

Montana Public Safety Officer Standards and Training Council
2260 Sierra Road E, Helena, MT

Meeting Agenda - June 27, 2012
Special Meeting
Conference Call 0830 – 0930

Note: This is a special meeting of the Council in order to meet certain deadlines required for Legislative issues and to approve/deny certificate requests, extension requests and equivalency requests.

Conference Call Information

Dial-in number: (866) 576-7975

Access code: 576754

Wednesday, June 27, 2012 Conference Call

I. 8:30 Call Meeting to Order, roll call, identify guests

Introductions:

Council Members Present: *Winnie Ore-Chair, Steve Barry, Tony Harbaugh, John Schaffer, Dennis McCave, Jim Smith, Ray Murray, Lewis Matthews, *Alex Betz (arrived 9:05am), *Georgette Boggio (arrived 8:50am)

Staff Members Present: *Wayne Ternes-Executive Director, *Clay Coker, *Sarah Hart-Agency Legal Services, Tana Meuer

Council Members Absent: Mike Anderson, Bob McCarthy, Harold Hanser

* Indicates Council members and staff present on MLEA campus.

Guests: Laurel Bolton-L&C County, Kevin Olson-MLEA, Jim Smith-MSPOA, Perry Johnson-Ravalli County, and unidentified others

II. Approval of Minutes for the April 12, 2012 Regular POST Meeting & May 30, 2012 Legislative Issues Conference Call Meeting

Steve Barry motioned to approve the April 12, 2012 minutes with the amended changes

Jim Smith seconded

Roll call vote: Steve Barry, Tony Harbaugh, John Schaffer, Dennis McCave, Jim Smith, Ray Murray, Lewis Matthews,

Opposed: none

Motion Carried

**Jim Smith motioned to approve the May 30, 2012 minutes with the amended change
John Schaffer seconded**

**Roll Call Vote: Steve Barry, Tony Harbaugh, John Schaffer, Dennis McCave, Jim
Smith, Ray Murray, Lewis Matthews, Winnie Ore**

Opposed: none

Motion carried

III. 1. Approval/Denial of Certification Requests

**Steve Barry motioned to approve the certification
Dennis McCave seconded**

**Roll call vote: Steve Barry, Tony Harbaugh, John Schaffer, Dennis
McCave, Jim Smith, Ray Murray, Lewis Matthews, Winnie ore**

Opposed: none

Motion carried

2. Approval/Denial of Extension Requests

~ Aaron C. Frank – Saint Ignatius Police Department

**Ray Murray motioned to approve the extension requests
Tony Harbaugh seconded**

**Roll call vote: Steve Barry, Tony Harbaugh, John Schaffer, Dennis
McCave, Jim Smith, Ray Murray, Lewis Matthews, Winnie Ore**

Opposed: none

Motion carried

3. Approval/Denial of Equivalency Requests

~ Richard Albert Sine – Flathead County Sherriff's Office
~ Paul Szczepaniak – Montana Law Enforcement Academy
~ Aaron C. Frank – Saint Ignatius Police Department
~ Christopher T. Rodgers – Mineral County Sheriff's Office
~ Derrek J. Shepherd – MT Department of Corrections

Discussion held.

Steve Barry motioned to approve the first 5 Equivalency requests

Lewis Matthews seconded

8:50am, Georgette Boggio abstain as she had arrived at the Council meeting during this discussion.

Roll call vote: Steve Barry, Tony Harbaugh, John Schaffer, Dennis McCave, Jim Smith, Ray Murray, Lewis Matthews, Winnie Ore

Opposed: none

Motion carried

~ Michael J. Freitas - East Helena Police Department – Attended basic training in California and meets or exceeds the minimum training; however was not employed for 1 year in that state. Chief Dale Aschim is requesting EQ with a waiver of the 1 year employment requirement.

Discussion held.

**Steve Barry moved to approve this request
Jim smith seconded**

Roll call vote: Steve Barry, Tony Harbaugh, John Schaffer, Dennis McCave, Georgette Boggio, Jim Smith, Ray Murray, Lewis Matthews, Winnie ore

Opposed: none

9:05am, Alex Betz abstained from the vote, as he just arrived at the Council meeting during this discussion.

Motion carried

~ Christopher Cain - Fairview Police Department- Cain completed his training and successfully passed his licensing testing in the state of Minnesota, however has not worked in Minnesota. Chief Quandt is requesting waiver for the 1 year work requirement and that the Council approve Mr. Cain for EQ in MT.

Discussion held.

Tony Harbaugh motioned to waive the 1 year requirement and approve this request.

Ray Murray seconded

Roll call vote: Steve Barry, Tony Harbaugh, John Schaffer, Dennis McCave, Georgette Boggio, Alex Betz, Jim Smith, Ray Murray, Lewis Matthews, Winnie ore

Opposed: none

Motion carried

4. **Legal Counsel Update - Sarah Hart**

a. Council approval to seek District Court Orders on CJI

Sarah stated that POST does not yet have the authority to look at any criminal justice information. She feels we need to seek a protective order from the district court to cover the confidential criminal justice information that POST has, dating back 20 years in our files. This would be until we can clear it, secure it, then destroy it.

Sarah is asking the council for approval to go to District Court to get those motioned for contested case hearings that we have pending; and a protective order for those dating back.

Steve Barry asked if requesting this order would place the council in any jeopardy or cause any problems.

Sarah stated that going prospectively by requesting the court order for all previous cases would protect us against any issues and shouldn't expose POST to any liability.

Sarah has asked the POST staff to not accept any new criminal justice information until she can get those orders.

Georgette Hogan-Boggio motioned to allow Sarah Hart to seek a protective order with the Council requesting time to destroy those documents and seek access to the current case documents.

Steve Barry seconded

Discussion held.

Roll call vote: Steve Barry, Tony Harbaugh, John Schaffer, Dennis McCave, Georgette Boggio, Alex Betz, Jim Smith, Ray Murray, Lewis Matthews, Winnie Ore

Opposed: none

Motion Carried

b. Council approval to seek an AG opinion on CJI

Sarah stated, as an alternative approach, would be to seek an Attorney General's opinion for criminal justice information; however she does not feel this would be our best bet for the council.

Georgette stated she doesn't think this makes sense unless we have an active case in controversy where there is a specific document that we have a sense exists and that we want.. without specifics she doesn't know that the generality would serve us that well.

Tony asked Sarah why she feels seeking an AG opinion would not be in the council's favor.

Sarah stated since she is an Assistant Attorney General she gets the sense that they would not be inclined to take on a political issue such as this.

Discussion held.

Steve Barry motioned to deny the request to seek an AG's opinion for Council access to CJI.

Jim smith seconded

Roll call vote: Steve Barry, Tony Harbaugh, John Schaffer, Georgette Boggio, Alex Betz, Jim Smith, Ray Murray, Lewis Matthew, Winnie Ore

Opposed: Dennis McCave

Motion carried

Sarah also stated she is working on a memo about "the right to know" for public entities and looking at case law that discusses police officers misconduct being a matter of public interest.. she doesn't believe that the names of the officers that are in contested case hearings are private; they are public information. The documents (complaints) that we create are public documents and the only exception to that is if there is A: confidential criminal justice information which cannot be revealed to anybody, B: either the subject of a contested case hearing or some other person can request that public information can be kept private. So we would have to ask the contested case hearing examiner for permission to keep those private and it's *their* determination. This applies for both testimony and for documents.

Sarah has made a flow chart to help in identifying what information would fall under this. Once this is identified, we will go to the hearings examiner and ask that it be sealed, and/or be discussed with the opposing counsel or opposing party if they want it kept under seal as well.

Sarah is looking for response or permission from the Council whether this is the correct way to proceed.

Discussion held.

Steve Barry motioned to accept the Counsel's suggestion regarding notification of privacy interest to parties who may be a part to a complaint.

Georgette asked for an amendment to the motion by asking if we can state: 'suggesting Counsel's 'advice'' vs. 'suggestion'

Ray Murray seconded.

Mr. Johnson asked if the privacy interest notice would also go to the agency that employs that officer.

Sarah state she believes it would and it would be best to notify everyone you can.

Roll call vote: Steve Barry, Tony Harbaugh, John Schaffer, Dennis McCave, Georgette Boggio, Alex Betz, Jim Smith, Ray Murray, Lewis Matthews, Winnie ore

Motion carried

c. Final approval on Legislative Requests

Sarah stated we were invited to the Law and Justice Interim Committee on Friday when they should have appeared in the morning (vs. afternoon) when the other agencies presented their bill drafts, and because of her short notice and not having enough material together, feels we may have missed the opportunity of having the chance to fast track some legislation. The morning meeting provided the opportunity to get preapproval for potential legislation with the possibility to get on the top of the priority list for the Law & Justice Interim Committee and also for legislative services.

Sarah said we can still meet the deadline which is September 15th to submit bill draft.

Sarah is trying to determine from the Council whether they want to take them up on this opportunity to allow us to submit bill draft on these 2 issues on this fast track if we want to. Sarah thinks POST needs criminal justice agency status and also some very limited ability to investigate.

Sarah wanted to assure everyone that the reason we need this is *just* for looking into the certification, decertification, suspension piece and no other reason. The less we have the better.

Dennis would like to decline the fast track option and feels it would be detrimental.

Steve wanted to clarify with Dennis that he was interested in moving forward with and AG's opinion but now talking about wanting to study it more?

Dennis stated that he understood that the AG's opinion would provide us with a response as to where we are at right now with our potential access. He feels if we went to the AG, they would at least come back to let us know what we can or cannot do and it would give us a feel of where we're at right now; more of an evaluated response.

Sarah clarified that this is what she had hoped for what the AG's opinion was going to be when we had our last meeting and would provide clarity. Since this meeting, she has had indications that the AG doesn't have to respond to our request, and feels they would opt not to as this point... therefore the change in her advice.

Steve isn't sure what value this fast tract gives us in terms of any potential introduction to legislation. He doesn't feel it will give us any additional support when it reaches the session and feels it might just do the opposite. Steve stated we may be better suited to go into the session with a well-supported piece of legislation.

Sarah commented that the Law and Justice Interim Committee meets on September 6th so we would need to have some bill draft legislation ready for approval at the August 15th meeting.

Georgette stated she has the County Attorney's meeting coming up and asked if we can get some authority to share potentially the language we are thinking about, or the direction we are going to get input from different constituents we are representing.

Sarah state this would be up to the council but in terms of the memo she suggested referring to the council about whether we want pieces of the memo left out. Sarah didn't think there is anything that would expose us or waive attorney client privilege on this particular issue.

Sarah also suggested separating out the statutory pieces she talked about if we are comfortable with that being circulated.

Winnie stated this would be her preference that when we have a confidential memorandum, she would like the council members to always keep that confidential and have a different memorandum that council would feel comfortable disseminating and talking about.

Sarah said as long as the council is ok with this language being disseminated as a 'potential'.

Steve believes that the interest in terms of sharing some of the potential legislation in terms of the specific statutory modifications is important for Georgette to share some of this.

Steve also asked if we need to make a decision on this so Georgette can move it forward.

Steve Barry motioned to ask Sarah to produce a document that is available to any of the council members to disseminate for discussion.

Alex Betz seconded

Sarah asked for clarification that this was just for the 1st piece for the criminal justice agency status.

Steve Barry stated this was his intent.

Roll Call Vote: Steve Barry, Tony Harbaugh, John Schaffer, Dennis McCave, Georgette Boggio, Alex Betz, Jim Smith, Ray Murray, Lewis Matthew, Winnie Ore

Motion Carried.

Sarah stated the 2nd piece offered by the Law and Justice Interim Committee was 1.) basic and limited investigative authority for POST, 2.) give POST some ability to mandate production; both of documents and of testimony prior to MAPA in an investigation. 3.) Concerns that POST may interfere in investigations but we know we take second to a criminal investigation.

Steve commented on part 2 stating he feels this is vague and subjective and the only thing that appears we could tie this to is our administrative rules that outline some of the examples of misconduct.

Sarah said this is an excellent idea.

Discussion held.

Sarah asked the council if they would like her to release this information like we did for the criminal justice agency piece so folks can discuss it.

Sarah also asked if the council would like her to go back to the Law and Justice Interim Committee to say 'thanks', but 'not thanks' and we would get this to them in due course.

Winnie stated she will be seeking a motion that Sarah is again going to extrapolate this piece out of her confidential memo that we can distribute.

**Georgette moved to extrapolate this language into a memo and ask this memo includes a very clear indication that this is preliminary and that we are seeking input; and additionally spell out the goals that we are trying to meet with them.
Dennis McCave seconded**

Ray Murray asked to amend the motion by asking that the memo also say that the council is reminded that if any legislation is to go forward, that it must be approve at the August meeting.

Georgette commented that we could add that we would review language at the August meeting.

Georgette and Dennis accepted the amendment.

Roll Call Vote: Steve Barry, Tony Harbaugh, John Schaffer, Dennis McCave, Georgette Boggio, Alex Betz, Jim Smith, Ray Murray, Lewis Matthew, Winnie Ore

Motion carried.

Winnie stated that she would prefer that Sarah talk to Shalkley.
Winnie will go, just not without legal counsel present.

Sarah also wanted to clear up the 2nd part of the investigative authority piece about the mandated production of testimony and document and whether the council wants to pursue that or not.

Georgette commented she didn't know if we want to pursue that or not and just set it as an agenda item to discuss.

d. Other Issues

August 14, 2012 legal training with Sarah Hart will be held starting at 1:00 pm. Location TBA. This will be a closed meeting.

August 15, 2012 is scheduled to hold a meeting to discuss issues coming forth by MPPA, MACOP and MSPOA. Location TBA.

August 16, 2012 will be the regularly scheduled POST council face to face meeting. Location TBA.

IV. Public Comments

No public comment

V. 9:30 Adjourn

**Dennis McCave motioned to adjourn at 10:55am
Ray Murray seconded
Motion carried**