

Special Commission on Qualified Immunity Meeting Minutes
Friday, April 30, 2021 at 10:30 AM
(virtual meeting)

Commission Chairs Day and Eldridge opened the Commission meeting by welcoming members and providing brief opening remarks, then called the roll:

- Commission Members Present:
 - Michael S. Day
 - James B. Eldridge
 - Sarah Peake
 - William Straus
 - Julian Cyr
 - Cynthia Creem
 - Steven Xiarhos
 - Bruce Tarr
 - Matthew Reddy
 - Christopher Ryan
 - Matthew R. Segal
 - Paul DeRensis
 - Iván Espinoza-Madrigal, Esq
 - Richard J. Sweeney

Following the call of the roll, Chair Day introduced Judiciary Committee staff and then provided a brief bio of each Commissioner.

The Commission reviewed the rules governing the Commission's meetings and Chair Day placed a copy of Joint Rule 29A on the screen for review. He then advised the Commission Members that the meeting had been formally noticed on the MA Legislature public website and was being recorded.

Chair Day invited a motion for the recording of future Commissions and posting on the Commission's public website. Senator Creem offered the motion, which Representative Peake seconded. After a roll call, the motion carried unanimously. The Commission agreed that materials received and discussed by the Commission at meetings will be made publicly available on the Commission's website and that the public would be allowed to provide materials privately to staff for the Chairs.

Chair Day then placed the public Commission website on screen for discussion and comment. The Commissioners were favorable to the website and expressed appreciation for the staff work in creating and maintaining it.

Chair Day noted the Commission's statutory reporting deadline of September 30, 2021 and the Commissioners agreed to reserve 10:00 AM on the last Friday of every month moving forward as a placeholder for future meetings.

Chair Eldridge then read the legislative charge to the Commission and shared the language of the charge on the screen. The Chairs noted their belief that a review of the statutory charge was important in order to keep focused on the actual work of the Commission and avoid drifting into areas beyond the charge.

Chair Day offered a summary of what he viewed as the five categories of the charge for discussion and consideration and placed a document listing these categories on the screen:

- Origins of Qualified Immunity
- Present interpretation of Qualified Immunity by courts in the Commonwealth
- Changes made to Qualified Immunity under most Police Reform Law
- Legal and policy rationale for Qualified Immunity
- Impact of Qualified Immunity to the administration of justice

Senator Creem opened the discussion and noted the recent work done in New York and other states in this area and suggested that the Commission should review that work. Senator Cyr supported that idea and specifically noted work done in Colorado and New Mexico. Chair Day noted that this work would be encompassed under the second category but that a specific subcategory could be added to include a survey of other states' treatment of qualified immunity. He also noted that the federal treatment of qualified immunity would fall under the first category.

Representative Peake stated that it would be beneficial to know whether there have been any legal challenges to newly enacted statutes and Chair Day agreed.

Commissioner Ryan asked that the Commission focus on Massachusetts and the issues we have here. He noted that Attorney Kesten wrote an opinion paper on qualified immunity in which he could not cite to any situation in Massachusetts where the wrongful conduct by police officers was protected by qualified immunity. He asked that if Commissioners know of any such case, it should be discussed here as well. Chair Day noted that this review would be encompassed by the fifth category as part of discussion on the impact of qualified immunity to the administration of justice. Chair Day stated that while the Commission's charge included a review of the doctrine, how it has evolved and what its present impact is here in Massachusetts, it is important to understand what other states are doing as part of this analysis as well.

Commissioner Segal stated that consideration must be given to the question what alternatives might exist as a means of deciding who should bear the cost of having their rights violated and that there might be different ways of allocating that. He suggested that it might be useful to separate out as a separate topic what the alternatives to qualified immunity are and whether they've been adopted by other states.

Commissioner DeRensis requested a copy of Attorney Kesten's opinion. Chair Day noted that the website will contain a repository of resources that Commissioners can populate and welcomed input.

Senator Cyr expressed his desire for public feedback and engagement and noted the racial makeup of the Commission. Chair Day stated that the Commission is going to be deliberate and

conscious in making sure that every voice is heard in the presentations as well as by welcoming public input and feedback.

Chair Day asked for discussion on where the Commission wished to begin its tasks and suggested that the Commission solicit an expert presentation on the origins of qualified immunity. Chair Eldridge asked for recommendations of professors or scholars that were equipped to provide the Commission with an overview of the history of qualified immunity. Representative Peake suggested that the Commission look to local law schools for ideas. Representative Xiahros offered Attorney Kesten and noted that Attorney Kesten had personally represented Representative Xiahros in a qualified immunity claim and has firsthand experience in this field. Senator Creem favored focusing on scholars for the initial presentation. Commissioner Segal supported that position. Commissioner Espinoza-Madrugal also expressed support for a scholarly, objective review of the doctrine.

Chair Day noted agreement among the Commissioners and asked them to provide suggested names to the Chairs ahead of the next meeting. Commissioner Reddy noted that he would benefit from a foundational understanding of qualified immunity and build from there.

Commissioner DeRensis suggested incorporating into the presentation a review of both the origins of the doctrine and a review of the present interpretation in the courts. Commissioner Ryan agreed and underscored his desire to hear from an expert on these issues. Senator Creem agreed and suggested that two scholars could handle these issues in their presentations. Chair Day stated that it seemed like there was broad consensus to have objective presenters review the doctrine and related case law to provide a common base of knowledge for the Commission.

The Commission moved onto a discussion of scheduling. Chair Eldridge offered 10:00am on Friday, May 28 as the next meeting date and noted that minutes and an agenda would be circulated ahead of that.

Chairs Day and Eldridge thanked the Commissioners and entertained a motion to adjourn. The motion was made, seconded and unanimously approved, whereupon the Commission meeting was adjourned.