

STATE OF NORTH CAROLINA
COUNTY OF IREDELL

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
24 DOJ 02403

Craig Andrew Poteat Petitioner, v. NC Sheriffs Education and Training Standards Commission Respondent.	PROPOSAL FOR DECISION
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This case came on for hearing on December 5, 2024, before Administrative Law Judge David F. Sutton in Morganton, North Carolina. This case was heard after Respondent requested, pursuant to N.C.G.S. § 150B-40(e), designation of an Administrative Law Judge to preside at the hearing of a contested case under Article 3A of Chapter 150B of the North Carolina General Statutes.

APPEARANCES

Petitioner: Gross Law Offices
Mikael R. Gross
11510 Auldbury Way
Raleigh, North Carolina 27617

Respondent: J. Joy Strickland
Assistant Attorney General
N.C. Department of Justice
9001 Mail Service Center
Raleigh, North Carolina 27699-9001

WITNESSES

For Petitioner:

Michael Hooper
Jeffrey Cheek

For Respondent:

Ms. Melissa Bowman, Sheriff's Standards Investigator
William Hamby, Chief Deputy Iredell County Sheriff's Office
Craig Poteat, Petitioner

EXHIBITS

Petitioner's Exhibit ("Pet. Ex.") 1, 2, 3, 4, 5, 6, 7, 8, and 10

Respondent's exhibits ("Res. Ex.") 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10

RULE AT ISSUE

Lack of Good Moral Character - 12 NCAC 10B .0301(12)

ISSUES

Whether to revoke Petitioner's certification as a Justice Officer for "lack of good moral character" in violation of Rule 12 NCAC 10B .0301(12).

STIPULATIONS

The parties stipulated:

1. It is stipulated that the parties are properly before Administrative Law Judge David F. Sutton and that the Office of Administrative Hearings has jurisdiction of the parties and the subject matter. (See Joint Stipulations).
2. It is stipulated that Respondent has the authority granted under Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B, to certify criminal justice officers, and to revoke, suspend, or deny such certification under appropriate circumstances, with proof of a rule violation. (See Joint Stipulations).
3. It is stipulated that the following Respondent's Proposed Exhibits are authentic and admissible:

Exhibit #1 – Iredell County Sheriff's Office Report of Separation for Petitioner.
Exhibit #2 – Davie County Sheriff's Office Report of Appointment for Petitioner.
Exhibit #3 – Petitioner's history of certification.
Exhibit #6 – D.A. Sarah Kirkman email to Iredell County Sheriff Campbell.
Exhibit #7 – Poteat Resignation email 11/1/2021
Exhibit #9 – Notification of Probable Cause Letter.
Exhibit #10 – Petitioner's request for administrative hearing.

(See Joint Stipulations). (T.pp. 10-11).

4. It is stipulated that the following Petitioner's Proposed Exhibits are authentic and admissible:

Exhibit #1 – D.A. Sarah Kirkman email to Iredell County Sheriff Campbell.
Exhibit #2 – History of Petitioner's Certification.

Exhibit #3 – Advanced Law Enforcement Officer Certificate Award.

Exhibit #4 – Report of Separation from Iredell County Sheriff's Office

Exhibit #5 – Personal Character Letter from Chief Deputy Burt Connelly of Iredell County Sheriff's Office. It is further stipulated that this is the personal character reference of Chief Deputy Connelly and does not represent the opinion of Iredell County Sheriff Campbell of his office.

(See Joint Stipulations). (T.pp. 10-11).

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned Administrative Law Judge makes the following **FINDINGS OF FACT**. In making the following **FINDINGS OF FACT**, the undersigned Administrative Law Judge has weighed all the evidence and has assessed the credibility of the witnesses by considering the appropriate facts for judging credibility, including, but not limited to, the demeanor of the witness, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case.

FINDINGS OF FACT

1. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, both parties received notice of hearing, and Petitioner was properly served with written notice of the North Carolina Sheriffs' Education and Training Standards Commission's (hereinafter "Respondent"), finding of probable cause. (Joint Stipulation Nos. 1 and 3).
2. Respondent has the authority granted under Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B, to certify sheriff's deputies and to revoke, suspend, or deny such certification under appropriate circumstances with valid proof of a rule violation. (Joint Stipulation No. 2).
3. Petitioner was appointed as an inactive reserve deputy with the Davie County Sheriff's Office and sworn on December 6, 2022. Inactive reserve means that Petitioner maintains his certification but does not perform law enforcement duties or carry a firearm. (Res. Ex. 2 redacted). (T.pp. 52-53).

Sheriffs' Standard Division Investigation

4. Respondent investigated the minimum qualifications of Petitioner to be certified as a Justice Officer. As part of that investigation, Respondent's investigator, Melissa Bowman, received a copy of an investigation conducted by Judy Kelley, an investigator with N.C. Criminal Justice Education and Training Standards Commission. (T.p. 28).
5. Investigator Bowman conducted no independent investigation into the matter but relied solely on the information contained in Investigator Kelley's report. (T.p. 28).

6. Investigator Bowman never contacted Petitioner during her review and investigation to verify any information contained in Investigator Kelley's report, nor did she ask any question about Petitioner's current moral character status to determine if, based on the passage of time or other factors, Petitioner was rehabilitated from any allegation regarding his moral character. (T.p. 28).
7. Investigator Bowman did not speak with or interview Investigator Kelley to determine whether there were any issues regarding the investigation into Petitioner's conduct while at Iredell County Sheriff's Office. (T.p. 29).
8. Investigator Bowman did not speak with or interview Amy Dyson to validate or verify information contained in Investigator Kelley's report or the internal investigation report. (T.p. 51).
9. Investigator Bowman did not speak with or interview any investigators, detectives, or other members of the Iredell County Sheriff's Office to validate or verify information contained in Investigator Kelley's report. (T.pp. 50-51).

(A) Required Minimum Standards for Good Moral Character

10. The North Carolina Criminal Justice Education and Training Standards Commission is a quasi-judicial agency of the State of North Carolina housed in the N.C. Department of Justice.
11. Respondent is a quasi-judicial agency of the State housed in the North Carolina Department of Justice.
12. Minimum standards for law enforcement officers are identical for both Respondent and N.C. Criminal Justice Education and Training Standards Commission. (T.pp. 30-31).
13. Good moral character is a minimum standard for all applicants and certified law enforcement officers for both Respondent and the N.C. Criminal Justice Education and Training Standards Commission. (T.pp. 30-31).
14. The North Carolina Criminal Justice Educations and Training Standards Commission has the same rule, although not identical, requiring good moral character as a minimum standard for certification as a law enforcement officer as the Respondent. (T.p. 30-31).
15. Respondent's rule for good moral character states:

"12 NCAC 10B .0301 MINIMUM STANDARDS FOR JUSTICE OFFICERS

Every justice officer employed or certified in North Carolina shall:

...

(12) be of good moral character as defined in: In re Legg, 325 N.C. 658, 386 S.E.2d 174 (1989); State v. Benbow, 309 N.C. 538, 308 S.E.2d 647 (1983); In re Willis, 288 N.C. 1, 215 S.E.2d 771 (1975), appeal dismissed 423 U.S. 976 (1975); State v. Harris, 216 N.C. 746, 6 S.E.2d 854 (1940); In re Dillingham, 188 N.C. 162, 124 S.E. 130 (1924); In re Applicants for License 143 N.C. 1, 55 S.E. 635 (1906); and later court decisions.

...."

12 NCAC 10B.0301(12) (2023).

16. The North Carolina Criminal Justice Educations and Training Standards Commission rule for good moral character states:

“12 NCAC 09B .0101 MINIMUM STANDARDS FOR LAW ENFORCEMENT OFFICERS

Every law enforcement officer who is employed in or has received a conditional offer of employment for a certified position by an agency in North Carolina shall:

...

(12) be of good moral character as defined in: In re Willis, 288 N.C. 1, 215 S.E. 2d 771 appeal dismissed 423 U.S. 976 (1975); State v. Harris, 216 N.C. 746, 6 S.E. 2d 854 (1940); In re Legg, 325 N.C. 658, 386 S.E. 2d 174 (1989); In re Applicants for License, 143 N.C. 1, 55 S.E. 635 (1906); In re Dillingham, 188 N.C. 162, 124 S.E. 130 (1924); State v. Benbow, 309 N.C. 538, 308 S.E. 2d 647 (1983); and later court decisions.

....”

12 NCAC 9B.0101(12) (2022).

(B) Application to Cooleemee Police Department

17. Petitioner was hired by Town of Cooleemee in July of 2022. (Pet. Ex. 2, Res. Ex. 3).

18. During Petitioner’s application process with the Town of Cooleemee, Petitioner admitted to the conduct that led to his resignation from the Iredell County Sheriff’s Office in November 2021. (T.p. 158)

19. During Petitioner’s application for certification as a Criminal Justice Officer for Cooleemee Police Department, the North Carolina Criminal Justice Education and Training Standards Commission conducted an investigation to ensure Petitioner met all required minimum standards for certification as a Criminal Justice Officer. (T.p. 19-20, 159).

20. The North Carolina Criminal Justice Education and Training Standards found Petitioner possessed the requisite moral character to hold a law enforcement officer certification and issued his certification to the Town of Cooleemee. (Pet. Ex. 2, Res. Ex. 3). (T.pp. 19, 35, 159-160)

21. During Petitioner’s time at Cooleemee Police Department, Petitioner served as the Chief of Police, until the department was disbanded by the Town Council. (T.pp. 161-162).

22. After leaving Cooleemee Police Department, there are no allegations that Petitioner engaged in any conduct that would cause him to lack good moral character.

(C) Investigation by Respondent to Determine Minimum Qualifications

23. After appointment to the Davie County Sheriff’s Office as an inactive reserve deputy Respondent received Petitioner’s F-4, Report of Appointment, and initiated an investigation into his minimum qualifications to be a Justice Officer. (Res. Ex. 2 redacted). (T.p. 17).

24. When the Report of Appointment was submitted to Respondent, Petitioner's F-5, Report of Separation was reviewed which reflected he had been the subject of an internal investigation prior to his resignation. (Pet. Ex. 4, Res. Ex. 1 redacted). (T.p. 15-16).
25. Petitioner's F-5, Report of Separation, showed Petitioner had not violated any rules of the Respondent, and that there were no substantiated allegations of untruthfulness. (Pet. Ex. 4, Res. Ex. 1 redacted). (T.pp. 31-32).
26. Petitioner's F-5, Report of Separation, was submitted to Respondent on November 1, 2021. (Pet. Ex. 4, Res. Ex. 1 redacted).
27. Petitioner's Report for Appointment to Davie County Sheriff's Office was submitted on December 6, 2022. (Pet. Ex. 2, Res. Exs. 2 redacted, 3).
28. At no point in time between the submission of the Petitioner's F-5, Report of Separation, from Iredell County Sheriff's Office until the submission of the Petitioner's F-4, Report of Appointment, from Davie County Sheriff's Office did Respondent initiate any investigation nor did it summarily suspend Petitioner's certification for failing to meet or maintain minimum standards. (T.p. 17, 34-36).
29. The investigation was assigned to Investigator Melissa Bowman to determine if Petitioner met the minimum standards required to be certified as a Justice Officer by Respondent. (T.p. 33-34).
30. Petitioner was employed with the Iredell County Sheriff's Office for over twenty-four years. (Pet. Ex. 2, Res. Ex.'s 1 redacted, and 3). (T.p. 107).
31. During Petitioner's employment with the Iredell County Sheriff's Office Petitioner had no disciplinary action and rose to the rank of Chief Deputy Sheriff, a direct report to the Sheriff of Iredell County. (T.pp. 107-108).
32. Petitioner resigned from the Iredell County Sheriff's on November 1, 2021. (Pet. Ex.'s 2, 4, Res. Exs. 1 redacted, 7) (T.p. 108).
33. Petitioner's resignation was the result of an internal investigation that established that Petitioner had an extra-marital affair with a subordinate deputy. (T.pp. 24, 72, 88).
34. The facts of the affair with the subordinate deputy were corroborated by Petitioner during his interview with the Cabarrus County Sheriff's Office Captain Pfister who conducted the internal investigation. (T.pp. 25-27).
35. The affair involved another subordinate deputy sheriff named Amy Dyson (Dyson) and had been taking place since some time in 2018. Both parties were married to others at the time the affair started. (Res. Ex. 5). (T.pp. 26-27).

36. The internal investigation was initiated when a Major had approached Dyson to ask her about a voice recorder and she made an allegation about sexual harassment by Petitioner. (T.pp. 59-62).

37. During the internal investigation, the facts showed that Petitioner had been in a consensual relationship with Dyson since approximately 2018. (T.p. 26)

38. Petitioner and Dyson had sexual relations sometimes afterwork and during lunch breaks, typically at hotels or motels. On at least one occasion, Petitioner and Dyson had sex in an unmarked patrol vehicle on their lunch break. (T.pp. 133-134).

39. Dyson left her husband in order to be in a committed relationship with Petitioner. (T.pp. 113-114).

40. Petitioner ended the relationship with Dyson in November of 2020, approximately a year prior to his resignation. (T.p. 111).

41. During their relationship, Petitioner and Dyson took two out of state trips for the Sheriff's Office, one for training in Virginia, and one for an investigation in Pennsylvania. (T.pp.74-83, 144).

42. During these trips the County paid for two rooms, one for Petitioner and one for Dyson, however, they both stayed in the room assigned to Petitioner and would engage in sexual relations after they had completed training/investigation for the day. (T.pp. 120-121, 130, 137-138)

43. The internal investigation alleges that Petitioner was untruthful when he filled out his travel reimbursement forms because Petitioner's actions resulted in the Sheriff's Office paying for two rooms when Petitioner and Dyson only used one room. (T.pp. 27, 32, 88). (Pet. Ex. 4, Resp. Exs. 1 redacted).

44. There was no written policy of the Iredell County Sheriff's Office that prohibited the Petitioner and Dyson from staying in the same room. (T.p. 89).

45. Sheriff Campbell submitted Investigation Findings prepared by Chief Deputy Hamby and other documents to the District Attorney for Iredell County, Sarah Kirkman, and met with her, Assistant District Attorney Carrie Nitzu, and Chief Deputy Bert Connelly, to discuss whether Petitioner should receive a "Giglio" notification letter. (Pet. Exs. 1, 10, Res. Ex. 6, 8).

46. District Attorney Kirkman, after reviewing this information, concluded that Petitioner would not be prohibited from testifying on behalf of the State. (Pet. Ex. 1, 10, Res. Ex. 6).

47. During the investigation conducted by Investigator Judy Kelley for the N.C. Criminal Justice Education and Training Standards Commission Kelley sent an email to Erika Jones, Assistant Attorney General, requesting verification of whether the email between D.A. Kirkman and Sheriff Campbell constituted a "Giglio" "letter reference Senate Bill 300?" Kelley was advised that the email was not a "Giglio" notification pursuant to the requirements of Senate Bill 300 (S.L. 2021-138). (Pet. Ex. 10)

48. Based on the evidence provided, no Giglio impairment letter has been issued to Petitioner by anyone authorized to issue such letter. (Pet. Ex. 1, 10, Res. Ex. 6).

49. Petitioner admitted his affair with Dyson to investigators and to Sheriff Campbell. (T.p. 157).

50. Petitioner admitted his affair with Dyson to his wife and has remained married during the time since November 2021 to the present. (T.p. 157, 167).

(D) Conclusion of Sheriffs' Standards Division Investigation

51. On March 21, 2024, Petitioner attended the hearing of the Probable Cause Committee. The Committee found probable cause existed to disqualify Petitioner from certification for an indefinite period of time due to a lack of good moral character. (Pet. Ex. 7).

52. On May 8, 2024, Respondent mailed to Petitioner, via certified mail, a Notification of Probable Cause to Revoke Justice Officer Certification. (Res. Ex. 9).

53. Petitioner requested a hearing in the Office of Administrative Hearings by a letter from his Attorney to Respondent on May 23, 2024. (Res. Ex. 10).

Rehabilitation Character Witnesses - Letters

54. Petitioner provided a character reference letter from Chief Deputy Bert Connelly (Connelly) of the Iredell County Sheriff's Office. Although the letter was written on Iredell County Sheriff's Office letterhead, it was stipulated that the reference given by Connelly was his personal position rather than that of the Iredell County Sheriff's Office. (See Joint Stipulations) (Pet. Ex. 5).

55. Petitioner also provided a character reference letter from Jessica Almond, Mayor of the Town of Cooleemee from 2019-2023. While this letter was not stipulated, it was accepted into evidence without objection from Respondent. (Pet. Ex. 6).

56. In their letters, Connelly and Almond stated that Petitioner was honest. They also noted positive attributes of Petitioner's character, including trustworthiness, leadership, accountability and work ethic. (Pet. Exs. 5 and 6)

Rehabilitation Character Witnesses – Testimonial Witnesses

(A) Michael Glenn Hooper

57. Michael Glenn Hooper (Hooper) is a level two paramedic and training officer with the Iredell County EMS. (T.pp. 170, 176).

58. Hooper has known Petitioner for many years. Hooper and Petitioner have attended school

together, worked at restaurants together, and ultimately worked together in Iredell County when Petitioner was a deputy sheriff and Hooper an EMS employee. (T.p. 171).

59. Hooper became aware of Petitioner's separation from the Iredell County Sheriff's Office but was not sure why he had resigned. (T.p. 172).

60. Petitioner and Hooper teach "concealed carry" classes and often work together to get students into each other's class if the student has an issue with dates, or the class is full. Petitioner is a good instructor. (T.p. 173).

61. Hooper has never had a complaint from any student that he referred to Petitioner about Petitioner being unprofessional or acting in a manner that caused the student to be mistreated or degraded. (T.P. 174).

62. Hooper teaches his classes for concealed carry in the same manner that Petitioner does because "[he] learned that from [petitioner]" and he tries to portray the same values. (T.p. 174).

63. Hooper finds Petitioner to be trustworthy. Petitioner always responds when Hooper calls or asks a favor. (T.p. 175).

64. Hooper finds that Petitioner is a professional and acts in a manner that he treats people, even suspects, with respect. (T.p. 177).

65. Hooper believes that Petitioner resigned to save the reputation of the agency (Iredell County Sheriff's Office) because that is what he would do to protect the agency. (T.p. 179).

66. 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).

(B) Jeffrey Clinton Cheek

67. Jeffrey Clinton Cheek (Cheek) is a retired Lieutenant from the Statesville Police Department in Statesville, North Carolina. He currently serves as a part-time deputy sheriff for the Iredell County Sheriff's Office. (T.p. 183).

68. Cheek said he knew Petitioner closely from the sheriff's office since 2014 because they were co-firearms instructors and taught in the BLET (Basic Law Enforcement Training) program. (T.p. 183).

69. Cheek finds that Petitioner's reputation in the community is beyond reproach. Cheek respects Petitioner's work ethic and investigative skills and while they may have philosophical differences, Cheek does not question Petitioner's integrity or honesty. (T.p. 184).

70. Cheek has been a law enforcement officer since 1974 and finds no reason that Petitioner should not be allowed to be a law enforcement officer. (T.p. 185).

71. 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).

Additional Findings

72. Respondent made no findings of fact that showed that Petitioner had engaged in any conduct that showed Petitioner lacked the requisite moral character to be certified as a Justice Officer after the finding by the North Carolina Criminal Justice Education and Training Standards Commission that Petitioner did possess the requisite moral character to be a certified Criminal Justice Officer.

73. Petitioner has accepted responsibility for his actions and has been honest about the affair with his wife, his subsequent employers, the internal investigator, and the Sheriff of his former agency.

74. Petitioner was honest and forthright with this Tribunal and explained in detail his actions during his affair with Dyson and how it has affected his professional and personal lives. There is no evidence that Petitioner was untruthful during any part of his investigation.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over this contested case pursuant to N.C.G.S. §150B Article 3A, following a request from Respondent under N.C.G.S. §150B-40(e) for an Administrative Law Judge to hear this contested case.

2. All parties were properly before the Office of Administrative Hearings and there was no question as to joinder or misjoinder. There was no objection from either party to the Tribunal hearing this contested case.

3. This case involves a proposal to revoke an occupational license or certification. It thus affects the substantive rights of the Petitioner, and he is entitled to both notice and an opportunity to be heard. Scroggs v. N. Carolina Criminal Justice Educ. & Training Standards Comm'n, 101 N.C. App. 699, 701, 400 S.E.2d 742, 744 (1991). Notice was duly provided to all parties by the Office of Administrative Hearings.

4. To the extent that the Findings of Fact contain Conclusions of Law, and vice versa, they should be considered without regard to their given labels. Charlotte v. Heath, 226 N.C. 750, 755, 40 S.E.2d 600, 604 (1946); Peters v. Pennington, 210 N.C. App. 1, 15, 707 S.E.2d 724, 735 (2011).

5. Respondent, North Carolina Sheriffs' Education and Training Standards Commission, has the authority granted under Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B, to certify justice officers and to revoke, suspend, or deny such certification.

6. N.C. Gen. Stat. §150B-40(e) provides that “[w]hen a majority of an agency is unable or elects not to hear a contested case,” the agency is to apply to the Office of Administrative Hearings (“OAH”) for a designation of an Administrative Law Judge (“ALJ”). In such case, “[t]he provisions of [Article 3A], rather than the provisions of Article 3, shall govern a contested case...” N.C. Gen. Stat. §150B-40(e).

7. In Article 3A cases, OAH, through an ALJ, presides over the hearing in place of the agency, and makes a “proposal for decision” back to the agency. N.C. Gen. Stat. §150B-40.

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.

9. 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.

10. The burden of proof is the preponderance of the evidence standard. See N.C. Gen. Stat. §§ 150B-23(a); 29(a); and 34(a)

11. The minimum standards for justice officers is contained in 12 NCAC 10B .0301. Specifically, 12 NCAC 10B .0301(12) requires that each justice officer be of good moral character . . .

12. What constitutes “good moral character” has been defined by appellate cases. In Devalle v. N.C. Sheriffs' Educ. & Training Stds. Comm’n, 289 N.C. App. 12, 21, 887 S.E.2d 891, 897 (2023), the Court of Appeals, held:

The requirement that an applicant maintain good moral character means something more than the absence of bad character. It is the good name which the applicant has acquired, or should have acquired, through association with his fellows. It means that he must have conducted himself as a man of upright character ordinarily would, should or does. Such character expresses itself, not in negatives nor in following the line of least resistance, but quite often in the will to do the unpleasant thing, if it is right, and the resolve not to do the pleasant thing, if it is wrong.

Id. citing In re Rogers, 297 N.C. 48, 58, 253 S.E.2d 912, 918 (1979) (citation omitted).

13. "Character thus encompasses both a person's past behavior and the opinion of members of his community arising from it." Id. Further, "whether a person is of good moral character is seldom subject to proof by reference to one or two incidents." Id. "[W]hen one seeks to establish restoration of a character which has been deservedly forfeited, the question becomes essentially one 'of time and growth.'" Id. citing In re Willis, 288 N.C. 1, 13, 215 S.E.2d 771, *appeal dismissed*, 423 U.S. 976, 96 S. Ct. 389, 46 L. Ed. 2d 300 (1975) (citation omitted)

14. Petitioner's conduct of engaging in a long-term extramarital affair with a subordinate deputy, including engaging in sexual activity in his patrol car and on work trips paid for by the county, and using his patrol car to meet the subordinate deputy during breaks in the workday to engage in the sexual affair, is not the conduct of a man of upright character. Thus, during the time Petitioner was engaged in the affair with his subordinate deputy, whether Petitioner lacked the "good moral character" required of justice officers, is questionable.

15. However, a determination of whether Petitioner currently possesses the requisite "good moral character" must include consideration of Petitioner's behavior and reputation, other than that related to his extra-marital affair with a subordinate deputy.

16. Prior to his resignation from the Iredell County Sheriff's Department in November 2021, Petitioner had a 24 year long career of exemplary service as a law enforcement officer.

17. Despite full knowledge of Petitioner's actions which formed the basis of this contested case proceeding, Petitioner was certified as a law enforcement officer by the N.C. Criminal Justice Educations and Training Standards Commission, a quasi-judicial body that requires the same minimum standards as Respondent, of which good moral character is one.

18. There is no evidence to suggest Petitioner has engaged in any conduct that showed he lacked the requisite moral character to be certified as a Justice Officer after the finding by the North Carolina Criminal Justice Education and Training Standards Commission that Petitioner did possess the requisite moral character, including the time period in which he served as the Chief of Police for the Town of Cooleemee.

19. The Undersigned found Petitioner to be honest and forthright in his testimony and that he has accepted responsibility for his regretful actions and has been honest about the affair with his wife, his subsequent employers, the internal investigator, and the Sheriff of his former agency.

20. Petitioner's current reputation in his community is that of an individual who is honest, and possesses integrity, and respect for the laws of this state and nation.

21. Petitioner currently possesses the "good moral character" required of a justice officer.

22. The finding of the Respondent's Probable Cause Committee was not arbitrary or capricious.

PROPOSAL FOR DECISION

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.

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 20th day of March, 2025.

A handwritten signature in black ink that reads "David F. Sutton". The signature is written in a cursive style and is positioned above a solid horizontal line.

David F Sutton
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 which subsequently will place the foregoing document into an official depository of the United States Postal Service:

Mikael R Gross
Gross Law Offices
grosslawoffices@gmail.com
Attorney For Petitioner

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

This the 20th day of March, 2025.



Melissa Boyd
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