

STATE OF NORTH CAROLINA
COUNTY OF GUILFORD

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
23 DOJ 01830

JOSEPH GRECO)
)
 Petitioner,)
)
 v.)
)
 NORTH CAROLINA SHERIFFS')
 EDUCATION AND TRAINING)
 STANDARDS COMMISSION,)
)
 Respondent.)
 _____)

EXCEPTIONS

The following **Exceptions** to the **Proposal for Decision** prepared by the Honorable Jonathan Dills, Administrative Law Judge, and filed in the Office of Administrative Hearings on September 7, 2023, are hereby submitted to the North Carolina Sheriffs' Education and Training Standards Commission for consideration in its Final Agency Decision.

1. Counsel has made minor typographical and grammatical changes as necessary to make the proposal appropriate for Final Agency Decision.
2. Finding of Fact No. 1 should be revised and Footnote 1 deleted to reflect the position of the Commission.
 1. The ~~Tribunal determined it has~~ Office of Administrative Hearings had jurisdiction over the parties and subject matter; venue ~~is~~ was proper; ~~the~~ parties are ~~were~~ properly designated; there ~~is~~ was no question as to joinder; parties received lawful notice; and no objection was raised ~~or otherwise remains~~.

[†]~~This Tribunal need only find facts material to resolution. *Flanders v. Gabriel*, 110 N.C. App. 438, 440, 429 S.E.2d 611, 612, *aff'd*, 335 N.C. 234, 436 S.E.2d 588 (1993).~~

3. Finding of Fact No. 2 should be deleted to because it was unnecessary. All remaining paragraphs should be renumbered to accurately reflect proper sequential numbering.

2. Respondent appears in its delegated role of oversight of *minimum* standards for law enforcement certification.
4. Finding of Fact No. 9 should be revised to accurately reflect the disposition of the criminal charge.
8. Charges were eventually dismissed and expunged. Nonetheless, Petitioner suffered consequences.
5. Finding of Fact No. 15 should be revised to accurately reflect the process by which a case is investigated by the Sheriffs' Standards Division.
15. Respondent ~~scrutinized~~ Petitioner's application for certification, and particularly investigated the subject charges. Probable cause was found to believe that Petitioner committed the class B misdemeanor offense of aiding the underage purchase of alcohol per G.S. 18B-302(c)(2). *See*, Joint Stipulations, Ex. A (letter constituting agency action).
6. Finding of Fact No. 16 should be deleted because it is unnecessary to include that portion of the procedural history.
16. ~~Petitioner appeals the Commission's determination and seeks redress here.~~
7. Conclusions of Law Nos. 17 through 27 should be renumbered to reflect the proper sequential numbering of paragraphs. Conclusion of Law Nos. 1 and 2 should be revised to align with Respondent's position on burden of proof.
- 17.1. ~~Though Article 3A of the APA is silent regarding the applicable standard of evidence, it is indisputably by preponderance. *In re Rogers*, 297 N.C. 48, 59, 253 S.E.2d 912, 919 (1979); 26 NCAC 03 .0125. The party with the burden of proof in a contested case must establish the facts required by N.C.G.S. § 150B-23(a) by a preponderance of the evidence. N.C.G.S. § 150B-29(a). The administrative law judge shall decide the case based upon the preponderance of the evidence. N.C.G.S. § 150B-34(a).~~
- 18.2. ~~As the Tribunal has repeatedly concluded, the State bears the burden of proof when it investigates a prior certificate holder and thereafter proposes restriction. *See, Russell v. Commission*, 21 DOJ 03252, 2022 NC OAH LEXIS 55. However, a new applicant has a threshold obligation to demonstrate suitability. *Graves v. Commission*, 21 DOJ 05194, 2022 NC OAH LEXIS 374. For further reference, see *Canty v. Commission*, 14 DOJ 01202, 2014 NC OAH LEXIS 127. These analyses are incorporated by reference. Petitioner has the burden of proof in the case at bar. *Overcash v.*~~

N.C. Dep't. of Env't & Natural Resources, 172 N.C. App 697, 635 S.E. 2d 442 (2006).

8. Conclusion of Law No. 3 should be revised to remove unnecessary case law.
 - ~~19.3.~~ Respondent is authorized to certify justice officers and to revoke, suspend, or deny such in appropriate circumstances. G.S. 17E-4(a), 7, & 9; 12 NCAC 10B .0204(d)(2). This authority encompasses criminal charges like here at issue. ~~However, the application of this authority is significantly discretionary. 12 NCAC 10B .0205(3); Brock and Scott Holding, Inc. v. Stone, 203 N.C. App. 135, 137, 691 S.E.2d 37, 39 (2010) (quoting Campbell v. First Baptist Church of the City of Durham, 298 N.C. 476, 483, 259 S.E.2d 558, 563 (1979)) (internal quotations omitted); See, Silver v Halifax Cty. Bd. Of Comm'rs, 371 N.C. 855, 864, 821 S.E.2d 755, 761 (2018) (“may” is intended to convey that power granted be exercised with discretion).~~
9. Conclusion of Law No. 24 should be deleted to accurately reflect the Commissions' authority to make a determination regarding Petitioner's certification.
 - ~~24. It would be arbitrary or capricious to deny certification under these circumstances. Seroggs v. N.C. Criminal Justice Educ. & Training Standards Comm'n, 101 N.C. App. 699, 701, 400 S.E.2d 742, 744 (1991) (time and circumstance matter); cf., Peace v. Employment Sec. Comm'n of N. Carolina, 349 N.C. 315, 328, 507 S.E.2d 272, 281 (1998) (In absence of mandate, we decide upon considerations of “policy, fairness and common sense.”).~~
10. Conclusion of Law No. 7 should be revised to accurately reflect the burden of proof in the contested case.
 - ~~25.7.~~ To the extent burdens of proof and persuasion fell to Petitioner, he carried them. ~~To any extent such was on Respondent, it failed.~~
11. Conclusion of Law No. 8 should be revised to accurately reflect the current procedural posture which is Final Agency Decision.
 - ~~26.8.~~ Pursuant to G.S. 150B-40(e), the Tribunal is to assume the role of the Commission; and after a just and lawful hearing and considerations of appropriate findings, applicable law, and extenuating circumstances; to propose a just and final decision for due deliberation. ~~Mindful of these principles, the Tribunal submits the following proposal.~~
12. Conclusion of Law No. 27 should be deleted to accurately reflect the current procedural posture which is Final Agency Decision.

~~27. Substantial evidence justifies its adoption. G.S. 150B-42.~~

13. Proposal for Decision should be revised to reflect the final decision of the Commission as follows:

PROPOSAL FOR DECISION ORDER

BASED ON the foregoing Findings of Fact and Conclusions of Law, it is hereby **ORDERED** that ~~the decision of the Probable Cause Committee should be REVERSED and~~ Petitioner's application for justice officer certification is GRANTED.

This the 20th day of November, 2023.

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the foregoing **EXCEPTIONS** have been duly served upon the **Petitioner's counsel** by mailing a copy to the address below:

**Daniel A. Harris
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415 W. Friendly Ave.
Greensboro, NC 27401**

This the 20th day of November, 2023.

JOSHUA H. STEIN
Attorney General

/s/ J. Joy Strickland
J. Joy Strickland
Assistant Attorney General
ATTORNEY FOR THE COMMISSION