

**NORTH CAROLINA CRIMINAL JUSTICE
EDUCATION AND TRAINING STANDARDS COMMISSION**

MINUTES

DATE: November 10, 2010

TIME: 9:00 A. M.

LOCATION: N. C. Department of Correction
Apex, North Carolina

SUBMITTED BY: Wayne Woodard
Director

The Education and Training Committee, the Planning and Standards Committee, and the Probable Cause Committee met on November 9, 2010 for their regular quarterly meetings. The Executive Committee also met on November 9, 2010.

MEMBERS PRESENT

Mr. John Glenn
Chief Ira Jones
Ms. Gwen Norville
Captain Lee Farnsworth
Captain Terry Jones
Chief Wrenn Johnson
Mr. Terry Waterfield
Mr. Frank Rogers
Mr. Ray Davis
Mr. James Festerman
Ms. Linda Hayes
Chief Scott Cunningham
Ms. Stephanie Freeman
Sergeant Lorrie Hersey
Mr. Kevin Wallace
Ms. Robin Pendergraft
Ms. Tracy McPherson
Chief Patricia Bazemore
Mr. Steve Johnson
Chief Tim Hayworth
Ms. Annie Harvey
Mr. Ricky Anderson
Mr. Brent Herron
Chief Tim Ledford

MEMBERS ABSENT

Mr. Eddie Caldwell
Mr. Johnson Britt
Dr. Robert Ruth
Mr. Tom Thornburg
Mr. Richard Armstrong

Mayor Bobby Kilgore
Chief John Manley
Ms. Angela Williams

VISITORS

Johnny D. Hawkins	
Linda Malone	N. C. Department of Correction
Scott Berkley	
George Daniel	Attorney representing Scott Berkley
Daryl Williams	N. C. Department of Correction
Chet Jernigan	N. C. Justice Academy
Norman Young	N. C. Department of Justice
Peggy Schaefer	N. C. Justice Academy
Laura Vanzant	Davidson College Campus Police Department
Asst. Chief Ronnie Hersey	Davidson College Campus Police Department
Major Jennifer Harris	N. C. State Highway Patrol
Ricky Tucker	N. C. State Capitol Police
Jennifer Councilman	N. C. Department of Correction
David Leaner	Attorney representing Harold Bryan
Harold Bryan	
Danny Newsome	
Darlene Newsome	
Jason Newsome	Nashville Police Department
Bob Dunn	Beaufort Police Department
Chief Steve Lewis	Beaufort Police Department
Mitchell Satterthwaite	
Jay Krueger	Raleigh Police Department
Melanie Krueger	
Travis Payne	Attorney representing Jay Krueger
Michael Norris	N. C. Department of Correction

STAFF

Wayne Woodard	Richard Squires	Dawn Suffel	Jane Gilchrist
Pam Pope	Teresa Marrella	Mark Dearry	Ed Zapolsky
Mike Heavner	Tim Pressley	Brandy Miree	Donna Byrd

I. CALL TO ORDER

Commission Chairman John Glenn brought the meeting to order. He read the Ethics Statement into the minutes. Following the roll call, Chairman Glenn declared that a quorum was present. He extended a warm welcome to the visitors.

Chairman Glenn personally thanked Commissioner Gwen Norville for hosting the Commission at the North Carolina

Department of Correction's training facility in Apex. He extended a warm thank you to the Department of Correction staff for assisting and coordinating the planning of the Commission meeting.

II. AWARDING OF ADVANCED CERTIFICATES

[Agenda Memorandum No. 04-10]

Chairman Glenn reported that staff had evaluated the applications of all one hundred and fourteen (114) candidates. There were ninety-one (91) candidates for the Advanced Law Enforcement Certificate and twenty-three (23) candidates for the Advanced Criminal Justice Certificate. He noted that each of these applicants had met the requirements to receive the Advanced Certificate and the Advanced Certificate pin.

MOTION was made by Commissioner Robin Pendergraft that the Commission award the Advanced Law Enforcement Certificate or Advanced Criminal Justice Certificate to each named individual. The MOTION was seconded by Commissioner Kevin Wallace and carried unanimously.

The following individuals were present to personally receive their Advanced Law Enforcement and Advanced Criminal Justice Certificates:

- | | |
|------------------------|---|
| Laura Ashley Vanzant | Davidson College Campus Police Department
Presented by Assistant Chief Ronnie Hersey |
| Jennifer K. Councilman | N. C. Department of Correction
Presented by Assistant Superintendent of Custody,
Johnny Hawkins and Commissioner Annie Harvey |
| Michael Norris | N. C. Department of Correction
Presented by Warden Gerald Branker and Commissioner Harvey |
| Daryl K. Williams | N. C. Department of Correction
Presented by Commissioner Ricky Anderson |
| Robert D. Dunn, Jr. | Beaufort Police Department
Presented by Chief Steve Lewis and Commissioner Glenn |
| Jason Carl Newsome | Nashville Police Department
Presented by Chief William Creech and Commissioner Glenn |
| Linda Ellen Malone | N. C. Department of Correction
Presented by Charles Moore, Jr. and Commissioner Harvey |

III. MINUTES OF AUGUST 27, 2010 MEETING

Chairman Glenn entertained a motion to approve the minutes of the previous Commission meeting.

MOTION was made by Commissioner Terry Jones that the Commission approve the minutes of the August 27, 2010 meeting; seconded by Commissioner Pat Bazemore and carried unanimously.

VI. STANDING COMMITTEE REPORTS

A. Executive Committee - Commission Chairman John Glenn

Commissioner Glenn stated that the Committee met on October 12th and November 9, 2010 and discussed Committee assignments. He reported that not everyone received their first choice for Standing Committees as a number of members requested the same committees. Another reason, for example, is the need for the Chief of Police and the Department of Correction Commission members to be distributed throughout the three Standing Committees.

Commissioner Glenn asked Director Wayne Woodard to give an update on the CJ Standards Division.

Director Woodard reported that the Executive Committee met and proposed a new subsection for the By-Laws under "Order of Business" that deals with the designation of and voting by proxies. He stated that this new subsection would need to be approved by the Commission. He explained the proposed process for participation by proxies at meetings. A Commission member may designate a proxy to attend meetings of the Committees and the Commission on their behalf, subject to the following limitations: (1) Ex officio members may designate, in writing, one member of their respective office, department, university or agency to represent and vote for them on the Commission at all meetings the ex officio member is unable to attend. The designated proxy may vote on all matters that come before the Commission or the ex officio member's assigned committee; (2) In the event a designated proxy of an ex officio member is unable to attend a meeting on behalf of the ex officio member that proxy may not designate another proxy to attend on their behalf. The designation of a replacement proxy must be made, in writing, by the ex officio member and (3) Non ex officio member may not designate a proxy to represent them at any Committee or Commission meeting.

MOTION was made by Commissioner Glenn on behalf of the Executive Committee to adopt the Proposed Subsection on Proxies of the By-Laws; seconded by Commissioner Steve Johnson. The MOTION carried unanimously.

Mr. Woodard stated that the Class B Misdemeanor Manual was last updated in 2005. On September 22, 2010, the Joint Class B Misdemeanor Manual Committee met and proposed some additions and deletions to the manual. The Committee consisted of: Commissioners Scott Cunningham, Ray Davis and Terry Waterfield, two Sheriffs from the Sheriffs' Education and Training Commission, and staff for both Commissions. Mr. Woodard summarized the changes, which were included in a memo provided to all members. He explained that most all of the deletions proposed pertain to Chapter 18B offenses. Mr. Woodard asked that the Commission adopt the Class B Misdemeanor Manual with additions of new criminal offenses or offenses with new punishment levels and deletions noted by the Committee.

MOTION was made by Commissioner Glenn on behalf of the Executive Committee to adopt the proposed amendments to the Class B Misdemeanor Manual; seconded by Commissioner Ray Davis. The MOTION carried unanimously.

Mr. Woodard next reported that long-time CJ Standards employee and current receptionist Ms. Rosemarie Stanley retired November 1, 2010. He reported that the division was in the process of searching for a new receptionist. He reported that Ms. Sharon Witherspoon was hired as processing assistant for the Radar/SMI

Program. Ms. Witherspoon came from the Private Protective Services Section of the Department of Justice.

Also, Mr. Bob Yow, former Assistant Director of the NC Justice Academy, will be joining the staff on November 15th. Mr. Woodard stated that Mr. Yow will be primarily responsible for assisting with administering Commission certification exams.

Mr. Woodard stated that the new office building is underway and plans are for the Standards Division and Sheriffs' Standards Division to move in the spring of 2011.

Commissioner Glenn asked Director Peggy Schaefer to give an update on the Justice Academy.

Ms. Schaefer reported that construction of the new firing range in Edneyville is underway and expected for completion in July 2011. She stated that she has been informed that it will be completed on time.

Ms. Schaefer stated during the holidays, the east campus administration annex building renovations would begin to remove asbestos. After renovations, this building will become the new welcome center which will open in the summer of 2011.

Ms. Schaefer stated that Johnnie Parker has been hired to work in the print shop and retired Asheville Police Department Assistant Chief Ross Robinson to work in the Child Sexual Assault Investigation position funded by Governor's Crime Commission. She stated that Mr. Bob Yow would be resigning from the Justice Academy. She reported that Cindy Owens and Betty Stanley also retired.

Ms. Schaefer next reported that the Academy was in the process of achieving their CALEA reaccreditation. She noted that the on-site visit was scheduled for January 2011.

Ms. Schaefer further reported that the Academy was working with the SBI and the Law Enforcement Liaison unit of DOJ to produce training that would prepare the criminal justice system to comply with the new DNA arrest process. They had scheduled two hour workshops that will start on December 7th. She reported that this training will educate agency personnel on what the new law is and will orient the officers to the cheek swab process and data collection. The train-the-trainer workshops are designed for instructors to take this training back to their agencies.

Lastly, Ms. Schaefer reported that she would be retiring on November 30th. She stated that in December, Attorney General Roy Cooper would be announcing the new Director. She thanked the Commission for their support and friendship.

B. Education and Training Committee - Chairperson Wrenn Johnson

Chairperson Johnson reported that the Education and Training Committee met at 1:30 p.m. on Tuesday, November 9, 2010, in Room 224 of the NC Department of Correction's Office of Staff Development and Training in Apex, NC.

Chairperson Johnson noted that the Committee elected Robin Pendergraft as Vice-Chairperson.

Chairperson Johnson stated that Mark Strickland, on behalf of the Joint In-service Training Subcommittee which met on October 5, 2010, identified 2012 in-service training topics and hours. The Education and Training Committee approved the subcommittee's proposal.

MOTION was made by Commissioner Johnson that the Commission authorize the Planning and Standards Committee to conduct a rule-making hearing to amend 12 NCAC 09E .0102 and all other related rules to reflect the following required in-service training topics and hours for 2012 mandated in-service training: Firearms Training and Qualification - 4 hours (minimum of); Legal Update - 4 hours; JMST: Interaction Skills in Building Rapport - 2 hours; Career Survival: Social Networking and Digital Communications - 4 hours; Awareness of Issues Surrounding Returning Military Personnel - 2 hours; and Department of Choice - 8 hours (a total of 24 hours); seconded by Commissioner Terry Jones. The MOTION carried unanimously.

Chairperson Johnson noted that the Justice Academy would develop 28 hours of training with 16 hours of mandated training and eight hours of agency topic of choice for a total of 24 required hours.

Chairperson Johnson stated that Commissioner Tim Ledford, on behalf of the North Carolina Association of Chiefs of Police, requested in-service pilot authority for two (2) hour block of instruction: Department Budgeting: Making the Numbers Work and Maneuvering Successfully in the Political Environment, to be delivered by Chief Dwayne Orrick of Cordele, GA, at the January 2011 Winter Chiefs Conference in Asheville. The Committee approved this request.

Chairperson Johnson stated that on behalf of the Department of Correction, Mr. Charles Walston explained a number of recommended changes to instructional objectives in the Basic Correctional Officer Course. Also, presented were several minor revisions. The Committee approved these changes.

Chairperson Johnson noted that Mr. Bob Yow, on behalf of the BLET Revision Committee, proposed adoption of a student performance evaluation form for use in the Explosives and Hazardous Material Emergencies block of instruction. A form for grading the use of a fire extinguisher was also presented. The Committee approved this request.

Chairperson Johnson stated that Ms. Schaefer reported that the Joint In-Service Subcommittee approved a policy regarding committee composition and terms of service. The policy indicated that the Joint In-Service Committee will be made up of 14 members appointed by the Chairs of the Education and Training Committee and the Sheriffs Commission for a staggered three year term. The Education and Training Committee approved this request.

Chairperson Johnson reported that Ms. Schaefer presented the current Education and Training Committee Curriculum Revision Policy, dated August 14, 2002 for review by the Committee. The Policy was reviewed and approved.

Chairperson Johnson stated that Commissioner Tracy McPherson introduced Pamela Gobel, Director of the Community College System's Career Readiness Certificate Program. Ms. Gobel offered an overview of the program to the Committee members. She stated that this program might be helpful to the Commission in regards to entrance standards and competencies associated with the application to, and completion of, various commission training programs.

Chairperson Johnson next reported that Mr. Chris Anderson of the Justice Academy updated the Committee regarding implementation of the Explosives and Hazardous Materials Specialized Training Program. By the end of the year, more than 200 existing Explosives and Haz-Mat Instructors will have completed the update training. Also, one full length Explosives and Hazardous Materials Specialized Training Course is scheduled before the end of the year and another in March 2011.

Chairperson Johnson stated that Ms. Schaefer briefed the Committee on the specifics of an Education and Training informational web page manned by the Academy. Also, Ms. Schaefer reported on a draft set of FAQs that will be developed to guide the practice and implementation of the reading comprehension standard. Work will continue on developing the FAQs.

Ms. Schaefer further briefed the Committee regarding work completed toward the November 2005 6th Edition System Plan adopted by the Commission. The accomplishments include: (1) the adoption of a reading standard for BLET entry, (2) continued development of in-service training curriculums and (3) continued work toward training delivery via current technology.

Chairperson Johnson stated that Mr. Mark Dearry reported to the Education and Training Committee aspects of House Bill 357, which, in part, directs educational institutions to adopt policies that accommodate absences for religious observances. Mr. Dearry stated that the staff and legal counsel feel the current excused absence policies for Commission courses would accommodate the requirements of this law. Language will be added to course management guidelines requiring school directors to cover the relevant details of this law and how it is implemented within the current Commission excused absences policy.

Mr. Dearry further briefed the Committee on an issue that had arisen in regards to the new reading standard required of BLET enrollees, including partial enrollees. He stated that a North Carolina law enforcement officer failed the mandatory annual firearms qualification requirement. As a result, he was required to enroll in the 40-hour firearms block of instruction offered as part of BLET. The officer failed the reading test, thereby prohibiting his enrollment in the firearms component of BLET. Mr. Dearry asked the Committee if it was their intention to require the reading test in such instances and prohibit enrollments as described here. The Committee suggested that the issue be discussed before the full Commission.

Commissioner Chairman Glenn asked staff and legal counsel to review the matter of partial enrollees, to include the impact on in-service firearms issues, and report their findings and recommendations to the full Commission at the February meeting.

C. Planning and Standards Committee - Chairperson Stephanie Freeman

Chairperson Freeman stated that the Planning and Standards Committee met on Tuesday, November 9, 2010 at the North Carolina Department of Correction's Office of Staff Development and Training in Apex.

Chairperson Freeman stated that the Committee elected Scott Cunningham as the new Vice-Chairman of the Committee.

Chairperson Freeman stated that the Committee had a rule-making hearing. The following amendments were proposed: 12 NCAC 09B .0203(b) Admission of Trainees - to amend the rule to restrict entry to BLET programs to persons 20 years or older; 12 NCAC 09B .0205(B)(4)(F) Basic Law Enforcement Training - to amend to: A new two-hour topic of instruction, Human Trafficking, has been added to the BLET curriculum. 12 NCAC 09B .0304 Specialized Instructor Training - amend to: require instructors to be certified in CPR and First Aid through an organization whose curriculum meets the national standards set forth by the International Guidelines Conference on Cardiopulmonary Resuscitation and Emergency Cardiovascular Care. This new requirement is consistent with other specialized instructor types that require CPR certification 12 NCAC 09E .0102 and 12 NCAC 09E .0105 amend to: Career Survival: Leadership and Mentoring. JMST: Race Matters is being replaced with JMST: Interactions, Communications and Understanding. Domestic Violence: Lesbian, Gay, Bi-Sexual and Transgender (LGBT) Relationships has been added. Total number of hours required for in-service training remains 24 hours.

MOTION was made by Commissioner Freeman that the Commission approve the proposed rule amendments and directs staff to make these permanent rule amendments; seconded by Commissioner Kevin Wallace. The MOTION carried unanimously.

Chairperson Freeman stated that Commissioner Frank Rogers with the Department of Correction presented a request for changes in the Commission's interpretive rule. The changes included the addition of and deletion of positions meeting the definition of "Criminal Justice Officer." Additional positions are: Correctional Officer Trainee, Probation/Parole Officer Trainee and Probation/Parole Officer I, Probation/Parole Officer II Trainee, Probation/Parole Officer Field Specialist. The following positions to be removed are: Judicial Unit Supervisor, Probation/Parole Administrative Case Officer and Probation/Parole Intensive Officer.

MOTION was made by Commissioner Freeman that the Commission approve the Proposed Amendments to the Interpretive Rule to include: Correctional Officer Trainee, Probation/Parole Officer Trainee and Probation/Parole Officer I, Probation/Parole Officer II Trainee, Probation/Parole Officer Field Specialist and removal of the following positions: Judicial Unit Supervisor, Probation/Parole Administrative Case Officer and Probation/Parole Intensive Officer; seconded by Commissioner Wallace. The MOTION carried unanimously.

Chairperson Freeman next reported that the Planning and Standards Committee reviewed an amendment to 12 NCAC 09B .0106 which covers documentation and educational requirements. The rule was last amended in 2000. The rule deals specifically with items that deal with the General Education Development (GED). Since the last amendment, the method of scoring the GED has changed. After consultation with the GED test office, staff discovered that the scoring will be changed again in 2012. Chairperson Freeman asked the Commission to amend the rule to remove references to a numeric score. The proposed amendment: "documentary evidence of having passed the general educational development test shall be satisfied by the certified copy of GED test results. The certified copy of a military GED may be used as alternate evidence of a GED completion."

MOTION was made by Commissioner Freeman that the Commission grant the Planning and Standards Committee rule-making authority to make amendments to 12 NCAC 09B .0106; seconded by Commissioner Wallace. The MOTION carried unanimously.

Chairperson Freeman reported that the Committee heard a presentation from Dr. John Wilkinson, who is a tactical physician based in Gaston County. He raised some issues regarding operation with special response tactical teams in North Carolina. Based on his presentation, the Committee will review his recommendations.

Lastly, Chairperson Freeman stated that the Executive Committee had reviewed the System Plan which currently has a total of five goals. The goals are: Continue Examination of Professional Development of Retention and Recruitment of criminal justice officers with a goal of improving their profession, Continue to develop a program of activities designed for all criminal justice officers in addressing the ever changing societal issues within the state, Review Commission training for possible improvements in delivery management and facilities, Evaluate the need for standards in particular areas of criminal justice specialization including: crime scene investigation, Spanish interpretation, K-9 handlers, field training, Taser, OC Spray, PR24 Baton and ASP, Review the professional standard requirements for criminal justice officers to ensure high quality officers are being hired and review and evaluate the Specialized Instructor Training Program to determine its effectiveness in meeting the needs of the criminal justice profession. She stated that each member would be receiving a ranking sheet. She asked that these goals be ranked according to their importance. Chairperson Freeman asked that this form be forwarded to staff member, Ms. Teresa Marrella upon completion.

D. Probable Cause Committee - Chairman Ray Davis

Chairman Davis reported that the Probable Cause Committee met on Monday, November 8, 2010 at 9:00 a.m. at the Department of Justice Building in Raleigh, and again on Tuesday, November 9, 2010 at 9:00 a.m. at the North Carolina Department of Correction's Office of Staff Development and Training in Apex. He stated that the Committee elected Commissioner Ira Jones as Vice-chairman.

Chairman Davis asked the Commission members to review the list of individuals that staff had certified after reviewing their criminal records. He advised that the Probable Cause Committee members had reviewed and subsequently approved the issuance of certification to these individuals.

Chairman Davis reported that the Committee had reviewed twenty-one (21) cases. Of those cases, one case was continued, probable cause was found in nine (9) cases and the committee found no probable cause in eleven (11) cases. He related that the committee found probable cause in four (4) of the cases which the Committee offered a lesser sanction of an "Official Written Reprimand."

MOTION was made by Commissioner Davis that the Commission accept a lesser sanction of a consent agreement for Preston Howell; seconded by Commissioner Terry Waterfield. The MOTION carried unanimously.

MOTION was made by Commissioner Davis that the Commission accept a lesser sanction of a consent agreement for Hubert Junior Dixon, Jr.; seconded by Commissioner Ira Jones. The MOTION carried unanimously.

MOTION was made by Commissioner Davis that the Commission accept a lesser sanction of a consent agreement for Hosea James; seconded by Commissioner Ira Jones. The MOTION carried unanimously.

MOTION was made by Commissioner Davis that the Commission accept a lesser sanction of a consent agreement for Michael Henry Robinson; seconded by Commissioner Terry Waterfield. The MOTION carried unanimously.

V. OTHER BUSINESS

None

VI. OLD BUSINESS**A. Old Business**

None

B. Legal Counsel Report

Ms. Jane Gilchrist distributed a document entitled "Pending Administrative Cases" for the membership's review:

1. Jay Eduard Krueger To Be Heard at the November 2010 Commission Meeting.
2. Roy Lee Burgess Petition for Judicial Review filed July 14, 2009 (Wake County); Superior Court Order filed August 3; 33 days: September 6, 2010. Notice of Appeal to COA filed by Petitioner September 2nd; Proposed Record on Appeal served October 7th; 30 days: November 8th.
3. Darryl Emanuel Gerald Petition for Judicial Review filed July 28, 2010 (Stanly County); Response filed August 4th; Official Record filed August 27th; Order for Prelim. An injunction filed September 10th.
4. George Lee Shaver, III Final Agency Decision entered September 1, 2010; waiting for Sheriff to serve Shaver with Final Agency Decision and letter explaining rights to appeal.
5. Scott Ray Berkley To Be Heard at the November 2010 Commission Meeting.
6. Tommy Keith Lymon Petition for Judicial Review filed April 29, 2010 (Wake County); Response filed May 27, 2010. Sent Calendar Request for Week of December 13th on September 28th.
7. Harold Kerwin Bryan To Be Heard at the November 2010 Commission Meeting.
8. Marcus Andrew Fleming Hearing: October 19, 2010, 9:00 a.m.; Charlotte. Draft Proposal for Decision Due to Judge November 17th.
9. Mitchell Ray Satterthwaite To Be Heard at the November 2010 Commission Meeting.
10. John David Dykes To Be Heard at the November 2010 Commission Meeting.
11. Christopher Ben Buff To Be Heard at the November 2010 Commission Meeting.
12. Shawn Carson Houston Draft Proposal for Decision sent to Judge October 14th.
13. James William Carpenter, Jr. Draft Proposal for Decision sent to Judge September 15th; Judge to file Decision by November 20th.
14. Chad Aaron Webster Proposal for Decision sent October 19th; 30 days; November 22nd. To Be Heard at the February 2011 Commission Meeting.
15. Emery Roland Anderson To Be Dismissed by Judge.
16. Timothy Scott Phillips Hearing: January 10-11, 2010, Mecklenburg Count Courthouse.
17. Timothy Tracy Walker Final Decision Order of Dismissal Filed September 13th; OAH could not serve Petitioner via Certified Mail; A certified letter with FDOD materials sent Petitioner on November 4th; 35 days.
18. Ahmed Joseph Blake Interrogatories sent October 28th; 15 days: November

15th - Discovery Due: November 15th. Hearing December 1, 2010, 9:30 a.m.; Raleigh.

19. James Albert Bowditch

Final Decision Order of Dismissal filed November 1, 2010; 35 days.

20. Bryson Lawrence Cornett

Interrogatories - Discovery Due: December 6, 2010 - Hearing Week of December 20, 2010; Fayetteville.

21. Petre Earl Franks

Interrogatories - Discovery Due: January 3, 2011; Hearing Week of January 17, 2011; New Bern.

C. Final Agency Decisions

Ms. Gilchrist noted that Mr. Norman Young, an Assistant Attorney General, would serve as the Commission's Legal Counsel for the Final Agency Decisions.

Chairman Glenn read the Recusal Statement to the Commission members and reminded everyone that both the Petitioner and the Respondent would be limited to 30 minutes of oral argument.

1. Scott Ray Berkley

Ms. Jane Gilchrist presented the case of Scott Ray Berkley. She reported that Mr. Berkley was convicted of a Department of Correction misdemeanor. On September 15, 2008, Mr. Berkley pleaded "nolo contendere" to the "Hit and Run" charge in violation of the Virginia Code in Danville County, Virginia. Ms. Gilchrist stated that this charge is comparable to the Department of Correction misdemeanor, the "Hit and Run" violation under North Carolina General Statute § 20-166(c1) duty to stop in the event of an accident. She asked the Commission to adopt the Proposed Final Agency Decision.

George Daniel, attorney representing Mr. Berkley, stated that Mr. Berkley was living north of Danville, Virginia. Mr. Daniel explained that Mr. Berkley decided to go to the store to purchase cigarettes and while driving there, he struck a tree. His car had some fluid draining from the radiator and the police were able to track his vehicle to the hotel where he was staying. Mr. Daniel stated that Mr. Berkley had been working with the Department of Correction for two and a half (2 ½) years. He stated that it was only property damage to a tree. He stated that Mr. Berkley had performed very well with the Department of Correction. Mr. Daniel asked the Commission to consider the Administrative Law Judge's Decision.

MOTION was made by Commissioner Wrenn Johnson that the Commission go into Closed Session; seconded by Commissioner Terry Jones. The MOTION carried unanimously.

MOTION was made by Commissioner James Festerman that the Commission return to Open Session; seconded by Commissioner Terry Jones. The MOTION carried unanimously.

MOTION was made by Commissioner Ray Davis that the Commission adopt the Proposed Final Agency Decision that Scott Ray Berkley's correctional officer certification be suspended based on his conviction of the DOC misdemeanor offense of "Hit and Run," in violation of 12 NCAC 9G .0504(b)(3). It is further ORDERED that this period of suspension be for one (1) year and that the one (1) year period of suspension be suspended on condition that Mr. Berkley continue his good work record and not commit any crimes or violations of Commission's rules, other than minor traffic offenses, during the one year period of suspension. This period of suspension is to run from the date this ORDER becomes final; seconded by Commissioner Steve Johnson. The MOTION carried unanimously. See Attachment I for the Commission's Final Agency Decision and Attachment II for the roll call vote.

2. **Jay Eduard Krueger**

Ms. Gilchrist presented the case of Jay Eduard Krueger. She stated that the matter before the Commission is to decide whether the suspension of the Petitioner's law enforcement officer certification is arbitrary and capricious behavior and if the Petitioner's right to due process and equal protection is in violation. She stated that this case has been before the Commission and after a remand by the Court of Appeals and back to the Office of Administrative Hearings. This case is before the Commission today for a Final Agency Decision. The evidence presented at the hearing indicated that in May 2005, the Raleigh Police Department conducted an Internal Affairs Investigation concerning allegations of inaccurate and falsified radar records, specifically the Commission Form SMI 15. The Petitioner admitted that he had signed two Form SMI 15s for two other officers indicating that those officers had engaged in radar training with the Petitioner when in fact, no training had taken place on the date indicated on the Form SMI 15. Ms. Gilchrist stated that Officer Kevin Augustus O'Neal submitted the form with the Petitioner's signature on it and was issued certification by this Commission. She stated that Mr. Krueger was in a supervisory role to Officers O'Neal and Christopher Brian Mingia when he engaged in the activity of signing the SMI 15 form. Based upon the admission of the Petitioner, he knowingly and willfully, by any means of false pretense, deception, defraudation, misrepresentation or cheating whatsoever, aided Kevin Augustus O'Neal and Christopher Brian Mingia in obtaining or attempting to obtain credit, training or certification from this Commission. Ms. Gilchrist reiterated that this case had been before the Commission in May 2007. A Final Agency Decision was entered in this matter. Ms. Gilchrist stated that the issue that was appealed was whether or not the failure of the Probable Cause Committee to offer Mr. Krueger a consent agreement was in violation of his rights to equal protection and due process and whether or not this behavior was arbitrary and capricious. At the hearing, she stated that she had presented several witnesses, including all of the officers involved with Officer Krueger. She stated that there were seven other officers whom the Probable Cause Committee found probable cause that they had attempted or obtained certification from this Commission by fraud. Ms. Gilchrist argued that Officer Krueger was not treated any differently in a protected class because he did not allege that he was in a protected class.

Travis Payne, attorney representing Mr. Krueger stated that he admitted to his actions and expressed remorse for his actions. He stated that Officer Krueger was suspended without pay. He was barred from any promotions within the department. He stated that Officer Krueger's career has been permanently damaged by the sanctions that were imposed on him by the Raleigh Police Department for an infraction. Mr. Payne stated that Officer Krueger had never been offered a lesser sanction and this was not fair. Mr. Payne stated that he introduced evidence that involved eighteen (18) other officers who had more serious allegations than Officer Krueger and were offered a lesser sanction. He stated at no time had Officer Krueger been offered the opportunity of a consent agreement.

MOTION was made by Commissioner Robin Pendergraft that the Commission go into Closed Session; seconded by Commissioner Angela Williams. The MOTION carried unanimously.

MOTION was made by Commissioner Pendergraft that the Commission return to Open Session; seconded by Commissioner Linda Hayes. The MOTION carried unanimously.

MOTION was made by Commissioner Pendergraft that the Commission adopt the Proposed Final Agency Decision that Jay Eduard Krueger's law enforcement officer certification be suspended for a period of 180 days for knowingly and willfully, by any means of false pretense, deception, defraudation, misrepresentation or cheating whatsoever, aided another person in obtaining or attempting to obtain credit, training or certification from the Commission, in violation of 12 NCAC 09A .0204(b)(8). This period of suspension is to run from the date this ORDER becomes final; seconded by Commissioner Kevin Wallace. The MOTION carried unanimously. See Attachment III for the Commission's Final Agency Decision and Attachment IV for the roll call vote.

6. Harold Kerwin Bryan

Ms. Joy Strickland presented the case of Harold Kerwin Bryan. She stated that Mr. Bryan had asked Ms. Julia Devane to terminate her relationship with another man. Ms. Devane had told Mr. Bryan that she was afraid of the other man and afraid to end the relationship with him. Ms. Strickland stated Ms. Devane did not ask Mr. Bryan to help her and she declined to give Mr. Bryan the correct name or telephone number of the gentlemen she feared. Ms. Strickland stated that Mr. Bryan obtained a telephone number from a woman's cell phone without her knowledge and without first obtaining her permission. Ms. Strickland stated that Mr. Bryan had gone into the Tri-County Wireless Store in Morganton, North Carolina and presented the telephone number and requested the name of the wireless subscriber associated with that number. She stated that the Tri-County Wireless store gave Mr. Bryan the name of the person associated with the number. This information was retrieved from a computer. Ms. Strickland stated that Mr. Bryan obtained this information by stating that he was a certified sworn officer with the North Carolina State Highway Patrol, on duty, in uniform, and driving a North Carolina State Highway Patrol car. She stated that Mr. Bryan had committed a felony offense of "Obtaining Property by False Pretense." Ms. Strickland asked that the Commission adopt the Proposed Final Agency Decision.

David Learner, attorney representing Mr. Bryan, stated that he has known Mr. Bryan personally since 1998. He stated that Mr. Bryan has been completely honest. Mr. Learner stated that he did not dispute the facts that Ms. Strickland had pointed out and that Mr. Bryan's actions were inappropriate. He stated that in Mr. Bryan's mind, he was trying to protect this woman. Mr. Learner stated that Mr. Bryan has acknowledged that his conduct was wrong.

MOTION was made by Commissioner Pendergraft that the Commission go into Closed Session; seconded by Commissioner Bobby Kilgore. The MOTION carried unanimously.

MOTION was made by Commissioner Lorrie Hersey that the Commission return to Open Session; seconded by Commissioner Tracy McPherson. The MOTION carried unanimously.

MOTION was made by Commissioner Hayes that the Commission adopt the Proposed Final Agency Decision; seconded by Commissioner Harvey. The MOTION carried unanimously. The MOTION carried unanimously. See Attachment V for the Commission's Final Agency Decision and Attachment VI for the roll call vote.

4. John David Dykes

Ms. Strickland presented the case of John David Dykes. She reported that there was a finding of guilt for leaving the military in that Mr. Dykes was issued an Article 15 (non-judicial punishment) for the crime of "desertion" occurring on October 22, 1989. Ms. Strickland stated that Mr. Dykes did not remember the punishment; however, she argued that Mr. Dykes should have remembered the punishment for "desertion." Ms. Strickland asked the Commission to adopt the Proposed Final Agency Decision.

Mr. Dykes was not present to address the Commission.

MOTION was made by Commissioner Pendergraft that the Commission adopt the Proposed Final Agency Decision; seconded by Commissioner Ricky Anderson. The MOTION carried unanimously. See Attachment VII for the Commission's Final Agency Decision and Attachment VIII for the roll call vote.

3. Christopher Ben Buff

Ms. Gilchrist presented the case of Christopher Ben Buff. She stated that Mr. Buff had completed a Report of Appointment/Application for Certification, Form F-5A. On the Form F-5A, Mr. Buff had marked the box adjacent to "No Criminal Charges Other Than Minor Traffic Offenses." Ms. Gilchrist stated that Mr. Buff did not list the simple worthless check charge and did not remember the two counts of assault on a female. She stated that Mr. Buff appeared in court and was found guilty. Ms. Gilchrist asked the Commission to adopt the Proposed Final Agency Decision.

Mr. Buff was not present to address the Commission.

MOTION was made by Commissioner Pendergraft that the Commission adopt the Proposed Final Agency Decision; seconded by Commissioner Annie Harvey. The MOTION carried unanimously. See Attachment IX for the Commission's Final Agency Decision and Attachment X for the roll call vote.

5. Mitchell Ray Satterthwaite

Ms. Gilchrist presented the case of Mitchell Ray Satterthwaite. She stated that Mr. Satterthwaite had submitted a Report of Appointment/Application for Certification, Form F-5A. The Form F-5A indicated that Mr. Satterthwaite had been charged with the offenses of "Assault on a Female," and "Larceny by Employee." She stated that an investigation was conducted. Ms. Gilchrist stated that Mr. Satterthwaite was served with the warrant for the Larceny by Employee charge. She stated on August

9, 2005, Mr. John Marsh wrote a statement that he had received the \$700.00 from Mr. Satterthwaite. The Larceny charge alleged that Mr. Satterthwaite embezzled \$700.00 dollars in cash without the employer's consent. Mr. Marsh testified that Mr. Satterthwaite left with the truck and the money. Ms. Gilchrist stated that between May 31 and early June 2005, Mr. Marsh went to the

Sheriff's department to file a report stating that he wanted his \$700.00 dollars back from Mr. Satterthwaite. She stated that Investigator Ben Williams asked Mr. Satterthwaite to come to the Sheriff's Office; however, he never showed up. She stated that Mr. Marsh trusted Mr. Satterthwaite with \$700.00 dollars but he did not return the money when asked. Ms. Gilchrist asked the Commission to adopt the Proposed Final Agency Decision.

Mr. Satterthwaite stated that he did not commit a felony. He admitted that Mr. Marsh had asked for his money and that he had returned the \$700.00. Mr. Satterthwaite stated that Mr. Marsh did not want this case heard in court. He stated that he never had the opportunity to prove himself. He asked the Commission to reverse the decision and let him keep his certification.

MOTION was made by Commissioner Wallace that the Commission go into Closed Session; seconded by Commissioner Hersey. The MOTION carried unanimously. The MOTION carried unanimously.

MOTION was made by Commissioner Wallace that the Commission return to Open Session; seconded by Commissioner Hayes. The MOTION carried unanimously.

MOTION was made by Commissioner John Manley that the Commission adopt the Proposed Final Agency Decision; seconded by Commissioner Hersey. The MOTION carried unanimously. See Attachment XI for the Commission's Final Agency Decision and Attachment XII for the roll call vote.

IX. DATE OF NEXT MEETING

Chairman Glenn advised that the next Commission meeting is scheduled for February 17-18, 2011 in Apex.

X. MOTION TO ADJOURN

MOTION was made by Commissioner Wallace that the Commission adjourn; seconded by Commissioner Manley. The MOTION carried unanimously.