STATE OF NORTH CAROLINA COUNTY OF HAYWOOD ALEXANDRA MCCASKILL, Petitioner, V. NORTH CAROLINA SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION, Respondent.

The following **Exceptions** to the **Proposal for Decision** prepared by the Honorable David F. Sutton, Administrative Law Judge, and filed in the Office of Administrative Hearings on April 7, 2025, are hereby submitted to the North Carolina Sheriffs' Education and Training Standards Commission for consideration in its Final Agency Decision.

- 1. Counsel has made minor typographical and grammatical changes as necessary to make the proposal appropriate for Final Agency Decision.
- 2. Conclusion of Law #5 should be amended because it is inconsistent with the Respondent's position regarding burden of proof:
 - 5. 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. 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 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.

- 3. Conclusion of Law #6 should be amended to accurately reflect the Respondent's position on the burden of proof:
 - 6. 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. 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").
- 4. Conclusion of Law # 7 should be amended to conclude that if the burden is on Respondent, the burden has been met as indicated by the ALJ:
 - 7. The burden of proof is the preponderance of the evidence standard. See N.C. Gen. Stat. §§ 150B-23(a); 29(a); and 34(a). If a reviewing court places the burden on the Respondent, the burden has been met.
- 5. Proposal for Decision should be revised to reflect the final decision of the Commission as follows:

PROPOSAL FOR DECISION ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby ORDERED proposed that Petitioner's justice officer certification should be denied for a period of five years but that the period of denial should be suspended, and if Petitioner is hired by a Sheriff's Office in North Carolina, that she be placed on a one year period of probation during which time she successfully complete the required detention officer certification course.

This the 19th day of May 2025.

JEFF JACKSON Attorney General

/s/ J. Joy Strickland

J. Joy Strickland Senior Deputy Attorney General N.C. Department of Justice 9001 Mail Service Center Raleigh, North Carolina 27699-9001 Telephone: (919) 716-6401 State Bar No.: 25695

COUNSEL TO THE COMMISSION

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the foregoing **EXCEPTIONS** have been duly served upon **Petitioner** by mailing a copy to the address below:

Alexandria McCaskill 200 Noland Drive Clyde, NC 28721

alexandriaalfeo@yahoo.com

This the Line day of May 2025.

JEFF JACKSON Attorney General

Attorney General

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