

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

DATE: June 17, 2015
TIME: 3:00 P.M.
SUBMITTED BY: Julia A. Lohman, Director

I. CALL TO ORDER

- Vice Chairman Alan Cloninger

The North Carolina Sheriffs' Education and Training Standards Commission's Final Agency Decision meeting was called to order by Vice Chairman Alan Cloninger on Wednesday, June 17, 2015 at 3:00 P.M. The Final Agency Decision meeting was held at the Caldwell County Public Library, 120 Hospital Ave., Lenoir, NC.

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

MEMBERS PRESENT

Sheriff Juan Vaughan
Sheriff Alan Jones
Sheriff Steve Bizzell
Mr. Robert Wisecarver
Mr. Marc Nichols
Sheriff Eric Tilley
Sheriff Alan Cloninger
Mr. Jamie Markham
Sheriff Ricky Oliver

MEMBERS ABSENT

Ms. Tracy McPherson
Sheriff Maynard Reid
Sheriff James Knight
Sheriff Jerry Monette
Sheriff B. J. Barnes
Sheriff Brad Riley
Sheriff David Mahoney
Sheriff John Ingram

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

Vice Chairman Cloninger recognized Host Sheriff Alan Jones. Sheriff Jones welcomed everyone to Caldwell County and introduced the County Manager Stan Kiser. Mr. Kiser spoke of various sites to visit throughout Caldwell County. Sheriff Jones invited the Commission members to a nice dinner at a local farm after the meeting.

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.

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

VISITORS

Major Jason Brown – Henderson County Sheriff’s Office
Cpt. Chris Denney – Henderson County Sheriff’s Office
Carey Larned, Admin Ass’t – Henderson County Sheriff’s Office
Corporal Sonya Matthews – Henderson County Sheriff’s Office
Sheriff Charles McDonald – Henderson County Sheriff
Howard Simons – Buncombe County Sheriff’s Office
Chris Anderson – North Carolina Justice Academy
Shea Maliscewski (Greg Kelly’s attorney)
Stephen L. Cash (Howard Simons attorney)

Sheriff Cloninger again welcomed the visitors and called on Matthew Boyatt for Final Agency Decisions. Mr. Boyatt asked Vice Chairman Cloninger that he be allowed to present the Final Agency Decision for Gregory Paul Kelly first.

II. FINAL AGENCY DECISIONS

***Gregory Paul Kelly**

Matthew Boyatt

Mr. Boyatt asked to go out of order from the agenda due to a request for postponement in that case. Mr. Kelly is represented by attorney Shea Maliscewski. Mr. Kelly is currently in military training this week and would like to be present. Mr. Boyatt’s staff did contact the Army to verify Mr. Kelly’s attendance for this training. Mr. Boyatt contacted Captain Villareal himself and verified that Mr. Kelly is attending mandatory military training this week being held in Louisiana. Mr. Boyatt does not have an issue with postponing until the next Commission Meeting. Mr. Kelly is an applicant and not currently certified.

Attorney Maliscewski addressed the Commission regarding Mr. Kelly’s request to be present and asked for postponement until the next Commission meeting

A **MOTION** was made by Sheriff Eric Tilley in the matter of Gregory Paul Kelly to postpone until the September 2015 Commission meeting for Final Agency Decision; seconded by Sheriff Juan Vaughan. **MOTION CARRIED.**

II. FINAL AGENCY DECISIONS

***Howard R. Simmons**

Matthew Boyatt

Mr. Boyatt summarized the Proposal for Decision for Howard R. Simmons as submitted by the Administrative Law Judge [**Attachment #1**], Exceptions to Proposal for Decision submitted by opposing counsel [**Attachment #2**], Exceptions and Proposal submitted by Legal Counsel [**Attachment #3**]. The issue is whether or not Mr. Simmons made a material misrepresentation to question #42 on the (F-3) Personal History Statement. The question: Have you ever been arrested by a law enforcement officer or otherwise been charged with a criminal offence? Mr. Simmons answered no to that question. Mr. Simmons claimed that the reason he answered no to the question was because he did not know he had been arrested for burglary, possession of burglary tools with intent, and larceny greater than \$500 in 1989. The Administrative Law Judge did not find Mr. Simmons explanation credible due to the circumstances.

Mr. Boyatt explained to the Commission that under rule .0205 material misrepresentations, the Commission may deny the application for a period of five (5) years but that is not required. The Commission can issue a lesser sanction. Mr. Boyatt went over his exceptions to the proposal for decision and asked the Commission to adopt his exceptions.

The Petitioner, Mr. Simmons, filed exceptions to the proposal for decision. Mr. Boyatt asked the Commission to not adopt those exceptions because they attempt to undo the Judge's findings of material misrepresentation.

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

Attorney Cash addressed the Commission with a brief overview of facts he believes to be important. Mr. Simons was 18 years old in 1989 when he and his friend stopped at a Dunkin Donuts in New Jersey late at night. Mr. Simmons went inside for a cup of coffee and his friend went across the street to a car lot. The Police showed up and took him downtown. Mr. Simmons was processed but he never appeared before a Judge. Mr. Simmons' mother had called an attorney who worked within the system and did not talk with Mr. Simmons. The Attorney got Mr. Simmons into a Diversionary Program. Mr. Simmons never had to think about it again.

When Mr. Simmons filled out the F-3 form as part of his application packet, he filled it out honestly. Mr. Simmons was also given a polygraph test and passed it. It wasn't until the current situation arose and he spoke with his mother that he remembered details from the event. The question is not whether he was arrested or not. Mr. Simmons was arrested. The question is whether Mr. Simmons knowingly made a material misrepresentation.

Attorney Cash believes that the polygraph shows a reasonable chance that Mr. Simmons was telling the truth and didn't realize, at that time, that he had been arrested. If he was to fill out the form and answer question #42 today, he would answer yes.

Attorney Cash stated that the “knowingly” standard is what’s important here. Mr. Simmons tried to tell the truth in saying that he didn’t know he was doing something wrong. Mr. Simmons wasn’t trying to hide anything. If you look into his service with current and previous agencies, everything has been positive and complimentary. Mr. Simmons has raised two daughters by himself, and worked his way through an Associate’s degree and Bachelor’s degree.

The exceptions that Attorney Cash made were related to that “knowingly” standard (Paragraphs 11, 12, and 13). And, that the Proposed Final Agency Decision be adjusted to reflect the fact that it was reasonable Mr. Simmons was being truthful at the time he filled out the application. There was credible evidence presented that Mr. Simmons didn’t intentionally mislead anybody. Mr. Simmons answered the question at the time honestly; but his answer did turn out to be false.

Mr. Cash stated that they do not object to the discipline recommended by the Administrative Law Judge. They believe a period of probation is fair considering the circumstances. Mr. Cash did ask that the period of probation be limited to one (1) year. If the Commission were willing to impose that penalty, Mr. Simmons could continue doing what he has been doing. Mr. Simmons would have a mark on his record, but he would be able to continue with his livelihood. Mr. Cash presented the Commission with a statement of support from Buncombe County’s Chief Deputy Matayabas for Mr. Simmons. Three people from Buncombe County were present at the Administrative Hearing in support of Mr. Simmons. Mr. Cash presented Mr. Simmons to the Commission for his statement.

Mr. Simmons addressed the Commission and stated that he realizes his honesty and integrity have come into question and he is deeply sorry for this. When this began, the two things he said were that he didn’t remember and that he didn’t think he had been arrested. Mr. Simmons stated that when he filled out the Personal History Statement (F-3), and answered question #42, he did not remember this incident. If he had remembered the incident, he would have listed it on the F-3. In the 25 years since this incident Mr. Simmons has not been in any trouble. In the last eight (8) years Mr. Simmons has raised his two daughters, and received a Bachelor’s Degree in Criminal Justice. Mr. Simmons has worked three (3) years with the Department of Corrections and more than three (3) years with Buncombe County Sheriff’s Office without any incidents or complaints against him. Mr. Simmons has received positive statements of support from his superiors and peers. This was an unintentional omission and was not an intentional act. Mr. Simmons stated that he is deeply regretful that it took place and appreciates the opportunity to address the Commission.

Sheriff Cloninger asked Mr. Simmons if there was anything else he would like to add. Mr. Simmons did not. Sheriff Cloninger asked Legal Counsel, Matthew Boyatt to read the June 11, 2015 letter written by Chief Deputy Matayabas of Buncombe County Sheriff’s Office. The letter was put into the record.

Sheriff Cloninger asked the Commission if there were any questions for Mr. Simmons. Sheriff Tilley asked about the exception Mr. Simmons attorney had with regard to probation for one (1) year. Sheriff Tilley asked what would happen if the probation was for more than one (1) year.

Mr. Simmons responded that he would be fine with probation for more than a year if that is what the Commission finds.

Sheriff Cloninger asked the Commission if there were any other questions. Negative Response.

A **MOTION** was made at 3:35 P.M. by Sheriff Steve Bizzell to enter into a closed session; seconded by Sheriff Ricky Oliver.
MOTION CARRIED.

A **MOTION** was made at 4:00 P.M. by Sheriff Eric Tilley to enter into open session; seconded by Sheriff Ricky Oliver.
MOTION CARRIED.

A **MOTION** was made by Sheriff Ricky Oliver in the matter of Howard R. Simmons to adopt the Final Agency Decision by Legal Counsel with the following amendments: That the Commission Deny the Applicant's Certification for a period of five years from his date of employment on March 12, 2012. The Commission also imposes a period of probation in lieu of the Denial beginning March 12, 2012 for a period of five (5) years and that he not violate any laws or Commission Rules during that period of probation. Seconded by Sheriff Steve Bizzell.
[Attachment #4 for Roll Call Vote] [Attachment #5 for Final Agency Decision]. MOTION CARRIED.

II. FINAL AGENCY DECISIONS

***Absalom Terrell Stample**

Matthew Boyatt

Mr. Absalom Stample is a Detention Officer applicant in Nash County. Mr. Stample was not present for the Commission's Final Agency Decision. At the Administrative Hearing with Judge Elkins, Mr. Stample was not represented by an attorney and acted pro se. Mr. Boyatt summarized the Proposal for Decision for Absalom Terrell Stample as submitted by both the Administrative Law Judge [**Attachment #6**] and Legal Counsel [**Attachment #7**]. The issue in this case is whether or not Mr. Stample has committed four (4) or more Class A or B misdemeanors. At issue were 10 worthless checks that Mr. Stample wrote in 2008. Mr. Boyatt summarized the Proposal for Decision for Mr. Absalom Stample.

Mr. Boyatt asked the Commission to adopt Judge Elkins findings of fact and conclusion of law, there were no exceptions. Judge Elkins recommended that Mr. Stample be issued certification issued a lesser sanction. Mr. Boyatt submitted an alternate proposal. The findings of fact and conclusion of law are the same; however, Legal Counsel's proposed penalty section is to deny certification.

Sheriff Cloninger asked if anyone was present to represent Mr. Stample. Negative response.

Sheriff Cloninger asked the Commission if there were any questions. Negative response.

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

A **MOTION** was made at 4:15 P.M. by Sheriff Ricky Oliver to enter into open session; seconded by Sheriff Steve Bizzell.
MOTION CARRIED.

A **MOTION** was made by Sheriff Eric Tilley in the matter of Absalom Stample to adopt the Legal Counsel recommendation to deny certification; seconded by Sheriff Juan Vaughan.
[**Attachment #8 for Roll Call Vote**] [**Attachment #9 for Final Agency Decision**] **MOTION CARRIED.**

III. LEGAL COUNSEL'S REPORT

Mr. Matthew Boyatt's report was distributed to all Commission Members along with a chart which included 39 active administrative case files that were in the Office of Administrative Hearings. He reported that 22 cases have been litigated. Mr. Boyatt advised that 17 cases have not been litigated. Mr. Boyatt went over the various stages of litigation for the 39 administrative cases as follows: [See **Attachment #10**].

- Nine (9) cases involve Class B misdemeanors after the deputy/detention officer has been certified.
- Ten (10) felony commissions.
- Ten (10) cases involving four (4) or more Class A or B misdemeanors.
- Four (4) cases material misrepresentations.
- Four (4) cases involve a lack of good moral character.
- Two (2) cases involve certified officers who have been charged and did not report that charge within the five day reporting period.

VI. ADJOURNMENT

A **MOTION** was made by Mr. William Nichols at 4:20 P.M. to adjourn the June 17, 2015 Sheriffs' Final Agency Decision meeting; Seconded by Sheriff Steve Bizzell. **MOTION CARRIED.**