

**IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
24 DOJ 02402**

EXCEPTIONS

1

4:00 AM. While I was there, the lady and myself had made out. We made out till about 4:50 AM. At that time I had left to go back to the Sheriff's Office. . . It was a mutual agreement to meet that night. (Respondent's Exhibit 4)

When Petitioner was interviewed by Investigator Bowman on 29 January 2024, regarding the incident with Ms. Scoot, Petitioner provided the following, in part, He did not remember her name until that was provided by investigator. He said he believes that the first time he met her it was on a call for service to her home because she thought someone hacked into her camera and she heard some noises in her home while home alone.

The second time Petitioner interacted with Scott, was a couple of weeks after the first incident. He was on duty that night. She was afraid someone was stalking her and she made a call to the Sheriff's Office requesting his assistance. He spoke with her in the parking lot, but then she left. He could not recall why.

The third incident occurred approximately 30 minutes after the first incident. Petitioner said he went to a nearby gas station get something to drink and saw her in the parking lot. He spoke with her again and she said she was afraid to go home. He told her to go to her house and he would follow her. When they arrived, she invited him inside. He said they both were flirting with each other. He sat on the couch, and she came and sat beside him. He stated they started kissing and making out. After a period of time, he told her he had to go back to work. Taylor said she told him he could come back that weekend. Taylor confirmed that he was on duty while at her home. (Respondent's Exhibit 5)

4. Finding of Fact #22 should be deleted entirely as not found by the evidence. The remaining paragraphs should be renumbered accordingly.

~~22.—Petitioner was significantly credible.~~

5. Conclusion of Law #3 should be amended to reflect the Commission's position regarding the Burden of Proof:

The burden of proof for cases under Article 3 of the Administrative Procedure Act, N.C.G.S. 150B, is allocated by statute. See N.C.G.S. 150B-25.1. There is no statutory allocation of the burden of proof in administrative actions arising out of Article 3A of the APA. 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”). If a reviewing court places the burden on the Respondent, it has met its burden.

~~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; cf., Graves v. Commission, 2022 NC OAH LEXIS 374 (new applicant); see also, Ganty v. Commission, 2014 NC OAH LEXIS 127. These analyses are incorporated by reference.~~

6. Conclusion of Law # 4 should be deleted as it is inconsistent with the Commission’s position regarding the Burden of Proof. The remaining paragraphs should be renumbered accordingly.

~~4. — Regardless, to any extent the burden fell to Petitioner, he carried it. To any extent it fell to Respondent, it failed. Cf. Harris v. Mangum, 183 N.C. 235, 239-40, 11 S.E. 177, 179 (1922) (summarizing the interplay of burden, participant roles, and a decision by preponderance of the probative evidence regardless of who successfully introduced it or when).~~

7. Conclusions of Law 13, 16-19, and 21 should be deleted, and 20 amended as they are unnecessary for the issuance of the Final Agency Decision and are not a complete recitation of the law. The remaining paragraphs should be renumbered accordingly.
8. Proposal for Decision should be revised to reflect the final decision of the Commission as follows:

PROPOSAL FOR DECISION

~~WHEREFORE, certification should be ALLOWED, and the decision of the Probable Cause Committee REVERSED.~~

ORDER

It is hereby ORDERED that Petitioner's Justice Officer Certification is revoked indefinitely for lacking the good moral character required of a justice officer

Or in the alternative:

It is hereby ORDERED that Petitioner's conduct in this case constituted lack of good moral character, but no action is being taken to revoke his certification as he has regained his good character. It is highly recommended to any employing Sheriff that Petitioner's conduct be closely monitored.

This the 19th day of May, 2025.

JEFF JACKSON
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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:

**William L Hill
Frazier, Hill & Fury RLLP
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This the 19th day of May, 2025.

JEFF JACKSON
Attorney General

Attorney General

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