

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
14 DOJ 00869

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## APPEARANCES

Petitioner: Lisa Paulette Childress, Pro se.  
1420 Grant Road  
Graham, North Carolina 27253

Respondent: William P. Hart, Jr., Assistant Attorney General  
N.C. Department of Justice  
9001 Mail Service Center  
Raleigh, North Carolina 27699-9001

## ISSUES

1. Whether Petitioner's application for justice officer certification is subject to denial by Respondent due to convictions for four or more Class A and Class B misdemeanor worthless check offenses?
2. What sanction, if any, should Respondent impose against Petitioner's application for 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 are properly before the Office of Administrative Hearings, in that jurisdiction and venue are proper. Both parties properly received notice of hearing.

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 has applied for certification as a detention officer through the Alamance County Sheriff's Office and is currently employed by that agency.

4. It is uncontested that Petitioner stands convicted of six misdemeanor worthless check offenses in Alamance County (2009 CR 052086; 2006 CR 052356; 2003 CR 057453; 1999 CR 000404; 1997 CR 11199; and 1997 CR 11198). Each of these convictions constituted a violation of N.C. Gen. Stat. § 14-107(d)(1). The fourth, fifth, and sixth convictions are considered Class 1 misdemeanors as a matter of law.

5. The undersigned takes judicial notice of the Class B Misdemeanor Manual published by the North Carolina Department of Justice. This manual defines fourth and subsequent convictions for the offense of worthless check as Class B misdemeanors for purposes of the Commission's rules. Therefore, the undersigned finds that Petitioner has been convicted of three Class A misdemeanors and three Class B misdemeanors.

6. During Respondent's investigation into her criminal background, Petitioner acted diligently in conducting her own investigation into the worthless check convictions to provide what information she could to Respondent.

7. To the best of Petitioner's recollection, her two 1997 convictions were based on the same check she had written for less than \$50 for weekly childcare. Her husband at the time had withdrawn a substantial amount of money from their joint checking account prior to this check being processed. Petitioner paid off the delinquent amount before her scheduled court date.

8. Petitioner acknowledges her own accounting errors leading to her convictions in 1999 and 2003. She made a similar mistake leading to the 2009 conviction, but this was also a consequence of having her work hours considerably reduced.

9. Petitioner's second husband left her in 2005 and withdrew a considerable sum of money, which contributed to her 2005 worthless check offense.

10. According to the testimonies of two supervising officers with the Alamance County Sheriff's Office (CPT Durham and CPT Rich), Petitioner is a dedicated and diligent employee with a reputation for integrity and reliability and potential for future promotion, should she become certified by Respondent. The Sheriff fully supports Petitioner's application.

11. Although the undersigned is constrained to find the facts of Petitioner's worthless check convictions, it is evident from her testimony and the record that she never acted with any intent to defraud or with malice. Moreover, Petitioner has readily accepted her responsibility when appropriate. Whereas the high number of convictions is certainly a factor in her case, there is no evidence she has been convicted of any other non-traffic-related offenses, and more than five years has passed since her most recent conviction. Along with her employer's strong support, these factors are specifically found as extenuating circumstances in her case.

### **CONCLUSIONS OF LAW**

1. The parties are properly before the undersigned, and the jurisdiction and venue are proper. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case. The parties received proper notice of the hearing in this matter.

2. The undersigned takes notice of all 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. § 14-107.

3. 12 NCAC 10B .0204(d)(5) states that the Sheriffs' Commission may deny justice officer certification to an applicant when the Commission finds that the applicant "has committed or been convicted of . . . any combination of four or more crimes or unlawful acts defined in 12 NCAC 10B .0103(10)(a) as a Class A misdemeanor or defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor regardless of the date of commission or conviction."

4. A preponderance of the evidence exists to conclude the Petitioner stands in violation of 12 NCAC 10B .0204(d)(5) due to her six worthless check convictions.

5. Pursuant to 12 NCAC 10B .0205(3)(d), the sanction for Petitioner's violation is denial for an indefinite period. Therefore, Petitioner's application for justice officer certification is subject to denial by Respondent.

6. However, the Commission may either reduce or suspend this sanction based on the undersigned's findings regarding extenuating circumstances as shown at the hearing. Based on the foregoing findings, the undersigned recommends Respondent suspend the denial of Petitioner's justice officer certification.

### **PROPOSAL FOR DECISION**

Based upon the foregoing findings of fact and conclusions of law, it is hereby proposed that Respondent suspend the denial of Petitioner's justice officer certification and award certification immediately.

### **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 7<sup>th</sup> day of July, 2014.

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Donald W. Overby  
Administrative Law Judge