

STATE OF NORTH CAROLINA
COUNTY OF UNION

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
24 DOJ 02500

DARRION FOSTER,

Petitioner,

v.

NORTH CAROLINA SHERIFFS'
EDUCATION AND TRAINING
STANDARDS COMMISSION,

Respondent.

PROPOSED FINAL AGENCY
DECISION

THIS MATTER was commenced by a request filed June 27, 2024, with the Director of the Office of Administrative Hearings for the assignment of an Administrative Law Judge. Notice of Contested Case Assignment and Order for Prehearing Statements (24 DOJ 02500) were filed July 15, 2024. The parties received proper Notice of Hearing, and the Administrative Hearing was held in Charlotte, North Carolina on November 4, 2024, before the Honorable John C. Evans, Administrative Law Judge.

The Petitioner was *Pro Se*. The North Carolina Sheriffs' Education and Training Standards Commission (hereinafter Commission or Respondent) was represented by Assistant Attorney General J. Joy Strickland.

On October 17, 2024, Judge John C. Evans filed a Proposal for Decision. On October 18, 2024, counsel to the Commission sent by certified mail a copy of the Proposal for Decision to the Petitioner with a letter explaining Petitioner's rights: (1) to file exceptions or proposed findings of fact; (2) to file written argument; and (3) the right to present oral argument to the Commission.

This matter came before Commission for entry of its **Final Agency Decision** at its regularly scheduled meeting on March 20, 2025.

Having considered all competent evidence and argument and having reviewed the relevant provisions of Chapter 17E of the North Carolina General Statutes and Title 12, Chapter 10B of the North Carolina Administrative Code, the Commission, based upon clear, cogent and convincing evidence, does hereby make the following:

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 Administrative Law Judge 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 Administrative Law Judge 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 the date of Judge Evan's Proposal for Decision, ~~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 Administrative Law Judge undersigned and thus has failed to prosecute this contested case.

8. The Administrative Law Judge undersigned has considered actions less drastic for disposing of this contested case and determined 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 Administrative Law Judge 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 Administrative Law Judge’s 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 Administrative Law Judge and the Commission undersigned has have 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 Administrative Law Judge 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 ORDER

~~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. The Commission is hereby adopting the recommendation of the Administrative Law Judge to dismiss this case, and it is hereby ordered that the case is DISMISSED, and therefore the original proposed action is instituted, and Petitioner’s certification is REVOKED for a period of 5 years.~~

IT IS SO ORDERED.

This the ____ day of March 2025.

Alan Norman, Chair
North Carolina Sheriffs' Education
and Training Standards Commission

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the foregoing **PROPOSED FINAL AGENCY DECISION** has been duly served upon the **Petitioner** by mailing a copy to the address below:

**Darrion Foster
3802 Sonoma Way
Monroe, NC 28110**

This the 3rd day of December 2024.

JOSHUA H. STEIN
Attorney General

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