BEFORE THE CRIMINAL JUSTICE TRAINING COMMISSION
IN AND FOR THE STATE OF WASHINGTON

In re the Tribal Police Officer Certification of: CLAUDE J. COX, Respondent.	NO. 15-586 FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER DENYING REQUEST TO REVOKE TRIBAL POLICE OFFICER CERTIFICATION

An administrative hearing in this matter was held on October 19, 2016, at the Washington State Criminal Justice Training Commission facility in Burien, Washington, before the Washington State Criminal Justice Training Commission Hearing Panel (Hearing Panel or Panel). The hearing was held to determine whether evidence proved by clear, cogent, and convincing evidence that respondent Claude Cox committed three separate violations of RCW 43.101.105(1)(b) by knowingly falsifying or omitting material information on three different applications for training or certification to the Commission and, if so, whether his tribal police officer certification should be revoked.

The Hearing Panel consisted of Presiding Member Chief Joe Orford of the Stillaguamish Tribal Police Department, Sheriff Harvey Gjesdal of the Douglas County Sheriff's Office, Lieutenant Ben Baker of the Puyallup Tribal Police Department, Officer Kerry Ziegler of the Seattle Police Department, and Professor Loreli Thompson of Brandman

University. The Hearing Panel was advised by Assistant Attorney General John Hillman pursuant to RCW 34.05.455(3).

Petitioner, the Criminal Justice Training Commission (CJTC or Commission), was represented at the hearing by Assistant Attorney General Rose Weston. Respondent was present at the hearing and was represented by attorney Paul Burns.

I. PROCEDURAL HISTORY

1.1 On February 24, 2016, Petitioner mailed Respondent the Statement of Charges and a Request for Hearing form in case number 15-586.

1.2 The Statement of Charges alleged that Respondent knowingly falsified or omitted material information on three applications for training or certification to the Commission by making material false attestations on Commission Form CJTC 1110 on August 4, 2013; on Commission Form CJ 1252 on June 25, 2014; and on Commission Form CJTC 1903 on September 24, 2014.

1.3 Respondent timely requested a hearing to contest the Statement of Charges.

1.4 On June 14, 2016, an Amended Statement of Charges was filed and served on Respondent. The Amended Statement of Charges clarified that the certification at issue in the Statement of Charges was tribal police officer certification.

II. HEARING

2.1 A hearing open to the public was held before the Hearing Panel on October 19, 2016, at the Commission offices in Burien, Washington.

2.2 Respondent lodged an untimely objection to Petitioner's Exhibit P-13. The Presiding Member considered the objection and agreed that Petitioner's Exhibit P-13 should be excluded. Petitioner's Exhibit P-13 was not considered by the Panel in deciding this matter.

2.3 Petitioner presented the testimony of the following employees of the Sauk-Suiattle Tribe: Chief Richard M. McDonnell, Officer Bryan Henken, Lieutenant

Tracy Harrington, Officer Patrick Roberts, and Sauk-Suiattle General Manager Ronda Metcalf. Petitioner also presented the testimony of William Overby from Skagit Valley College; and Tisha Jones, CJTC's Peace Officer Certification Manager.

2.4 Respondent testified on his own behalf. He presented no other testimony or evidence.

2.5 Petitioner offered the following exhibits, which were admitted into evidence:

P-1 Amended Statement of Charges, *In re the Certification of Claude L. Cox*

P-2 Commission Form CJ 1252 – Criminal Records Check of Bryan C. Henken, dated June 25, 2014

P-3 Commission Form CJTC 1903 – Notice of Peace Officer Hire of Bryan C. Henken, dated September 24, 2014

P-4 Commission Form CJTC 1903 – Notice of Peace Officer Hire of Richard M. McDonnell, dated August 4, 2013

P-5 Polygraph record of Bryan C. Henken, dated July 18, 2015

P-6 Psychological evaluation of Bryan C. Henken, page 1, dated July 28, 2015;

P-7 Polygraph record of Richard McDonnell, dated June 12, 2015

P-8 Psychological evaluation of Richard M. McDonnell, page 1, dated June 30, 2015

P-9 Basic Law Enforcement Reserve Academy Recruit Evaluation Week 1, dated June 23, 2014

P-10 Basic Law Enforcement Reserve Academy Recruit Evaluation Week 2, dated June 30, 2014

P-11 Skagit Valley College Letter, dated May 7, 2014

P-12 Tribal Law Enforcement Officer Certification Application, CJTC Form CJ 1906, dated August 8, 2013

2.6 Respondent moved to dismiss all charges at the close of evidence due to insufficient evidence. The Presiding Member denied the motion, finding that the evidence and reasonable inferences therefrom, when viewed in a light most favorable to the Petitioner, were

sufficient to convince a rational trier of fact that the charges were proved by clear, cogent, and convincing evidence.

2.7 The parties made their respective arguments, which were considered by the Hearing Panel.

Based on the evidence presented at the hearing, the Hearing Panel enters the following findings of fact and conclusions of law.

III. FINDINGS OF FACT

3.1 On August 8, 2013, the Commission issued tribal police officer certification to the Respondent pursuant to RCW 43.101.157. Exhibit P-12.

3.2 Respondent was employed as Chief of Police of the Sauk-Suiattle Police Department from approximately March 2013 until his final termination from employment on June 29, 2015.

3.3 As of August 4, 2014, Sauk-Suiattle Officer Richard M. McDonnell had not successfully completed psychological or polygraph testing or had his fingerprints submitted for the criminal history records fingerprint check for his employment at Sauk-Suiattle Tribal Police Department as required by RCW 43.101.095 and Chapter 139-07 WAC.

3.4 On August 4, 2014, Respondent attested under penalty of perjury on CJTC Form 1110, entitled "Notice of Peace Officer Hire" and admitted as Exhibit P-4, that Richard M. McDonnell had successfully completed the psychological examination, polygraph testing, and criminal history records check requirements of RCW 43.101.095 and Chapter 139-07 WAC and was, therefore, "a duly authorized applicant."

3.5 Richard M. McDonell did not complete a polygraph examination for his employment at Sauk-Suiattle Tribal PD until June 12, 2015; did not complete a psychological evaluation for his employment at Sauk-Suiattle Tribal PD until June 30, 2015; and did not

undergo a criminal history records fingerprint check during the time Respondent served as Chief of Police of the Sauk-Suiattle Police Department.

3.6 Under WAC 139-05-810, an applicant cannot attend CJTC's Basic Reserve Officer Academy until the employing agency has completed "a search of state and national criminal history records information regarding its applicant through the submission of the applicant's fingerprints to an appropriate agency or agencies."

3.7 As of June 25, 2014, Bryan C. Henken had not successfully completed psychological or polygraph testing or had his fingerprints submitted for the criminal history records fingerprint check as required by RCW 43.101.095 and Chapter 139-07 WAC.

3.8 On June 25, 2015, Respondent completed Commission Form CJ 1252 (admitted as Exhibit P-2, page 2), which specifically informed Respondent that "RCW 43.101.095 and 43.101.080 requires Academy candidates to successfully complete a psychological and polygraph or similar assessment" before the applicant can attend the Commission's Basic Reserve Officer Academy, which is a training academy.

3.9 On June 25, 2014, Respondent attested on Commission Form CJ 1252 that Bryan C. Henken had "successfully completed a psychological examination and a polygraph" and that a "search of state and national criminal history records has been effected by [Respondent's] agency regarding the applicant through appropriate submission of applicant's fingerprints" and was, therefore, qualified to attend the CJTC Basic Reserve Officer Academy.

3.10 Commission Form CJ 1252, which was admitted as Exhibit P-2, was submitted to the Commission by the Respondent as part of an application for training.

3.11 As of September 24, 2014, Bryan C. Henken had not undergone a psychological examination, submitted to a polygraph or similar assessment, or had his fingerprints submitted for a criminal history records check.

3.12 On September 24, 2014, Respondent attested under penalty of perjury on CJTC Form 1903, entitled "Notice of Peace Officer Hire," that Bryan C. Henken had successfully completed the psychological examination, polygraph testing, and criminal history records check requirements of RCW 43.101.095 and Chapter 139-07 WAC and was, therefore, "a duly authorized applicant."

3.13 Commission Form 1903, which was admitted as Exhibit P-3, was submitted to the Commission by the Respondent as part of an application for certification or training.

3.14 Bryan C. Henken did not complete a polygraph examination until July 18, 2015; and did not complete a psychological evaluation until July 28, 2015. Henken did not undergo a criminal history records fingerprint check during the time Respondent served as Chief of Police of the Sauk-Suiattle Police Department.

3.15 At no time prior to August 4, 2014, did Lieutenant Tracy Harrington inform Respondent that Richard McDonnell had undergone a psychological examination, had taken a polygraph test, or that his fingerprints had been submitted for a criminal history records check.

3.16 At no time prior to June 25, 2014, did Lieutenant Tracy Harrington inform Respondent that Bryan Henken had undergone a psychological examination, had taken a polygraph test, or that his fingerprints had been submitted for a criminal history records check.

3.17 At no time prior to September 24, 2014, did Lieutenant Tracy Harrington inform Respondent that Bryan Henken had undergone a psychological examination, had taken a polygraph test, or that his fingerprints had been submitted for a criminal records check.

3.18 On multiple occasions, the Commission's Certification Manager, Tisha Jones, discussed with Respondent the requirements of RCW 43.101.095 and Chapter 139-07 WAC During these discussions Ms. Jones informed Respondent repeatedly of his responsibility to ensure that all of his new hires and candidates for the Commission's Academies must first

complete psychological examinations, submit to polygraph or similar assessments, and have their fingerprints submitted for a check of state and national criminal history records.

3.19 The Commission relies on the accuracy of the content of Forms 1110, 1252 and 1903 to ensure that newly hired officers have been hired in accordance with the requirements of state law, to include the Respondent's submission of the forms for Officers Henken and McDonnell that were admitted as Exhibits P-2, P-3, and P-4.

3.20 Respondent knew on June 25, 2014 and September 24, 2014, that the hiring of each tribal police officer must be reported to the Commission and that a psychological evaluation, polygraph examination, and criminal history records check by fingerprints was required as a condition of hire in order to comply with state law.

3.21 Psychological evaluations, polygraph examinations, and criminal history records check cost time and money to the Sauk-Suiattle Tribal PD.

3.22 Any Finding of Fact deemed to be properly considered a Conclusion of Law is hereby adopted as such.

Based on the foregoing Findings of Fact, the Panel makes the following:

IV. CONCLUSIONS OF LAW

4.1 Respondent's tribal police officer certification, and whether it can or should be revoked, is governed by chapter 43.101 RCW and chapter 139-06 WAC.

4.2 The Washington State Criminal Justice Training Commission and this Hearing Panel have jurisdiction over Respondent and authority over these proceedings under RCW 43.101.085, 43.101.105, 43.101.157, and 43.101.380.

4.3 Under RCW 43.101.380(1), Petitioner bears the burden of proof by clear, cogent, and convincing evidence.

4.4 RCW 43.101.157(1) requires Respondent "to comply with all the requirements for granting, denying, and revoking certification as those requirements are applied to peace officers certified under this chapter and the rules of the commission."

4.5 Under RCW 43.101.105(1)(b), the Commission may revoke Respondent's tribal police officer certification based on a finding that he knowingly falsified or omitted material information on any application for training or certification to the Commission.

4.6 Under RCW 43.101.105(1)(b), the Commission may revoke Respondent's tribal police officer certification based on a finding that he "knowingly falsified or omitted material information on an application for training or certification."

4.7 A person knows or acts knowingly or with knowledge when: (i) he or she is aware of a fact, facts, or circumstances or result described by a statute defining an offense; or (ii) he or she has information which would lead a reasonable person in the same situation to believe that facts exist which facts are described by a statute defining an offense. RCW 9A.08.-010.

4.8 The element of "knowingly" is not established by evidence that a person was negligently ignorant. *State v. Shipp*, 93 Wn.2d 510, 514-17 (1980).

4.9 "Material information" means information reasonably likely to be relied upon by a public servant in the discharge of his or her official powers or duties. *See generally,* RCW 9A.76.175.

4.10 RCW 43.101.095 specifically requires that a criminal background investigation of a law enforcement applicant include "a check of criminal history, a psychological examination, and a polygraph or similar assessment as administered by the county, city, or state law enforcement agency, the results of which shall be used to determine the applicant's suitability for employment as a fully commissioned peace officer or a reserve officer."

4.11 For Count I of the Amended Statement of Charges, a majority of the Panel concludes by clear, cogent, and convincing evidence that on or about June 25, 2014, the Respondent knowingly falsified or omitted material information on an application for training or certification to the Commission when he submitted Form CJ 1252 to the Commission, which form was admitted as Petitioner's Exhibit P-2, page 2.

4.12 For Count II of the Amended Statement of Charges, a majority of the Panel concludes by clear, cogent, and convincing evidence that on or about September 24, 2014, the Respondent knowingly falsified or omitted material information on an application for training or certification to the Commission when he submitted Form CJ 1903 to the Commission, which form was admitted as Petitioner's Exhibit P-3.

4.13 For Count III of the Amended Statement of Charges, the Panel unanimously concludes that the evidence was insufficient to establish by clear, cogent, and convincing evidence that the Respondent knowingly falsified or omitted material information on an application for training or certification to the Commission on or about August 4, 2013.

a. The Panel notes that although testimony established that Petitioner's Exhibit P-4 was completed and submitted to the Commission on or about August 4, 2014, Count III was not amended to reflect this date. The Amended Statement of Charges alleges that the allegedly offending conduct was committed on August 4, **2013**, which was not proved by the evidence.

4.14 RCW 43.101.105(1)(b) and RCW 43.101.157 together provide that the Commission "may" revoke tribal police officer certification upon a finding that a tribal police officer knowingly falsified or omitted material information on an application for training or certification to the Commission.

4.15 The Legislature's use of the word "may" in RCW 43.101.105(1) gives the Hearing Panel discretion whether to revoke tribal police officer certification following a

finding that an officer knowingly falsified or omitted material information on an application for training or certification to the Commission.

4.16 Considering the totality of the evidence presented, a 3-2 majority of the Hearing Panel concludes that revocation of tribal police officer certification is not warranted in this case.

4.17 Any Conclusion of Law deemed to be properly considered a Finding of Fact is hereby adopted as such.

V. ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Panel HEREBY ORDERS THAT:

The request for revocation of Respondent's tribal police officer certification is hereby DENIED.

DATED this 24 day of October, 2016.

CHIEF JOE ORFORD
Stillaguamish Tribal Police Department
Presiding Panel Member

NOTICE TO PARTIES

RECONSIDERATION: Pursuant to RCW 34.05.470, you have ten (10) days from the mailing of the Final Order (the Findings of Fact, Conclusions of Law, and Order Denying Request to Revoke Peace Officer Certification) to file a petition for reconsideration stating the specific grounds on which relief is requested. No matter will be reconsidered unless it clearly appears from the petition for reconsideration that: (a) there is a material clerical error in the Order, or (b) there is specific material error of fact or law. A petition for reconsideration, together with any argument in support thereof, should be filed by mailing or delivering directly to the Washington State Criminal Justice Training Commission, 19010 1st Avenue South, Burien, Washington 98148, with a copy to all other parties of record and their representatives. Filing means actual receipt at the Commission's office. RCW 34.05.010(6).

A timely petition for reconsideration is deemed to be denied if, within twenty (20) days from the date the petition for reconsideration is filed, the Commission does not: (a) dispose of the petition, or (b) serve the parties with a written notice specifying the date by which it will act on the petition. An order denying reconsideration is not a prerequisite for filing a petition for judicial review.

STAY OF EFFECTIVENESS: The filing of a petition for reconsideration does not stay the effectiveness of the Final Order. The Commission has determined not to consider a petition to stay the effectiveness of the Final Order. Any such request should be made in connection with a petition for judicial review under chapter 34.05 RCW.

JUDICIAL REVIEW: Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement (RCW 34.05.510 through .598). The petition for judicial review of the Final Order shall be filed with the appropriate court and served on the Commission, the Office of the Attorney General, and all parties within thirty (30) days after service of the Final Order, as provided in RCW 34.05.542.

SERVICE: The Final Order in this matter was served on you the day it was deposited in the United States mail. RCW 34.05.010(19).

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