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## **Michigan Commission on Law Enforcement Standards**

### **Commission Meeting Minutes**

**November 6, 2019**

**Lansing, Michigan**

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#### **COMMISSION MEMBERS PRESENT**

Sheriff Timothy Donnellon, representing the Michigan Sheriff's Association  
Mr. Michael Wendling, representing the Prosecuting Attorneys Association of Michigan  
Major Greg Zarotney, representing the Michigan State Police  
Mr. David Tanay, representing Attorney General Dana Nessel  
Mr. Duane Smith, representing the Police Officers Labor Council  
Commander Mark Bliss, representing the Detroit Police Department  
Mr. Arthur Weiss, representing the Criminal Defense Attorneys of Michigan  
Mr. Thomas Adams, representing the Public  
Trooper Nate Johnson, representing the Michigan State Police Troopers Association  
Deputy Matthew Hartig, representing Deputy Sheriff's Association of Michigan  
Sheriff Matthew Saxton, representing the Michigan Sheriffs' Association  
Mr. Ken Grabowski, representing the Police Officers Association of Michigan  
Sheriff Gregory Zyburt, representing the Michigan Sheriffs' Association  
Ms. Linda Broden, representing the Detroit Police Officers Association  
Mr. Michael Kunath, representing the Michigan Association of Police  
Chief Donald Mawer, representing the Michigan Association of Chiefs of Police

#### **COMMISSION MEMBERS EXCUSED**

Chief David Molloy, representing the Michigan Association of Chiefs of Police  
Mr. Michael Sauger, representing the Fraternal Order of Police  
Chief Karianne Thomas, representing the Michigan Association of Chiefs of Police

#### **STAFF PRESENT**

Mr. Timothy Bourgeois, MCOLES Executive Director  
Ms. Hermina Kramp, MCOLES Deputy Executive Director  
Ms. Lauryl Scott, Commission Counsel  
Mr. David Lee, MCOLES Staff  
Mr. Joe Kempa, MCOLES Staff  
Ms. Kayla Hanselman, MCOLES Staff

#### **GUESTS (SIGNING-IN)**

Mr. Andrew Delobel, Public

## **CALL TO ORDER**

The Commission meeting was called to order by Vice Chair Timothy Donnellon on November 6, 2019 at 10:30 AM. The meeting was held at the MCOLES Office, 927 Centennial Way, Lansing, Michigan. Vice Chair Donnellon noted Chair Molloy was in Japan on a governmental exchange trip and he would be chairing the meeting in his absence.

## **INTRODUCTIONS**

Vice Chair Donnellon introduced himself. He then asked the remaining commissioners, staff, and audience members to do the same.

## **ACCEPTANCE OF THE SEPTEMBER 18, 2019 COMMISSION MEETING MINUTES**

A **MOTION** was made by Commissioner Wendling and supported by Commissioner Saxton to approve the September 18, 2019 Commission Meeting Minutes as written.

A **VOTE** was taken. The **MOTION** carried.

## **ADDITIONS/CHANGES TO THE AGENDA**

There were no additions or changes to the Agenda.

## **CHAIR'S REPORT**

**LEO Population Report** – Vice Chair Donnellon advised the LEO population report for the month of September was made available to the commissioners. There was a slight increase in the number of officers and positions.

**Special Use Request** – Vice Chair Donnellon also stated the Special Use Request report was provided to the Commissioners. He asked if there were any questions and there were none.

**Nominating Committee (Chair and Vice-Chair)** – Vice Chair Donnellon appointed Sheriff Gregory Zyburt, Trooper Nate Johnson and Major Greg Zarotney to serve. These three will need to report back at the December 4, 2019 Commission Meeting with their nominations for Chair and Vice Chair which will be put before the commission for a full vote. Major Greg Zarotney will serve as the Chair for the Nominating Committee.

## **DIRECTOR'S REPORT**

**International Association of Chiefs of Police (IACP) Conference** – Director Bourgeois attended the IACP conference last week where he stated he heard a number of interesting and shocking things regarding officer wellness. Director Bourgeois stated he was informed the average tenure for those who still have a Defined Benefit pension plan have a national average benefit draw of 18 months annually. Director Bourgeois hopes that as MCOLES builds capacity in staffing, assets can be identified to help agencies with officer wellness. A request was made to review the report that was referenced, however, Director Bourgeois stated that it was not a single report but rather a series of classes he attended. He said the Texas Department of Public Safety has done some incredible work in this area over the last 12 years and MCOLES will work to get some of that information and make it available to the commission and the public. Commissioners discussed how those figures don't match Michigan statistics they are familiar with. Director Bourgeois stated one of the issues discussed was compared to the general population an officer's susceptibility to things such as suicide, coronary disease and other major illnesses such as stroke and cancer. Director Bourgeois stated a lot of work can be done in this area and as MCOLES staff are able to identify information it will be made available to commissioners.

**Training Director Conference** – Director Bourgeois said MCOLES tries to bring the training directors in twice a year. There are currently several new training directors at academies. Director Bourgeois stated it was an excellent conference with a lot of information being shared between MCOLES staff and the training directors as well as between training directors themselves.

**Brady Giglio** – Director Bourgeois asked Assistant Attorney General Scott to give a brief overview of the Brady and Giglio cases. Assistant Attorney General Scott stated Brady v. Maryland was a US Supreme Court case in 1963 which held due process requires prosecutors provide to the defense all exculpatory evidence. Giglio v. United States was another US Supreme Court case in 1972 that extended disclosure requirements to impeachment evidence or evidence that could adversely affect the credibility of a witness, which includes law enforcement witnesses.

Director Bourgeois stated Michigan courts didn't seem follow these cases, however, there has been great awareness the last couple of years. There has been a fair amount of information about this in the media and 3 weeks ago USA Today ran a major article about this. Director Bourgeois stated the staff is in discussions with the Prosecutors Association of Michigan and their Best Practices Committee about how prosecutors see this and what they do. If a licensed officer is determined by a prosecuting authority to be on a so-called Brady Giglio list that doesn't automatically mean ramification against their license, however, that underlying conduct could be considered if their license goes inactive or lapses for the character fitness assessment.

Commissioner Wendling stated he is on the Best Practices Committee with the Prosecutors Association of Michigan and they have been talking about this issue for a long time. Commissioner Wendling stated the federal courts have had a requirement for a long time and now it is being pushed down to the state level. He said county prosecutors are now going to be asking their local law enforcement partners to disclose if they have any officers on their books that have any convictions, incidents or anything in their personnel file that may lend itself to exculpatory information.

Commissioner Wendling stated officer misconduct that has historically been handled with discipline that is then removed from an officer's file after 6 months of good behavior will need to be disclosed. He also stated that several of the larger counties are also starting to ask for this information.

Commissioners Weiss stated that the federal judges are more in tune with Brady Giglio and that state judges or starting to come into it. He also stated that some issues at the agencies don't always see the light of day, however, defense attorneys want what they can get.

Commissioner Wendling stated that as discussed at the September 18, 2019 commission meeting regarding background investigations agencies now must provide information regarding terminated employees or employees who separate in lieu of termination to any hiring agency of that officer.

Commissioner Bliss stated that in the past his agency has had officers who have been charged with making a false written oral statement because their activity log was off by just a few minutes. He said he would hope that departments who are looking at what to charge an officer within this type of situation are careful not to charge an officer with something that might be misconstrued as dishonesty versus sloppy record keeping. Commissioner Wendling stated the strict interpretation believes something like the situation Commissioner Bliss described must still be disclosed even though they are minor things and may not end up being determined by the court to be relevant exculpatory information.

Director Bourgeois said as things continue to evolve with Brady Giglio the Commission will likely have to wrestle with this issue at some point. He also stated that the interplay between Public Act 128 and Brady Giglio is a sign that the public expect different things from law enforcement officers today.

Commission Saxton questioned how situations where an officer is disciplined for an offense which would require a Brady/Giglio disclosure and an arbitrator subsequently overturns the discipline would be viewed. He also noted legislative efforts to increase the availability of expungements and asked if officers convicted of criminal offenses could simply get automatic expungements. Commissioner Wendling stated that he believes that information would still be discoverable. Director Bourgeois pointed out under Public Act 203, the Commission is required to consider adjudications of guilt, which include expungements.

Director Bourgeois said that part of the difficulty in determining how to deal with Brady Giglio is that it is constitutional law and some advocate for a statute to define the process. This could lead to a conflict since a statute can't modify the constitution. He said he also thought it was important to ensure accused officers' due process rights were respected in making these determinations.

## **COMMITTEE REPORTS**

**Executive Committee** – Vice Chair Donnellon advised the Executive Committee met that morning prior to the Commission meeting. He stated that committee members discussed the following issues:

- Five open commission seats which have been submitted with a list of names and are waiting to hear back from the Governor's office

- Open MCOLES positions
- Medical marijuana funding for MCOLES administrative costs

**Reserves Committee** – Director Bourgeois said the Reserve Committee met in Lansing about three weeks ago. As a reminder the committee includes Commissioners Grabowski, Mawer and Vice Chair Donnellon. MCOLES staff member Joe Kempa has been working on drafting standards and the committee was updated on where that stands. Director Bourgeois stressed this project is more complicated than it appears to be, however MCOLES is proceeding with all possible haste.

A **MOTION** was made by Commissioner Wendling and supported by Commissioner Adams to accept the Vice Chair and Directors committee reports.

A **VOTE** was taken. The **MOTION** carried.

**CONSENT AGENDA** - None

## **NEW BUSINESS**

**2020 Proposed Commission Meeting Dates** – Vice Chair Donnellon stated the 2020 proposed commission meeting dates were provided to each of the commissioners. He asked that each commissioner please review those dates in the next month and get back with the MCOLES staff if there are issues with the dates. At the December 4, 2019 commission meeting the commissioners will be voting on posting the 2020 commission meeting dates on the website.

**Commission Resolution 2019-03 Honoring Fallen Firefighter Norman Klenow** – Vice Chair Donnellon read into the record Commission Resolution 2019-03 honoring Fallen Firefighter Norman Klenow and extending Public Safety Officer Benefits.

A **MOTION** was made by Commissioner Saxton and supported by Commissioner Wendling to approve Commission Resolution 2019-03 honoring Fallen Firefighter Norman Klenow and extending Public Safety officer Benefits.

A **VOTE** was taken. The **MOTION** carried.

**OLD BUSINESS** - None

**Publication of Advisory Standard for Background Investigation** – Director Bourgeois said an email was sent to the commissioners a couple weeks ago regarding the Advisory Standard for Background Investigations and Best Practices Guide. He also said the advisory standard has been posted on the MCOLES website. Director Bourgeois asked that each of the commissioners review the standard and provide any feedback they may have.

**MISCELLANEOUS** - None

## PUBLIC COMMENT

Vice Chair Donnellon opened the floor for any public comment. Mr. Andrew Delobel said he had some comments regarding Public Act 128 that he wanted to discuss, however, he noticed notes were being taken and he wanted his comments to be off the record. Vice Chair Donnellon, Director Bourgeois and Assistant Attorney General Scott agreed that any comments made by the public would be entered into the record. Vice Chair Donnellon informed Mr. Delobel that he was free to add any comments he'd like, however, any comments he made would be entered into the record. Mr. Delobel said that he would like a private meeting with Director Bourgeois and Assistant Attorney General Scott. Director Bourgeois said that MCOLES is aware of Mr. Delobel's concerns and staff are currently looking into it and will be in touch with Mr. Delobel when their review is complete. Mr. Delobel was comfortable with waiting to hear from MCOLES once their review was complete and did not wish to provide any further comments.

## NEXT MEETING

Date: December 4, 2019 at 10:30 AM  
Lansing

## ADJOURNMENT:

A **MOTION** was made by Commissioner Adams and supported by Commissioner Hartig to adjourn the meeting at 11:00 AM.

APPROVED BY  ON 2-12-20

WITNESSED BY  ON 2-12-20