

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13 DOJ 16261

PROPOSAL FOR DECISION

APPEARANCES

Respondent: Catherine F. Jordan
Attorney for Respondent
Department of Justice
Law Enforcement Liaison Section
P.O. Box 629
Raleigh, NC 27602-0629

ISSUE

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cadets were enrolled in the Wilson Community College BLET program, and while Petitioner served as the Commission-certified School Director, and instructor of that program?

STATUTES AND RULES

N.C. Gen. Stat. § 17C-10
12 NCAC 09B .0101, 12 NCAC 9A .0204, 12 NCAC 9B .0301, 12 NCAC 9A .0205

EXHIBITS ADMITTED INTO EVIDENCE

For Petitioner: 1 (Offer of Proof only), 2 - 11

For Respondent: 1 – 13, 16
15 (Offer of Proof only)

FINDINGS OF FACT

Procedural History

1. On May 21, 2013, Petitioner's case was submitted to the Criminal Justice Education and Training Standards Commission's Probable Cause Committee. (Respondent's Exhibit 9) Respondent's Probable Cause Committee found probable cause existed:

(1) To revoke Petitioner's general/specialized instructor certification, because Petitioner failed to meet the minimum standards required for instructors to have good moral character, because he maintained unethical and unprofessional relationships with female cadets enrolled in the Wilson Community College's Basic Law Enforcement Training ("BLET") program while Petitioner served as the Commission-certified School Director and a BLET instructor of that program; and

(2) To suspend Petitioner's law enforcement officer certification, because Petitioner failed to meet the minimum standards required for instructors to have good moral character, because he maintained unethical and unprofessional relationships with female cadets, enrolled in the Wilson Community College BLET program, while Petitioner served as the Commission-certified School Director and a BLET instructor of that program.

2. Petitioner timely requested an administrative hearing.

Applicable Rules

3. Respondent is authorized by Chapter 17C of the North Carolina General Statutes, and Title 12 of the North Carolina Administrative Code, Chapter 09B, to certify instructors and to revoke, suspend or deny such certification.

4. Respondent is authorized by Chapter 17C of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 09B, to certify law enforcement officers and to revoke, suspend or deny such certification.

5. 12 NCAC 09B.0101 entitled “Minimum Standards for Criminal Justice Officers” states:

Every criminal justice officer employed by an agency in North Carolina shall:

....

(3) be of good moral character pursuant to G.S. 17C-10 and as determined by a thorough background investigation[.]

6. 12 NCAC 09A.0204, entitled “Suspension: Revocation: or Denial of Certification” states:

(b) The Commission may suspend, revoke, or deny the certification of a criminal justice officer when the Commission finds that the applicant for certification or the certified officer:

....

(2) fails to meet or maintain one or more of the minimum employment standards required by 12 NCAC 09B.0100 for the category of the officer’s certification or fails to meet or maintain one or more of the minimum training standards required by 12 NCAC 09B.0200 or 12 NCAC 09B.0400 for the category of the officer’s certification[.]

7. 12 NCAC 09B.0301, entitled “Certification of Instructors” states:

(f) The Commission may deny, suspend, or revoke an instructor’s certification when the Commission finds that the person:

....

(8) has failed to meet or maintain 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. 2d 854 (1940); in re Legg, 325 N.C. 658, 386 S.E. 2d 174 (1989); in re Applicants for License, 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, as required to effectively discharge the duties of a criminal justice instructor[.]

8. 12 NCAC 09A.0205, entitled “Period of Suspension: Revocation: or Denial” states:

(c) When the Commission suspends or denies the certification of a criminal justice officer, the period of sanction shall be for an indefinite period, but continuing so long as the stated deficiency, infraction, or impairment continues to exist, where the cause of sanction is:

....

(2) failure to meet or maintain the minimum standards of employment[.]

Background Facts

9. On April 22, 1995, Jason Thomas Hunt (“Petitioner”) became a detention officer with the Wilson County Sheriff’s Office. (Respondent’s Exhibit 1). On April 22, 1996, Petitioner became a Deputy Sheriff with the Nash County Sheriff’s Office. (Respondent’s Exhibit 1)

10. From September, 2002 until January, 2011, Petitioner served as BLET Coordinator at Wilson Community College. (Respondent’s Exhibit 7)

11. On or about February 11, 2003, Petitioner became certified as the BLET School Director. (Respondent’s Exhibit 2)

12. On January 31, 2006, Petitioner successfully completed Wilson Community College’s mastery test (faculty) in *Preventing Sexual Harassment* with a score of 93%. (Respondent’s Exhibit 12)

13. On or about December 8, 2009, Petitioner became employed as an Instructor with Wilson Community College. (Respondent’s Exhibit 14)

Respondent’s Investigation

14. On October 4, 2012, Dr. Rusty Stephens, President of Wilson Community College, contacted Respondent’s Deputy Director, Pam Pope by email. Dr. Stephens asked that Darlene Hall be named the School’s BLET Director and that Petitioner be removed immediately as their BLET School Director and Chief of Police. Wilson Community College was investigating allegations against Petitioner for engaging in a sexual relationship with a female BLET cadet in 2007, and with another female BLET cadet in 2010.

15. In October of 2012, Alex Setzer, Respondent’s investigator, conducted an investigation into the allegations of lack of good moral character against Petitioner. Setzer interviewed Dr. Sessoms and Dean Holston of Wilson Community College, former BLET cadets Julie Jackson and Miles Rountree, and 3 other female BLET students at Wilson Community College. Setzer specifically investigated whether Petitioner engaged in a romantic relationship with Miles Rountree in 2010, while Rountree was a cadet in the BLET program at Wilson

Community College. Mr. Setzer also investigated whether Petitioner had a sexual relationship with former BLET cadet Julie Jackson in 2007, while she was a cadet in the BLET program at Wilson Community College.

16. Setzer's investigation was approximately five (5) years after Julie Jackson had graduated from the Wilson Community College BLET program, and approximately 2 years after Miles Rountree had graduated from the Wilson Community College BLET program. Neither Ms. Rountree nor Ms. Jackson ever filed a complaint against Petitioner with either Wilson Community College or with Respondent regarding any alleged improprieties by Petitioner.

17. During his investigation, Setzer learned there was an allegation that the Wilson County Sheriff Calvin Woodard made complaints against Petitioner in July, September and October, 2012 because Woodard was politically motivated. Mr. Setzer never interviewed Sheriff Woodard. Mr. Setzer did not substantiate any complaints by Sheriff Woodard against Petitioner. Mr. Setzer concluded that Petitioner adequately managed the BLET program at Wilson Community College.

18. During his investigation, Mr. Setzer did not interview any person in the law enforcement community regarding Petitioner's good moral character, his reputation for truthfulness, his character for honesty, his character for fairness, his character for respect of the law, and Petitioner's respect for the rights of others.

19. On October 31, 2012, Setzer interviewed Julie Jackson and Miles Rountree at Wilson Community College. (Respondent's Exhibit 5 & 6) On November 28, 2012, Setzer interviewed Petitioner. (Respondent's Exhibit 7) By memorandum dated January 23, 2013, Mr. Setzer advised Respondent's Probable Cause Committee of the allegations against Petitioner and the facts of his investigation into such allegations. (Respondent's Exhibit 8)

Julie Jackson

20. Julie Jackson was a cadet in the BLET program at Wilson Community College from approximately August 18, 2007 until she graduated from such program on or about December 14, 2007. Jackson is now employed as a Deputy Sheriff with the Wilson County Sheriff's Department.

21. When Jackson was a cadet in 2007, she was twenty-eight (28) years of age, and single. Ms. Jackson remains single to this day.

22. At that time, Petitioner was the director for the BLET program at Wilson Community College, and instructed Ms. Jackson in her driver training in the BLET program at Wilson Community.

23. During the Thanksgiving holidays in late November, 2007, Ms. Jackson traveled to Charlotte, North Carolina with Petitioner to visit Petitioner's parents. Petitioner and Ms. Jackson occupied a motel room, and engaged in a sexual relationship. Ms. Jackson and

Petitioner began a romantic relationship, and continued that relationship until well after Ms. Jackson's graduation from Wilson Community College in 2007.

24. After Jackson graduated from the BLET program, her romantic relationship with Petitioner was an on and off relationship that continued for almost five (5) years through September of 2012. At all times during her romantic relationship with Petitioner, Ms. Jackson was a mature, single, consenting adult. Any relationship that occurred between Petitioner and Ms. Jackson was private in nature, involving two mature consenting adults, was not done for commercial purposes, and did not occur while the Petitioner was engaged in his official duties as director of the BLET program at Wilson Community College.

25. While Petitioner provided one grade for one of Jackson's BLET courses, the preponderance of the evidence at hearing showed that Petitioner treated Ms. Jackson as he treated all other cadets. Petitioner did not show favoritism towards Jackson while she was a cadet, and did not take advantage of their relationship.

26. At the administrative hearing, Ms. Jackson explained that Wilson County Sheriff Woodard made a complaint to Dr. Rusty Stephens, President of Wilson Community College. Sheriff Woodard also spoke at the Wilson Community's Board of Trustees meeting regarding Petitioner's employment.

27. At the contested case hearing, Ms. Jackson opined that Woodard's complaint against Petitioner was politically motivated and without merit. Ms. Jackson characterized the Wilson Community College's meeting on Petitioner's employment as "horse shit," and opined that the WCC Board of Trustees "ganged up on Petitioner to get rid of him." Jackson supported Petitioner, and considered him honest, truthful, fair to students, respectful of the law and the cadets' rights in his BLET classes. Ms. Jackson also wrote Petitioner's Exhibit 1, and wanted Petitioner to present it at Respondent's Probable Cause Committee meeting.

Miles Rountree

28. Miles Rountree was a cadet in the Wilson Community College BLET program from approximately April 19, 2010, until approximately August 20, 2010. Rountree is now employed as a Detective with the Wilson, North Carolina Police Department.

29. Ms. Rountree and the Petitioner began a romantic relationship over the Fourth of July weekend, 2010. Ms. Rountree graduated from the Wilson Community College BLET program in August of 2010. Ms. Rountree's romantic relationship with Petitioner continued well after her graduation until sometime in late 2010 or early part of January, 2011.

30. Although Rountree's romantic relationship with Petitioner ended in either late 2010 or early 2011, Ms. Rountree continued to send Petitioner text messages through the month of March, 2011. In those text messages, Ms. Rountree told Petitioner that she still loved him. She also solicited Petitioner's assistance in securing admission to an officer survival driving class taught in the in-service training program at Wilson Community College in the spring of 2011. Petitioner assisted Rountree in securing admission to her requested officer survival driving class.

31. At all times during her attendance in the BLET program, Miles Rountree was either 26 or 27 years of age, and was a mature adult.

32. In May, 2011, Ms. Rountree became employed as a police officer with the Wilson Community College Police Department. While Petitioner was Chief of that department, and Ms. Rountree was a subordinate of Petitioner, Petitioner and Rountree had a professional law enforcement relationship.

33. Petitioner taught physical fitness when Ms. Rountree was a student in the BLET program. Petitioner was harder on Miles Rountree than on other people, did not afford her any special consideration, and did not take advantage of his relationship with Ms. Rountree.

Dr. Rusty Stephens

34. Dr. Rusty Stephens is the President of the Wilson Community College. Mr. Stephens re-employed Petitioner as an instructor at the Wilson Community College beginning August 16, 2012.

35. Calvin Woodard, Sheriff of Wilson County, North Carolina, made complaints about Petitioner to Dr. Stephens in July, September and October of 2012. In July 2012, Woodard told Stephens he heard that Petitioner had made a comment, while teaching a class, that Petitioner would like to be Sheriff of Wilson County someday. The second complaint involved Woodard's cousin who had been a student in the BLET program. The third complaint was based on an audiotape of a cell phone conversation that took place between Petitioner and Julie Jackson on May 11, 2011, approximately 3½ years after Ms. Jackson's graduation from the BLET program. After receiving Sheriff Woodard's third complaint on October 2, 2012, Dr. Stephens interviewed some BLET students and former students. Neither Miles Rountree nor Julie Jackson ever made a complaint with the Wilson Community College regarding any alleged improprieties by Petitioner.

36. On October 23, 2012, Dr. Stephens met with Petitioner to discuss his findings, and give Petitioner an opportunity to respond. By letter dated October 23, 2012, Dr. Stephens terminated Petitioner's employment with Wilson Community College. (Petitioner's Exhibit 8) On November 1, 2012, Petitioner responded to Dr. Stephens, and requested an administrative hearing of his dismissal. (Petitioner's Exhibit 9) The Wilson Community College Board of Trustees upheld Petitioner's dismissal after an administrative hearing.

Petitioner's good moral character

37. Bentley Massey is a United States Probation Officer who has secondary employment as an instructor in the Wilson Community College BLET program. Mr. Massey has been so employed as an instructor from May of 1990, and continues to instruct at Wilson Community College to this day. Mr. Massey teaches subject control arrest techniques.

38. Mr. Massey has had a professional relationship with Petitioner since Petitioner became coordinator for the BLET program at Wilson Community College in 2002. Mr. Massey was working at the Community College the day that Petitioner was terminated from his employment contract in October of 2012. Massey opined that Petitioner is a trustworthy person, and has a reputation as being responsible and fair with the cadets. Massey thinks that Petitioner is respectful of all people with whom he works, and he respects his students. Massey also notes that Petitioner enjoys a good character for honesty and truthfulness.

39. Catherine Daniel knows Petitioner, because she attended the BLET program at Wilson Community College on two separate occasions, August of 2008 and August of 2009. Ms. Daniel did not successfully complete her first BLET program, because she had difficulty with the firearms training.

40. After graduation from the BLET program, Ms. Daniel became employed as a police officer in Clayton, North Carolina. Subsequently, she left law enforcement, and is now employed as a LPN (Licensed Practical Nurse). While she was a student in the BLET program at Wilson Community College, Petitioner was coordinator for the BLET program. Ms. Daniel had regular contact with Petitioner as Petitioner was a physical fitness instructor. During the times that Daniel dealt with Petitioner, Petitioner never made any inappropriate comments or engaged in any inappropriate conduct towards Daniel or towards any other female cadets. Petitioner treated male and female cadets equally. Daniel opined that Petitioner was fair with all the cadets, and was a responsible person. Ms. Daniel never observed Petitioner exhibit any conduct with any cadet that she considered out of the ordinary.

41. Leslie Bunn is a female who is employed by Wilson Professional Services. who attended the Wilson Community College BLET program from August of 2010 through December of 2010. Ms. Bunn did not successfully complete the BLET program, because she was unable to satisfactorily perform the physical fitness requirements. During that time, Petitioner was a physical fitness instructor at the BLET program.

42. While Ms. Bunn was a cadet, she never heard Petitioner make any inappropriate comments to either herself or any other female cadets. Bunn opined that Petitioner was harder on the female cadets than the male cadets. She realized that Petitioner being harder on females was Petitioner's effort to make the female cadets feel equal to the male cadets. Ms. Bunn also recognized that Petitioner wanted the female cadets to realize that the job of a police officer was physically demanding, and the cadets needed to be well prepared for future employment as police officers.

43. Bunn also opined that Petitioner treated the cadets fairly. Petitioner was a responsible person, and maintained a professional relationship towards all the cadets in Ms. Bunn's class. Petitioner never treated Bunn or any other of the cadets in a disrespectful manner, and Petitioner was fair to all students in the BLET program.

44. Keith Hale is a 28 year veteran of the Tarboro, North Carolina, Police Department who currently holds the rank of Lieutenant. Lt. Hale became acquainted with Petitioner when Petitioner was a student in one of Hale's BLET classes. Lt. Hale and Petitioner are friends who

have worked together for a period of approximately twenty (20) years. Lt. Hale knows the Petitioner's character for trustworthiness. Hale thinks that Petitioner is very trustworthy, and respects his colleagues and the cadets. Lt. Hale opined that Petitioner is a respectful person, is always fair with other individuals, and possesses an excellent character for truth and honesty. Lt. Hale never observed Petitioner act inappropriately with any male or female cadet.

45. Lt. Hale is a firearms instructor, and has been employed on a part-time basis as a firearms instructor at Wilson Community College since the fall of 1991. Lt. Hale taught Miles Rountree as a cadet in one of his BLET classes during the summer of 2010. Lt. Hale recalls that Ms. Rountree was a platoon leader elected by her fellow students. Lt. Hale never observed any inappropriate activity or relationship at the Wilson Community College that may have existed between Petitioner and Miles Rountree.

46. John Farmer is a retired Major from the Wilson County Sheriff's Department where he spent his entire law enforcement career. Mr. Farmer first became acquainted with Petitioner when Petitioner was employed by the Wilson County Sheriff's Department in 1995.

47. Major Farmer (ret.) has been employed on a part-time basis by the Wilson Community College since 1986, where he instructs patrol techniques and teaches a driving course. Mr. Farmer worked with Petitioner when the Petitioner was an instructor in the BLET program at Wilson Community College, and when Petitioner became coordinator of the BLET program at Wilson Community College. Farmer observed the Petitioner interact with both the male and female cadets. During his many years of working with Petitioner at Wilson Community College, Mr. Farmer observed that Petitioner was very thorough and interacted fairly with both male and female cadets, and performed his duties with the highest professional and ethical standards.

48. Mr. Farmer opined that Petitioner is a very trustworthy person, was a dedicated BLET coordinator, and ensured that the students got the best instruction possible. Petitioner respected his colleagues and the cadets, and was fair to one and all. Farmer explained that Petitioner is a responsible person who possesses an excellent character and reputation for honesty and truthfulness.

Petitioner

49. Petitioner first became employed with the Wilson County Sheriff's Department in 1995 when he was 21 years old. At the time of this contested case hearing, Petitioner was 40 years old, single, never married, and had no children. When Petitioner was terminated from his position as BLET program coordinator and Chief of Police at Wilson Community College, he was 38 years old, and had been constantly employed in law enforcement since age 21. Since the date of his termination in October of 2012, Petitioner has been unable to find any employment in the law enforcement field.

50. At hearing, Petitioner acknowledged that he engaged in a romantic relationship with Julie Jackson, a cadet in the BLET program at Wilson Community College, from approximately Thanksgiving 2007 until her graduation from the BLET program on

approximately December 14, 2007. Likewise, Petitioner engaged in a romantic relationship with Miles Rountree when she was a cadet at Wilson Community College from July 4, 2010 until her graduation from the program on approximately August 18, 2010. Petitioner maintains that he was not disrespectful to any of the cadets, male or female, in the BLET program at Wilson Community College, and he never acted in a disrespectful or offensive manner towards Julie Jackson or Miles Rountree. He indicated that he never abused his authority over the cadets, and never displayed any demeaning behavior. Petitioner never took advantage of Miles Rountree, Julie Jackson, or any other cadet in the BLET program at Wilson Community College. He insisted that he did not afford Jackson or Rountree any preferential treatment at any time while either Jackson or Rountree were cadets at the Wilson Community College BLET program.

51. Petitioner acknowledged that, in hindsight, he used poor judgment, and would not engage in the same or similar conduct with any student again.

52. During cross-examination, Petitioner was asked if he was familiar with the law enforcement code of ethics. Petitioner recited such code of ethics verbatim and by memory.

53. At hearing, Respondent did not present any statute, promulgated law enforcement rule, or policy that specifically provided that Petitioner could not, or should not engage in a consensual romantic relationship with a consenting adult student. The romantic relationships that existed between Petitioner and Rountree, and Petitioner and Jackson took place off campus, in private, and were voluntary and consensual in nature between a mature, consenting adult male and single, mature, consenting adult females. These romantic relationships did not occur during any scheduled BLET activities, and were not for any commercial purposes.

54. At hearing, Respondent did not introduce any evidence that Petitioner took advantage, either explicitly or implicitly, of his position of authority as BLET Director and/or coordinator over either Julie Jackson or Miles Rountree at any time that either of the individuals were cadets at the Wilson Community College BLET program.

55. There was no evidence presented that Petitioner afforded any preferential treatment to either Julie Jackson or Miles Rountree, because of their respective relationships with Petitioner, during the times that Jackson or Rountree were enrolled as cadets at the Wilson Community College BLET program.

56. Petitioner served as a law enforcement officer in various capacities from 1995 through and including the date of his termination from Wilson Community College in October of 2012. There were no prior complaints filed against Petitioner with Respondent, and no history of any discipline or any misconduct by Petitioner during his entire law enforcement career.

57. Respondent did not present any evidence at hearing that it or any other agency performed any background investigation during its investigation to determine Petitioner's good moral character.

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. Respondent Commission has the authority granted under Chapter 17C of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 9G, to certify enforcement officers and to suspend, revoke or deny such certification.

3. 12 NCAC 09B.0101 “Minimum Standards for Criminal Justice Officers” requires that:

Every criminal justice officer employed by an agency in North Carolina shall:

....

(3) be of good moral character pursuant to G.S. 17C-10 and as determined by a thorough background investigation[.]

4. Pursuant to N.C. Gen. Stat. 17C-10, every criminal justice officer employed by an agency in North Carolina shall be of good moral character. That statute states in pertinent part:

In addition to the requirements of subsection (b) of this section, the Commission, by rules and regulations, shall fix other qualifications for the employment, training, and retention of criminal justice officers including minimum age, education, physical and mental standards, citizenship, **good moral character, experience, and such other matters as relate to the competence and reliability of persons to assume and discharge the responsibilities of criminal justice officers, and the Commission shall prescribe the means for presenting evidence of fulfillment of these requirements.** (Emphasis added)

5. 12 NCAC 09A.0204 “Suspension: Revocation: or Denial of Certification” states that:

(b) The Commission may suspend, revoke, or deny the certification of a criminal justice officer when the Commission finds that the applicant for certification or the certified officer:

....

(2) fails to meet or maintain one or more of the minimum employment standards required by 12 NCAC 09B.0100 [now .0101] for the category of the officer’s certification or fails to meet or maintain one or more of the minimum training standards required by 12 NCAC 09B.0200 [now .0201] or 12 NCAC 09B.0400 for the category of the officer’s certification[.]

6. 12 NCAC 10B.0301(a)(8) requires that justice officers certified in North Carolina shall be of good moral character. 12 NCAC 09B.0301 “Certification of Instructors” states:

(f) The Commission may deny, suspend, or revoke an instructor's certification when the Commission finds that the person:

(8) has failed to meet or maintain good moral character as defined 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. 2d 854 (1940); in re Legg, 325 N.C. 658, 386 S.E. 2d 174 (1989); in re Applicants for License, 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, as required to effectively discharge the duties of a criminal justice instructor[.]

7. 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. . .

8. “It is basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined.” Treants v. Onslow County, 94 N.C. App. 453, 458, 380 S.E. 2d 602 (1989), quoting City of Mesquite v. Aladdin's, 455 U.S. 283 (1982) and Grayned v. City of Rockford, 408 U.S. 104 (1972). The North Carolina test for vagueness provides that a provision is:

vague if it either: (1) fails to give the person of ordinary intelligence a reasonable opportunity to know what is prohibited; or (2) fails to provide explicit standards for those who apply the law.”

State v. Sanford Video & News, Inc., 146 N.C. App. 554, 556, 553 S.E.217, 218 (2001). A regulation is “unconstitutionally vague if [individuals] of common intelligence must necessarily guess at its meaning and differ as to its application.” State v. Hines, 122 N.C. App. 545, 551-52, 471 S.E. 2d 109, 113-114 (1996).

9. The North Carolina Courts have defined “good moral character” as “honesty, fairness, and respect for the rights of others and for the laws of the state and nation.” In re Willis, 288 N.C. 1, 10 (1975). Whether an applicant is of good moral character is seldom subject to proof by reference to one or two incidents. Good moral character is something more than the absence of bad character. In the Matter of David Henry Rogers, Applicant to the 1975 Bar Exam, 297 NC 48, 253 SE 2d 912 (1979) (the board ruled that an applicant for admission cannot be denied on the basis of suspicion or accusations alone. Further, an applicant may only be able to meet a charge of wrongdoing only with his denial.) Generally, isolated instances of conduct are insufficient to properly conclude that someone lacks good moral character. See 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.”)

10. While rulings in contested cases have no binding authority over other contested cases, such cases can be instructive. In Jonathan Mims v. North Carolina Sheriffs Education and Training Standards Commission, 02 DOJ 1263, 2003 WL 22146102 at page 11-12, Administrative Law Judge Gray stated that police administrators, officers and others have considerable differences of opinion as to what constitutes good moral character. Mims, at page 12, Conclusion of Law 12. Respondent Commission offered the testimony of someone knowledgeable regarding moral character who opined 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.

11. While having good moral character is an ideal objective for everyone to enjoy, the lack of consistent and clear meaning of that term within the Respondent’s rule, and the lack of clear enforcement standards or criteria for application of the rule, renders enforcement actions problematic and difficult. Mims, at page 12, Conclusion of Law 4. Because of concerns about the flexibility and vagueness of the good moral character rule, any suspension or revocation of an officer’s law enforcement certification based upon an allegation of a lack of good moral character should be reserved for clear and severe cases of misconduct. Mims, at page 12 and 13.

12. In this case, as in Mims, the issue was whether Petitioner lacked the minimum standard of good moral character required to retain his general/specialized instructor certification and his law enforcement officer certification. Specifically, whether Petitioner lacked the requisite good moral character by engaging in romantic relationships with two cadets enrolled in a BLET program of which Petitioner was the Commission-certified Director and an instructor.

13. A preponderance of the evidence established that Petitioner and Julie Jackson engaged in a romantic relationship from the end of November, 2007, while Jackson was a cadet in the Wilson Community College BLET program, until around December 14, 2007. Petitioner and Miles Rountree engaged in a romantic relationship from July 4, 2010 through August 18, 2010, while Ms. Rountree was a cadet in the Wilson Community College BLET program, and Petitioner was the Commission-certified Director and an instructor in that program.

14. Clearly, Petitioner used very poor judgment, and showed a lack of professionalism by having romantic relationships with 2 cadets enrolled in a BLET program of which Petitioner was the director, and an instructor. However, there was no evidence that Petitioner abused his authority or position as an instructor or director at the Wilson Community College BLET Program while he was dating cadet Jackson or cadet Rountree. Neither was there any evidence that Petitioner harassed or intimidated Jackson or Rountree, showed favoritism towards Jackson or Rountree, that such relationships affected the cadets’ grades in the BLET program, or those relationships compromised Petitioner’s job as an instructor and/or BLET director.

15. Instead, a preponderance of the evidence demonstrated that Ms. Jackson and Ms. Rountree were both single, mature, consenting adults who willingly and voluntarily entered into

a consensual romantic relationship with Petitioner. Those relationships took place off campus, and in private. There was no evidence that such relationships interfered with Petitioner's job performance as the BLET director and instructor.

16. There was no evidence that Petitioner's relationship with these cadets was "unethical" in violation of any rule, regulation, or policy of Respondent.

17. Because the romantic relationships between Petitioner and two mature consenting adults took place off campus, in private, and were not for a commercial purpose, that conduct is protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution, and should not be considered as a basis for a finding of lack of good moral character.

18. The undersigned will not review and pass judgment on any relationship between Petitioner and Jackson, and Rountree that occurred after 2 and 5 years after Jackson and Rountree graduated from the BLET program. If Petitioner's conduct during his personal relationships with Jackson or Rountree was inappropriate, harassing, or intimidating, then such misconduct is best handled by the criminal courts.

19. During Respondent's investigation, Mr. Setzer never interviewed Sheriff Woodard, and did not substantiate any complaints by Sheriff Woodard against Petitioner. Mr. Setzer never interviewed any person in the law enforcement community regarding Petitioner's good moral character, his reputation for truthfulness, for honesty, for fairness, for respect of the law, and Petitioner's respect for the rights of others. Setzer never conducted a thorough background investigation into Petitioner's good moral character. Setzer concluded that Petitioner adequately managed the BLET program at Wilson Community College.

20. A preponderance of the evidence showed that the complaints about Petitioner and inappropriate relationships were politically motivated. In July 2012, Sheriff Woodard told Dr. Stephens he heard Petitioner would run for Sheriff, and that he also heard Petitioner was having inappropriate relationships with cadets. At the Wilson Community College's Board of Trustees meeting regarding Petitioner's employment, Sheriff Woodard testified about complaints regarding Petitioner's alleged inappropriate relationships with cadets. Sheriff Woodard is running for re-election this year (2014).

21. At the administrative hearing, Ms. Jackson characterized the Wilson Community College's meeting on Petitioner's employment as "horse shit," and opined that the WCC Board of Trustees "ganged up on Petitioner to get rid of him." Jackson supported Petitioner, and considers him honest, truthful, fair to students, respectful of the law and the cadets' rights in his BLET classes. The evidence at hearing showed that if not for Sheriff Woodard's complaints, this matter would not be before the Respondent.

22. Setzer's investigation was approximately five (5) years after Julie Jackson had graduated from the Wilson Community College BLET program, and approximately 2 years after Miles Rountree had graduated from the Wilson Community College BLET program. Neither

Ms. Rountree nor Ms. Jackson ever filed a complaint against Petitioner with either Wilson Community College or with Respondent regarding any alleged improprieties by Petitioner.

23. Petitioner presented undisputed witness testimony that he was trustworthy, respectful, responsible, fair, and a good citizen. He demonstrated that he had a good reputation for truth and honesty, and had a long-term employment history as a law enforcement officer with no complaints or discipline.

24. Considering the criteria set forth in Mims, supra. at pages 12-13, the preponderance of evidence in this case does not establish a clear case of misconduct, or that Petitioner lacks good moral character.

25. Given Petitioner's otherwise exemplary history of good moral character, long-term employment as a law enforcement officer, lack of any prior complaints or discipline, and Petitioner's professionalism during his law enforcement career, the facts and circumstances of this case do not warrant or justify revoking Petitioner's instructor certification, or suspending Petitioner's law enforcement certification.

PROPOSAL FOR DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby proposes that Respondent **REVERSE** its initial decision to revoke Petitioner's general/specialized instructor certification and suspend Petitioner's law enforcement certification.

NOTICE

The North Carolina Criminal Justice 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 18th day of September, 2014.

Melissa Owens Lassiter
Administrative Law Judge