

STATE OF NORTH CAROLINA  
COUNTY OF UNION

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
24 DOJ 02500

<p>Darrion J Foster Petitioner,</p> <p>v.</p> <p>NC Sheriffs Education and Training Standards Commission Respondent.</p>	<p><b>PROPOSAL FOR DECISION</b></p>
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THIS MATTER is before the Undersigned, *sua sponte*, upon review of the filings of record, having provided Petitioner with multiple opportunities to file a Prehearing Statement through Orders for Prehearing Statements, and without receiving a Prehearing Statement from Petitioner, the Undersigned, having considered the entire record, finds that the matter is now ripe for disposition.

**APPEARANCES**

For Petitioner: Darrion J Foster, *Pro Se* Petitioner  
No Response

For Respondent: J. Joy Strickland, Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629, Raleigh, North Carolina 27602

**ISSUE**

Whether this contested case should be dismissed for failure to comply with an Administrative Law Judge's Order, and failure to prosecute?

**FINDINGS OF FACT**

1. By letter dated June 27, 2024, Respondent requested the assignment of an Administrative Law Judge in the matter of the proposed revocation of Petitioner's justice officer certification.

2. By Order dated and filed July 2, 2024 the undersigned ordered Petitioner and Respondent to file Prehearing Statements with the Office of Administrative Hearings within thirty (30) days from the date of the Order.

3. The Order for Prehearing Statement was served on Petitioner at the address Respondent has on file for the Petitioner, 3802 Sonoma Way, Monroe, North Carolina 28110.

4. That on July 15, 2024, Respondent filed a Prehearing Statement with the Office of Administrative Hearings.

5. On September 20, 2024, the undersigned served a Second Order for Prehearing Statement on the Petitioner requiring Petitioner to file a prehearing statement on or before October 4, 2024.

6. As of today's date, Petitioner has not filed a Prehearing Statement with the Office of Administrative Hearings, nor has Petitioner requested an extension to file a prehearing statement.

7. By not filing a Prehearing Statement Petitioner has failed to comply with Orders of the undersigned and thus has failed to prosecute this contested case.

8. The undersigned has considered actions less drastic for disposing of this contested case and determines that less drastic actions will not suffice. The lack of any response whatsoever to the Office of Administrative Hearings prohibits even an examination by the ALJ of excusable neglect by Petitioner. No less action than disposing of this case by dismissal would be effective in ensuring compliance with the orders of the undersigned and would best serve the interests of justice.

### CONCLUSIONS OF LAW

1. This contested case is subject to dismissal pursuant to N.C.G.S. §150B-33(b)(10), and 26 NCAC 03.0114 for failure of the Petitioner to comply with interlocutory orders of the undersigned and failure to prosecute the contested case.

2. A petitioner's failure to comply with an Order for Prehearing Statements issued by an Administrative Law Judge pursuant to 26 NCAC 03 .0104 is a basis for imposing sanctions, which includes the dismissal of the petition. *See, e.g., Lisa Lincoln & Honeybees Creative Center v. North Carolina Dept. of Health and Human Services, Nutrition Branch*, 172 N.C. App. 567, 572, 616 S.E.2d 622, 626 (2005) (holding, *inter alia*, that "[d]ismissal of a contested case is admittedly a drastic sanction, but one within the plain language of the ALJ's statutory and regulatory power to sanction a party for failure to comply with an order").

3. Pursuant to the required findings for involuntary dismissal for failure to prosecute, set forth in *Wilder v. Wilder*, 146 N.C. App. 574, 578, 553 S.E.2d 425, 428 (2001), the undersigned concludes:

- a. Petitioner has acted in a manner that has deliberately and unreasonably delayed this contested case based on Petitioner's failure to file a Prehearing Statement, as originally ordered on July 2, 2024, pursuant to the undersigned's Order for Prehearing Statements; and
- b. Petitioner's failure to file a Prehearing Statement prejudices Respondent's ability to prepare for the contested case hearing as Petitioner has failed to advise of the specific issue(s) to be resolved in this matter, specific statement of facts and reasons supporting the issue(s) in dispute, the statutes, rules, and regulations, and legal precedent at issue, and a list of the proposed witnesses Petitioner intends to call at the contested case hearing.

4. By failing to file a Prehearing Statement, Petitioner has failed to comply with the undersigned's first and second Orders to file a Prehearing Statement, and thus, has failed to prosecute this contested case, pursuant to N.C. Gen. Stat. § 1A-1, Rules of Civil Procedure, Rule 41(b) and 26 NCAC 03 .0114.

5. The undersigned has considered lesser sanctions against Petitioner, including those authorized in 26 NCAC 03 .0114. Sanctions short of dismissal would not suffice or be effective in this contested case as Petitioner has demonstrated a pattern of unresponsiveness by failing to comply with the Second Order for Prehearing Statements.

6. As Petitioner failed to comply with interlocutory orders of the undersigned and failed to prosecute this contested case by failing to file a Prehearing Statement in compliance with the Orders for Prehearing Statement, the undersigned proposes dismissal of this contested case petition.

### **PROPOSED FINAL DECISION**

NOW, THEREFORE, based on the foregoing, the Undersigned hereby finds proper authoritative support of the Conclusions of Law noted above to impose sanctions. It is hereby recommended that this contested case be dismissed without prejudice.

### **NOTICE**

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this Proposal for Decision, to submit proposed Findings of Fact and to present oral and written arguments to the agency. N.C.G.S. § 150B-40(e).

The agency that will make the final decision in this contested case is the North Carolina Sheriffs' Education and Training Standards Commission.

A copy of the final agency decision or order shall be served upon each party personally or by certified mail addressed to the party at the latest address given by the party to the agency and a copy shall be furnished to any attorney of record. N.C.G.S. § 150B-42(a).

IT IS SO ORDERED.

This the 17th day of October, 2024.

A handwritten signature in cursive script that reads "John C Evans". The signature is written in black ink and is positioned above a solid horizontal line.

John C Evans  
Administrative Law Judge


**CERTIFICATE OF SERVICE**

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service:

Darrion James Foster  
3802 Sonoma Way  
Monroe NC 28110  
Petitioner

J. Joy Strickland  
NC Department of Justice  
jstrickland@ncdoj.gov  
Attorney For Respondent

This the 17th day of October, 2024.



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Lisa J Garner  
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