

STATE OF NORTH CAROLINA  
COUNTY OF SCOTLAND

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
15DOJ01107

TOD LESLIE BONELLO PETITIONER,  V.  N C SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION RESPONDENT.	<b>PROPOSAL FOR DECISION</b>
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On June 10, 2015, Administrative Law Judge J. Randall May heard this case in Fayetteville, 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: Tod Leslie Bonello, *Pro Se*  
1401 West Terrace Circle  
Apartment A  
Laurinburg, North Carolina 28352

Respondent: Matthew L. Boyatt, Assistant Attorney General  
N.C. Department of Justice  
9001 Mail Service Center  
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#### **ISSUE**

Is Respondent's proposed denial of Petitioner's application for certification for Petitioner knowingly making a material misrepresentation of any information required for certification as a justice officer to the North Carolina Sheriffs' Education and Training Standards Commission supported by a preponderance of the evidence presented at the hearing?

#### **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 the Petitioner received by mail the proposed Denial of Justice Officer's Certification letter, mailed by Respondent North

Carolina Sheriffs' Education and Training Standards Commission on January 9, 2015. (Respondent's Exhibit 1)

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. 12 NCAC 10B .0204(c)(1) and (2) provides the Sheriffs' Commission may deny the certification of a justice officer when the Commission finds that the applicant has:

(1) knowingly made a material misrepresentation of any information required for certification or accreditation from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission; or

(2) knowingly and designedly by any means of false pretense, deception, defraud, misrepresentation, or cheating whatsoever, obtained or attempted to obtain credit, training or certification from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission.

4. Petitioner previously applied for certification through the North Carolina Criminal Justice Education and Training Standards Commission (hereinafter "CJ Commission") in order to seek employment at the Laurinburg Police Department. However, Petitioner separated from the Laurinburg Police Department in order to pursue other employment and Petitioner never became certified through the CJ Commission.

5. The Petitioner completed an Application for Certification Form F-5A on September 18, 2013, in furtherance of his application for certification through the CJ Commission. On the F-5A Form, Petitioner was required to list all criminal charges, regardless of the date of the offense and regardless of the disposition of the offense. Petitioner completed the F-5A Form and indicated that he had "No criminal Charges." Petitioner initialed this response. (Respondent's Exhibit 4, p.2) Petitioner was given room on the F-5A Form to disclose all "Offenses Charged" and to disclose the "Date of Offense" and the "Disposition of Case and Date." Again, Petitioner made no disclosures on the F-5A relating to criminal charges.

6. Petitioner signed the F-5A Form and attested that the information provided on that form was thorough and complete. Petitioner was cautioned in writing that any omission or falsification could result in the denial of his application for certification.

7. Petitioner also completed a Personal History Statement on April 10, 2013, in furtherance of his application for certification through the CJ Commission. Question No. 47 of the Personal History Statement asked Petitioner to disclose whether or not he had ever been arrested or otherwise charged with a criminal offense, and if so, to provide the offense charged,

the charging law enforcement agency, the date of the offense, and the disposition of the matter. The instructions provide that if any doubt exists in the applicant's mind about whether they were charged criminally, they should answer yes.

8. Petitioner answered "No" to question No. 47, indicating that he had not been charged with any criminal offense. (Respondent's Exhibit 5)

9. Petitioner signed his Personal History Statement before a Notary, affirming that his answers in the Statement were true and complete. Petitioner was cautioned that any misstatement or omission could result in his being denied certification. Further, Petitioner was cautioned that he had a continuing duty to update all information contained in the Personal History Statement.

10. Petitioner was aware that both the F-5A Form and the Personal History Statement were being submitted to the CJ Commission in furtherance of Petitioner's application for certification. At the time Petitioner completed these forms, Petitioner was fully aware of his duty to be thorough, complete and honest on each form. Petitioner had earned a Bachelor of Science Degree in criminal justice from Fayetteville State University in 2012, and had previously served in the United States Air Force from 2001 through 2007. Petitioner understood the questions being asked of him on the 2013 F-5A and 2013 Personal History Statement and fully understood the requirement to provide honest and complete answers.

11. As stated above in greater detail, Petitioner completed the Personal History Statement and F-5A Form in 2013, responding on each form that he had no previous criminal charges. However, Petitioner's subsequent criminal history check revealed that Petitioner was charged with injury to personal property on October 18, 2007, case number 2007 CR 65440, and with assault on a female on November 20, 2007, case number 2007 CR 67236. (Respondent's Exhibit 3)

12. Petitioner's injury to personal property case was dismissed by the assistant district attorney after Petitioner appeared in court on December 10, 2007. The prosecuting witness in that case did not want to pursue the charges.

13. Petitioner also appeared in criminal district court on January 31, 2008, and entered a plea of not guilty to the assault on a female charge in 2007 CR 67236. The district court judge entered a verdict of not guilty upon Petitioner's plea of not guilty. (Respondent's Exhibit 3, p. 3)

14. Petitioner maintains the omissions made on the F-5A and on the Personal History Statement were simply a mistake and oversight. Petitioner's explanation is not credible given the totality of the evidence presented at the administrative hearing. Petitioner completed the F-5A Form and the Personal History Statement at home on his personal computer. Petitioner was not forced to complete these forms quickly, nor was Petitioner told what information to provide on the forms. Petitioner signed both the F-5A Form and the Personal History Statement, thereby attesting that the information on each form was thorough and complete, and that there were no omissions or misrepresentations. Petitioner was highly educated at the time he completed these forms, having earned a four (4) year Bachelor of Science Degree and also having served for many years in the United States Air Force.

15. Petitioner made material misrepresentations of information required to be disclosed to the CJ Commission within the meaning of 12 NCAC 10B .0204(c)(1). Petitioner's material misrepresentation occurred on two (2) separate occasions and on two (2) different forms submitted to the CJ Commission for Petitioner's certification application.

16. A preponderance of the evidence presented at the administrative hearing establishes that Petitioner's application for certification is subject to denial pursuant to 12 NCAC 10B .0204(c)(1) based on: 1) Petitioner making a material misrepresentation on the September 18, 2013, F-5A Form by not disclosing previous criminal charges; and 2) by making a second material misrepresentation on the April 10, 2013 Personal History Statement by not disclosing previous criminal charges.

### **CONCLUSIONS OF LAW**

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

2. 12 NCAC 10B .0204(c)(1) and (2) states that the Sheriffs' Commission may deny the certification of a justice officer when the Commission finds that the applicant has:

(1) knowingly made a material misrepresentation of any information required for certification or accreditation from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission; or

(2) knowingly and designedly by any means of false pretense, deception, defraud, misrepresentation, or cheating whatsoever, obtained or attempted to obtain credit, training or certification from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission.

3. For the reasons set out above, Petitioner did make a knowing, material misrepresentation of information required for certification on his April 10, 2103, Personal History Statement and on the September 18, 2103 F-5A Form within the meaning of 12 NCAC 10B.0204(c)(1) by failing to disclose the following criminal charges on each form: 2007 CR 65440 (injury to personal property); and 2007 CR 67236 (assault on a female). At the time Petitioner completed the Personal History Statement and F-5A Form, Petitioner was fully aware of the aforementioned criminal charges. Petitioner chose not to disclose these criminal charges knowing at the time that his Personal History Statement and F-5A forms were inaccurate and misleading.

4. Pursuant to 12 NCAC 10B .0205, Petitioner's application for certification is subject to denial for a period of five (5) years based on Petitioner's material misrepresentations of information required to be disclosed to the Commission on the April 10, 2013, Personal History Statement and on the September 18, 2013 F-5A Form.

5. The Petitioner has the burden of proof in this matter. The Petitioner has failed to show by a preponderance of the evidence that the Respondent Commission improperly proposed to deny Petitioner's application for certification.

**PROPOSAL FOR DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law and pursuant to 12 NCAC 10B .0205, the undersigned recommends Respondent deny the Petitioner's application for certification for a period of five (5) years based on Petitioner's material misrepresentations on two separate forms submitted to the North Carolina Criminal Justice Education and Training Standards Commission.

**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 3<sup>rd</sup> day of August, 2015.

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J. Randall May  
Administrative Law Judge