

STATE OF NORTH CAROLINA
COUNTY OF MADISON

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 DOJ 01534

William Kirk Ramsey Petitioner, v. N C Sheriffs' Education And Training Standards Commission Respondent.	PROPOSAL FOR DECISION
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On November 3, 2015, Chief Administrative Law Judge Julian Mann III, heard this contested case in the Haywood County Courthouse, Waynesville, North Carolina. Pursuant to N.C.G.S. § 150B-40(e), Respondent requested 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

Did Petitioner fail to make proper notice of criminal charges to the Respondent Commission?

FINDINGS OF FACT

1. Both parties are properly before the Chief 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 Revocation of Justice Officer's Certification letter, mailed by Respondent North Carolina Sheriffs' Education and Training Standards Commission on January 5, 2015. (Respondent's Exhibit 1)

2. The North Carolina Sheriffs' Education and Training Standards Commission (hereinafter referred to as the "Respondent 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(b)(2) provides the Sheriffs' Commission shall revoke, deny, or suspend the certification of a justice officer when the Commission finds that the applicant for certification or certified officer fails to meet or maintain any of the employment or certification standards required by 12 NCAC 10B .0300.

4. 12 N.C.A.C. 10B .0301(a)(7) requires that every justice officer employed or certified in North Carolina shall within five (5) working days notify the Sheriffs' Standards Division and the appointing department head, in writing, of all criminal offenses charged against the officer and shall also give notification, in writing, to the Sheriffs' Standards Division and the appointing department head following the adjudication of these criminal charges.

5. Petitioner completed Basic Law Enforcement Training in 2010 and is currently certified as a justice officer through the Madison County Sheriff's Office. Petitioner has been employed through the Madison County Sheriff's Office since 2010 and is currently a reserve deputy with that agency. Petitioner received his certification from the Respondent Commission on August 13, 2011. (Respondent's Exhibit 3)

6. Petitioner executed a Report of Appointment, Form F-4, which was submitted to the Respondent Commission on August 30, 2010. On that form, Petitioner was cautioned that he must report all new criminal charges to the Sheriffs' Commission within five (5) working days. Petitioner signed an acknowledgement indicating that he understood the reporting requirements. (Respondent's Exhibit 5)

7. Petitioner also completed a Form F-3 Personal History Statement, which was submitted to the Respondent Commission on August 22, 2010. Petitioner was advised on the Personal History Statement that he was under an obligation to update all information contained within the Statement. Petitioner signed the Personal History Statement before a notary, acknowledging his understanding of his duty to update information contained within the F-3 Personal History Statement. (Respondent's Exhibit 6, p.16)

8. On December 8, 2012, Petitioner was charged with carrying a concealed weapon while consuming alcohol in Buncombe County, North Carolina, case number 12 CR 008845. (Respondent's Exhibit 4) This criminal charge was subsequently dismissed on November 8, 2013.

9. Petitioner did not report to the Respondent Commission that he had been charged with the above-referenced criminal offense in 12 CR 008845 within five (5) working days of December 8, 2012. Petitioner initially reported this charge to his commanding officer within five (5) days of being charged, with the understanding that his chain of command at the Madison County Sheriff's Office would report the charge to the Respondent Commission within the

required five (5) working day period. Petitioner does not dispute that his employer failed to report the criminal charge to the Respondent Commission.

10. Petitioner regrets his failure to follow up with his employer in order to ensure that the Respondent Commission received notification that Petitioner had been charged with the above-referenced offense within the required time set out in 12 N.C.A.C. 10B .0301(a)(7). Petitioner accepts responsibility and has not attempted to make excuses for his failure to ensure the Respondent Commission received proper notification.

11. Petitioner's failure to report his criminal charge within the time required arose out of Petitioner's reliance on his chain of command. Petitioner acknowledges that ultimately he is responsible for reporting criminal charges to the Respondent Commission under 12 NCAC 10B 0301(a)(7), and that he failed to do so pursuant to 12 N.C.A.C. 10B .0301(a)(7). Petitioner has indicated that, based on this experience, he will always follow up in the future to ensure all information is being updated in a timely manner, pursuant to the Commission's rules. Hence, it is exceedingly unlikely that Petitioner will violate a reporting requirement of the Sheriffs' Commission in the future.

12. Mitigating circumstances exist in this case to warrant a lesser sanction than revocation of certification, especially in light of Petitioner reporting the criminal charge in 12 CR 008845 to his employer immediately, with the expectation and understanding that his employer would provide the requisite written notification to the Respondent Commission.

13. Based on the evidence presented at the administrative hearing, Counsel to the Commission will recommend that Petitioner be allowed to maintain his certification.

CONCLUSIONS OF LAW

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

2. The Petitioner failed to make timely notification of his criminal charge in 12 CR 008845, which constitutes a violation of 12 NCAC 10B .0204(b)(2) and 12 NCAC 10B .0301(a)(7).

3. The Respondent's proposed revocation of Petitioner's justice officer certification is supported by substantial evidence. However, pursuant to 12 NCAC 10B .0205 (2), the Respondent Commission has the discretion to impose a lesser sanction, to include a verbal and/or written warning in lieu of suspension or revocation. The undersigned recommends such a written and/or verbal warning to Petitioner, given the evidence presented at the hearing and the mitigating circumstances existing in this case.

PROPOSAL FOR DECISION

NOW, THEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned recommends the Respondent issue Petitioner a verbal and/or written warning for violating 12 NCAC 10B .0301(a)(7), based on the totality of the evidence presented at the administrative hearing.

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.

IT IS SO ORDERED.

This the 11th day of December, 2015.

Julian Mann III
Chief Administrative Law Judge