

STATE OF NORTH CAROLINA
COUNTY OF JOHNSTON

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 DOJ 07442

JAMES PHILIP DAVENPORT,)
)
 Petitioner,)
)
 v.)
)
 N.C. SHERIFFS' EDUCATION)
 AND TRAINING STANDARDS)
 COMMISSION,)
)
 Respondent.)
 _____)

PROPOSAL FOR DECISION

On January 12, 2016, Administrative Law Judge Melissa Owens Lassiter heard this case in Fayetteville, North Carolina 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. Pursuant to the undersigned's request, Respondent filed a draft Proposal for Decision with the Office of Administrative Hearings on April 18, 2016.

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

Whether Petitioner's application for certification is subject to denial based upon Petitioner having been denied certification by the North Carolina Criminal Justice Education and Training Standards Commission?

FINDINGS OF FACT

1. Both parties are properly before the Administrative Law Judge, in that jurisdiction and venue are proper, both parties received notice of hearing, and that the Petitioner received by mail the Notification of Probable Cause to Deny Justice Officer Certification letter mailed by

Respondent North Carolina Sheriffs' Education and Training Standards Commission on September 24, 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(c)(5) provides the Sheriffs' Commission may revoke, deny, or suspend the certification of a justice officer when the Commission finds that the applicant for certification or certified officer:

- (5) has been denied certification or had such certification suspended or revoked by the North Carolina Criminal Justice Education and Training Standards Commission....

4. Petitioner has extensive law enforcement experience prior to applying for certification through the Sheriffs' Commission. Petitioner was a detective for the Baltimore County Police Department in the State of Maryland. Petitioner retired from that agency in good standing after 20 years' service. Petitioner also worked as an investigator for the Department of State in Pennsylvania for approximately 4 years.

5. Petitioner completed Basic Law Enforcement Training in 2007 at Johnston Community College in Smithfield, North Carolina. Petitioner applied for and obtained justice officer certification from the North Carolina Criminal Justice Education and Training Standards Commission (hereinafter "CJ Commission") on February 22, 2013. *See* Respondent's Exhibit 3. Petitioner worked for the North Carolina General Assembly Police and later the Rocky Mount Police department.

6. Petitioner is currently an applicant for justice officer certification through the Sheriffs' Commission. Petitioner has not previously held certification through the Sheriffs' Commission. Petitioner is currently employed at the Wayne County Sheriff's Office and is the lead bailiff at that agency.

7. Petitioner testified at the administrative hearing, and does not dispute that he previously applied for certification through the CJ Commission, and that the CJ Commission denied his certification for a period of five (5) years for material misrepresentation in violation of rule 12 NCAC 09A .0204(b)(6), as set out in greater detail in the Final Agency Decision introduced into evidence in this case. *See* Respondent's Exhibit 3.

8. However, pursuant to the CJ Commission's Final Agency Decision, the denial of Petitioner's application for certification for a period of five (5) years was stayed, and Petitioner was issued certification by the CJ Commission on the condition that he not violate any federal or state laws, and that he remain in compliance with the rules established by the CJ Commission.

9. Petitioner has remained in compliance with the CJ Commission's Final Agency Decision since being issued certification by that Commission. Petitioner has not been charged with committing any criminal offense and has remained in compliance with the rules established by the CJ Commission.

10. The Sheriff's Commission has the authority to deny Petitioner's application for certification pursuant to 12 NCAC 10B .0204(c)(5) based on the undisputed fact that Petitioner's application for certification was denied by the CJ Commission for material misrepresentation. However, mitigating circumstances exist in this case to warrant a lesser sanction than denial of Petitioner's application for certification through the Sheriffs' Commission. Issuance of certification with a probationary period is warranted in light of Petitioner having been issued certification by the CJ Commission and also based upon Petitioner's extensive experience in law enforcement and his commitment to the profession.

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)(5) provides the Sheriffs' Commission may revoke, deny, or suspend the certification of a justice officer when the Commission finds that the applicant for certification or certified officer:

- (5) has been denied certification or had such certification suspended or revoked by the North Carolina Criminal Justice Education and Training Standards Commission....

3. Petitioner applied for certification through the CJ Commission and his application for certification was denied for no less than five (5) years based upon material misrepresentation in violation of rule 12 NCAC 09A .0204(b)(6). Respondent's Exhibit 3.

4. Respondent's proposed denial of Petitioner's application for justice officer certification is supported by substantial evidence. However, pursuant to 12 NCAC 10B .0204, the Sheriffs' Commission has the discretion to impose a lesser sanction in lieu of denying Petitioner's application for certification. The undersigned recommends that Respondent issue Petitioner certification and place Petitioner on a two (2) year probationary period, during which time Petitioner shall not violate any federal or state law and shall remain in compliance with the rules established by the Sheriffs' Commission and the CJ Commission. At the end of this probationary period, Petitioner's certification shall remain in full force and effect provided he is in compliance with the rules established by the Respondent Commission and the CJ Commission.

PROPOSAL FOR DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned recommends Respondent issue a justice officer certification to Petitioner, and place Petitioner on a two (2) year probationary period, during which time Petitioner shall not violate any federal or

state law and shall remain in compliance with the rules established by the Sheriffs' Commission and the CJ Commission. Petitioner's certification shall remain in full force and effect at the conclusion of this probationary period, provided Petitioner remains in compliance with the rules established by the Respondent Commission and the CJ 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 19th day of April, 2016.

Melissa Owens Lassiter
Administrative Law Judge