

COMMISSION ON LAW ENFORCEMENT STANDARDS AND TRAINING

COMMISSION MEETING MINUTES

JANUARY 14, 2010

ARKANSAS LAW ENFORCEMENT TRAINING ACADEMY

Meeting was called to order at 10:05 by Vice Chairman Butch Morris. Commissioners present:

Sheriff Butch Morris
Ms. Jami Cook
Sheriff Danny Russell
Dr. James Golden
Lt. Bobby Walraven
Chief Kel Nicholson
Mr. Barney H. Reeves

Absent:

Chief Bob Harrison
Mr. Carroll Lester

Others present:

Director Terry Bolton
Fiscal Director, Fred Starnes
Deputy Director, Mike Paladino
Deputy Director, Brian Marshall
Asst. Attorney General, Meredith Rebsamen
Commission Secretary, Sue Albritton
J. R. Thomas, Tobacco Control Board
James Allen, Bentonville Police Department
Jon Simpson, Bentonville Police Department
Joshua Adams, Sherwood Police Department
Emyli Bryant,
Laurie Bryant
Judy Wade
Sgt. Stephanie Berthia, Little Rock Police Department
Ronnie Kennedy, Little River Sheriff's Office
Johnathan Lewellyn, Carlisle Police Department
Eric Frank, Carlisle Police Department
Greg Sled, Tobacco Control Board
Glenn Redding, Tobacco Control Board

Bill Holohan, Tobacco Control Board
Phoebe Garner
Toby Garner
Lance Garner
Martin Miller
Robert Philson, Waldo Police Department
Danny Jackson, Grant County
Lance Huey, AR Scholarship Lottery
Robert Shepherd, Grant Co. Sheriff
Wade Hodge, Hearing Officer
Gerald Robinson, Jefferson Co. Sheriff
Lafayette Woods, Jefferson Co. Sheriff's Office
Lt. Joe Garza, Pulaski County Sheriff's Office
Stanley James, Jefferson County Sheriff's Office
Jacob Sanders, Arkansas Democrat Gazette
Matthew B. Miller, Bureau of Legislative Research
Sheriff Ron Stovall, Miller County Sheriff

Chairman Morris: I will call this meeting of the Commission on Law Enforcement Standards and Training to order. We have someone here from the news media I believe? Thank you for being here. We need to open the floor to a Public Hearing to the proposed changes to Regulation 1005. I think Mr. Bolton might have some information on that, that we need to discuss.

Mr. Bolton: It has come to our understanding that the \$250 fee that we have proposed charging for the exam, we cannot do without some specific legislation allowing us to do that. We have a couple of options. We could take that out and go ahead with it and try to get that legislation in the coming session. Or we can wait that long. I just wanted to make you aware that the fee has got to come out. Matthew Miller is here, Matthew will you come up? And in case you have any questions about this, Matthew can answer them.

Mr. Miller: My name is Matthew Miller. I am with the Legislative Counsel up at the Capitol. These issues pop up a lot. Any fees being charged with any authority. There are a lot of agencies that have statutes that say you can charge a fee up to a certain amount. Some of them say you can charge a flat fee. Just come up with a schedule for that. There are a lot of examples of that and this Commission doesn't have it. And in the absence of that, means that you are not to charge it. That is what I have discussed with Mr. Bolton. Of course the legislative rule making is not here to tell you what to do. But it is an issue we raise and the legislature reviews it. That is just the discussion that Mr. Bolton and I had and that and another little thing, there is one place where it says less than ten years and another that says more than ten years and it should be ten or less or ten or more. One or the other. That is what we discussed.

Mr. Bolton: And that has been changed in the new wording that has been passed out. Both that and the fee.

Mr. Miller: I would be happy to answer any questions if you have any.

Mr. Bolton: The other part he was talking about is on the second page. The first paragraph, "Any one who has been separated from law enforcement for ten (10) years or more is required to attend a new Basic Law Enforcement Refresher Course without exception." The previous reading said for "over ten years." So we are leaving out exactly one word. No one from the public has a comment on this today? We have had no letters and no phone calls other than the ones from Mr. Miller. So this is non controversial. We need a motion to make these changes. And a vote to accept it and at that point we will go forward with the paper work to the Legislative Counsel.

Commissioner Reeves: I move that we accept it.

Commissioner Nicholson: I second.

Chairman Morris: Motion made and seconded. All those in favor, (All commissioners vote aye.) Any oppose? None opposing. Motion passed.

Mr. Bolton: Mr. Miller do you have any thing else?

Mr. Miller: No. I do not. We meet on February 4th in just a couple of weeks and if we get the paper works in fast enough we can get this one wrapped up before the Fiscal Session starts.

Mr. Bolton: Thank you Matthew.

Chairman Morris: Thank you. The next thing is we need to accept the minutes of the last meeting. Do I hear a motion to accept those minutes?

Commissioner Nicholson: I move we accept the minutes.

Commissioner Russell: I second.

Chairman Morris: Motion made and seconded, all those in favor say aye, (All commissioners vote aye.) Any oppose? Motion passes. **ITEM I** At the January meeting of each year it is the duty of the Commission to discuss and vote regarding the Board and Commission Expenses. I am sure that everyone has had a chance to look at that. We need a motion to pass that.

Commissioner Reeves: So move.

Commissioner Nicholson: I second.

Chairman Morris: We have a motion and a second, all those in favor say aye. (All commissioners vote aye.) Any oppose? Motion passes. **ITEM II** At the October 2009 meeting the Commission voted to go forward with decertification of William Roach, formerly with the Russellville Police Department. Mr. Roach was notified by certified mail of the Commission's actions but did not request a hearing. The Commission now needs to give a final decertification vote. Any discussion? Standards do you have anything? Do I hear a motion?

Commissioner Golden: So move.

Commissioner Reeves: Second.

Chairman Morris: We have a motion and a second. All those in favor say aye. (All commissioners vote aye.) Any oppose? None opposing, motion passed. **ITEM III** Former Officer Darrell Webb of the Crossett Police Department extorted money from a known dealer and felon and had him use the money to buy and then sell cocaine, the profits going to Webb. Webb pleaded guilty to the felony and received a 20-year sentence. A felony conviction is an automatic decertification that the Commission is being asked to formalize.

Commissioner Nicholson: I make that motion.

Commissioner Russell: I second.

Chairman Morris: made and seconded. All those in favor say aye. (All commissioners vote aye.) Any oppose? Motion passes. **ITEM IV** Former Officer Jeffery Garcia was charged in April of 2009 with sexual assault of children. On 12/05/09 he was found guilty and sentenced to 100 years. A felony conviction is an automatic decertification that the Commission is being asked to formalize.

Commissioner Golden: I make a motion.

Commissioner Nicholson: I second.

Chairman Morris: Motion made and seconded, all those in favor, (All commissioners vote aye.) Any one opposed? Motion passes. **ITEM V** Former Deputy Shawn Ashcraft of the Randolph County Sheriff's Office was previously employed at the Baltz Equipment Company and kept a key, which gave him access to gasoline at Riverside

Petroleum. He basically stole gasoline over an extended time. On 10-26-09 he pleaded guilty to felony theft. A felony conviction is an automatic decertification that the Commission is being asked to formalize.

Commissioner Walraven: I make a motion that we decertify.

Commissioner Reeves: I second.

Chairman Morris: Motion made and seconded. All those in favor say aye. (All commissioners vote aye.) Any oppose? Motion passes. **ITEM VI** Former Officer Michael Isaac was employed by the Ft. Smith Police Department until he was terminated for an incident involving the arrest of a subject and it was believed that he used unnecessary violence during the arrest. The Ft. Smith Police Department is requesting decertification of Mr. Isaac. Is there someone here from the Ft. Smith Police Department? There is no one here. Do I hear a motion?

Commissioner Nicholson: I make a motion that we set it for a decertification hearing.

Commissioner Golden: I second.

Chairman Morris: We have a motion and a second, all in favor, any oppose? One vote in opposition. Motion passes. **ITEM VII** Former Officer Daniel Ross was a probationary officer assigned to the undercover unit. Ross admitted to providing confidential information to outside parties. Ross also initially lied regarding his culpability. The Ft. Smith Police Department feels this officer should be decertified. Anyone here on this matter from Ft. Smith? Any discussion? Standards do you have anything? Do I hear a motion?

Commissioner Reeves: I make a motion that we set it for a decertification hearing.

Commissioner Nicholson: I second.

Chairman Morris: Motion made and seconded, all those in favor of setting it for a decertification hearing, say aye. (All commissioners vote aye.) Anyone oppose? Motion passes. **ITEM VIII** Former Officer Bennie Dandy was employed by the Little Rock Police Department until he resigned during an Internal Investigation. Officers responded to a retail business alarm on 9-24-09. Dandy and another officer waited for an employee to arrive and determine loss. A review of the store video disclosed Dandy attempting to leave the store with a computer. Little Rock Police Department felt it was obvious that Dandy was attempting to steal the computer. Dandy resigned during the Internal Investigation. Little Rock Police Department wants Dandy decertified for this egregious

behavior. Is any one here from Little Rock? Come forward please. State your name for the record and tell us your request.

Sgt. Berthia: I am Sergeant Berthia of the Internal Affairs Division. On September 24th 2009, several officers were dispatched to an alarm at Stroman's Rental Center. Of which one was Officer Bennie Dandy. Officers arrived and determined that entry had been gained into the business. Several officers searched and cleared the business. Officers Dandy and Prater stood by the business until responding party could arrive. Shawn Funderburg, the manager arrived and walked through the business with Dandy and Prater and determined what was missing. During the walk through Mr. Funderburg and Officer Prater checked a storage room, which contained laptops. Which also was used as a rest room. He specifically noted that there were two stacks of laptops which contained ten in each stack and an additional laptop on top with the initials BR written on top. Mr. Funderburg explained that the initials meant that the laptops were to go to the John Barrow Stroman's store. Officers Dandy then met back with Mr. Funderburg and Officer Prater in the hallway. Then the three went into an office area where they could view the video for suspects. While viewing the video Officer Dandy asked if he could use the restroom. He then excused himself to the hallway where the restroom is located. Mr. Funderburg advised that five minutes later Officer Dandy returned as he and Prater were leaving the camera room and met them in the hall way again. Mr. Funderburg advises that Officer Prater requested a copy of the video. Officer Dandy advised that they need only still shots. Mr. Funderburg noted that the officers were not arguing about this issue, however they agreed that video would be made. Officer Prater then left the business leaving Officer Dandy and Mr. Funderburg, as Officer Dandy and Mr. Funderburg began walking toward the exit, the manager observed a laptop box against a bedroom suite on the floor. He immediately noticed the initials BR on top of the box and remembered he had seen this in the storage bathroom area. He requested that Officer Dandy fingerprint the item. Officer Dandy declined to fingerprint the item saying he could not fingerprint cardboard. After Officer Dandy left the business, Mr. Funderburg reviewed the video again and this time he noticed Officer Dandy leaving the storage bathroom carrying a laptop box. He stated that the officer observed attempted to carry the hid the item from the camera by placing it at his side and behind his back. Officer Dandy attempted to exit the west side of the business, however the door was locked. Officer Dandy was then observed walking in the foyer area, he stopped and peaked down the hallway where Officer Prater and Funderburg were located. On the video he was observed leaning beneath the camera near the show room area where it is believed he was laying the laptop. After observing this footage, Mr. Funderburg contacted the Supervisor; criminal and internal investigations were initiated. Officer Dandy was interviewed and stated while he was in the rest room he accidentally knocked the laptop on to the floor and was afraid he had broken the laptop. He stated he was taking the laptop back to Mr. Funderburg to inform him of the incident and got lost in the business. He stated he did not want to carry the laptop around until he found his way and placed on the floor. He

stated he met up with Officer Prater and Mr. Funderburg but did not tell him of possibly breaking the laptop. Because Officer Prater and Mr. Funderburg were in a conversation. Officer Dandy stated he did not tell Mr. Funderburg later because he knew he could not afford the laptop. Officer Dandy was immediately relieved of duty on September 24th 2009. Internal Affairs investigated him for allegations of theft of property, rules and regulations violations, untruthfulness, conduct unbecoming, officer misconduct. The investigation was completed by Internal Affairs, by Detective Tracey Campbell on October 5, 2009. Officer Dandy's chain of command sustained all allegations; he was afforded an administrative hearing to take place on November 25th, 2009. Upon arrival of his administrative hearing, Officer Dandy tendered his resignation to be effective November 27, 2009. Chief Stuart Thomas accepted the officer's resignation and requested that he be decertified.

Chairman Morris: Any questions by the Commissioners? Anything from Standards?

Mr. Marshall: No.

Chairman Morris: Do we have a motion?

Commissioner Nicholson: I make a motion that we set it for a decertification hearing.

Commissioner Golden: I second.

Chairman Morris: We have a motion and a second. All those in favor to set it for decertification say aye. (All commissioners vote aye.) Any oppose? Motion passes. You will be notified when the hearing will be. **ITEM IX** Former Officer Shawn House was employed by the Grant County Sheriff's Office. Officer House was involved in a Petition for Order of Protection by his girl friend. Sheriff Shepherd has advised that based on the enclosed documentation, House had a history of abuse prior to employment but was sincere in his promise that those instances were behind him. However that behavior has continued and resulted in further incidents of domestic abuse. Do we have someone here from the Grant County Sheriff's Office? Come forward sir. If you would state your name and your request.

Sheriff Shepherd: Robert Shepherd, Sheriff of Grant County.

Mr. Huey: Lance Huey, former Sheriff of Grant County.

Chairman Morris: Go ahead sir.

Sheriff Shepherd: I have actually been sheriff for only a few months. And during the short period of time that I have been there, after reviewing his packet and looking at his

previous history, it was my opinion that he had personal problems that needed to be dealt with. We had one oral reprimand that I had made during this short period of time. Sheriff Huey will tell you of a disciplinary that he had imposed during his time in the sheriff's office. Shawn again at the oral reprimand denied any contact with this individual that we had gotten complaints from. And a short time later we had a physical altercation that took place after a ball game. Where the individual and his former wife both came to the prosecutor for some relief and an order of protection. We brought Shawn in at that time and advised him it was our position that we had gone as far as we could as far as dealing with him and working with him, that he had a personal problem that needed to be dealt with. It was not something that we could fix for him and that in my personal opinion I did not think it was something that could be swept under the rug. I did not want to recommend him to some other agency somewhere else and create a problem for them. This was something he needed to deal with. And was certainly a problem that was going to deal more misery for us and for him, if we did not deal with it directly. So we actually terminated him at that time. And at this point we would like to see him decertified rather than passing the buck on to another agency that he might go to work for and continue with the problems he had in the past.

Chairman Morris: Sheriff Huey do you want to say anything?

Mr. Huey: I hired Shawn House after he had about eight years with the Pine Bluff Police Department. He lived in Grant County and worked in Pine Bluff. He came to me and said those problems were in the past. I followed up with Chief Howell, who detailed out the problems and I offered to give Shawn a chance to restore his career and his reputation in law enforcement. Shortly thereafter, after assuring me that he would have no more problems along those lines, he did have a problem. Obviously not being sheriff any more, I do not have privy to his personnel file but my personal file here shows we suspended him for an incident where he drove his vehicle out of the county to basically in order to have an altercation with someone who he felt like were talking about him and his girlfriend. He had an altercation with a young woman at a residence in Benton. We suspended him then and that is when I left to go to the Lottery and I felt like that was his third chance. He had had two incidences. I will not speak for Chief Howell; I will just speak from what he told me. Chief Howell told me when I spoke to him that he had two incidences at Pine Bluff, which were the basis for his termination or being allowed to resign. I am not sure which it was. I felt like this was a third and now being aware of what happened, I think he has had four chances along the same line. And I concur with Sheriff Shepherd. I would not like to see him go to another department and continue this; it is more than a pattern. It is apparently a standard for him.

Chairman Morris: Any questions by the commissioners?

Commissioner Reeves: I move that we set it for decertification.

Chairman Morris: Motion made.

Commissioner Nicholson: Second.

Chairman Morris: All those in favor to set it for a decertification hearing, say aye. Any oppose? One opposed, motion passed. You will be notified when it will be. Before you leave, let me make sure the Office House is not here. OK, thank you. **ITEM X** Chief Eric Frank of the Carlisle Police Department wishes to address the Commission in regard to a second psychological for Part Time II Officer Johnathan Lewellyn. If you would state your name and your request.

Chief Frank: I am Eric Frank, Chief of the Carlisle Police Department. To my right is officer Johnathan Lewellyn. He is the officer we are here about.

Chairman Morris: Go ahead.

Chief Frank: I initially hired Johnathan as a dispatcher and jailor for the police department and he expressed an interest in becoming a part time officer. And I sent him to Part Time Officers' School and as a part of the requirements sent him for a psychological and a physical. And thought everything was OK. He came back from the psychological and indicated that the examiner said she did not see anything wrong with psyche. But this took place in November of 2008. He went through Part Time Officers' School and graduated January 31, 0f '09. And on February 2nd of '09 I submitted a F-1 on him. And let him start riding and training with the full time officers. Later that month, while I was updating his personnel file, I realized that I didn't have a copy of the paper work in his file. So I started calling the counseling agency that had administered the psychological evaluation and asked them where the report was. They told me they would send me one. It took several follow up calls to the counselor before I finally received a copy of the report on June 9th of '09. And when I read the report, I was shocked to see that they were recommending him not be employed as a police officer. At that point I went ahead and dismissed him. And then notified Standards that he was no longer on our roster as a part time officer. I am requesting that he be allowed to have a second psychological. Number one, because there were a couple issues that I had with the initial psychological. And we did in fact talked to someone at Standards, who and I may have gotten the information wrong, I may have misunderstood, but I was under the impression that if he applied to another agency, and he took a psychological and passed there and if he was briefly employed by them, we could bring him back and go with that psychological. I subsequently learned after talking with Mr. Marshall, that we could not do that. Johnathan has in fact paid for a second psychological out of his own pocket. And he passed it. We are just requesting that he has the opportunity to be given a second psychological examination that we can use toward re-employing him as a part time officer.

Chairman Morris: Standards do you have anything?

Mr. Marshall: No.

Commissioner Nicholson: Didn't we do something like this not too long ago where we had a psychological request come up and I think we decided and correct me if I am wrong, that can happen. That they can take a second and pass it. It is the agency's judgment on whether or not they want to take a chance on whether—

Mr. Bolton: In order to take a second one they have to have approval from this board. I might just caution the board about accepting the one he personally paid for. Let him take another test. But let it be a test the department seeks from someone other than the one he paid for.

Chief Frank: I can tell you this. The Psychologist who administered the second evaluation did not furnish him with a copy of it. The only person who has a copy of it is the Chief Deputy at the Sheriff's Office. The only thing he was given was a piece of paper that said, he is recommended for employment. And this same psychologist is the one that is doing the evaluations for our department too. I was not aware that he was still in practice.

Mr. Bolton: The reason that I made that comment is it might be construed at some point in the future as a conflict of interest. If we accept the one that he paid for himself out of his own pocket.

Chief Frank: I understand that. Yes sir.

Commissioner Walraven: May I ask, who did the F-1 in your department?

Chief Frank: I did the F-1.

Commissioner Walraven: Mr. Marshall, doesn't it state on the back of the form that if they have already taken a psychological and he had passed and as part of the background information?

Mr. Marshall: Yes sir, that is one of the minimum standards and they are all supposed to be completed prior to employment.

Commissioner Walraven: And when the F-1 was being filled out, if he had noticed that the psychological was not in his file, then they would have had the opportunity to do a second psychological before they sent the F-1 in.

Mr. Marshall: Yes.

Commissioner Walraven: And Standards would have accepted this second psychological.

Mr. Marshall: If we had known about it we would have taken his name off the books as an active officer. Because he had not met the minimum standards. But as you say they had given him a psychological during that period of time and resubmitted an F-1, we would have accepted it, had he passed.

Commissioner Walraven: It is my understanding, at the October meeting on the psychological we had an issue of department heads quitting and not making it known to the employee and here we have the issue is we have a department head that did the F-1 and not follow up on the paper work. I am not sure where we are going to set the Commission on people going out and doing selective on psychologicals in the future. I am wondering how many will be coming in to the Commission appealing their first test.

Mr. Bolton: Traditionally we have not had a large number of people requesting a second. We have had a few over the years. And the Commission has routinely, when they did grant them, routinely sought psychologicals other than the one that the person himself had sought themselves. I can remember three off the top of my head in the last ten years. So it doesn't happen very often. But we don't have many requests for it either.

Chairman Morris: Any more discussion? Do I hear a motion?

Commissioner Reeves: I make a motion that we allow him to take a new psychological furnished by the department, the Carlisle Police Department.

Chairman Morris: Motion made, do I hear a second? No second, I assume it dies for a lack of a motion. Your request has been denied.

Chief Frank: Thank you.

Chairman Morris: **ITEM XI** Former Deputy Justin Robinson was employed by the Pulaski County Sheriff's Office until he was dismissed after an altercation with his partner Brett Barger, which resulted in Pulaski County deputies and North Little Rock officers responding. Robinson made oral statements and furnished a written statement that Barger pointed a gun at him. Robinson later denied that. Robinson was found guilty of Domestic Battery in the Third Degree on August 12, 2009. The Pulaski County Sheriff's Office recommends decertification. Persons convicted of Domestic Battery are unable to possess firearms. Do we have anyone here from the Pulaski County Sheriff's Department? Is Officer Justin Robinson here? Come forward sir. State your name and make your request.

Lt. Garzza: I am Lieutenant Joe Garzza with the Pulaski County Sheriff's Office.

Chairman Morris: Go ahead sir.

Lt. Garzza: On May 21, 2009 Deputy Robinson was involved in an altercation with his partner, Brett Barger. Deputy Robinson and Mr. Barger had been drinking intoxicating beverages that evening. They then argued about utility bills for their shared residence. A physical altercation ensued. Deputy Robinson sustained bite marks to his arms. Deputy Robinson stated that Mr. Barger destroyed his phones and the only way he could call for help was to use the radio in his Sheriff's Office vehicle. Deputy Robinson requested a "code three" response. He then activated the emergency button on the radio in his Sheriff's Office vehicle. Deputies with the Pulaski County Sheriff's Office and officers with the North Little Rock Police Department responded. The night of the incident, Deputy Robinson made oral statements and a written statement to the responding personnel that Mr. Barger had pointed a handgun at him, which resulted in a SWAT response from the North Little Rock Police Department. The residence was later searched by SWAT and Mr. Barger was not located. All law enforcement personnel left the scene. After approximately one hour, Deputy Robinson again activated the emergency button on the radio in his Sheriff's Office vehicle. Both agencies responded and Mr. Barger was located on scene. Mr. Barger was then arrested. Mr. Barger was found to have a laceration on his head. Mr. Barger gave a verbal and a written statement saying that Deputy Robinson had struck him on the head with handcuffs and that he had to bite Deputy Robinson to get away. The North Little Rock Police Department arrested both Deputy Justin Robinson and Mr. Barger for Domestic Battery in the Third Degree. During an internal investigation of this incident, Deputy Robinson stated that Mr. Barger did not have a handgun. He stated he did not recall telling the responding law enforcement personnel that Mr. Barger had a handgun. He said he did not think they were lying, but he did not remember it because he was intoxicated and it was a traumatic event. On August 12, 2009, Deputy Robinson appeared in North Little Rock District Court, case CR-09-5156, and was convicted of Domestic Battery in the Third Degree. On August 18, 2009, Deputy Robinson had an administrative hearing with Chief Deputy Mike Lowery, of the Pulaski County Sheriff's Office. Deputy Robinson was found to be in violation of department policies to include the following: Standard 01-Affirmatively Promoting a Positive Public Image, Standard 11 dishonesty and Untruthfulness and Standard 18 Observance of Criminal and Civil Laws. Deputy Robinson was then Terminated from employment with the Pulaski County Sheriff's Office.

Chairman Morris: Any questions of any of the Commissioners? Standards?

Mr. Marshall: The only thing, and Meredith maybe you can help with this, would we have to set this for a decertification hearing? Or because of the domestic battery and the fact that Brady Bill he cannot carry a weapon? Could he be decertified today?

Ms. Rebsamen: No, we need to, he has appealed this, there is a letter in your packet where he has appealed this matter to Circuit Court. Which means that the underlying conviction and the District Court basically goes away. So my suggestion would be that we move today, if the Commission so desires to go forward with a hearing for decertification today but postpone the hearing until we have a resolution from the Circuit Court regarding his actual conviction. There are two issues. The conviction regarding whether or not he can carry a firearm is one issue, upon which he can be decertified. However if the Sheriff's Department feels they want to move based on the underlying circumstances, a conviction from Circuit is not necessary. So the Commission can move in whatever way they want to today. My recommendation is that we postpone the decertification hearing until the outcome in Circuit.

Commissioner Nicholson: You are talking about setting a hearing but not a hearing date.

Ms. Rebsamen: Correct.

Commissioner Nicholson: I make a motion that we set this for a decertification hearing.

Commissioner Reeves: I second.

Chairman Morris: Motion made and seconded. All those in favor, say aye. Any one oppose? Motion carried. Sir your department will be notified; she will keep up with the disposition of the Circuit Court Case.

Ms. Rebsamen: I assume you will be informed of the decision of the Circuit Court Case or have you been keeping up with that as part of your investigation?

Lt. Garzza: We haven't been but we can.

Ms. Rebsamen: Can you do that? And just notify me and we can notify you as soon as there is a hearing date. The next meeting is in April. But if there is no resolution we may have to set it back.

Chairman Morris: Do you need contact information for her?

Lt. Garzza: Yes I do.

Chairman Morris: **ITEM XII** Former Officer David Harrell was employed by the Jefferson County Sheriff's Office until he was terminated. Harrell while off duty was contacted by a friend on the evening of 10-06-09. He was told that she and a friend had missed a driveway and their vehicle was in the ditch. They requested his help. He drove his marked unit to the site and with the assistance of a passerby pulled the vehicle from

the ditch. Another deputy, on duty, saw flashing lights of Harrell's patrol unit and stopped to assist. He thought he smelled alcohol on Harrell's breath. Also Harrell was working off-duty at a local nightclub and wearing his department uniform. He had not requested permission, which is a violation of JCSO Policy. JCSO conducted an internal investigation and concluded that Harrell knowingly neglected his duties and was deceptive and argumentative throughout the process. JCSO feels that his behavior demonstrates a lack of the necessary qualities to be a law enforcement officer. Do we have someone here from Jefferson County? Also is former Officer Harrell here? State your name sir and then proceed.

Sgt. Woods: Sergeant Lafayette Woods of the Jefferson County Sheriff's Office. I will start by giving the employment date of Deputy Harrell. He was employed by the Jefferson County Sheriff's Office on March 15, 2007 where he was assigned to the Braswell Detention Center as a Deputy Jailer. Between that time and June 1st of 2007, he expressed his interest with the Sheriff's Department as becoming a law enforcement officer in the patrol division. At that time he was hired on as full time. June 1, 2007 as a full time deputy. During the course of his employment, I took over the commands of the Internal Affairs Division in 2008. A little over a year now. The first complaint I received was in regard to a number of accidents, motor vehicle collisions that Deputy Harrell had been involved in. Which one of the main causes was that he had been warned previously on two occasions about his speed while driving his unit. That ultimately led to him being suspended for a number of days. After being counseled a number of times about that, he was involved in another accident. Which was the third accident. The third accident involved him in violation as it relates to the equipment policy, blue lights, and sirens running an emergency code to an incident for an enforcement action. While in route to the call he received an accident with injury. He initiated the blue light and siren started in route. During that time, his car is equipped with the video camera system that automatically activates when he hits the lights. The Policy states that at no time are you to deactivate the camera system while any emergency code. I learned through my investigation of that complaint that he had in fact deactivated his camera, which ultimately would have contributed to, had he not, would have us found out he was at fault. Based on the camera being on. Once the camera is turned on it activates and records 60 seconds prior to it being activated. We were not able to retrieve any footage other than showing him in route. And approximately two or three miles prior to the collision. I interviewed both parties. I interviewed the individual that he collided with. During the interview he said he did see the lights being activated. But he did not hear the siren. Policy states that both siren and emergency lights should be activated at that time. When I interview Deputy Harrell, he was very evasive and argumentative. At that time I deemed him uncooperative during the Internal Affairs Investigation. He failed to take responsibility for his actions. He was subsequently transferred to the Warrants Division. And the reason so, based on talking to the administration of Jefferson County is to basically take him out of a position where wouldn't be in any enforcement actions. The

chances involved in a collision is lesser with him being in a position where he is transporting versus him going to a hot call or something of that nature. The administration felt it was necessary to give him a second chance and allow him to kind of rebuild his career in a different department. The second complaint came to me March 8, 2009. After the complaint the department received, the Sheriff of Jefferson County advised me he had been notified by one of the Division Commanders in Patrol that he had learned from Cpl. Harper who is also in the Patrol Division and also a Supervisor for Deputy Harrell, that Deputy Harrell had possibly been intoxicated, as he had smelled intoxicants on his breath on March 6, 2009. At the time I got the written orders to open a formal internal affairs investigation on March 10th. However I had talked to Cpl. Harper and Sheriff Robinson about the incident. I proceeded with the investigation of the incident. My first attempt was to contact Corporal Harper and also give the written information to him based on the incident that had occurred. In the report, he stated that while patrolling with Reserve Deputy Guy Oaks, they were traveling down Middle Warren Road and they located blue lights illuminating from a vehicle. As he got closer, he noticed that it was a marked patrol unit from his agency. He attempted to render assistance by approaching the vehicle. He noticed it was a young lady behind the driver's seat in the patrol unit. He also noticed it was Deputy Harrell's vehicle. He asked the young lady where Deputy Harrell was located and she directed him to a car that was beyond the patrol unit. At that time Corporal Harper approached the vehicle and noticed that Deputy Harrell and another white male were pulling the vehicle out of the ditch. He said he spoke with Deputy Harrell and he smelled intoxicants on his breath. It was not a lengthy discussion about it. Based on talking to him he never asked him about it. But he related the information to Asst. Division Commander Terry Peckham. When I spoke with Deputy Harrell about the investigation, I advised him that I had tried to contact his friend who was behind the driver's seat of the patrol unit. I made several unsuccessful attempts to contact her. She refused to return my phone calls. After I talked to Deputy Harrell I received a phone call from his female companion, at that time I really did not feel it necessary to interview her based on her having not returning my phone calls prior to the investigation and talking to Deputy Harrell. Basically I really feel after the investigation that and interviewing Deputy Harrell that he had spoken to his female companion and kind of briefed her on what we had discussed. He had tainted the information that I needed to get from her. When I asked him about his knowledge of her reason for being in the area, he stated he did not know why she was there. He told me she lived off of Cherry Street, which is on the south side of Pine Bluff, which is quite a way from where the accident occurred between her and the ditch. However coincidentally Deputy Harrell stays feet from where the accident took place. I learned another Deputy Michael Birmingham received a phone call that night, from Deputy Harrell asking who was on shift, who was working. Deputy Birmingham asked him why and he said he was trying to keep his friends from getting a DWI because they were intoxicated and had been drinking and ran into a ditch. When I interviewed Deputy Harrell about that he said that was not true and he denied contacting him and asking that. He said he was asking that

simply because he was wondering who was on shift so he could gain some assistance. He was untruthful about that. There was a written statement about that written by the deputy stating just what I have said. In further trying to assist him and give him an opportunity to show we were trying to work with him, during the interview prior to concluding, I suggested to him that the Administration suggested a Polygraph Examination. I told him I would contact him when it was scheduled. The following day that I interviewed Deputy Harrell I gave him a date that was well over 48 hours notice. He called me the morning of the interview, maybe thirty or forty five minutes prior to and said he could not make it. I told him that was fine and I contacted Administration. They advised me to advise Deputy Harrell in short of an excuse from a doctor or a legitimate excuse other than that, he would have to show just cause why he could not make it and to reschedule it. I had to reschedule it and when I got the date I tried to communicate with Deputy Harrell by phone several times and he refused to return my phone calls. Again the morning of the next rescheduling of the polygraph, the polygraph examiner called me and said that Deputy Harrell was present and said he was not going to be able to make it because his female companion was going into labor. I contacted him and advised him that I advised him as I did the first time he would have to provide some kind of excuse of why he did not make it. Some time after that I received a phone call from Cpl. Andy Hoots who stated that he overheard a conversation between his daughter and David about the second scheduling of the polygraph. And he said his daughter advised him that Deputy Harrell advised her that the reason he did not make it was he just did not feel like going. It was not the fact that his female companion was in labor. Based on the totality of the complaints and numerous warnings, verbal and written, Deputy Harrell exhibited fully disregard for the policies of Jefferson County. Has not lived by the sworn oath that he would serve and uphold the Constitution of Arkansas and live up to the policies and procedures set forth by Jefferson County. We felt the need to ask for decertification based on the second complaint. Clearly he placed the agency in a position where it could have been detrimental to the agency in a lot of ways. Had the young lady had left and gotten into a collision with someone else knowing that, while he was in uniform, he was using his unit as a diversion tool to render assistance to her. That placed the agency in a liable position where the agency could have been liable for damages. Or going on and killing someone. Our agency does not have draft policy, where we go out and draft individuals. We gain employees simply individuals expressing interest in wanting to work for the Sheriff's Department.

Chairman Morris: I don't mean to cut you off but we don't need to the full hearing today. I think the Sheriff wants to say something. Sheriff, state your name.

Sheriff Robinson: Sheriff Gerald Robinson, Jefferson County. Based on the totality of all the things that has occurred, I will sit here before the board and tell you that I had very high hopes for this individual. To say the least, I can tell you whole heartily I like the individual. If you looked at him prior to on paper, would be the model individual as far

his military background and all those things. But from the day of employment to the time of his dismissal, was a downward spiral that many of us see in some individuals who could be young and bright and doing things. But this was a downward spiral and became a pattern. And what was not said is that three accidents occurred in less than thirty days. Not only was he a detriment to the community but to his own life. I feel that was disregarded on his part. And this is one of the hardest things that I have had to do especially when you really like someone. But if we don't, I am afraid when you are in this profession, it will either get him hurt or get someone else hurt. And I do not want to have that on my shoulders.

Chairman Morris: Thank you sir. Any discussion by the Commissioners? Is there a motion?

Commissioner Russell: I make a motion that we set this for a decertification hearing.

Commissioner Nicholson: I second.

Chairman Morris: Motion made and seconded. All those in favor, say aye. (All commissioners vote aye.) Any oppose? Motion passes. You will be notified when the date and time will be. **ITEM XIII** During the 87th General Assembly of 2009, laws were passed designating Arkansas Tobacco Control as a law enforcement agency and state that agents shall:(1) Be considered a law enforcement officer by the Arkansas Commission on Law Enforcement Standards and Training under § 112-9-101 et seq.; (2) Have a statewide law enforcement authority. Given the extensive law enforcement experience that some of the agents have, the Tobacco Control Board is asking for a waiver to the seven-year rule for three agents. Mr. J. R. if you would, state your name and tell us your request.

Mr. Thomas: Thank you Mr. Chairman. I am J. R. Thomas, Director of the Tobacco Control. Mr. Director and Board members we are proud to be here today. We have three officers as the Chairman said that fall outside that seven-year rule and we ask for a waiver today. You should have in your packets, if not, we will make copies, of the resumes. We would just say that these officers have a long career in law enforcement. They have been out of law enforcement for specific different times. Then they came to work for us under specialized law enforcement authority. They have been trained in law enforcement since they have been at Tobacco Control. We do carry firearms, we have been firearms trained and we qualify, three or four times a year. We would ask that because of their resumes and their time in law enforcement, you would waive it today. This is Deputy Director Greg Sled who is in charge of enforcement side and would ask if you don't mind Mr. Chairman, for him to say a few words.

Mr. Sled: Thank you Commission, I appreciate you taking time to hear us today. I would just like to add that some of you may not be familiar with what the work we do on a regular basis. But it is much like the Alcohol Beverage Control does. Their agents are fully certified, and so the law recently changed to give us that same ability. We do a lot of work with the FBI and the Joint Terrorist Task Force, both in Little Rock and in Memphis. The three agents that we are asking waivers on today are real assets within our department. They are leaders within our department and I believe their work experience speaks for itself. They have been outside longer than the seven years allowed, if that time they have been with us is counted, I don't think we would have the issue that we have today. But we would just ask that you take all that into consideration and grant the waiver to the seven year rule.

Commissioner Walraven: I make a motion that we waive the seven-year rule.

Commissioner Russell: I second.

Chairman Morris: We have a motion and a second, all those in favor say aye. (All commissioners vote aye.) Any oppose? Motion passed.

Mr. Thomas: Thank you Commission. We appreciate it and I was glad to see you again and glad to be in Camden.

Chairman Morris: **ITEM XIV** At the October 2009 meeting the Commission voted to go forward with the decertification of Jonathan McClain. Mr. McClain was notified by certified mail and requested a hearing. Later Mr. McClain's attorney notified Attorney Rebsamen that he no longer wanted to contest his decertification. The Commission is now in need of a final decertification vote on Jonathan McClain.

Commissioner Reeves: So move.

Commissioner Russell: I second.

Chairman Morris: Motion made and seconded. All those in favor, (All commissioners vote aye.) Any opposed? Motion passed. **ITEM XV** Coby J. Heard was employed by the Dermott Police Department from May 2009 until July 2009. Mr. Heard feels there were some discrepancies in his background check after his F-1 was sent to the Standards Office. Mr. Heard wishes to address the Commission in this regard. Is Mr. Heard here?

Mr. Bolton: Mr. Chairman, he was notified of the meeting today and was sent a certified letter and he refused it. He called today and asked for it to be postponed until April.

Chairman Morris: What is the will of the Commission?

Commissioner Nicholson: I don't want to set it for April. I think he should make a second request.

Chairman Morris: Brian what is he saying?

Mr. Marshall: I have no idea, but I think it is a moot point. He has been convicted of Domestic Battery and under the Brady Bill he cannot carry a weapon.

Commissioner Nicholson: I really don't understand what he is wanting to do. He can just come in here and talk? Basically that is what he is wanting to do and he is not here. So I guess if he wants to come in here and talk, he can ask again. So we don't need to do anything do we?

Chairman Morris: I believe that concludes our business except for the Decertification Hearings. We will break for lunch and come back at 11:30. We are adjourned. 11:02 A.M.