

STATE OF NORTH CAROLINA  
COUNTY OF CURRITUCK

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
22 DOJ 03476

Jacquelyn Covell Petitioner,  v.  NC Sheriffs Education and Training Standards Commission Respondent.	<b>PROPOSAL FOR DECISION</b>
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**PROPOSAL FOR DECISION**

This case came on for hearing on January 17, 2023, before Administrative Law Judge John C. Evans, in Ayden, NC. This case was heard after Respondent requested, pursuant to Article 3A, N.C.G.S. § 150B-40(e), designation of an Administrative Law Judge to preside at the hearing of a contested case to hear Petitioner's appeal of the Respondent's proposed justice officer certification revocation.

**APPEARANCES**

For Petitioner: Jacquelyn Covell, *pro se*  
260 Maple Road  
Maple, NC 27956

For Respondent: Arneatha James  
Special Deputy Attorney General  
North Carolina Department of Justice  
Special Prosecutions and Law Enforcement Section  
9001 Mail Service Center  
Raleigh, North Carolina 27699-9001

**ISSUE**

Whether Respondent's revocation of Petitioner's justice officer certification for failing to maintain the minimum standards required for justice officer certification is supported by a preponderance of the evidence.

## STATUTES AND RULES AT ISSUE

12 N.C.A..C 10B .0301(a)(7)<sup>1</sup>

### EXHIBITS ADMITTED INTO EVIDENCE

For Petitioner:           None

For Respondent:         Exhibits 1-13

### FINDINGS OF FACT

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:

1.       Petitioner was certified by Respondent as a telecommunication officer through the Currituck County Communications Center from August 11, 2020, until the present date.

2.       Respondent's proposed revocation of Petitioner's telecommunication officer certification is based on the allegation that she failed to notify the Sheriff's Standard Division that she had been charged with two misdemeanor offenses of simple assault and assault and battery in violation of 12 N.C.A.C. 10B .0301(a)(7). Respondent's Exhibit 2.

3.       On October 2, 2021, Petitioner was charged and served with a Simple Assault and Assault and Battery charge that occurred on October 2, 2021 in Currituck County. Respondent's Exhibits 5 and 8. On October 4, 2021, Petitioner was charged with a Simple Assault charge that occurred on October 2, 2021 in Currituck County. Respondent's Exhibit 7.

4.       On October 18, 2021, Petitioner notified the Sheriff's Standard Division that she was charged with the aforementioned misdemeanors and admitted that she failed to notify the Commission within five days of being. Respondent's Exhibit 9.

5.       On October 15, 2021, Petitioner's charge for assault and battery was dismissed, because the "[a]lleged victim would testify [Petitioner] never assaulted her." Respondent's Exhibit 6. On October 26, 2021, the simple assault charge was dismissed and automatically expunged.

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<sup>1</sup> The notification requirement that is the subject of this case was the 2021 version of 12 NCAC 10B .0301 because it was the version in effect at the time Petitioner failed to notify Respondent within the required time. The notification requirement is currently contained at 12 N.C.A.C. 10B .0301(13).

6. Sirena Jones, Deputy Director of the Sheriffs' Education and Training Standards Division (Sheriffs' Standards Division) testified at the administrative hearing. Her testimony was credible and included the following:

- a. As deputy director, Jones acts as staff to the Commission and assists in the gathering of information and documentation of potential Commission rule violations for presentation to the Commission's Probable Cause Committee.
- b. Jones received an email from Liz Hodges, the Supervisor of the Currituck County Communications Center, Hodges discussed Petitioner's charges with Jones and was informed that Petitioner will need to submit a notarized statement regarding her failure to notify the Commission.
- c. Pursuant to her duties, Jones gathered information in this case.
- d. Petitioner's written statement, dated October 18, 2021, conceded she failed to notify the Commission within five business days due to being incarcerated and in the hospital. Respondent Exhibit 9.

7. Petitioner testified at the administrative hearing. Her testimony was credible and included the following:

- a. Petitioner stated she notified her supervisor immediately (the next day) about her charges.
- b. Petitioner was served on October 2, 2021, and was released from custody on October 4, 2021.
- c. Petitioner went straight to the hospital where she was treated for a concussion, a broken nose, and a fractured jaw.
- d. Petitioner was placed on two weeks of paid leave following the incident.

### **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 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 under appropriate circumstances, with valid proof of a rule violation.

5. Pursuant to N.C. Gen. Stat. § 150B-29(a), the party with the burden of proof in a contested case must establish the facts required by N.C. Gen. Stat. § 150B-23(a) by a preponderance of the evidence. Furthermore, the Administrative Law Judge shall decide the case based upon the preponderance of the evidence. N.C. Gen. Stat. § 150B-34(a).

6. Since this contested case is heard under Article 3A, N.C. Gen. Stat. § 150B, the undersigned Administrative Law Judge presides over the hearing in place of Respondent and makes a written Proposal for Decision to the Respondent agency. N.C. Gen. Stat. § 150B-40. N.C. Gen. Stat. § 150B-40(e) provides:

The provisions of this Article [3A], rather than the provisions of Article 3, shall govern a contested case in which the agency requests an administrative law judge from the Office of Administrative Hearings. The administrative law judge assigned to hear a contested case under this Article shall sit in place of the agency and shall have the authority of the presiding officer in a contested case under this Article.

7. The plain, ordinary language of N.C. Gen. Stat. § 150B-40(e) provides a clear distinction between cases under Article 3 and under Article 3A cases. *See Homoly v. N. Carolina State Bd. of Dental Exam'rs*, 121 N.C. App. 695, 698, 468 S.E.2d 481, 484 (1996) (“[T]he contested case provisions of Article 3 do not apply to Article 3A agencies and the same is true conversely.”).

8. “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, *Broun & 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) 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.*

9. Applying these general principles of policy considerations and fairness, Respondent should bear the burden of proof where Respondent has wishes to take some action against that license or certification. Moreover, “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 . . .” *Peace v. Emp’t Sec. Comm’n of N. Carolina*, 349 N.C. 315, 328, 507 S.E.2d 272, 281 (1998) (citation omitted). Therefore, Respondent has the burden of proof in this case to prove that its proposed revocation of the certification should be upheld.

10. 12 N.C.A.C. 10B .0204(b) provides, “The Commission shall revoke, deny or suspend the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer:

(2) fails to meet or maintain any of the employment or certification standards required by 12 NCAC 10B .0300.

11. 12 N.C.A.C. 10B .0205(2)(e) provides, “When the Commission suspends, revokes, or denies the certification of a justice officer, the period of sanction shall be:

(2) not less than five years where the cause of sanction is:

- (e) Failure to make either of the notifications as required by 12 NCAC 10B.0301(a)(7).

12. The Commission may either reduce or suspend the periods of sanctions under this item or substitute a period of probation in lieu of revocation, suspension or denial following an administrative hearing. This authority to reduce or suspend the period of sanction may be utilized by the Commission when extenuation circumstances brought out at the administrative hearing warrant such a reduction or suspension. 12 N.C.A.C. 10B .0205(2).

13. Extenuating circumstances were brought out at the administrative hearing. They include:

- (a) Petitioner was honest and forthcoming about her charges.
- (b) Petitioner did not intend to hide the charge from the Commission or deceive the Commission.
- (c) Petitioner kept the Commission informed concerning the disposition of the charges against her.
- (d) The reasons for Petitioner's delay in notifying the Commission of the charges against her was her incarceration and her hospitalization.

### **PROPOSAL FOR DECISION**

Based on the foregoing Findings of Fact and Conclusions of Law, it is proposed that Petitioner's justice officer certification be REVOKED FOR (ONE) 1 YEAR; however, that revocation be suspended and Petitioner be placed on PROBATION for a period of ONE (1) YEAR due to the extenuating circumstances brought out at the administrative hearing, on the condition that during that period of probation, Petitioner not violate any law (other than minor traffic infractions) of this state or any other state, any federal laws, or any rules of this Commission or the North Carolina Criminal Justice Education and Training Standards.

### **NOTICE OF APPEAL**

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.

It hereby is ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, North Carolina 27699-6714.

IT IS SO ORDERED.

This the 17th day of March, 2023.



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John C. Evans  
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 who 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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Attorney For Respondent

This the 17th day of March, 2023.



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