

**IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
24 DOJ 02403**

Respondent.

EXCEPTIONS

1. Counsel has made minor typographical and grammatical changes as necessary to make the proposal appropriate for Final Agency Decision.
2. Findings of Fact 5-14, 16 should be deleted in their entirety as they are superfluous. The remaining paragraphs should be renumbered accordingly.
3. Finding of Fact 28 (new 16) should be amended to accurately reflect the status of the case and work completed by Sheriffs' Standards Division staff:

4. Finding of Fact 46 (new 34) should be amended to accurately reflect the facts:

46- 34. District Attorney Kirkman, after reviewing this information, concluded that Petitioner would not be prohibited from testifying on behalf of the State. However, District Attorney Kirkman did indicate that any untruthfulness discovered during the investigation of [Petitioner] would have to be disclosed

to the defense before [Petitioner] would be permitted to testify. (Pet. Ex. 1, 10, Res. Ex. 6).

5. Finding of Fact 66 (new 54) should be amended as follows to accurately reflect the facts:

~~66~~54. Since Petitioner resigned from Iredell County Sheriff's Office, Hooper has not heard or come to know anything that would call Petitioner's reputation or character into question. (T.p. 180). However, Hooper indicated that he has had no interaction with Petitioner in many years other than to refer students to his concealed carry class and was not aware that Petitioner had been employed by the Cooleemee Police Department. (T p 180-181)

6. Finding of Fact 71 (new 59) should be amended as follows to accurately reflect the facts:

~~71~~59. Cheek agreed that Petitioner's conduct was unacceptable, however, Cheek expressed concern that Petitioner's certification was in jeopardy for a period of five years when it was already over four years since Petitioner had discontinued the affair, and over three years since he resigned from the Iredell County Sheriff's Office. (T.p. 189). Cheek has not seen Petitioner since the incident happened with the Iredell County Sheriff's Office and only communicates with Petitioner about firearms related issues. (T p. 183)

7. Conclusion of Law 8 should be deleted in its entirety and Conclusion of Law 9 should be amended to accurately reflect the Commission's position regarding Burden of Proof. The remaining paragraphs should be renumbered accordingly.

~~8. 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 contest: (1) the burden rests on the party who asserts the affirmative, in substance rather than form; 4 and (2) the burden rests on the party with peculiar knowledge of the facts and circumstances. Id.~~

89. Neither the North Carolina Constitution nor the General Assembly has 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") 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 certifi~~

8. 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, the undersigned hereby proposes that Respondent take no adverse action against Petitioner's certification. 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 deny his certification as he has regained his good character.~~

This the 19th day of May 2025.

JEFF JACKSON
Attorney General

/s/ J. Joy Strickland
J. Joy Strickland
Senior Deputy Attorney General
N.C. Department of Justice
9001 Mail Service Center
Raleigh, North Carolina 27699-9001
Telephone: (919) 716-6401
State Bar No.: 25695
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 Attorney** by mailing a copy to the address below:

**Mikael R. Gross
Gross Law Offices
11510 Auldbury way
Raleigh, NC 27617**

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