

State of Connecticut
Department of Administrative Services
State Marshal Commission
das.ct.gov/statemarshal

W. Martyn Philpot, Jr., Esq.
Chairperson

Jeffrey Beckham
Staff Director

Minutes
STATE MARSHAL COMMISSION SPECIAL MEETING
September 1, 2016

Members present: Chairperson W. Martyn Philpot, Jr., Esq., Vice-Chairperson Michael Cronin, Esq., Honorable Elizabeth A. Bozzuto, Robert P. LaTorraca (via teleconference call), Tracy L. Dayton, Esq., 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. Sarah Fryxell and Mildred Torres-Ferguson were not present.

State Marshals H. Mark DeAngelis and Kevin McNeil were present for the public portion of the meeting prior to executive session.

Chairperson W. Martyn Philpot, Jr., Esq. called the meeting to order at 4:40 p.m.

First Business

1. Minutes: July 28, 2016 meeting

The Commission, after a motion by Robert P. LaTorraca, seconded by Michael Desmond, voted 5-0 to adopt the minutes from the July 28, 2016 meeting. Tracy Lee Dayton abstained as she was not present for the entirety of that meeting.

New Business

2. Administrative Issues

a. Commission Monthly Meeting Packets

Jeffrey Beckham discussed the monthly cost to send the meeting packets to the Commissioners via United States mail. He proposed that the Commission office circulate pdf copies of the packet to the Commissioners via email for their review and noted that the office would make a few paper copies of the packet available at the meeting. The Commission agreed to this administrative change.

165 Capitol Avenue, Room 407
Hartford, Connecticut 06106
Tel. (860) 713-5372 Fax (860) 713-7459

b. State Marshal Email Listserv

Jeffrey Beckham discussed the policy adopted by the Commission office in 2011 to mandate that state marshals maintain an email address with the Commission and receive notices and Administrative Bulletins via a listserv using this email address. Attorney Beckham explained that there are a few dozen state marshals who receive communications via United States mail and that this is at substantial cost to the Commission. Attorney Jennifer Montgomery advised that, under the Public Act pertaining to restraining orders, as of October 1, 2016, all state marshals will be required to utilize the online restraining order registry maintained by the Judicial Branch. This registry requires that the marshals maintain an active email address. Ex-Officio Lisa Stevenson raised the issue that not all state marshals do restraining order work. Upon questioning, she noted that these marshals are on the restraining order rotation but make arrangements with other state marshals to provide coverage. The Commission agreed to this enforcement of the 2011 policy.

3. Non-Capias Unit Firearms

State Marshal H. Mark DeAngelis discussed his position that non-capias state marshals must be permitted to carry firearms due to the dangerous nature of their work and the need to maintain the perception that they are law enforcement. He noted that, without the perception that they are law enforcement, he believed that their ability to serve process would be impossible. He described the increasingly dangerous nature of state marshal work. He acknowledged that marshals can and have called for back-up from law enforcement. He noted that law enforcement agencies do not provide swift responses. He acknowledged that some marshals do not carry but noted that, if a marshal does want to carry, he or she is required to meet standards. He further noted that such marshals carry a million dollar liability insurance policy. Commissioner Tracy Lee Dayton, Esq. inquired about the differences between capias and non-capias training. Marshal DeAngelis described that non-capias marshals who carry firearms are trained in firearms and practical shooting. Capias marshals are also trained in pepper spray, batons, handcuffs and civil liberties.

4. Revised Use of Force Policy

Jeffrey Beckham presented a memorandum on the issue of the Use of Force Policy and firearms authorizations. [This memorandum is attached hereto and incorporated into these minutes in its entirety.] Attorney Beckham discussed the history of firearms authorizations by the Commission. He noted that there was an Attorney General (AG) Opinion issued shortly after the system transitioned from the sheriff system. That opinion noted that the state marshals were removed from a permitting exemption afforded to the sheriffs. The AG suggested that the General Assembly did not intend for the state marshals to carry firearms during the course of performing their duties. Until 2008 there was not a formal process for authorizing marshals to carry firearms. In 2012, the AG issued an opinion on Fourth Amendment liability wherein it stated that the failure to adequately train or exercise its supervisory obligations may expose the Commission and its members to substantial liability. The Commission was apparently aware of this liability as, up until 2012, the Commission and its officers were listed as additional insureds in the marshal liability insurance policies. In late 2012, the Commission voted to drop this requirement based on a former director's recommendation. That director had represented that he believed this change was necessary to clarify that the state marshals were not employees and the Commission is not an appropriate liable party. He apparently did not consult an attorney with respect to this recommendation. Attorney Beckham stated his perception that the liability and lack of coverage seemed like a problem.

Attorney Beckham noted that there are currently 22 marshals who carry firearms: 18 capias unit marshals (out of 37) and 4 non-capias marshals. He noted that the question of whether state marshals should carry at all does not appear to have been considered by the Commission. He noted that the Use of Force Policy does permit other equipment (pepper spray, batons and handcuffs) and also that the Capias Unit members have been strongly advised to work with a partner. Also, Capias Unit members have been advised that it is a best practice to contact law enforcement prior to executing a civil capias arrest. He advised that the Commission could conclude that carrying a firearm is not necessary for conducting state marshal duties.

Apart from liability and the lack of authorization by the legislature, Attorney Beckham noted that the Commission is not a law enforcement agency with the communication system, chains of command, capacity for direct supervision, and human resources inherent therein. This creates a risk of harm to the public which cannot be managed. He noted that the bail enforcement agents are specially permitted to carry and regulated by DESPP. Attorney Beckham concluded with his recommendation that the Commission discontinue its authorization for state marshals to carry firearms.

Chairperson Philpot asked to hear from the ex-officio members of the Commission. Ex-Officio Thomas Burke expressed his opinion that, although he does not carry a firearm, state marshals should be permitted to carry. He noted his belief that Capias Unit marshals team up with partners who carry. He indicated that a plumber can carry a firearm so long as he has a permit. He did not believe that a state marshal should have to jump through more hoops if they are permitted. He noted that state marshals are independent contractors. He generally discussed the dangerous nature of state marshal work. He also expressed his belief that, if the Commission withdraws firearm authorization, a marshal might have a claim for liability if they are shot and injured. Judge Bozzuto inquired about whether it was standard practice for Capias Unit marshals to work in teams of two. He confirmed that it was. Upon questioning by Attorney Jennifer Montgomery, he acknowledged that he did not have knowledge of whether one of the partners carried a firearm. Attorney Montgomery noted that the Commission does not possess this knowledge either as, to Attorney Beckham's point, the office is not a law enforcement agency and has no supervision over capias work. Judge Bozzuto inquired about the new bill that passed regarding service of restraining orders where there are firearms. Attorney Montgomery clarified that law enforcement will not be serving such restraining orders. Ex-Officio Burke, Attorney Montgomery, and Attorney Beckham engaged in a general discussion about potential Commission liability for disallowing firearms due to the potential for state marshal injury. Marshal Burke indicated that he believed that such a claim might be valid. Attorney Beckham asserted his belief that no court would find that this is a valid claim.

Judge Bozzuto raised the basic issue of the Commission's authority to authorize state marshals to carry a firearm. Attorney Montgomery noted that the office staff found no authority in its research. Ex-Officio Burke described that he was told sheriffs carried under the color of their badges. He asserted that perhaps it is enough that state marshals can get a pistol permit issued by the State of Connecticut.

Ex-Officio Lisa Stevenson noted that in 2001 Pat Lempicki asked the Attorney General for several questions. Prior to 2001, sheriffs could carry without a permit. When the Public Act passed changing over to state marshals, Rep. Lawlor said on the floor that state marshals would not be able to carry. Over the course of time, the Commission took on different things. The Commission issued pepper spray, handcuffs, and batons and provided training. She represented that in 2008, the Commission asked for an AG opinion and the AG put ownership back on the Commission indicating that it was required to set up policies and to train. She noted that there used to be good training program which was later eliminated. She noted that she believed that state marshals should carry a firearm. She indicated that she was on the Capias Unit for fifteen years. She did not carry a firearm but would partner with someone who did carry. Upon questioning by Chairperson Philpot, Marshal Stevenson noted that they would

inform law enforcement prior to a *capias* sweep but they would not assist. She generally described the increasing dangerous nature of state marshal work.

At the request of Attorney Beckham, Attorney Montgomery described observing the *Capias* Unit civil liability training in July. She noted that there were three state marshals at the training who argued that state marshals should have the authority to enforce criminal law. She noted that one of these marshals was just disciplined this past winter for attempting to enforce criminal law. She was required to step in and outline the AG's opinion as well as the Commission's position that state marshals are not authorized to enforce criminal law. Ex-Officio Lisa Stevenson interjected and suggested that these marshals were new and perhaps the Commission needed to make the position more clear. Attorney Montgomery noted that these were not new marshals rather they were long-time marshals. She outlined that the Commission's position in the Administrative Bulletin covering the AG opinion plainly states that the Commission does not authorize state marshals to enforce criminal law. She concluded by stating that what she observed was ridiculous and it made her very uncomfortable.

At this point, Marshal DeAngelis began to interject. Attorney Beckham stopped him and noted that there are two ex-officio members of the Commission who are marshals and who represent the marshals in Commission deliberations. Chairperson Philpot indicated his belief that the meeting was a public forum. Attorney Beckham disagreed and stated that it was a meeting of the Commission. He indicated that allowing non-member marshals to participate in deliberations was "the tail wagging the dog" and observed that the Commission regulates state marshals and not the other way around. Chairperson Philpot exercised his discretion and permitted State Marshal DeAngelis to speak on the record. Marshal DeAngelis noted that he thought it was unconscionable that any state marshal would want to intervene in a criminal matter. He noted that it is very important that the Commission discipline anyone who does this. He noted that, with respect to the new rules for notifying law enforcement regarding restraining orders with firearms, he and other marshals in New Haven have begun contacting law enforcement. While officers have been receptive, they have noted that they cannot accompany the marshal immediately and will "get there when they can." He noted that he still has to serve that restraining order immediately.

Ex-Officio Stevenson noted that, with respect to the insurance issue, she had spoken with Jim Delvecchio at the insurance company and he had indicated that they could add the language back to the policies with no issue. She inquired about the reason behind the removal and Attorney Beckham reiterated that Mr. Rinaldi believed that this would make clear that state marshals are not employees and liability would not obtain.

Judge Bozzuto inquired whether or not the question of the Commission's liability had ever been addressed by the AG. Chairperson Philpot noted that this had not been addressed directly other than in the general language concerning search and seizure. He noted that the Commission needs to address the insurance issue and that the Commission may need to be named in every policy for marshals who carry. He noted that the training component needs to be enhanced. Attorney Montgomery clarified that the current Use of Force Policy mandates that state marshals who carry take POST-certified firearms training on an annual basis and practical shooting decisions training every three years. Chairperson Philpot noted that the Commission could mandate that the training mirror that of the police academy or be conducted at the police academy. Ex-officio Stevenson noted that the training used to be conducted at the academy. Attorney Montgomery noted that all of the firearms training is paid for by the marshals. Chairperson Philpot stated his belief that the Commission needs a specific opinion from the AG's office as to what Commission liability would occur when a marshal discharges a firearm.

Commissioner Tracy Lee Dayton, Esq. inquired about how many state marshals had been denied the right to carry a firearm. Ex-Officio Stevenson noted two denials, one based on the psychological

examination and one based on behavior. Attorney Montgomery mentioned a third instance where a marshal agreed to resign from the Capias Unit as part of a final decision in a disciplinary matter. That marshal later asked to carry a firearm as a non-capias marshal and the Commission denied his request.

Vice-Chairperson Michael Cronin raised the issue of restraining orders and how there was a movement to have law enforcement serve restraining orders where there were firearms involved. He noted that this legislation did not pass. He stated that this was part of a broader movement to take capiases, restraining orders, and transferring child custody away from the marshals and giving it to law enforcement. He noted that if the Commission took the firearms away, this action may add to that movement. Ex-Officio Stevenson noted that this would be detrimental to all the marshals. Judge Bozzuto questioned why there were only 22 marshals that carried firearms if this would have such a big impact. Ex-Officio Stevenson represented that there was only a select few marshals that work with DCF and they all work with partners. Upon questioning by Attorney Montgomery, Ex-Officio Stevenson stated that the DSS police officers who execute capias warrants are armed. Attorney Montgomery noted that these officers are state employees who are part of the law enforcement bargaining unit.

Ex-Officio Burke raised the question of whether the Commission would be liable if a marshal stole someone's funds. Commissioner Dayton interjected stating that there is a difference between getting sued when a marshal steals funds and getting sued when someone is dead. Ex-Officio Burke inquired where the line is drawn. Chairperson Philpot noted that this was the type of question that could be answered by an AG Opinion. Attorney Beckham commented that the Commission could obtain an opinion and beef up the insurance and training but that this would not protect the Commission from the public relations liability should a marshal injure someone with a firearm. He advised that they might have to go through litigation. Vice-Chairperson Cronin noted that anyone who would sue the marshal could definitely sue the Commission for failure to provide oversight.

Chairperson Philpot observed that there was not a consensus around the table regarding how to proceed. Judge Bozzuto noted that, after reviewing all of the materials, there is a muddled history and the question of whether the Commission has the authority to grant a marshal the right to carry a firearm has not been specifically addressed. Attorney Beckham noted that typically state agencies have to be granted the authority by the legislature to do things and they do not have general authority to do whatever. He also noted that staff did not research that issue. Ex-Officio Stevenson remarked that the legislature gave the authority when it authorized the Commission to "establish professional standards." Judge Bozzuto indicated that the stance has morphed. In 2000, the AG stated that the legislature did not intend for the marshals to carry firearms. Then the Commission latched onto the "establish professional standards" language and the marshals were carrying batons, handcuffs, pepper spray, and guns. Attorney Montgomery inquired about the 2008 AG opinion which Ex-Officio Stevenson had mentioned during her presentation as putting the onus on the Commission to provide training for firearms. Ex-Officio Stevenson clarified that that opinion pertained to the general statutory mandate that the Commission provide training and it was not specific to firearms. Attorney Montgomery noted that the training mandate is in the statute but the concept of marshals carrying firearms is not in the statute.

Commissioner LaTorraca represented that he is totally opposed to taking away the right of marshals to carry firearms. He noted that, over the years, there has not been continuity due to different directors and staff attorneys. He recommended that the Commission form a committee of marshals, the Commission, and its staff to investigate liability and the AG opinions. He advised that he believed there may be liability if the Commission withdraws permission to carry a firearm and a marshal is hurt.

Ex-Officio Burke noted that Rep. Lawlor very directly sat at the table when the state marshal system was created and said "no firearms." He believed that, although it may not be clear in the public act, Rep. Lawlor wanted to make sure there was no carrying under the color of the marshal's badge.

Commission Dayton noted that the 2012 AG opinion, which describes the Use of Force Policy, presupposes that the Commission has the authority to grant the right of marshals to carry. Judge Bozzuto remarked that that was not the question being asked of the AG. Vice-Chairperson Cronin noted that the AG was not asked whether the policy was valid or whether the Commission had the authority to grant permission to carry. Commissioner Dayton mentioned that the Commission could ask the AG to clarify what they meant in that opinion and maybe it would not take three years.

Attorney Montgomery remarked that given the current climate, the AG will want to answer this question. She noted that Commission LaTorraca's suggestion of forming a committee was well-taken but remarked that none of the attorneys in the room could answer the question of liability as they were not specialists in that area of the law.

Chairperson Philpot questioned what the Commission should do in the interim with the 22 marshals that are currently carrying. He noted that those marshals should, at a minimum, add the Commission as an additional insured on their policies. Ex-Officio Stevenson remarked that it should be in policies for every marshal.

Commissioner Michael Desmond inquired whether there was a time when only Capias Unit marshals carried firearms. Attorney Montgomery advised that this used to be the policy but there was a departure in 2011 when the Commission voted to allow non-capias marshals to carry. Commissioner Desmond inquired whether it would make sense to go back to that policy. Attorney Montgomery remarked that, in her opinion, there was absolutely a distinction to be made between Capias Unit and non-capias marshals. Commissioner LaTorraca clarified that the non-capias marshals were required to go through a psychological exam and training in order to carry. Attorney Montgomery confirmed that this was a requirement in the current Use of Force Policy.

Attorney Montgomery began describing the revised Use of Force Policy. Commissioner Dayton and Vice-Chairperson Cronin raised some potential issues with the language in revised Policy for when uses of force are reportable to the Commission. During this discussion, it became clear that not every Commissioner had had a chance to review the revised policy. Upon questioning by Commissioner Bozzuto, Attorney Montgomery explained that the insurance requirement was embodied in the Use of Force Policy and to her knowledge was not articulated elsewhere by the Commission.

Ex-Officio Burke inquired whether the Use of Force Policy was consistent with what is taught at POST. Attorney Montgomery advised that none of the people in the room were POST instructors so they could not answer that question. Attorney Beckham remarked that, under the MOU with Manchester Community College, instructors were required to cover the Use of Force Policy.

Chairperson Philpot entertained a motion to table consideration of the Revised Use of Force Policy. He asked that it be re-circulated and also that the Commissioners circulate their comments to each other via email ahead of the meeting. He also proposed that the firearms requests on the agenda be stayed. The Commission, after a motion by Vice-Chairperson Michael Cronin, Esq. seconded by Honorable Elizabeth A. Bozzuto, voted 6-0 to table consideration of the Revised Use of Force Policy.

Chairperson Philpot stated that he would like to entertain a motion to require that the additional insureds discussed be added to state marshal policies. Vice-Chairperson Cronin inquired whether they would have to vote to open the agenda and add an agenda item to so vote. Attorney Montgomery stated that she thought that they might as the agenda item pertained to the Use of Force Policy. Attorney Beckham noted that they could not under FOIA as this was a special meeting. Judge Bozzuto inquired whether the Use of Force Policy applied to all marshals and Attorney Montgomery advised that this was

correct. The Commission, after a motion by Vice-Chairperson Michael Cronin, Esq., seconded by Tracy Lee Dayton, Esq., voted 6-0 to add a requirement to state marshal insurance policies that the following be additional insureds: The State of Connecticut, the Department of Administrative Services, the State Marshal Commission and their officers, agents and employees.”

The Commission, after a motion by Honorable Elizabeth A. Bozzuto, seconded by Tracy Lee Dayton, Esq., voted 6-0 to enter executive session. At this point Commissioner LaTorraca left the meeting.

[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 Vice-Chairperson Michael Cronin, Esq., seconded by Michael Desmond voted 5-0 to exit executive session. No votes were taken during executive session.

5. Proposed Decisions

The Commission, after a motion by Vice-Chairperson Michael Cronin, Esq., seconded by Honorable Elizabeth A. Bozzuto voted 5-0 to adopt the Proposed Decisions and recommended dispositions in the following files:

File No.	Name
14-05	Sanchez/Fry
14-08	Glazer/Bryk
14-18	Plimpton and Hills Corp./McNeil

The Commission, after a motion by Vice-Chairperson Michael Cronin, Esq., seconded by Honorable Elizabeth A. Bozzuto, voted 5-0 to adopt the Proposed Decision and recommended disposition in the following file with language indicating that further violations involving the failure to cooperate with a Commission investigation or to file a written response will subject the Respondent to significant discipline up to and including dismissal due to the clear preceding pattern and practice of such violations:

File No.	Name
15-38	Brown/Cappiello, Jr.

6. Complaints

The Commission, after a motion by Vice-Chairperson Michael Cronin, Esq., seconded by Honorable Elizabeth A. Bozzuto, voted 5-0 to dismiss the following files:

File No.	Name
15-30	Lumpkin/Musumeci
15-31	Ziegler/LaBranche
15-34	Darcy/Delli Carpini
15-37	Posick/Davies

The Commission, after a motion by Honorable Elizabeth A. Bozzuto, seconded by Tracy Lee Dayton, Esq., voted 5-0 to table Items 7 and 8 on the agenda subject to reviewing the revised Use of Force policy.

7. Capias Firearms

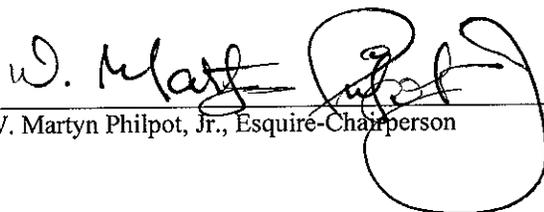
Name	County
John O'Leary	Hartford
Peter Meshanic	Tolland
Anthony Cipriano	Hartford
Kevin McCrewell	Tolland

8. Non-Capias Firearms

Name	County
Christopher Paoletti	Fairfield
John Barbieri, Sr.	New Haven

The Commission, after a motion by Vice-Chairperson Michael Cronin, Esq., seconded by Tracy Lee Dayton, Esq. voted 5-0 to adjourn the meeting at 6:35 p.m.

Minutes were approved by the Commission on September 22, 2016.



W. Martyn Philpot, Jr., Esquire-Chairperson