

**IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
12 DOJ 8049**

## **PROPOSAL FOR DECISION**

## APPEARANCES

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

## ISSUES

1. Whether Petitioner was convicted of the misdemeanor offense of resisting an officer in violation of section 14-223 of the North Carolina General Statutes?
2. What sanction, if any, should be imposed against Petitioner under the Respondent's rules?

## FINDINGS OF FACT

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3. Petitioner timely requested an administrative hearing, and the Commission thereafter requested the assignment of an administrative law judge to hear the contested case.

4. The Office of Administrative Hearings has jurisdiction over the subject matter and over both parties in this case, and venue is proper.

5. On or about January 8, 2012, Petitioner was charged in Cleveland County, N.C. with resisting an officer in violation of N.C.G.S. § 14-223. On or about February 13, 2012, Petitioner entered a plea of guilty for this offense. Petitioner therefore stands convicted of the offense in question, and does not contest this fact.

6. As defined in 12 NCAC 10B .0103(10)(b), the offense of resisting an officer in violation of N.C.G.S. § 14-223 is a Class B misdemeanor offense.

7. Because Petitioner was convicted of a Class B misdemeanor after the date of his appointment as a justice officer, his certification is subject to revocation or suspension for a period of no less than five years pursuant to 12 NCAC 10B .0204(d)(1) and 12 NCAC 10B .0205(2)(a). This sanction may be reduced by the Commission upon a showing of extenuating circumstances, pursuant to 12 NCAC 10B .0205(2).

8. Late in the year 2011, Petitioner's brother died from causes related to alcohol. There is a history of alcoholism in Petitioner's family. Petitioner himself drank regularly for several years leading up to January 2012. In the year 2006, he was charged with the offense of driving while impaired, for which he was later convicted.

9. On January 8, 2012, Petitioner had consumed about three-and-a-half beers in his garage when an argument began between his wife and 14-year-old son inside of their house. Petitioner intervened and argued with both his wife and his son, exchanging heated words which prompted his wife to place a 911 call.

10. When deputies from the Cleveland County Sheriff's Office arrived at the residence a short time later, Petitioner was still in an excited state. The deputies were unable to calm him down. Petitioner at one point asked to be taken to jail. He was arrested soon afterward.

11. Petitioner did not act out toward his family or the responding deputies with any physical aggression. He admits he was in the wrong both with his family and with the deputies. Since the incident, Petitioner has worked to stop his alcohol consumption and does not consume alcohol at present. He and his wife have now been married for twenty three years.

12. The undersigned finds that extenuating circumstances warrant the imposition of a lesser sanction against Petitioner's justice officer certification.

## **CONCLUSIONS OF LAW**

1. Both parties are properly before this Administrative Law Judge and jurisdiction and venue are proper.

2. The North Carolina Sheriffs' Education and Training Standards Commission has the authority granted under Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B, to certify justice officers and to deny, revoke or suspend such certification.

3. Pursuant to 12 NCAC 10B .0204(d)(1) the Commission may revoke, deny, or suspend the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer has been convicted of a criminal offense defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor and which occurred after the date of initial certification.

4. Pursuant to N.C.G.S. § 14-223, 12 NCAC 10B .0103(10)(b), and the Class B Misdemeanor Manual adopted by the Respondent, the crime of resisting an officer constitutes a Class B misdemeanor. Respondent has met its burden of proving Petitioner was convicted of a Class B misdemeanor offense while holding certification as a justice officer.

5. The Commission may revoke Petitioner's justice officer certification for a period of not less than five years. Based on the extenuating circumstances presented, the Commission may reduce or waive this period of sanction or instead impose a period of probation.

## **PROPOSAL FOR DECISION**

Based on the foregoing STIPULATIONS, FINDINGS OF FACT and CONCLUSIONS OF LAW, the undersigned recommends the Commission revoke Petitioner's justice officer certification for a period of no less than five years, but that the Commission suspend this sanction on condition that Petitioner successfully complete a two-year period of probation.

## **NOTICE**

The Agency making the final decision in this contested case is required to give each party an opportunity to file Exceptions to this Proposal for Decision, to submit Proposed Findings of Fact and to present oral and written arguments to the Agency. N.C.G.S. § 150B-40(e).

The Agency that will make the Final Decision in this contested case is the North Carolina Sheriffs' Education and Training Standards Commission.

This the 18th day of January, 2013.

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Donald W. Overby  
Administrative Law Judge

On this date mailed to:

Phillip Eugene Dendy  
211 Stacey Street  
Lawndale, NC 28090  
Petitioner

William P Hart  
Assistant Attorney General  
NC Department of Justice  
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Attorney - Respondent

This the 10th day of May, 2013.

  
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