



**PIMA COUNTY
LAW ENFORCEMENT MERIT SYSTEM COUNCIL
MINUTES OF NOVEMBER 14, 2019**

The Pima County Law Enforcement Merit System Council met at the Human Resources Conference Room at 150 W. Congress Street, Tucson, Arizona, on Thursday, November 14, 2019 at 9:00 a.m.

The Commission Members present were: John Fink, Chair; David Freund, and Michael Hellon.

All persons in attendance were asked to state their names for the record:

Barry Corey, Counsel for the Commission/Council
Dan Jurkowitz, Deputy County Attorney for the Respondent
Lenora Anderson, Paralegal, Pima County Attorney's Office
Capt. Harold Janes, PCSD-Department Representative
Mike Storie, Attorney for the Appellant
Lt. Joseph Cameron, Appellant
Mark Napier, Pima County Sheriff
Aurora Hernandez, Recording Secretary, Human Resources

Mr. Fink called to order the Open Meeting of the Pima County Law Enforcement System Council 9:04 a.m. Sheriff Napier led the Pledge of Allegiance. Mr. Fink asked if there were any preliminary matters.

Mr. Jurkowitz stated Sheriff Napier had a previous appointment and would only be available until 3:30 PM.

ACTION: Mr. Jurkowitz at this time submitted **EXHIBIT 24**, Memorandum from Capt. Russ Ponzio to Bureau Chief Karl Woolridge, Corrections Bureau, dated 11/08/2018, Bates No. 2023. Which was requested by Mr. Fink at the October 15 hearing. **Exhibit 24** was admitted without objection.

RESPONDENTS WITNESS # 4, Sheriff Mark D. Napier, PCSD, was sworn in by Mr. Corey, Counsel to the Commission, and provided testimony in this hearing. Sheriff Napier began his testimony by giving a synopsis of his career from 1981 up to January 1, 2017 when he was elected Sheriff of Pima County.

Mr. Jurkowitz questioned regarding **Exhibit 15**, Chief Woolridge Memo dated 12/31/18, Bates Nos. 1955-1965 (Previously submitted by Mr. Jurkowitz on October 14, 2019 without objection.) This was a memo that was sent by Chief Woolridge regarding Lt. Cameron's performance and conduct. This was the first he heard of these issues with Lt. Cameron. The Sheriff was asked if Chief Woolridge was involved in the discipline process and he responded, indirectly.

Mr. Jurkowitz questioned regarding **EXHIBIT 10**, Chief Stuckey Memo dated 1/28/19, Bates Nos. 1949-1950, Bates 1950 (Previously submitted by Mr. Jurkowitz on October 14, 2019 without objection). Chief Stuckey recommended an 80-hour suspension. Chief Gwaltney thought a 40-hour suspension reasonable.

Mr. Jurkowitz questioned regarding **EXHIBIT 11**, Sheriff Napier Memo dated 2/5/19, Bates No. 1951 (Previously submitted by Mr. Jurkowitz on October 14, 2019 without objection) this was his response to accept the 40-hour suspension for the three incidents.

On recommendations from the Command Staff he agreed the 40-hour suspension would effectively address the misconduct. The Sheriff met with Capt. Janes to ensure this was his recommendation. Capt. Janes was not comfortable with the 40-hour suspension and recommended a 3-day suspension, 1-day for each infraction.

Capt. Janes penned **EXHIBIT 6**, Notice of Suspension dated 5/3/19, Bates Nos. 004-007, (Previously submitted by Mr. Jurkowitz on October 14, 2019 without objection) and the Sheriff signed off on the 3-day suspension. Discussed the inaccuracies in the Notice.

The third paragraph, *“your audio recorded both meetings and were ordered not to do so on both occasions.”* that was not an accurate statement. Sheriff stated he had relied on Capt. Janes’ review of the transcripts and the tape and it wasn’t an order. Mr. Jurkowitz stated it was not an order but he was told not he did not have consent to record. Sheriff stated it was a matter of semantics as to whether it was an order or not.

Mr. Fink questioned regarding the term “explicit” order and wanted further explanation as to the dynamic. Does the order need to be explicit, does the supervisor have to say *“I am giving you a direct order?”* The Sheriff explained it would be nonsensical to explain every time they issued an order.

The fourth paragraph it states *“on that occasion you again interfered with the disciplinary process and were directed by both Corrections Captains to leave the meeting and cease recording.”* Mr. Jurkowitz stated it is not true both Corrections Captains gave direction to Lt. Cameron on the January 22 meeting, correct? Sheriff Napier stated, no in review of the transcript that sentence as it is written is not entirely accurate and discussion ensued.

Sheriff stated it was clear from the transcripts that Lt. Cameron knew he was violating policy and the policy violation is crystal clear. Commanders are tenured employees. They should know the rules and follow them. They are held to a higher standard, they have great organization responsibility, and the public trust. They are a self-regulating agency and they administer their own discipline. Therefore, they are held to a higher standard.

Mr. Jurkowitz went on with paragraph 4 referring to *“Although neither Corrections Captains Stephens nor Stewart is your immediate supervisor, they both have the authority to give lawful orders to you in this circumstance, especially in the detention center in their recognized areas of expertise and work domain.”* Does a Corrections Captain have the authority to give an order to a Commissioned Deputy? The Sheriff stated within the construct of the Detention Center they do and in Judicial Security.

Lt. Cameron stated in his Pre-Action Meeting he was being set up for demotion or termination. Sheriff Napier replied, we didn't go out and solicit information in an effort to oust Lt. Cameron. His behavior brought it forward. Lt. Cameron was disciplined for not complying with an order.

Based on the facts of the two incidents of intentional violations of the rule and the incident of not following Capt. Ponzio's order; the Sheriff stated he would have demoted Lt. Cameron. He would have done it swiftly and without reservation. This is a Commander that willfully and knowingly flagrantly violated the policies of the department and that is completely unacceptable for a Command level person. It speaks of a complete lack of understanding of what it means to be a Commander.

The Sheriff was asked why the Law Enforcement Merit System Council should uphold the disciplines discussed. He replied the Law Enforcement Merit System Council should uphold the 3-day suspension for misconduct. Lt. Cameron received a Letter of Reprimand and the next progression would be suspension.

ACTION: at this time Mr. Jurkowitz had no further questions.

Mr. Fink asked regarding the meeting with Capt. Janes, **EXHIBIT 9, Capt. Janes Memo dated 4/3/19, Bates Nos. 2019** (Previously submitted by Mr. Jurkowitz on October 14, 2019 without objection). When the Sheriff met with Capt. Janes, did he express any issues regarding any pressures he might have received to recommend the three-day suspension? Sheriff stated no, he purposely met with him, personally to discuss that issue.

Mr. Storie asked about Chief Gwaltney stating at the Senior Staff meeting that "*Joe shouldn't even be a Sergeant much less a Lieutenant.*" and would that have been Chief Gwaltney's support for demotion.

Mr. Storie referenced the charging document; **Exhibit 6, Notice of Suspension dated 5/3/19, Bates Nos. 004-007.** (Previously submitted by Mr. Jurkowitz on October 14, 2019 without objection.) Mr. Storie started with the corrections in Exhibit 6. Mr. Hellon stated the Commission heard about the corrections from previous witnesses. Mr. Storie agreed to drop the questioning of the inaccurate statements in Exhibit 6.

Discussed the issues of the Lt. Cameron's suspension which were re-displaying the discipline after he was ordered to take it down and refusing to stop recording at two meetings Lt. Cameron attended.

Discussed Commissioned and Non-Commissioned people interacting in a jail setting. Depending on the circumstances a Non-Commissioned superior could give orders to a Commissioned Deputy. This is not documented in a policy; it is based on good judgement.

Discussed Capt. Janes meeting with the Sheriff regarding his recommendation of a suspension. The Sheriff did not know someone spoke with Capt. Janes about the Lt. Cameron's violations and stating the discipline should not go lower than a suspension.

This was not mentioned when Capt. Janes met with the Sheriff. Mr. Storie stated Capt. Janes took that as an order. The Sheriff stated he was not part of the conversation and could only speak of the conversation he had with Capt. Janes.

Mr. Storie then asked about the disciplinary letter being displayed again in Lt. Cameron's office. Where is Lt. Cameron's office? What time did Chief Woolridge see the display? Under what circumstance did Chief Woolridge see it displayed again? The Sheriff stated the questions asked are irrelevant as Lt. Cameron was given an order to not display the Letter of Reprimand. Chief Woolridge saw it on display again in Lt. Cameron's office which is against the order to take it down.

Mr. Storie informed the Sheriff of other Commanders who display their disciplinary letters. The Sheriff was not aware other Commanders displaying their letters and stated it was "grotesquely irresponsible" especially for Commanders.

Sheriff Napier stated all discipline should be personal; if it's impersonal it has no value. His hope is Commanders and Supervisors have a personal relationship with their subordinates. When they discipline a subordinate it would be more meaningful. He has done this with his subordinates. He stated a piece of paper could mean nothing to somebody but to violate that personal relationship should be more meaningful.

Discussion of the Sheriff not being a Pima County employee. The rule states "you cannot tape a department member without their consent" and Lt. Cameron was issued a Letter of Reprimand for taping the Sheriff without consent. A year later Lt. Cameron brings up a violation, he believes the Sheriff committed, to the head of Internal Affairs. This person contacts a Pima County attorney who informs the person in Internal Affairs the Sheriff is not a Pima County employee and he is not culpable in the policy violation. Lt. Cameron then inquires how he could have gotten a Letter of Reprimand for taping a department member. Mr. Fink stated this information is not pertinent to the current events and the Commission can't re-adjudicate the Letter of Reprimand. Mr. Hellon stated for the record that he would use the information when making a decision and interpreted this part of the conversation as being an effort to up escape and withhold facts. Mr. Corey reminded everyone the Chair ruled this not admissible. Mr. Storie withdrew the question of the Sheriff being a County employee.

The role of an employee representative was reviewed. The discussion included recording of a Pre-Action meeting and why a person would not want to record a Pre-Action meeting. The Sheriff stated it is a judgement call from the people who attend the meeting if the session would be recorded. If the Employee Representative was not a member of the Sheriff's Department the rule would not be applicable to the representative. This concluded Mr. Storie's examination.

ACTION: Mr. Jurkowitz began his re-cross examination.

Mr. Jurkowitz, "could you take a look at **EXHIBIT 17**, *Transcript of CO Conrad's Disciplinary Meeting on 1/22/19, Bates Nos. 2125-2131* (Previously submitted by Mr. Jurkowitz on October 14, 2019 without objection.) page 2129 at the bottom and starting at Line 3.

Discussed the conversation of recording during a Pre-Action meeting. Lt. Cameron's action of not complying when Capt. Stephen's direction to turn off the recorder or he could leave is an act of insubordination.

Discussed the problem of displaying disciplinary letters. Sheriff Napier stated the Sheriff's Department is a self-regulating agency. We investigate officer involved shootings and all kinds of misconduct based on public trust. We administer discipline, it's meaningful and when a Commander does that it undermines that process. Mr. Jurkowitz informed the Sheriff of other Commanders who displayed their discipline's. The Sheriff was unaware of others, if he had known he would order them to take them down.

Mr. Freund suggested making a written rule pertaining to display of disciplinary actions so everyone would know it is inappropriate. Sheriff Napier stated they expect Law Enforcement Officers to exercise good judgement. They have a tremendous amount of power, operating with a tremendous amount of autonomy. We shouldn't have to create a rule for a topic that should be good judgment.

ACTION: Mr. Fink made a motion to go into Executive session for legal advice and asked the witness to remain for additional questions. Mr. Storie had a question and decided to wait until after the Executive Session.

ACTION: Mr. Fink motioned to go into Executive Session, Mr. Freund, second. Motion passed unanimously. Commission convened to Executive Session for legal advice at 10:33 a.m. Mr. Corey reminded the Sheriff of the invocation of the Rule.

ACTION: Mr. Fink reconvened the Commission from Executive Session at 11:08 a.m.

The group discussed A.R.S. § 38-1104(A)(3) and 38-1104 which pertains to recordings. A.R.S. § 38-1104(A)(3) was effective on August 27, 2019. After the discussion Sheriff Napier stated he will confer with his legal counsel. Sheriff Napier was reminded of the rule and excused.

ACTION: Mr. Jurkowitz, no further questions.

ACTION: Mr. Storie called his first witness, Capt. Janes.

Discussed Capt. Janes seven years' experience in Human Resources at the Sheriff's Department. They received discipline packages and often it included a recording of the Pre-Action meeting. The Union Representatives who were familiar with the process were often asked to participate in the disciplinary meetings.

Discussed his involvement in the disciplinary process which included separate meetings with Sheriff Napier and his immediate supervisor, Chief Stuckey. Drafting the first disciplinary Notice based upon Chief Woolridge's memo and listening to one portion of Lt. Cameron's recordings. The draft was reviewed by several Command staff members who made changes. Discussed the mistakes in the final Notice.

ACTION: Mr. Storie, no further questions.

Discussed the Exhibits that were admitted and next hearing dates.

ACTION: Mr. Hellon made a motion to adjourn. Mr. Freund seconded. The Commission adjourned at 12:31 p.m.

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

Minutes approved on June 24, 2021