

**STAFF SAFETY ADVISORY COMMITTEE (SSAC)
SUBCOMMITTEE OF THE COMMITTEE ON PROBATION (COP)**

MINUTES

June 22, 2009

10:00 A.M. - 2:00 P.M.

**ARIZONA SUPREME COURT
ADMINISTRATIVE OFFICE OF THE COURTS (AOC)
541 E. VAN BUREN, SUITE B-4
SILVER & TURQUOISE CONFERENCE ROOMS**

MEMBERS PRESENT:

Livingston Sutro, Chair
David F. Sanders, Vice Chair, via teleconference
Leslie Anderson
Stephen Arend
Carol L. Boone
Patrice Buzan
Mike Faust
Brenda Flynn
Martin Mendez for Steve Hardy
Henry Meraz

Jim Meyer
Steve Nesky
Lance Nickell
George Owens
Alan Palomino
John Ryder
Jon Thompson
Mary Walensa
Art Waterman

MEMBERS ABSENT:

Charles Counts
Saul Schoon
Tim Schouten

Mark Smalley
Dan Tomlinson

GUESTS:

Chad Campbell
Chad Kewish
Kathy Waters

Brett Watson
David Withey

STAFF:

Kevin Jeffries

Lorraine Lerma

CALL TO ORDER

Livingston Sutro called the meeting to order at 10:04 a.m., welcomed the committee members and guests, and asked everyone to introduce themselves. Livingston reported that COP did not approve the Taser pilot program for juvenile probation in Mohave and Yuma Counties.

I. APPROVAL OF THE APRIL 27, 2009, MINUTES

MOTION: Carol Boone made a motion to approve the April 27, 2009, meeting minutes. Jon Thompson seconded the motion. Motion passed unanimously. SSAC 09-05.

II. DT ACADEMY

Livingston Sutro stated that for ethical reasons he would not participate in the discussions, but will continue to chair the meeting. He turned the meeting over to Kathy Waters and David Withey.

Kathy Waters gave a brief background surrounding this issue for discussion:

- Newly hired Probation Officer (Individual) attended the Certification Academy October 2007 and the Officer Safety Defensive Tactics (DT) Training March 2008.
- Individual did not request any accommodations at the beginning of training.
- Individual failed the DT practical exam at the end of the training.
- Individual's probation department notified and advised by the Code they had 60 days to complete and remediate, if possible, and to retake the exam.
- April 8, 2008, Individual requested a medical accommodation.
- April 22, 2008 AOC staff (Adult Probation Services, Education Services, and Legal Services) met to discuss the medical accommodation.
- May 2008 AOC consulted with the Attorney General's (AG) office.
- July 21, 2008, per code, letters sent to probation department requesting Individual's physician address the accommodations request.
- August 7, 2008, letter received from the physician, but did not provide the necessary information to be able to determine what accommodation was necessary.
- According to the Code of Judicial Administration, AOC met and asked the AG's office and ADOA to send the Individual to a physician.
- Late October 2008, ADOA first contacted Barrows Neurological Hospital for an independent medical evaluation. AOC Legal Services followed up.
- December 2008, an appointment was scheduled for January 2009 and later changed to accommodate the Individual, after submission of a packet to Dr. Ladha.
- May 4, 2009, received letter from the doctor outlining the limitations and of those limitations, the Individual can do all of the DT moves with the exception of the kicks.

Kathy asked the committee to look at the requirements of the DT program and the standards that are in place; what accommodations have been made in the past for individuals to pass the DT curriculum; and is there an acceptable accommodation that can be made in this case or an exception. Kathy also mentioned that Kevin Jeffries and some of the lead instructors have developed somewhat of a plan.

David Withey mentioned the Individual has raised a claim under the Americans with Disabilities Act. David questioned whether the particular requirements that are at issue are an essential function of the job of a probation officer. If yes, then they can be required regardless of whether someone has a disability and the law will recognize that, but must be able to prove it. Given those limitations should the Individual perform the job of a probation officer or not.

Kevin Jeffries spoke as to the specific skills the Individual cannot perform, which are essential to the job:

- Bicycle kick
- Self-defense Stance
- Lower body Personal Weapons

The Lead Trainers, Defensive Tactics Instructors, and Kevin have come up with alternatives for the Individual. They will purchase a 31” expandable baton (10” longer than currently issued) and OC Spray (Cone Spray) with twice the volume.

David Withey mentioned the implication of treating these alternatives as accommodations would be that anytime anyone else comes along with the same problem would have to be offered the same accommodations. David questioned whether the skills that cannot be performed are an essential function and explained that it is discriminatory to not hire someone if it is not an essential function, so it is necessary to define the physical requirements for the job of a probation officer. In order to meet the legal requirements SSAC must determine whether the Individual should be recognized as an exception because the requirements were not implemented appropriately or are the requirements not really necessary to do the job. (Need to be able to prove the skills are an essential function of this job and if a probation officer cannot do this, then they are at risk of harming themselves. SSAC must articulate why these safety requirements give officers additional safety that they need to do their job both to protect themselves and to protect the public.)

Kevin Jeffries provided a handout (handout attached) on Defensive Tactics Academy Practical Test / Critical Elements of Defensive Tactics Techniques that lists 13 techniques to be performed for an instructor to evaluate students on a Pass/Fail basis.

The question for SSAC to discuss is what are the physical requirements to be a probation officer in the state of Arizona?

Federal law states criteria for determining these physical requirements to do DT are essential, you look at the following:

- Employer’s judgment
- Written job descriptions
- Amount of time spent on the job performing the function
- The consequences of not requiring the incumbent to perform the function
- Terms of a collective bargaining agreement
- The work experience of past incumbents in the job
- The current work experience of incumbents in similar jobs

David Withey told the committee of Kevin's suggestion of the use of pepper spray and the baton that they need to recognize that and for everybody. The task for the committee is to start articulating what are the requirements and to get them in policies, job descriptions, and code.

Kevin said yes they can make an exception for this Individual, leave the standards the same as they are, tighten up the hiring practices, and address the aging work force in a manner similar to AZPOST.

MOTION: Carol Boone made a motion to exempt this Individual from the requirements as it relates to the kicking that is required. Jon Thompson seconded the motion.

After a clarification was made, Carol amended her motion.

MOTION: Carol Boone made a motion to exempt this Individual from the requirements as it relates to the kicking, Self-defense Stance, and Prone that are required. Jon Thompson seconded the motion. The motion did not pass with 3 in favor, 12 opposed, and 3 abstentions. SSAC 09-06.

MOTION: Henry Meraz made a motion that at this time, SSAC is reluctant to make any changes to the program in the way that it exists or to suggest any changes that need to be made to the code itself, but that SSAC does understand the predicament as it pertains to a pre-employment issue and recommends to the Chief Justice that she or her staff intervene and make the appropriate decision. There was no second to the motion.

Carol Boone made a recommendation for the chair of SSAC to discuss the officer safety program with the chair of COP and she also recommends that it be placed on the next COP agenda for discussion and direction.

III. NON AGENDA ITEMS

There were none.

IV. ADJOURNMENT

MOTION: Jon Thompson made a motion to adjourn. Stephen Arend seconded the motion. Motion passed unanimously. SSAC 09-07.

Livingston thanked everyone for coming and to drive safely.

The meeting adjourned at 12:30 P.M.