

STATE OF NORTH CAROLINA
COUNTY OF ONSLOW

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
23 DOJ05278

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

EXCEPTIONS

The following **Exceptions** to the **Proposal for Decision** prepared by the Honorable Samuel K. Morris, Administrative Law Judge, and filed in the Office of Administrative Hearings on August 2, 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 and renumbered the Conclusions of Law as there appeared to be a typo in the filed Proposed Decision.
2. The Burden of Proof paragraphs 1-3 should be deleted and/or amended as follows:

BURDEN OF PROOF

1. 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).

2. 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 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”).

3. If a reviewing court determines the burden is on the Respondent, that burden has been met.
3. 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 ~~proposed~~ ordered that Petitioner's justice officer certification ~~should be~~ **REVOKED** for a period of five years pursuant to 12 NCAC 10B .0204(d)(1) and 12 NCAC 10B 0205(2)(a) due to him committing the misdemeanor offense of assault inflicting serious injury in violation of N.C.G.S. § 14-33.

This the 1st day of October 2024.

JOSHUA H. STEIN
Attorney General

/s/ J. Joy Strickland

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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's Counsel** by mailing a copy to the address below:

Barry Henline
115th Nth 6th Street
Wilmington, NC 28401

This the 1st day of October 2024.

JOSHUA H. STEIN
Attorney General

Attorney General

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