

STATE OF NORTH CAROLINA
COUNTY OF ALEXANDER

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
12DOJ05145

<p>DUSTIN WILSON GRANT</p> <p>Petitioner,</p> <p>v.</p> <p>NC SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION</p> <p>Respondent.</p>	<p>PROPOSAL FOR DECISION</p>
--	-------------------------------------

On October 4, 2012, this case was heard by the undersigned by designation and appointment under Article 3A, Chapter 150B of the North Carolina General Statutes.

APPEARANCES

Petitioner: Dustin Wilson Grant, Pro Se

Respondent: William P. Hart, Jr., Assistant Attorney General

ISSUES

Whether Petitioner, after the date of his initial justice officer certification, committed the Class B misdemeanor offense of Harassing Phone Calls on August 20, 2011, in violation of N.C.G.S. § 14-196.

Whether Petitioner lacks the good moral character required of a justice officer, such that he fails to meet the minimum standards for certification under Respondent's rules.

Whether any sanction should be imposed by Respondent against Petitioner's justice officer certification.

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned makes the following Findings of Fact. In making the Findings of Fact, the undersigned has weighed all the evidence and has assessed the credibility of the witnesses by

taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witnesses; any interest, bias, or prejudice the witness may have; the opportunity of the witness to see, hear, know, or remember the facts or occurrences about which the witness testified; whether the testimony of the witness is reasonable; and whether the testimony is consistent with all other believable evidence in the case.

FINDINGS OF FACT

1. Both parties received notice of hearing by certified mail more than 15 days prior to the hearing and each stipulated on the record that notice was proper.
2. The North Carolina Sheriffs' Education and Training Standards Commission (hereinafter referred to as "the Commission") 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 deny, revoke, or suspend such certification.
3. Petitioner held certification as a justice officer through the Alexander County Sheriff's Office during the relevant dates in question. Petitioner also held certification with the Criminal Justice Education and Training Standards Commission through the Catawba Police Department.
4. As of August 20, 2011, Petitioner also was employed as an animal control officer with the town of Newton, N.C, which was not a certified law enforcement position.
5. The facts asserted as substantiating the first issue presented in this case are the same or substantially similar to those which were presented before the District Court, Catawba County, in Jenna M. Arsenault v. Dustin Grant (11 CVD 2592), wherein Arsenault filed a complaint and motion for domestic violence protective order against the defendant Dustin Grant, who is the petitioner in the instant case. Petitioner was afforded an opportunity to appear and contest the issues litigated in Arsenault v. Grant. A Domestic Violence Order of Protection ("DVOP") was entered against Petitioner in the District Court for Catawba County on September 27, 2011.
6. Through the DVOP, the Court found that Petitioner placed Arsenault "in fear of continued harassment that rises to such a level as to inflict substantial emotional distress." The court adopted by reference paragraph number four of Arsenault's complaint, as consistent with Arsenault's testimony, which provides in pertinent part as follows [sic throughout]:

The defendant has . . . placed me . . . in fear of imminent serious bodily injury or in fear of continued harassment that rises to such a level as to inflict substantial emotional distress . . . in that "fear of continued harassment. Up to and on Saturday August 20, 2011. Showing up at my residence uninvited on several different occasions. [B]anging on windows and doors. Calling upwards of 27 times in one hour. On August 20, 2011 Mr. Grant attempted to hit my vehicle while leaving the Hickory Tap Room, yelling [and]

screaming outside followed me home. Attempted to fight, refused to leave. Had to call HPD. HPD advised him to discontinue calling he continues calling, shows up where I am frequently[.]”

7. Petitioner, by these actions, telephoned Arsenault repeatedly on August 20, 2011, with the purpose of abusing, annoying, harassing, and/or embarrassing Arsenault.
8. Because of the events on August 20, 2011, Petitioner thereafter was subject to internal investigation by the Town of Newton. Kenneth Yarborough, then a senior officer with the Newton Police Department, conducted the investigation. Officer Yarborough interviewed Petitioner three times regarding the events of August 20, 2011. During the first two interviews, Officer Yarborough believed Petitioner was not being truthful regarding two relatively minor points of fact. When Officer Yarborough confronted Petitioner during the third interview, Petitioner admitted that he had not told the truth, shrugged his shoulders, and laughed.
9. After the internal investigation was concluded, Petitioner was terminated from his employment with the Town of Newton. Petitioner also was terminated from his employment with Catawba Police Department. As of the date of the hearing, Petitioner was not employed in any law enforcement capacity.
10. Petitioner presented no evidence of extenuating circumstances surrounding his commission of Harassing Phone Calls or with respect to his moral character.
11. The undersigned takes official notice of relevant and applicable rules for the Commission as contained in Title 12, Chapter 10B of the North Carolina Administrative Code, as well as N.C.G.S. § 14-196.
12. 12 NCAC 10B .0204(b)(2) states that the Sheriffs’ Commission shall revoke the certification of a justice officer when the Commission finds that the certified officer:
 - (b)(2) fails to meet or maintain any of the employment or certification standards required by 12 NCAC 10B .0300.
13. 12 NCAC 10B .0301 sets forth the minimum standards for justice officers. 12 NCAC 10B .0301(a)(8) requires that every justice officer employed or certified in North Carolina shall be of good moral character as defined in: In re Willis, 299 N.C. 1, 215 S.E.2d 771, appeal dismissed, 423 U.S. 976 (1975); State v. Harris, 216 N.C. 746, 6 S.E. 854 (1940); In re Legg, 325 N.C. 658, 386 S.E.2d 174 (1989); In re Applicants for Licensure, 143 N.C. 1, 55 S.E. 635 (1906); In re Dillingham, 188 N.C. 162, 124 S.E. 130 (1924); State v. Benbow, 309 N.C. 538, 308 S.E.2d 647 (1983); and their progeny.
14. 12 NCAC 10B .0204(d)(1) states that the Commission may revoke certification as a justice officer when the Commission finds that the applicant has committed or been convicted of:
 - (1) a crime or unlawful act defined in 12 NCAC 10B .0103(10)(b) as a Class

B misdemeanor which occurred after the date of initial certification.

CONCLUSIONS OF LAW

1. The parties properly are before the Office of Administrative Hearings.
2. Under the facts of this case, the actions of Petitioner support a conclusion that he lacks the good moral character required of law enforcement officers.
3. A preponderance of the evidence exists to conclude that Petitioner is in violation of Rule 12 NCAC 10B .0301(a)(8) and 12 NCAC 10B .0204(b)(2) by being untruthful during the internal investigation conducted by Officer Yarborough and by committing the Class B misdemeanor offense of Harassing Phone Calls.
4. Under 12 NCAC 10B .0205(3)(b), the sanction for a violation of 12 NCAC 10B .0204(b)(2) is revocation for an indefinite period, continuing for so long as the stated deficiency exists. As held in In re Dillingham, 188 NC 162, 124 S.E.130 (1924), when one seeks to establish a restoration of a character the question becomes one of “time and growth.” Petitioner demonstrated a lack of good character through his actions on August 20, 2011, and shortly thereafter. Petitioner presented no evidence tending to show that his good moral character has been restored since that date.
5. Under N.C.G.S. § 14-196(a)(3), it is unlawful for any person “[t]o telephone another repeatedly, whether or not conversation ensues, for the purpose of abusing, annoying, threatening, terrifying, harassing, or embarrassing any person at the called number.” On August 20, 2011, Petitioner committed this misdemeanor offense by repeatedly telephoning Jenna Arsenault with the purpose of abusing, annoying, harassing, and/or embarrassing her.
6. Petitioner has not contested that this offense constitutes a Class B misdemeanor under Respondent’s rules. Therefore, Petitioner’s justice officer certification is subject to revocation under 12 NCAC 10B .0204(d)(1). The period of this sanction is a period of not less than five (5) years under 12 NCAC 10B .0205(2)(a).

PROPOSAL FOR DECISION

Based upon the foregoing findings of fact and conclusions of law, it hereby is proposed that Respondent revoke Petitioner’s justice officer certification for an indefinite period for Petitioner’s lack of good moral character but not less than five (5) years for Petitioner’s commission of a Class B misdemeanor which occurred after the date of his initial certification.

NOTICE AND ORDER

The North Carolina 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 hereby is 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 25th day of November, 2012.

Beecher R. Gray
Administrative Law Judge