September 19, 2023

10:00 AM

Teams Meeting

**Members in Attendance Public Session:**

William Sorrell, Chair – Governor Appointed

Brian Searles – Governor Appointed

Christopher Louras – Governor Appointed

James Whitcomb –Proxy for Commissioner Jennifer Morrison Public Safety

Glenn Boyde – Proxy for Commissioner Nick Deml, Dept. of Corrections

Wade Cochran – Proxy for Commissioner Wanda Minoli, Dept. of Motor Vehicles

Justin Stedman – Proxy for Commissioner, VT Fish & Wildlife

Kathleen Hentcy – Proxy for Commissioner Emily Hawes, Department of Mental Health

Erin Jacobsen – Proxy for Attorney General Charity Clark

Timothy Lueders-Dumont – Proxy for Executive Director John Campbell, Dept. of SAS

Xusana Davis –Executive Director, Office of Racial Equity

Jennifer Frank – VT Chief’s Association

Kelly Price – VT State Employees Association

Sadie Donovan – Proxy for Jennifer Poehlmann, Center for Crime Victim Services

Cassandra Burdyshaw – VT Human Rights Commission

**Other Attendees:**

Heather Simons – Vermont Criminal Justice Council

Christopher Brickell – Vermont Criminal Justice Council

Lindsay Thivierge – Vermont Criminal Justice Council

Kim McManus – Vermont Criminal Justice Council

Jennifer Firpo – Vermont Criminal Justice Council

Dan Pennington – Vermont Criminal Justice Council

Jamielee Bedard – Vermont Criminal Justice Council

Darla Mariduena – Human Rights Commission

Jesse Robson – Det. Sgt. VSP

Lance Martel

Wesley Lawrence – Theriault & Joslin P.C.

**Call to Order:**  *Vermont Criminal Justice Council Chair, William Sorrell* 10:00.

**Additions or deletions to Agenda:**  No additions or deletions to the agenda.

**Meeting Minutes from September 6, 2023:**  Brian Searles makes a motion to approve the minutes from September 6, second by Jim Whitcomb, all in favor.

**Docket 2020GNU -** *Vermont Criminal Justice Council, Associate General Counsel, Kim McManus*

2020GNU – Lance Martel – After repeated attempts to contact Mr. Martel over the summer we were prepared to move forward with Mr. Martel’s hearing pledging unprofessional conduct Category A.

* Yesterday afternoon we were contacted by Mr. Martel’s attorney indicating she believes a resolution in lieu of a hearing is highly possible but did not enough time to generate an appropriate agreement and was unable to attend this morning due to a previous engagement.
* The State agrees that it’s in the best interest of the case to reach a settlement if possible. If a settlement were not possible then Mr. Martel would have a full and fair hearing with his counsel present.
* We are asking the Council to continue this matter and to reschedule it for the December hearing date of 12/19.

*Bill Sorrell –* Is he a current law enforcement officer in the State of Vermont

*Kim McManus –* He is not.

Timothy Lueders-Dumont moves to continue the hearing on Mr. Martel until our December meeting for professional regulation matters, seconded by Erin Jacobsen, all in favor.

**Docket 2020CQM -** *Vermont Criminal Justice Council, Associate General Counsel, Kim McManus*

Stipulation and Consent order in regard to Chad Emery. Mr. Emery has held a Level III Vermont Law Enforcement Officer Certification since 2005.

* At the time of the Category A complaint Mr. Emery was employed by the Brattleboro Police Department. He is no longer employed by any law enforcement agency in Vermont.
* The Council received the complaint in June of 2020. The internal investigation was completed in August of 2020.
* The professional regulation subcommittee determined that the facts of the case as established in the investigation, supported a finding of unprofessional conduct on May 18, 2023. The subcommittee found that:
  + The respondent committed an act of domestic assault and misdemeanor in the State of Vermont under Title 13, Section 1042, specifically that the respondent recklessly struck his then wife in the face with a door, causing her pain.
  + Mr. Emery admitted to this act of domestic violence in court on March 31, 2023, and he received a deferred sentence in the matter and is currently on probation.
  + If this matter had proceeded to a hearing, the state was prepared to submit Mr. Emery’s plea agreement signed by Mr. Emery and accepted by the Windsor Superior Court, admitting guilt to the misdemeanor crime of domestic assault.
  + Mr. Emery’s admission of guilt to domestic assault and the underlying facts of the case more than satisfies the Council’s burden to find, by a preponderance of evidence, that Mr. Emery engaged in criminal behavior, specifically domestic assault, and that this is a Category A unprofessional conduct violation.
  + With this stipulation, Mr. Emery acknowledges that the state could prove that he engaged in Category A conduct, and he agrees that his law enforcement certification is to be permanently revoked as of today.
  + As such, the State and Mr. Emery’s request is that the Council accepts the stipulated agreement and issues an order that Mr. Emery’s law enforcement certification be permanently revoked as of today September 19, 2023.

*Questions Ensued: Bill Sorrell-* What is a deferred sentence and what are the effects of a successful completion of a deferred sentence?

*Kim McManus* *did a brief review of the meaning of a deferred sentence and the effects of a successful completion.*

*Bill Sorrell* – If someone were to complete a deferred sentence agreement he or she would not have been legally convicted of a crime. In the case of Mr. Emery if there were a permanent revocation to his Level III certification may he apply for law enforcement work in Vermont or elsewhere?

*Kim McManus* – The order the Council would be issuing includes a responsibility for Mr. Emery to share this stipulation order with any law enforcement agency he would apply to in the future to include: any state regulatory body or other certification authority related to law enforcement officers in any location or jurisdiction where he may apply for law enforcement officer employment.

*Bill Sorrell* – If the conviction goes away in this case there is a requirement on the individual’s part to notify a potential employing agency of the fact of at least one incident. There were other allegations reported showing that there was a pattern of domestic violence, are these subject to disclosure?

*Kim McManus –* The notice of hearing, which outlines further allegations, remains a public document with the State of Vermont. If anyone were to consider Mr. Emery for employment, the agency has a responsibility to reach out to Mr. Emery’s former agency, which would then disclose the nature of the complaint.

*Kelly Price* – Is this similar to an expungement?

*Kim McManus –* I believe that after a certain amount of time, it would be expunged.

*Kelly Price –* Legality wise how does this all work? Would he have to disclose anything if it were expunged?

*Timothy Lueders-Dumont –* This is a constant conversation among State’s Attorney’s and is ongoing during the discussion on the expungement law itself. The duty that I read in this order is protected, he has to disclose. The fact of the conviction is separate from the fact of the complaint. The VCJC may have to redact documents but the complaint at the Agency level may still be protected from the expungement sweep. And of course, there is always the Google record.

*Bill Sorrell* – I agree, the reason I posed the question to Kim was for that reason. Expungement would declare the matter never happened, but our agreement is a separate agreement that is not under the law.

*Erin Jacobsen –* So, any allegation or arrest or any other record pertaining to that would be wiped clean but this is a separate process under the Administrative Procedures Act, so this would not be affected by an expungement?

*Bill Sorrell* – Yes. What is in the agreement before us, and the deferred sentence period had to be agreed upon between the state’s attorney and the prosecutor. This was a serious matter, made arguably more serious by the fact that it was a law enforcement officer involved, and there are other allegations of prior similar conduct. I was surprised the length for deferment was only a year.

*Jim Whitcomb made a motion to accept the stipulated agreement for permanent revocation of Chad Emery’s Level III certification, second by Brian Searles, all in favor.*

**General Discussion** - *Vermont Criminal Justice Council Chair, Bill Sorrell*

Next month we are scheduled for a contested hearing, and there is an order that any prehearing matters must be raised on or before October 1.

* That will be our first truly contested hearing with live witnesses.
* It may be lengthy and in the event of evidentiary aspects of the hearing and statements or arguments by Counsel, the Council may adjourn privately to discuss and deliberate.
* Legal Counsel will be given an opportunity to make written filings for the consideration of the Council some period of time after the hearing date potentially two weeks.
* It will be important to have a quorum that day and for reconvening for deliberations.

**Motion to adjourn** made by Bill Sorrell and seconded by Jim Whitcomb, no discussion, all in favor.