



TEXAS COMMISSION ON LAW ENFORCEMENT OFFICER STANDARDS AND EDUCATION

Quarterly Meeting Minutes March 21, 2013

On Thursday, March 21, 2013, at 9:30 a.m. the quarterly meeting of the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) was held at the J.J. Pickle Research Campus, The Commons Learning Center, 10100 Burnet Road, Bldg 137, Austin, Texas.

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

Veena Mohan and William Van Shellenbeck from the Office of the Attorney General were present. TCLEOSE staff members attending were Executive Director Kim Vickers, Director John Helenberg, Legal Counsel John Beauchamp, Laurie Abernathy, Michael Antu, Lynn Beard, Larry Capps, Thurman Felder, Lisa Fontenot, Dennis Graffious, Richard Gutierrez, Mike Hobbs, Carey McKinney, Kenneth Merchant, Nazareth Munoz, 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 Hendrickson High School Marine Corps Junior ROTC from Pflugerville, Texas. Members of the Color Guard included Cadet First Lieutenant Krista Bolton, Cadet Lance Corporal Kristen Thompson, Cadet Sergeant Kasia Cano, and Cadet Lance Corporal Cerra Thompson. Commissioner Hood 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 and introduced Commissioner Rob Kyker. Commissioner Kyker replaces Randy Watson who left to become a member of the Public Safety Commission. Commissioner Kyker is from Richardson and has served on numerous state commissions.

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

Ken Mobley read the names of those officers that have died in the line of duty since the December commission meeting.

Angel David Garcia, El Paso Police Department

End of Watch: Sunday December 16, 2012

Officer Garcia was struck by a vehicle and killed as he attempted to remove debris from the interstate.

Jimmie D. Norman, Bellaire Police Department

End of Watch: Monday December 24, 2012

Officer Norman was shot and killed in a struggle with a suspect after making a traffic stop.

Edrees Mukhtar, San Antonio Police Department

End of Watch: Saturday December 29, 2012

Officer Mukhtar succumbed to injuries received in a vehicle accident three weeks prior while responding to a call for service.

Agenda item #3 Approval of the minutes of the December 5, 2012 meeting at Austin, Texas.

Commissioner Griffith made a motion to approve the minutes of the December 5, 2012 meeting. Commissioner Lovejoy seconded the motion. The motion passed unanimously.

Agenda item #4 Approval of the minutes of the December 6, 2012 meeting at Austin, Texas.

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

Agenda item #5 Receive Presiding Officer's Report. Take action, if necessary.

There was no action taken on this agenda item.

Agenda item #6 Receive Executive Director's Report. Take action, if necessary.

Executive Director Vickers directed the Commissioners to the information provided to them prior to the quarterly meeting which contained current budget information, the quarterly misconduct report, and the current totals for the Peace Officers' Memorial fund. A bill has been introduced that would remove fund raising responsibilities for the Memorial from TCLEOSE and directed to the State Preservation Board. Both agencies are agreeable to this arrangement. Mr. Vickers also introduced Nazareth Munoz who will be

handling the FAST fingerprint reports while Janice Washington is deployed overseas. Most recently, Nazareth was with the Attorney General's office in the Crime Victims Services Department.

There was no action taken on this agenda item.

Agenda item #7 Discuss and take action on Peace Officers' Memorial funding project.

There was no action taken on this item.

Agenda item #8 Take action to enroll and induct officers in the Texas Peace Officers' Memorial. 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.

Ken Mobley read the names to be enrolled and inducted into the Texas Peace Officers' Memorial. Commissioner Griffith made a motion to induct these officers into the Texas Peace Officers' Memorial. Commissioner Hollingsworth seconded the motion. Commissioner Hollingsworth encouraged the Commissioners and the members of the audience to attend the ceremony in May. She also urged all to take time to view the Memorial and the damage that has been done, and to make contributions to the restoration project. The presiding officer informed everyone that the candlelight vigil is on Sunday evening at 7:30 p.m. with the ceremony on Monday, May 6, beginning at 10:30 a.m. The motion passed unanimously.

Agenda item #9 Discuss and take action to approve the recommendations for the 2012 Law Enforcement Achievement Awards.

Executive Director Vickers noted that officers from around the state are being recognized for their actions and will be honored at a ceremony on Thursday, June 13, at 10:00 a.m. in the Senate auditorium with a reception following. There are 21 officers being honored, two from a single incident and the remainder from single incidents or events. The judges who selected the finalist are Frank Woodall, Assistant Director, Education, Training and Research, Texas Department of Public Safety; Chief Tom Whitten with the assistance of Michael Kester, Harlingen Police Department; Sheriff Wade Turner, Coleman County Sheriff's Office; Constable Phil Sandlen, Harris County Pct. 8; and Chief Jimmy Ellison, Abilene Christian University Police Department.

Commissioner Griffith made a motion to approve the recommendations as presented. Commissioner Lovejoy seconded the motion. The motion passed unanimously.

Agenda item #10 Discuss and take action on applications to be an approved law enforcement academy, contractual training provider or academic alternative provider.

- Academy
 - Henderson County Sheriff's Office

Mr. Helenberg noted that this is actually a training provider contract application with an academy addendum to teach the basic jail course. Sheriff Ray Nutt and Training Coordinator/Jail Administrator Michael Starkey were present to answer questions and to thank the staff for their assistance given during the application process. Sheriff Nutt noted that there are 23 agencies in the county, most of which are small agencies, that will be able to take advantage of the training offered by the Sheriff's Office. If the application is approved, the first year of training will be provided without cost. After that, there will only be a cost recovery charge.

Commissioner Griffith made a motion to approve Henderson County Sheriff's Office as an academy. Commissioner Oakley seconded the motion. The motion passed unanimously.

- Contractual Training Provider
 - Brownsville ISD Police Department

Mr. Helenberg noted that all requirements have been met for this application and a letter has been received from the Texas School Safety Center. Chief Oscar Garcia was available for questions and was accompanied by Training Coordinator Sgt. Lorena Bermudez and Senior Investigator Patrick Gabbert. Chief Garcia noted that they will be available to provide training to the neighboring ISD's and cities in the Rio Grande Valley.

Commissioner Oakley made a motion to approve the training provider application. Commissioner Villescás seconded the motion. The motion passed unanimously.

- Center for Criminal Justice Research and Training, University of Texas at Arlington

Representatives were unable to attend the meeting so this item was postponed until a later meeting. No action was taken.
- D.A.R.E. America

Mr. Helenberg said that staff has reviewed the application and that it meets the requirements. George Little was available for questions from the Commissioners and joining him at the podium were Craig Fletcher, Matt Petrie, Penny Jost, and Gerald Adams.

Commissioner Lovejoy made a motion to accept the training provider application. Commissioner Oakley seconded the motion. The motion passed unanimously.

- o Greater Harris County 911 Network

Mr. Helenberg noted that staff has reviewed the application and that it meets the requirements. Lavergne Schwender and Roxie Dodd were present representing the Greater Harris County 911 Network. They provide 911 services to 2 counties and 49 cities in Southeast Texas.

Commissioner Lovejoy made a motion to accept the application. Commissioner Oakley seconded the motion. The motion passed unanimously.

Commissioner Griffith noted that he is in the city of Sugar Land and that they are served by the 911 Network. He thanked the 911 staff for their work.

- o Harris County Constable Pct. 7

Mr. Helenberg said that staff has reviewed the application and it meets all the requirements. Included in the packet provided to the Commissioners was information concerning the number of providers in Harris County currently offering this type of training. Constable May Walker and Training Coordinator Captain Lionel Aaron were available for questions. Constable Walker stated that the agency will provide untraditional training by offering courses after 5:00 p.m. and on weekends, at no cost. Commissioner Hollingsworth noted her concern that the Houston area is being saturated with training providers and asked Constable Walker if current training providers in the area have been contacted about offering training after normal business hours. Constable Walker noted that they have been unsuccessful in convincing current training providers to offer training during hours that meet the needs of her agency. Commissioner Hollingsworth also expressed concerns over the agency's past record keeping issues. Captain Aaron noted that all files are now electronic and standard operating procedures are in place.

Commissioner Lovejoy made a motion to accept the application. Commissioner Hood seconded the motion.

Commissioner Griffith noted his concern that proper recordkeeping be maintained and appropriate records submitted to TCLEOSE. He stated that the staff review of the application noted that it was minimal and was submitted in various emails creating some duplication of documents. Captain Aaron explained that the application size prohibited it from being submitted in one email.

Commissioner Villescas asked the executive director if he could share information on the audits that were mentioned. Mr. Vickers reported that there were problems with the hiring paperwork and that the constable took the necessary steps to rectify the issues.

Commissioner Pennington asked staff if the technology issues mentioned were of concern, to which Mr. Helenberg replied that the problem was a file transmission issue at the constable's office and does not impact this issue before the Commission.

The presiding officer called for a vote and the motion passed with Commissioner Hollingsworth opposing.

After a break, Commissioner Hollingsworth expressed her concerns over the number of training providers in the state and whether staff will be able to audit each provider. She suggested groups develop training consortiums rather than apply for individual training provider contracts. We may need to consider the number of for-profit training providers that we have, and consider fee changes for them.

Agenda item #11 Discuss and take action on final orders of amendments to existing TCLEOSE rules.

- 13_19_221.29 Sexual Assault/Family Violence Investigator Certificate. Commissioner Griffith made a motion to approve 13_19_221.29 Sexual Assault/Family Violence Investigator Certificate. Commissioner Lovejoy seconded the motion. The motion passed unanimously.
- 13_20_221.41 Court Security Specialist Certificate. Constable Randy Harris, Pct 4, Tom Green County spoke to the Commissioners concerning this rule change, noting that court security officers are taught what to do, but are not taught how to do their jobs. An advisory board consisting of representatives from large and small agencies agreed that this certificate is needed to enhance the abilities of court security officers.

Commissioner Griffith made a motion to approve 13_20_221.41 Court Security Specialist Certificate. Commissioners Oakley and Villescas seconded the motion. The motion passed unanimously.

- 13_21_223.2 Administrative Penalty Schedule. Mr. Beauchamp noted that *(d)(4) actual or potential harm to the public's expectation of commission licensees being trustworthy, demonstrating good-judgment, and maintaining obedience to the law* applies only to law enforcement agencies or governmental entities and not to individuals. Because this section of the proposed rule change has caused confusion, staff recommends that this provision of the rule be removed and the remainder of the rule be adopted.

Commissioner Griffith made a motion to approve 13_21_223.2 Administrative Penalty Schedule as recommended and amended by Mr. Beauchamp. Commissioner Lovejoy seconded the motion. The motion passed unanimously.

- 13_18_217.7 Reporting Appointment and Separation.
Mr. Beauchamp noted that the agency received numerous public comments on this proposed rule change. Therefore, based on the public comments received, staff recommends that no action be taken.

Robert Armbruster, Houston Police Officer's Union, addressed the commissioners concerning subsection (h) of proposed rule 217.7, stating that there is not a definition for administrative appeals. If the commission decides to move forward with this proposed rule change, he recommends that the word "shall reject" be changed to "may reject."

Executive Director Vickers noted that staff received substantial feedback on this proposed rule change, and in the spirit of listening to those in the law enforcement community, staff recommends that the Commission not take action.

As recommended by staff, no action was taken.

Agenda item #12 City of Arlington requests public hearing on proposed rule 217.7.

Because no action was taken on proposed rule 217.7, it was no longer necessary to take action on this agenda item.

Agenda item #13 Discuss and take action on expense recovery on SOAH Hearings and Legal Services reference *Howard Miller v. University of Texas System Police Department*, SOAH Docket No. 407-09-2768.F5; Appeal of F-5 Report of Separation.

Mr. Beauchamp explained that under SOAH rules, if cases are docketed for more than one day, a court reporter must be provided. By statute, TCLEOSE is not a party to an F-5 proceeding, but acts as the referring agency. When a court reporter is required, TCLEOSE can recover the costs from one or both of the parties involved. He explained to the commissioners that the entire amount could be paid by the licensee, Mr. Miller, or the entire amount could be paid by the University of Texas, or they could require an amount be paid by each. In this case the Administrative Law Judge issued a final order requiring the University of Texas System Police Department to change Mr. Miller's F-5.

Commissioner Griffith made a motion in the case of *Howard Miller v. University of Texas System Police Department* SOAH Docket No. 407-09-2768 that the Commission call for the recovery of the costs of the SOAH hearings split

between the two parties equally. Commissioner Lovejoy seconded the motion. The motion passed unanimously. Commissioner Oakley was absent for the vote.

Agenda item #14 Discuss and take action on proceedings for revocation, suspension, and other disciplinary actions.

Mr. Beauchamp addressed the Commission concerning disciplinary actions.

Statutory Revocation Orders

<i>George, Jimmy W.</i>	<i>13-12-0290LR</i>	<i>Harris County Sheriff's Office</i>
<i>Yarbrough, Sr., Kirt</i>	<i>12-01-0481LR</i>	<i>Killeen Police Department</i>

Commissioner 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 Jimmy George and Kirt Yarbrough. Commissioner Lovejoy seconded the motion. The motion passed unanimously. Commissioner Oakley was absent for the vote.

Statutory Suspension Orders

<i>Salinas, Gerardo</i>	<i>12-01-0556LS</i>	<i>Val Verde Correctional Facility</i>
<i>Williams, Kristopher E.</i>	<i>12-08-1172LS</i>	<i>Bowie County Sheriff's Office</i>

Commissioner 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(b) to suspend the licenses of Gerardo Salinas and Kristopher Williams. Commissioners Hollingsworth and Lovejoy seconded the motion. The motion passed unanimously. Commissioner Oakley was absent for the vote.

Default Suspension Orders

<i>Delgado, Laura A.</i>	<i>10-01-0238LS</i>	<i>Bexar County Sheriff's Office</i>
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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 license of Laura Delgado. Commissioner Lovejoy seconded the motion. The motion passed unanimously. Commissioner Oakley was absent for the vote.

Proposed Agreed Suspension Orders

Essary, Bobby J. *11-03-0490LS* *Hunt County Constable, Pct. 4*
Rust, Dustin R. *12-04-0986LS* *Smith County Constable, Pct. 3*

Commissioner Griffith made a motion that the Commission accept and adopt the recommendations of the Executive Director to enter Agreed Suspension Orders for Bobby Essary. Commissioner Lovejoy seconded the motion. The motion passed unanimously. Commissioner Oakley was absent for the vote.

Commissioner Griffith made a motion that the Commission accept and adopt the recommendations of the Executive Director to enter Agreed Suspension Orders for Dustin Rust. Commissioner Lovejoy seconded the motion. The motion passed unanimously. Commissioner Oakley was absent for the vote.

Proposal for Decision Orders

Cardona, Joseph *12-03-0907C* *Progreso Police Department*

Mr. Cardona addressed the Commissioners stating that although he disclosed his arrest on job applications it did not appear on a criminal history or fingerprint check. Executive Director Vickers explained that the hiring agencies based their decisions on the criminal history return when in fact the court had failed to forward the disposition of the case to the Texas Department of Public Safety for inclusion on his criminal history. Mr. Cardona was not eligible for licensing. Mr. Beauchamp further noted that on the L-1 application for appointment, Mr. Cardona signed the form which includes a statement that the appointee has never been on court ordered community supervision or probation for any criminal offence above the grade of Class B misdemeanor. At this time, Mr. Helenberg read Mr. Cardona’s statement directly from his signed L-1 confirming Mr. Beauchamp’s comments. When further questioned by Commissioner Lovejoy, asking if Mr. Cardona was aware that this was a disqualifying factor, Mr. Cardona responded that he knew a conviction was, but not a deferred adjudication. Commissioner Lovejoy asked if his legal counsel informed him that a deferred adjudication is a disqualifying factor and Mr. Cardona responded no, although he did have legal counsel. Commissioner Lovejoy confirmed that it is a conviction.

Commissioner Griffith made a motion to accept the recommendation of the executive director to cancel the license of Joseph Cardona. Commissioner Lovejoy seconded the motion. The motion passed. Commissioner Villescás abstained. Commissioner Oakley was not present for the vote.

Causey, Dennis K. *12-11-0167LR* *Trinidad Police Department*

Commissioner Griffith made a motion to accept the recommendation of the executive director for revocation of the license of Dennis Causey.

Commissioner Lovejoy seconded the motion. The motion passed unanimously. Commissioner Oakley was not present for the vote.

Grice, Alice C. 11-12-0247LS Dallas County Sheriff's Office

Commissioner Griffith made a motion to accept the recommendation of the executive director for a 2 year suspension on the license of Alice Grice with the following 8 years probated. Commissioner Lovejoy seconded the motion. The motion passed unanimously. Commissioner Oakley was not present for the vote.

Hamilton, Michael W. 11-12-0210LS Austin Police Department

Mr. Beauchamp explained that the Administrative Law Judge recommended 12 months suspension of the license with 6 months hard suspension and the remaining 6 months probated. The executive director filed exceptions. The executive director is asking that the case be remanded to SOAH to consider additional evidence related to the existence of mitigating circumstances discovered after the issuance of the proposal for decision. Brad Heilman, attorney for Mr. Hamilton, asked that the Commissioners deny the remand. He stated that the new evidence mentioned was available almost 2 years prior to the SOAH hearing.

Commissioner Griffith made a motion that the case be remanded to SOAH to consider additional evidence. Commissioner Lovejoy seconded the motion. The motion passed unanimously. Commissioner Oakley was absent for the vote.

Jackson, Jr., James 12-05-1010C Cedar Valley College Police Department

Commissioner Griffith made a motion to accept the recommendation of the executive director to cancel the license of James Jackson. Commissioner Lovejoy seconded the motion. The motion passed unanimously. Commissioner Oakley was absent for the vote.

Morales, Roland P. 12-04-0953LS Harris County Constable's Office, Pct. 7

Commissioner Griffith made a motion to accept the recommendation of the executive director for a 10 year suspension, 2 years hard suspension and 8 years probated. Commissioner Lovejoy seconded the motion. The motion passed unanimously. Commissioner Oakley was absent for the vote.

For Information Only

Permanent Surrenders

Alcala, Manuel	12-01-0357PS	Via Metro Transit Police Department
Arzaga, Michael J.	13-01-0361PS	El Paso Police Department
Blankenship, Bluford K.	10-03-0374PS	Cleveland Police Department
Calhoun, Dana R.	10-05-0511PS	Shelby County Sheriff's Office
Campbell, Eric J.	12-08-1200PS	Mount Pleasant Police Department
Candelaria, Oscar L.	12-07-1088PS	El Paso Police Department
Castaneda, Gabriel	13-10-0072PS	El Paso Police Department
Clopp, Jeffery C.	13-12-0243PS	Shelby County Sheriff's Office
Crumpler, Michael D.	12-01-0347PS	Van Zandt County Sheriff's Office
Davila, Jr., Enrique	12-04-0992PS	El Paso Police Department
Davis, Stephen L.	13-09-0005PS	Bremond Police Department
Epps Sr., Andre V.	12-01-0364PS	Port of Galveston Police Department
George, Jimmy W.	12-03-0875PS	Harris County Sheriff's Office
Hood, Corby D.	12-01-0491PS	Bexar County Sheriff's Office
James, Donald W.	13-11-0195PS	Harris County Sheriff's Office
Jennings, Steven E.	12-04-0946PS	Harris County Constable Pct. 8
McClure, Jr. James C.	11-09-0012PS	San Antonio Police Department
McFarland, Scott E.	12-04-0954PS	El Paso Police Department
Miller, Zachary	12-10-0068PS	University of Texas System Police
Nicholas, Edward N.	13-10-0171PS	El Paso Police Department
Quintero, Ray A.	10-04-0454PS	Bexar County Sheriff's Office
	11-03-0540PS	
Ruiz, Jr., Jose L.	12-03-0906PS	El Paso Police Department
Ybarra, Roger G.	11-10-0112PS	San Antonio Police Department
York, Gary L.	12-06-1061PS	Wichita Falls Police Department

Term Surrenders

Billa, Robert P.	13-12-0346TS	Bexar County Constable's Office, Pct. 4
Kneese, Danny R.	13-01-0399TS	Bell County Sheriff's Office
Martin, William J.	13-03-0783TS	Patton Village Police Department
Novelo, George A.	11-01-0309TS	Donna Police Department

Reprimands

Huizar, Joshua	12-02-0720	Bexar County Sheriff's Office
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Agenda item #15 Receive public comment on any topic, without action.

The presiding officer asked for public comments.

Robert Armbruster, Houston Police Officers' Union, spoke about the program used by Houston Police Department to assist officers that may have an alcohol abuse problem that is identified after a DWI arrest. The treatment program has been successful in maintaining these people within the agency and they have had a zero recidivism rate.

Agenda item #16 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.

Agenda item #17 Return from Executive Session to report, discuss, or take further action if needed.

Presiding Officer Richardson noted that no decisions were made in executive session, no votes were taken, and there was no business requiring action.

Agenda item #18 Adjourn.

Commissioner Griffith made a motion to adjourn. Commissioner Oakley seconded the motion. The presiding officer adjourned the meeting at 1:05 p.m.