

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
23 DOJ 03114

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

EXCEPTIONS

The following **Exceptions** to the **Proposal for Decision** prepared by the Honorable David F. Sutton, Administrative Law Judge, and filed in the Office of Administrative Hearings on August 23, 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. Conclusion of Law No. 5 should be amended as follows:

5. ~~In *Peace v. Employment Sec. Comm'n of N. Carolina*, 349 N.C. 315, 328, 507 S.E.2d 272, 281 (1998), the North Carolina State Supreme Court addressed the burden of proof. Although *Peace* is an Article 3 case, the discussion of burden of proof is instructive in this instant case. *Peace* states:~~

~~In the absence of state constitutional or statutory direction, the appropriate burden of proof must be "judicially allocated on considerations of policy, fairness and common sense." 1 Kenneth S. Broun, Brandis & Broun on North Carolina Evidence §37 (4th Ed. 1993). Two general rules guide the allocation of the burden of proof outside the criminal context: (1) the burden rests on the party who asserts the affirmative, in substance rather than form; and (2) the burden rests on the party with peculiar knowledge of the facts and circumstances. *Id.*~~

~~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").

3. Conclusion of Law #6 should be amended as follows:

~~6. If a reviewing court determines that Respondent has the burden in this matter, it met its burden. Neither the North Carolina Constitution nor the General Assembly has addressed the burden of proof in Article 3A cases. Applying the statutory law along with "considerations of policy, fairness and common sense," the Undersigned determines that Respondent should bear the burden of proof in an action where Respondent proposes to deny an individual's justice officer certification based upon its investigation into that individual.~~

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

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, while the Commission finds that Petitioner should be commended for the tremendous work she has done to gain her sobriety and earn a well-deserved reputation at the Buncombe County Sheriff's Office, the Administrative Code rules are clear regarding commission of offenses. Therefore, it is hereby ordered that Petitioner's justice officer certification be DENIED permanently for the commission of the felony offenses of 2nd degree robbery and possession of heroin and denied for an indefinite period for the commission and/or conviction of a combination of four or more Class A and B misdemeanors.

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** by mailing a copy to the address below:

**Margaret Rein
112 Halsburg Avenue
Hendersonville, NC 28791**

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