

STATE OF NORTH CAROLINA
COUNTY OF FORSYTH

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14DOJ08257

CATHERINE DENISE NETTER PETITIONER, V. N C SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION RESPONDENT.	PROPOSAL FOR DECISION
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On May 28, 2015, Administrative Law Judge J. Randall May heard this case in High Point, North Carolina. This case was heard after Respondent requested, pursuant to N.C.G.S. § 150B-40(e), the designation of an administrative law judge to preside at the hearing of a contested case under Article 3A, Chapter 150B of the North Carolina General Statutes.

APPEARANCES

Petitioner: Pro Se

Respondent: Matthew L. Boyatt, Assistant Attorney General
N.C. Department of Justice
9001 Mail Service Center
Raleigh, North Carolina 27699-9001

ISSUE

1. Does Petitioner stand convicted of the class B misdemeanor offense of criminal contempt of court, such that Petitioner's certification is subject to suspension or revocation?

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 that Petitioner received by mail the proposed Revocation of Justice Officer's Certification letter, mailed by Respondent Sheriffs' Commission on September 16, 2014.

2. The North Carolina Sheriffs' Education and Training Standards Commission (hereinafter referred to as the "Commission" or "Sheriffs' 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 obtained employment as a detention officer with the Guilford County Sheriff's Office in 1997. Petitioner currently holds certification through the Respondent Commission. (Respondent's Exhibit 4) Petitioner has risen through the ranks at the Guilford County Sheriff's Office and is currently a Sergeant responsible for supervising approximately 50 detention officers. Further, Petitioner is responsible for the care of approximately 700 inmates. In addition to detention officer certification, Petitioner currently holds a general instructor certification through the Respondent Commission. Petitioner has earned a BA degree in political science from North Carolina A&T State University, in addition to a Master's degree in education.

4. 12 NCAC 10B .0204(d)(1) provides the Sheriffs' Commission may revoke the certification of a justice officer when the Commission finds that the officer has committed or been convicted of a crime defined as a Class B misdemeanor, which occurred after the officer's date of appointment through the Respondent Commission.

5. On September 30, 2013, Petitioner was found to be in direct criminal contempt of court in violation of North Carolina General Statute § 5A-11. Judgment was entered against Petitioner by Judge Thomas G. Foster and Petitioner was ordered to pay \$180.00 in costs plus a \$50.00 fine. (Respondent's Exhibit 2)

6. The Order finding Petitioner in criminal contempt of court states the basis of the finding was that Petitioner's "cell phone rang during session of court during hearing." (Respondent's Exhibit 2, p.2)

7. Criminal contempt of court in violation of North Carolina General Statute § 5A-11 is classified as a Class B misdemeanor pursuant to the Commission Rules and the Class B Misdemeanor Manual adopted by the Respondent Commission.

8. Petitioner testified at the administrative hearing regarding the events leading to the finding of contempt. Petitioner was attending a court hearing on September 30, 2013 to support her husband in a child custody matter. Petitioner entered the courtroom and all were advised that telephone devices must be turned off. Petitioner took her cell phone and placed the device in what she believed to be power off mode. However, Petitioner inadvertently placed the device in airplane mode.

9. At some point during the proceedings on September 30, 2013, Petitioner's cell phone beeped. Petitioner apologized and explained that she intended to turn her phone off and that she believed the device was indeed turned off, but that she mistakenly placed the phone into airplane mode. Petitioner's phone was taken from her and Petitioner was advised by the Court at the conclusion of the hearing that she could only get her cell phone back if she paid off a fine.

10. Petitioner was not provided a hearing on the criminal contempt charge, nor was Petitioner advised of her rights or advised that by paying the fine, Petitioner would have a criminal

adjudication for contempt of court. Petitioner went to the Clerk of Court and paid off the fine and court costs, not knowing that doing so resulted in a criminal conviction being placed on her record.

11. Petitioner's actions on September 30, 2013 were unintentional and were completely accidental. Petitioner did not willfully or intentionally violate an order of the court on September 30, 2013.

12. On March 30, 2015, Petitioner filed a Motion for Appropriate Relief in Guilford County, North Carolina, seeking to set aside Petitioner's criminal conviction in case number 13 CR 38653. Said Motion was granted and Petitioner's criminal conviction for contempt of court in case number 13 CR 38653 was set aside by Judge Linda Falls on April 1, 2015.

13. The record before this Court establishes that Petitioner no longer stands convicted of criminal contempt of court and Petitioner's certification is therefore not subject to suspension and/or revocation. Further, after considering the evidence presented in this matter, the undersigned finds that Petitioner did not commit the act of being in direct criminal contempt of court insofar as Petitioner's actions were unintentional and arose out of accident and mistake. Petitioner did not willfully and knowingly defy a court order. Petitioner quite simply made a mistake by placing her telephone in airplane mode instead of power off mode. Petitioner was not in criminal contempt of court on the date in question.

CONCLUSIONS OF LAW

1. The parties are properly before the undersigned Administrative Law Judge and jurisdiction and venue are proper.

2. Pursuant to 12 NCAC 10B .0204(d)(1), the Commission may revoke, suspend, or deny the certification of a justice officer when the Commission finds that the applicant for certification or certified officer has committed or been convicted of:

(1) a crime or unlawful act defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor which occurred after the date of appointment.

3. Criminal contempt of court in violation of N.C.G.S. § 5A-11 is classified as a Class B misdemeanor pursuant to 12 NCAC 10B .0103 (10)(b) and the Class B Misdemeanor Manual adopted by Respondent.

4. A preponderance of the evidence presented at the administrative hearing establishes that Petitioner does not stand convicted of the Class B misdemeanor offense of criminal contempt of court. This conviction was set aside by the Honorable Linda Falls on April 1, 2015. Therefore, Petitioner's certification is not subject to suspension and/or revocation for the events of September 30, 2013 which resulted in the charge in 13 CR 038653.

5. A preponderance of the evidence presented at the administrative hearing establishes that Petitioner did not commit an act of criminal contempt of court on September 30, 2013.

Petitioner did not willfully and knowingly defy a court order. Petitioner made a mistake on September 30, 2013 by placing her telephone in airplane mode instead of power off mode. Petitioner did not commit the offense of criminal contempt of court on the date in question.

PROPOSAL FOR DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned recommends Respondent take no adverse action against Petitioner's certification.

NOTICE

The Agency making the Final Decision in this contested case are 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 9th day of July, 2015.

J. Randall May
Administrative Law Judge