

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
25 DOJ 02143

<p>Eric Robert Lowe Petitioner,</p> <p>v.</p> <p>North Carolina Sheriffs Education and Training Standards Commission Respondent.</p>	<p>PROPOSAL FOR DECISION</p>
--	-------------------------------------

PROCEDURAL BACKGROUND

This case came on for hearing on October 7, 2025, before Administrative Law Judge Samuel K. Morris in Bolivia, North Carolina, upon Respondent’s request, pursuant to N.C.G.S. § 150B-40(e), for the designation of an Administrative Law Judge to preside at the hearing of a contested case under Article 3A, Chapter 17E of the North Carolina General Statutes.

By letter dated April 30, 2025, Respondent’s Probable Cause Committee notified Petitioner that the Committee found probable cause to deny his justice officer certification application. Specifically, the Committee found probable cause to deny Petitioner’s certification for not less than five years under 12 NCAC 10B .0204(c)(1) for knowingly making a material misrepresentation of information required for certification. (Resp. Ex. 10).

APPEARANCES

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

Ian L. Courts
Assistant Attorney General
Counsel for Respondent
Department of Justice
9001 Mail Service Center
Raleigh, North Carolina 27699-9001

ISSUES

Whether Petitioner’s justice officer application for a deputy sheriff appointment with Pender County Sheriff’s Office should be denied pursuant to 12 NCAC 10B .0204(c)(1) for not less than five years due to Petitioner knowingly making a material representation of information required for certification?

APPLICABLE RULES

12 NCAC 10B .0204(c)(1)
12 NCAC 10B .0205 (2)(b)

EXHIBITS ADMITTED INTO EVIDENCE

For Petitioner: Pet.’s Exhibits 1-2.
For Respondent: Res.’s Exhibits 1-11.

FINDINGS OF FACT

UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits admitted into evidence, and the entire record in this proceeding, having weighed all evidence and assessed the credibility of the witnesses by considering the appropriate facts for judging credibility, including, but not limited to, the demeanor of the witness, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know, or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case, the Undersigned finds as follows:

1. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, both parties received notice of hearing, and the Petitioner received by certified mail, the proposed denial letter, mailed by Respondent, the North Carolina Sheriff’s Education and Training Standards Commission (hereinafter “Respondent” or “The Commission”), on April 30, 2025.
2. Respondent is authorized by 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 under appropriate circumstances with valid proof of a rule violation.
3. In May 2023, Petitioner applied for justice officer certification through the Pender County Sheriff’s Office. In the personal history section of his application (F3 form), which required Petitioner to list any prior drug use, Petitioner listed his prior use of marijuana, cocaine, mushrooms, morphine, suboxone, Percocet, Adderall, and cyclobenzaprine. (Resp. Ex. 1)
4. Petitioner had previously applied for certification through the New Hanover County Sheriff’s Office in 2021. Petitioner had also previously submitted an Adult Corrections (DOC)

application in 2020.

5. The Commission's Probable Cause Committee reviewed Petitioner's case and found probable cause to deny Petitioner's justice officer certification for not less than five years for knowingly making material misrepresentations of information required for certification.

6. When seeking certification at various agencies, Petitioner had discrepancies on Commission forms that were deemed material misrepresentations.

7. The first was made on Form F3, which Petitioner signed on May 3, 2021, when Petitioner was applying for certification with the New Hanover County Sherriff's Department. On this form, Petitioner failed to disclose his prior use of cocaine, mushrooms, Morphine, Suboxone, and Percocet.

8. In addition, when Petitioner applied for certification through the New Hanover County Sherriff's Office in 2021, a case was reviewed by the Commission in reference to material misrepresentation based on Petitioner's previous answers to the Criminal Justice Commission for a position with the Department of Adult Correction. During the certification process in 2021, it was discovered that Petitioner failed to include drug usage on his application, Form F-5A. On this form, Petitioner marked the box "No" in response to question 3(a), which asked if he had ever used any illegal drugs.

9. At the administrative hearing, Petitioner acknowledged that he failed to disclose drug use on two prior forms. When he submitted his DOC application, he thought the application was inquiring of "recent" drug use. Likewise, he thought he would not get the job if he included that information. (Resp. Ex. 6)

10. During the hearing, Petitioner apologized, expressed remorse, and took full responsibility for his actions.

11. Lieutenant James Clark Cotton, Jr. of the Pender County Sherriff's office testified in support of Petitioner. Lieutenant Clark testified that Petitioner has been truthful to him, has demonstrated a willingness to learn and a desire to serve as an officer, that he deserved a "second chance," and that Petitioner will make a "fine officer" with guidance and supervision.

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. A judge is not required to find all the facts shown by the evidence, but only sufficient material facts to support the decision. *Green v. Green*, 54 N.C. App. 571, 575, 284 S.E.2d 171, 174 (1981); *In re Custody of Stancil*, 10 N.C. App. 545, 549, 179 S.E.2d 844, 847 (1971).

4. Respondent, North Carolina Sherriff's Education and Training Standards Commission, has the authority granted under Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code (NCAC), Chapter 10B, to certify justice officers and to revoke, suspend, or deny such certification.

Burden of Proof

5. From its inception, the North Carolina Administrative Procedures Act ("APA"), N.C. Gen. Stat. Chapter § 150B, has contained two separate and distinct sets of administrative hearings provisions. Each article contains separate provisions governing all aspects of the administrative hearings to which they apply. *Homoly v. N. Carolina State Bd. of Dental Examiners*, 121 N.C. App. 695, 697, 468 S.E.2d 481, 483 (1996). The manner in which a contested case is commenced and conducted varies depending on which set of provisions applies.

6. Although similarities exist between Article 3 and Article 3A, they are decidedly different. A critical distinction between the two Articles is that the burden of proof is allocated in Article 3; it is not allocated in Article 3A.

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.

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.

9. As Respondent requested designation of an Administrative Law Judge to hear this case pursuant N.C.G.S. § 150B-40(e), the undersigned sits and presides over this Article

3A hearing in the place of the Respondent agency and makes a “proposal for decision” to the agency. N.C.G.S. § 150B-40. In such a case, “[t]he provisions of [Article 3A], rather than the provisions of Article 3, shall govern a contested case . . .” N.C.G.S. § 150B-40(e). *See Homoly v. N. Carolina State Bd. of Dental Examiners*, 121 N.C. App. 695, 697, 468 S.E.2d 481, 483 (1996).

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.

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.

Proposed Denial of Petitioner’s Certification Application

12. The Respondent may suspend, revoke, or deny the certification of a justice officer when the Respondent finds that the applicant for certification or probationary certification holder has knowingly made a material misrepresentation of any information required for certification. 12 NCAC 10B .0204(c)(1).

13. A material misrepresentation is “a false representation of fact or omission of fact reported to or required to be reported to the Commission that if the true fact were known would have induced or caused the Commission to have treated the individual’s certification or application for certification differently.” 12 NCAC 10B.0205(2)(b).

14. When the Commission suspends or denies the certification of a justice officer for knowingly making a material misrepresentation of any information required for certification, the period shall not be less than five years; however, the Commission may reduce or suspend the period of sanction or substitute a period of probation in lieu of suspension of certification, or impose a combination of reduction, suspension or probation, as determined on a case by case basis. 12 NCAC 10B .0205(2)(b).

15. There was substantial evidence in the record that Petitioner misrepresented his prior drug use on his New Hanover Sheriff’s Office application in 2021 and his DOC application in 2020 by omitting the full extent of his previous drug use. Petitioner has admitted on the record at the OAH hearing and in written statements his misrepresentation, even expressing remorse for his misrepresentations. (Trans. pgs. 15, 18-19, 32-35)(Resp. Exs. 1, 2, 3, 4, 5, 6, 9, 10). Based upon the findings of facts and conclusion of law demonstrated in the record, the findings of the probable cause committee were not arbitrary and capricious but based on substantial and credible evidence.

16. The record reflects, however, that Petitioner voluntarily disclosed his prior drug use without compulsion in his most recent application, was candid with the Tribunal, and that Petitioner is remorseful for his prior misrepresentations. In addition, Respondent’s own proposed decision acknowledges that, although Petitioner’s certification is subject to denial, such denial should be suspended.

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

PROPOSAL FOR DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, and in accordance with Respondent's Proposed Final Decision, the Undersigned proposes Respondent **SUSPEND** its proposed denial of Petitioner's certification and place Petitioner 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 Respondent Commission during that period.

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.

Respondent is **ORDERED** to serve a copy of its final agency decision or order 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).

Respondent is further **ORDERED** to file a copy of its Final Agency Decision or order with the Office of Administrative Hearings within thirty (30) days of such order being issued.

SO ORDERED.

This the 30th day of December, 2025.



Samuel K Morris
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:

Barry Keith Henline
The Law Offices of Barry K. Henline, PLLC
barrykhenline@outlook.com
Petitioner

J. Joy Strickland
NC Department of Justice
jstrickland@ncdoj.gov
Attorney For Respondent

Ian Lamar Courts Esq.
North Carolina Department of Justice
icourts@ncdoj.gov
Attorney For Respondent

This the 30th day of December, 2025.



Rebecca Wilson
Paralegal
N. C. Office of Administrative Hearings
1711 New Hope Church Road
Raleigh, NC 27609-6285
Phone: 984-236-1850