

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.	PROPOSAL FOR DECISION
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This case was heard on September 30, 2025, before Administrative Law Judge David F. Sutton in Morganton, North Carolina. This case was heard after Respondent requested on behalf of the Petitioner, pursuant to N.C.G.S. § 150B-40(e), the designation of an Administrative Law Judge to preside at the hearing of a contested case under Article 3A, Chapter 150B of the North Carolina General Statutes.

APPEARANCES

Petitioner:	Michila S. Cupp <i>Pro se Petitioner</i> 3992 Flat Rock Road Terrell NC 28682
Respondent:	Ian L. Courts Assistant Attorney General <i>Counsel for Respondent</i> Department of Justice Law Enforcement Liaison Section 9001 Mail Service Center Raleigh, North Carolina 27699-9001

ISSUE

Should the Petitioner's justice officer application for a telecommunicator appointment with Iredell County Emergency Communications be denied for felony commission?

RULES AT ISSUE

12 NCAC 10B .0204(a)(1) and 12 NCAC 10B .0205(1)(a)

EXHIBITS ADMITTED INTO EVIDENCE

For Petitioner: None admitted.

For Respondent: Res.'s Exhibits 1-9

Based upon careful consideration of the exhibits admitted into evidence, the entire record in this proceeding, and the credibility and believability of witness testimony at hearing including the witnesses' credibility, demeanor, any interests, biases or prejudices, the opportunity of the witnesses to see, hear, know or remember the facts or occurrences about which the witnesses testified, and whether the testimony of the witnesses are reasonable and consistent with other believable evidence in the case, the undersigned finds as follows:

FINDINGS OF FACTS

1. Both parties are properly before this Administrative Law Judge, the jurisdiction and venue are proper, and both parties received notice of hearing.

2. The 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.

3. On September 20, 2023, Petitioner received a probationary appointment (F5 form) to the position of telecommunicator at the Iredell County Emergency Communications Office. (Resp. Ex. 2)(Trans. pgs. 6-7).

4. In the personal history section of her application (F3 form) for the telecommunicator position, Petitioner was required to list previous criminal charges and convictions. Ms. Cupp listed a 2005 felony fraud charge from Orange County, Florida. (Resp. Ex. 1)(Trans. pgs. 7-8).

5. At the hearing, when asked by Respondent's counsel to explain the felony charge Petitioner stated:

I was working for JCPenney at the time. I had a friend that was in need, and I was trying to figure out a way to help them. They had a court date coming up, but I mean the reasoning behind it is more along the lines of I have a soft heart, but also, I was kind of gullible at the time. You know, friendship, stuff like that, kind of mattered

back then. So, I had tried to figure out a way that I could beat the system, so to say. So, I had – in between customers, I had rang up a gift card, didn't put any money in the register, and then took those gift cards and gave them to a friend of mine. My hope was that I would be able to put money in the drawer another day to cover it so that one it's short, one day it's over, and that it would work out, but that is not how it happened.

(Trans. pg. 9).

6. Petitioner obtained two separate gift cards – one in the amount of \$50, the other in an amount of \$20, for a total of \$70. (Resp. Ex. 5)(Trans. pgs. 9-10).

7. Petitioner was arrested and charged with felony scheme to defraud (FL Statute 817.034(4)(a))(Resp. Exs. 1, 3B, 5).

8. Petitioner's felony fraud charge was reduced to two counts of misdemeanor petit theft, to which Petitioner pled Nolle Contendere on one count and adjudication was withheld on the other. (Resp. Exs. 3A and 3B) Additionally, Petitioner paid \$210 in restitution - the entire amount Petitioner was ordered pay. (Resp. Ex. 6).

9. On June 10, 2024, Petitioner provided a notarized statement to the Sheriffs' Standards Division where she explained:

In September of 2005, I, Michila Cupp (formerly Michila Statton), was arrested at JC Penny on a felony fraud charge. The charge was based off shoplifting at the store and my refusal at the time to cooperate with law enforcement. . .In September of 2005, I was notified by the DA's office explaining that the felony charge would be dropped down to two counts of misdemeanor petit theft...the judge found that having 2 charges was excessive and dismissed 1 count misdemeanor, only convicting me of the other count misdemeanor petit theft...I completed my probation, paid the restitution, and completed my community service hours.

(Resp. Ex. 7)

10. In February of 2025, Petitioner was informed via certified mail that she would have the opportunity to present her case before the Probable Cause Committee of the Respondent in Kitty Hawk, North Carolina on March 20, 2025. Petitioner attended that PC Committee hearing. (Resp. Ex. 4) (Trans. pgs. 12-13).

11. On April 28, 2025, in a letter sent through certified mail the NC Sheriffs' Training Standards Commission informed Petitioner that probable cause existed to deny her justice officer certification for commission of a felony in violation of rule 12 NCAC 10B

.0204 (a)(1). (Resp. Ex. 8)

12. In a letter received by Respondent on May 15, 2025, Petitioner requested an administrative hearing to challenge the denial of her justice officer certification. (Resp. Ex. 9).

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case, pursuant to Article 3A, N.C. Gen. Stat. § 150B-40(e), and the parties received proper notice of the hearing in this matter.

2. 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).

3. 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).

4. 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.

5. 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.*

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.

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).

8. 12 NCAC 10B .0204(a)(1) states that Respondent shall deny certification of a justice officer when the Commission finds the applicant or certified officer has committed a felony. Furthermore, the sanction for such a violation under .0204(a)(1) is a permanent denial pursuant to 12 NCAC 10B .0205(1)(a) (“When the Commission suspends, revokes, or denies the certification of a justice officer, the period of sanction shall be: permanent where the cause of sanction is: commission or conviction of a felony.”)

9. Petitioner was charged pursuant to Florida Statute Section 817.034(4)(a) Scheme to Defraud which is classified under Florida Law as a felony of the third degree. *See* FL Statute 817.034(4)(a) (“(a) Any person who engages in a scheme to defraud and obtains property thereby commits organized fraud, punishable as follows: 3. If the amount of property obtained has an aggregate value of less than \$20,000, the person commits a felony of the third degree.”) (Resp. Exs. 3A, 3B and 5).

10. Based on the full evidentiary hearing, the evidence demonstrates that Petitioner did not commit the felony offense as the Florida Statute in question requires a “scheme to defraud” which is defined as a “systematic, ongoing course of conduct.” FL. St. 817.034(3)(d). Petitioner’s conduct here was not a systematic ongoing course of conduct, but rather two instances of bad judgment in an attempt to help a friend. This conclusion is further supported by the decision of the prosecuting attorney’s office to eliminate the felony charge.

11. The preponderance of the evidence is that Petitioner did **not** commit the felony offense alleged.

12. The findings of the probable cause committee were not arbitrary and capricious.

PROPOSAL FOR DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby proposed that Petitioner’s justice officer certification should be **GRANTED**.

NOTICE

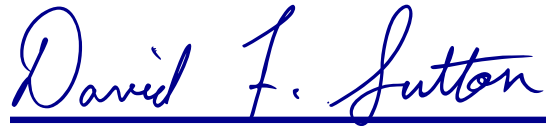
The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this Proposal for Decision, to submit proposed Findings of Fact and to present oral and written arguments to the agency. N.C.G.S. § 150B-40(e).

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). The undersigned hereby orders that the agency serve a copy of its Final Decision in this case on the Office of Administrative Hearings, 1711 New Hope Church Road, Raleigh, N.C. 27609.

SO ORDERED.

This the 10th day of November, 2025.

A handwritten signature in blue ink, reading "David F. Sutton", is positioned above a solid blue horizontal line. The signature is written in a cursive style.

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:

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Petitioner

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This the 10th day of November, 2025.



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