

STATE OF NORTH CAROLINA  
COUNTY OF LEE

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
13DOJ19151

ANNETTE SELLERS BLUE PETITIONER,  V.  N C SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION RESPONDENT.	<b>PROPOSAL FOR DECISION</b>
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In accordance with N.C. Gen. Stat. § 150B-40(e), Respondent requested the designation of an administrative law judge to preside at a North Carolina General Statute Chapter 150B, Article 3A contested case hearing of this matter. Based upon Respondent's request, Administrative Law Judge J. Randall May was assigned to hear this contested case in Raleigh, North Carolina. On March 25, 2014, Petitioner and counsel for the parties appeared. Petitioner requested a continuance of the hearing due to a serious family medical emergency that required her immediate attention and presence in Sanford, North Carolina. Petitioner's motion for a continuance of the hearing was granted. In lieu of a contested case hearing, counsel for the parties, with the concurrence of the undersigned, agreed to submit a Stipulated Proposal for Decision pursuant to N.C. Gen. Stat. § 150B-41(c).

#### **APPEARANCES**

Petitioner: Robert O. Crawford, III  
CRAWFORD & CRAWFORD, LLP  
6500 Creedmoor Road, Suite 104  
Raleigh, NC 27613

Respondent: Matthew L. Boyatt  
Assistant Attorney General  
Law Enforcement Liaison Section  
N.C. Department of Justice  
9001 Mail Service Center  
Raleigh, NC 27699-9001

#### **ISSUE**

Did Petitioner intentionally make a material misrepresentation on her October 3, 1998, Form F-3 Personal History Statement submitted through the Mecklenburg County Sheriff's Office?

#### **STATUTES AND RULES AT ISSUE**

N.C. Gen. Stat. §§ 150B-40, 41, 42  
N.C. Gen. Stat. §§ 17E-7(c) and 9  
12 NCAC 10B.0204(c) (1) and (2)  
12 NCAC 10B.0205(2)(b)

**EXHIBITS**

**For Respondent**

1. Notification of Probable Cause to Deny Justice Officer Certification letter dated September 19, 2013
2. Lee County Sheriff's Office Form F-3 Personal History Statement dated May 29, 2012
3. Mecklenburg County Sheriff's Office Form F-3 Personal History Statement dated October 3, 1998
4. Notification of Probable Cause Committee meeting letter dated August 15, 2013
5. Probable Cause Memorandum, with attachments 1 through 4
6. Petitioner's written request for an administrative hearing letter dated September 30, 2013

**For Petitioner**

1. Letter dated March 16, 2014, from Pastor Douglas Waterson
2. Letter dated March 16, 2014, from Dorothy Waterson
3. Employment History (from Form F-3)

**FINDINGS OF FACT**

1. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, both parties received Notice of Hearing, and Petitioner received the notification of "Probable Cause to Deny Justice Officer Certification" letter mailed by the Respondent on September 19, 2013. [Resp Exh No. 1].

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, Subchapter 10B, to certify justice officers and to revoke, deny, or suspend such certification.

3. 12 NCAC 10B.0204(c)(1) provides that 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 justice officer “has knowingly made a material misrepresentation of any information required for certification or accreditation from the Commission . . . .”

4. 12 NCAC 10B.0204(c)(2) provides that 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 justice officer “has knowingly and designedly by any means of false pretense, deception, fraud, misrepresentation or cheating whatsoever, obtained or attempted to obtain credit, training or certification from the Commission . . . .”

5. 12 NCAC 10B.0205(2)(b) provides that when the Commission suspends, revokes, or denies the certification of a justice officer pursuant to 12 NCAC 10B.0204(c), the period of sanction shall be not less than five years; however, the Commission may either reduce or suspend the periods of sanction under sub-paragraph (2) of this Rule or substitute a period of probation in lieu of revocation, suspension, or denial of certification following an administrative hearing when extenuating circumstances brought out at the administrative hearing warrant such a reduction or suspension.

6. 12 NCAC 10B.0203 provides that when any person certified by the Commission is found to have knowingly and willfully violated any provision or requirement of these rules, the Commission may take corrective action including (1) issuing an oral warning; (2) issuing a written warning; (3) issuing an official written reprimand; (4) suspending the certification for a specified time; and (5) revoking the certification.

7. Respondent found probable cause to deny Petitioner’s certification on the grounds that she had provided false information on the Personal History Statement (Form F-3) she completed and signed on September 29, 1998, in furtherance of her application for certification through the Mecklenburg County Sheriff’s Office. [Resp Exh Nos. 1 and 5].

8. In response to Question #44 which reads “Have you ever used marijuana?” Petitioner answered “No.” [Resp Exh No. 3].

9. In 2012, Petitioner applied for certification with the Commission through the Lee County Sheriff’s Office.

10. In furtherance of that application, Petitioner completed and signed a Personal History Statement (Form F-3) on May 30, 2012. In response to Question #39, which reads “Have you ever used any illegal drugs including but not limited to marijuana, steroids, opiates, pills, heroin, cocaine, crack, LSD, etc. to include even one time use or experimentation?” Petitioner answered “Yes.” [Resp Exh No. 2].

11. Petitioner explained: “Used marijuana at the age of 18 years old - experimented with friends two times.” [Resp Exh No. 2].

12. By sworn letter dated April 11, 2013, to the Commission, Petitioner explained the foregoing discrepancy as follows:

I was rushing to get my application packet in on time. I went through the questions quickly trying to get it in by the due date. I don't even remember that question on the 1998 application. On the Lee County application I took my time, thought about each question more clearly.

[Resp Exh No. 5, Attachment 4]

13. By letter dated August 15, 2013, Petitioner was informed of the Probable Cause Committee to be held in Tarboro, North Carolina on September 4, 2013, at which time she could attend and make a presentation to the Committee. [Resp Exh No. 4].

14. Petitioner informed the Commission that she would appear, but on the morning of September 4, 2013, her daughter, age 5, was sick and there was no one able to care for her. Therefore, Petitioner was unable to appear before the Probable Cause Committee.

15. In her absence, the Probable Cause Committee found probable cause. [Resp Exh No. 5].

16. By letter dated September 30, 2013, Petitioner requested an administrative hearing and further explained the discrepancy as follows:

Please know that this was not done intentionally and was a mistake on my part. During the time I was filling out the application in Mecklenburg County, I was under the pressure of a deadline and rushed to get the application back in. I did see the question, but did not put much thought into it. It was so long ago that it had slipped my memory. It was my intent to answer both applications honestly, so as not to purge (sic) myself.

If you will look at my past record it is exemplary. This is a fact I am proud of, and I would like an opportunity to make a difference in society; which is the reason I chose this career field. If given a chance I will strive to do my best in the Sheriffs' Department.

[Resp Exh No. 6]

17. Petitioner was born in Sanford, North Carolina on January 12, 1970. She graduated from Lee County Senior High School in 1988. After high school, Petitioner was employed in Sanford by J. T. Davenport, Trion, Inc., and Carolina Jacobson with some periods of unemployment. In 1997, Petitioner separated from her husband and moved to Lancaster, South Carolina. [Resp Exh No. 3].

18. From June 1997 to May 1998, Petitioner was employed as a Correctional Officer with the South Carolina Department of Corrections at Kershaw Correctional Institute in Camden, South Carolina. [Resp Exh No. 3].

19. From May 1998 to August 1998, Petitioner was employed as a Patrol Officer by the Lancaster Police Department, but was unable to complete the criminal justice academy. [Resp Exh No. 3].

20. On or about September 29, 1998, Petitioner, then 28 years of age, sought employment with the Mecklenburg County Sheriff's Office.

21. In November 1998, Petitioner commenced employment with the Mecklenburg County Sheriff's Office and worked as a detention officer until March 2003. [Resp Exh Nos. 2 and 3].

22. In January 2004, Petitioner returned to the Lancaster Police Department as a patrol officer. However, Petitioner was unable to complete the BLET driving course and separated from employment in September 2004. [Resp Exh No. 2].

23. Between 2007 and 2010, Petitioner worked in health care in Hartsville and Camden, South Carolina. [Resp Exh No. 2].

24. In May 2008, Petitioner's daughter was born. [Resp Exh No. 3].

25. Petitioner left her employment with Fresenius Medical because her daughter was in and out of the hospital with sickle cell and she had no other family in South Carolina. [Resp Exh No. 2].

26. From October 2010 until April 2011, Petitioner was employed as a detention officer at the Kershaw County Jail, but had to separate from this employment due to complications with caring for a child with sickle cell. [Resp Exh No. 2].

27. In September 2011, Petitioner returned to North Carolina to be near her family.

28. On or about May 30, 2012, Petitioner, then 42 years of age, applied for a position with the Lee County Sheriff's Office in the Detention Center. [Resp Exh No. 2].

29. Petitioner has been employed as a detention officer with the Lee County Sheriff's Office from August 2012 to the present.

30. Petitioner's negative response to Question #44 on the 1998 Form F-3 was inadvertent and an innocent mistake and does not constitute a "material misrepresentation."

31. Petitioner did not intend to mislead the Mecklenburg County Sheriff's Office or any law enforcement agency about her history.

32. Petitioner did not intentionally make a material misrepresentation on her Personal History Statement (Form F-3) submitted through the Mecklenburg County Sheriff's Office on or about October 3, 1998.

33. Petitioner has had an exemplary work and employment history both in and out of law enforcement.

34. Petitioner does not drink alcoholic beverages. [Resp Exh No. 2]

35. Petitioner has been a faithful member of New Zion Missionary Baptist Church in Sanford since 2011 and has faithfully attended services. Her pastors have found her to be an honest and trustworthy person as well as sincere, decent and reliable. [Pet Exh Nos. 1 and 2].

36. The foregoing facts are inconsistent with a finding that Petitioner knowingly and/or intentionally made a material misrepresentation of her history required for certification in North Carolina.

BASED UPON the foregoing STIPULATED FINDINGS OF FACT and upon the preponderance or greater weight of the evidence in the whole record, the undersigned makes the following:

### **CONCLUSIONS OF LAW**

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case. The parties received proper notice of the hearing in the matter. To the extent that the FINDINGS OF FACT contain CONCLUSIONS OF LAW, or that the CONCLUSIONS OF LAW are FINDINGS OF FACT, they should be so considered without regard to the given labels.

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 revoke, suspend, or deny such certification.

3. "A misrepresentation or omission is 'material' if, had it been known to the party, it would have influenced the party's judgment or decision to act." *Latta v. Rainey*, 202 N.C. App. 587, 599, 689 S.E.2d 898, 909 (2010). Materiality is a question of fact for the fact-finder. *Id.*

4. The Petitioner's negative answer to Question #44 on her 1998 Form F-3 submitted to the Commission through the Mecklenburg County Sheriff's Office denying that she had used marijuana does not constitute an intentional material misrepresentation of information required for certification because the negative response arose out of mistake and was not intentional.

5. Respondent's proposed denial of Petitioner's certification as a justice officer is not supported by a preponderance of the substantial evidence.

### **PROPOSAL FOR DECISION**

NOW, THEREFORE, based upon the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, the undersigned recommends that Respondent GRANT the Petitioner's justice officer certification.

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 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.

IT IS SO ORDERED.

This the 23<sup>rd</sup> day of April, 2014.

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J. Randall May  
Administrative Law Judge