

MINUTES
OF
THE NORTH CAROLINA SHERIFFS'
EDUCATION AND TRAINING STANDARDS COMMISSION

DATE: December 10, 2015
TIME: 2:10 P.M.
SUBMITTED BY: Julia A. Lohman, Director

I. CALL TO ORDER

- Chairman Brad Riley

The North Carolina Sheriffs' Education and Training Standards Commission's Final Agency Decision meeting was called to order by Chairman Brad Riley on Thursday, December 10, 2015 at 2:10 P.M. The Final Agency Decision meeting was held at the Wake Technical Community College Public Safety Education Campus, 321 Chapanoke Rd., Raleigh, NC 27603.

Chairman Riley requested a roll call of Commission members. Administrative Assistant Judy Marchetti recorded the following:

MEMBERS PRESENT

Sheriff Juan Vaughan
Sheriff Brad Riley
Sheriff Steve Bizzell
Mr. Robert Wisecarver
Mr. Marc Nichols
Sheriff Eric Tilley
Sheriff Alan Cloninger
Sheriff John Ingram
Sheriff Ricky Oliver

MEMBERS ABSENT

Ms. Tracy McPherson
Mr. Jamie Markham
Sheriff Alan Norman
Sheriff Alan Jones

STAFF

John Congleton - Legal Counsel - NC Department of Justice
Matthew Boyatt - Legal Counsel - NC Department of Justice
Julia A. Lohman - Director - Sheriffs' Standards Division
Judy Marchetti - Administrative Assistant - Sheriffs' Standards Division

In the first order of business, Legal Counsel John Congleton read the Ethics Reminder which states:

All members have a duty to avoid conflicts of interest and appearances of conflict. Commission members have an affirmative duty to fully disclose any conflict of interest or potential conflict of interest between the member's service on the Commission and his or her private interests. One of the most basic rules is that members cannot knowingly use their position on the Commission in a manner that will result in a financial benefit to the person, a member of the person's family, or a business with which he or she is associated. [N.C.G.S. 138A-31]. Commission members are also prohibited from accepting gifts from persons doing or seeking to do business with the Commission, persons engaging in activities that are regulated or controlled by the Commission, or persons having a financial interest that may be substantially affected by the member's official duties.

Legal Counsel John Congleton then asked whether any member had a known conflict or appearance of conflict with respect to any matters coming before the Commission at this time.

Negative response from all Commission members.

A statement of Economic Interest was filed for Sheriff James "Alan" Norman and Sheriffs' Standards Division Director Julia Lohman. Both economic evaluations have come back and were found to have no conflicts of interest or potential conflicts of interest.

The delivery of Oath of Office was performed by Notary Public Judy Marchetti for William Marcus Nichols – Senate Pro-Tem.

Chairman Riley welcomed the visitors and asked that the visitors stand up and introduce themselves.

VISITORS

Lt. Jessie Fennell – Hertford County Sheriff's Office
Darren Jackson - Attorney
Amy Long - New Hanover County Sheriff's Office
Sgt C. L. Smith – New Hanover County Sheriff's Office
Carol Manning – Vance County Sheriff's Office

VISITORS (cont.)

Mike Plummer – Mecklenburg County Sheriff’s Office
Mike Smith – Mecklenburg County Sheriff’s Office
Litchard Hurley – Retired Sheriff Randolph County
Sgt Scott Zeman – Cabarrus County Sheriff’s Office

Sheriff Riley again welcomed the visitors and called on Matthew Boyatt for Final Agency Decisions.

II. LEGAL COUNSEL’S REPORT

Mr. Matthew Boyatt’s report was distributed to all Commission Members along with a chart which included 47 active administrative case files that were in the Office of Administrative Hearings. He reported that 37 cases have been litigated. Mr. Boyatt advised that 10 cases have not been litigated. Mr. Boyatt went over the various stages of litigation for the 37 administrative cases as follows: [See **Attachment #1**].

- Three (3) cases involve Class B misdemeanors after the deputy/detention officer has been certified.
- Nine (9) felony commissions.
- Ten (10) cases involving four (4) or more Class A or B misdemeanors.
- Five (5) cases material misrepresentations.
- Eight (8) cases involve a lack of good moral character.
- One (1) case involves a certified officer who has been charged and did not report that charge within the five day reporting period.
- One (1) case with a positive drug screen.

III. FINAL AGENCY DECISIONS

***Gerrod Bennett Gay**

Matthew Boyatt

Mr. Gerrod Gay is represented by attorney Darrin Jackson. Mr. Gay is not present although he wanted to be. Mr. Gay’s attorney is present. Mr. Boyatt chose to hear the case today because he believes it is a case the Commission can hear and make a decision. If there is any issue about which the Commission Members would like to speak with Mr. Gay, that can be arranged if it is needed.

The Proposal for decision was signed by Administrative Law Judge Lassiter on December 03, 2015. The Petitioner and Counsel are ready to proceed and not wait 30 days to file exceptions and wait for the next commission meeting. Mr. Boyatt summarized the Proposal for Decision for Gerrod Bennett Gay as submitted by the Administrative Law Judge and Proposal submitted

by Legal Counsel [**Attachment #2**]. Mr. Boyatt summarized the facts of this case. This is a one issue case involving a positive drug screen.

Mr. Gay is an applicant to the Franklin County Sheriff's Office. While Mr. Gay was in the application process he visited his father on May 2nd 2015. Mr. Gay had a headache, cough, and congestion. His father gave Mr. Gay one Floricet pill from his prescription medication. On May 4th 2015 Mr. Gay was requested to have a drug screen. While Mr. Gay was at the Urgent Care facility he also saw a doctor for his cough and congestion. Mr. Gay was diagnosed with acute upper respiratory infection did receive a prescription from the doctor. This prescription medicine was different from the prescription pill given to him by his father which resulted in a positive drug screen and a violation of Rule 12 NCAC 10B .0301 (a) (6).

William Dennis, M.D. reviewed Mr. Gay's medical records in addition to the records related to his exam at Urgent Care on May 4th 2015. It is Dr. Dennis's opinion that Mr. Gay did take the one (1) Floricet pill but does not conclude that Mr. Gay has a history of taking or abusing controlled substances. Sheriff Winstead was at the Administrative Hearing to support Mr. Gay and believes Mr. Gay made an isolated mistake. Judge Lassiter found a violation of the rule but recommended certification. Mr. Boyatt agrees with Judge Lassiter's proposal to recommend certification with acknowledgment of the rule violation.

Chairman Riley asked the Commission if there were any questions. Negative response.

Attorney Jackson addressed the Commission with an overview of Mr. Gay's case. Attorney Jackson stated that he does not dispute anything Mr. Boyatt said. Attorney Jackson stated for the record that the story presented to the Commission today is the story Mr. Gay shared immediately with the Sheriff. Mr. Gay does take full responsibility for his mistake. Attorney Jackson asked the Commission to approve Judge Lassiter's proposal.

Chairman Riley asked the Commission if there were any questions. Negative response.

A **MOTION** was made at 2:40 p.m. by Sheriff Eric Tilley to enter into a closed session; seconded by Sheriff Juan Vaughan.
MOTION CARRIED.

A **MOTION** was made at 2:47 p.m. by Sheriff Ricky Oliver to enter into open session; seconded by Sheriff Steve Bizzell.
MOTION CARRIED.

A **MOTION** was made by Sheriff Steve Bizzell in the matter of Gerrod Bennett Gay to adopt the Legal Counsel recommendation to adopt the Administrative Law Judge's proposal to issue certification and that the applicant, Gerrod Gay, does not violate any Commission Rules; seconded by Sheriff Juan Vaughan. **[Attachment #3 for Roll Call Vote] [Attachment #4 for Final Agency Decision] MOTION CARRIED.**

III. FINAL AGENCY DECISIONS

***Carol Bernice Manning**

Matthew Boyatt

Ms. Carol Manning is a Detention Officer applicant with the Vance County Sheriff's Office. During the application process it was discovered Ms. Manning had been charged with a felony larceny by employee that dates back to 1998. The issue before the Commission is to determine if Ms. Carol Manning committed the felony Larceny by Employee in violation of NCGS 14-74. Ms. Manning was not convicted but instead completed a Deferred Prosecution Program and the offense was dismissed. Mr. Boyatt summarized the Proposal for Decision for Carol Bernice Manning as submitted by the Administrative Law Judge [**Attachment #5**], Exceptions and Proposal submitted by Legal Counsel [**Attachment #6**].

Ms. Manning admitted in 1998 both verbally and in writing that she removed a \$500 television from Walmart without paying for the item and defrauding her employer and agreed to pay \$500 restitution for her criminal act and was placed on probation. At the Administrative Hearing Ms. Manning changed her story and stated that she bought the television as a gift for her mother and that she really didn't take it. Ms. Manning could not account for a receipt and never communicated to her employer or the police at the time of the offense that she purchased the television.

The Administrative Law Judge ruled in favor of Ms. Manning which led to Legal Counsel filing Exceptions to the Proposal for Decision. If the Commission finds that felony Larceny by Employee was committed, then under the rules of the Commission, you do not have the authority to issue a lesser sanction. A felony offense requires the Commission to deny certification.

Chairman Riley asked the Commission if there were any questions. Negative response.

Ms. Carol Manning addressed the Commission and stated that she did admit to doing what Mr. Boyatt just summarized. The incident occurred in 1998 when Loss Prevention said they had video of her taking merchandise plus a television. When Loss Prevention personnel returned they had the police with them. Ms. Manning stated that she admitted to it in a written statement because she was held in a room for two hours and was tired. She feels that it was stupid of her to have admitted to the theft.

Ms. Manning stated that she was trying to put the past behind her because every time she applied for a job this issue came up. After she applied for the position at the jail, she brought paperwork in to show she was trying to get it expunged.

Ms. Manning stated that she doesn't have a 17 year old receipt. Sheriff Riley asked Ms. Manning if she had a receipt at the time in 1998. Ms. Manning answered that she did not. Sheriff Riley asked Ms. Manning why she agreed to the Deferred Prosecution and paid \$500 restitution to Walmart. Ms. Manning responded that she didn't understand what she was signing.

Sheriff Cloninger asked Ms. Manning about her education. Ms. Manning responded that she had a 2 year law enforcement degree. Sheriff Cloninger asked why she made a written statement admitting that she stole the television if she didn't. Ms. Manning stated that the Loss Prevention person from Washington D.C. told her what to write. Sheriff Cloninger asked Ms. Manning if she was represented by an attorney when she went to court. Ms. Manning stated that she was. Sheriff Cloninger asked if her lawyer explained what was going on with her court case. Ms. Manning stated that he did and she was aware that the charges would be dismissed after she did her 12 months' probation. Sheriff Cloninger asked if she had been in any more trouble. Ms. Manning replied that she had not and that she learned her lesson. Ms. Manning stated that she had done something "out of context".

Sheriff Cloninger asked if Ms. Manning remembered how much she paid for the television. Ms. Manning stated that she paid \$500 restitution for the television. Sheriff Cloninger asked Ms. Manning if she paid \$1,000.00 for the television. Ms. Manning replied that she did not pay \$1,000 for the television; she paid \$500. Sheriff Cloninger asked Ms. Manning if she understood his question. Ms. Manning stated yes, and that she paid \$500. Sheriff Cloninger asked Ms. Manning if she only paid for the television one time. Ms. Manning answered yes. Sheriff Cloninger asked Ms. Manning if that was the \$500 restitution. Ms. Manning answered yes, the \$500 restitution.

Mr. Nichols asked Ms. Manning what was she was charged with. Ms. Manning stated she was charged with Theft by Employee for merchandise and a television. Ms. Manning stated that she needs and loves her job. Her job pays her bills and jobs are hard to come by. Ms. Manning stated that she admitted to doing something that she knew she shouldn't have done because they didn't have any proof that she did those things. She stated that she shouldn't have admitted to something she didn't do.

Chairman Riley asked the Commission if there were any questions. Negative response.

A **MOTION** was made at 3:15 P.M. by Mr. Marc Nichols to enter into a closed session; seconded by Sheriff Juan Vaughan. **MOTION CARRIED.**

A **MOTION** was made at 3:20 P.M. by Mr. Marc Nichols to enter into open session; seconded by Sheriff Ricky Oliver. **MOTION CARRIED.**

A **MOTION** was made by Sheriff Alan Cloninger in the matter of Carol Bernice Manning to adopt the Proposal for Decision submitted by Legal Counsel recommendation to deny certification; seconded by Sheriff John Ingram. [**Attachment #7 for Roll Call Vote**] [**Attachment #8 for Final Agency Decision**]. **MOTION CARRIED.**

III. FINAL AGENCY DECISIONS

***Sandy Hargrove Cowan**

Matthew Boyatt

Mr. Sandy Cowan is a Deputy Sheriff applicant in Vance County. Mr. Cowan was not present or represented by an attorney. Mr. Boyatt summarized the Proposal for Decision for Sandy Hargrove Cowan as submitted by the Administrative Law Judge [**Attachment #9**], Exceptions and Proposal submitted by Legal Counsel [**Attachment #10**].

Mr. Boyatt filed exceptions to the Administrative Law Judge's Proposal for Decision. Mr. Sandy Hargrove Cowan was arrested and charged with the felony offenses of Second Degree Forgery and Criminal Possession of Stolen Property in the fourth degree in White Plains, New York, these charges were associated with the unauthorized use of credit card.

Chairman Riley asked the Commission if there were any questions. Negative response.

A **MOTION** was made at 3:50 P.M. by Sheriff Eric Tilley to enter into a closed session; seconded by Sheriff Juan Vaughan. **MOTION CARRIED.**

A **MOTION** was made at 3:55 P.M. by Sheriff Ricky Oliver to enter into open session; seconded by Sheriff Juan Vaughan.
MOTION CARRIED.

A **MOTION** was made by Sheriff Alan Cloninger in the matter of Sandy Hargrove Cowan to adopt the Legal Counsel recommendation with exceptions to deny certification; seconded by Sheriff John Ingram. [**Attachment #11 for Roll Call Vote**] [**Attachment #12 for Final Agency Decision**]. **MOTION CARRIED.**

III. FINAL AGENCY DECISIONS

***Tod Leslie Bonello**

Matthew Boyatt

Mr. Tod Leslie Bonello is a separated Deputy Sheriff applicant in Scotland County. Mr. Bonello is not present or represented by an attorney. Mr. Bonello was served with regard to these proceedings. The issue before the Commission is Material Misrepresentation. Mr. Boyatt summarized the Proposal for Decision for Tod Leslie Bonello as submitted by the Administrative Law Judge [**Attachment #13**], Proposal submitted by Legal Counsel [**Attachment #14**].

Mr. Boyatt stated that in Judge May's finding of facts, he found Mr. Bonello to not be credible. The Administrative Law Judge May recommended Denial for a period of five years. Mr. Boyatt does not see any basis to modify the Judge's recommended proposal.

Chairman Riley asked the Commission if there were any questions. Negative response.

A **MOTION** was made at 3:56 P.M. by Sheriff Eric Tilley to enter into a closed session; seconded by Sheriff Juan Vaughan.
MOTION CARRIED.

A **MOTION** was made at 3:58 P.M. by Sheriff Eric Tilley to enter into open session; seconded by Sheriff John Ingram.
MOTION CARRIED.

A **MOTION** was made by Sheriff Alan Cloninger in the matter of Tod Leslie Bonello to adopt the Administrative Law Judge's Proposal for Decision to deny certification for a period of five years; seconded by Sheriff John Ingram. [**Attachment #15 for Roll Call Vote**] [**Attachment #16 for Final Agency Decision**] **MOTION CARRIED.**

III. FINAL AGENCY DECISIONS

***Brandon Tyler Josey**

Matthew Boyatt

Mr. Brandon Tyler Josey is a Deputy Sheriff applicant in Alexander County.

Mr. Josey is not present or represented by an attorney. Mr. Josey was served with regard to these proceedings. The issue before the Commission is Lack of Good Moral Character required for certification as a law enforcement officer. Mr. Boyatt summarized the Proposal for Decision for Brandon Tyler Josey as submitted by the Administrative Law Judge [**Attachment #17**], Exceptions and Proposal submitted by Legal Counsel [**Attachment #18**].

Mr. Boyatt stated that the Administrative Law Judge did find that Mr. Josey did lack Good Moral Character; but recommended a lesser sanction including a period of probation. Legal Counsel, Matthew Boyatt, filed Exceptions to the Administrative Law Judge's Proposal for Decision. Legal Counsel's recommendation is to deny certification indefinitely.

Chairman Riley asked the Commission if there were any questions. Negative response.

A **MOTION** was made at 4:03 P.M. by Sheriff Alan Cloninger to enter into a closed session; seconded by Sheriff Steve Bizzell. **MOTION CARRIED.**

A **MOTION** was made at 4:08 P.M. by Sheriff Alan Cloninger to enter into open session; seconded by Sheriff Steve Bizzell. **MOTION CARRIED.**

A **MOTION** was made by Sheriff Alan Cloninger in the matter of Brandon Tyler Josey to adopt Legal Counsel's Proposal for Decision with Exceptions to deny certification for an indefinite period; seconded by Sheriff Steve Bizzell. [**Attachment #19 for Roll Call Vote**] [**Attachment #20 for Final Agency Decision**] **MOTION CARRIED.**

III. FINAL AGENCY DECISIONS

***Rae Marie Bishop**

Matthew Boyatt

Ms. Rae Marie Bishop is a Detention Officer applicant in Iredell County. Ms. Bishop is not present or represented by an attorney. The issue before the Commission is whether Ms. Bishop committed Material Misrepresentation of Information required for certification. Mr. Boyatt summarized the Proposal for Decision for Rae Marie Bishop as submitted by the Administrative Law Judge [**Attachment #21**], Proposal submitted by Legal Counsel [**Attachment #22**].

Mr. Boyatt stated that the Administrative Law Judge found that Ms. Bishop made a mistake. The Administrative Law Judge recommended certification as a justice officer be issued. Legal Counsel, Matthew Boyatt, did not file exceptions to the Administrative Law Judge's Proposal for Decision. Legal Counsel's recommendation is to issue certification.

Chairman Riley asked the Commission if there were any questions. Negative response.

A **MOTION** was made at 4:13 P.M. by Sheriff Alan Cloninger to enter into a closed session; seconded by Sheriff Eric Tilley. **MOTION CARRIED.**

A **MOTION** was made at 4:18 P.M. by Sheriff Alan Cloninger to enter into open session; seconded by Sheriff Steve Bizzell. **MOTION CARRIED.**

A **MOTION** was made by Sheriff Alan Cloninger in the matter of Rae Marie Bishop to adopt Legal Counsel's Proposed Final Agency Decision to issue certification; seconded by Sheriff Steve Bizzell. [**Attachment #23 for Roll Call Vote**] [**Attachment #24 for Final Agency Decision**] **MOTION CARRIED.**

III. FINAL AGENCY DECISIONS

***Donald Earl Schwab**

Matthew Boyatt

Mr. Donald Earl Schwab is a separated Deputy Sheriff in Hoke County. Mr. Schwab is not present or represented by an attorney. Mr. Schwab and his attorney were served with regard to these proceedings. There are two issues in this case before the Commission. The first is whether Mr. Schwab has the Good Moral Character required of a sworn Justice Officer. The second is whether Mr. Schwab willfully failed to discharge the duties of his office. Mr. Boyatt summarized the Proposal for Decision for Donald Earl Schwab as submitted by the Administrative Law Judge [**Attachment #25**], Proposal submitted by Legal Counsel [**Attachment #26**].

Donald Schwab was the lead investigator on a capital murder case. During the capital murder case and trial, Mr. Schwab began a sexual relationship with the murder victim's sister Alisha. The Assistant District Attorney, Kristi Newton was informed by the victim's brother that Officer Schwab was having sexual relations with his sister. Kristi Newton interviewed Mr. Schwab on several occasions and asked if he was having a relationship with the victim's sister. Mr. Schwab lied and stated "no" on each and every occasion.

Mr. Boyatt stated that the Administrative Law Judge found that Mr. Schwab did fail to discharge the duties of his office and that he does not have the Good Moral Character required of a sworn Justice Officer. He found that Mr. Schwab's certification should be revoked for an indefinite period.

Chairman Riley asked the Commission if there were any questions. Negative response.

A **MOTION** was made at 4:30 P.M. by Sheriff Steve Bizzell to enter into a closed session; seconded by Sheriff John Ingram
MOTION CARRIED.

A **MOTION** was made at 4:33 P.M. by Sheriff Alan Cloninger to enter into open session; seconded by Sheriff Eric Tilley.
MOTION CARRIED.

A **MOTION** was made by Sheriff Alan Cloninger in the matter of Donald Earl Schwab to adopt Legal Counsel's Proposal for Decision to revoke certification for an indefinite period; seconded by Sheriff Eric Tilley. [**Attachment #27 for Roll Call Vote**] [**Attachment #28 for Final Agency Decision**] **MOTION CARRIED.**

III. FINAL AGENCY DECISIONS

***Travis Lee Richmond**

Matthew Boyatt

Mr. Travis Lee Richmond is a Detention Officer applicant in Hoke County. Mr. Richmond was not present or represented by an attorney. Mr. Richmond requested an Administrative Hearing to contest the denial of his certification. Mr. Richmond failed to prosecute his case, failed to file a Prehearing Statement, engage in discovery, and did not show up for court.

Mr. Boyatt summarized the Proposal for Decision for Travis Lee Richmond as submitted by the Administrative Law Judge [**Attachment #29**], Proposal submitted by Legal Counsel [**Attachment #30**]. Mr. Boyatt recommended the Commission adopt the Administrative Law Judge's Proposal for Decision to dismiss this contested case with prejudice.

Chairman Riley asked the Commission if there were any questions. Negative response.

A **MOTION** was made at 4:36 P.M. by Sheriff Alan Cloninger to enter into a closed session; seconded by Sheriff John Ingram.
MOTION CARRIED.

A **MOTION** was made at 4:38 P.M. by Sheriff John Ingram to enter into open session; seconded by Sheriff Juan Vaughan. **MOTION CARRIED.**

A **MOTION** was made by Sheriff Alan Cloninger in the matter of Travis Lee Richmond to adopt the Legal Counsel's Proposed Final Agency Decision to deny certification; seconded by Sheriff Juan Vaughan. [**Attachment #31 for Roll Call Vote**] [**Attachment #32 for Final Agency Decision**]. **MOTION CARRIED.**

VI. ADJOURNMENT

A **MOTION** was made by Sheriff Steve Bizzell at 4:50 P.M. to adjourn the December 10, 2015 Sheriffs' Final Agency Decision meeting; Seconded by Sheriff Eric Tilley. **MOTION CARRIED.**