the commission noting that

he teaches court security classes around the state. These courses will transform an information training segment to an educational training program, and will help in the professional development of court security specialists.

223.2 establishes base penalty amounts which can be imposed against a law enforcement agency or governmental entity for violation of a statute or rule. The proposal sets forth aggravating and mitigating circumstances for consideration in determining final penalty amount. Subject to approval by the commission, the proposal allows the executive director to enter into agreed orders and provides the law enforcement agency or governmental entity an opportunity to challenge alleged violations. Mr. Beauchamp then reviewed some of the penalties and corresponding fees assessed to the panalties. Commissioner Lovejoy asked why subsection (c)(2) doesn't seem to have the same importance as subsection (c)(1). Mr. Beauchamp noted that (c)(2) is not a statutory disqualifier, it is a rule violation. Subsection (c)(1) refers to convicted felons and is rooted in statute. Commissioner Lovejoy suggested that this be amended to a \$1,000 penalty. Executive Director Vickers gave the philosophy for the creation of this rule. The commission is tasked to ensure rules are followed and if an administrator has a license, the commission has leverage for compliance. Not all chief administrators are sworn officers and TCLEOSE has no mechanism to address civilian administrators that refuse to comply with rules. Commissioner Watson asked if this rule would be used more for monetary purposes versus licenses to which Executive Director Vickers responded that historically this is not the case. The commission is seeking compliance with the rules and statutes. Commissioner Villescas asked if staff has asked for comments from the chief's and sheriff's to which Executive Director Vickers replied that we have not. Mr. Beauchamp noted that after these proposed rules have been posted in the Texas Register, agency administrators may comment on them. Commissioner Villescas asked if staff has considered academies who train people that are not eligible to enter the academy. Executive Director Vickers noted that this amendment to the rule works with academies as well, plus the commission has a contract with the academies which gives the commission the ability to suspend the contract. Mr. Beauchamp noted that the statute allows this penalty to be assessed on the agency, not the individual administrator. Director Roth stated that this is a result of the Sunset process (HB 3389) and the funds collected go to the Office of the Attorney General, not to the commission. Mr. Winter said fines under this provision of law default to the general revenue unless they are specified to be placed elsewhere. Commissioner Pennington asked how the fines will be collected and Mr. Winter said the State Office of Administrative Hearings places a judgment against the city. The commission issues a final order assessing the monetary penalty. If the city refuses to pay, it is referred to the Attorney General's Bankruptcy and Collection Division. Commissioner Pennington asked for the number of instances where an agency has refused to comply. Executive Director Vickers stated that it happens fairly regularly.

Robert Armbruster, representing the Houston Police Officer's Union, thanked the commission for taking a positive action on 217.7(h) and (f). He expressed concern over 223.2(d)(4) asking how the commission will determine the actual or potential harm to the public's expectation of commission licensees to be trustworthy. He asked how the commission will judge who the public is, and what part of the public they are considering, and how you will measure expectations from the public on this issue. He asked that the commission consider a rewording of this criteria.

Commissioner Griffith made a motion that action be taken on these proposed orders and go forward with 217.7, 221.29, 221.41, and 223.2. Commissioner Watson seconded the motion. The motion passed unanimously.

The commission took a 10 minute break.

Agenda item #9 Discuss and take action on final orders of amendments to existing TCLEOSE rules.

- 13_01_211.1. Definitions.
- 13_02_211.29. Responsibilities of Agency Chief Administrators.
- 13_03_215.13. Risk Assessment.
- 13_04_215.15. Basic Licensing Enrollment Standards.
- 13_05_217.1. Minimum Standards for Initial Licensure.
- 13_06_217.2. Minimum Standards for Telecommunicators (wording change from course title of Crisis Intervention to course title of Crisis Communication)
- 13_07_217.3. Application for License and Initial Report of Appointment.
- 13_08_217.5. Denial and Cancellation.
- 13_09_217.21. Firearms Proficiency Requirements.
- 13_10_221.19. Firearms Instructor Proficiency.
- 13_11_221.25. Civil Process Proficiency.
- 13_12_221.27. Instructor Proficiency.
- 13_13_221.28. Advanced Instructor Proficiency.
- 13_15_221. 37.Cybercrime Investigator Proficiency
- 13_16_221.39. Crime Prevention Specialist Proficiency.
- 13_17_223.15. Suspension of License.

Mr. Beauchamp noted that public comments were received on three of the rules, 221.19, 221.27, and 221.28. Based on the comments, the rules committee recommends that the commission not take action on these rules and allow the committee to further refine them. Executive Director Vickers noted that the rule process is complex. The staff received a significant amount of input from the public and staff listened to the feedback and would like an opportunity to refine and re-propose these three rules. Commissioner Oakley made a motion to accept the rules with the exception of 221.19, 221.27, and

221.28. Commissioner Villescas seconded the motion. The motion passed unanimously.

Agenda item #10 Discuss and take action on proceedings for revocation, suspension, and other disciplinary actions.

Mr. Winter addressed the commission concerning disciplinary action.

Criminal Misconduct Orders

Statutory Revocation Orders

Aguirre, Jose R.	11-05-0934LR	Laredo Police Department
Aikens, Leslie M.	11-08-1113LR	Houston Police Department
Hernandez, Alfredo	08-06-1552LR	La Grulla Police Department
Kedrowski, Mark E.	09-02-0324LR	Bexar County Constable Pct 3

Mr. Griffith made a motion that the commission accept and adopt the recommendations of the Executive Director to enter a final order as required under the provisions of Texas Occupations Code, Chapter 1701, Section 1701.502(a) to revoke the licenses of the names as read. Commissioner Lovejoy seconded the motion. The motion passed unanimously.

Default Revocation Orders

Arriola, Jimmy L.	11-08-1109LR	Hudspeth County Sheriff's Office
Carbajal, Pablo T.	11-04-0632LR	Dallam-Hartley County Jail
Duarte, Jr., David	12-12-0232LR	Cameron County Sheriff's Office
Garcia, Jr., Juan H.	12-12-0322LR	Petersburg Police Department
Gray, David P.	12-10-0091LR	Italy Police Department
Martinez, Jr., Roberto A.	12-12-0231LR	Cameron County Sheriff's Office
Quinn, Richard W.	10-02-0334LR	Upshur County Sheriff's Office
White, James C.	12-04-0943LR	Jim Wells County Constable Pct. 3

Commissioner Griffith made a motion that the commission accept and adopt the recommendations of the Executive Director to enter a default final order as authorized under the provisions of 37 Texas Administrative Code, Section 223.3, and as required under the provisions of Chapter 1701, Texas Occupations Code, Section 1701.501 to revoke the license of those names read. Commissioner Lovejoy seconded the motion. The motion passed unanimously.

Agreed Revocation Order

Whitfield, James L.	10-07-0651LR	Fannin County Sheriff's Office
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Commissioner Griffith made a motion that the commission accept and adopt the recommendations of the Executive Director to enter Agreed Final Orders to

revoke the license of James L. Whitfield. Commissioner Hollingsworth seconded the motion. The motion passed unanimously.

Default Suspension Orders

Jackson, Fred	09-03-0365LS	Dallas County Constable Pct. 5
Lopez, Jason	12-09-0056LS	Mathis Police Department
O'Farrell, Nathaniel C.	12-01-0478LS	Sweeny Police Department
Ramos, Angel L.	10-12-0216LS	Karnes County Correctional Center
Wadlington, Levi C.	10-05-0526LS	Burleson County Sheriff's Office

Commissioner Griffith made a motion that the commission accept and adopt the recommendations of the Executive Director to enter a default final order as authorized under the provisions of 37 Texas Administrative Code, Section 223.3, and as required under the provisions of Texas Occupations Code, Chapter 1701, Section 1701.501 to suspend the licenses of the names that were read. Commissioner Lovejoy seconded the motion. The motion passed unanimously.

Agreed Waiver Suspension Orders

Moses, Charles D.	11-04-0732LS	Red Oak Police Department
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Commissioner Griffith made a motion that the commission accept and adopt the recommendations of the Executive Director to enter a final agreed waiver suspension order for Charles D. Moses. Commissioner Lovejoy seconded the motion. The motion passed unanimously.

Agreed Waiver Cancellation Orders

Parker, Chad W.	12-02-0572C	Clay County Sheriff's Office
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Commissioner Griffith made a motion that the commission accept and adopt the recommendations of the Executive Director to enter a final agreed waiver cancellation order for Chad W. Parker. Commissioner Hollingsworth seconded the motion. The motion passed unanimously.

FY '09-'11: Continuing Education Noncompliance Orders

Default Suspension Orders

Gholson, Robert T.	12-07-1120LS	Harris County Constable Pct. 6
Stutt, James D.	12-07-1117LS	Robertson County Constable Pct. 1

Commissioner Griffith made a motion that the commission accept and adopt the recommendations of the Executive Director to enter a default final order as

authorized under the provisions of 37 Texas Administrative Code, Section 223.3, and as required under the provisions of Texas Occupations Code, Chapter 1701, Section 1701.501 to suspend the licenses of the names that were read. Commissioner Lovejoy seconded the motion. The motion passed unanimously.

Proposed Misconduct Orders

Proposal for Decision Orders

Ochoa Hernandez, Jorge 11-11-0170LS Sullivan City Police Department

Mr. Winter explained that Mr. Hernandez was convicted of a Class B misdemeanor for false identification of a peace officer. The Executive Director recommended a 10 year suspension of the license. In the Proposal for Decision, the recommendation was for a 10 year suspension of the license with the first 5 years as a hard suspension and the remaining 5 years be probated. The Executive Director did not file exceptions. Mr. Hernandez appeared on his own behalf explaining that his attorney, Jon Evans, had an emergency and had to leave. Mr. Hernandez asked the commission for a lesser charge. Commissioner Griffith made a motion that the commission accept the recommendation of the Executive Director and the Administrative Law Judge for a 5 year hard suspension with the remaining 5 years as a probated suspension. Commissioner Lovejoy seconded the motion. The motion passed with Commissioner Hollingsworth opposing.

For Information Only

Permanent Surrenders

Blackmon, James	12-07-1076PS	Buckholts Police Department
Carlson, Cory J.	12-11-0170PS	Yoakum County Sheriff's Office
Cummings, Gregory A.	13-10-0076PS	Burleson county Sheriff's Office
Enriquez, Francisco	13-10-0107PS	El Paso Police Department
Lass, Tasha M.	10-03-0382PS	Travis County Sheriff's Office
Milton, Reginald	10-07-0710PS	Texas Southern University Police Department
Nichols, Brent A.	11-01-0268PS	Marble Falls Police Department
Rodriguez, Jesus	12-04-0982PS	Hudspeth County Sheriff's Office
Rooney, Donald J.	12-01-0371PS	Montgomery County Sheriff's Office
Sales, David R.	12-08-1179PS	Leon County Sheriff's Office
Spencer, Cody R.	12-08-1179PS	White Settlement Police Department
Sugg, Jeffery W.	12-06-1041PS	Reno Police Department
Thorn, John G.	12-02-0593PS	Texas City Police Department

Term Surrenders

Aston, Andrew W.	11-11-0175TS	Bexar County Constable Pct. 3
Jimenez, David M.	12-07-1085TS	Hudspeth County Sheriff's Office
Lavergne, Deangelo J.	12-03-0779TS	Patton Village Police Department

Mr. Winter noted that these are for information only and no action needs to be taken.

Agenda item #11 Receive public comment on any topic, without action.

In addition to the public comments that were received prior to the meeting and were included in the meeting material mailed to the commission members, two individuals addressed the board.

Tom Williams of Hico stated he addressed the commission three months ago because he had a dilemma. He thanked the commission, Executive Director Vickers and staff for assisting him in his recertification.

Robert Armbruster, Houston Police Officer's Union, stated that he had heard the commission was considering charging fees for posting certificates to officers electronic records, due to limitations on the budget. Ray Hunt is willing to meet with legislators to garner support to loosen funds, especially the LEOSE funds, to help sustain the agency in lieu of having the license holders help to sustain the agency.

Because items 12 and 13 which dealt with executive session were addressed in a meeting the previous day, these item were not addressed.

Agenda item #14 Adjourn

Commissioner Oakley made a motion to adjourn. Commissioner Hood seconded the motion. Presiding Officer Richardson adjourned the meeting at 11:20 a.m.

Dr. Johnny E. Lovejoy, II, Secretary
JL/kw