

**NORTH CAROLINA**

**OFFICE OF ADMINISTRATIVE HEARINGS**

**WAKE COUNTY**

**14 DOJ 05067**

**SUSAN MANEY** )  
**Petitioner** )  
) )  
**v** )  
) )  
**N.C. CRIMINAL JUSTICE** )  
**EDUCATION AND TRAINING** )  
**STANDARDS COMMISSION,** )  
**Respondent** )  
\_\_\_\_\_ )

**PROPOSAL FOR DECISION**

This matter coming on to be heard and being heard February 16, 2015, in the Office of Administrative Hearings, and appearing for the Petitioner is attorney Mr. Mikael R. Gross, and for the Respondent Assistant Attorney General Ms. Lauren Tally Earnhardt; based upon the evidence presented, the undersigned finds the following facts by the preponderance of the evidence:

1. Petitioner had certification as a probation/parole officer from May, 1990 through and until December, 2011. Said certification was transferred to correctional officer certification on December 29, 2011.
2. Petitioner served as a Chief Probation and Parole Officer for the State of North Carolina until 2011.
3. Petitioner was transferred to Swannanoa Correctional Center for Women in January, 2012, after being disciplined and demoted for reasons more fully set forth herein.
4. Petitioner currently serves as a correctional case manager; her duties include assisting inmates with transition, PRIA, and CBI counseling and compliance. She has been active in domestic violence counseling for inmates that are preparing to leave prison, and she believes that she is having a positive impact in her current employment.
5. Petitioner has never been disciplined by Respondent prior to the matter at issue herein.
6. On August 18, 2011, Petitioner submitted to a drug test for her employer. The results of the test were negative for controlled substances.
7. Petitioner was indicted for Felony Possession of Schedule VI Controlled Substance, Manufacturing Schedule VI Controlled Substance, and Conspiracy to Manufacture Schedule VI Controlled Substance on April 30, 2012, in Madison County, North Carolina.

8. On May 1, 2012, Petitioner prepared a statement to provide her employer, the North Carolina Department of Public Safety, with information related to her arrest and the criminal investigation. NCDPS notified the Respondent of the charges against the Petitioner on June 21, 2012.

9. Petitioner's statement regarding the substance of the criminal charges was stamped "RECEIVED" by the Respondent on June 26, 2012.

10. Respondent immediately initiated an investigation against the Petitioner.

11. Mr. Richard Squires, Deputy Director, Criminal Justice Standards Division, was an investigator for the Respondent at the time of this incident, and he was assigned to investigate the Petitioner's matter.

12. Each of the criminal charges were dismissed on February 3, 2014, with the following explanation: "Co-defendant has taken responsibility for all offenses and contraband."

13. The co-defendant in the criminal case was the Petitioner's husband, Chris Maney.

14. On February 11, 2014, Respondent received notice that all charges against the Petitioner had been dismissed.

15. Respondent's evidence showed that on February 5, 2014, Kevin Burress, an "Authorized Representative/Manager" with the North Carolina Department of Public Safety, recommended that Petitioner's criminal justice officer certification be continued. Said notice was stamped "Received" by the Respondent on February 18, 2014.

16. Following the dismissal of the criminal charges against the Petitioner, Mr. Squires reviewed Petitioner's May 1, 2012 statement, and requested the criminal investigative file of the State Bureau of Investigation related to the Petitioner's case.

17. Squires had knowledge of the existence of a State Bureau of Investigation (SBI) investigative file, but did not request the information until after dismissal of the criminal charges. A synopsis of the SBI investigation was reviewed and prepared by Respondent's counsel on March 6, 2014.

18. Squires did not conduct an independent investigation of the allegations, relying solely on the documents provided by other sources.

19. According to Squires, the Respondent would "typically" wait for the disposition of criminal charges before a review was conducted.

20. Squires testified that summary suspension proceedings could have been initiated against the Petitioner in 2012, immediately upon receiving information regarding the criminal charges.

21. Had summary suspension proceedings been instituted in this matter, Squires would have been the individual responsible for doing so by providing information to the Probable Cause Committee.

22. Pursuant to 12 N.C. Admin. Code 9G .0506(a), a summary suspension may be made by the Respondent's Probable Cause Committee "when the person has committed or been convicted of a violation of the criminal code that would require a permanent revocation or denial of certification."

23. Conviction of a criminal offense is not required for a permanent revocation or denial of certification, only that a felony be committed, or other offense for which imprisonment for two years is authorized. 12 N.C. Admin. Code 09A. 0205 (a)(1) and (a)(2).

24. Squires chose not to provide the Committee with information regarding the criminal charges upon receiving the same because Petitioner did not meet the criteria for summary suspension.

25. Respondent took no action to summarily suspend or revoke Petitioner's certifications after having been properly noticed of the pending criminal charges.

26. Despite the existence of pending felony drug charges, Respondent took no action to suspend or revoke Petitioner's certifications.

27. Despite the existence of pending felony drug charges, the North Carolina Department of Public Safety chose to allow Petitioner to continue close contact with the state's prison population.

28. Respondent had actual knowledge of the criminal charges and the existence of the SBI investigation for more than 20 months before they were reviewed by Squires and the Respondent.

29. Squires prepared the probable cause memorandum regarding this matter on March 26, 2014, citing the three felony drug charges and lack of good moral character as items to be considered by the Committee for possible suspension or revocation of Petitioner's certifications.

30. On May 20, 2014, the Respondent's Probable Cause Committee reviewed the investigative memorandum and underlying documentation.

31. At the time the Probable Cause Committee reviewed allegations associated with the Petitioner's matter, the information available to the Respondent was more than two years old.

32. The Committee found no probable cause with respect to the felony charges against Petitioner.

33. The Committee did, however, find probable cause that Petitioner lacked the good moral character required of a correctional officer and probation/parole officer.

34. C.E. Vines with the North Carolina State Bureau of Investigation interviewed the Petitioner in connection with the criminal investigation on August 10, 2011.

35. Vines is the Assistant Special Agent in Charge for the Western District of North Carolina which also includes Mitchell, Yancey and Madison counties.

36. ASAC Vines has been involved with marijuana eradication for 12 years.

37. ASAC Vines was asked to assist the Madison County Sheriff's Office with the investigation into the allegations that Petitioner's husband, Christopher Maney was growing marijuana.

38. ASAC Vines assisted the Sheriff's Office by locating the plants and surveying the area to see who came to tend to them. The plants were in pots and were located in a field off to the side of Petitioner's residence, approximately 50-75 yards from the marital home.

39. ASAC Vines swore out a warrant for Christopher Maney and processed him for possession of marijuana.

40. During the course of the investigation, Vines interviewed the Petitioner.

41. ASAC Vines testified that Petitioner was honest, forthright, and truthful during the course of the criminal investigation.

42. Petitioner told Vines that she found out about the marijuana plants in 2011 when she saw them in the upstairs section of their barn.

43. Petitioner told ASAC Vines that she didn't know how many plants there were and that she confronted her husband about the plants.

44. Agent Vines did not observe the Petitioner anywhere near the marijuana plants during the investigation and although there was video surveillance of the grow operation, no usable video showed Petitioner near the plants or in any way exercising custody or control over the marijuana.

45. Petitioner told her husband he was jeopardizing everything they had, and that he could be charged with crimes for growing the marijuana.

46. Petitioner was concerned about the impact her husband's criminal activity could have on both of their careers.

47. Petitioner told her husband that she did not want to know anything about what he was doing with the marijuana plants. She had no information regarding sale of marijuana by her husband; only that the marijuana was for his personal use.

48. In addition to marijuana, Petitioner's husband also used alcohol to excess.

49. Petitioner testified that her husband was physically abusive towards her during the course of their marriage, and that she was the victim of repeated acts of domestic violence and domestic abuse.

50. On July 18, 2011, Petitioner called her husband and told him that she heard Madison County detectives talking about a marijuana eradication fly-over which would be taking place.

51. Petitioner told her husband about the possible fly-over because she was afraid he would become physically abusive if she knew about the fly-over and failed to tell him.

52. No fly-over marijuana eradication operation occurred at or near the time Petitioner advised her husband.

53. ASAC Vines testified had such an operation occurred, he "would have known about it because I would have been the one who was responsible for the operation."

54. Petitioner did not acquire or otherwise obtain information regarding the fly-over as part of her duties as Chief Probation/Parole Officer for Madison County.

55. Petitioner did not become aware of the information regarding the fly-over as a result of her position or duties.

56. While the Petitioner was an employee of the State and the information regarding the fly-over was in contemplation of an official action by a governmental unit, her duties as a probation officer were not associated with the fly-over.

57. Information regarding the fly-over was not made known to her in her official capacity.

58. Petitioner was not charged with violating NCGS §14-234.1; the Respondent did not allege she committed an act in violation of this statute; and her conduct did not meet the elements of NCGS §14-234.1.

59. ASAC Vines knew the Petitioner for many years preceding his investigation, and had witnessed what he believed to be evidence of domestic violence against the Petitioner.

60. While an agent with the North Carolina SBI, Vines had observed the Petitioner with bruising about the head and face on two occasions prior to 2011. Vines believed the bruising to be the result of domestic abuse.

61. Petitioner told ASAC Vines during the investigation that she sought treatment for the abuse from her doctor.

62. ASAC Vines has told Petitioner on more than one occasion that she should speak to someone about the abuse.

63. While speaking with Petitioner's co-workers during the course of the investigation, Vines confirmed that the Petitioner had spoken with them about being the victim of domestic abuse.

64. Petitioner advised Vines of several serious domestic violence situations allegedly perpetrated by her husband. On more than one occasion, Petitioner's husband discharged a firearm at her during domestic abuse incidents.

65. Petitioner testified that on one occasion while trying to escape from her husband's domestic abuse, she was running from the house and was trying to get up an embankment in her back yard when her husband began shooting at her in the dark. The bullets were hitting the ground so close to her that the dirt was flying up and hitting her in her face and on her legs where she was positioned.

66. On yet another occasion, Petitioner's husband was angry with her and had hit her, knocking her to the ground in front of the fireplace inside the home. Petitioner testified that her husband then opened fire with a .380 semi-automatic pistol striking the fireplace and shattering the doors. Glass from the fireplace struck her, causing cuts and scratches to her face and legs.

67. Petitioner's two children witnessed domestic abuse over the years, and on one occasion, her husband had beaten her, took her into the children's room, and told the boys that their mother was a whore.

68. Buncombe County Department of Social Services investigated the domestic violence and substantiated abuse in the Petitioner's case.

69. Petitioner suffered bodily injury at the hands of her husband, and was afraid that he would kill her.

70. Petitioner would often call to "test the waters" before she would go home to see if she needed to hide or avoid her husband.

71. Petitioner, at the time of this hearing, is undergoing therapy and counselling for mental and emotional issues arising from the long-term and repeated episodes of domestic violence.

72. Petitioner has been honest, truthful, and forthright throughout this process, freely admitting to her conduct.

73. Petitioner was honest and credible at this hearing, and again freely admitted to her actions. Petitioner was apologetic and testified that she understood the gravity of her actions and her current situation.

Based upon the foregoing findings of fact, the undersigned concludes as a matter of law:

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter herein.

2. The Respondent has the burden of proof in this matter. The burden is on the Respondent to show by preponderance of the evidence that Petitioner lacks the moral character to hold the certification of a correctional officer or probation/parole officer.

3. The North Carolina Criminal Justice Education and Training Standards Commission has the authority to suspend, revoke, or deny the certification of a corrections or probation/parole officer if the Commission finds, among other things, that a correctional officer does not meet or maintain required employment standards. 12 NCAC 9G .0504(b)(2)

4. 12 NCAC 09G .0206 provides that every person employed as a correctional officer or probation/parole officer shall demonstrate good moral character by: not being convicted of a felony, not being convicted of certain other offenses, submitting to and producing negative drug screenings, attaining certain age, education, and background requirements, and being truthful in providing information to the Department of Public Safety, Division of Adult Correction and Juvenile Justice and to the Standards Division for the purpose of obtaining probationary or general certification.

5. North Carolina case law provides that “[g]ood moral character is 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).

6. A lack of good moral character can be shown where the findings viewed as a whole reveal a pattern of conduct “that permeates that applicant’s character and could seriously undermine public confidence...” In re Legg, 325 N.C. 658, 675 (1989).

7. 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.”)

8. The evidence does not demonstrate a pattern of conduct that permeates Petitioner’s character.

9. To the contrary, Petitioner was forthright and truthful with law enforcement regarding her conduct and an isolated incident associated therewith.

10. Further, Petitioner was forthright and truthful with law enforcement regarding her husband’s conduct and their actions.

11. Considering the totality of the circumstances, disclosure of information to her husband regarding the fly-over does not implicate concerns regarding the Petitioner's moral character.

12. Issues concerning lack of good moral character of an individual holding probation/parole certification and corrections certification can affect public health, safety, or welfare requiring immediate action.

13. Respondent's failure to act on information that could have a direct impact on the health, safety, and welfare of the state's prison population for approximately two years is evidence that Petitioner's conduct was not and is not sufficiently egregious to justify suspension or revocation of her certifications.

14. Similarly, Respondent's failure to conduct a timely, independent investigation in light of such serious charges is evidence that the Petitioner's conduct was not and is not sufficiently egregious to justify suspension or revocation of her certifications.

15. Respondent's argument that it did not want to get involved in the criminal case to protect Petitioner's due process rights is without merit. Respondent's obligation to the public is different from that of the criminal justice system. Respondent is charged with ensuring that those individuals who hold certification meet certain minimum standards.

16. The North Carolina Department of Public Safety's actions in allowing the Petitioner continued contact with the state's prison population while felony drug charges were pending against her is further evidence that the Petitioner's conduct was not sufficiently egregious to justify suspension or revocation of her certification.

17. There is no evidence that the Petitioner violated any law.

18. Given the nature and extent of the domestic violence the Petitioner experienced and the Petitioner's fear of death or serious bodily injury from her husband, Petitioner reasonably believed her only option to avoid another domestic violence incident was to provide her husband with information regarding the fly-over.

19. Petitioner's disclosure of information regarding the fly-over does not violate NCGS §14-234.1.

20. Petitioner did not commit the drug offenses for which she was indicted.

21. The fact that a criminal charge was filed against the Petitioner, standing alone, cannot be considered evidence that she committed a crime. It is merely evidence that a charge existed.



22. Similarly, the fact that a criminal charge was filed against the Petitioner, standing alone, cannot be considered evidence that she lacked good moral character. Again, it is merely evidence that a charge existed.

23. Respondent has not proven that the Petitioner lacks good moral character through criminal conduct, and Petitioner's actions do not rise to the level of conduct warranting a finding of lack of good moral character.

24. Respondent has not established that Petitioner had a duty to disclose to her employer, or anyone else, that her husband was engaging in illegal activity.

25. Petitioner's honesty and candor regarding her actions, submission to counselling, positive role in her work and her community, her negative drug test, the testimony and evidence submitted at the hearing, and the fact that her employer recommended her certification be continued, demonstrates that the Petitioner has the good moral character sufficient to maintain her certifications.

26. No allegation of wrong-doing has been made since Petitioner's arrest, and there is no evidence that Petitioner has not been of good moral character since that time.

27. Given the passage of time from notice of the criminal charges to the Respondent's review of this matter, the availability of and access to the information by the Respondent, Petitioner's unremarkable discipline record, NCDPS's recommendation that Petitioner's certification be continued, her positive employment history, negative drug screen, and complete candor during the course of the investigation, the Respondent acted in an arbitrary and capricious manner. (See *Scroggs v. North Carolina Criminal Justice Educ. and Training Standards Com'n.*, 101 N.C.App. 699 (N.C. App., 1991))

28. Substantial evidence to suspend or revoke Petitioner's correctional officer certification does not exist.

29. Petitioner meets or maintains the minimum employment standard that every correctional officer shall demonstrate good moral character.

### **PROPOSAL FOR DECISION**

Based upon the foregoing findings of fact and conclusions of law, the undersigned recommends that the North Carolina Criminal Justice Education and Training Standards Commission find that the Petitioner is of good moral character and that she has not engaged in any conduct that would rise to the level of requiring her correctional officer and probation/parole officer certifications to be suspended or revoked.

### **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 Criminal Justice Education and Training Standards Commission.

A copy of the final agency decision or order shall be served upon each party personally or by certified mail addressed to the party at the latest address given by the party to the agency and a copy shall be furnished to her attorney of record. N.C. Gen Stat. §150B-42(a). It is requested that the agency furnish a copy to the Office of Administrative Hearings.

This 16<sup>th</sup> day of April, 2015.

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Philip Berger, Jr.  
Administrative Law Judge