STATE OF NORTH CAROLINA **COUNTY OF ROBESON**	**IN THE OFFICE OF ADMINISTRATIVE HEARINGS** **24 DOJ 03310**
MICHAEL EUGENE LASHLEY, **Petitioner,** **v.** **NORTH CAROLINA SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION,** **Respondent.**	**PROPOSED FINAL AGENCY DECISION**

THIS MATTER was commenced by a request filed August 21, 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 03310) were filed August 27, 2024. The parties received proper Notice of Hearing, and the Administrative Hearing was held in Fayetteville, North Carolina on December 12, 2024, before the Honorable John C. Evans, Administrative Law Judge.

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

On March 20, 2025, Judge Brian P. LiVecchi filed his Proposal for Decision. On March 21, 2025, 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 June 12, 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

Parties

1. Respondent, North Carolina Sheriffs' Education and Training Standards Commission ("the Commission" or "SETSC") is authorized under Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B to certify deputy sheriffs, detention officers, and telecommunicators, and to revoke, suspend, or deny such certifications.

2. On or about July 16, 2021, Petitioner graduated Basic Law Enforcement Training ("BLET"). On January 1, 2023, Petitioner was appointed by the Sheriff of Bladen County to the position of Detention Officer, and the Sheriff requested that Petitioner be granted certification as a justice officer by Respondent via submission of a Form F-4, Report of Appointment. (Resp Ex 1).

Respondent's Investigation

3. Respondent thereafter received Petitioner's Report of Appointment from the Bladen County Sheriff's Office, notifying Respondent that the Bladen County Sheriff had appointed Petitioner to the position of Detention Officer. Appended was an AOC-CR-280 Form, Verification of Expungement, which disclosed Petitioner's 1999 conviction for insurance fraud (97 CRS 000534) (Resp Ex 3).

4. Respondent assigned Deputy Director of the Sheriff's Standards Division of the NC Department of Justice Sirena Jones to investigate the application because there was a felony conviction involved.

5. Upon commencing her investigation, Deputy Director Jones learned Petitioner had previously applied for certification as a law enforcement officer through the Criminal Justice Education Training and Standards Commission ("CJETS"), as he was seeking employment with the Rowland, NC police department in 2021. This application was similarly flagged for investigation at that time by CJETS, due to the disclosure of a felony conviction. (Resp Ex 7, pp 8-12). That investigation resulted in a recommendation to the CJETS Probable Cause Committee ("CJETS PCC") that it should decide not to certify Petitioner following a probable cause hearing before that committee. By way of letter dated March 3, 2022, the CJETS PCC issued a Notification of Probable Cause to Deny Justice Officer Certification, which informed Petitioner of the decision to deny his certification and of his right to request a hearing. (Resp Ex 7, pp 21-25). Petitioner requested a Contested Case Hearing, and the matter was assigned to Administrative Law Judge Melissa Owens Lassiter (22 DOJ 01727). After a hearing conducted September 16, 2022, Judge Lassiter issued a Proposal For Decision reversing the decision of the CJETS PCC and allowing Petitioner to be probationally certified. The decision was subsequently adopted by the full CJETS Commission, and Petitioner was granted a probationary certification by its Final Agency Decision, 3 issued May 24, 2023. The Final Agency Decision was accepted into evidence as Respondent's Exhibit 6, and a transcript

of the hearing in 22 DOJ 01727 was accepted into evidence as Respondent's Exhibit 7 (without objection) (T. pp 22-23).

6. In the course of conducting her investigation in this matter, Deputy Director Jones ~~merely~~ reviewed the 2021 CJETS file, including the Final Agency Decision and two written statements allegedly provided by Petitioner to the Rowland Police Department for submission to CJETS titled "explanation of expunction" as part of his 2021 application to serve in that department. Ms. Jones ~~did not interview Petitioner nor any other potential witness who may have provided information regarding the conviction and expungement, and~~ relied on the contents of Petitioner's CJETS file in making her presentation to the Sheriffs' Education and Training Standards Commission's ("SETSC") Probable Cause Committee ("SETSC PCC") in June, 2024.

7. The two written statements titled "Explanation of Expunction" contained within Petitioner's CJETS file both bear the signature of Michael Eugene Lashley. The first statement, dated August 31, 2021, was provided by Petitioner to the Rowland Police Department for submission to CJETS as part of his application packet. The statement was notarized on September 2, 2021 by Donna R. Holden, a Notary Public for Robeson County. It was received by CJETS September 23, 2021, and is Respondent's Exhibit 4.

8. During the course of investigating Petitioner's 2021 application, CJETS requested additional information from the Rowland Police Department regarding the expunged conviction. (Resp Ex 7, pp 14-16). Petitioner was contacted by Connie Barnes-Hayes, who was employed by the Rowland Police Department in a non-sworn civilian administrative capacity, and informed that additional information was required. Petitioner supplied another, more detailed "Explanation of Expunction" to the Rowland Police Department. (Pet Ex 1; T. pp 43-45). On October 15, 2021, CJETS received from the Rowland Police Department a second statement, also entitled "Explanation of Expunction," purportedly signed by Petitioner, which is Respondent's Exhibit 5.

9. This second statement entitled "Explanation of Expunction" received by CJETS on October 15, 2021 (Respondent's Exhibit 5) is not the same document as the document Petitioner provided to the Rowland Police Department (Petitioner's Exhibit 1). The second statement received by CJETS was "notarized" by Ms. Barnes-Hayes, a Notary Public for Robeson County, inasmuch as it bears a notarial seal and a "certification" that Petitioner "personally appeared before" her, but makes no mention of Petitioner making any mark, signature, oath, affirmation, acknowledgment, or verification in connection therewith. (Resp Ex 5.) Though bearing a notarial seal, the document lacks the fundamental elements of any "notarial act," whether setting forth an acknowledgement, oath or affirmation, or verification or proof. It is completely devoid of a legally sufficient Notarial Certificate, and the Tribunal finds that the document is not notarized as a matter of fact and law. (See, generally, N.C. Gen. Stat. § 10B-40, et seq.).

10. ~~This second statement contained factual errors, inconsistencies, and even words with which Petitioner appeared unfamiliar and that he struggled to pronounce aloud at hearing. 4~~ Petitioner consistently, ~~stridently, and credibly~~ denies having written or

signed the second statement and was not aware of its existence until he received copies of intended exhibits from opposing counsel in advance of the contested case hearing in 22 DOJ 01727. (T. pp 45-52; Resp Ex 7, pp 54-62).

11. CJETS never received a copy of Petitioner's Exhibit 1, which Petitioner claims was used by a third party to prepare Respondent's Exhibit 5 without his knowledge. (T. p 44; Resp Ex 7, pp 79, 63-70). The Tribunal finds this claim to be credible and, accordingly, affords the second statement (Resp Ex 5) no evidentiary weight insofar as its authorship cannot reliably be attributed to Petitioner.

12. Deputy Director Jones included the Final Agency Decision in 22 DOJ 01727 among the documents provided to the SETSC PCC for Petitioner's probable cause hearing. ~~There is no evidence that Deputy Director Jones questioned the veracity or authenticity of the documents she placed before the SETSC PCC, or expressly advised its members of Judge Lassiter's finding in 22 DOJ 01727 that "Petitioner also proved he did not submit [the second statement] to [CJETS] during [its] investigation and that Explanation was filled with incorrect and false information." (Resp Ex 6, p 13, ¶ 16). Rather, despite knowledge that a previous Tribunal had discredited the document and that it was the subject of credible claims of fraud, and without the slightest attempt to investigate those claims, Deputy Director Jones instead represented it as reliable and competent "evidence" of why Petitioner should not be certified by the Commission.~~

13. These two statements allegedly submitted by Petitioner in support of his application formed the basis of the CJETS PCC's decision to deny Petitioner's application for certification in 2021. (Resp Ex 6, pp 5-6, ¶¶ 12, 13). Specifically, the CJETS PCC cited Petitioner's admission of guilt with regard to insurance fraud contained within the second statement, Respondent's Exhibit 5, which Petitioner has credibly claimed was not his statement. (Id.).

The Probable Cause Committee

~~14. These statements, despite one of them being (1) either suspiciously or incompetently (but surely ineffectively) "notarized," (2) of an acknowledged dubious origin, and (3) previously explicitly claimed to be a forgery - under oath - by Petitioner, along with the AOC280 expunction form and Final Agency Decision in 22 DOJ 01727, were all that was placed before the SETSC PCC by Deputy Director Jones with her summary memorandum when it considered and denied Petitioner's application for certification in June 2024, the subject of this Contested Case.~~

~~15. At no time did Respondent seek to interview any relevant witnesses (even Petitioner), inquire as to the validity of documents it received, or even, apparently, take any steps whatsoever to investigate Petitioner's claim that a document in his file was perjurious and forged (a felony) and illegally "notarized" by an employee of a police department (a felony), despite being 5 aware of those claims (which this Tribunal finds, and the Tribunal in 22 DOJ 01727 found, to be credible).~~

~~16. In fact, rather than investigate, or exhibit even the tiniest scintilla of the sort of curiosity one might expect from a "professional law enforcement investigator" regarding a formal submission maintained in its official files which purports to be a sworn document prepared and submitted by a law enforcement agency that was marred by credible claims regarding its authenticity and alleged — under oath — to be fraudulent, Respondent, remarkably, instead blasely used this document as evidence before the SETSC PCC, and this Tribunal, that Petitioner committed a felony.~~

~~17. Deputy Director Jones conducted no investigation whatsoever. She merely passed along documentation in an apparent act of bureaucratic complacency – which she knew or reasonably should have known to be potentially fraudulent — in support of Respondent's contention that Petitioner had committed or been convicted of a felony offense and should not be certified.~~

~~18. There is no evidence that Deputy Director Jones ever notified the Secretary of State, CJETS, or any other competent authority of the suspicious nature of Respondent's Exhibit 5, or of Petitioner's credible allegations of violations of rule and law that transpired in its provenance.~~

~~19. When asked at hearing, "Other than reviewing the application materials and the items in the Criminal Justice Training file, did you do anything else as part of an investigation or request anybody else to do any investigating in this particular matter?", Deputy Director Jones testified: "I don't believe so. I think that -- you know, the Criminal Justice Standards Division had their investigative information, a statement from Mr. Lashley. We had the AOC-280 match report. We had the finding by the Criminal Justice Standards Commission. So that's -- that's all of the information that I believe we obtained in reference to our investigation with Sheriffs' Standards." (T. pp 16-17.)~~

~~20. When asked at hearing, "So did you rely solely on his application and the record from Training and Standards?", Deputy Director Jones testified, "Yes, because he had already provided two statements to the Criminal Justice Standards Division, and that was just in 2021." (T. pp 21-22).~~

~~21~~14. Petitioner was duly notified of the meeting of the SETSC PCC and attended in person. He was not represented by counsel.

~~22~~15. By letter dated August 4, 2024, and posted via certified mail, Respondent notified Petitioner that the SETSC PCC had found probable cause to deny his justice officer certification based upon Petitioner's felony conviction pursuant to 12 N.C.A.C. 10B .0204(a)(1), which states:

(a) The Commission shall revoke or deny the certification of a justice officer when the Commission finds that the applicant or certification or the certified officer has committed or been convicted of:

(1) A felony;

The Commission specifically found that:

> Facts and circumstances exist to show that on or about April 14, 1999 (Robeson 97CRS000534) you were convicted of the felony offense of "Insurance Fraud," in violation of N.C. General Statute § 58-2-161. You pled guilty to the offense and were placed on supervised probation until full restitution was paid to the insurance company. Although the conviction is expunged, the record is released to the Commission pursuant to N.C.G.S. § 15A-151.
>
> (Resp Ex 9).

Contested Case Hearing

~~23~~16. Petitioner timely petitioned for review of the decision of the SETSC PCC by filing a Petition for a Contested Case Hearing on August 20, 2024. (Resp Ex 9).

~~24~~17. Deputy Director Jones was tasked with investigating Petitioner's application and presenting her findings and related documentation to the SETSC PCC at its meeting in June 2024. She provided a summary to the PCC along with "statements, investigative documents, clerk of court documents … as well as the finding from the Criminal Justice Commission, the CJ Commission's final agency decision." (T. p 17).

~~25. Deputy Director Jones was aware that the statue (N.C.G.S. § 17E-12) pertaining to consideration of expunged felony convictions in the context of justice officer certification uses the word "may" in reference to the SETSC's authority to deny an officer's certification, while the more restrictive rule of the SETSC (12 N.C.A.C. 10B .0204(a)(1)) uses the word "shall." (T. p 19). Deputy Director Jones was also aware that Judge Lassiter had determined these two authorities (or their functional and legal equivalent) to be in conflict in 22 DOJ 01727 and ruled in favor of granting Petitioner's certification in that case. (T. p 20).~~

~~26. Deputy Director Jones never interviewed or otherwise inquired of Petitioner regarding his allegations that one of the statements contained in his CJETS file was not his own and was not prepared or signed by him, of which she was or reasonably should have been aware.~~

~~27~~18. At the contested case hearing, Petitioner credibly testified about the basis for his felony conviction as follows:

a) On or about April 17, 1996, Petitioner rented a pressure washer from Richmond Rentals to perform side jobs including cleaning sidewalks at local grocery stores. On the Sunday thereafter, Petitioner's boss called Petitioner to work. Petitioner worked primarily for Carter Specialties in Camden, South Carolina. That night, Petitioner left for work in Camden, SC and left the pressure washer at his home while he worked. 7 Petitioner planned to return the pressure washer to Richmond Rentals, albeit late, when he returned home on Friday.

b) When Petitioner returned home, he discovered the pressure washer, and his lawn mower were missing. Petitioner's wife told Petitioner she did not know where the pressure washer was located.

c) Petitioner filed a police report with the Robeson County Sheriff's office, and Detective Ricky Britt responded to Petitioner's home and took the report. Petitioner later used the police report to file a claim against his homeowner's insurance policy for the missing pressure washer and lawn mower.

d) A few weeks later, and before receiving any money from the insurance company, Petitioner became aware of the location of the pressure washer while rabbit hunting on land belonging to the uncle of Detective Britt. He overheard a group of other men present discussing how they had purchased a pressure washer from Petitioner's father in-law, Meredith Hill.

e) Petitioner did not say anything to the group of men but returned home and informed his wife that Mr. Hill had stolen and sold the pressure washer.

f) When Petitioner confronted Mr. Hill about the pressure washer and lawn mower, Mr. Hill told Petitioner that he took the equipment from Petitioner's home and sold them because Petitioner owed Mr. Hill $350.00.

~~28~~19. Petitioner felt that he could not reveal this information to law enforcement because his residence sat on land owned by Mr. Hill, and Petitioner believed that Mr. Hill would kick Petitioner, his ailing and recently post-partum wife, and their two young children off the property. Petitioner believed that this would result in the Department of Social Services taking custody of his children, as he was otherwise homeless and without any means to provide alternative shelter for his family. (T. pp 28, 41, 58).

~~29~~20. In August 1996, Petitioner was charged with the misdemeanor offense of Failure to Return Rental Property after Richmond Rentals reported that Petitioner did not return the pressure washer he had rented. On August 20, 1996, the Failure to Return Rental Property charge was dismissed after Petitioner paid Richmond Rentals the cost of the pressure washer from funds received as the proceeds of his homeowner's insurance claim. (T. p 66).

~~30~~21. Sometime in early 1997, Petitioner was charged by the Robeson County Sheriff's Office with the felony offense of insurance fraud for allegedly filing a false insurance claim for the pressure washer and lawn mower. The same detective who took the report for the stolen items, who is also the same detective whose uncle purchased the pressure washer, Detective Ricky Britt, was the charging officer. (Criminal charge no. 97 CRS 000534). (Resp Ex 3, p 2; T. 58-60).

~~31~~22. After being charged with Insurance Fraud by Detective Britt, Petitioner agreed to work for law enforcement as a confidential informant in exchange for having this felony charge reduced to a misdemeanor. Petitioner agreed with Detective Britt and "drug agent"

Roger Taylor that he would sell five pounds of marijuana to Petitioner's wife's uncle, Earchman Hill, in a controlled drug sale. (T. p 28, 60). Earchman Hill was later charged, convicted, and served time in prison. (T. p 60).

~~32~~23. When Petitioner appeared in court on April 14, 1999 for his Insurance Fraud charge, he was represented by a court-appointed attorney. Petitioner did not recall the name of the attorney. (T. p 29). He did not inform his attorney of the "deal" he had worked out with Detective Britt and Roger Taylor. Petitioner attempted to contact both men by phone from the courtroom and was unable to reach them. Petitioner was not well-versed in the workings of the criminal justice system and was unsure how to proceed in light of his misplaced trust in Britt and Taylor. (T. pp 28-30; Pet Ex 1).

~~33~~24. Petitioner still believed that disclosing the truth about his father-in-law's culpability would result in him losing his home and children. Rather than run that risk, and unsure of the impact or status of the "deal" he believed he had with law enforcement, Petitioner pleaded guilty. (T. pp 28, 33, 61). He was placed on probation until he completed restitution to his insurance company, and was released from probation April 1, 2002. (T. p 30; Resp Ex 3, p 2).

~~34~~25. The pressure washer was never recovered by the Robeson County Sheriff's office, neither was it returned by Detective Britt's uncle, nor was Detective Britt's uncle ever charged with or convicted of any crime related to the pressure washer. (Pet Ex 1).

~~35~~26. Former deputies Ricky Britt and Roger Taylor, however, were charged with and convicted of federal crimes in connection with "Operation Tarnished Badge," the largest investigation of police corruption in North Carolina history. The Tribunal takes notice of the convictions of these two disgraced former law enforcement officers in considering and assigning the proper weight to the uncontradicted testimony of Petitioner that, "[B]ack then, they didn't care at Robeson County – they didn't care what you said. I mean that's just the way it was back then. The whole sheriff's department was corrupt" (T. pp 29-30), and that "[t]he Sheriff's Department back then – they done what they wanted to. They went on the buddy system. The SBI and the FBI proved it. They were all – everyone that charged me with this here was involved in Operation Tarnished Badge. … So, they done what they wanted to." (T. pp 58-59).

~~36. There was no evidence presented at the hearing that rebutted Petitioner's explanation of the facts upon which the conviction for the felony offense of Insurance Fraud was based. There was no evidence presented at hearing that rebutted Petitioner's explanation of why, despite knowing himself to be innocent of the crime, he pleaded guilty. There was no evidence presented at the hearing to rebut the inferred contention that former Robeson County sheriff deputies Britt and Taylor wrongfully pursued felony charges against Petitioner in order to coerce 9 him into acting as a confidential informant with the promise of reduced charges in exchange for cooperation, and then failed to honor their agreement with Petitioner. (T. pp 60-61).~~

~~37. There was no evidence presented at hearing proving Petitioner knowingly, willfully, or~~

~~feloniously filed a claim or statement with his homeowner' s insurance company for the pressure washer and lawnmower taken from his home in 1996. Specifically, there was no evidence proving that Petitioner filed a claim with his homeowner's insurance company in 1996, knowing that such claim or statement contained false or misleading information concerning any fact or matter material to the claim, and/or that Petitioner acted with the intent to defraud his insurance company by filing such claim. As such, there was no evidence presented at hearing proving Petitioner "committed" the felony offense of Insurance Fraud on or about July 1, 1996.~~

~~32~~78. In 2021, Petitioner discovered that his teenage son had been using marijuana. As a result, and despite having been employed as a truck driver for all his adult life, Petitioner felt compelled to alter his life course and career and seek to become a law enforcement officer, in his fifties, in order to affect positive change in his community. (T. pp 61-63, 26). Upon researching admission to Basic Law Enforcement Training ("BLET") programs, Petitioner became aware that his felony conviction would be an obstacle to becoming employed as a law enforcement officer, and sought to have the conviction expunged prior to enrolling in BLET. (T. pp 62, 25-26). Petitioner paid a local attorney $3000.00 to represent him in that matter and successfully obtained an expunction. (T. p 34-35). Petitioner completed Basic Law Enforcement Training at Central Carolina Community College, at his own expense. (T. p 25).

~~39~~28. Since his appointment as a jailer by the Bladen County Sheriff, Petitioner has distinguished himself by rapid advancement, increasing responsibility, and professional conduct above and beyond the basic duties of a law enforcement officer which has been recognized – and awarded – by other local government officials. (T. pp 35-36). In the roughly two years since being appointed on January 1, 2023, Petitioner worked in the capacity of jailer for only four months before being promoted and stationed in the Bladen County Courthouse, charged with the protection of the Court, its officials and employees, and the public. Petitioner worked in this capacity for only another three months before he was again promoted to deputy sheriff and assigned to patrol, the position he still holds. (T. pp 24-25). Petitioner has been actively engaged in serving as an armed, sworn, professional law enforcement officer for approximately 15 months as of the time of the hearing in this matter.

~~40~~29. Petitioner has received awards and recognition from his community and the Police Benevolence Association for his work. While on patrol as a Bladen County Deputy Sheriff, Petitioner observed a school bus disembarking children without its warning devices activated, and conducted a traffic stop on the bus and ensured the schoolchildren crossed the street safely. For this meritorious action, Petitioner was summoned to the local Board of Education meeting three weeks later and presented with an award. (T. pp 35-36). Petitioner also testified regarding an event where he felt compelled, when he was off duty, to further investigate a hunch pertaining to an 10 arrest he had made earlier that day while on duty that did not sit rightly with him. (T. pp 36-37). The suspect had been wanted out of Missouri, and had claimed to Petitioner that she was not the wanted individual and that there was a case of stolen identity. Rather than simply shrug and rest comfortably in the knowledge that he had fulfilled the bare requirements of his duty, leaving someone else

down the line to deal with the problem, Petitioner heeded the gut instinct that woke him from slumber at 2:00 the following morning and, above and beyond the call of that duty, took it upon himself to investigate further, on his own and on his own time. The results of his investigation confirmed that the suspect was not the individual wanted in Missouri, that it was in fact a case of stolen identity, and that the individual in the Bladen County Jail was wrongfully detained. Absent Petitioner's extraordinary and completely voluntary efforts, the error would not have been discovered as swiftly, and an innocent person would have been further unnecessarily deprived of their liberty. (T. p 37-38).

4130. Petitioner credibly and emotionally testified regarding his commitment to the core values of the law enforcement profession, his dedication to serving his community, his passion for volunteer work and helping others, and his desire to "make a difference." (T. p 26). Petitioner testified: "I didn't commit this crime, and I've been paying for it for 28 years, and I give you my word that I wouldn't tarnish that badge if it brought me death. That's just the gospel." (T. p 29).

CONCLUSIONS OF LAW

1. It is not necessary for the Tribunal to make findings on every fact presented at the hearing, but rather those which are material for resolution of the present dispute. Flanders v. Gabriel, 110 N.C. App. 438, 440, 429 S.E.2d 611, 612, (1993), affirmed, 335 N.C. 234, 436 S.E.2d 588 (1993). To the extent that the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the 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).

Parties and Jurisdiction

2. All parties were ~~are~~ properly before the ~~this~~ Administrative Law Judge, the Office of Administrative Hearings hadhas personal and subject matter jurisdiction over this contested case, and all parties received proper notice of the hearing in this matter.

3. Petitioner is a resident of Robeson County, North Carolina, a graduate of an approved Basic Law Enforcement Training course, sworn deputy sheriff with the Bladen County Sheriff's Office, and applicant for justice officer certification through Respondent.

4. Respondent, the North Carolina Sheriffs' Education and Training Standards Commission, is authorized pursuant to Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10, to certify law enforcement officers and to deny, revoke, or suspend such certification.

Burden of Proof and Persuasion

5. The party with the burden of proof in a contested case must establish the facts required by N.C. Gen. Stat. §150B-23(a) by a preponderance of the evidence. N.C. Gen. Stat.

§150B-29(a). The administrative law judge shall decide the case based upon the preponderance of the evidence. N.C. Gen. Stat. §150B-34(a). 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").

~~From its inception, the North Carolina Administrative Procedures Act ("APA"), N.C. Gen. Stat. Chapter § 150B, has been divided into two separate and distinct sets of administrative hearings provisions. Each article contains separate provisions governing all aspects of the administrative hearings to which they apply. Homoly v. N. Carolina State Bd. of Dental Examiners, 121 N.C. App. 695, 697, 468 S.E.2d 481, 483 (1996). The manner in which a contested case is commenced and conducted varies depending on which set of provisions applies.~~

~~6. Although many similarities exist between Article 3 and Article 3A, they are decidedly different. A significant distinction between the two is that the burden of proof is statutorily allocated in Article 3 but is not so allocated in Article 3A.~~

~~7. As Respondent requested designation of an Administrative Law Judge to hear this case pursuant N.C.G.S. § 150B-40(e), the Undersigned sits and presides over this Article 3A hearing in the place of the Respondent agency and makes a "proposal for decision" to the agency. N.C.G.S. § 150B-40. In such a case, "[t]he provisions of [Article 3A], rather than the provisions of Article 3, shall govern a contested case . . .." N.C.G.S. § 150B-40(e). See Homoly, 121 N.C. App. at 697, 468 S.E.2d at 483.~~

~~8. Historically, in Article 3A hearings, a license or certification is considered "property or rights" such that the applicant or holder is entitled to a contested case hearing pursuant to Article 3A. When a license or certification is at issue, whomever is trying to deny, suspend or revoke such license or certificate generally has the burden of proof.~~

~~9. In Peace v. Employment Sec. Comm'n of N. Carolina, 349 N.C. 315, 328, 507 S.E.2d 272, 281 (1998), the N.C. Supreme Court provided:~~

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

~~Although Peace was an Article 3 case, the discussion of burden of proof is instructive in~~

this instant case because, similar to the burden of proof issue in Peace, neither the North Carolina 12 Constitution nor the General Assembly by statute has addressed the burden of proof in Article 3A cases.

10. Moreover, it is a general legal principle that the burden rests on the party asserting a claim to show the existence of that claim. Robinson v. Univ. of N.C. Health Care Sys., 242 N.C. App. 614, 621, 775 S.E.2d 898, 903 (2015). Here, Respondent claims that Petitioner (a) committed or was convicted of an offense, and (b) that because of that offense, Petitioner's certification, to which he has a property right, is subject to denial.

11. While at least one appellate decision in the Article 3 context suggests approval of requiring petitioners to prove a negative, no North Carolina appellate court has endorsed the State, in any form, first deciding that a citizen committed a crime and then requiring that citizen to prove that they did not. Jones v. All American Life Ins. Co., 68 N.C. App. 582, 585, 316 S.E.2d 122, 125 (1984) affirmed, 312 N.C. 725, 727, 325 S.E.2d 237, 238 (1985) (burden of proof in civil action under Slayer Statute is preponderance of the evidence); accord, Osman v. Osman, 285 Va. 384, 390-391, 737 S.E.2d 876, 879 (2013). N.C.G.S. § 150B-40 also provides that Article 3A "hearings shall be conducted in a fair and impartial manner," and that the presiding officer, including the Administrative Law Judge, may "regulate the course of the hearings." This statutory provision allows the presiding officer to dictate who has the burden of proof.

12. The Tribunal, mindful of policy, fairness, and common sense, emphasizes that few principles are as thoroughly engrained in the American concept of justice as the idea that a citizen is presumed innocent until proven guilty. This principle, known as the presumption of innocence in criminal courts, is not a mere judicial afterthought which may be easily set aside; rather, it is the "undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law." State v. Grappo, 271 N.C. App. 487, 493, 845 S.E.2d 437, 44 (2020) (citing Coffin v. United States, 156 U.S. 432, 453, 15 S. Ct. 394, 39 L. Ed. 481, 491, (1895); see also Zanchelli v. Department of Health and Human Services, 2023 NC OAH LEXIS 277, *28, 23 OSP 01640 (citing Grappo, 271 N.C. App. at 493, 845 S.E.2d 437), affirmed, Zanchelli v. HHS, 2024 N.C. App. LEXIS 879, *16, 908 S.E.2d 429, 2024 WL 4823652 (unpublished). While the standard of proof may vary in criminal, civil, or administrative contexts, the Tribunal finds no compelling reason, in the absence of an explicit statutory directive, to shift the burden of proof away from this foundational core principle of justice.

13. Absent a contrary statutory directive, the Tribunal cannot conclude that it is consistent with traditional notions of due process, fairness, and common sense to place the burden of proof on a citizen to prove they did not commit a crime in order to obtain or retain a property right to which they are entitled. In re Rogers, 297 N.C. 48, 59, 253 S.E.2d 912, 919 (1979) 23-24 ("As a general rule in this jurisdiction, the party who substantively asserts the affirmative of an issue bears the burden of proof on it. The rationale for this rule lies in the inherent difficulty of proving the negative of any proposition." (internal quotations and citations omitted)). 13

14. Applying the statutory law and "considerations of policy, fairness and common sense," as well as the statutory authority to regulate the course of the hearing, the Undersigned determines that Respondent should bear the burden of proof in an Article 3A action where Respondent proposes to take some action against a license/certificate holder or application for certification based upon its investigation into that individual.

15. The party with the burden of proof in a contested case must establish the facts required by N.C.G.S. § 150B-23(a) by a preponderance of the evidence. N.C.G.S. § 150B-29(a). The administrative law judge shall decide the case based upon the preponderance of the evidence. N.C.G.S. § 150B-34(a).

16. "In all contested cases, irrelevant, immaterial, and unduly repetitious evidence shall be excluded. Except as otherwise provided, the rules of evidence as applied in the trial division of the General Courts of Justice shall be followed; but, when evidence is not reasonably available under such rules to show relevant facts, they may be shown by the most reliable and substantial evidence available." N.C. Gen. Stat. § 150B-41(a).

17. "A transcript of testimony given at a prior trial or proceeding, if offered to prove the truth of the matters stated therein, is hearsay." Munchak Corp. v. Caldwell, 301 N.C. 689, 692, 273 S.E.2d 281, 284, (1981) (citing State v. Smith, 291 N.C. 505, 231 S.E. 2d 663 (1977); Smith v. Moore, 149 N.C. 185, 62 S.E. 892 (1908)). "Nevertheless, the necessity and reliability of such evidence often override the principles underlying the hearsay rule…." (Id.) "We recognize that there may well be a situation where a strict adherence to the Smith rule would impede or even thwart the ends of justice, or present an unnecessary obstacle to the expedient disposition of cases." Munchak, 301 N.C. at 693, 273 S.E.2d at 284-85.

18. Pursuant to 26 N.C.A.C. 03 .0122, "[An] administrative law judge may admit all evidence that has probative value." While the transcript of the hearing in 22 DOJ 01727, depending upon the portions utilized and for what purpose, may constitute hearsay, the Undersigned in his discretion concludes that its admission and consideration as evidence is warranted in light of (1) the agreement and stipulation of the parties, (2) its probative value, (3) its inherent trustworthiness and reliability, (3) considerations of judicial economy, and (4) the close relationship between the cases procedurally, factually, and legally, including shared or overlapping facts and documentary evidence, motivations, and parties.

19. Though bearing a notarial seal, Respondent's Exhibit 5 lacks the fundamental elements of any "notarial act," whether setting forth an acknowledgement, oath or affirmation, or verification or proof. It is completely devoid of a legally sufficient Notarial Certificate, and the Tribunal finds that the document is not notarized as a matter of fact and law. (See N.C. Gen. Stat. § 10B-40, et seq.).

20. Despite bearing a notarial seal, which, along with a proper notarial certificate, would ordinarily permit the Tribunal to presume that it had been signed by the person whose 14 purported signature was affixed thereto, the uncontradicted evidence regarding Respondent's

Exhibit 5 is that it was not drafted or signed by Petitioner, and therefore the Undersigned affords it no evidentiary weight as to the facts it purports to assert or its alleged authorship.

Respondent's Investigation

21. There was no investigation conducted by Respondent, either into the circumstances underlying Petitioner's 1999 conviction for Insurance Fraud or his credible allegations that the "admission of guilt" he allegedly wrote and sent to CJETS, and upon which Respondent relied in its PCC meeting, was fraudulent.

22. 12 N.C.A.C. 10B .0201 requires that, "[b]efore taking action against an agency, school, or individual for a violation, the Division shall investigate the alleged violation…." Deputy Director Jones testified, "the Criminal Justice Standards Division had their investigative information, a statement from Mr. Lashley. We had the AOC-280 match report. We had the finding by the Criminal Justice Standards Commission. So that's -- that's all of the information that I believe we obtained in reference to our investigation." (T. p 16-17).

However, investigatory collaboration and the sharing of evidence does not, ipso facto, absolve [the agency] of responsibility for independently determining or substantiating the [allegations]. Stated differently, while [the agency] may utilize evidence collected by [another agency] in its investigation, [the agency] may not treat [another agency's] substantiation as dispositive for purposes of discipline.

Nanny's Korner Care Ctr. v. N.C. HHS - Div. of Child Dev., 234 N.C. App. 51, 61, 758 S.E.2d 423, 429 (2014).

23. Respondent is required to follow the administrative regulations where its authority to act is described and in fact circumscribed. Simonel v. N.C. Sch. of the Arts, 119 N.C. App. 772, 776, 460 S.E.2d 194, 197 (1994) (affirming trial court decision that agency's decision was based upon unlawful procedure where procedure did not comport with procedures expressly set forth in the administrative rules created and adopted by the agency, noting that the Court's construction was "compelled by the express language" of the rules.) See United States v. Heffner, 420 F.2d 809 (4th Cir. 1969); see also Poarch v. N.C. Dep't of Crime Control & Pub. Safety, 223 N.C. App. 125, 133, 741 S.E.2d 315, 320 (2012). Moreover, because the regulations at issue in this matter are punitive in nature, they must be strictly construed. Elliot v N.C. Psychology Bd., 348 N.C. 230, 235, 498, S.E. 2d. 616, 619 (1998).

24. Respondent failed to conduct the investigation required by N.C.A.C. 10B .0201, in violation of that Rule. In this case the violation is harmless as Respondent is bound by 12 N.C.A.C. 10B .0205(1)(a) to refer Petitioner's certification application to the PCC upon discovery of the conviction of a felony, regardless of the circumstances surrounding that conviction. However, the 15 Record in this matter would be far more complete had Respondent's investigator complied with Respondent's own Rule and gathered and presented ALL relevant information to its PCC, rather than nonchalantly

~~and improperly relying on extremely suspect documents previously proven to be fraudulent from another agency's prior investigation.~~

Proposed Denial of Petitioner's Certification

~~25~~6. In this matter, Respondent's PCC determined that probable cause existed to deny Petitioner's justice officer certification application on the grounds that Petitioner had either committed or been convicted of a felony offense, in violation of 12 N.C.A.C. 10B .0204(a)(1).

~~26.~~7 Specifically, the SETSC PCC found that:

> Facts and circumstances exist to show that on or about April 14, 1999 (Robeson 97CRS000534) you were convicted of the felony offense of "Insurance Fraud," in violation of N.C. General Statute § 58-2-161. You pled guilty to the offense and were placed on supervised probation until full restitution was paid to the insurance company. Although the conviction is expunged, the record is released to the Commission pursuant to N.C.G.S. § 15A-151.

(Resp Ex 8).

~~27~~8. 12 N.C.A.C. 10B .0204 SUSPENSION: REVOCATION: OR DENIAL OF CERTIFICATION provides:

(a) The Commission shall revoke or deny the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer has committed or has been convicted of:

(1) A felony....

~~28~~9. 12 N.C.A.C. 10B .0205(1)(a) requires that "[w]hen the Commission suspends, revokes, or denies the certification of a justice officer, the period of sanction shall be:

(1) permanent where the cause of sanction is:

(a) commission or conviction of a felony;"

~~29. It is not immediately evident whether the SETSC PCC specifically found that Petitioner committed, or merely that he was convicted of, the felony offense of Insurance Fraud, or both. Therefore, the Tribunal addresses each scenario infra.~~

~~Commission of Felony Offense of Insurance Fraud~~

~~30. 12 N.C.A.C. 10B .0103(2) defines "Commission" (as pertaining to criminal offenses) as "a finding by the North Carolina Sheriffs' Education and Training Standards~~

Commission or an administrative body, pursuant to the provisions of G.S. 150B, that a person performed the acts necessary to satisfy the elements of a specified criminal offense." 12 N.C.A.C. 10B .0103(2).

31. Under North Carolina law, the elements for insurance fraud are:

> that the accused presented a statement in support of a claim for payment under an insurance policy, that the statement contained false or misleading information concerning a fact or matter material to the claim, that the accused knew that the statement contained false or misleading information, and that the accused acted with the intent to defraud.

State v Payne, 149 N.C. App 421, 426-27, 561 S.E.2d 507,510 (2007); N.C.G.S. § 58-2-161 (1999).

32. Petitioner was the only witness at hearing who had personal knowledge of the events in 1996 surrounding Petitioner filing a claim with his insurance company to cover the loss of a rented pressure washer and Petitioner's lawn mower. Petitioner's explanation of facts surrounding his filing the claim with his homeowner's insurance in 1996 were honest, credible, and believable. He did not learn that his father-in-law had taken the pressure washer and lawn mower from his home until after he filed an insurance claim for the missing equipment. Petitioner proved he did not file the subject insurance claim feloniously, willfully, or with any intent to defraud his homeowner's insurance company but did so because he believed a lawn mower and rented pressure washer were stolen from his home by a person or persons unknown to him.

33. In all documents filed with Respondent, and throughout the process of seeking justice officer certification through CJETS in 2021, Petitioner has consistently and voluntarily disclosed that he was convicted of the felony offense of Insurance Fraud. However, his unwavering and credible testimony has been that he was, effectively, "wrongfully convicted" of the felony offense of Insurance Fraud. (While this Tribunal lacks the jurisdiction or authority to probe this contention further or conclude as much, Petitioner's testimony and the documentary evidence surrounding these matters are troubling in the extreme.)

34. Petitioner and his wife lived in a mobile home beside and on the property of his father-in-law in 1996 and had no means to obtain alternative shelter. Petitioner disclosed that he pleaded guilty to the felony conviction because he was afraid that he and his wife would no longer have a place to live if he told the judge that his father-in-law had stolen the pressure washer from Petitioner's home, and that he and his wife would lose custody of their children. Petitioner pleaded 17 guilty even though he did not knowingly or willfully file a false or misleading claim with his insurance company with the intent to defraud the company. Petitioner did so to protect his wife and children at a time when he had no inkling of the potential future implications of such a conviction on a law-enforcement career which he had not yet thought to pursue, and did not pursue until some twenty-two years later.

~~35. Petitioner also proved that he did not write, sign, or submit Respondent's Exhibit Number 5, titled "Explanation of Expungement" to CJETS, or to the Rowland Police Department, and that Explanation was filled with incorrect and false information. Due to its lack of credibility, it is afforded no evidentiary weight for the purpose of any statement by Petitioner.~~

~~36. There was no evidence presented at the hearing proving Petitioner knowingly, willfully, or feloniously filed a claim or statement with his homeowner's insurance company for the pressure washer and lawn mower taken from his home in 1996. There was no evidence at the hearing proving that Petitioner knowingly filed a statement or claim with his homeowner's insurance company that contained false or misleading information concerning any fact or matter material to the claim. There was no evidence showing that Petitioner acted with the intent to defraud his insurance company by filing such claim.~~

~~37. Based on the Findings of Fact and Conclusions of Law, there was no evidence at the hearing proving Petitioner "committed" the felony offense of Insurance Fraud on or about July 1, 1996.~~

~~38. For the foregoing reasons, the Commission's PCC erred when it found probable cause to permanently deny Petitioner's law enforcement certification application for committing the felony offense of Insurance Fraud.~~

Conviction of Felony Offense of Insurance Fraud

~~39~~10. 12 N.C.A.C. 10B .0103(3) defines "Convicted" or "Conviction" as the entry of:

(a) a plea of guilty;

(b) a verdict or finding of guilt by a jury, judge, magistrate, or other adjudicating body, tribunal, or official, either civilian or military; or

(c) a plea of no contest, nolo contendere, or the equivalent.

~~40~~11. The Administrative Law Judge held that it ~~It~~ is without question that Petitioner entered a plea of guilty in 97 CRS 000534 to the charge of Insurance Fraud and was therefore "convicted" for the purposes of 12 N.C.A.C. 10B .0103(3).

~~41~~12. 12 N.C.A.C. 10B .0204 provides that "[t]he Commission shall revoke or deny the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer has committed or been convicted of a felony."

~~42~~13. 12 N.C.A.C. 10B .0205(1)(a) requires that "[w]hen the Commission suspends, revokes, or denies the certification of a justice officer, the period of sanction shall be:

(1) permanent where the cause of sanction is:

(a) commission or conviction of a felony;"

~~43. However, 12 N.C.A.C. 10B .0205(2) further provides that, in cases where an applicant for certification has committed or been convicted of other, non-felony offenses, or has violated some other Rule of the Commission,~~

> ~~[t]he Commission may either reduce or suspend the periods of sanction under this Item or substitute a period of probation in lieu of revocation, suspension, or denial following an administrative hearing. This authority to reduce or suspend the period of sanction may be utilized by the Commission when extenuating circumstances brought out at the administrative hearing warrant such a reduction or suspension.~~

~~While this (or virtually identical) language applies to subsections (2) and (3), but not to subsection (1) dealing with felony convictions, it belies the awareness of the Commission that a diversion from the prescribed sanction in the Rule may be necessary "when extenuating circumstances brought out at the administrative hearing warrant such a reduction or suspension." The Commission cannot be faulted for failing to imagine a scenario during the original adoption of the Rule in 1991 in which such extenuating circumstances could possibly apply to a valid criminal conviction sought by trusted law enforcement officers and handed down by our courts. In 2011, the General Assembly of North Carolina, however, acknowledged exactly that scenario, and the requirement that the Commission exercise its discretion in such cases, with the enactment of Session Law 2011-278 (effective date December 1, 2011), amending N.C.G.S. § 17E-12 to add subsection (b).~~

~~44~~14. At hearing, counsel for Respondent argued that an expunction of Petitioner's felony conviction did not stop or prohibit Respondent from denying Petitioner's application for certification because, pursuant to N.C.G.S. 17E-12(b), Respondent Commission "may" access convictions expunged pursuant to N.C.G.S. § 15A-145.5 of any applicant or licensee seeking certification by the Commission whether or not the convictions were expunged, and "may deny, suspend, or revoke a person's certification based solely on that person's felony conviction, whether or not that conviction was expunged…." N.C. Gen. Stat. § 17E-12(b). Moreover, 12 N.C.A.C. 10B .0204(a)(1) requires that an applicant for certification shall not be convicted of a felony, and requires the Commission to deny such an applicant without exception. 19

~~45~~15. In N.C.G.S. §§ 17E-4, 17E-7, and 17E-9, the North Carolina Legislature granted the Commission, among other powers, the power to promulgate rules and regulations for administration of Chapter 17E, to establish minimum educational and training standards required for certification of criminal justice officers, and to investigate and evaluate as may be necessary to determine if individuals comply with Chapter 17E. N.C. Gen. Stat. § 17E-4(1), (2), and (3). Pursuant to that authority, as well as that granted the Commission in N.C.G.S. § 17E-7, the Commission properly established Rules requiring that "every justice officer employed or certified in North Carolina shall not have committed or been convicted by a local, state, federal, or military court of … a felony." 12 N.C.A.C. 10B .0307.

(see also 12 N.C.A.C. 10B .0204, 12 N.C.A.C. 10B .0301(10)).

~~46~~16. In 2011, the N.C. General Assembly enacted N.C.G.S. § 17E-12(b). That statute states:

> . . . The Commission may deny, suspend, or revoke a person's certification based solely on that person's felony conviction, whether or not that conviction was expunged.
>
> (Effective December 1, 2011) (Emphasis supplied).

~~47~~17. The Administrative Law Judge held that ~~C~~comparing the "may deny, suspend, or revoke" language in N.C.G.S. § 17E-12(b) to the "shall revoke or deny when … the applicant for certification or the certified officer has … been convicted of a felony" language in 12 N.C.A.C. 10B .0204, there arises a contradiction or conflict as to the Commission's actual authority when an applicant for certification has a felony conviction that has been expunged pursuant to N.C.G.S. § 15A-145.5. To make that determination, one must examine the statutes which created the Commission, Chapter 17E, and the ~~powers enumerated therein.~~

~~48. "An administrative agency is a creature of the statute creating it and has only those powers expressly granted to it or those powers included by necessary implication from the legislature grant of authority." Boston v. N.C. Private Protective Servs. Bd., 96 N.C. App. 204, 207, 385 S.E.2d 148, 150–51 (1989).~~

~~49. "The principal goal of statutory construction is to accomplish the legislative intent." Wilkie v. City of Boiling Spring Lakes, 370 N.C. 540, 547, 809 S.E.2d 853, 858 (2018) (citation omitted). Our Supreme Court has directed that "[t]he intent of the General Assembly may be found first from the plain language of the statute." Lenox, Inc. v. Tolson, 353 N.C. 659, 664, 548 S.E.2d 513, 517 (2001).~~

~~50. "[O]rdinarily, the word 'must' and the word 'shall,' in a statute, are deemed to indicate a legislative intent to make the provision of the statute mandatory[.]" State v. House, 295 N.C. 189, 203, 244 S.E.2d 654, 662 (1978). "The use of the word 'may' generally connotes permissive or discretionary action and does not mandate or compel a particular act." Brock and 20 Scott Holding, Inc. v. Stone, 203 N.C. App. 135, 137, 691 S.E.2d 37, 39 (2010) (quoting Campbell v. First Baptist Church of the City of Durham, 298 N.C. 476, 483, 259 S.E.2d 558, 563 (1979)).~~

~~51. By way of example, N.C.G.S. § 17E-7(b) states that "the Commission shall provide, by regulation, that no person may be appointed as a justice officer … unless such person has satisfactorily completed an initial preparatory training at a school certified by the Commission." N.C. Gen. Stat. § 17E-7(b) (emphasis supplied). When the legislature intends to impose its will to require a specific outcome from a regulation, as here in the case of ensuring that all entry-level justice officers complete an approved training course, it makes that clear by directing that the Commission shall take some regulatory action~~

with a specific effect. On the contrary, when the legislature intends to require that the Commission carefully apply the discretion with which it has been entrusted by the legislature, it makes that clear by use of the word "may," as in N.C.G.S. 17E-7(c) which states that, "[i]n addition to the requirements of subsection (b) of this section, the Commission, by rules and regulations, may fix other qualifications for the employment and retention of justice officers...." N.C. Gen. Stat. § 17E-7(c) (emphasis supplied). Here, the General Assembly granted the SETSC no discretion (other than that narrowly and expressly set forth in separate statute) to determine whether justice officers should be required to complete a training course, but required the SETSC to exercise its discretion in determining what types of convictions or offenses committed would be disqualifying for those persons seeking to serve as justice officers. Had the legislature intended to remove discretion from the Commission in the area of criminal convictions, it could have directed, similar to N.C.G.S. § 17E-7(b), that "the Commission shall provide, by regulation, that no person may be appointed as a justice officer who has committed or been convicted of a felony." It did not. In light of the plain language of N.C.G.S. § 17E-12, there exists then a question of whether a rule which inflexibly triggers an automatic mandatory outcome comports with the requirements of a statute directing the Commission to employ its discretion in considering the specific case of a person seeking to be certified as a justice officer who has an expunged felony conviction in his or her background. If it does not, such a restrictive rule exceeds the authority of the Commission granted by the General Assembly.

5218. Applying the rules of statutory construction to the statute and rule at hand, the Administrative Law Judge held that the legislature's use of the word "may" in N.C.G.S. § 17E-12(b) indicates the legislature's intent to provide the Commission the discretionary and permissive authority to determine if an applicant, who has had a felony conviction expunged under N.C.G.S. § 15A-145.5, may be certified as a justice officer.

53. Moreover, N.C.G.S. § 17E-9 invests the Commission with the plenary power and authority to "waive the deficiency" if the Commission determines that a justice officer has not complied with Chapter 17E or "any rules adopted under [that] Chapter," such that the individual would still be authorized and empowered by law to "exercise the powers of a justice officer," including "the power of arrest." N.C. Gen. Stat. § 17E-9(a). In fact, pursuant to N.C.G.S. § 17E9(a), the legislature clearly intended to give the Commission authority to "waive" the entire requirement that a justice officer maintain a certification altogether: "Any justice officer who the 21 Commission determines does not comply with this chapter or any rules adopted under this Chapter shall not exercise the powers of a justice officer and shall not exercise the power of arrest unless the Commission waives that certification or deficiency." N.C. Gen. Stat. § 17E-9(a) (emphasis supplied). That the Commission has not promulgated rules or regulations concomitant with this grant of authority or adopted procedures for "waiving" the requirements of Chapter 17E, or Title 12, Chapter 10B of the North Carolina Administrative Code, does not alter the legal existence of that authority delegated by the legislature. To date, no North Carolina appellate court has had occasion to opine on the existence, or extent, of this authority, and there are no North Carolina appellate decisions which cite N.C.G.S. § 17E-9. Accordingly, the employment of this statutory discretion and authority appears to be a

~~matter of first impression for North Carolina courts. Put simply, the General Assembly has invested the Commission with plenary authority and discretion to "waive" the requirements of its own rules when the ends of justice and demands of common sense cannot otherwise be satisfied. This is one such instance.~~

~~54~~19. Based upon the foregoing Findings of Fact and Conclusions of Law, the Administrative Law Judge found extenuating circumstances, including (1) the existence of a potentially wrongful and legally expunged felony conviction, (2) the age and circumstances of the conviction and Petitioner's otherwise clean record, (3) his commendable persistent attempts to serve his community, and (4) Petitioner's honorable and exemplary service as a justice officer since his appointment with Bladen County Sheriff's Office, unquestionably exist in this matter such that the Commission should exercise its discretion under N.C. Gen. Stat. §§ 17E-9(a) and 17E-12(b), as well as that inherent in its authority, to reduce the sanction required under 12 NCAC 10B .0205(1).

~~55. As the Undersigned sits in the place of the Commission and with the authority of the presiding officer pursuant to N.C.G.S. § 150B-40(e), the Undersigned then exercises the discretionary authority bestowed on the Commission in N.C.G.S. §§ 17E-9(a) and 17E-12(b) by the legislature.~~

~~PROPOSED FINAL DECISION ORDER~~

Based on the foregoing Findings of Fact and Conclusions of Law, ~~the Undersigned hereby proposes that the Commission **REVERSE** the proposed denial of~~ it is hereby ordered that Petitioner's law enforcement officer certification be DENIED permanently ~~and issue Petitioner his law enforcement certification in a state of **PROBATION for** ONE **(1) YEAR**, on the condition that Petitioner shall not violate any federal law, any law of the State of North Carolina, or any rules of the Respondent Commission~~.

IT IS SO ORDERED.

This the 12th day of June 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's Attorney** by mailing a copy to the address below:

L. Johnson Britt
503 N. Elm Street, Suite B
Lumberton NC 28359

This the 19th day of May 2025.

JEFF JACKSON
Attorney General

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