

STATE OF NORTH CAROLINA
COUNTY OF SURRY

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
11DOJ06781

Steven Davis Boone Petitioner, v. North Carolina Sheriffs' Education and Training Standards Commission Respondent.	PROPOSAL FOR DECISION
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This contested case was heard on December 3 through December 7, 2012 by Administrative Law Judge J. Randall May in High Point, North Carolina.

APPEARANCES OF COUNSEL

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ISSUES

1. Whether Petitioner's justice officer certification should be denied based upon the allegation that Petitioner lacks sufficient good moral character to serve as a justice officer?

A) Whether Petitioner has good moral character?

2. Whether Petitioner's justice officer certification should be denied based upon the allegation that Petitioner committed larceny?

A) Whether all elements of larceny were established with substantial evidence?

CHARGES/RULES IN ISSUE

1. Good moral character, 12 NCAE 10B.030(a)(8).
2. Larceny, N.C.G.S. 14-72.

FINDINGS OF FACT

Based upon careful consideration of the sworn testimony of the witnesses who testified at the hearing, the exhibits admitted into evidence, and the entire record in this proceeding, the undersigned Administrative Law Judge makes the following findings of fact. In making these findings of fact, the undersigned has weighed all of the evidence, or the lack thereof, and has assessed the credibility and believability of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witnesses, any interests, biases or prejudices the witness may have, 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.

Testimony of District Attorney Ricky Bowman

1. The first witness called by Petitioner was Clifford Ricky Bowman, the elected District Attorney for Judicial District 17B, which includes Surry and Stokes Counties. T26 Mr. Bowman has been a licensed attorney since 1984. He practiced law from 1984 to 1995. T27 Bowman became District Attorney in 1995. T27
2. Bowman estimated that he has known Boone for at least 20 years. T27 Bowman explained how he worked with Boone prosecuting cases, and how he could count on Boone and depended on him to tell the truth. T28-29
3. Bowman explained that Boone was “a good resource.” T29 He explained that Boone was “someone who would always volunteer to go out and go the extra mile.” T29 Bowman explained that “in all my years of prosecuting cases with him in District Court or being involved with him in investigations, he had always been honest and truthful with me as far as I could tell.” T30
4. Bowman gave examples of Boone’s work while he was off-duty, including on weekends when he was off work with his family “and still went and done what he needed to do. He was just someone we could always count on.” T31 Bowman explained that he or any of his Assistant District Attorneys could call “Steve at eleven o’clock at night or early morning, and we could get a response because he knew his law, and we could count on him ... he was just always very helpful.” T31
5. Bowman further explained: “I can say in all my years of working with Steve Boone I never had a defense attorney ever question Steve Boone’s honesty ... I never heard a defense attorney criticize Steve Boone or question his honesty.” T32 Bowman never had one of his

Assistant District Attorneys ever question Boone's honesty. T32 Bowman explained that Boone had a reputation for being honest and that he had never heard anyone question his honesty. T33

6. Bowman further explained that Boone also had a reputation for being a good father and a good husband. T33 He explained how Boone was involved in his community and that Boone "was a great public relations representative for ALE." T33 Bowman explained that Boone was "someone in our small community that everyone could always call for assistance..." T34

7. Bowman testified that Boone's moral character "is as good as any I've ever seen." T35 He explained that Boone "goes to church, and he really goes to church ... he appears to be a man who generally cares about his community." T35

8. Bowman was familiar with the working space provided to Boone at the Sheriff's Department. T37 It was a cubicle. T37 He described it as being a "little cubicle, it was full of supplies. The man had nowhere to sit ... you couldn't work there comfortably." T37 Whenever Bowman or an Assistant District Attorney had a question or needed assistance, they did not go to Boone's office because "everyone could hear your conversation, and everyone's coming through the door." T38 In summary Bowman opined that the space provided by the Sheriff was too small and inadequate to conduct business

9. Bowman explained that it did not surprise him at all that Boone resulted to working at home in order to get his job done. T38 It also did not surprise Mr. Bowman that Boone would need to work at home. T39

10. Bowman explained how Boone "wasn't afraid of hard work. If he was on his time off, he would go to work." T45

11. A magistrate informed Bowman if he had a question at three o'clock in the morning, he would call Boone and ask him about the statutes. "Steve Boone was not one to leave his phone unhooked or have an answering machine. He would answer that phone every time, even on vacation." T45 Bowman explained that if he called Boone, "he was there for me and my office when - - any time I needed him." T46

12. Bowman explained how he was not social friends with Boone, they did not go to church together, they did not eat out together, and their children did not play together. T46 Bowman explained that "in my work experience with him, he was - - he was one of the best. He was someone I could always count on and depend on." T46

13. Bowman explained that "when Steve Boone was removed from his job it was a bad thing for my community." T49

14. District Attorney Bowman was a credible and believable witness.

Testimony of Magistrate Donnie Marion

15. The second witness called by Petitioner was Donnie Marion, who is a retired Magistrate from Surry County who served for twenty eight years as a Magistrate and worked with Boone. T53 Marion has known Boone approximately twenty years. T53 Boone would appear before Marion, including presenting evidence to him. T54 Marion has had opportunities to observe Boone in his professional capacity as a law enforcement officer. T54 Marion knew Boone through his work and through civic and social activities and they attended the same church. T54-55

16. Marion described Boone as “very intelligent.” T55 He explained how he would call Boone at all hours of the night, at two, three and four o’clock in the morning to ask his opinion on different things that related to the statutes within 18B. T55 Marion explained that when he called Boone at two, three or four o’clock in the morning, Boone “always answered the phone.” T55 Marion explained how Boone worked beyond the tour of his assigned duty and that he did his job seven days a week, twenty four hours a day. T56

17. Marion testified that Boone had a “very good reputation throughout the community, throughout law enforcement and throughout our church, throughout the little league, throughout the county.” T56 Marion testified as to Boone’s reputation within the court system as being “very good, never heard of any of Steve’s testimonies questioned...” T56 Marion observed that Boone’s “morals were impeccable.” T57

18. Marion explained that any time he called or referred someone to Boone, that Boone was always available. T61

19. Magistrate Marion was a credible and believable witness.

Testimony of Dr. Moira Artigues

20. The next witness called by the Petitioner was Dr. Moira Artigues, a Forensic Psychiatrist. T73

21. Dr. Artigues is engaged in the private practice of psychiatry, where she sees patients and does forensic psychiatric evaluations. T84 Dr. Artigues treats patients with various types of psychiatric illnesses and disorders. T85

22. Dr. Artigues is familiar with Adult Attention Deficit Disorder (ADD) and has diagnosed patients with that condition numerous times. T85

23. Dr. Artigues completed a residency in psychiatry at Duke University and then completed an extra year in forensic psychiatry training. T85

24. Dr. Artigues is Board Certified in both general and forensic psychiatry. T89 Dr. Artigues’ resume, which appears in Exhibit 12, fairly and accurately shows the primary areas of

her qualifications, experience and training. T89 Dr. Artigues earned her general Board Certification in 2002 and her Forensic Board Certification in 2003. T90

25. Dr. Artigues has provided expert testimony between 90 and 100 times. T90 She has testified in various hearings where medical and mental health issues were involved. T90 Dr. Artigues has active patients who she treats for ADD and is familiar with the medication known as Strattera. T91

26. Dr. Artigues is a qualified forensic psychiatrist based on her credentials and experience. Dr. Artigues' report and testimony are credible and believable.

27. As a part of Dr. Artigues' analysis, she reviewed the medical records, notes and reports of Dr. Charlotte Evans. T91-92 Dr. Artigues considered and used those documents as a part of her professional opinion set forth in her expert report. T92

28. Dr. Artigues diagnosed Boone with ADD and her diagnosis was consistent with the diagnosis of Dr. Evans. T92

29. Dr. Artigues determined that Boone had ADD since childhood, which was undiagnosed until 2009. T95-96 Dr. Artigues explained that it was very common for someone to have ADD for a number of years when it was undiagnosed. T96

30. Dr. Artigues explained that Boone "needed a quiet, distraction-free workplace in which to complete his paperwork due to having ADD." T96 Dr. Artigues observed in her evaluation that Boone seemed to be a very conscientious person who resorted to working at home as a last desperate act to get his work done on time. T97 Working at home is something that Boone had been doing for fifteen years, so it wasn't out of line with what he had done in the past. T97

31. Boone offered supervisors alternatives that would assist him in getting his work done in a timely way and in an organized way, which had not been adequately addressed, and he resorted to working at home with the feeling that was the only way he could get his work done in a timely way. T97 Boone's working from home was a form of compensating for his condition. T97

32. Dr. Artigues observed that Boone had tried a lot of other things; he had tried to offer alternative office spaces and he had worked in his car for a certain amount of time and it was not working for him. T98 Boone resorted again to working at home to compensate for his ADD. T98

33. Dr. Artigues explained that ADD is considered a disabling or impairing condition. T98

34. Dr. Artigues observed that working from home, under the circumstances confronting Boone, was very reasonable. T99

35. ADD has recognized symptoms including symptoms that relate to frontal lobe dysfunction. T99-100 The frontal lobe is considered to be the command and control center of the brain. T100

36. Dr. Artigues explained that someone with ADD cannot concentrate and focus when there are minor distractions around; they are often forgetful and lose things. T100 Attention, concentration and not staying on task are symptoms of ADD. T100
37. Dr. Artigues explained that the job duties and functions of Boone that relate to administrative matters are matters that adults with ADD will avoid doing. T101 She explained how it was not easy for a person with ADD to stay on task, to pay attention, and to track tasks all the way through. T101
38. Dr. Artigues explained that had Boone been provided a quiet, distraction-free workplace environment for purposes of his job duties and functions, he could have performed his job duties and responsibilities. T102
39. Dr. Artigues considered and relied upon the medical records of Dr. Evans, which appear in Exhibit 11, as a part of her professional analysis and opinions in her report and in her testimony in Court. T104
40. Dr. Artigues' expert report, Exhibit 12, was admitted into evidence. T112 Dr. Artigues' resume was also admitted. T113
41. Dr. Artigues testified that Exhibit 11, the medical records of Dr. Evans, were the types of medical records that she and other forensic psychiatrists use and rely upon as a part of their expert analysis. T124
42. Dr. Artigues observed that Dr. Evans' medical notes and statements are "really good. The traditional ones I see aren't this good." T114 Dr. Artigues observed that Dr. Evans' records are very thorough. T114 Dr. Artigues observed that Dr. Evans' records were genuinely helpful to her as a part of her forensic work in the case. T114
43. Boone did not know that he was dealing with ADD, and had been struggling for many years with getting reports in on time. T117 Boone realized that he needed a quiet, distraction-free work environment, which is why he built the addition to his home, the office with special insulation so it was very quiet. T117
44. When Boone was told that he could no longer use that special home office, he made attempts to get an accommodation at work for a distraction-free workplace. T117 Boone was not known to be rebellious or insubordinate. T117
45. Boone was very conscientious and that he was returning to work at his home in a somewhat reluctant last ditch way, having made many efforts to compensate to get the work done in the environments that were provided. T118
46. Dr. Artigues did not believe that Boone stole from the State, and that what he did was not an act of rebellion or insubordination, but in an act of being very conscientious, he began to work from home to get his work done in a timely way. T118

47. Boone was not trying to be intentionally insubordinate, but rather appeared that he was trying to compensate for his condition and get his job done. T118-119
48. ADD is a condition that impacts one's ability to read. T119 ADD patients may need to read something repeatedly. T119
49. ADD can result in one being disorganized. T120 Concentration can be a problem for people with ADD in many different settings. T121 Concentration is one of the symptoms that medications help the most. T121
50. Some of the job skills that would have been greatly impacted by Boone's ADD would have been thinking things through, applying policy to real life, being able to express in a report, and being able to sit down and organize thoughts in order to prepare the report. T121
51. People with ADD are notoriously late for deadlines because of difficulties organizing themselves, getting started and not being able to get back onto the task. T122
52. If Boone had been provided a relatively quiet, relatively distraction-free work environment and continued on his Straterra, Dr. Artigues did not have any reason to believe he would be unable to continue to perform his job duties and responsibilities. T123
53. Boone had a very good track record for his work with ALE. T125

Testimony of Sheriff Graham Atkinson

54. The next witness called by Petitioner was Sheriff Graham Atkinson, Sheriff of Surry County. T134 Sheriff Atkinson first met Boone when he worked for the Surry County EMS back in the mid 1980's. T134 Sheriff Atkinson worked with Boone when he was employed with the U.S. Marshall Service. T134 Sheriff Atkinson jointly worked together with Boone numerous times over the years when Boone was with ALE. T135
55. Sheriff Atkinson explained that when Boone was assigned to Surry County, they had someone they could call twenty four hours a day, seven days a week and Boone would be there to help. T136 Sheriff Atkinson explained that he called Boone many times early in the morning and after midnight and Boone never failed to answer his phone. T136
56. Sheriff Atkinson explained how he once contacted Boone while Boone was on a family vacation in Myrtle Beach, and Boone responded and helped solve the problem. T136 Sheriff Atkinson explained how Boone was always available to assist and was a pleasure to work with. T136-137 Sheriff Atkinson explained that Boone was very motivated and a hard worker. T138
57. Boone was effective and successful in his investigations and in working his cases. T139
58. Sheriff Atkinson explained that Boone is very active with the PTO at his children's school. T139 Boone was very effective with public relations. T140

59. Sheriff Atkinson explained how at least two judges were glad that Boone was serving as a part-time bailiff in the courtroom, and how efficient he was in his work and in his demeanor in the courtroom. T141

60. Before hiring Boone, Sheriff Atkinson talked to persons in the court system and community leaders about Boone, and everybody that the Sheriff talked to said that it would be a mistake to not hire Boone. T143

61. Boone served as a Detention Officer and later as the person responsible for keeping the Court records. T144

62. Sheriff Atkinson described the cubicle space given to Boone for an office as being “about eight feet by eight feet maybe.” T147

63. Sheriff Atkinson explained “I’ve got one position, and I would hire him back today if he wanted to come back to work.” T148 Boone has been continuing to work part-time on a limited as needed basis for the Sheriff since Boone retired from full-time status. T150

Testimony of Assistant Chief of Police Shon Tally

64. The next witness called by Petitioner was Assistant Chief of Police Shon Tally. T187 Tally served with ALE from 1989 until 2011. T188

65. Tally has known Boone since 1992 or 1993. T188 Tally got to know Boone “pretty well.” T188 From 1989 to 2011, Tally became generally familiar with Agency practices and customs. T190

66. Tally described Boone as “a good agent ... he took care of his people in Surry County, on a very good relationship with the sheriff, the district attorneys, the attorneys ... Steve was an instructor. He taught a lot of in-service classes. He - - he was just a - - he was a good agent, a good guy to work with.” T190

67. Boone had a good professional reputation amongst his colleagues in ALE. T190-91 Boone’s “honesty and integrity were above approach...” T191

68. Tally explained that “it was common for an agent to - - to work out of his home, to check emails, to do a report, fax it or email it down to Raleigh...” T191 Working from home as an ALE agent “was a common practice ... it was kind of an unwritten rule...” T192

69. When he served with ALE, Tally was from time to time on some special operations assignments, including in 2008 and 2009. T194

70. Tally explained that within ALE, if you needed to stop and pick up something, you could. T195 He further explained that “in ALE you had a lot of freedom.” T195 Tally explained that “if you needed to stop and pick something up, you could, and generally everyone - - everyone knew that.” T196

71. An ALE weekly report was an explanation of activities for the prior week and to document time. T197
72. Mostly the ALE supervisors would put down a straight 8:00 a.m. to 5:00 p.m. T197 Assistant Supervisor Beckom was observed coming in late and leaving early. T199
73. Tally explained how service as an ALE agent would frequently involve calls during all hours of the day and night and an agent would later compensate for that by leaving a few minutes early one day. T202
74. Tally explained that agents were allowed one fifteen-minute break in the morning and one fifteen-minute break in the afternoon. T221 Agents had the ability to take their meal break at whatever time during the day that they desired. T221
75. Assistant Chief Tally was a credible and believable witness.

Testimony of Spencer Gray King, Jr.

76. The next witness called was Spencer Gray King, Jr. T229 King serves as the church organist for the First Presbyterian Church in Mocksville, where he has served for two and a half years. T262-63 King was employed with ALE from 1998 until 2010, as an Office Assistant IV. T230
77. King's position was an administrative type support position in the Agency. T230-31 Among other administrative duties, King "handled time entry and data entry for personnel time keeping duties." T231 King was the resident person regarding personnel issues and work time issues. T232
78. King worked with Boone for probably six years. T232 King described Boone as being "very well-liked by the public. He always did his job ... He met objectives." T233
79. Reviewing and working with the processing of weekly reports at ALE was a part of King's work. T233 King has observed the weekly reports of about every agent in ALE. T233
80. King explained that assistant supervisors direct some sort of modification to weekly reports on a "pretty frequently" basis." T233-34 King observed a supervisor direct a change to a weekly report with the change resulting in a result that was not accurate. T234
81. King testified that there were agents who from time to time would work from their home as opposed to their assigned work offices. T234
82. King gave an example of an agent named Allan Roberts, who had listed in his weekly report that he had worked from home, and Supervisor Fields instructed King to make a change to something that was not true, to have the report changed and have Roberts sign it. T236 This resulted in an inaccurate and untruthful weekly report. T236-237
83. The changing of weekly reports occurred with some frequency. T237

84. King explained that Supervisor Fields made changes in weekly reports every two to three weeks. T238 Directions were given to change weekly reports providing untruthful information. T239-240

85. King explained that the weekly report was not intended to be a specific, precise time sheet. T240 Rather, the weekly report "was intended to primarily track what agents were doing as - - by way of inspections and how many tickets they had written of a certain kind, sell to underage, sale of tobacco ... and that primarily was what - - what that was intended for." T241

86. King had discussions with colleagues that other supervisors in other areas were also making changes to weekly reports resulting in inaccurate information. T242

87. King testified regarding the practice within ALE where agents from time to time would conduct personal errands during their work day. T242

88. King testified that there were a lot of written ALE policies that were not enforced, or selectively enforced. T244 Those practices varied from supervisor to supervisor and from headquarters to headquarters. T244

89. King explained that the weekly report form, AL4, was not used to determine how much time an agent has worked so that they could get paid. T250 The AL4 weekly report form "does not generate payroll for the state." T251 "Payroll was generated by an assumption that one hundred sixty-three hours ... would be worked in a pay cycle." T251

90. Mr. King was a credible and believable witness.

Testimony of Steve Boone

91. Steve Boone is 52 years old, resides in Mt. Airy and graduated from high school in 1978. T286 Boone attended Surry Community College and later Gardner Webb University and graduated there with a Bachelor of Science Degree in Criminal Justice Administration. T287 He is currently working on a Master's Degree. T287 Boone was employed as an Emergency Medical Technician in Surry County and began in 1979. T287 He attended paramedic school and worked as a paramedic in Surry County for 12 years. T287 Following that, he served as a Deputy United States Marshall. T287

92. Boone has been married for twenty five years to Marion Boone; they have three children, ages 15, 13 and 11. Boone's wife is an attorney, in private practice and has been an attorney for about 26 years. T288 Boone has lived in Surry County since 1979. T288

93. Two of Boone's three children have ADHD. T288-89

94. Boone began service with the North Carolina Alcohol Law Enforcement Agency in 1994. T289 He completed the ALE specialized training academy. T289

95. Boone received his law enforcement certification in 1994. T289 There has never before been any adverse action taken against Boone's law enforcement certification. T290

96. Exhibit 1 is a job description for an alcohol law enforcement agent. T291 Boone explained that ALE agents are assigned a geographical area and their responsibilities were to handle the alcohol, drugs, prostitution, gambling and those types of activities. T293 ALE agents investigate all of the administrative work for the ABC Commission. T293 ALE agents are involved in permitting and investigating applicants for alcohol permits, and also investigate locations. T293 ALE agents handle complaints in the alcohol establishments and work closely with police departments and sheriff departments to provide them assistance. T293 ALE agents write violation reports, prepare felony reports for the District Attorney's offices and testify. T294

97. Boone was involved in providing training for the western part of the state, from Greensboro west. T295 Boone traveled all over the state teaching, along with the basic ALE school. T295

98. Boone's geographical area of assignment included Agent Shon Tally's area when he was out on special assignment for five months. T295 There were nine counties in Boone's district, and when Tally was away on special assignment, Boone had to work those counties as well, which were Wilkes County and Allegheny County. T295-296

99. Tally's special assignment for five months began in January, 2008. T296

100. In the year 2008, the counties that Boone was expected to regularly cover were Surry and Yadkin. T296 In January 2008, Boone picked up Wilkes and Allegheny because of Tally's special assignment, which therefore doubled Boone's work load. T297

101. Of Boone's total duties and responsibilities, he estimated that approximately 30 percent of his duties involved administrative work. T299 A study had been done indicating that 37 or 38 percent of ALE agent duties were administrative in nature. T299

102. The headquarters of the District to which Boone was assigned was in Hickory. T300 The approximate distance from Dobson to Hickory was more than 70 miles. T300-301

103. Up until November 2007, ALE agents worked in their homes. T301 Additionally, the State Bureau of Investigation and Wildlife always worked out of their homes. T301

104. In 2004, Boone remodeled his home and made a decision to create a special office in his home for purposes of doing his job for ALE. T301 Boone equipped his home office with the traditional things that would be in an office. T302 ALE had a printer and fax machine that was at Boone's home office. T302

105. When Boone was constructing his home office, he did several things with respect to the insulation factor in his home office. T302 Boone had the new home office "double-insulated"

and he put in a solid core door to reduce the sound. T302 Boone needed a quiet place to do his work. T302

106. Boone had difficulty concentrating and doing certain types of administrative work historically in his life. T303 Historically, Boone had to do things by seeking a quiet area for work, studying and concentration. T303 After finding a quiet place to work, that enhanced Boone's ability to perform his tasks. T303

107. As a part of his duties and responsibilities with ALE, Boone made himself available to the law enforcement community in Surry and Yadkin Counties on an as needed basis. T303 Boone made concerted efforts to communicate with alcohol permittees including providing them with his personal cell phone number. T304

108. Every law enforcement officer in the rural counties where Boone served and in the communication centers all had Boone's telephone number. T305 Boone received phone calls all the time at ten or eleven o'clock at night. T305 He got calls inquiring about statute numbers for alcohol violations and other matters. T305

109. Boone was frequently contacted by phone and otherwise on a "24-7" basis from other police officers and others in the Criminal Justice system. T306 Boone has been contacted while he was on vacation for requested assistance regarding ALE work and he responded and accomplished the work. T306

110. Boone was available to ALE when he was on scheduled days off and in situations when he was in travel elsewhere. T306-307 Boone described the work setting in the rural counties of his service as consisting of law enforcement officers who were "family" and that he would help other officers out. T307

111. In 2008, the number of alcohol outlets assigned to Boone was 200. T307

112. When Boone constructed his specially developed home office, both of his supervisors saw it. T308

113. Previously, it was common for ALE agents to work out of their homes because most other ALE agents did not have anywhere else to work from. T308 Internet service became an essential tool to be able to effectively perform his job. T308-309

114. In connection with work performed on vacation or days off, Boone never kept up with those hours. T309 Boone explained how he was called and stopped by people and asked various alcohol related questions. T309 Boone did not count that time and "there was a tremendous amount of it." T309

115. Some other ALE agents took calls beyond their assigned time of duty and others "were 8-to-5 agents." T310

116. In November, 2007, ALE agents were told that they could no longer work at their residence. T310 Therefore, Boone had to find a place to work because there was no way he could work out of his car with all of the volume of work that he was doing. T310 Boone contacted the Sheriff and inquired about an office at the Sheriff's Office. T310 The Sheriff indicated that "there was a cubicle downstairs" that Boone could use. T310-311

117. In considering his office space needs, Boone conferred with his supervisor, Mark Senter, about the office that Boone had in his building in Dobson. T311 Boone offered to his supervisor this office that had its own egress and where persons could come and go as they please with its own entrance. T311 The office available for Boone to use was at the other end of the building from his wife's law practice and was not connected to his wife's law office. T311

118. This office option offered to the ALE by Boone would not have cost the State any money and would have afforded Boone an opportunity to have a place to interview people and do his work. T312 Boone's supervisor would not permit Boone to use that office. T312 Therefore, Boone conferred with the Sheriff and he was ultimately afforded one of the cubicles to work out of. T312

119. Boone identified numerous administrative duties that he could successfully perform at home, which included making a work plan for the day, review emails, follow up on previous contacts with permittees and witnesses, read case files, review interviews, prepare reports of interviews, clean and maintain weapons. T315 Other administrative duties that he performed at home were preparing for court, preparing testimony, notifying witnesses of court dates, prepare for compliance checks, recruiting individuals for the compliance check program, research ABC laws, prepare weekly reports, purge files, clean his vehicle, prepare and edit lesson plans for the BLET program, prepare for the training classes, prepare other documents, prepare safety reports (because Boone was the safety officer for the district) and other duties. T317-318

120. It is generally expected that law enforcement officers need to keep their various analytical and investigative work confidential. T319

121. At some point, ALE agents were told not to work from home. T319 Rather, they were told to go to Wal-Mart or if you had computer work to do then do it at the public library. T319 Boone did not go to Wal-Mart or the public library for purposes of carrying out any of his confidential law enforcement work. T319

122. The travel from Dobson to Hickory ordinarily takes about three hours to travel round trip, depending on traffic. T320

123. Initially after Senter gave a verbal directive in November to not work from home, Boone stopped working from home. T321 In May, 2008, Boone received counseling for guidance, which is not a disciplinary action, as a way to address a problem. T321 Boone's problem was that he was not getting his complaints in the complaint tracking system; he was not getting that completed and updated like he should and Boone took that very seriously. T321 Boone was

able to use his home office to perform duties which enabled him to alleviate the problem that was identified at counseling. T323

124. Boone believed that it was necessary for him to work from home in order to meet the expectation in his official job description. T323

125. Boone's supervisors had a meeting on August 22, 2008, and an investigation began of him then and the investigation concluded on January 12, 2009, therefore consisting of 169 days of investigation. T326

126. On August 18, 2008, Boone became aware of information relating to activities going on at the ALE training program at the Justice Academy in Salemburg. T327 As a result of what he learned, he reported his concerns to both of his supervisors, Mark Senter and Rodney Beckom. T327 Boone had received communication from a trainee's father, who had indicated that his son had a broken leg and ALE was threatening to fire him if he did not quit and that his son wanted to file a worker's compensation claim but ALE would not let him. T328

127. Boone informed Beckom that he had information that hazing instances had occurred at the basic school. T328 Hazing included putting pacifiers in the trainees' mouths and telling them to suck it, making the trainees carry sippy cups into the chow hall, and that trainees were required to do some PT activities that were not helpful. T328 After reporting that to Senter and Beckom, Boone was never interviewed by anybody on behalf of ALE or the Commission regarding an inquiry. T329-330

128. Boone conferred with his family doctor, Dr. Charlotte Evans. T332 He had a conference with Dr. Evans, which was more focused on the needs of one of his children. T332 That led to a discussion about an examination of Boone regarding some of his behaviors. T333 Dr. Evans prepared documents which were communicated to Boone's employer. T333

129. Boone informed Roger Hutchings that he had been diagnosed with Adult Attention Deficit Disorder and that he had been placed on medication and was being treated for that. T333 The medication prescribed was Strattera. T333

130. Boone's employer was going to have him evaluated by a forensic psychologist at UNC, but ALE cancelled that because Boone was going to go to a pre-dismissal hearing. T341

131. Petitioner's Exhibit 2 was admitted into evidence, which was a performance rating document for Boone. T243

132. Petitioner's Exhibit 3 was admitted into evidence, which was a summary of email communications. T345

133. Petitioner's Exhibit 4 was admitted into evidence, which were Boone's discovery responses. T346

134. Petitioner's Exhibit 5 was admitted into evidence, which was the Respondent Commission's discovery answers. T346

135. Petitioner's Exhibit 8 was admitted into evidence, which were emails without commentary. T348

136. Petitioner's Exhibit 9 was admitted into evidence, which was a letter from Director Chandler dated November 3, 2008 thanking Boone for teaching at the Alcohol Law Enforcement Basic School. T349

137. Petitioner's Exhibit 10 was admitted into evidence, which was Boone's F-5B Form. T349

138. Petitioner's Exhibit 11 consisted of documents prepared by and executed by Boone's physician, Dr. Charlotte Evans. T350 Dr. Evans was Boone's treating physician during that period of time. T350 Dr. Evans' documents in Exhibit 11 were provided to Dr. Artigues for purposes of her forensic analysis. T350

139. Petitioner's Exhibit13 consisted of letters that were sent to Respondent Commission. T361

140. Petitioner's Exhibit 16 is a memorandum from Mark Senter dated June 9, 2008 regarding gas. Exhibit 16 was admitted. T364

141. Petitioner's Exhibit 17 is an agency document summarizing accomplishments for 2008. T364 Exhibit 17 was admitted. T365

142. Petitioner's Exhibit 20 reflected Boone's promotion to ALE Agent III, which was admitted. T368

143. Petitioner's Exhibit 21 was admitted into evidence, which was an email sent by Kelton Brown to all ALE personnel. T369

144. Petitioner's Exhibit 23 is an email from Roger Hutchings to Director Chandler and Deputy Director Kaylor, which was admitted. This email informed Hutchings that Boone had been diagnosed with ADD. T371

145. Petitioner's Exhibit 25 was admitted, which is a document demonstrating that Boone received a passing score for the position of Assistant Supervisor; the document was dated October 4, 2008. T371

146. Petitioner's Exhibit 30 was admitted, which was a memorandum from ALE Director Mike Robertson involving transportation. T374-375

147. Similarly, many exhibits were admitted by Respondent, and all of those admitted exhibits have been considered.

148. Boone testified regarding the ALE weekly reports. T376-378 A weekly report was not meant to be a timesheet. T377 The weekly report was primarily so the supervisor would have an idea of what an Agent was doing. T377 Further, there was information put on the weekly reports so that the legislature could track certain information. T377

149. A weekly report is a one page document where information is prepared and provided in the available space. T378 The information being included in the weekly report is a very abbreviated summary. T378

150. Boone prepared his weekly reports honestly and accurately to the best of his ability. T378 Boone did not attempt to deceive the agency in his weekly reports. T378 Boone intended the information used in his weekly reports in this case to be accurate. T379 An ALE Agent has discretion regarding how to deal with the meal breaks and 15 minute morning and afternoon breaks and how that is dealt with on a weekly report. T379 ALE Agents have discretion as to when they take their hour meal break. T379 The two 15 minute breaks can be taken any time. T379

151. Conducting personal errands during work time at ALE was permitted. T381 Work related calls would start before assigned shift of duty and calls would continue after conclusion of work duty. T381

152. It was permissible to conduct personal errands on-duty including when not on a lunch break or a morning or afternoon break. T381-382

153. Agent Boone and other colleague agents have run personal errands while on-duty. T382

154. Boone provided accounts of various allegations within the charge sheets. T385-406 Boone explained how he worked various times at home. He visited his wife's law office on occasion, where he made copies because ALE did not provide him with a copier and she allowed ALE to use the copier in her office. T392

155. Boone explained the activity on November 21, 2008, regarding shopping when he visited Wal-Mart, Lowes and Game Stop. He obtained some paint for an item in use in his ALE vehicle and he picked up a gift on the same trip. T403-404 This was a joint business and personal errand, within what he understood to be agency custom and practice where others have made trips for similar purposes. T404-405

156. On November 14, 2008, Boone expended substantial time returning an ALE vehicle to the District office. T405 Boone returned the official car to ALE, and had his wife follow to pick him up, which was a three hour trip. T406 He referenced returning the car on his weekly report, but did not claim the time, which was the time that he was using on the 21st. T406

157. Boone was familiar with the concept known "give an hour, take an hour" within ALE. T408

158. The goal and expectation was for agents to work 40 hours per week. T409 Boone consistently put in at least 40 hours of labor every week throughout the period of time in the Fall of 2008. T409 There were times when Boone may have considerably exceeded the 40 hours per week and didn't attempt to keep up with the time. T409 The return of the vehicle is an example of this. T410

159. Boone never intended to improperly take anything from his employer that he was not entitled to. T410 There was a lack of any criminal intent or any intent to wrongfully take anything from ALE.

160. Weekly reports are not specific time sheets. T415 The weekly report is a general outline of what an employee did. T416 There was not enough room for writing down everything that was done. T416

161. ALE agents do not get paid for comp time. T422

162. Boone explained how the weekly report was used and that it is "not a time clock" and that it was "looser..." T430-431 Boone explained how the ALE agent position was not an "eight-to-five job" and that agents were an agent "24/7." T434

163. Boone could not write down every time somebody called and calculate every call on every occasion that law enforcement was calling him. T434 Boone's returning of the car was an example of when he made reference to that on his weekly report that he brought the car back but did not record the time for. T437

164. With regard to the office at the building owned by Boone and his wife, Probation and Parole had been in that building for years. T439 Boone's wife's law office is located in the other side of the building but would not have been next to the office for ALE. T439 He would have been at the office at the opposite at the end of the building. T439

165. Boone was diagnosed with ADD on December 9, 2008. T440 Boone's daughter had been diagnosed with ADD in July, 2008. T440

166. Boone explained how he began his day, which would involve preparing for the day. T531

167. Boone was questioned about his activities for November 20, 2008. T531-533 His weekly report indicated that he had been doing administrative work. T532 Administrative work encompasses making a work plan for the day, reading emails, following up on previous contacts for permittees and witnesses, reading case files, review interviews and writing reports. T532-533 Boone also cleaned and maintained his weapons at his residence, worked on special assignments, prepared for court testimony, prepared for compliance checks, recruited qualified individuals to participate in the compliance check program, research ABC laws for permittees and others, prepared for training classes, completed reports for training classes. T534 Boone provided additional details regarding other administrative duties. T536-537 Administrative matters did not appear in weekly reports a lot of times. T539

168. Boone's case files were with him all the time, even at his house. T634

169. Boone explained how he and other agents could be at home during working hours as Supervisor Senter and others were at home all the time during working hours. T652

170. Boone had worked at home for 12 years the same way. T652 However, Senter told him that Ronnie Keylor didn't like Boone and that Boone should not get run over by the "bipolar express." T652

171. Boone further described the office building owned by he and his wife that was offered to ALE for use as Boone's local office. T664-668 Boone's wife's law office is under lock and key limited to her and staff. T666 The office that Boone had in mind for proposed ALE use would have been under separate lock and key. T666 The offices were totally separate. T666 There was no issue of joint or mixed use between the offices. T667 All of this information was made clear to Senter. T667

172. Boone had a conference with Roger Hutchings on December 3, 2008. T668 Boone made a request to Hutchings to be able to confer with the ALE agency doctor, Dr. Griggs. T668 Hutchings told Boone that he needed to go see his own family doctor. T668

173. Boone understood that documents that were created as a part of any criminal investigation were statutorily protected. T669

174. Boone's work computer was seized from him when he was terminated. T669 ALE turned Boone's email off so that he could not access any emails. T669

175. When Boone was working out of the Sheriff's Department, there was a dedicated telephone line for Boone's use. T675-676 Hutchings was made aware that there was a business line dedicated for Boone there. T676

176. Boone was never asked to take a polygraph examination regarding any of the alleged issues. T680

177. No representative of ALE ever asked Boone to pay any type of reimbursement to the Agency. T682

178. Boone did not have any financial deficiency or financial problem causing him to have a need to engage in any form of larceny. T682

179. Petitioner Boone was a credible and believable witness.

Testimony of Diane Konopka

180. The first witness called by the Respondent was Diane Konopka, Deputy Director of the Commission. T713 Respondent's Exhibit 3 is a Commission document setting forth the

certification history of Boone. T717 Respondent's Exhibit 4, Boone's Report of Separation, was admitted. T721

181. The Respondent Commission, through Konopka, contacted ALE to inquire about reviewing their file regarding Boone. T722 Respondent's Exhibit 1 is a summary memorandum that was prepared for the Probable Cause Committee for their review where the alleged issues were outlined. T723

182. Boone was fully cooperative with Konopka and her inquiry. T734 Boone called Konopka and inquired if there was anything that was needed from him. T735 Boone provided Konopka all the different types of information that she needed to properly complete her investigation. T735

Testimony of Deputy Director Mark Senter

183. Respondent's second witness was Mark Senter, Deputy Director with ALE. T741 Senter was District Supervisor for the Hickory office in 2007 and 2008. T742

184. Senter testified that there was an instance in 2007 or 2008 where Boone's reports were not being submitted on time and were incorrect. T750

185. There was a complaint received regarding Boone on September 18, 2008. T751 The complaint was forwarded to ALE headquarters and ended up with Deputy Director Roger Hutchings. T751

186. Senter testified that when he sent the personnel complaint regarding Boone, he was already aware of an ongoing investigation involving Boone, in which Boone had been under surveillance. T753 Senter explained that he had been summoned to headquarters to speak with the Deputy Director for Operations at the time. T754 The Deputy Director for Operations indicated to Senter that "Agent Boone was home when he was supposed to be working." T754 The Deputy Director for Operations at the time was Ronald Kaylor. T757

187. Senter referenced the minutes involving comments by Deputy Director Kaylor indicating: "Agents cannot work from home. Go to Wal-Mart, library, et cetera." T758

188. Senter testified that on January 15, 2008 and March 5, 2008 he told Boone that "couldn't do anything from home, couldn't do any work from home unless he had approval from myself or Assistant Supervisor Rodney Beckom . . ." T763

189. Senter explained that in a supervisors' meeting, which Boone attended on July 14, 2008, that he again reminded the attendees that working from home was prohibited. Senter also testified that he had previously reminded Boone of this. T765

190. Senter testified that Boone brought some concerns to him about the Training Academy at Salemburg, which involved concerns about treatment of the trainees; Senter did *not* do anything with that information provided by Boone. T804

191. Senter acknowledged that he did not know how the term “good moral character” is defined by the Sheriff’s Education and Training Standards Commission. T949

192. Senter offered a conclusory opinion that he did not believe that Boone has good moral character. T807 However, Senter acknowledged that he “really never got to know Steve real well on a - - on personal basis.” T841 Senter did not get to know Boone’s life history. T842 Senter was not aware of Boone’s church related activities. T842 Senter acknowledged that he was “not aware of extra-curricular activities” that Boone engaged in. T842 Senter was not aware of Boone’s medical history. T844 Senter acknowledged that he never got really close to Boone. T844 Senter did not have a valid or sufficient basis to properly assess all of the factors required for consideration in properly assessing moral character.

193. Ronnie Kaylor was the person that communicated to Senter and provided him the information that was included in the complaint and told Senter to fill out the AL-29 form. T854 Kaylor had the authority to fill out an AL-29 on his own. T858

194. Kaylor alleged that Boone was at home when he was supposed to be working. T857 Senter testified that Kaylor did not provide him with any evidence or documentation against Boone. T858 Senter did not ask his superior for the evidence that his superior may have. T858

195. Kaylor had the authority, on his own volition, to have conferred with Roger Hutchings, who is in charge of internal investigations, and he could have done that but did not. T859-860 Boone’s matter was the only occasion when Kaylor used the mechanism that he did to start a formal complaint with Senter’s assistance. T862

196. Senter described how he was summonsed to Raleigh by Kaylor to meet with him, and the two of them met. T863 Roger Hutchings was not in that meeting. T863 Senter met with Kaylor for thirty minutes to an hour and Senter did not make any notes. T865

197. Senter testified: “I told Steve Boone one time that every time I saw Ronald Kaylor, he asked about him [Boone], and I asked him if he ever did anything to piss him off.” T866 This evidence raises serious concerns about Kaylor’s objectivity and bias.

198. When Senter was asked if Kaylor wanted the tool of surveillance used on Boone, Kaylor responded “it would be tough to watch him.” T868

199. When Senter was asked did he essentially start the investigation of Boone or did Hutchings start the investigation, Senter responded “I don’t know.” T869

200. When Kaylor met with Senter, when Senter was summonsed to Raleigh, Senter was not told that surveillance had already been conducted on Boone. T870 Senter explained that Mr. Hales and Mr. Pace had already been on the job investigating Boone prior to his involvement conducting surveillance on Boone. T872 Thus, overlapping surveillance was conducted on Boone.

201. Kaylor had started a second surveillance with Pace and Hales that was unbeknownst to Senter. T872-873 Prior to Senter's involvement, he was not aware of what the other two investigators were doing. T873 Senter did not know when Roger Hutchings had become involved in the investigation. T873 Senter acknowledged that the thirty minute to one hour meeting in Raleigh that he was summonsed to attend could have simply been done over the telephone. T876
202. Senter and Beckom coordinated what they were doing regarding surveillance, but Senter did not receive any notes from Pace or Hales or any updates from Hutchings. T880
203. Agents were allowed to have a local field office in the counties where they were assigned. T888 Senter acknowledged that agents were "typically" allowed to have a field office if it was free. T888
204. The building owned by Boone and his wife that was proposed as Boone's local field office for free had two entrances. T890 Senter never went in that building. T890 Senter did not inspect it. T890 Senter never asked Boone for an opportunity to look at the building to see if met Senter's standard and suitability. T891
205. Senter acknowledged that any criminal cases would be maintained as confidential. T894
206. Senter acknowledged that the supervisory meeting minutes indicated that agents could go to the parking lot in Wal-Mart and sit there in their car and connect with their computer or go to the public library. T894 Senter acknowledged that there was various risks associated with an unsecured Wi-Fi and compromising the integrity of investigations. T895
207. The ALE policy that agents could no longer work from home was not a written policy. T898 ALE has policies and procedures to guide the behavior of its agents. T900
208. When Boone reported to Senter his concerns about the basic school in Salemburg on August 18, 2008, that got Senter's attention enough that he checked it out to see if there could be some criminal problem there and he looked up the statue. T902-903 Boone was concerned that someone had been hurt at the basic school. T903-904
209. In Boone's last evaluation, Senter gave him an overall good evaluation. T911
210. Boone was not identified or referred for the Agency's policy called PEWS, Personnel Early Warning System. T915
211. Senter acknowledged that Boone actively working to take corrective action to address the problem conflicting in his evaluation regarding being late on supporting documents. T921, 913
212. In connection with Boone's performance evaluations, Senter received counsel and advice from Kaylor about how Boone ought to be rated and evaluated on the final evaluation for 2008. T923 Senter had communications with Kaylor about that evaluation. T923 Senter was asked whether he recalled asking Kaylor if there was enough for the unsatisfactory evaluation of Boone

in all areas. T923 Senter admitted that he asked Kaylor, is there enough for this unsatisfactory evaluation on all areas. T925

213. Senter further admitted that he also said to Kaylor, should I down grade Boone in the “competencies?” T924-925 Senter admitted asking Kaylor before Senter had come up with all of his ratings is to whether there is enough for the unsatisfactory evaluation of Boone on all areas. T928

214. When Senter was asked was the mission of coming up with unsatisfactory in all areas accomplished, Senter responded by saying “I wouldn’t say it was a mission. Would that have been a result, probably so.” T937

215. Senter’s communications with Kaylor regarding the potential changing and down grading of Boone’s evaluation is suspect and suggests bias and unfairness to Boone. Kaylor was not Boone’s supervisor.

216. Senter testified that some chiefs and sheriffs had told him that Boone was doing a good job. T949 To earn a promotion in ALE, the employee has got to be doing a good job. T950

217. Boone had been promoted to ALE Agent III, and Senter made the recommendation for Boone in that regard. T950

218. In discussions with Boone, Senter has used the term “bipolar express” before. T951

219. Senter acknowledged that trainees at the basic school in 2008 were actually injured as result of having to crawl down on the asphalt. T955

Testimony of Roger Hutchings

220. The next witness called by the Respondent was Roger Hutchings, who was employed with ALE as the Deputy Director of Administration for Alcohol Law Enforcement. T974 When he was Deputy Director of Administration, he supervised the regulation of bingo, boxing, personnel matters and the budget. T974-975 Conducting internal investigations was a part of his duties. T975

221. The complaint regarding Boone was around the end of September, 2008. T976 The nature of the complaint or allegations was that he was not working the required hours and insubordination. T976 The personnel complaint, Exhibit 6, was received on September 22, 2008. T1026

222. Hutchings contended that the Agency’s IT section determined that there were only four or five emails during the relevant period that actually pertained to Boone’s work. T983

223. Hutchings explained that the Deputy Director of Operations was in a separate area and did not duplicate the areas of his coverage. T1022-1023 The Deputy Director of Operations would not be involved unless they asked for his assistance. T1023

224. ALE had another employee, Ken Pike, who was involved in internal investigations and worked for Hutchings. T1025

225. Hutchings testified that the overall goal of an internal investigation is to discover all of the facts whether they might be facts that might incriminate the employee or facts that might exonerate the employee. T1028 There were no limitations placed upon the scope of the investigation to be conducted by Hutchings involving Boone. T1028

226. Hutchings indicated that Senter was not an investigative agent for him in this Boone matter. T1035

227. Hutchings testified that Boone fully cooperated with him in providing Boone's phone records and that Boone cooperated fully throughout the investigation. T1039-1040

228. Hutchings did not obtain the phone records retrieved from the phone number at the Sheriff's office when Boone was there. T1041

229. Hutchings's testimony revealed numerous investigative failures, omissions and lack of completeness. In examining work performance, work conduct and credibility, an internal investigation would examine those issues. T1044 One of the things that would be done in the investigation would be to get some idea as to what the assigned work load is for the agent. T1044 Hutchings indicated that he did not learn in the investigation that Shon Tally had been given an assignment in Special Operations and that his area of coverage was assigned over to Boone. T1044

230. Hutchings acknowledged that Boone told him that on some occasions when he was at home, he would in fact use his home phone. T1046 Hutchings acknowledged that they did not make any effort to retrieve Boone's home phone records. T1046 The home phone records were not retrieved and the investigation did not produce any evidence as to the quantity of those calls. T1047

231. Hutchings acknowledged that no one ever interviewed Mrs. Boone to ask her what her observations were that Boone was doing during any of the times when he was at home. T1050 No one at ALE ever interviewed Mrs. Boone about anything. T1050

232. One of the investigative tools that is available to ALE is the polygraph. T1050 ALE had qualified polygraph examiners that had been used in other investigations, but ALE made no request for Boone to be polygraphed. T1051

233. Hutchings never asked Boone what he was specifically doing at his wife's law office when he was there on occasion under surveillance. T1053

234. With regard to emails in the relevant time period for Boone, ALE created a summary for a 21 day period. T1053-1054 There were 18 emails in a 21 day period. T1054 Kelton Brown was the agency IT person and they requested him to obtain the information regarding the emails. T1058

235. When Hutchings was reviewing the email summary document, he was asked about the indication in the emails as “GMT” as to whether that means Greenwich Mean Time and he responded “probably” but further indicated that he did not know what Greenwich Mean Time is. T1059 Hutchings further testified that he did not know if the emails were broken down not by Eastern Standard Time or by Greenwich Mean Time. T1059-1060 He acknowledged that there was an indication on each of the email references as being “GMT.” T1060

236. Hutchings acknowledged that all of the email times are in Greenwich Mean Time according to the list, and that was the list that he used for purposes of his email analysis. T1060 Hutchings indicated that he was sure that he would have asked Kelton Brown, the IT person, what GMT meant. T1065 Thus, the ALE email analysis was palpably erroneous because it was six hours off of Eastern Standard Time.

237. ALE did not have Brown or anyone else with IT expertise conduct an analysis of Boone’s hard drive on his work computer to see if there were any reflections there of activities associated with work. T1066

238. Hutchings recalled Boone presenting a letter from Dr. Evans and her diagnosis of him was Adult Attention Deficit Disorder. T1071 However, Hutchings did not make any inquiry to Dr. Evans regarding her diagnosis or how she thought the prognosis was going to be. T1072

239. Hutchings had a general understanding of ADD as being that the person has a hard time concentrating or applying themselves. T1073 ADD could affect one’s ability to concentrate and do their work. T1073 Hutchings acknowledged that ALE could have maintained Boone on suspension without pay until a medical condition could have been fully explored. T1076

240. Hutchings referenced the alleged instances involving the reporting time that Boone left Hillybilly Bar. T1087-1088 There was a contention that Boone had inaccurately stated when he had left there. T1087 Boone said it was around midnight and the surveillance showed that he was back home at eleven o’clock. T1087 That charge against Boone was withdrawn by ALE because they did not have a substantiated basis for it. T1087

241. The underlying investigation of Boone was not thorough or complete. The investigation did not provide all necessary evidence.

Testimony of Rodney Beckom

242. The next witness called by the Respondent was Rodney Beckom, who served in the Hickory District office in 2008 and 2009. T1095 Beckom was an Assistant Supervisor. T1095

243. Respondent’s Exhibit 22 is a counseling for guidance that Beckom issued to Boone, which is a non-disciplinary counseling for guidance in a particular area. T1096 The counseling was in regards to meeting deadlines for paperwork. T1096

244. On December 13, 2007 Beckom drove to Dobson and contacted Boone who was at home. On this occasion Beckom advised Boone that, "He could not work out of his house or telecommunicate without approval". T1104

245. Beckom acknowledged that Boone told him that he had to work out of his house because of computer access and it was the easiest place to have quiet to concentrate. T1124

246. Beckom acknowledged that on occasions when Boone's vehicle was at this house, that it was not known what he was doing in his house. T1130

247. Beckom further stated that, after seeing what he had seen regarding Boone continuing to work at home after being ordered not to, that he could not trust him. T1114

248. Beckom conceded that he did not doubt that other ALE agents, including supervisors, did not go home from time to time throughout the work day. T1131 Beckom and Senter have gone home during the work day. T1132 Beckom acknowledged that it was really not unusual for an agent to be at home. T1132

249. Beckom acknowledged that an agent was given complete flexibility as to when they could take their lunch break. T1132

250. Beckom acknowledged that conducting personal errands during the official work schedule "happens" within ALE. T1134 Beckom explained that "*the policy says as long as it doesn't interfere with your duties.*" (emphasis added) T1135 There was no evidence that Boone's personal errands interfered with his duties. T1135

251. Beckom had discussions with Kaylor regarding Boone. T1136 Kaylor was wanting feedback to know what was going on with the surveillance. T1136

252. In summary, the Respondent's evidence showed that Petitioner was at home during the time he recorded he was working. Those dates were as follows:

26 August 2008
27 August 2008
9 September 2008
11 September 2008
29 September 2008
30 September 2008
3 October 2008
13 October 2008
17 October 2008
20 October 2008
7 November 2008
8 November 2008
20 November 2008
21 November 2008

EVIDENCE/FINDINGS FROM KEY EXHIBITS

Respondent's Exhibits

253. Respondent's Exhibit 4 is the "Report of Separation" for Boone executed by the ALE Director on March 27, 2009. The form indicated that Boone was dismissed from ALE but in the area designated on the first page with numerous lines where the "reasons" for termination was listed, ALE stated "Steven Boone was terminated on March 20, 2009." Therefore no reasons, facts or allegations were set forth. On the second page of the form, ALE had the opportunity to not recommend Boone's employment elsewhere as a criminal justice officer. However, ALE *did not* check the box associated with that type of negative recommendation and therefore did not make any negative recommendation. Further, ALE did not include any comments in the specially designated area for agency's comments.

254. Respondent's Exhibit 7 is a memorandum dated September 30, 2008 from Ronald Kaylor to "file" whereby Kaylor alleged that "it has come to the attention of Supervisor Senter that Agent Boone does not work the required 40 hours per week. Supervisor Senter conducted an inquiry into this matter and confirmed in reports and notified his findings to the headquarters staff." Senter testified that Kaylor summonsed him all the way to Raleigh for a meeting that lasted some thirty minutes to an hour whereby it was Kaylor who alleged that Boone was not working the required hours.

255. All of Respondent's admitted exhibits have been considered.

Petitioner's Exhibits

256. Petitioner's Exhibit 1 identifies the official job duties and responsibilities for an ALE agent. The job description identifies numerous and broad duties and responsibilities including extensive administrative duties and written communication duties.

257. Petitioner's Exhibit 2 is the performance appraisal of Boone for February, 2008, these official performance ratings indicated that Boone either met or exceeded performance expectations in every area except one which was "administrative reporting" where Boone was observed as having been late on reports but also that "Boone had no reports containing significant error."

258. Petitioner's Exhibit 3 is a listing of various emails where Boone subsequently explained background and facts relating to those emails.

259. Petitioner's Exhibit 4 is Petitioner's responses to Respondent's discovery requests whereby Petitioner answered various questions relating to the facts and circumstances of the allegations.

260. Petitioner's Exhibit 5 is Respondent's answers to Petitioner's discovery requests.

261. Petitioner's Exhibit 7 is Boone's weekly reports that were disclosed to Boone.

262. Petitioner's Exhibit 8 is pertinent 2008 emails regarding working at home that were not supplemented with explanations by Boone.

263. Petitioner's Exhibit 9 is a memorandum from ALE Director Chandler to Boone dated November 3, 2008, commending him for his performance at the 25th ALE School.

264. Petitioner's Exhibit 10 is Boone's Report of Separation executed by ALE, where ALE did not check the box indicating a negative reference elsewhere for Boone.

265. Petitioner's Exhibit 11 is medical records provided by Dr. Charlotte Evans of the Foot Hills Family Medicine Office in Elkin regarding Boone. Dr. Evans' records demonstrate the course of actions as she treated Boone in 2008 and 2009 and her diagnosis of Boone as having Adult ADD. Dr. Evans diagnosed Boone with ADD on December 9, 2008.

266. Dr. Evans explained that "people with ADD try to compensate with the disability in many ways at work, and when those attempts fail, I do see that many of them try to find themselves quiet, distraction free environments to work in, using techniques that have worked for them for many years outside the workplace." Dr. Evans further explained that "I do not always think people with ADD understand what is wrong, and they often do not ask for accommodation; they simply come up with ways to compensate on their own, this does often get people in trouble in the workplace." Dr. Evans further explained that "many people do not know what is wrong and do not seek help."

267. Petitioner's Exhibit 12 is the forensic psychiatric evaluation report of Boone by Dr. Moria Artigues, M.D. Dr. Artigues observed that Boone was suffering with untreated ADD during the relevant time, that his ability to perform the program management portion of his work was impaired. See report at 8. Dr. Artigues further explained that it is essential for an individual with ADD to have a distraction - free quiet environment in order to carry out computer related and paper work task to completion. A person with ADD is unable to complete such task in any other type of environment. This is an accommodation that Agent Boone made for himself by working from home. Dr. Artigues further explained how ADHD/ADD is a disabling condition as described under the Americans with Disabilities Act.

268. Petitioner's Exhibit 26 is an email of December 31, 2008 from Director Chandler to Roger Hutchings and Ronnie Kaylor stating that "lets get together early Monday and make a decision about Boone."

269. Petitioner's Exhibit 31 is a copy of the official "Investigative Report" conduct on the Division of Alcohol Law Enforcement by the Office of the State Auditor, issued June, 2012.

Additional Findings of Fact

270. There is insufficient evidence to substantiate any larceny by Petitioner. Petitioner did not commit any larceny. The **trespassory** taking of the personal property of another person, a required element of this crime, was not proven.

CONCLUSIONS OF LAW

1. Both parties are properly before this Administrative Law Judge. Jurisdiction and venue are proper and both parties received proper notice of the hearing.
2. The North Carolina Sheriffs' Education and Training Standards Commission (hereafter the Commission) has certain authority 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 suspend, revoke or deny certification under appropriate circumstances with valid substantial proof of a rule violation.
3. 12 NCAC 10B.0301(a)(8) requires that justice officers certified in North Carolina shall be of good moral character.
4. The totality of the evidence demonstrates that Petitioner has been a person of good moral character and a dedicated professional law enforcement officer in North Carolina for many years.
5. Moral character is a vague and broad concept. E.g. *Jeffrey Royall v. N.C. Sheriffs' Education and Training Standards Commission*, 09 DOJ 5859; *Jonathan Mims v. North Carolina Sheriff's Education and Training Standards Commission*, 02 DOJ 1263, 2003 WL 22146102 at page 11-12 (Gray, ALJ) and cases cited therein. See *Mims* at page 11.
6. The United States Supreme Court has described the term "good moral character" as being "unusually ambiguous." In *Konigsberg v. State*, 353 U.S. 252, 262-63 (1957), the Court explained:

The term good moral character ... is by itself ... *unusually ambiguous*. It can be defined in an almost unlimited number of ways for any definition will necessarily reflect the attitudes, experiences, and prejudices of the definer. Such a vague qualification, which is easily adapted to fit personal views and predilections, *can be a dangerous instrument* for arbitrary and discriminatory denial ... (emphasis added).
7. Police administrators, officers and others have considerable differences of opinion as to what constitutes good moral character. *Royall* at page 13; *Mims, supra.* at page 12, Conclusion of Law 12. In *Mims*, the Respondent Commission offered the testimony of someone who claimed to be knowledgeable regarding moral character; he testified that there are six components to good moral character of law enforcement officers: trustworthiness, respect, responsibility, fairness, citizenship and being a caring individual. *Mims*, page 7 at Finding of Fact 48.
8. Because of these concerns about the flexibility and vagueness of the good moral character rule, any suspension or revocation of an officer's law enforcement certification based on an allegation of a lack of good moral character should be reserved for clear and severe cases of misconduct. *Royall, supra* at 14, *Mims, supra.* at page 12 and 13.

9. Generally, isolated instances of conduct are insufficient to properly conclude that someone lacks good moral character. See *Royall, supra.*; *In Re Rogers*, 297 N.C. 48, 58 (1979) (□whether a person is of good moral character is seldom subject to proof by reference to one or two incidents.□); *Daniel Brannon Gray v. N.C. Sheriffs Education and Training Standards Commission*, 09 DOJ 4364 (March 15, 2010; May, ALJ).

10. Under *In Re Rogers*, an instance of conduct amounting to poor judgment, especially where there is no malice or bad faith, would not ordinarily rise to the high level required to reflect a lack of good moral character. However, in this case, there were numerous direct orders of superior officers for the Petitioner not to work at home without approval; and fourteen (14) instances, as determined by the surveillance conducted by ALE, of failing to comply with these orders.

11. When there are this many instances of insubordination, it goes beyond the level of job performance, and questions the level of trust and responsibility that an individual may be afforded by fellow officers. For this reason, if for no other, the Petitioner's good moral character is challenged.

12. In *Daniel Brannon Gray v. N.C. Sheriffs Education and Training Standards Commission*, 09 DOJ 4364 (March 15, 2010; May, ALJ), the good moral character rule was interpreted. "Good moral character has been defined as 'honesty, fairness and respect for the rights of others and for the laws of state and nation.' " *Gray*, at page 18, Conclusion of Law 5, citing *In Re Willis*, 299 N.C. 1, 10 (1975). *Gray* further explained that "[g]enerally, isolated instances of conduct are insufficient to properly conclude that someone lacks good moral character. However, if especially egregious, even a single incident could suffice to find that an individual lacks good moral character in places [sic] of clear and especially severe misconduct," citing *In Re Rogers*, 297 N.C. 48, 59 (1979). Here, there were multiple instances of misconduct.

13. Police officers and others make occasional honest mistakes and sometimes exercise poor judgment. *Royall supra* at 15; *Andreas Dietrich v. N.C. Highway Patrol*, 2001 WL 34055881, 00 OSP 1039 (August 13, 2001, Gray, ALJ), ("Ideally, it is desired that law enforcement officers be near perfect; however, that is not a realistic standard").

14. In reviewing the evidence where character is "a direct issue in the case", 1 Brandis on North Carolina § 102, opinion testimony is much more freely admitted, both, to show good character and bad. In this case it is uncontroverted that Petitioner's reputation in his community was good; and there were many knowledgeable and respected members of the community who gave direct opinion testimony of his good reputation. However, none of these witnesses was aware of Petitioner's total disregard for the orders of his superior officers requiring him not to work at home. These specific instances of misconduct contradict the otherwise good reputation of the Petitioner. Our Supreme Court has concluded:

"In such cases, character may be proved, not only by reputation, but also by the opinions of witnesses who have first hand knowledge of it and by specific good or bad acts of the person whose character is in question." *State v. Taylor*, 309 NC 570, 576 (1983).

15. The elements of larceny are set out in Jessica Smith, *North Carolina Crimes*, at 324 (2012 7th ed.):

- (1) takes
- (2) personal property
- (3) in the possession of another *and*
- (4) carries it away
- (5) without the consent of the possessor *and*
- (6) with the intent to deprive the possessor of its use permanently
- (7) knowing that he or she was not entitled to it.

16. In *State v. Bowers*, 273 N.C. 652, 654, 161 S.E.2d 11 (1968), our Supreme Court defined felony larceny under N.C. G.S. 14-72:

“to constitute larceny there must be a wrongful taking and carrying away of the personal property of another without his consent, and this must be done with felonious intent; that is, with intent to deprive the owner of his property and to appropriate it to the taker's use fraudulently. It involves a **trespass** (emphasis added) either actual or constructive. The taker must have had the intent to steal at the time he unlawfully takes the property from the owner's possession by an act of trespass.”

17. The following cases review the elements of misdemeanor larceny, which are virtually the same except for the level of loss. See *State v. Perry*, 305 N.C. 225, 232, 287 S.E.2d 810, 815 (1982), overruled in part on other grounds, *State v. Mumford*, 364 N.C. 394, 699 S.E.2d 911 (2010); *State v. Kelly*, 75 N.C. App. 461, 464, 331 S.E.2d 227 (1985); *State v. Barbour*, 153 N.C. App. 500, 502, 570 S.E.2d 126 (2002).

18. No specific amount of money was ever identified or alleged in Respondent's evidence. Nothing was wrongfully taken. Nothing was carried away.

19. There was implied consent of the possessor, ALE, when ALE continuously paid Boone's salary and never requested reimbursement.

20. Boone had good faith beliefs that he was entitled to his salary based on the agency practices that he had seen for years. Further, compensating for a disability is good faith conduct that many resort to, according to Dr. Moira Artigues, to accomplish their jobs. T101

21. “A person who honestly believes he or she is entitled to taken property is not guilty of larceny, even if this belief is wrong.” See Smith, *North Carolina Crimes*, citing *State v. Booker*, 250 N.C. 272, 108 S.E. 2d 426 (1959), overruled in part on other grounds, *State v. Barnes*, 324 N.C. 539, 540, 380 S.E. 2d 118 (1989). Boone had a good faith belief that he was entitled to his salary, and therefore did not commit larceny.

22. In *State v. Kelly*, 75 N.C. App. 461, 464, 331 2d 227 (1985), overruled in part on other grounds, *State v. Mumford*, 364 N.C. 394, 699 S.E.2d 911 (2010), the Court of Appeals explained that “a key element of larceny is that the property be wrongfully taken without the

owner's consent. If the property was initially obtained with the consent of the owner, then there can be no larceny.” Here, there was no evidence of wrongful intent. Here, the owner, ALE, impliedly consented for Boone to possess his salary - and indeed *kept paying him* while investigating him working from home. Thus, ALE impliedly consented for Boone to receive the salary. This evidence further defeats Respondent’s larceny charge.

23. In *Lisa Michelle Thomas v. N.C. Sheriff’s Education and Training Standards Commission*, 11 DOJ 6784, the petitioner was accused of submitting falsified time sheets, thus obtaining salary that she had not earned. Administrative Law Judge Augustus B. Elkins, II found that the petitioner did not knowingly take the property of her employer with intent to steal at the time she signed the incorrect time sheet or received pay stemming from that time sheet. The same is true here.

24. Judge Elkins in *Thomas* relied upon appellate case law that “the taker must have had the intent to steal at the time he unlawfully takes the property from the owner’s possession.” *Thomas* at page 4. There was no evidence that Boone intended to steal anything as he served his employer on a literal 24/7 basis, as explained by District Attorney Bowman, Magistrate Marion, Sheriff Atkinson, and others.

25. The larceny charges against Boone fail for numerous reasons. There was no evidence of any criminal intent. Boone acted in good faith and in reliance upon his legitimate medical needs to engage in some limited work from home in order to meet his job duties and responsibilities.

26. Boone also acted pursuant to long-time agency history and custom of looseness in completing the necessary work hours, in an environment of elastic verbal policies. However, it cannot be ignored that Petitioner repeatedly failed to obey orders not to work at home.

27. Boone did not deprive ALE of any compensation that he did not have a good faith basis that he was entitled to.

28. Boone’s actions in resorting to a home office to properly complete his work tasks and compensate for his disability is not a form of larceny or a means to commit larceny. Boone frequently worked off the clock and for extensive times that were not counted.

29. Public employees frequently act in accordance with agency practices and customs because employees can literally see those practices and customs at work every day. Vague and ill-defined policies, particularly vague verbal policies as in this case, may create various problems. See *Michael Faison v. N.C. Department of Crime Control*, 11 OSP 08850, where Judge Lassiter issued a decision including extensive analysis of vague agency policies. There, the same employer’s undefined cell phone usage policy was the source of the agency’s arbitrary termination decision.

30. The evidence does not establish that Petitioner committed any larceny. The evidence does not demonstrate that there was substantial evidence of each of the required elements of larceny. Petitioner did not have any criminal intent to steal anything and did not steal anything. Petitioner had an honest and good faith belief that he was entitled to the salary that he was paid.

31. The conundrum created by the evidence is not whether the Petitioner had the intent to steal from the state by reporting that he was working when in fact he was not working, because the majority of the instances of misconduct shown by the surveillance do not attempt to show what he was doing within the confines of his home. Petitioner testified that he was “working”. However, even if, *arguendo*, he were working, he was still defiant of the direct orders prohibiting him from working at home. In a quasi para-military organization such as ALE, this is contrary to the trust and responsibility that individuals within these agencies require.

PROPOSAL FOR DECISION

BASED UPON the foregoing findings of fact and conclusions of law, it is hereby proposed that the North Carolina Sheriffs Training and Standards Commission find that there has been no rule violation concerning the allegations of larceny. However, because of Petitioner’s years of credible service, and his otherwise good reputation, *vis-à-vis* his failure to obey orders that he refrain from working at home, it is the recommendation of the undersigned that Petitioner’s certification be suspended, and that the Commission consider suspending this suspension under supervision of a period of probation.

NOTICE AND ORDER

The Sheriffs' Education and Training Standards Commission is the agency that will make the Final Decision in this contested case. As the final decision-maker, that agency 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 pursuant to N.C. Gen. Stat. § 150B-40(e).

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

This the 18th day of July, 2013.

J. Randall May
Administrative Law Judge