



**MERIT SYSTEM COMMISSION
LAW ENFORCEMENT MERIT SYSTEM COUNCIL**

MINUTES
Open Meeting
Monday, July 22, 2019

Members Present:
John Fink, Chair
David P. Freund
Paul Rubin

Also Present Were:

Barry Corey	Counsel for the Commission/Council
Aurora Hernandez	Recording Secretary, Human Resources
Jennifer Blum	Deputy County Attorney for the Respondent
Lenora Anderson	Paralegal, Pima County Attorney's Office
Nathan Dunn	Paralegal, Pima County Attorney's Office
Lt. James Snead	Department Representative, Pima County Sheriff's
Sgt. Stephen Shomonta	Pima County Sheriff's Department
Javier Alatorre	Representative/Counsel for the Appellant
Michael Flaminio	Appellant

The Open Meeting of the Pima County Merit System Commission was called to order by John Fink, Chair, at 9:05 a.m. All persons in attendance were asked to state their names for the record.

Item C. Approval of Minutes

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| 1. Open Meeting Minutes April 25, 2019 | 2. Open Meeting Minutes May 14, 2019 |
| 3. Open Meeting Minutes June 11, 2019 | 4. Open Meeting Minutes June 24, 2019 |
| 5. Open Meeting Minutes June 25, 2019 | 6. Open Meeting Minutes June 27, 2019 |
| 7. Executive Session Minutes April 25, 2019 | 8. Executive Session Minutes June 25, 2019 |
| 9. Executive Session Minutes June 27, 2019 | |

ACTION: David Freund made a motion to accept the Open Meeting minutes listed above as Item C. Paul Rubin seconded the motion. Motion passed unanimously.

ACTION: David Freund made a motion to accept the Executive Session minutes listed above as Item C. Paul Rubin seconded the motion. Motion passed unanimously.

Item D. Other Business

Discussion and Action: NONE

Item F. Appeal Hearing

Discussion and Action:

Michael Flaminio v Pima County Sheriff's Department
Suspension

Mr. Fink, Chair, read the opening statement into the record and asked if either party wished to invoke the Rule of Privilege. The Rule of Privilege which excludes witnesses from the Hearing Room was invoked by Javier Alatorre, Attorney for the Appellant.

Witnesses, Sgt. Shomonta Pima County Sheriff's Department, Lt. Smead, Pima County Sheriff's Department; and Michael Flaminio, Appellant, were sworn in by Barry Corey, Counsel to the Commission.

Mr. Fink asked all parties if they had any preliminary matters they wished to discuss, there were none.

Respondent's Exhibits that were stipulated to, for admission into the record for this hearing are listed below:

Exhibits # 7: Notice of Suspension With-out Pay dated April 25, 2019, Bates Nos. 005-007

Exhibit #10: Memo Appellant to Corr. Lt. Adkins dated February 9, 2019, Bates No. 008

No Appellant Exhibits were admitted at this time.

Jennifer Blum, Deputy County Attorney, made an opening statement. Javier Alatorre, Attorney for the Appellant, made an opening statement. Discussion ensued.

Respondent's First Witness: Sgt. Stephen Shomonta, Pima County Sheriff's Department, previously sworn in by Barry Corey, Counsel to the Commission, provided testimony in this hearing.

Ms. Blum moved to admit **Respondent's Exhibit #5:** discussion ensued.

Mr. Fink ruled to admit **Respondent's Exhibit #5.**

Respondent's Exhibit # 5: Pima County Sheriff's Department Corrections Policy and Procedure 3.IV.B-Supervision of Housing Units, was admitted without objection.

Respondent's first Witness, Sgt. Shomonta continued testimony.

Ms. Blum moved to admit Respondent's **Exhibit #12:** discussion ensued.

Mr. Fink ruled to admit Respondent's **Exhibit #12.**

Respondent's Exhibit #12: Jail Video dated 2/6/19 and 2/8/19 was admitted and viewed by the Commission. Discussion ensued.

Respondent's first Witness, Sgt. Shomonta continued testimony.

Page 3

Ms. Blum moved to admit Respondent's **Exhibit #13**: discussion ensued.

Mr. Fink ruled to admit Respondent's **Exhibit #13**.

Respondent's **Exhibit #13**: Round Audit Notes, Bates Nos. 394-397, was admitted without objection.

Respondent's first Witness, Sgt. Shomonta continued testimony.

Ms. Blum moved to admit Respondent's **Exhibit #3**: discussion ensued.

Mr. Fink ruled to admit Respondent's **Exhibit #3**.

Respondent's **Exhibit #3**: Pima County Sheriff's Department Rules and Regulations 7.VI.I-Responsibilities, was admitted without objection.

Respondent's first Witness, Sgt. Shomonta continued testimony.

Ms. Blum moved to admit Respondent's **Exhibit #14**: discussion ensued.

Mr. Fink ruled to admit Respondent's **Exhibit #14, page 417**.

Respondent's **Exhibit #14**: Demonstrative Exhibit, Bates Nos. 416-417, page 417, was admitted without objection.

Respondent's first Witness, Sgt. Shomonta continued testimony.

Ms. Blum moved to admit Respondent's **Exhibit #9**: discussion ensued.

Mr. Fink ruled to admit Respondent's **Exhibit #9**.

Respondent's **Exhibit #9**: Notice of Intent to Suspend dated April 11, 2019, Bates Nos. 389-392, was admitted without objection.

The Commission recessed at 10:43 a.m. and re-convened at 10:54 a.m.

Respondent's first Witness, Sgt. Shomonta continued testimony.

Sgt. Shomonta was released subject to recall; reminded of the Rule by Barry Corey, Attorney for the Commission.

The Commission recessed for lunch at 11:51 a.m. and re-convened at 1:00 p.m.

Respondent's Witness # 2 Lt. James Smead, Pima County Sheriff's Department, previously sworn in by Barry Corey, Attorney for the Commission provided testimony in this hearing.

Ms. Blum moved to admit Respondent's **Exhibit #15**, discussion ensued.

Mr. Fink ruled to admit Respondent's **Exhibit #15**.

Respondent's Exhibit #15: Disciplinary Actions- Rounds 2018-2019, Bates No. 393, was admitted without objection.

Respondent's second Witness, Lt. Smead continued testimony

Ms. Blum moved to admit Respondent's **Exhibit #8** discussion ensued.

Mr. Fink ruled to admit Respondent's **Exhibit #8.**

Respondent's Exhibit #8: Pre-Action meeting memo dated April 18, 2019, Bates No. 003, was admitted without objection.

Respondent's second Witness, Lt. Smead continued testimony

Mr. Alatorre presented and moved to admit **Appellant's Exhibit A.**

The Commission recessed for copies at 2:10 p.m. and reconvened at 2:16.

Mr. Fink ruled to admit **Appellant's Exhibit A.**

Appellant's Exhibit A: Pima County Sheriff's Department Discipline Application Chart, was admitted without objection.

Respondent's second Witness, Lt. Smead continued testimony.

Respondent's second Witness, Lt. Smead was excused.

ACTION: Mr. Rubin made a motion to go into Executive Session for the purpose of legal consultation with Barry Corey, Counsel to the Commission. Mr. Freund seconded the motion. Motion passed unanimously.

ACTION: The Commission recessed for Executive Session at 2:44 p.m. and re-convened at 3:09 p.m.

Ms. Blum, Deputy County Attorney, made a closing argument. Mr. Alatorre, Counsel for the Appellant, made a closing argument. Ms. Blum provided a rebuttal.

Mr. Fink stated that this was the time for the Commission to deliberate and asked for discussion.

Mr. Rubin, Mr. Freund and Mr. Fink each explained their thought processes in deciding their decisions and discussion ensued.

ACTION: Mr. Fink moved that based on the testimony presented and evidence submitted, the Appellant knew or should have known that his conduct could have resulted in disciplinary action and that the April 25, 2019, One Day Suspension Without Pay Appeal of Michael Flaminio, be denied and that the disciplinary action imposed upon him be affirmed for the reason that there was just cause for the discipline imposed. Mr. Freund seconded the motion. After a roll call vote the motion passed unanimously.

ACTION: Mr. Fink made a motion to adjourn the Open Meeting. Mr. Freund seconded the motion. Motion passed unanimously. The Commission adjourned at 3:47 p.m.

The digital recording of the official proceedings and the minutes were prepared by the Recording Secretary.

Minutes approved on October 10, 2019.