

STATE OF NORTH CAROLINA
COUNTY OF CATAWBA

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
25 DOJ 02144

MICHILA S. CUPP,

Petitioner,

v.

NORTH CAROLINA SHERIFFS'
EDUCATION AND TRAINING
STANDARDS COMMISSION,

Respondent.

EXCEPTIONS

The following **Exceptions** to the **Proposal for Decision** prepared by the Honorable David Sutton, Administrative Law Judge, and filed in the Office of Administrative Hearings on November 10, 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. Counsel has removed language prior to the Findings of Fact and has replaced that with standard Final Agency Decision opening paragraphs.
3. In Finding of Fact No. 3, add language to indicate Petitioner's current application status:

Petitioner is an applicant for detention officer certification with the Nash County Sheriff's Office. On September 20, 2023, Petitioner received a probationary appointment (F5 form) to the position of telecommunicator at the Iredell County Emergency Communications Office. (Resp. Exs. 1-2)(Trans. pgs. 6-7).

4. In Conclusion of Law No. 5, substitute language to indicate the Commission's position on the burden of proof:

~~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.~~

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. GenStat. §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).

5. In Conclusion of Law No. 6, substitute language to indicate the Commission's position on the burden of proof:

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"). ~~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.~~

6. The section entitled "Proposal for Decision" should be revised read as an "Order."

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~~ GRANTED.

This the 12th day of November, 2025.

JEFF JACKSON
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COUNSEL TO THE COMMISSION

CERTIFICATE OF SERVICE

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

**Michila S. Cupp
3992 Flat Rock Road
Terrell, NC 28682**

This the 12th day of November, 2025.

JEFF JACKSON
Attorney General

/s/ Ian L. Courts
Ian L. Courts
Assistant Attorney General
ATTORNEY FOR THE COMMISSION