

Aaron Ravillious Petitioner, v. NC Sheriffs Education and Training Standards Commission Respondent.	PROPOSED FINAL AGENCY DECISION
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THIS MATTER was commenced by a request filed November 22, 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 04585) were filed November 27, 2024. The parties received proper Notice of Hearing, and the Administrative Hearing was held in Raleigh, North Carolina on March 18, 2025, before the Honorable Michael C. Byrne, Administrative Law Judge.

The Petitioner was represented by Mr. Joel Hart Miles, Esq. The North Carolina Sheriffs' Education and Training Standards Commission (hereinafter the Commission or Respondent) was represented by Assistant Attorney General Haley A. Cooper.

On April 15, 2025, Judge Byrne filed his Proposal for Decision. On November 13, 2025, counsel to the Commission sent 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 December 4, 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 10 of the North Carolina Administrative Code, the Commission, based upon clear, cogent and convincing evidence, does hereby make the following:

~~This contested case was heard by Michael C. Byrne, Administrative Law Judge, on March 18, 2025 at the Office of Administrative Hearings in Raleigh, North Carolina.~~

APPEARANCES

Mr. Joel Hart Miles
Cheshire Parker Schneider, PLLC
~~PO Box 1029 Raleigh NC 27602~~

~~Attorney For Petitioner~~

~~Ms. Haley A. Cooper
North Carolina Department of Justice
114 W. Edenton Street Raleigh
NC 27603
Attorney For Respondent~~

WITNESSES

~~For Petitioner: Aaron Ravillious~~

~~For Respondent: Alisha Pitt~~

NOTE ON INTERPRETER USE

~~Alisha Pitt testified through an American Sign Language Interpreter. The Tribunal swore the interpreter using the North Carolina Administrative Office of the Courts Interpreter's Oath prior to Pitt's testimony.~~

ISSUES

~~Whether Petitioner's law enforcement certification is subject to suspension or revocation because Petitioner committed the criminal offense of "Assault on a Person With a Disability".~~

~~Whether Petitioner's law enforcement certification is subject to suspension or revocation because Petitioner committed the criminal offense of "Second Degree Foreible Rape."~~

~~Whether, due to his alleged commission of the criminal offenses above, Petitioner presently lacks the good moral character required of law enforcement officers in North Carolina.~~

~~Based upon the testimony of the witnesses, consideration of all the admitted exhibits, the governing law and rules, and all evidence of record, the Tribunal makes the following:~~

FINDINGS OF FACT

Parties and Witnesses

1. Alisha Pitt is the victim of the criminal offenses Respondent alleges Petitioner committed. Her testimony was partially credible and partially not credible.
2. Pitt is hearing-impaired and testified with the assistance of an interpreter trained in American Sign Language. She also communicates with non-ASL-trained persons via text message using her mobile telephone.

3. It is found as a fact that while Petitioner has a disability in terms of being hearing impaired, there is no evidence that Petitioner at any time relevant to this case had a “mental disability” or was “mentally incapacitated” as described in N.C.G.S. 1427.22(a)(2).
4. Petitioner Aaron Ravillious holds a justice officer certification from Respondent. He has worked as a Detention Officer for the Hoke County Sheriff’s Office and for the Cumberland County Sheriff’s Office. Neither Sheriff testified or presented evidence on Petitioner’s behalf.
5. In part based on other evidence, specifically Internal Affairs Report of the Cumberland County Sheriff’s Office, the ~~Tribunal~~ Commission finds that Petitioner was generally credible in his description of the relevant incidents in this contested case.
6. Lt. Helms Norwood has worked for the Cumberland County Sheriff’s Office for 12 years and knows the Petitioner professionally. She was a character witness for Petitioner. Norwood described Petitioner as a “pretty good officer” who “didn’t have any issues coming to work on time” and worked on his career. Based on her observations Norwood believes Petitioner has a good moral character. None of Norwood’s testimony addressed the facts of the criminal allegations against Petitioner. Norwood was a generally credible witness.
7. Respondent, along with its counterpart North Carolina Criminal Justice Education and Training Standards Commission, employs professionals, usually current or retired law enforcement officers, who investigate claims regarding applications for certification and alleged violations by certified personnel. See Phyllis King v. NC Criminal Justice Education and Training Standards Commission, 2023 NC OAH LEXIS, 31623 DOJ 02317. No investigator testified in this contested case.

The Incidents Giving Rise to This Case

8. Pitt and Petitioner initially met on Facebook and communicated by phone. Pitt is hearing impaired to the point of complete deafness. She used texts to communicate with Petitioner but did not use sign language. The text messages between the two persons, which were entered into evidence (Pet. Ex. 2) show communications that are sexual in nature.
9. This interaction led eventually to an in-person encounter after approximately two weeks of communication.
10. This encounter took place on March 17, 2023. Pitt and Petitioner’s accounts of what happened in that encounter vary widely.
11. According to Pitt, Petitioner brought her to his home, where he lived with his parents, and raped her vaginally in his bedroom after shutting the door and refusing to let her leave. Pitt became visibly distraught during her testimony on these events, requiring a recess for the witness to collect herself.

12. Some days after her encounter with Petitioner, Pitt met with law enforcement and filled out a report.
13. According to Petitioner, Pitt voluntarily accompanied him to his bedroom and voluntarily performed a sexual act on him. Petitioner testified that he summarily broke off contact with Pitt after that. Petitioner alleged that Pitt made multiple attempts to contact him after the sexual encounter, and after he had blocked Pitt's number on his phone.
14. Text messages showed both prior and current (as of the date of the alleged criminal offenses) sexually related activity and communication between Petitioner and Pitt (Pet Ex. 2, p. 14).
15. There was no medical evidence of an assault or rape. Id.
16. Pitt declined to assist the Cumberland County Sheriff with text messages about the incident, despite having them in her possession (Pet. Ex. 2. p. 8)
17. The Cumberland County Sheriff's ~~Department-Office~~ investigation showed Pitt both making inconsistent statements about the incident as well as engaging in harassing conduct toward another person who ended a relationship with her later in 2023 (Pet. Ex. 2, pp. 18, 19-20). As discussed below, the Tribunal considered~~eds~~ the latter evidence under N.C.G.S. 150B-41.
18. The criminal charges filed against Petitioner were dismissed for having insufficient evidence to proceed. Id.
19. The ~~Tribunal-Commission~~ finds as a fact that there is insufficient evidence to conclude that Petitioner assaulted Pitt.
20. The ~~Tribunal-Commission~~ finds as a fact that there is insufficient evidence to conclude that Petitioner committed an act of rape against Pitt.

Based on these Findings of Fact, the Tribunal makes the following:

CONCLUSIONS OF LAW

General and Jurisdictional

1. The Office of Administrative Hearings had~~s~~ jurisdiction over this contested case pursuant to N.C.G.S. 150B, Article 3A, following a request from Respondent under N.C.G.S. 150B-40(e) for an Administrative Law Judge to hear this contested case. In such cases the Tribunal sits in place of the agency and has the authority of the presiding officer in a contested case under Article 3A. The Tribunal makes a proposal for decision,

which contains findings of fact and conclusions of law. Respondent makes the final agency decision. N.C.G.S. 150B-42.

2. All parties ~~are-were~~ properly before the Office of Administrative Hearings and are properly before the Commission and there is no question as to joinder or misjoinder. There was no objection from either party to the Tribunal hearing this contested case. Notice of hearing was provided to all parties by the Office of Administrative Hearings.
3. To the extent that the Findings of Fact contain Conclusions of Law, and vice versa, they should be considered without regard to their given labels. Charlotte v. Heath, 226 N.C. 750, 755, 440 S.E.2d 600, 604 (1946).
4. The question presented by this case is whether Petitioner “committed” criminal offenses for which he was never convicted of or pleaded guilty to in a court of law, and whether he presently possesses the good moral character required of law enforcement officers in North Carolina.
5. This case involves a proposal to revoke an occupational license or certification. It thus affects the substantive rights of the Petitioner, and he is entitled to both notice and an opportunity to be heard. Scroggs v. N. Carolina Criminal Justice Educ. & Training Standards Comm'n, 101 N.C. App. 699, 701, 400 S.E.2d 742, 744 (1991).

Respondent’s Authority Under N.C.G.S. 17E

6. The General Assembly, in creating the North Carolina Sheriffs’ Education and Training Standards Commission in N.C.G.S. 17E-3, stated, “The General Assembly finds and declares that the office of sheriff, the office of deputy sheriff and the other officers and employees of the sheriff of a county are unique among all of the law-enforcement officers of North Carolina. ... The offices of sheriff and deputy sheriff are therefore of special concern to the public health, safety, welfare, and morals of the people of the State. The training and educational needs of such officers therefore require particularized and differential treatment from those of the criminal justice officers certified under Article 1 of Chapter 17C of the General Statutes.” N.C.G.S. 17E-1 (condensed).
7. In N.C.G.S. 17E-4, “Powers and Duties of the Commission,” the General Assembly authorizes Respondent to make enforceable “rules and regulations” and “certification procedures” regarding such officers in a number of areas. N.C.G.S. 17E-4(3) authorizes Respondent to “certify, pursuant to standards that it may establish for the purpose, persons as qualified under the provisions of this Chapter who may be employed at entry level as officers.”
8. N.C.G.S. 17E-7, “Required standards,” directs and authorizes Respondent to set certain standards for appointment of justice officers, and “may fix other requirements, by rule and regulations, for the employment and retention of justice officers... .” Id. at (c).

9. Respondent's authority to impose standards for certification of justice officers is recognized by the Supreme Court. Britt v. N. Carolina Sheriffs' Educ. & Training Standards Comm'n, 348 N.C. 573, 501 S.E.2d 75 (1998). However, like any other agency, Respondent may not perform its role in a manner that is arbitrary and capricious. Devalle v. N. Carolina Sheriffs' Educ. & Training Standards Comm'n, No. COA22-256, 2023 WL 3470876 (N.C. Ct. App. May 16, 2023).

"Commission" Of A Criminal Offense

10. Petitioner was not convicted of nor pled guilty to any criminal offense in a court of law. Thus, Respondent must show that Petitioner "committed" the offenses.
11. "Commission" means a finding by the North Carolina Sheriffs' Education and Training Standards Commission or an administrative body, pursuant to the provisions of N.C.G.S. 150B, that a person performed the acts necessary to satisfy the elements of a specified criminal offense. 12 NCAC 10B .0103(16); see also 12 NCAC 10B .0307
12. The Administrative Code defines "conviction" and "commission" of a crime separately. Becker v. N. Carolina Crim. Just. Educ. & Training Standards Comm'n, 238 N.C. App. 362, 768 S.E.2d 200 (2014) (unpublished). In addition, Respondent "may revoke a correctional officer's certification if it finds that the officer committed a misdemeanor, regardless of whether he was criminally convicted of that charge." Becker, citing Mullins v. N.C. Criminal Justice Educ. & Training Standards Comm'n, 125 N.C. App. 339, 348, 481 S.E.2d 297, 302 (1997). Though these cases involved the North Carolina Criminal Justice Education and Training Standards Commission, that body and Respondent serve similar roles, and ~~the Tribunal presumes them to have equal~~ have similar regulatory authority.
13. In determining whether a person "committed" a crime, Respondent does not "attempt to interpret North Carolina's criminal code," but instead must **"use pre-established elements of behavior** which together constitute [a criminal] act. **The Commission relies on the elements of each offense, as specified by the Legislature and the courts."** Mullins at 347, 302 (emphasis supplied). See State v. Eastman, 113 N.C. App. 347, 351, 438 S.E.2d 460, 462 (1994): "The State failed to show any instance where the defendant [a state employee at the Governor Morehead School] could exercise sovereign power at any time in the course of his employment."

Burden of Proof

14. While N.C.G.S. 150B-40 enumerates the powers of an Administrative Law Judge in Article 3A cases, neither that statute nor Article 3A generally allocate the burden of proof in Article 3A contested case hearings.
15. 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.

16. ~~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).~~

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

17. Respondent claims that (a) Petitioner committed multiple crimes, without evidence of a conviction, and (b) that because his commission of those crimes, Petitioner lacks good moral character.

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.

Evidence Considered Under N.C.G.S. 150B-41(a)

~~20.~~18. “Except as otherwise provided, the rules of evidence as applied in the trial division of the General Court 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.G.S. 150B-41(a).

~~21.~~19. Petitioner’s Exhibit 2 is an Internal Affairs Report from the Cumberland County Sheriff’s Office. It contains an extensive discussion of the statements and conduct of both Pitt and Petitioner. While the report was admitted, the officer who made the report did not testify. Further, information in the report from a person who had a subsequent intimate relationship with Pitt is hearsay within hearsay. Ordinarily, the Tribunal would not consider this evidence. “Statements made by a person other than the person(s) compiling the business record which are recorded within the record are double hearsay, or compound hearsay, and may only be admitted if an exception to the hearsay rule is found for that statement.” Fisher v. Thompson, 50 N.C. App. 724, 727-28, 275 S.E.2d 507, 511 (1981).

~~22.~~20. However, this is the rare situation where the Tribunal, to help resolve the “he said/she said” issues of credibility in this case, employeds its authority under N.C.G.S. 150B-41. Evidence of Pitt’s conduct in another case involving termination of an intimate relationship is not otherwise reasonably available under the Rules of Evidence, constitutes “relevant facts” to resolving this case, and is the most reliable and substantial evidence on that issue, as explained by the Court of Appeals for N.C.G.S. 150B-41’s Article 3 counterpart, N.C.G.S. 150B-29-:

Our State’s APA provides that in all contested cases, “[e]xcept as otherwise provided, the rules of evidence as applied in the trial division of the General Court of Justice shall be followed; but, **when evidence is not reasonably available under the rules to show relevant facts, then the most reliable and substantial evidence shall be admitted.**” N.C. Gen. Stat. § 150B29(a). Title 26, Chapter 3 of the North Carolina Administrative Code governs the procedures to be followed during OAH hearings and provides that **an ALJ “may admit all evidence that has probative value.”** 26 N.C.A.C. 03 .0122 (1) (2015).

N.C. Dep’t of Pub. Safety v. Ledford, 247 N.C. App. 266, 290, 786 S.E.2d 50, 66 (2016); review allowed, appeal dismissed, 369 N.C. 567, 797 S.E.2d 514 (2017) (emphasis supplied).

~~23.~~21. Accordingly, the evidence of Pitt’s conduct in a subsequent relationship is properly considered under N.C.G.S 150B-41(a). This is not consideration of character evidence as to Pitt’s sexual history, but rather her conduct following the termination of an intimate relationship.

Whether Petitioner Committed the Criminal Offense of “Assault on a Person With A Disability”

~~20-22.~~ N.C.G.S. 14-32.1(f) states, “Any person who commits a simple assault or battery upon an individual with a disability is guilty of a Class A1 misdemeanor.”

~~21-23.~~ Assault is a statutory offense, but the statute contains no definition of the crime. N.C.G.S. 14-33(a) (2007). The Supreme Court has defined assault as: (1) an overt act or an attempt, or the unequivocal appearance of an attempt, (2) with force and violence, (3) to do some immediate physical injury to the person of another, (4) which would put a person of reasonable firmness in fear of immediate bodily harm. *Id.* (citations omitted).

~~22-24.~~ An assault is an intentional, offensive touching of another person **without that person’s consent.**” *State v. Harry Junior Ford*, 2023 N.C. App. LEXIS 372, *6, 2023 WL 4346026 (emphasis supplied). Actual physical injury is not required for commission of an assault. *In re L.D.G.*, 286 N.C. App. 775, 879 S.E.2d 904 (2022).

~~23-25.~~ Under N.C.G.S. 14-32.1, an “individual with a disability” is an individual who has one or more of the following that would substantially impair the ability to defend oneself: “(1) A physical or mental disability, such as a decreased use of arms or legs, blindness, **deafness**, intellectual disability, or mental illness. (2) An infirmity.” (emphasis supplied). As a matter of law, Pitt is an “individual with a disability” as defined by the statute.

~~24-26.~~ While N.C.G.S. 14-32.1 “does not specifically require that defendant know his victim

is [disabled],” it is also the case that “in order to convict an individual under N.C. Gen. Stat. § 14-32.1(e), the jury must find that defendant knew or had reasonable grounds to know the victim was a [disabled] person.” *State v. Collins*, 221 N.C. App. 604, 612, 727 S.E.2d 922, 927, 2012 N.C. App. LEXIS 882, *15-16, 2012 WL 2891046.

~~25-27.~~ As a matter of law, Petitioner knew or had reasonable grounds to know that Pitt was a disabled person at the time of his interactions with her. *See State v. Singletary*, 163 N.C. App. 449, 594 S.E.2d 64, 2004 N.C. App. LEXIS 509, *cert. denied*, 359 N.C. 196, 608 S.E.2d 65, 2004 N.C. LEXIS 1285 (2004) (victim wearing a hearing aid when assaulted by defendant).

~~26-28.~~ The question, though, is whether Petitioner committed an assault. When resolving an allegation of criminal activity involving conflicting stories, the **Tribunal Commission** is assisted by Respondent’s Final Agency Decision in Nathaniel Corthia Gilliam v. NC Sheriffs Education and Training Standards Commission, 22 DOJ 04731, which also involved an assault on an individual with a disability.

~~27-29.~~ In Gilliam, the Tribunal found that the petitioner committed an assault on disabled inmate based on the credible testimony of three certified officers who saw him

do that, the credible testimony of the victim, and the credible testimony of the jail nurse, whose testimony helped demonstrate that Gilliam's denials of the assault were not credible. The Tribunal concluded as a matter of law that Gilliam "committed" the criminal offense of "Assault Individual w/Disability" and proposed that Respondent revoke Gilliam's certification.

28:30. However, Respondent's Final Decision in Gilliam, which did not take issue with the Tribunal's findings of fact on the issue, was: "Based on these Findings of Fact and Conclusions of Law, there was insufficient evidence that Petitioner committed the misdemeanor offense as alleged, and it is hereby ordered that Petitioner's justice officer certification is **NOT REVOKED**." Final Decision, March 27, 2024 (emphasis in original).

29:31. Applying Gilliam's guidance, no law enforcement officer (other than Petitioner) witnessed the alleged assault. Petitioner and Pitt told widely differing stories. Text messages showed both prior and current sexually related activity between Petitioner and Pitt (Pet Ex. 2, p. 14). There was no medical evidence of an assault. Finally, Pitt (a) declined to assist the Cumberland County Sheriff with text messages about the incident, despite having them in her possession (Pet. Ex. 2, p. 8), and (b) the Cumberland County Sheriff's Department-Office investigation showed Pitt both making inconsistent statements about the incident as well as engaging in harassing conduct toward another person who ended a relationship with her later in 2023 (Pet. Ex. 2, pp. 18, 19-20). Finally, the criminal charges filed against Petitioner were dismissed for having insufficient evidence to proceed. Id.

30:32. As a matter of law, there is insufficient evidence to conclude that Petitioner committed the criminal offense of "Assault On An Individual With a Disability."

Whether Petitioner Committed the Criminal Offense of "Second-Degree Forcible Rape"

31:33. A person is guilty of second-degree forcible rape if the person engages in vaginal intercourse with another person: (1) By force and against the will of the other person; or (2) Who has a mental disability or who is mentally incapacitated or physically helpless, and the person performing the act knows or should reasonably know the other person has a mental disability or is mentally incapacitated or physically helpless. N.C.G.S. 14-27.22

32:34. In 2024, the Court of Appeals re-affirmed that the elements of this offense are, "(1) Defendant engaged in vaginal intercourse with [the victim]; (2) against her will by force; (3) while she was mentally incapacitated or physically helpless; and (4) Defendant knew or should reasonably have known Jessica was mentally incapacitated or physically helpless. See N.C. Gen. Stat. § 14-27.22 (2019)." State v. Estrada, 2024 N.C. App. LEXIS 777, *4, 907 S.E.2d 97, 2024 WL 4490724 (unpublished).

33:35. For the same reasons as on the assault charge, which are incorporated by reference, as a matter of law there is insufficient evidence to conclude that Petitioner committed the criminal offense of "Second Degree Forcible Rape."

~~34.36.~~ 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. Grappe, 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).

Whether Petitioner Lacks Good Moral Character

~~35.37.~~ It is a requirement for law enforcement certification in North Carolina that a person:

be of good moral character as defined in: In re Willis, 288 N.C. 1, 215 S.E. 2d 771 appeal dismissed 423 U.S. 976 (1975); State v. Harris, 216 N.C. 746, 6 S.E. 2d 854 (1940); In re Legg, 325 N.C. 658, 386 S.E. 2d 174 (1989); In re Applicants for License, 143 N.C. 1, 55 S.E. 635 (1906); In re Dillingham, 188 N.C. 162, 124 S.E. 130 (1924); State v. Benbow, 309 N.C. 538, 308 S.E. 2d 647 (1983); and later court decisions.

12 NCAC 9B .0101(12).

~~36.38.~~ Good moral character is a minimum employment standard. The lack of it authorizes revocation or suspension of an officer’s certification. William Robert Casey v. North Carolina Sheriffs’ Education and Training Standards Commission, 2012 NC OAH LEXIS 5011, 11 DOJ 11632

~~37.39.~~ Justice Douglas Montgomery of our State Supreme Court wrote, on the character of one of his predecessors, Justice William Gaston:

Judge Gaston was the beau ideal of North Carolinians, whose character contained the flower and fragrance of every virtue. I have often thought that the splendor of his intellectual qualities was over-shadowed by the sublimity of his moral character. It may well be said of him that among the great men of his generation few have left a more splendid and none a more stainless name. It is the deliberate judgment of his countrymen that throughout a long and distinguished life he ever bore the trenchant blade of heroic manhood with the spotless shield of Christian chivalry.

Mial v. Ellington, 134 N.C. 131, 178-179, 46 S.E. 961, 977 (1903) (dissenting).

~~38.40.~~ That is not a description fitting this Petitioner. For better or worse, however, society’s standards for “good moral character” have shifted from one generation to another. Joshua Orion David v. NC Criminal Justice Education and Training Standards Commission, 2018 NC OAH LEXIS 490, 17 DOJ 06743.

39.41. While North Carolina is best served by law enforcement officers having personal codes of chivalry rather than churlishness, officers also have rights to lawfully conducted private lives. “An officer has a right to a private life free from intrusion unless it interferes with his work performance or the efficiency of the governmental service.” Swope v. Bratton, 541 F. Supp. 99, 108, 1982 U.S. Dist. LEXIS 12644, *20. “It has also been held that the off duty-private sexual conduct of public employees is protected by the constitutional right of privacy.” Briggs v. North Muskegon Police Dep’t, 563 F. Supp. 585, 588, 1983 U.S. Dist. LEXIS 17171, *8, 1 I.E.R. Cas. (BNA) 195; citing Shuman v. City of Philadelphia, 470 F. Supp. 449 (E.D. Pa. 1979).

40.42. Additionally, in the case of Pitt, disabled persons not adjudged incompetent, or suffering mental disability making them incapable of making informed choices, have the same “rights of personal privacy, bodily integrity and autonomy in matters of conception, procreation and child rearing” as anyone else. In re Truesdell, 63 N.C. App. 258, 279, 304 S.E.2d 793, 806 (1983); modified and affirmed, 313 N.C. 421, 422, 329 S.E.2d 630, 631 (1985). That includes the autonomy to engage in intimate personal relationships that are brief, disappointing, or both.

41.43. Moreover, Respondent specifically based its claim that Petitioner lacks good moral character not on his general conduct in personal relationships, but rather on the premise that Petitioner committed two criminal offenses (Res. Ex. 9). If Petitioner committed one or more of the offenses alleged, the Tribunal would have absolutely agreed with Respondent’s position. The Tribunal concluded in Gilliam that a jailer who assaulted an elderly, disabled inmate should have his certification revoked. Had it been shown that this Petitioner committed rape in any form, the Tribunal would have had zero hesitation in proposing revocation.

42.44. However, it has not been so shown. As Respondent chose to proceed on the theory that Petitioner’s lack of good moral character stems from commission of unproven criminal offenses, it cannot be determined as a matter of law that Petitioner lacks the good moral character required of justice officers in North Carolina.

PROPOSAL FOR DECISION ORDER

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