



February 6, 2023

Mr. Michael J. Deery, Esq.  
Chief Counsel  
Pennsylvania Commission on Crime & Delinquency  
3101 North Front Street  
P.O. Box 1167  
Harrisburg, PA 17108-1167

***Re: Formal Complaint Concerning the Constables' Education & Training Board***

Chief Counsel Deery:

Pursuant to sections 35.9 and 35.10 of the General Rules of Administrative Practice and Procedure, 1 Pa. Code § 35.9–10, Complainants Christopher Lee, Richard Banks, Paul Castline, and Ryan Potopsky (collectively, “Complainants”) hereby file this Formal Complaint with the Pennsylvania Commission on Crime and Delinquency (“PCCD”) alleging that instructional content developed by the Constables’ Education and Training Board (“CETB”) under the jurisdiction of PCCD contains misstatements of law that prejudice Constables seeking to obtain continued certification under Act 49 of 2009 (“Act 49”). *See* 44 Pa.C.S. § 7146. In support thereof, Complainants aver the following:

**PARTIES**

1. Complainant Christopher Lee is the elected Constable for Damascus Township in Wayne County, Pennsylvania. Constable Lee resides at 21 Pflaster Road, Damascus, PA 18415. Constable Lee is currently undergoing “Continuing Education” training under CETB.
2. Complainant Richard Banks is the elected Constable for Preston Township in Wayne County, Pennsylvania. Constable Banks resides at 1646 Crosstown Highway,



Lakewood, PA 18439. Constable Banks is currently undergoing “Continuing Education” training under CETB.

3. Complainant Paul Castline, Jr. is the elected Constable for East Donegal Township in Lancaster County, Pennsylvania. Constable Castline resides at 146 West High Street, Marietta, PA 17547. Constable Castline is currently undergoing “Continuing Education” training under CETB.

4. Complainant Ryan Potopsky is the elected Constable for Berwick Borough’s 4th Ward. Constable Potopsky resides at 1325 Orange Street, Berwick, PA 18603. Constable Potopsky is currently undergoing “Basic Training” through CETB.

5. Respondent CETB is a statutorily created advisory board composed of seven (7) members: the Pennsylvania state Police Commissioner or his designee and six gubernatorial appointees. 44 Pa.C.S. § 7143.

### STATEMENT OF FACTS

6. Several times each year, CETB offers an 80-hour Basic Training (“BT”) for Constables and Deputy Constables to secure certification under Act 49.

7. Every year, CETB offers a 20-hour Continuing Education Course (“CE”) for Constables and Deputy Constables to renew their certifications for the next year.

8. Constables do not have a choice as to where to take BT or CE courses—they must be taken through CETB.

9. Constables’ successful completion of BT and CE is mandatory should they wish to continue performing judicial duties. *See* 44 Pa.C.S. § 7142(a) (“[N]o constable or deputy constable shall perform any judicial duties nor demand or receive any fee surcharge or mileage provided by this subchapter unless he has been certified under this subchapter.”).



10. According to CETB, BT and CE are not intended to train Constables and Deputy Constables to perform work under Act 49 unrelated to judicial duties, such as Constables' election services under section 7163; their enforcement of forest laws under section 7155; or their duties to arrest and commit persons pursuant to section 7158. *See* Constables' Training Bulletin Nos. 107 & 108, attached hereto as Exhibit A and incorporated herein by reference.

11. In order to successfully complete CETB's BT, Constables must pay a \$1,125.00 fee, sign a statement, attend all instructional components, and pass proficiency and written examinations. Several courses are offered throughout the year. *See* <https://www.pccd.pa.gov/training/Pages/Constables-Basic-Training.aspx>.

12. In order to successfully complete CETB's CE, Constables must pay a \$210.00 fee, attend all instructional components, and pass a course-ending exam before a pre-determined date in November of each year, providing CETB with sufficient time to issue certification cards in December for the upcoming year. *See* <https://www.pccd.pa.gov/training/Pages/Constables-Continuing-Education.aspx>

13. With both BT and CE, if Constables attend all instructional components *but fail the exam(s)*, they will not successfully complete the course, and their certifications will not be issued or renewed. *See* 37 Pa. Code §§ 431.22, 431.32.

14. However, BT and CE include instruction that is clearly wrong or about which reasonable people may disagree. Constables are expected to assent to such statements and even parrot them back on exams.

15. For example, during BT, Complainant Potopsky was instructed that "the conception of America as 'the world's melting pot' [is] inadequate" because "certain persons, especially white Anglo-Saxon males, have been dominant and women or persons from other



cultures have not been easily assimilated.” A copy of the slide evidencing such instruction is attached hereto as Exhibit B and incorporated herein by reference.

16. Likewise, during BT and CE, Constables are instructed that Constables are not “police officers” for purposes of the Vehicle Code, 75 Pa.C.S. §§ 101–9901.

17. During BT and CE, Constables are were also instructed that “Constables are not trained or intended to make warrantless summary arrests, investigate crimes, or enforce the Crimes Code or Motor Vehicle Code.” A copy of the slide evidencing such instruction is attached hereto as Exhibit C and incorporated herein by reference.

18. During BT and CE Constables are instructed that “Constable’s private vehicle is not defined as an emergency vehicle” for purposes of the Vehicle Code, 75 Pa.C.S. §§ 101–9901. A copy of the slide evidencing such instruction is attached hereto as Exhibit D and incorporated herein by reference.

19. Complainants do not agree with these statements and, in particular, CETB’s unwarranted limitations to their statutory and non-statutory authority, and Complainants do not wish to be forced into accepting such limitations to pass an exam.

20. However, CETB’s instruction effectively requires Complainants to accept and observe these unwarranted limitations to pass the exam. Yet if they answer as the CETB expects them to answer, they incur liability in the future.

21. Should Complainants face a civil lawsuit or criminal charges, for example, alleging that they breached their duties or exceeded their authority as Constables, plaintiffs’ attorneys or prosecutors will use CETB’s training and/or Constables’ answers to the course-ending exam against them.

22. Even in the absence of such legal action, CETB’s incorrect instruction, should it be permitted to continue as accepted authority, effectively limits Complainants’



authority as Constables among law enforcement personnel, the judiciary, and the general public.

### VIOLATION(S) OF STATUTE

23. CETB violates Act 49 by delivering incorrect instructional material and/or engages in *ultra vires* acts by delivering instructional material outside of CETB's authority under Act 49.

24. Act 49 requires that the CETB “[e]stablish, implement and administer the Constables’ Education and Training Program according to the minimum requirements set forth in this subchapter.” 44 Pa.C.S. § 7144(1).

25. Act 49 requires that CETB “[e]stablish, implement and administer requirements for a continuing education program for constables and deputy constables concerning subjects [CETB] may deem necessary and appropriate for the continued education and training of constables and deputy constables.” 44 Pa.C.S. § 7144(4).

26. Similarly, Act 49 requires that CETB’s CE must include “subjects [CETB] may deem necessary and appropriate for the continued education and training of constables and deputy constables.” 44 Pa.C.S. § 7146.

27. CETB “may adjust annually the content of continuing education as it deems necessary to address new or varied topics or skills required to perform judicial duties set forth in the act.” 37 Pa. Code § 431.31.

28. The CETB delivers inaccurate information concerning the status of Constables under the law.



29. For example, the Vehicle Code defines “Police officer” as “[a] natural person authorized by law to make arrests for violations of law.” 75 Pa.C.S. § 102.<sup>1</sup> Act 49 makes clear that Constables have the power to make such arrests. *See, e.g.*, 44 Pa.C.S. § 7155 (“[T]he constable may, without first procuring a warrant, arrest the person.”); § 7158 (“In addition to any other powers granted under law, a constable of a borough shall, without warrant and upon view, arrest and commit for hearing any person who . . .”). Yet CETB instructs Constables that they are not “police officers” for purposes of the Vehicle Code.

30. In any event, CETB has exceeded its own authority, delivering instruction that cannot be said to relate to Constables’ judicial duties.

31. Act 49 defines “Judicial duties” as “[t]hose services specified in section 7161 (relating to fees).” 44 Pa.C.S. § 7141. “Those services specified in section 7161” include:

- (1) transporting defendant(s), § 7161(b);
- (2) services related to criminal cases, including “transporting a prisoner [or] serving a felony or misdemeanor warrant,” *id.* at (c), “taking custody of a defendant,” *id.* at (g)(2), and “conveyance of defendant to or from court,” *id.* at (g)(3);
- (3) services related to “civil and landlord-tenant cases,” including “holding the sale or carrying out an ejectment,” *id.* at (d), “serving complaint, summons or notice,” *id.* at (f)(1), levying and selling levied goods, *id.* at (f)(2), or “providing courtroom security,” *id.* at (f)(9); and

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<sup>1</sup> Similarly, Pennsylvania Rule of Criminal Procedure 103 defines a police officer as “any person who is by law given the power to arrest when acting within the scope of the person’s employment.” Federal courts have uniformly held that Pennsylvania Constables are “police officers” for purposes of § 1983 claims. *See Galluzze v. Miller*, No. CIV.A. 10-836, 2012 WL 995263, at \*9 (W.D. Pa. Mar. 22, 2012).

(4) service of district court issued subpoenas, *id.* at (h).

32. These judicial duties are legally distinct from other services in Act 49, for example, Constables' election services under section 7163; their enforcement of forest laws under section 7155; or their duties to arrest and commit persons pursuant to section 7158.

33. Constables' understanding of the United States as either a "melting pot" or something else does not relate to their performance or fitness to perform judicial duties under Act 49.

34. Constables' understanding of whether they are legally defined as "police officers" under the Vehicle Code is not a requirement for and does not relate to their fitness to perform judicial duties under Act 49.

35. Constables' understanding of whether their vehicles are "emergency vehicles" under the Vehicle Code is not a requirement for and does not relate to their fitness to perform judicial duties under Act 49.

36. Constables' understanding of whether they are "intended to make warrantless summary arrests, investigate crimes, or enforce the Crimes Code or Motor Vehicle Code" is not a requirement for and does not related to their fitness to perform judicial duties under Act 49.

WHEREFORE, Complainants respectfully request that PCCD remedy the CETB's error(s) by requiring CETB to (1) remove the complained-of portions of instruction from CETB's curriculum and/or instruction; (2) issue corrective guidance to all Constables; and (3) maintain enhanced oversight over CETB curriculum and/or instruction for a period of at least one year, with the goal of ensuring that CETB focus on educating Constables as to their performance of judicial duties only.

Respectfully Submitted,



GOLDSTEIN LAW PARTNERS, LLC

Dated: February 6, 2023

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