

STATE OF NORTH CAROLINA
COUNTY OF CUMBERLAND

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
25 DOJ 04585

AARON RAVILLIOUS,

Petitioner,

v.

NORTH CAROLINA SHERIFFS'
EDUCATION AND TRAINING
STANDARDS COMMISSION,

Respondent.

EXCEPTIONS

The following **Exceptions** to the **Proposal for Decision** prepared by the Honorable Michael Byrne, Administrative Law Judge, and filed in the Office of Administrative Hearings on April 15, 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 Conclusion of Law 15, remove language not necessary for the decision:

Respondent consistently holds that petitioners have the burden of proof in Article 3A cases. 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"). ~~The Tribunal disagrees with this premise and incorporates by reference its burden of proof analysis in Alex William Aboussleman v. NC Sheriffs Education and Training Standards Commission, 23 DOJ 05109 (August 27, 2024); see also Malcolm T. Kennedy v. NC Criminal Justice Education and Training Standards Commission, 2024 NC OAH LEXIS 346, *8-9, 24 DOJ 00515.~~

4. In Conclusion of Law 16, add language regarding the burden of proof regarding good moral character and remove language regarding general principles of burden of proof:

~~The Commission recognizes that in cases involving good moral character where the officer has met the initial burden of proving good moral character (such as by being certified), the Commission has the burden by the greater weight of the evidence to prove facts that show a lack of good moral character, consistent with the North Carolina Supreme Court's holding in *Devalle v. N.C. Sheriffs' Educ. & Training Standards Comm'n.* The burden of proof here is governed by the principles in *Peace v. Employment Sec. Comm'n.*, 349 N.C. 315, 317, 507 S.E.2d 272, 275 (1998). *Peace* features a broad discussion of due process under the Constitution of North Carolina and, on the burden of proof, concludes: "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 North Carolina courts have generally allocated the burden of proof in any dispute on the party attempting to show the existence of a claim** or cause of action, and if proof of his claim includes proof of negative allegations, it is incumbent on him to do so. *Johnson v. Johnson*, 229 N.C. 541, 544, 50 S.E.2d 569, 572 (1948).~~

~~*Peace* at 315, 328, S.E.2d 272 (emphasis supplied).~~

5. Delete Conclusions of Law 18 and 19 regarding discussions of burden of proof that are not necessary for the decision and renumber remaining paragraphs accordingly:

~~18. 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 he or she 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). Simplified, placing the burden of proof on a citizen to show he did not commit a crime is neither "fair" nor demonstrates "common sense." *Peace*.~~

~~19. The Tribunal places the burden of proof on Respondent to show that Petitioner committed the criminal offenses alleged and Petitioner's lack of good moral character because of those actions.~~

6. In Conclusion of Law 38 (now 36), remove language not necessary for the decision:

~~A criminal offense so serious as forcible rape is one that an administrative agency, which is not a criminal court, should allege only with great caution, and with evidence much stronger than is present here. "[T]he principle that there is a presumption of innocence in favor of the accused 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, 441 (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. DHHS, 2023 NC OAH LEXIS 277, *28, 23 OSP 01640; affirmed, Zanchelli v. HHS, 2024 N.C. App. LEXIS 879, 908 S.E.2d 429, 2024 WL 4823652 (unpublished).

7. 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.

8. The section entitled “Proposal for Decision” should be revised read “Order.”

PROPOSAL FOR DECISION ORDER

9. The text in the section entitled “Proposal for Decision” should be amended to indicate an order rather than a proposal.

It is proposed ORDERED that Respondent take no action is taken against Petitioner’s general certification.

This the 13th day of November, 2025.

JEFF JACKSON
Attorney General

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the foregoing **PROPOSED FINAL AGENCY DECISION** and **EXCEPTIONS** have been duly served upon **Petitioner** by mailing a copy to the address below, deposited to the United States Postal Service:

Mr. Joel Hart Miles, Esq.
Cheshire Parker Schneider, PLLC
P.O. Box 1029
Raleigh, NC 27602

This the 13th day of November 2025.

JEFF JACKSON
Attorney General

/s/ Steven D. Draper
Steven D. Draper
Assistant Attorney General