

PENNSYLVANIA COMMISSION ON CRIME AND DELINQUENCY
CONSTABLES' EDUCATION AND TRAINING BOARD

Minutes of the November 18, 2010, Meeting

Members Present

Judge Richard Opiela, Allegheny Co, MDJ, Chairman
Fred Contino, Constable, Delaware County
A.R. DeFilippi, Court Administrator, Beaver County
Teresa O'Neal, Juniata County Commissioner
Captain Rodney Manning, PA State Police
Julie Sokoloff, Constable, Montgomery County
Harry Walsh, Constable, Allegheny County

Commission Staff Present

John Pfau
Donald Horst
Sherry Leffler
Sue Lanza
Alison Taylor, PCCD Legal Counsel
Norma Hartman

Members Absent

None

Visitors

Paul Bauer, Constable, Allegheny County
Albert Dancisin, Constable, Allegheny County
James Oconis, Constable, Allegheny County
Francis Peitz, Constable, Allegheny County
Margareth Sweeney, Constable, Allegheny County
Tom Impink, Constable, Berks County
Irving Wallace, Constable, Cumberland County
Paul Pape, Constable, Jefferson County
Louis Solt, Constable, Lehigh County
Raymond Hartman, Constable, Lycoming County
Michael Landau, Constable, Montgomery County
Charles Seyfried, Constable, Northampton County
Thomas Rushnock, Constable, Westmoreland County
Mike Marcantino, Indiana University
Barbara Butcher, Mansfield University
Tony Luongo, Temple University
Jennifer LaBelle, AOPC

Randolph Canella, Constable, Allegheny County
Antione Malloy, Constable, Allegheny County
Joseph O'Connor, Constable, Allegheny County
Russell Roach, Constable, Allegheny County
Glenn King, Constable, Armstrong County
Jack Garner, Constable, Dauphin County
John Pisano, Constable, Indiana County
Ronald Clever, Constable, Lehigh County
Roger Metzgar, Constable, Monroe County
Emil Minnar, Constable, Montgomery County
Garry Kimmel, Indiana University
Teresa Conley, Temple University
Mark Rothermel, AOPC

I. Call to Order

The Constables' Education and Training Board (Board) meeting was held at 10:00 a.m. on Thursday, November 18, 2010, at the Pennsylvania Commission on Crime and Delinquency (PCCD), 3101 North Front Street, Harrisburg, Pennsylvania.

The Honorable Richard Opiela, Chairman, called the meeting to order at 10:00 am and asked all to join him in the Pledge of Allegiance. Board members and staff then introduced themselves to the audience.

II. Action Items

Chairman Opiela asked if there were any questions from the Board regarding the **Minutes of the August 5, 2010, Meeting**. Constable Harry Walsh moved to approve the minutes and Constable Julie Sokoloff seconded the motion.

VOTING AYE: Opiela, Contino, DeFilippi, Manning, O'Neal, Sokoloff and Walsh

VOTING NAY: None

ABSTAINING: None

The motion carried.

Chairman Opiela moved to the next action item on the agenda, consideration of the **Financial Report for November 18, 2010**. Ms. Norma Hartman, PCCD fiscal staff, provided a review of the Financial Statement for Fiscal Year 2010-2011, as of September 30, 2010. She stated that the balance carried forward from the previous year was \$6,918,158.17. Fees collected for the first quarter were \$496,944.32. Based on an estimate of collections for the entire year (\$2,200,000.00) the total funds available as of September 30 were \$9,118,158.17. Total expenditures as of September 30, 2010, were \$881,082.55. There were no Act 233 payments during the quarter. Total expenditures and commitments, as of September 30, were \$8,376,765.75. The amount included administrative costs of \$141,476.47. The estimated balance in the account as of September 30, 2010, was \$741,392.42.

Ms. Hartman explained that the balance appears deceptively low because new purchase orders have been created to begin January 1, 2011. Commitments now amount to almost \$7.5 million. She also provided a list of purchase orders to Board members. She explained that some of the same information is listed on the Financial Report, except the Financial Report is based on the July 1, 2010, through June 30, 2011, Fiscal Year. Purchase order information is based on the term of the order, generally 24 months (2 years). The first six purchase orders will expire December 31, 2010. Four of the six renewal orders have been approved. Two are still pending.

Chairman Opiela asked for clarification of administrative costs for EDP services, through Computer Aid, Inc. Mr. John Pfau, PCCD staff, explained that the amount shown is for half of the cost of the full-time computer programmer who is providing services for both the constable and the deputy sheriffs information systems. The cost is determined by an information technology negotiated state contract. Constable Fred Contino asked about the amount spent for the contract with Indiana University of Pennsylvania (IUP) in southwestern Pennsylvania. Mr. Don Horst, PCCD staff, explained that the largest constable training population is located in southwestern Pennsylvania, the region that includes Allegheny County. Mr. Pfau further explained that all training contractors have gone through extensive budget negotiations each budget cycle and have continued to cut costs as requested by PCCD staff. Mr. Horst added that, during the last two budget cycles, proposed budgets have not been accepted "as is." Cost reductions have ranged from a few hundred thousand dollars to

over one million dollars. Mr. Horst also explained that the schools have voluntarily reduced the initial amounts of their budget submittals because of past negotiations. He indicated that budgets are at about the lowest possible levels. Further, significant cuts could only be accomplished by reducing salaries, training hours, or the number of classes offered. Mr. Pfau added that it will not be possible to add classes to the training schedule for the next two years. Commitments are at the limit, and revenue amounts are never a certainty.

Constable Contino asked if a majority of the training population resides in the regions served by IUP and Temple University. Mr. Horst replied that the two largest constable training populations are located in regions served by IUP-SW and Temple University. Temple University handles the Southeast region, which includes the Philadelphia suburbs (360 or 26% of all constables). IUP-SW handles the Southwest region, which includes Pittsburgh and its suburbs (368 or 26% of all constables). The western part of the state also contains the largest number of constables who take firearms training. The two regions served by IUP train 45% of the constables who want training in firearms.

Ms. Hartman stated that the next quarterly financial report will show an even lower balance, because there are two purchase orders that will appear as new commitments on the report as of December 31, 2010. Unused commitments of funds from the six purchase orders expiring on December 31, 2010, will be returned to the training account in early 2011. Chairman Opiela added that the balance should also reflect the receipt of fourth quarter Constable Education Training Account (CETA) funds.

Chairman Opiela asked if there were any further questions regarding the Financial Report. There were none, and a motion to accept the Financial Report was made by Commissioner Teresa O'Neal. The motion was seconded by Mr. A.R. DeFilippi.

VOTING AYE: Opiela, Contino, DeFilippi, O'Neal, Manning, Sokoloff and Walsh
VOTING NAY: None
ABSTAINING: None

The motion carried.

Chairman Opiela moved to the next action item on the agenda, the **2011 Board Meeting Schedule**. He indicated that meetings were scheduled as follows: February 3 in Harrisburg, May 5 in Pittsburgh, August 4 in Hazleton, and November 3 in Harrisburg. Chairman Opiela asked if there were any issues or problems with the dates. Constable Sokoloff indicated that she had a conflict with May 5. Commissioner O'Neal indicated that she had a conflict with November 3. Hearing no further questions, he asked for a motion to approve the February 3 and August 4 dates. A motion to approve was made by Constable Contino. The motion was seconded by Commissioner O'Neal.

VOTING AYE: Opiela, Contino, DeFilippi, O'Neal, Manning, Sokoloff and Walsh
VOTING NAY: None
ABSTAINING: None

The motion carried.

Chairman Opiela moved to the next action item on the agenda, **Board Policy on Attendance at Continuing Education Without Current Liability Insurance and Certification.** Ms. Sherry Leffler, PCCD staff, provided an overview of the policy unanimously approved at the August 5, 2010, Meeting. Staff recommended Board approval for the following addition: “If the lapse in certification is for two years or more, but less than five years, constables and deputy constables would be allowed to enroll in continuing education classes only if current professional liability insurance is on file with PCCD. This would allow flexibility for those constables who have medical surgeries, disabilities or other legitimate, documentable reasons, but would mitigate issues with individuals taking Act 49 training to secure work in areas other than for the minor judiciary. The Board would have the final say in determining extenuating circumstances. Staff would provide outreach information to the insurance producers currently being utilized by constables and deputy constables. They, in turn, could provide their agents with this information regarding changes in the training requirements for constables attending Act 49 continuing education classes. This Board policy would become effective on January 1, 2011.” Ms. Leffler stated that information on this change would be provided in the next training bulletin.

Constable Sokoloff requested clarification on registration for continuing education; namely, that you cannot register for the class unless you have current insurance. Ms. Leffler indicated that this change would require insurance prior to registration for a class, with the two year exception as indicated. Mr. Pfau added that this measure was requested due to the costs involved in training a constable. If the constable could not perform any duties for the minor judiciary, there would not be any contribution to the training fund through fees collected. Ms. Leffler reminded the Board that cost comparisons of various training scenarios were provided at the previous Board meeting.

Chairman Opiela asked if there were any other questions regarding the policy. Hearing none, he indicated that the policy was voted upon at the last Board meeting; however, the final language was not provided at that time. Chairman Opiela asked for a vote by acclamation to approve the language as presented today. Ms. Alison Taylor, PCCD Legal Counsel, supported that request.

VOTING AYE: Unanimous

VOTING NAY: None

ABSTAINING: None

The motion carried.

Chairman Opiela moved to the next action item on the agenda, **Implement Board Policy for Non-Constables Attendance at Act 49 Basic Training Classes.** Ms. Leffler indicated that due to the addition of over 700 constables and deputy constables to the program, slots in the 80-hour basic training classes were at a premium in 2010. She stated that, to alleviate enrollment issues in the future, the redesign workgroup and staff recommended that elected and appointed constables and deputy constables be given first priority for enrollment in the 80-hour basic training classes. Non-constables would be required to submit payment by check or money order in the amount of \$617.00, two weeks prior to the class start date. If payment is not received within two weeks prior to the class start date, the non-constable would be removed from the enrollment roster. Enrollment rosters for basic training would close two weeks prior to the class start date in order to prevent non-constables from “bumping” onto the enrollment roster from the waiting list. Ms. Leffler stated that staff was recommending that the Board approve this policy to begin January 1, 2011.

Constable Contino asked for clarification of “non-constable.” Does it include an individual who won the primary election? Would that individual have to pay to attend training? Ms. Leffler indicated that, unless someone has current term dates, they would have to pay for training.

Chairman Opiela asked, “Why not require payment within two weeks after enrolling in the class?” He then asked if there were any other questions regarding the policy. Hearing none, he asked for a motion to approve the policy. A motion to approve was made by Constable Sokoloff. The motion was seconded by Constable Contino.

VOTING AYE: Opiela, Contino, DeFilippi, O’Neal, Manning, Sokoloff and Walsh

VOTING NAY: None

ABSTAINING: None

The motion carried.

Chairman Opiela moved to the next action item on the agenda, **Change Current Board Policy to Board Regulation for Attendance at Same Class Type in Same Training Year.** Ms. Leffler indicated that this is currently a Board policy, and the request from the redesign workgroup is to include it in the regulation. She indicated that current policy states that constables and deputy constables may attend only one class of the same type in the same training year. She provided, as examples, that a constable may only attend and successfully complete one continuing education or one annual firearms class each year. She further indicated that the policy includes those constables who attend a basic training and then want to attend a continuing education class in the same year. It is not necessary to attend both and is not cost effective. Ms. Leffler stated that staff and the redesign workgroup was recommending that the Board approve this policy to begin January 1, 2011.

Constable Contino asked for clarification regarding weapon malfunctions after a constable has completed an annual firearm qualification. Mr. Pfau indicated that weapon malfunction situations are handled when the situation occurs during the training. He further explained that the intention of the policy is to prohibit a constable or deputy from attending multiple annual firearm qualification classes in the same year. Training is intended to provide one successful qualification per year.

Mr. Pfau indicated that language would be added, subject to PCCD legal counsel review, to cover exceptions, such as weapon malfunctions. Constable Walsh asked whether or not exceptions to the seven-day policy would be allowed. Mr. Pfau indicated that current regulation exists. School directors are given the flexibility to consider mitigating circumstances, and the Board has final say.

Chairman Opiela asked if there were any questions regarding the policy. Hearing none, he asked for a motion to approve the inclusion of the language within Board policy. The proposed regulation would be presented to the Board in its final form in a future meeting. A motion to approve was made by Mr. A.R. DeFilippi. The motion was seconded by Constable Contino.

VOTING AYE: Opiela, Contino, DeFilippi, O’Neal, Manning, Sokoloff and Walsh

VOTING NAY: None

ABSTAINING: None

The motion carried.

Chairman Opiela moved to the next action item on the agenda, **Implement Board Policy for No-Shows: Attendance at Classes in Next Training Year**. Ms. Leffler provided a brief overview of the current Board policy regarding No-Shows at training, constable notifications to schools, payments for training, and attendance at training during subsequent years. She indicated that an issue arises when a constable is a No-Show for a class and waits until the next training year to attend the class without penalty. The situation is becoming a burden on the constable training account. She indicated that the changes to current Board policy would involve the addition of a subsection to the Basic Training, Continuing Education, and Firearms Qualification sections to read: "If notification is deemed untimely and no mitigating circumstances exist, the constable or other person must bear financial responsibility for the cost of the basic training, continuing education, or firearms class in the next training year in order to attend". Current regulation states, "A notification will be deemed timely if it is delivered to the director of the school no later than 7 days prior to the start of classes."

Ms. Leffler indicated that the redesign workgroup and staff recommend that written notification go out to the No-Show persons at the last known address on file, advising them of the policy, and that they would be responsible for paying for training in the next training year. Notification would also indicate that payment is due at the time of enrollment, and if not received two weeks prior to the class start date, the person will be removed from the enrollment roster. Ms. Leffler indicated that the policy could be put in place immediately, to be effective January 1, 2011, and changes to the regulation would be done at a future date. Constable Sokoloff asked how notification would be made to the constable population at large. Ms. Leffler indicated that the information would be included in a Constables' Training Bulletin.

Chairman Opiela asked why the registration was being held for two weeks, waiting for payment, rather than making payment at the time of enrollment. He stated that if payment is not made within two weeks of enrollment, the No-Show's spot in class should be lost to him, because the position is being taken away from someone else who needs the class. Mr. Don Horst added that there were 55 No-Shows for basic training in 2010, enough to fill two classes, at a cost of almost \$62,000.00. Mr. Pfau added that the schools have always had the flexibility to handle extenuating circumstances regarding No-Show situations. The policy was instituted several years ago, but the manual system of tracking attendance was difficult. The automated system significantly reduced the number of No-Shows.

Constable Contino asked for clarification in a situation where a constable attended a class on Friday and missed Saturday. Could he attend on Sunday? Mr. Pfau indicated that each situation would be addressed on its own, at the discretion of the school director, and would depend on the type of training that was missed. Mr. Horst added that this policy exists now, for the current training year. The additional language extends the policy and penalty into the following year. Commissioner O'Neal expressed a concern about the language used, "the next training year." Could it be misinterpreted? She asked whether the slate was wiped clean if someone is a No-Show in 2010 and then tries to register in 2012.

Mr. Pfau indicated that each situation would be handled individually; extenuating circumstances would be investigated. Ms. Leffler indicated that the automated system would be able to track the attendance. Constable Contino asked for clarification regarding "delivery to the director;" namely, does notification also include instructors? Does delivery include notification by fax, phone call, or email? Mr. Pfau indicated that interpretation has been left to the discretion of the schools. Constable Sokoloff stated that after she registers for a class, a confirmation letter with emergency information is

sent by the school. She asked if all of the schools do the same thing. Mr. Pfau stated that staff can check with all of the schools regarding their contact methods to maintain consistency and allow flexibility. Mr. Horst suggested that the language in the policy include "his or her designee." Constable Contino asked for clarification of "substantial mitigating circumstances," What is the difference between a "failure" in a class and a legitimate excuse? Mr. Pfau clarified the procedure followed by the schools when they enter grades or No-Show information in the system. He explained that both types of data entry are handled differently. He added that, if there is an excused absence, the schools are supposed to 'un-enroll' the person, to allow attendance in another class without prejudice.

Mr. Horst asked for clarification of the changes discussed: 1.) Inclusion of the words "the director of the school or his or her designee." 2.) Should payment be required two weeks prior to class or two weeks after enrollment? It was agreed that payment should be received within two weeks of the enrollment. Constable Sokoloff suggested that merely having the policy would help prevent No-Shows. Constable Contino added that the policy should not be so restrictive as to prohibit legitimate situations. Ms. Leffler indicated that staff would have to monitor the system manually, until the final re-write of the automated system was complete. She further indicated that these suggested changes would have to be reviewed by the Board at the next meeting and forwarded to the Commission. Then the regulatory review process would begin.

Captain Manning suggested that, since it was expected that this policy would be in effect January 1, there would not be sufficient time to go through all of the reviews prior to publication in the next training bulletin. Mr. Pfau suggested that the Board hold off on any action at this time, as this is only a modification to add a penalty to an existing policy. It would be possible to implement a formal regulation in mid-year. He indicated that it is important to get the policy in a final form now. Then it would be easier to move it into a formal regulation at a later date without more changes. Current policy will be able to handle any issues that might arise in the new training year. Constable Sokoloff suggested that information be included in the next training bulletin so that constables are aware of the pending change in policy. Commissioner O'Neal suggested that cost figures also be included in the published information to show the impact on the training fund.

Chairman Opiela asked if there were any further questions regarding the policy. Hearing none, he indicated that this policy re-write would be tabled until the next meeting.

Chairman Opiela moved to the next action item on the agenda, **Constables' Legal Reference Guides**. Mr. Horst provided a brief overview of four courses of action that could be taken regarding the reprinting of the constable guides. The basic recommendation of staff is to eliminate the printing of hard copies of the guides. He suggested that there are various governmental Internet web sites available that provide constant, current information to constables at no cost. Mr. Horst indicated that as soon as the material is printed, it becomes dated because information changes constantly. Mr. Pfau added that, in the past, hard copies of reference materials were provided as part of the initial training, and were replaced on a yearly basis.

Mr. Pfau indicated that the costs incurred utilizing Fry Communications, Inc., are for a custom print job, because no other agency uses the same materials in exactly the same format. He added that the contract with Fry has expired, and there have been major changes in the information that would require a reorganization of everything. Fry provided rough estimates of the costs involved in a total

revamp of the publication. Mr. Pfau indicated that in 2010, the full packet of information was not available. Constables only received a special edition of information covering minor court rules. He also indicated that the staff recommendation was to continue to provide materials for basic training only. Chairman Opiela suggested that the Board should consider eliminating the printing of the guides and provide referral sources for constables to obtain the information.

Constable Contino requested clarification on the staff recommendation to eliminate the printing. He continued that the recommendation would require a constable to have a computer and many constables cannot afford one. He indicated that the printed documents are very important and that he refers to them often. He stated that he does not have a computer available in his vehicle. Mr. Pfau indicated that the first course of action included a first year printing cost estimated at \$72,608 (new editions for all constables). During the second and subsequent years, printing is estimated at \$24,626 (annual updates) for all certified constables. Mr. Pfau added that relevant materials would be made available during basic training and other courses. He stated that material that is not covered in a particular training will no longer be provided, as it is available elsewhere. Mr. Pfau indicated that Fry, the sole source for printing for the General Assembly, was not interested in providing the material in an electronic format to be posted on PCCD's website. Captain Manning stated that an online document could be printed. He added that reputable links could be located on the constables' page of PCCD's web site.

Chairman Opiela suggested the issue be tabled and that staff approach Penn State-Fayette to determine if they could assist with the situation.

AOPC Appearance

At this time, Chairman Opiela recognized Jennifer LaBelle, and Mark Rothermel, from the Administrative Office of Pennsylvania Courts (AOPC). Chairman Opiela requested clarification on data provided by AOPC regarding server fees and Constable Education and Training Act (CETA) fees being collected by Pennsylvania counties. Mr. Rothermel offered that the information provided is a combination of Magisterial District Judge (MDJ) and Court of Common Pleas (CCP) fee data. He explained that there could be multiple server fees from the MDJ, but only one CETA fee per defendant. The other data complication occurs when cases are transferred to common pleas with the server fees. There is an adjustment record at the MDJ level and a CETA fee added at the common pleas level. He added that the query used to obtain data for this meeting was not a straightforward query.

Chairman Opiela asked if the data being requested could be obtained by eliminating the CCP data, since it is not relevant to immediate needs. Mr. Rothermel indicated that that would be possible. He also added that the server fee for a criminal case could be assessed at the MDJ level, but could also be referred to the county for payment or cancelled completely, and, depending upon the county, the CETA would probably be paid at CCP. Mr. Rothermel briefly discussed the data provided. He acknowledged the difficulty in obtaining exact numbers with so many variables involved in the original data submissions from MDJ and CCP offices. He explained that the data may not be complete because actual collection of fees can occur in different years, a server fee can be collected when a CETA fee is not, and vice versa. Constable Contino asked if this could be due to an MDJ's not paying the constable, as is the case in some counties.

Chairman Opiela added that if it were a mandatory field, that situation would be avoided. He added that the training fund was set up specifically for the education of constables. By adding a mandatory field, it would avoid the necessity of approaching the legislature for an increase in the constable \$5 surcharge because the training fund has been depleted so much. Chairman Opiela stated that Supreme Court Chief Justice Ronald Castille is most interested in cleaning up the constable system with handbooks and making it a more professional entity. However, there are multi-level issues involved, and it is difficult, given the current condition of the fund. He added that one way to correct the current condition of the fund would be through the AOPC's computer system, in order to prevent MDJs from over-riding constable fees. Chairman Opiela also acknowledged that education of MDJs is also necessary to understand why the surcharges are important.

Mr. Rothermel acknowledged that the new computerized system has been rolled out in over 40 counties so far. However, there is nothing in the new system that will automatically add or provide an informational message to the MDJ. He was uncertain how that automatic function would be achieved because the system would have to know that it was the first time the server fee was being assessed and under what circumstances the fee was being collected. Chairman Opiela advised that the criminal side of the process seems to be the larger problem with fee collections. The civil side seems to be working, because the fees are collected up front.

Constable Contino asked for clarification on situations where a warrant is served, the defendant defaults, and it is reissued. New costs are assessed, but no CETA. He then provided the text of the statute describing fee assessments. He asked for direction as to who would provide an interpretation regarding the collection of fees when an additional service is performed on the same warrant. At that point, Ms. Labelle offered her input, indicating that the assessment is only once per docket number on any criminal case. She indicated that that was the interpretation of AOPC, and that the attorney for the constables statewide association should approach AOPC attorneys to discuss that interpretation. She advised that an alternative would be to require that the legislature further clarify the statute through an amendment. Constable Contino asked PCCD Legal counsel, Alison Taylor, to look into getting clarification regarding AOPC's interpretation of the Constable's Fee Bill.

Constable Contino continued to voice his frustration with the interpretation regarding the collection of fees. He also stated that there are several constable organizations, so it would be difficult to form a unified interpretation. Ms. Labelle also voiced her concern regarding fees that are not being collected by MDJs in a variety of situations, and that the existing system does not automatically create a warning or waiver message, or assess fees. She indicated that by doing so with fees, it would create a backlash from MDJ offices complaining about staff time involved in repetitive tasks, and indicating that they know how to apply the law. She repeated that the situation is an educational one for MDJ offices, continually issuing bulletins to MDJ offices reminding them when to properly assess fees. Ms. Labelle suggested that it might be helpful to get information to Susan Davis for inclusion in the MDJ continuing education training. Ms. Labelle repeated that there has to be some kind of counsel to represent the constable position on the interpretation of the statute. She advised that contact should be made with AOPC's legal department to discuss issues. She stated that AOPC has interpreted the statute. Until further legislative amendments or clarifications are made to persuade any differences, the AOPC position will remain as it is.

Chairman Opiela asked if the AOPC data could be submitted to auditors for review of all MDJ offices. Mr. Rothermel indicated that the Auditor General's office receives electronic copies of AOPC accounting files; however, he indicated he has not heard of that office citing an MDJ office for

not assessing CETA fees. Mr. Pfau indicated he has spoken with Ms. Davis, who indicated that PCCD would have to provide materials and staff for the training. Final approval would have to be obtained from a training committee. Mr. Pfau indicated that there is insufficient staff manpower at this time to provide that training. Chairman Opiela indicated that no matter how strongly the information is presented to MDJs at training, it is MDJ staff who are ultimately responsible for the data entry, and few understand the meaning or purpose of the CETA fee. Constable Contino added that county central collections are not collecting at the common pleas level.

Chairman Opiela then discussed the data provided by AOPC to the Board, asking for clarification. He indicated it appears from the data for 2006-2009, that fee collections have stagnated; however, he noted that warrants have not stagnated over the same period. He stated that the collections in his own office since 2004 have increased from \$600,000 to over \$1 million. He added that the AOPC data provided should have shown a steady increase, and fees collections should have also shown an increase. Chairman Opiela speculated how widespread the situation is. He stated that, if an approach is to be made to the legislature to increase the amount of fees, reliable data would be required to support the position. He added that, if fees are not being collected by the system at the beginning of the process, it will be difficult to sell an increased amount. Mr. Rothermel added that multiple laser faxes could be sent to MDJ offices; however, given human nature, those documents are eventually ignored because of the quantity and repetitive nature of the information.

Chairman Opiela suggested that once the warrant is issued, the \$5 fee field automatically opens up, forcing an override by the MDJ. He added that the constable training system is unique, in that it is set up to pay for itself, if used properly. Mr. Pfau added that it would be helpful, when addressing the legislature, to be able to show that the Board has done everything possible to be fiscally responsible in maximizing the training with fees collected and provide suggestions for a remedy before it becomes a burden on the court system. He further added that the same situation was encountered with the deputy sheriffs' training fund. It took over two years to get the surcharge increased.

Ms. Labella offered that she can take the Board's concerns back to AOPC, although AOPC is not the magical solution to the situation. She added that, ultimately, MDJs are responsible for training their own staff and being sure that data entry is accurate. Mr. Pfau added that AOPC is in a better position than PCCD to be part of the solution, because they are more involved in fee collections. PCCD provides training and certification of constables to work for the courts. It is not involved in fee collections. Chairman Opiela added that AOPC does provide a staff training component within the MDJ training and suggested that a portion of the time be used to discuss constable fees and collections. Ms. Labella indicated that she would discuss it with AOPC chief counsel as a Board concern for inclusion in future trainings.

Mr. DeFilippi added that it is a revenue stream that is not being taken advantage of to its fullest. He added that he felt that it was an internal issue at AOPC, and it was inappropriate and unnecessary to request legislation to increase fees when current fees are simply not being collected.

Constable Contino asked about the address not being included on the front of warrant document. It is now located on the third page. He added that he was taught that the address on the front of the warrant is what allows him to go to that address to serve the warrant. Mr. Rothermel explained that the system is set up to place similar information in the same location. He added that each section contains specific identification information, and the last page contains address information, showing the most recent address first on the list of all known addresses. That facilitates tracking of multiple

addresses. Constable Contino added that the address should be located on the first page, since that page was the warrant. Mr. Rothermel stated that all pages of the warrant document are considered to be part of the warrant. Constable Contino then asked which address should be used to properly locate the person named in the warrant, because mileage is a cost incurred by constables. Constable Contino asked that the service address be returned to a location on page one of the warrant. Chairman Opiela stated that the addresses were a security concern for the constable, but did agree that the listing of multiple addresses was a good idea.

Chairman Opiela requested that AOPC provide the data again, but in a more delineated format by removing common pleas data, to show just MDJ traffic and non-traffic warrant data. He advised that criminal paperwork is not normally given directly to a constable if NCIC/CLEAN entry is desired. It must go through a police department for the Originating Agency Identification Number (ORI) entry. Mr. Rothermel clarified that the data provided at this meeting showed server and CETA fees over a period of years and suggested that the new query of data should also be refined to include 2007 through 2010.

Chairman Opiela moved to the next action item on the agenda, **Board Policy on Testing**. Alison Taylor, PCCD Legal Counsel, stated that under the Americans with Disabilities Act (ADA), no public entity, including an employer, is required to give an individual a reasonable accommodation, if the entity is not aware that the individual has a disability. She added that it is difficult to develop a useful written policy, which may be either too specific or too general. A reasonable accommodation for one individual with a specific disability may be different from a reasonable accommodation for another individual with a similar disability. Ms. Taylor stated she felt that the best action for the Board would be to add language to the current course applications to include, "If special arrangements are required for a person with a record of a disability to participate in this course, please contact *[insert name of designee]* at least 20 days prior to the first day of class." She added that a determination would be made about the specific disability, what documentation exists (unless it is obvious), and then we can work with the individual to develop a course of action.

Mr. Pfau indicated that one incident in the past involved an individual who had a reading comprehension issue. There was never a formal request for accommodation. The individual was allowed to take the written exam several times, without success, and never pursued the issue further. However, Mr. Pfau did say that the Board should develop and have a mechanism in place in the event a request is received. Ms. Taylor felt that the Board is now aware and is able to address the possibility of a such a request.

Ms Taylor indicated that a possible difficulty would arise in a situation where there is a reading comprehension issue. She explained that the ability to read is a basic, essential part of the job of a constable. She added that if tests are read to an individual, the Board has no control over how that individual will perform his job once they are out in the field. She indicated that even though the individual may have a disability, he or she would not be qualified to do the job, and the Board would not be obligated under ADA to create a reasonable accommodation.

Mr. Pfau added that the same rationale would apply to firearms training; namely, the ability to safely manipulate and control a firearm. Ms. Taylor added that in that situation, the school or the instructor would be obligated to determine the ability of the individual to hold, load, fire and holster the weapon safely and not place other trainees at risk. Constable Contino added that that type of situation already exists with firearms training.

Mr. Pfau added that the Board is approaching the next step regarding specific disabilities and any anticipated challenges to the training. He stated that as a condition of employment, it could be stated that an individual must be able to do specific, standard things. However, as a training Board, it is not possible to create those standards. Ms. Taylor added that she has not been able to locate any discussion in text or on the ADA web site on how to apply the standards to independent contractors. Constable Contino indicated that “reasonable accommodation” should be included in the text. He stated that if the individual cannot take the test or speak English, they should not have taken the job. Commissioner O’Neal repeated that it is the responsibility of the individual to come forward and ask for the accommodation.

Ms. Taylor indicated that it would be difficult to create specific accommodations for each disability, because each disability is different for each person. No two situations are the same. Mr. Pfau indicated that the reason the issue is being addressed is because an instructor was found to have read a test to an individual. Policy has always been that an instructor cannot read a test to a constable. He indicated that instructors had asked about how to accommodate disabilities during their recent updates. Ms. Taylor indicated that if an individual waits until the time of the test to ask for an accommodation, it is too late.

Chairman Opiela asked if there were any further questions regarding **Board Policy on Testing**. There were none. Commissioner O’Neal made a motion to adopt the proposal from PCCD Legal Counsel, Alison Taylor. The motion was seconded by Mr. DeFilippi.

VOTING AYE: Opiela, Contino, DeFilippi, O’Neal, Manning, Sokoloff and Walsh
VOTING NAY: None
ABSTAINING: None

The motion carried.

Chairman Opiela moved to the next action item on the agenda, **Instructor Review and Certification**. Ms. Leffler reviewed the applications and gave staff recommendations, as follows:

HARRISBURG AREA COMMUNITY COLLEGE

Vanessa Adler

Requested Subject Certifications:

Use of Force
Defensive Tactics

Firearms
Chemical Aerosol

Harry Cleland, Jr.

Requested Subject Certification:

Firearms

James R. Miller

Requested Subject Certification:

Management of Aggressive Behavior

TEMPLE UNIVERSITY

Christopher Marrone

Requested Subject Certifications:

| | |
|-------------------------------------|---------------------|
| Role of Constable in Justice System | Use of Force |
| Professional Development | Crisis Intervention |
| Civil Law and Process | Firearms |
| Criminal Law and Process | Expandable Baton |

Staff recommended certification of each individual for all subjects listed.

Chairman Opiela asked if there were any questions from the Board regarding the applications. Constable Fred Contino asked about the qualifications of Mr. Marrone to teach Civil Law and Process, since Marrone is a police officer and not directly involved in civil process. Ms. Leffler indicated that the final decision lies with the Board.

Chairman Opiela then asked for a motion to approve the certifications individually.

Regarding the Adler application, Constable Walsh made a motion to approve. Chairman Opiela seconded the motion.

VOTING AYE: Opiela, Contino, DeFilippi, Manning, O'Neal, Sokoloff and Walsh

VOTING NAY: None

ABSTAINING: None

The motion carried.

Regarding the Cleland application, Captain Manning made a motion to approve. Constable Walsh seconded the motion.

VOTING AYE: Opiela, Contino, DeFilippi, Manning, O'Neal, Sokoloff and Walsh

VOTING NAY: None

ABSTAINING: None

The motion carried.

Regarding the Miller application, Captain Manning made a motion to approve. Constable Sokoloff seconded the motion.

VOTING AYE: Opiela, Contino, DeFilippi, Manning, O'Neal, Sokoloff and Walsh

VOTING NAY: None

ABSTAINING: None

The motion carried.

Regarding the Marrone application, Constable Contino made a motion to approve certification for all modules except Civil Law and Process. Constable Walsh seconded the motion.

VOTING AYE: Opiela, Contino, DeFilippi, Manning, O'Neal, Sokoloff and Walsh

VOTING NAY: None

ABSTAINING: None

The motion carried.

The next item on the agenda was **Act 233 of 1994**. Mr. Horst provided the staff recommendation that payments not be made under Section 7149(f) of the training act for Training Year 2010 due to the current status of the training account.

Chairman Opiela asked if there were any further questions regarding the Act 233 payments.

Chairman Opiela requested a motion to approve or reject the staff recommendation to suspend the Act 233 Payments for Training Year 2010. Motion was made by Mr. DeFilippi to approve the staff recommendation to suspend Act 233 Payments for Training Year 2010. Commissioner O'Neal seconded the motion. Constable Sokoloff asked if the vote today is binding, or does staff take the item to PCCD for final approval. Chairman Opiela indicated that Board votes are recommendations only, but are taken seriously by PCCD.

VOTING AYE: Manning, Sokoloff, DeFilippi, O'Neal, and Opiela

VOTING NAY: Contino and Walsh

ABSTAINING: None

The motion carried.

III. Discussion Items

Chairman Opiela requested that a follow-up letter be sent to Mr. Rothermel and Ms. Labelle thanking them for their attendance at the meeting, reaffirming the data request, and looking forward to further dialogue regarding that data.

Constable Contino asked Ms. Taylor whether or not she would be representing the Board in discussions with AOPC regarding the collection of CETA fees. Chairman Opiela suggested that the

situation might result in future litigation. He asked that Ms. Taylor review the situation and return a legal opinion regarding Section 7149(b) Surcharge.

IV. Informational Items

The next item on the agenda was **Status of Certifications Issued**. Mr. Horst provided an overview of certifications. He stated that, currently, there are 1,425 certified constables, and that 3,650 individuals have been issued certification numbers as of October 5, 2010. Constable Contino requested that the data presented at future Board meetings also show the number trained this year. Mr. Pfau suggested that the report should continue to show the overall total number trained. Mr. Horst added that figures could be provided for basic training, continuing education and firearms.

The next item on the agenda was **2011 Curriculum Overview – PSU Fayette Campus**. Personnel from Penn State were not present at the meeting. Chairman Opiela voiced his appreciation for the work being done now and in the past by Penn State-Fayette and all of the contractors providing constable training. Captain Manning asked if the dates for 2011 training were available. Mr. Pfau indicated that the schedule is set to be mailed during the week after Thanksgiving. Online enrollment will be turned on at the same time. Constable Contino expressed his concern that the material provided does not show any class segments to cover civil or fees, especially for the new constables trained during 2010. Mr. Pfau stated that a review of prior years' topics involving core skills showed that it was necessary to cover the topics chosen.

The next item on the agenda was **Contract Budget Renewals**. Mr. Horst reiterated his earlier statements during the discussion of the financial report. Action had already been taken to significantly reduce independent contractor development and delivery budgets, cutting commitments to contractors by \$1,433,540 during 2009-2010 (a 34% overall decrease compared with 2007-2008) and another \$349,337 during 2011-2012 (an 8% overall decrease compared with 2009-2010). The latest round of negotiations put budgets at about their lowest possible levels unless more drastic measures are taken, such as cutting the numbers of classes offered each year or cutting the wages and salaries paid to the contractors' administrators and instructors. He added that classes would be held to an historical maximum number; no provision was made for increasing the number of training classes in Training Years 2011 and 2012. Mr. Pfau stated that, over time, this would help to eliminate the glut of persons waiting to enroll in class at the last minute, because no additional classes would be added, even if it meant some constables would not become re-certified until the following year. Mr. Horst mentioned several other cost saving measures which could be taken, including, but not limited to, online training, elimination of issuing annual ID cards, elimination of printed class schedules, elimination of the legal reference guide (discussed previously), and regulation changes (discussed previously).

Mr. Horst turned the discussion over to Ms. Leffler for her input regarding the Constable Information System re-design. Besides online training and regulation changes being considered, Ms. Leffler briefly discussed other, potential cost savings associated the redesign of the computer software currently being used to track constable training and certification. She added that county clerks of courts would be contacted for their direct involvement with the input of election, appointment and insurance information.

Chairman Opiela drew the Board's attention to information provided regarding the evaluations for April through June for the Northeast and Southeast regions, and for July through September for the Southwest and Southeast regions. He said that the data suggests that constables feel that the courses are more than acceptable.

VI. Public Voice

Chairman Opiela asked if there were any other comments regarding the Informational Items. Hearing none, Chairman Opiela then moved on to the next item on the agenda, **Public Voice**.

Constable Tom Rushnock, Westmoreland County, state membership chair for the Pennsylvania Fraternal Order of Constables (PaFOC) addressed several items: firearms training, CETA fees, and background checks. He asked why constables have to attend 20 hours of annual firearms training every year. He suggested reducing it to an eight or twelve-hour day. He indicated that there are no city police departments in Pennsylvania that go through qualifications for 20 hours. He advised that they go to the range, qualify, then continue to work. Mr. Pfau offered that a change in training should be based on the type of training and the standard or norm. He added that the chief of police in a municipal department sets the criteria. Officers may go out for eight hours, but they may also go six times per year. The criteria may also require qualification in low light. The only opportunity the constable has for firearms training is through PCCD, on an annual basis.

Constable Rushnock indicated that he felt the standards are too high for the annual firearms training. Mr. Pfau stated that the current pass rate is 96%, and if annual firearm classes were reduced to an eight hour day, failure rates would increase. Standards are set for the students to meet, not for everyone to pass, and standards require justification as to how they are related to the training and the job. He added that an eight hour day is not sufficient time. Constable Rushnock indicated that it is possible during a twelve hour day to have half of the class practice while the other half qualifies during the first half of the day, then both groups switch during the afternoon, and then, in the evening, provide low light and simulator classes the same way. Constable Rushnock indicated that every constable fires at least 150 rounds. He stated that eliminating two of the three days would save ammunition. Mr. Pfau agreed that the situation is not outside the realm of possibility; however, the decision is up to the Board. He added that any decision to change the amount of training time or standards should not be only for financial reasons, but that it should be justified from a training and skills-development perspective.

Constable Rushnock indicated there are MDJ courts in Western Pennsylvania that are refusing to collect the CETA fees, no matter what the situation. He asked if there were some way to force the collection of these fees. Mr. Pfau indicated that AOPC's attendance and direct dialogue with the Board at today's meeting was a step forward in continued discussions.

Constable Rushnock indicated that the PaFOC has standards with respect to membership. If a constable has been convicted of an M-2 or higher, membership is not accepted. He asked who is responsible for background checks to qualify for schooling. Mr. Pfau indicated that PCCD staff has access to JNET for that purpose. Constable Rushnock indicated that the PaFOC has denied membership to 19 people with M-2's or higher. Constable Glenn King, President PaFOC, Lodge 21, and Secretary to Grand Lodge, added that he had spoken to a PCCD Board member several months ago and was told that over the past few years there have not been any background checks conducted

on constables going for their annual firearms. He offered that this is a situation that needs to be corrected. If background checks are being conducted, someone, somewhere, is apparently not doing a very good job.

Constable King stated that the first thing that is done for potential membership in their organization is a complete background check. He stated that in the past 11 months he has denied 19 potential members across Pennsylvania, because they have an Misdemeanor of the second degree (M-2) or higher. Mr. Pfau repeated that background checks are performed for those who come to firearms training. He added that during the last Board meeting there was a discussion regarding whether background checks should be done prior to firearms training. Currently, background checks are not done until after the class is completed, and prior to certification. If anything questionable is found, it is taken to legal counsel for direction. Mr. Pfau added that certifications have also been pulled due to Protection From Abuse notifications. Constable King questioned how it is possible to have 19 firearms-certified constables with a background of M-2 or higher. Constable King indicated he would provide the list of the 19 constables in question to Mr. Pfau, who indicated the situation would be reviewed.

Constable Rushnock indicated that they are trying to police their own ranks, because they want standards to be high, and constables have no oversight. Constable Contino asked if the organization is looking at Misdemeanors of the third degree (M-3), as opposed to M-2. Mr. Pfau indicated that the criteria used can be found on the background check form, signed by each constable during class. The form lists federal and state offenses, as well as penalties. Constable King again offered to provide the list of 19 to Mr. Pfau, so that both could work on it with legal counsel. Mr. Pfau further offered that PCCD utilizes JNET for the background check; however, if an arresting jurisdiction does not submit information for an arrest via LiveScan, the information will not be found during the check. He added that, periodically, PCCD will receive notifications from JNET regarding arrests or death notices for constables. He noted that these notifications are not always timely; that is, they could be received weeks or months after an occurrence.

Constable King provided an example of an unnamed individual whose background revealed a felony conviction in 2001; the individual is a certified constable, but not firearms-certified. He stated that it is not a good reputation for constables, knowing that there is a constable out there with a felony conviction, working the streets. Mr. Pfau indicated that the Board has no power over the standards to become a constable. The Board can control who can come for training, and who meets the standards for certification. He added that background checks are limited to those who attend firearms training and are not done on those who attend basic training. Mr. Pfau stated that, over the years, the Board and legal counsel have addressed the purpose of the background check.

Constable King asked whether or not background checks can be required to enroll in the basic class, or annual updates. Mr. Pfau asked what would the standards be for not allowing an individual into basic training on a criminal hit? What would be the limit? Mr. Pfau provided an example of a constable, convicted of a felony in another state, elected locally by using a false name and social security number. PCCD legal counsel contacted the county involved. The county indicated that the individual was one of their best constables and kept him in office, with the stipulation that he not carry a firearm. Mr. Pfau stated that from that point, the Board took the position to perform background checks once a year for firearms only, unless or until a JNET notification is received.

Constable Al Dancisin, Allegheny County Constables Association, asked if the photos on the new warrants being issued are coming from JNET or from some other source. Chairman Opiela indicated that the source of photos was the Pennsylvania Department of Transportation; however, they did not originally authorize their dissemination. Constable Dancisin asked that if constables in certain counties were permitted to have the photos only, why couldn't other constables have the same access? Chairman Opiela referred Constable Dancisin to Mr. David Naisby, JNET Executive Director. Chairman Opiela indicated that it appears the photos are somehow making it through AOPC and the JNET system and are appearing on the warrants. Direct access to JNET is not being given.

Mr. Pfau stated that eventually all counties will have access, when AOPC completes the rollout of their new computer system. The AOPC website provides the county schedule for computer system upgrades to the new MDJ system. Constable Dancisin acknowledged that Westmoreland County is currently online. Allegheny County is not. He added that the photo on the warrant apparently originates from a Pennsylvania Driver's License or ID card. Constable Dancisin also added that he understands why JNET access is not permitted for constables, because access is abused by constables and the police. Constable Contino and Chairman Opiela agreed that trying to win JNET access has been a battle. Constable Dancisin also thanked the Board for allowing the audience to be present and speak during the meeting.

Constable Rushnock then asked why CETA fees could not be collected per service, instead of per docket. Chairman Opiela indicated that, as discussed earlier, PCCD Legal Counsel, Alison Taylor, will be providing an opinion for a future meeting.

Constable Raymond Hartman, Lycoming County indicated his frustration with a basic training he attended several months ago. He stated that classroom instruction consisted of an instructor reading the material directly from the manual. He further stated he felt that many in the class did not receive useful information. He stated that it appears that the education provided is looked down upon by the rest of the state, and many counties are creating their own training sessions for constables. He cited Lycoming and Berks Counties as examples. Constable Hartman added that Lycoming County wants to train on how to be a constable at polling locations and how to serve criminal or civil warrants. He added that the rules are confusing, and he has nothing to reference to see what the laws are. Counties are making up their own rules. As an example, Constable Hartman stated that Lycoming County will not allow constables to wear uniforms. An individual appeared at a polling place in civilian clothing with a visible weapon. He continued that, because of this incident, the President Judge in Lycoming County ordered that no constables are permitted to carry firearms at polling places. Constable Hartman voiced his frustration with differences among county rules, PCCD training, and state law. He added that what he was told by his county sheriff and the President Judge appear to agree. AOPC gave the sheriff the authority to oversee the activities of constables. Constable Hartman indicated his frustration in that he was told he had to obtain First Aid and CPR training on his own, and that conflicts with the Good Samaritan law.

Constable Hartman then indicated he had received a non-photo ID saying he was certified after basic training, several weeks later he received one with a photo, and, after receiving firearms training, he received a third card. He indicated that the cards are expensive, and costs could have been saved by not printing all of them.

Constable Contino stated that being frustrated is part of being a constable. He stated that differences in fees, interpretations, and practices in each county are allowed. Regarding training, he stated that the Board is currently short on money for optional courses. He added that the training being provided is great, but that constables should utilize what counties and organizations are offering, and should learn what they can from veteran constables.

Chairman Opiela added that the legislature is currently developing guidelines for constables to establish a uniform set of rules and regulations beyond the responsibilities of the training Board.

VII. Adjournment

Chairman Opiela asked if there were any more comments from staff or Board members. There were none, and he called for a motion to adjourn. Constable Contino made a motion to adjourn. Commissioner O'Neal seconded the motion.

Chairman Opiela adjourned the meeting at 1:07 p.m.