

STATE OF NORTH CAROLINA  
COUNTY OF CHEROKEE

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
13DOJ11694

<p>LOGAN ROY CLONTS PETITIONER,</p> <p>V.</p> <p>N C SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION RESPONDENT.</p>	<p><b>PROPOSAL FOR DECISION</b></p>
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This matter came on for hearing before Administrative Law Judge J. Randall May on August 5, 2013, in Waynesville, North Carolina.

**APPEARANCES**

Petitioner: David P. Ferrell, Esq.  
Vandevanter Black LLP  
Post Office Box 2599  
Raleigh, North Carolina 27602-2599  
Attorneys for Petitioner

Respondent: Matthew L. Boyatt  
Assistant Attorney General  
NC Department of Justice  
9001 Mail Service Center  
Raleigh, NC 27699-9001  
Attorneys for Respondent

**ISSUES**

1) Is the Respondent's proposed revocation of Petitioner's certification for the commission of the Class B misdemeanor offense of assault on a female supported by a preponderance of the evidence?

2) Did Petitioner fail to provide proper notice of criminal charges to the Respondent?

## STATUTE AND RULES IN ISSUE

N.C. Gen. Stat. § 150B  
12 NCAC 10B.0204(d)(1)  
12 NCAC 10B.0204(b)(2)

THE FINDINGS OF FACT are made after careful consideration and observation of the sworn testimony of the witnesses presented at the hearing, either by their audio and/or video presentation and the entire record in this proceeding. 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 witness; any interests, bias, or prejudice the witness may have; the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified; whether the testimony of the witness is reasonable; and whether the testimony is consistent with all other believable evidence in the case. From the sworn testimony and the admitted evidence, or the lack thereof, the undersigned makes the following:

### FINDINGS OF FACT

1. Petitioner Logan Roy Clonts (“Petitioner” or “Clonts”) has been certified as a deputy sheriff since November 7, 2011. On July 29, 2012, Petitioner was employed by the New Hanover County Sheriff’s Office as a detention officer.

2. On or about March 20, 2013, Petitioner was notified that the Respondent North Carolina Sheriffs’ Education and Training Standards Commission (“Respondent” or “Commission”) found probable cause exists to believe his certification as a justice officer should be revoked for a period of five years.

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. On July 29, 2012, Petitioner was living in New Hanover County in an apartment he shared with Chanel Nixon (“Ms. Nixon”). Although Ms. Nixon and Petitioner had once been engaged, they were no longer involved in a romantic relationship on July 29, 2012. Petitioner was hoping they would get back together in a romantic relationship.

5. The evidence shows that the apartment that Petitioner and Ms. Nixon shared was in Petitioner’s name, with Ms. Nixon paying little to no rent and only one-half of the utility bills. As a condition of Ms. Nixon’s staying at the apartment, Petitioner asked Ms. Nixon that she have no male visitors at the apartment.

6. On July 29, 2012, Petitioner discovered that Ms. Nixon had a male visitor in her bedroom.

7. In a heated discussion outside Ms. Nixon’s room about the man hiding in Ms. Nixon’s room, Ms. Nixon hit Petitioner in the jaw.

8. Petitioner then went back downstairs. A short while later, Petitioner went upstairs to speak to Ms. Nixon again about the man hiding in her room.

9. After a heated discussion, Petitioner turned to go downstairs. Ms. Nixon began taunting him about the man hiding in her room.

10. Petitioner went back upstairs, with the intent to remove the man from his apartment.

11. Although Petitioner does not recall if the door to Ms. Nixon's room was locked or unlocked, Petitioner kicked Ms. Nixon's bedroom door, separated it from the frame, and entered Ms. Nixon's bedroom to remove the male visitor from the apartment.

12. Petitioner immediately reached for the closet door which was right next to the door to Ms. Nixon's room. Petitioner opened it looking for the man hiding in Ms. Nixon's room.

13. Ms. Nixon began hitting Petitioner. Petitioner grabbed Ms. Nixon by the upper arms to keep her from hitting him. Ms. Nixon leaned over and bit Petitioner on the upper arm. This exchange was quick and ended with Petitioner leaving Ms. Nixon's room.

14. Petitioner left the apartment. Petitioner shortly thereafter reported the incident to the New Hanover Sheriff's Office and later to the Wilmington Police Department.

15. Following Petitioner's report, police officers from the Wilmington Police Department investigated the matter.

16. On July 29, 2012, Petitioner was charged with a misdemeanor assault on a female [N.C.G.S. § 14-33(c)(2)].

17. As defined in 12 NCAC 10B .0103(10)(b), the offense of Assault on a Female, in violation of N.C.G.S. § 14-33(c)(2), is classified as a Class B misdemeanor.

18. Petitioner notified the New Hanover County Sheriff's Office immediately of the charge. Petitioner, however, did not individually notify the Commission that he had been charged with assault on a female pursuant to N.C.G.S. § 14-33(c)(2). In his past reports of appointment, it was apparent that Petitioner had been advised of his continuing duty to notify the Commission of criminal charges.

19. The New Hanover County Sheriff's Office dismissed Petitioner as a detention officer on July 30, 2012.

20. The New Hanover County Sheriff's Office informed the Commission of Petitioner's dismissal in a letter dated July 31, 2012, two (2) days after the incident. The New Hanover Sheriff's Office also informed the Commission that it would send in a few days the F-5 Form to explain the separation. This letter informed the commission that Petitioner was no longer employed by the New Hanover County Sherriff's Office but gave no further details.

21. The New Hanover County Sheriff's Office eventually sent the F-5 Form to the Commission, but did not include the reason for Petitioner's dismissal in the F-5 Form.

22. The charges against Petitioner were voluntarily dismissed on October 2, 2012.

23. Petitioner notified the Commission that the charges were dismissed on October 12, 2012.

24. The charges were expunged from Petitioner's criminal record on October 18, 2012.

25. Petitioner entered Ms. Nixon's room to remove the male visitor from Ms. Nixon's room, not to harm or to instill fear in Ms. Nixon. Petitioner placed his hands on the upper arms of Ms. Nixon in an effort to prevent her from hitting Petitioner, not to harm or instill fear in Ms. Nixon.

26. Petitioner cooperated with law enforcement during the investigation of this matter. Petitioner immediately informed the New Hanover Sheriff's Office of the charges, and then immediately went to the Wilmington Police Department to report the matter.

27. Based on the evidence in the record, Petitioner did not commit the offence of assault on a female on July 29, 2012.

28. Petitioner has not worked as a law enforcement officer since July 29, 2012.

29. The evidence shows that, outside of the events of July 29, 2012 and his failure to initially report the charges against him to the Commission, Petitioner has shown responsibility throughout his professional life.

30. Superintendent Stephen E. Lane, Ed. D., of the Haywood County Schools has observed Petitioner for much of his life. Superintendent Lane testified that Petitioner has the character, the propensity for honesty, and the demeanor to be a successful law enforcement officer. Superintendent Lane testified that he would hire Petitioner to work in his schools as a school resource officer, notwithstanding the events of July 29, 2012.

31. Prior to his serving with the New Hanover County Sheriff's Office, the Cherokee County Sheriff's Office sponsored Petitioner for Basic Law Enforcement Training ("BLET"). Upon his completion of BLET, Petitioner served with the Cherokee County Sheriff's Office as a deputy sheriff. Sgt. Joseph Preston Allen observed Petitioner when he worked as a deputy sheriff for Cherokee County. Sgt. Allen testified that Petitioner displayed exemplary professionalism, self-control, and work ethic as a deputy. Sgt. Allen was present and heard the testimony about the incident with Ms. Nixon, and his opinion of Petitioner did not change.

32. Petitioner submitted into evidence a letter from Sheriff R. Keith Lovin, who is the Sheriff of Cherokee County. In his letter, Sheriff Lovin stated that, notwithstanding the events of July 29, 2012 and Petitioner's initial failure to report the charges to the Commission, Petitioner

would be a good officer for any organization in the future and expressed his willingness to give Petitioner full consideration for re-employment if Petitioner retains his certification.

33. The evidence is that Petitioner's failure to initially inform the Commission of the charges did not arise from a desire to conceal or hide the charges from the Commission, but his testimony was that he did not recall that requirement. In fact, Petitioner did not work in law enforcement during this time.

34. There are extenuating circumstances that warrant a substitution of a one year period of probation in lieu of revocation for Petitioner's apparent failure to notify the Commission of his being charged with the offense of assault on a female within five days of the charge.

BASED ON the above Findings of Fact, the undersigned makes the following:

### **CONCLUSIONS OF LAW**

35. The Office of Administrative Hearings has jurisdiction over this matter pursuant to Chapter 150B of the North Carolina General Statutes.

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

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

38. Respondent has the burden of proof in this matter.

39. Based on the evidence in the record, Petitioner did not commit the offense of assault on a female on July 29, 2012.

40. Upon consideration of the preponderance of the evidence presented at the August 5, 2013, administrative hearing, the undersigned determines that the Respondent did not have probable cause to revoke his certification for the commission of this offense as specified in 12 NCAC 10B.0204(d)(1).

41. Upon consideration of the preponderance of the evidence presented at the August 5, 2013, administrative hearing, the Undersigned determines that Petitioner did not make an initial report to the Commission that he had been charged with a misdemeanor of assault on a female to the Commission within five (5) days as required under 12 NCAC 10B.0301(a)(7). Petitioner's failure to initially inform the Commission of the charges did not appear to arise from a desire to conceal or hide the charges from the Commission, but as Petitioner explained, because he did not recall that requirement. In fact, Petitioner did not work in law enforcement during this time.

42. 12 NCAC 10B .0205(2) provides that the Commission may either reduce or suspend the periods of sanction where revocation, denial or suspension of certification is based upon Subparagraphs 10.301(a)(7) or substitute a period of probation in lieu of revocation,

suspension or denial following an administrative hearing. This authority to reduce or suspend the period of sanction may be utilized by the Commission when extenuating circumstances brought out at the administrative hearing warrant such a reduction or suspension.

43. The Administrative Law Judge has the authority to consider the extenuating circumstances and propose a one (1) year period of probation in lieu of revocation following an administrative hearing.

44. There are extenuating circumstances as described herein that warrant Petitioner receiving a one year period of probation in lieu of revocation of his certification.

45. A Justice Officer is required to notify, in writing, the Standards Division within five days of a criminal offense and all civil domestic violence orders specifying the nature of the offense, its date and the arresting agency. The officer's department head (after receiving notice of the offense) also has a duty to notify the Division within thirty days. If notice is given by the Justice Officer or his department to the Standards Division within the proscribed time period then under 12 NCAC 10B.0301(a)(7), "[r]eceipt by the [Commission] of timely notification of the initial offenses charged and of adjudication of those offenses, from either the officer or the department head, is sufficient notice for compliance with this Subparagraph."

46. Petitioner immediately reported the incident to his superiors at the New Hanover County Sheriff's Office, but not to the Commission.

47. New Hanover County sent a notice to the Commission within five (5) days of Petitioner's separation from employment. New Hanover did not provide the Commission the reason for the separation. Petitioner was not contacted about this notice nor did he have any input into the notice.

48. The New Hanover County Sheriff's Office also informed the Commission that it would send an F-5 Form to explain the separation. The New Hanover Sheriff's Office eventually sent the F-5 Form to the Commission, but did not include the reason for Petitioner's dismissal in the F-5 Form.

49. Petitioner reported the resolution of the charge (dismissal) to the Commission within thirty (30) days as required under 12 NCAC 10B.0301(a)(7).

50. There is no evidence that Petitioner failed to immediately report the charges to the Commission in an attempt to mislead or deceive the Commission. In fact, after hearing the evidence, it is the belief of the undersigned that Petitioner exhibited good faith in attempting to give notice of this offense.

51. Therefore, a suspension or revocation of Petitioner's certification is not warranted under the facts of this case.

BASED UPON the above, the undersigned makes the following:

## **PROPOSAL FOR DECISION**

That the Respondent's decision is REVERSED in that there are insufficient facts to prove, by the greater weight of the evidence, that the Petitioner committed the offense of assault on a female. Further, it appears that there was no nonfeasance in Petitioner's failure to report his dismissal to the Commission, but simply his failure to follow up with a proper communication to the Commission. Therefore, it is the recommendation and proposal that Petitioner's certification by the North Carolina Sheriffs' Education and Training Standards Commission shall continue in full force subject to the Commission's imposition of a one (1) year probationary period.

## **NOTICE AND ORDER**

The North Carolina Sheriffs' Education and Training Standards 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 17<sup>th</sup> day of October, 2013.

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J. Randall May  
Administrative Law Judge