

State of Connecticut
Department of Administrative Services
State Marshal Commission
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W. Martyn Philpot, Jr., Esq.
Chairperson

Jeffrey Beckham
Staff Director

Minutes
STATE MARSHAL COMMISSION MEETING
September 22, 2016

Members present: Chairperson W. Martyn Philpot, Jr., Esq., Vice-Chairperson Michael Cronin, Esq. (via teleconference call), Mildred Torres-Ferguson, Robert P. LaTorraca (via teleconference call), Tracy L. Dayton, Esq. (via teleconference call), and Michael Desmond. Robert P. LaTorraca left the meeting prior to executive session. Also present were Ex-Officios Thomas Burke and Lisa Stevenson (non-voting members), Staff Director Jeffrey Beckham, and Staff Attorney Jennifer Y. Montgomery. Honorable Elizabeth A. Bozzuto and Sarah Fryxell, Esq. were not present.

State Marshals Arthur Quinn, Elizabeth Ostrowski, Michael Copertino, Greg Woodruff, John Barbieri, Sr., David Hubbs, Julie Ingham, and Susan Corbett were present for the public portion of the meeting prior to executive session. State Marshal Joseph Heap was present for the public portion of the meeting prior to executive session starting with item number 4 on the agenda. Item number 2 was tabled until Marshal Heap was present.

Chairperson W. Martyn Philpot, Jr., Esq. called the meeting to order at 4:32 p.m.

1. Minutes: September 1, 2016 special meeting

Ex-Officio Lisa Stevenson asked to discuss the Commission's new policy regarding sending the meeting packet each month to Commissioners electronically. Attorney Montgomery advised that this was not properly considered under agenda item 1 for adoption of the minutes and the Commission would have to vote and approve the addition of an agenda item related to that policy.

The Commission, after a motion by Robert P. LaTorraca, seconded by Michael Desmond, voted 5-0 to adopt the minutes from the September 1, 2016 special meeting. Mildred Torres-Ferguson abstained as she was not present for that meeting.

The Commission, after a motion by Michael Desmond, seconded by Mildred Torres-Ferguson, voted 6-0 to add an item to the agenda allowing Ex-Officio Stevenson to address the Commission regarding the new policy adopted at the September 1, 2016 meeting to electronically send meeting packets to the Commissioners in order to save on printing and postage costs. Ex-Officio Lisa Stevenson briefly addressed the Commission regarding the new policy. She advised that it was burdensome for the ex-officios to print the packet at their offices due to its length. The Commission agreed to modify the policy

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and to print the packet for the ex-officios each month while continuing to send it to the other Commissioners electronically.

Due to the absence of State Marshal Joseph Heap, the Chairperson passed on agenda item 2 until Marshal Heap arrived at the meeting.

3. Firearms Policy

State Marshal David Hubbs provided a presentation regarding the use of firearms by state marshals. He noted that he was appointed as the safety officer to act as a liaison between the marshals and the Commission. He noted that he had read Attorney Jeffrey Beckham's memorandum presented at the September 1, 2016 meeting. He explained that he was alarmed at the elimination of firearms authorization as the marshals have had a thirty-year history of potential violence due to the system. He noted that State Marshal Arthur Quinn was shot while serving a capias and his belief that all marshals have been exposed to violent situations. He articulated his position that marshals should be permitted to carry firearms. He credited the Commission for utilizing POST standards. He stated his position that the Commissioners would not be liable for state marshal actions but noted that the additional insurance coverage should assist. Chairperson Philpot inquired whether the insurance changes were in place. Ex-Officio Stevenson advised that she believed the changes had been made. Attorney Beckham noted that the staff was waiting for clarification on the appropriate addresses to list for the additional insureds.

Marshal Hubbs suggested that marshals need more training due to certain dangers in the field. Attorney Montgomery advised that the discussion may run afoul of the Freedom of Information Act as it strayed from the stated agenda item. Chairperson Philpot inquired about whether Marshal Hubbs believed that marshals should be trained in the use of pepper spray. He noted that the POSTC standards require that every police officer who is carrying pepper spray in the course of his duties be trained. He then noted his belief that every housewife carries pepper spray on her key chain. Commissioner Tracy Lee Dayton noted that she does not carry pepper spray and stated her belief that marshals should be trained if they carry pepper spray. Marshal Hubbs then noted that he believed that if marshals carry either an impact weapon or pepper spray they should be trained.

Commissioner Dayton inquired whether the marshals currently report uses of force. Marshal Hubbs stated that the marshals had been advised by previous management to that they did not want a reporting process in place because it would be subject to FOIA. Attorney Montgomery clarified that this was not a Commission policy and, in fact, the Use of Force policy has a reporting mechanism. Marshal Hubbs stated that he would like a standardized form and report-writing training. Commissioner Dayton noted that the fear surrounding state marshals carrying firearms may be due to the lack of oversight. She stated that the police officers report when they point their weapons at someone. She noted her concern that under the present system no one knows when a weapon has been drawn. Chairperson Philpot noted that this is accounted for in the proposed revised Use of Force Policy.

Marshal Hubbs encouraged every member of the Commission and Commission staff to do a ride along with the marshals. Ex-Officio Thomas Burke noted that he has known Marshal Hubbs for many, many years and, in his opinion, he is the most qualified to speak on use of force, weapons, and training.

Vice-Chairperson Michael Cronin inquired whether the marshals that currently carry a firearm also carry pepper spray or a baton. Marshal Hubbs stated that if marshals are doing a capias the likelihood is that they are also carrying pepper spray or an expandable baton. If they are doing normal civil process they are likely only carrying a firearm. He confirmed that there is no requirement that they carry any particular equipment. He noted that, when he is conducting service of process, he tries to minimize the equipment he carries so as to not cause alarm. When he conducts a capias, he carries a full equipment

belt. Vice-Chairperson Cronin noted that police officers have a continuum of force. Marshal Hubbs noted his belief that there was no longer a continuum of force that applies to officers, rather there is a circle of options for the officer given the circumstances. Vice-Chairperson Cronin noted that marshals should be required to carry less lethal alternatives and Marshal Hubbs agreed.

Ex-Officio Thomas Burke inquired about a letter that he was asked to submit by a state marshal regarding his firearms approval. Attorney Beckham noted that this would be appropriately considered during agenda item 5.

4. Legislative Update

Attorney Montgomery provided a brief update regarding the two Public Acts that will become effective October 1, 2016. Public Act 16-34 was the omnibus bill resulting from recommendations by the Restraining Order taskforce which makes substantial changes to the service of restraining orders, particularly where the restraining order applicant has indicated that the respondent has firearms or ammunition. The state marshals are now required to contact law enforcement prior to serving a restraining order where there are firearms. There are changes in the timing of service. The Act mandates usage of the Online Restraining Order Registry. The Judicial Branch is required, where feasible, to provide space for the marshals to meet with applicants. The Commission is required to adopt internal rules.

Public Act 16-64 revised the fee statute to permit marshals to charge a reasonable fee for recordings. Governor Malloy issued Executive Order 54 which states that a reasonable fee for recordings is \$20. The bill also permits a state marshal to, at the direction of an employer, serve a wage execution out of state. Ex-Officio Thomas Burke raised the concern that the statutory language is incorrect because it does not state "out-of-state" and instead states "out-of-county." He stated his belief that the word "county" will harm marshals in small counties. Ex-Officio Burke inquired where the language came from and Attorney Montgomery advised that she did not know and that this was not a Commission initiative. Ex-Officio Stevenson noted that the use of the word county in the description was causing confusion and Attorney Montgomery noted that she was required to follow the language in the statute. Commissioner Torres-Ferguson noted that they would need to resubmit the bill if they wanted the language changed. Ex-Officio Burke requested an Administrative Bulletin. Attorney Beckham advised that Commission staff would need to see a legislative proposal and research the issue. Attorney Montgomery read the statutory language into the record: "in a case involving an employer whose address is not within such levying officer's appointed jurisdiction, to the address designated by the employer." Ex-Officio Stevenson noted that this means out of state. Attorney Beckham noted that that is not what the language says. Chairperson Philpot noted that this could mean out-of-state. Ex-Officio Burke reiterated his concern that marshals could utilize this language to send executions to another county even if they have not initiated the matter.

2. Report from State Marshal Advisory Board, policy complaints

State Marshal Joseph Heap noted the concern that there are matters in the Commission complaint backlog which are four or five years old. He also inquired about size of the backlog. Chairperson Philpot noted that Attorney Montgomery had worked very hard to eliminate the backlog since inheriting it and also there has been a reduction in staff. Attorney Beckham reported that there are between 70 and 80 outstanding complaints. He also noted that the oldest complaint we have requiring review is about a year old. State Marshal Susan Corbett indicated that she has a matter that is several years old in her file. Attorney Montgomery noted that there were a number of matters that have been stayed which would require the Commission to receive information in order to lift the stay. She noted that she provide Ex-Officio Burke with information about that process. State Marshal Corbett noted that she had sent

information about the matter to Attorney Montgomery twice. Attorney Montgomery noted that she had not received anything pertaining to this matter and apologized. Attorney Beckham indicated that he would look into this matter.

5. Revised Use of Force Policy

Attorney Montgomery advised that the Commission staff had re-circulated the revised Use of Force Policy considered at the September 1, 2016 meeting along with a solicitation by the Chairperson for comments via email. She noted that the office had not received any comments on the policy prior to the meeting. She clarified that the draft reflected concerns raised by Commissioners Torres-Ferguson and Bozzuto at a previous meeting. Ex-Officio Stevenson circulated written comments on the revised policy at the meeting. Attorney Montgomery noted that she would have to research these comments.

Ex-Officio Thomas Burke submitted a letter from State Marshal John Barbieri, Sr. pertaining to his firearms authorization. [This letter is attached hereto and incorporated into these minutes in its entirety.]

Attorney Montgomery then led the discussion regarding the proposed revisions.

Ex-Officio Stevenson recommended that the Supreme Court case of *Tennessee v. Garner* be included as part of the reasonable force standard, although she noted that it had been subsequently overruled by the *Graham v. Connor* decision. Attorney Beckham stated that the Commission office would research the case. Attorney Montgomery discussed the reporting requirement in the policy and her incorporation of suggestions by the Commissioners at the September 1, 2016 Special Meeting. Chairperson Philpot suggested combining the reporting requirement for drawing and discharging a weapon into one provision. Ex-Officio Stevenson noted that marshals are trained to draw their weapon upon entering a room. State Marshal Hubbs echoed this sentiment and noted that sometimes they will draw their weapons 4 or 5 times a night. Attorney Montgomery advised that this is simply a reporting requirement to eliminate the issue of the Commission not having information about firearms usage as it is not a law enforcement agency. Attorney Beckham inquired whether this was a public hearing or a meeting of the Commission and noted that they had noticed a meeting under FOIA. He noted that there were two marshals on the Commission. Chairperson Philpot noted that they did not want to run afoul of the FOIA provisions. He stated that he would permit marshals to make a brief and concise statement. Marshal Corbett noted her position that every previous person seated in the Commissioners' chairs had participated in a "ride along" with a state marshal to better understand the marshal perspective. Commissioner Dayton recommended adding language regarding accidental discharges of firearms.

As to the insurance requirement, Attorney Montgomery described that she revised to add the additional insureds from the Attorney General opinion. Attorney Montgomery then raised for discussion additional proposed training requirements for marshals that carry firearms. She noted that the proposal stems from the requirements for state police and is similar to the training already in place for Capias Unit marshals. The proposal essentially takes into consideration the continuum of force. She noted that, while non-Capias marshals may carry pepper spray or batons, the Commission does not mandate training for these marshals nor does it track such usage. Commissioner Torres-Ferguson raised the issue of why a marshal should be required to take baton training if he or she doesn't intend to carry a baton. Attorney Montgomery clarified that the proposal is that all marshals who carry a firearm also have a menu of non-lethal options. Attorney Beckham noted that, if marshals are to retain the ability to carry firearms, they should have other tools on the continuum of force and should be trained in these tools so that the public is better protected. Commissioner Torres-Ferguson raised the question of how these new requirements would impact marshals who already have the authorization to carry. Attorney Beckham noted that the Commission is, for the first time, considering whether marshals should be authorized to carry firearms during the course of their official duties. He noted that, if the Commission concludes that they should be

allowed to carry, the staff is recommending that they carry other weapons as well. In addition, they will have training in defensive tactics and civil liability. He noted that the recommendation is that, like the state police, marshals also receive decisional shooting training every year. He noted that even the most highly trained marshals on the Capias Unit do not receive this training every year. He further advised that, should the Commission determine that marshals should carry firearms, all of them should at least be trained similarly to law enforcement. Commissioner Torres-Ferguson raised the issue of why the Commission does not currently authorize taser usage. Ex-Officio Stevenson advised that there was historically a taser protocol developed but the Commission changed directors and it was tabled. Attorney Montgomery clarified that tasers have never been authorized by the Commission. Attorney Montgomery then outlined other state police training courses for consideration by the Commission which are currently not mandated for either firearms or Capias Unit marshals: Less Than Lethal Force, Officer Safety/Mechanics of Restraint, First Responder, and Physical Fitness.

Chairperson Philpot read into the record the proposed changes to the proposed firearms approval criteria and noted his belief that these changes were reasonable. Chairperson Philpot also noted the proposed change to suspend firearms authorization for marshals who are arrested for a felony. Attorney Montgomery raised the question of the mandate in the existing policy that marshals use hollow-point ammunition. Ex-Officio Stevenson advised that this ammunition was recommended by a university police chief when the original policy was conceived in 2001 or 2002, as such ammunition was then utilized by the university force and the majority of police departments. She noted that the Commission had originally wanted the guns and ammunition to be identical to other police forces and, to her knowledge, this is still what the majority of police departments including Manchester utilize. Attorney Beckham noted that the policy is simply mandating that ammunition be factory loaded rather than handmade. He noted that the change to the policy would be more permissive.

With respect to the Capias Unit training, Attorney Beckham raised that, although the Capias Unit receives the most training of any marshal, it is not as extensive as that mandated for state police. Ex-Officio Stevenson stated that the marshals pay for this training themselves and the Commission no longer supplies or reimburses for the training. Attorney Montgomery noted, for the record, that the Commission does pay for capias training and had just provided this training over the summer. Upon inquiry by Chairperson Philpot, Attorney Beckham reiterated that DAS had paid for capias training at Manchester Community College. He noted that, due to the budget, the question of training was up in the air. He also noted that firearms training has historically not been provided by the Commission and has, instead, been provided as a one off by POST certified trainers. He noted his belief that this was not ideal as the marshals do not receive the same, consistent training. He noted that he would like to explore a uniform training at the POST academy. Ex-Officio Stevenson noted that the Commission had done training at the academy in 2010. Attorney Montgomery noted that there were other courses offered by POST that would be a good addition to the mandatory training for Capias Unit marshals.

With respect to pepper spray, Attorney Montgomery advised that the Commission does not currently monitor or mandate training for marshals who carry pepper spray outside of the Capias Unit. Accordingly, the recommendation is that only marshals who have a training certificate on file with the Commission should be authorized to carry during the course of their official duties. Ex-Officio Burke suggested that the Commission staff consult with the ex-officio Commissioners and Marshal Hubbs regarding the standards. Ex-Officio Stevenson advised that in 2010 the Commission offered pepper spray training for the state marshals.

Ex-Officio Stevenson recommended that tasers be considered again by the Commission. Attorney Beckham suggested that the Commission staff put a draft together with respect to tasers and training. Commissioner Torres-Ferguson raised her concern regarding the absence of tasers in the policy.

With respect to batons, Attorney Montgomery raised the recommendation that only marshals who have a training certificate on file with the Commission should be authorized to carry during the course of their official duties. Attorney Montgomery raised the question of whether non-Capias Unit marshals should be permitted to carry and use handcuffs as this could result in an unlawful restraint if someone was detained without a valid warrant. She invited input by the marshals present. Ex-Officio Stevenson advised that she will sometimes detain someone during an eviction or service of restraining orders.

In light of the questions raised by the Commissioners, Attorney Beckham proposed that the Commission staff circulate a revised draft of the Use of Force Policy in advance of the next meeting which the Commissioners could then circulate to whomever they wanted to for input. He proposed that this input could then be presented through the Commissioners when the draft was considered at the next meeting. Ex-Officio Burke raised the cost of the proposed training requirements. Attorney Beckham reiterated that the Commission is, for the first time, considering the question of firearms. He noted that, should they continue to authorize firearms usage, the proposal requires training comparable to law enforcement. He clarified that this would be the training requirement regardless of whether the state can finance the training, as firearms usage is elective. Ex-Officio Burke suggested that the Commission look to other agencies like DEEP where marshals could receive the training. Attorney Beckham noted that the staff would contact State Police.

Chairperson Philpot noted that the Commission was going to effort to vote and adopt a new Use of Force Policy at the next meeting. He noted that it had been pending for a few meetings. Commissioner Torres-Ferguson asked whether there would be further input by other marshals. Chairperson Philpot clarified that the ex-officios will have the draft and are free to circulate it to anyone. He noted that the Commission needs to have timely comments prior to the meeting so that the revised policy can be discussed expeditiously.

Commissioner LaTorraca left the meeting at this juncture. At some point during the discussion of agenda item 5, Vice-Chairperson Cronin was disconnected. At this juncture, he was again connected by teleconference call. The Commission, after a motion by Michael Desmond, seconded by Mildred Torres-Ferguson, voted 5-0 to enter executive session. The individuals present included those listed above, with the exception of Commissioner LaTorraca and the following state marshals: Joseph Heap, Arthur Quinn, Elizabeth Ostrowski, Michael Copertino, Greg Woodruff, John Barbieri, Sr., David Hubbs, Julie Ingham, and Susan Corbett.

[Deliberations proposed for executive session pursuant to Sections 1-200 and 1-225 of the Connecticut General Statutes to discuss the appointment, performance, evaluation, health or dismissal of a public officer]

The Commission, after a motion by Michael Desmond, seconded by Mildred Torres-Ferguson, voted 5-0 to return to the public record. No votes were taken in executive session.

Commissioner Torres-Ferguson raised the issue of State Marshal Barbieri's firearms request. Attorney Beckham noted that this marshal's training had lapsed so he had been taken off the Capias Unit. He then requested to carry as a non-Capias Unit marshal and that request had been tabled. Attorney Montgomery noted that, to the extent he had completed the training, he would be administratively reinstated to the Capias Unit. It was unclear from the letter whether State Marshal Barbieri was requesting authorization to carry as a Capias Unit marshal or a non-Capias Unit marshal. To the extent that his request was to carry as a non-Capias Unit marshal, those requests were stayed. Attorney Montgomery advised that the office would follow up with the marshal and seek clarification.

6. Complaints

The Commission, after a motion by Mildred Torres-Ferguson, seconded by Michael Desmond, voted 5-0 to dismiss the following files:

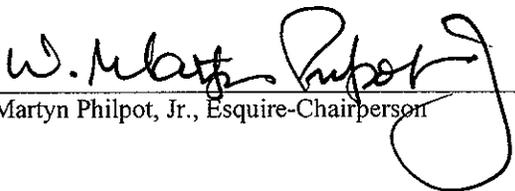
File No.	Name
15-32	Forbes/Zaniewski
15-42	Porterfield/Bryk
15-45	Barbe/Foldy
15-48	Percopo/Gahan

The Commission, after a motion by Mildred Torres-Ferguson, seconded by Michael Desmond, voted 5-0 to consolidate and find probable cause for a hearing in the following files:

File No.	Name
16-04	Biesedecki/DeLucia
16-41	Usher/DeLucia

The Commission, after a motion by Tracy Lee Dayton, Esq., seconded by Mildred Torres-Ferguson voted 5-0 to adjourn the meeting at 6:25 p.m.

Minutes were approved by the Commission on October 27, 2016.



W. Martyn Philpot, Jr., Esquire-Chairperson