

**2021CI12657**

**CAUSE NO.** \_\_\_\_\_

**DEPUTY SHERIFFS ASSOCIATION  
OF BEXAR COUNTY**

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**IN THE DISTRICT COURT**

Bexar County - 224th District Court

**V.**

\_\_\_\_ **JUDICIAL DISTRICT**

**BEXAR COUNTY SHERIFFS  
OFFICE AND BEXAR COUNTY  
SHERIFF'S CIVIL SERVICE  
COMMISSION**

**BEXAR COUNTY, TEXAS**

**PLAINTIFF, DEPUTY SHERIFFS ASSOCIATION, VERIFIED APPLICATION  
FOR TEMPORARY RESTRAINING ORDER AND TEMPORARY INJUNCTION**

**TO THE HONORABLE DISTRICT COURT JUDGE:**

Plaintiff Deputy Sheriffs Association of Bexar County as authorized representative of its members, hereinafter DSABC, requests that the court issue a temporary restraining order (TRO) and a temporary injunction against Defendants Bexar County Sheriffs Civil Service Commission and the Bexar County Sheriff's Office to prevent imminent and irreparable harm to Plaintiff. In support of this application for TRO and temporary injunction (collectively, "temporary injunctive relief"), Plaintiff respectfully shows the Court as follows:

### **FACTS**

1. This case involves the violation of the promotion rules applicable to the Bexar County Sheriff's Office. (BCSO) The applicable rules are found in the Bexar County Civil Service Commission's (Commission) rules at Chapter XII-Promotional Procedures, Section 8. Miscellaneous.<sup>1</sup> In order for deputies to be promoted, the BCSO creates a list of eligible candidates ranked in order. When a promotion is made, the first qualified individual on the list is promoted. The list remains active for one year. After such time, the testing procedures to create a new list

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<sup>1</sup> Attached as Exhibit A.

are followed. An exception to the one-year rule occurs when a position is left vacant. If this occurs the active life of the promotion list may be extended in increments of three (3) months up to a maximum of one (1) year at the discretion of the Commission provided that the list is still active. These rules were violated by the BCSO and Commission.

2. On February 25, 2020, the promotion list for Law Enforcement Captains was posted with an expiration date of February 24, 2021. In October of 2020, without authority, the Commission extended the deadline to May 24, 2021. This was the first violation as the Commission's rules which plainly state that the list can only be extended if there is a vacancy. There was not. Therefore, the Commission had no authority to extend the deadline. BCSO had no need to seek and obtain this invalid extension as the list would not expire until February. On May 10, 2021, the BCSO petitioned the Commission to extend the deadline for 90 days which the Commission again granted without authority. There was no valid active list and no vacancies. Both conditions were required to extend the deadlines. Therefore, this extension clearly violated the rules and the list remained invalid.

3. On May 17, 2021, the DSABC filed a grievance about the May 10, 2021 extension as there were no openings. This grievance is still pending, and it is anticipated it will not be heard for two plus years despite the fact the rules call for a hearing within 10 days. <sup>2</sup>

### **GROUND FOR INJUNCTIVE RELIEF**

4. Plaintiff re-alleges and incorporates by reference the paragraphs, above, as if fully set forth herein.

5. On information and belief, unless Defendant BSCO is immediately enjoined and restrained, Defendant will promote an individual on Friday, June 25, 2021 or shortly thereafter from the

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<sup>2</sup> Attached as Exhibit B.

invalid list. This is because a current Captain announced his retirement on June 1, 2021, effective June 25, 2021. The individual who is assumed to be promoted is on the invalid list. Plaintiff requests that the Court temporarily enjoin Defendant from these acts until the trial of this cause.

6. Temporary injunctive relief is authorized under Texas Civil Practice and Remedies Code § 65.011 because if not granted the BCSO will promote an individual off of the invalid list. It should be pointed out that this injunction is in no way sought single out and harm the individual anticipated to be promoted but rather so that all eligible deputies are treated fairly and by the promotion rules.

7. Plaintiff is entitled to an injunction under principles of equity and to enforce the rules of the Commission. The harm is imminent because the invalid promotion is expected to take place soon. All but one of the individuals on the invalid list will suffer an irreparable injury if this takes place. It will also allow the BCSO and Commission to flaunt the rules it is bound to follow. The Commission has already not followed its own rule to have the grievance heard in 10 days. It is not expected that the grievance will be heard for two plus years given the current actions of the Commission in setting grievances. Certainly, Covid has a role in creating a backlog and this delay but the Commission could have been hearing cases via Zoom and there is no reason it could not hear this grievance in a timely manner as the harm is imminent but current practices shows that will not happen. If this injunction is not granted, an entire class of deputies will be harmed. Those who have now qualified to take the promotional test since the original list expired in February of 2021 will be denied the opportunity to test and be placed on the list. Individuals currently on the invalid list will lose out on the chance to re-retest and be re-ranked and perhaps move up on the list. All of the affected individuals will then lose the chance to obtain the experience and lessons of being a Captain which would further their careers and possibly lead to higher positions in law

enforcement or the private sector. The opportunity to promote to Captain at the BCSO rare as there only four in the Law Enforcement Division. While not as important as the stature and experience gained by being a Captain, there is also a monetary implication. Defendant BCSO may argue that this monetary harm is not harm because the Commission or a Court could, order back pay to the individuals harmed by losing out on this opportunity to promote. However, there is no certainty this would this happen, and it deprives these individuals of the certain raise in salary they would receive if promoted. It also deprives them of the use of this increased income for the entire time the grievance is pending, or a Court corrects the error committed in allowing the invalid list to be used. It is also unlikely, at best, that the Commission will cure its own mistake by reversing its decision in 2 plus years and demoting the individual who is promoted off the invalid list.

8. There is no reasonable remedy if the invalid promotion is allowed to happen. The promotion does not affect just the deputies looking to promote to Captain. It has a chain reaction affect because when a Lieutenant is promoted three other positions below the Lieutenant open and individuals promote. Therefore, this one invalid promotion likely affects 3 promotions that would have to be reversed in 2 plus years to correct the plain error committed in extending the deadline and allowing the current invalid list to be used to promote a deputy.

9. There is also harm to the deputies who are promoted because there is no certainty in their promotion because it was invalid. It protects all deputies who promote as a result of this invalid promotion to instead have the error cured and the process proceed by the rules. Doing so, would remove the cloud and uncertainty of all promotion that follow as a result of this invalid promotion.

10. The solution is really quite simple and should have been done ever since the list expired in February of 2021. The BCSO simply needs to open the testing for Captain and create a valid list. The BCSO could have been doing this since February rather than violate the Commission's rules

and operate under an invalid list and improper Order by the Commission. There was no reason the BCSO did not do this other than not wanting to follow the rules it is bound by. The BCSO ran promotional testing for other classes during this time. On March 24, 2020, November 17, 2020, May 12, 2021 and May 21, 2021 tests were conducted for other ranks. There is no valid excuse for not doing so here.

11. It also does not create a hardship on the BCSO by having this position “vacant” until the proper promotion procedures are conducted. It is a practice of the BCSO to fill vacancies with “out-of-class” individuals to fill vacant positions until a position can be filled properly. Here, the individual expected to be promoted off the invalid list could temporarily fill the position while the proper procedure is followed, and a valid list is created.

### **TEMPORARY INJUNCTION**

12. Plaintiff re-alleges and incorporates by reference paragraphs, above, as if fully set forth herein.

13. As set forth more fully above, Plaintiff seeks recovery from Defendant for violations of the Commission’s rules.

14. Plaintiff’s members are likely to succeed on the merits of this lawsuit because plain error was committed by the Commission in failing to follow its own rules. BCSO is going to commit an error by promoting off the invalid list and not follow the rules it is bound by.

15. Unless this Court grants Plaintiff’s application and temporarily restrains Defendant BCSO from the acts described above, Plaintiff’s members will suffer probable, imminent, and irreparable injury for which there is no adequate remedy at law to give Plaintiff complete, final, and equitable relief. As explained above, there is no adequate remedy at law that will give Plaintiff complete, final, and equitable relief.

16. The comparative injury or balance of equities and hardships to the parties and to the public interest supports granting temporary injunctive relief for the reasons set forth above.

17. The requested temporary injunction will simply maintain the status quo between the grant of the temporary injunction and having the grievance issue ruled on by the Commission or heard at the trial of this application. The BCSO could stop all of these necessary legal actions by just agreeing to conduct the proper procedures to create a valid list and promote thereafter. Any delay is solely at the fault of the BCSO and is no basis for it to argue it will be harmed by its self-created problem.

### **TEMPORARY RESTRAINING ORDER**

18. Plaintiff re-alleges and incorporates by reference paragraphs, above, as if fully set forth herein.

19. Plaintiff further requests that the Court issue a TRO immediately enjoining Defendants from the acts described above to protect Plaintiff from the irreparable harm described above and to maintain the status quo in the interim before the application for temporary injunction may be heard. As shown by the verified facts, Plaintiff has satisfied all requirements for a TRO.

20. Plaintiff requests that this application for a TRO be heard ex parte because Plaintiff will suffer an immediate and irreparable injury before notice can be served on Defendant and a hearing held on the application for temporary restraining order. Specifically, an ex parte TRO is appropriate under the circumstances because the promotion of an individual off the improper list is imminent. The current Captain is retiring on June 25, 2021 and the minute he retires the BCSO will likely put a promotion in motion if it has not done so already. The BCSO is well aware that once the proverbial cat is out of the bag, it is nearly impossible to put her back in. Therefore, it will seek to act promptly.

## **REQUEST FOR HEARING**

21. Plaintiff requests that the Court set this application for TRO and temporary injunction for hearing, and after hearing the application, issue a TRO and temporary injunction against Defendants enjoining Defendants from the acts described above as well as enjoining the Commission from taking any action to attempt to usurp this injunction by taking any further action, other than hearing the grievance, while this suit is pending.

## **BOND**

22. Plaintiff is willing and able to post a bond in a reasonable amount to be set by this Court. However, as the interest being sought to be protected are for public servants and no financial harm will be incurred by Bexar County and BCSO, the Plaintiffs would ask the Court to waive bond or set bond at a nominal amount.

## **PRAYER FOR RELIEF**

FOR THESE REASONS, Plaintiff respectfully prays that the Court:

- A. Immediately hear ex parte this application for a TRO and after the hearing, issue a TRO enjoining Defendants and Defendant's officers, agents, servants, elected officials, appointed officials and employees from the date of the TRO and for 14 days thereafter from directly or indirectly taking any action to promote to the position of Captain unless proper procedures are followed by the BCSO and Order the Commission to take no further action related to promotion to the Captain position except to hear the grievance in short order.
- B. Set a hearing on this application for a temporary injunction and after the hearing issue a temporary injunction enjoining Defendants, during the pendency of this action, from directly or indirectly promote to the position of Captain unless proper procedures are followed by the BCSO and Order the Commission to take no further action related to promotion to the Captain position except to hear the grievance in short order if it chooses to do so.
- C. Order that Plaintiff recover from Defendants the reasonable costs Plaintiff incurred in obtaining the TRO and temporary injunction.
- D. Award such other and further relief to which Plaintiff may be entitled.

**Respectfully submitted,**

**PAUL GARCIA & ASSOCIATES**

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**/s/ Clarkson F Brown**

CLARKSON BROWN

State Bar No. 00798082

PAUL GARCIA

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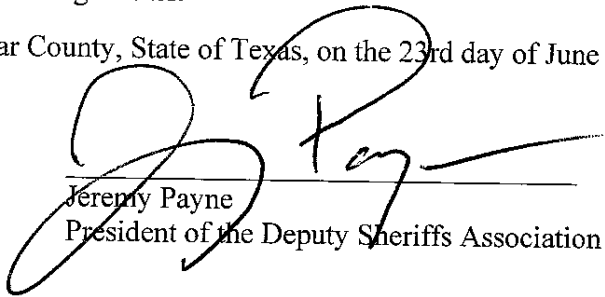
## VERIFICATION

### **DECLARATION OF JEREMY PAYNE IN SUPPORT OF PLAINTIFF DEPUTY SHERIFFS ASSOCIATION VERIFIED APPLICATION FOR TEMPORARY RETRAINING ORDER AND TEMPORARY INJUNCTION**

"My name is Jeremy Payne, President of the Deputy Sheriffs Association of Bexar County. I am of sound mind and capable of making this declaration. I have personal knowledge of the facts stated herein because of my position. My business address is 1202 Hallmark Dr, San Antonio, TX 78216. I declare under penalty of perjury that the statements and facts contained in paragraphs facts, Grounds For Injunctive Relief, and Temporary Injunction of the Deputy Sheriffs Association Verified Application For Temporary Restraining Order And Temporary Injunction are true and correct.

Declarant states nothing further."

Executed in Bexar County, State of Texas, on the 23rd day of June 2021.



Jeremy Payne

President of the Deputy Sheriffs Association of Bexar County

## **CHAPTER XII - PROMOTIONAL PROCEDURES**

### **SECTION 8. MISCELLANEOUS**

12.27 Candidates scheduled to be on duty at the designated time of any testing procedure shall be permitted time off for the examination without loss of pay. Candidates shall return to duty following the examination if their shift is still on duty.

12.28 There is no make-up examination. The examination will be given at the place and time posted on the vacancy announcement, unless otherwise approved in advance by the Commission. Persons unable to attend the examination because of illness, injury, personal reasons, etc., will not be given the examination at another scheduled time.

12.29 In cases where a candidate is unable to test because of a Federal, State or County directive to be at another location during that time, the candidate is required to notify the Commission or its designee immediately upon the knowledge of the conflict. Efforts will be made with the respective governing body to allow the candidate to test at the designated time. If arrangements cannot be made, the candidate will be tested prior to the posted examination date. The written examination will be scored along with the other written examinations on the designated test date.

12.30 The promotion list will remain active for a period of one (1) year, beginning the first day of posting of the promotion list. When a position is left vacant as determined by the Sheriff, the active life of the promotion list may be extended in increments of three (3) months up to a maximum of one (1) year at the discretion of the Commission provided that the list is still active. (ADOPTED 7-17-01; EFFECTIVE 7-31-01)

12.31 If there are no eligible candidates for an announced position or fewer than three (3) candidates at the end of the registration period of each test, the registration will be extended for ten (10) business days to allow persons with less than two (2) years in grade at the qualifying rank to be given an opportunity to compete for the promotion. The date for the written examination will accordingly be delayed by ten (10) business days to allow fair and equal study time for all candidates.

12.32 If no candidates pass the examination, registration will begin again at which time persons with less than two (2) years in grade at the qualifying rank will be given an opportunity to compete for the promotion. All candidates must have completed the initial one (1) year probationary period with the Sheriff's Office prior to competing for a promotion by the date of the promotion test. (ADOPTED 7-17-01; EFFECTIVE 7-31-01)

12.33 If the number eligible with less than two years in grade at the qualifying rank still does not make a large enough pool to match the actual vacancies, then the examination will be open to those with at least two years in the next lower qualifying rank. All candidates must have completed the initial one (1) year probationary period with the Sheriff's Office prior to competing for a promotion by the date of the promotion test. (ADOPTED 7-17-01; EFFECTIVE 7-31-01)

Exhibit A



**Deputy Sheriff's Association of Bexar County**  
**One Badge. One Voice.**



**TO:** Bexar County Civil Service Commission

**FROM:** Jeremy Payne, President  
Deputy Sheriff's Association of Bexar County

**RE:** Personal Grievance

**DATE:** May 17, 2021

I am writing on behalf of many members of the Deputy Sheriff's Association of Bexar County who have expressed concerns of the recent decision by the Civil Service Commission to extend the current promotional lists. Pursuant to Bexar County Sheriff's Civil Service Rules; Chapter 12: Promotional Procedures, Section 8. Miscellaneous; and Subsection 12.30, the Commission can extend the Promotional list if there is an opening as designated by the Sheriff. Currently, there are no openings for either ranks of Captain or Lieutenant in the Law Enforcement tier or the Detention Tier. Therefore, it is my belief that by extending the list that the rule has been violated and would request that the ruling by the Commission be rescinded. In previous grievances we have settled with the county to work people out of class to fill vacant positions. It is my belief that if the reasoning to extend the list is due to its effect on operational issues in the Sheriff's Office this could be alleviated by utilizing staff in out of class positions until a new test can be administered and a promotional list put in place. Many of the staffing shortages with in administration are not new. It has taken the Sheriff 5 months to finally replace Chief Avery Walkers position with Chief Joel Janssen. Furthermore, it took months to replace Chief Bennett with Chief Schuler. In both instances these replacements were promoted from within. I have never seen such a shortage of staff in both administration and the rank and file as I have seen with this administration. The lack of urgency to staff this agency has fallen unfairly on the backs of the men and women who serve this community diligently. As trivial as it may seem to extend the promotional list due to staffing only puts the weight of the Sheriff's inability to hire and retain people on those who wish to promote. I respectfully ask the commission to reverse their ruling giving everyone a fair chance to promote and due to the time sensitive nature of this grievance that it be given immediate attention.

Respectfully,



Jeremy Payne, President  
Deputy Sheriff's Association of Bexar County

Exhibit B