

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
25 DOJ 02143

ERIC ROBERT LOWE, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 NORTH CAROLINA SHERIFFS' )  
 EDUCATION AND TRAINING )  
 STANDARDS COMMISSION, )  
 )  
 Respondent. )  
 )

**EXCEPTIONS**

The following **Exceptions** to the **Proposal for Decision** prepared by the Honorable Samuel K. Morris, Administrative Law Judge, and filed in the Office of Administrative Hearings on December 30, 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. **Additionally, Counsel has corrected references to “the Tribunal” to “the Commission” to reflect the procedural posture of the Final Agency Decision throughout the document.**
4. **In Conclusion of Law No. 1, edited language to comport with the Commission’s procedural posture:**

1. The Tribunal ~~Office of Administrative Hearings~~ had 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. Moreover, neither party has contested the final agency authority of the Commission in this action; thus, both parties are properly before the Commission.

5. **In Conclusion of Law No. 2, edited language to comport with the Commission’s procedural posture:**

2. To the extent that the Tribunal’s Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, ~~they~~ the Commission should be so considered considers them 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).

**6. In Conclusion of Law No. 7, deleted language to comport with the Commission's position on the burden of proof:**

~~7. Historically, in Article 3A hearings, a license or certification is considered "property or rights," such that the applicant or holder is entitled to a contested case hearing. When a license or certification is at issue, whoever is trying to deny, suspend or revoke such license or certificate generally has 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 N.C. Supreme Court provided that [i]n 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.*~~

**7. In Conclusion of Law No. 8, deleted language to comport with the Commission's position on the burden of proof:**

~~8. Although *Peace* was an Article 3 case, the discussion of burden of proof is instructive in this instant case because, similar to the burden of proof issue in *Peace*, neither the North Carolina Constitution nor the General Assembly has addressed the burden of proof in Article 3A cases.~~

**8. In Conclusion of Law No. 10, edited language to comport with the Commission's position on the burden of proof:**

10. Section 150B-40 also provides that Article 3A "hearings shall be conducted in a fair and impartial manner" and that the presiding officer, including the Administrative Law Judge, may "regulate the course of the hearings." ~~That statutory provision allows the presiding officer to dictate who has the burden of proof.~~

**9. In Conclusion of Law No. 11, deleted language to comport with the Commission's position on the burden of proof:**

~~11. Applying the statutory law along with "considerations of policy, fairness and common sense," and the statutory authority to regulate the course of hearing, the Undersigned determines that Respondent should bear the burden of proof in an Article 3A action where Respondent proposes to take some action against a license/certificate holder or application for certification based upon its investigation into that individual.~~

**10. In Conclusion No. 17, edited language to comport with current procedural posture before the Commission:**

17. The Tribunal ~~and the Commission~~ concludes that there is sufficient evidence to support ~~Respondent's~~ a suspension of the proposed denial of Petitioner's certification and issuance of a probationary certification for two years ~~to Petitioner~~ provided Petitioner does not further violate any federal or North Carolina laws, and/or any Administrative Rules of Respondent the Commission during that period.

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

PROPOSAL FOR DECISION ORDER

THEREFORE, Based on the foregoing Findings of Fact and Conclusions of Law, and in accordance with Respondent's Proposed Final Decision, the ~~Undersigned proposes Respondent Commission~~ SUSPENDS its proposed denial of Petitioner's certification, and ~~place~~ place Petitioner be placed on PROBATION for a period of TWO YEARS on the condition that Petitioner not further violate any federal law, any law of the State of North Carolina, or any ~~rules of the Respondent the Commission's~~ Administrative Rules ~~during that period.~~ and his certification be GRANTED.

This the \_\_\_<sup>th</sup> day of March, 2026.

JEFF JACKSON  
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**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:

**Eric Robert Lowe, Petitioner  
Barry Henline, Esq.  
Counsel for Petitioner  
115 North 6th Street  
Wilmington, NC 28401**

This the 6<sup>th</sup> day of February, 2026.

JEFF JACKSON  
Attorney General

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