

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
24 DOJ 00311

LATOYA SHAUNICE MELTON,

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 S. Dills, Administrative Law Judge, and filed in the Office of Administrative Hearings on May 15, 2024, 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. 18 was deleted because it was unnecessary. All remaining paragraphs should be renumbered to reflect proper sequential numbering of paragraphs.
18. ~~Petitioner did not attend the Probable Cause meeting notwithstanding prior notification via certified mail. (R's Ex #6).~~
3. Conclusion of Law No. 3 should be amended and No. 4 added to reflect Respondent's position on burden of proof. All remaining paragraphs should be renumbered to reflect proper sequential numbering of paragraphs.
3. ~~As the Tribunal has repeatedly concluded, the State generally bears the burden of proof when it proposes to restrict certification. See, *Russell v. Commission*, 2022 NC OAH LEXIS 55; *Graves v. Commission*, 2022 NC OAH LEXIS 374. For further reference, see *Canty v. Commission*, 2014 NC OAH LEXIS 127. These analyses are incorporated by reference. The party with the burden of proof in a contested case must establish the facts required by N.C. Gen. Stat. §150B-23(a) by a preponderance of the evidence. N.C. Gen. Stat. §150B-29(a). The administrative law judge shall decide the case based upon the preponderance of the evidence. N.C. Gen. Stat. §150B-34(a).~~

4. While N.C. Gen. Stat. § 150B-40 enumerates the powers of the presiding officer, including an Administrative Law Judge in Article 3A cases, such statute does not address which party has the burden of proof in an Article 3A contested case hearing. Neither has the North Carolina Constitution nor the General Assembly addressed the burden of proof in Article 3A cases. However, the Commission has consistently held that Petitioner has the burden of proof in the case at bar as does a petitioner in an Article 3 case. Overcash v. N.C. Dep't. of Env't & Natural Resources, 179 N.C. App 697, 635 S.E.2d 442 (2006) (stating that “the burden of proof rests on the petitioner challenging an agency decision”).

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

PROPOSAL ORDER

BASED ON the foregoing Findings of Fact and Conclusions of Law, it is hereby **ORDERED** that Petitioner's justice officer certification be **GRANTED**, Petitioner be provided with a **WRITTEN REPRIMAND**, and be placed on a period of **PROBATION** for **TWO (2) YEARS**, during which she shall not violate any State or federal law or Commission Rules. ~~Respondent should issue reprimand, grant certification, and prescribe a two-year period of probation beginning from final decision.~~

This the 23rd day of August, 2024.

JOSHUA H. STEIN
Attorney General

/s/ J. Joy Strickland

J. Joy Strickland
Assistant Attorney General
N.C. Department of Justice
9001 Mail Service Center
Raleigh, North Carolina 27699-9001
Telephone: (919) 716-6401
State Bar No.: 25695
COUNSEL TO THE COMMISSION

CERTIFICATE OF SERVICE

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

**Latoya Shaunice Melton
3715 Eastover Ridge Drive, Apt. 1301
Charlotte, North Carolina 28211**

This the 23rd day of August 2024.

JOSHUA H. STEIN
Attorney General

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