

STATE OF NORTH CAROLINA  
COUNTY OF CAMDEN

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
15 DOJ 07702

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Luke Thomas Marcum )  
 )  
 Petitioner )  
 )  
 v. )  
 )  
 North Carolina Criminal Justice Education )  
 And Training Standards Commission )  
 )  
 Respondent )

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**PROPOSAL FOR DECISION**

On June 30, 2016, Administrative Law Judge Melissa Owens Lassiter heard this case in Raleigh, North Carolina, after Respondent requested, pursuant to N.C.G.S. § 150B-40(e), 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. This petition is an appeal of the decision by Respondent's Probable Cause Committee to deny Petitioner's request for law enforcement certification for lack of good moral character.

**APPEARANCES OF COUNSEL**

For Petitioner: J. Michael McGuinness, The McGuinness Law Firm, P.O. Box 952  
Elizabethtown, N.C. 28337

For Respondent: Whitney H. Belich, Assistant Attorney General, N.C. Department of  
Justice, Law Enforcement Liaison Section, 9001 Mail Service Center, Raleigh, N.C. 27699-9001

**ISSUE**

Whether substantial evidence exists for Respondent to deny Petitioner's request for law enforcement officer certification for lack of good moral character?

**RULES AT ISSUE**

12 NCAC 09A .0204(b)(2)  
12 NCAC 09B .0101(3)

## **EXHIBITS ADMITTED INTO EVIDENCE**

For Petitioner: 1 - 8

For Respondent: 1, 2

## **WITNESSES**

For Petitioner: Kurt Schmidt, Captain John Young, Captain James K Anderson, Gina Childress, Lori Brown, Petitioner

For Respondent: Michelle Schilling

## **FINDINGS OF FACT**

### **STIPULATIONS**

1. Petitioner was awarded his law enforcement certification on April 27, 1998 by Respondent.

2. Respondent was notified in October of 2014 that Petitioner had become separated from employment with the Wilson Police Department due to sexual contact with a female while on duty and in a police vehicle.

3. On August 20, 2015, the Petitioner came before Respondent's Probable Cause Committee on the allegation that he lacks good moral character required of a law enforcement officer pursuant to 12 NCAC 09A .0204(b)(2) and 12 NCAC 09B .0101(3).

4. Petitioner and his attorney were present before the Probable Cause Committee and addressed the Committee. Respondent found that sufficient probable cause existed to substantiate a violation against Petitioner that he lacked the good moral character required to maintain certification through Respondent.

5. Prior to October of 2014, Petitioner was involved in a sexual relationship with Tammy Thompson. The relationship began when Petitioner was still married and separated later from his wife.

6. During the course of the relationship, Petitioner would come to Ms. Thompson's home, or meet at his home, or at other locations while he was on duty with the Wilson Police Department, and have sexual intercourse with her. This occurred more than ten (10) times during the course of their relationship.

7. Petitioner would meet with Ms. Thompson at designated locations while on duty and engage in sexual intercourse with Ms. Thompson in his patrol car, and on the hood of his patrol car, including having Ms. Thompson perform oral sex on him.

8. Petitioner engaged in sexual intercourse with Ms. Thompson at the training academy at Wilson Community College off duty.

9. In October of 2014, Ms. Thompson threatened to notify the Wilson Police Department of the nature of her relationship with Petitioner. Petitioner subsequently notified the Wilson Police Department of the relationship, and that Ms. Thompson would be coming in to report their relationship. Ms. Thompson did so on October 12, 2014.

10. Ms. Thompson claims that she reported the relationship because Petitioner possessed nude photographs of her and she claimed that she was concerned he would reveal them. Petitioner and Ms. Thompson had an altercation over these photographs prior to the relationship being reported to the Wilson Police Department. Ms. Thompson acknowledged to the investigator that Petitioner did not assault or strike her.

### ADJUDICATED FACTS

11. On April 27, 1998, Respondent issued a law enforcement certification to Petitioner. Beginning in April 1998, Petitioner served as a law enforcement officer for the City of Wilson for sixteen years in various capacities including the rank of Sergeant. On October 21, 2014, Petitioner resigned from the Wilson Police Department. (Pet. Exhs. 1, 3).

12. In October of 2014, Respondent received notice that Petitioner was separated from employment with the Wilson Police Department, because Petitioner had engaged in sexual conduct with a female, while on duty, and in a police vehicle. Respondent's Investigator Michelle Schilling investigated Petitioner's conduct. Petitioner cooperated fully with the Commission's investigation.

13. Respondent assigned Investigator Michelle Schilling to investigate the matter involving Petitioner. Ms. Schilling obtained pertinent documents from the Wilson Police Department, obtained a statement from Petitioner, spoke with Petitioner on several occasions, and interviewed other witnesses including Tammy Thompson. (T19-21) Ms. Schilling also contacted the Elizabeth City Police Department and obtained documents, including the background investigation that Sergeant Larry James of the Elizabeth City Police Department conducted into the alleged conduct, and Petitioner's character. (T34-36)

14. Ms. Schilling determined that the evidence she obtained, including from Ms. Thompson, established that the sexual conduct at issue was voluntary and consensual on everyone's part, and there was not any undue influence, duress or coercion. (T42)

15. By letter dated September 15, 2015, Respondent notified Petitioner that Respondent's Probable Cause Committee was denying Petitioner's request for certification as a law enforcement officer, because Petitioner lacked good moral character based upon Petitioner's on-duty sexual relationship with Tammy Thompson that occurred over a five-year period, while Petitioner was a member of the Wilson Police Department.

16. The undisputed evidence at hearing showed that around 2008, Petitioner and his wife, began a friendship with Tammy Thompson and her husband. Ultimately, the couples engaged in sexual behaviors known as “swapping.” The relationship was a completely voluntary and consensual relationship on behalf of everyone. (T121)

17. Eventually, Petitioner began a separate romantic affair with Tammy Thompson. (T122) This affair lasted for five years. During four of those years, Petitioner was separated from his wife.

18. During the course of their relationship, Petitioner had sex with Ms. Thompson at her apartment, Petitioner's home, or at other locations while Petitioner was on duty for the Wilson Police Department. (T124) This occurred approximately ten times. Petitioner also engaged in sexual relations with Thompson in Petitioner's patrol car, and on the hood of Petitioner's patrol car, including having Thompson perform oral sex on Petitioner. (T125) Petitioner had occasional sexual contact with Ms. Thompson “maybe once or twice a month.” (T125) It was usually in an area that was generally private where they would not likely been seen by the public. (T126) Petitioner also had sex with Ms. Thompson at the Wilson Community College training academy while he was off duty.

19. Petitioner and Ms. Thompson had only consensual sexual conduct while Petitioner was off-duty and on-duty. There was no contention of any sexual harassment, coercion, or duress. (T42)

20. Petitioner’s relationship with Ms. Thompson did not cause him to neglect his duties, or be a less effective law enforcement officer, and did not affect him carrying out his duties and responsibilities. (T126)

21. In October of 2014, Petitioner terminated his relationship with Ms. Thompson. Ms. Thompson became angry, and initiated a complaint against Petitioner with the Wilson Police Department. Petitioner resigned from his position with the Wilson Police Department out of respect for the Wilson Police Department.

22. Ms. Thompson continued with various attempted communications with Petitioner over a period. (T129) Petitioner kept Investigator Schilling of the Commission informed as to the attempted communications from Ms. Thompson. (T129)

23. Kurt Schmidt is an attorney who has practiced civil and criminal law for 22 years in Wilson, NC in both District and Superior Courts. (T46-47) Mr. Schmidt has known Petitioner since the late 1990s when Petitioner moved to Wilson. (T48) Mr. Schmidt had regular contact with Petitioner on cases; specifically, in cases which Petitioner had investigated. (T48) Schmidt was also involved in charitable activities with Petitioner. (T49-50) At hearing, Schmidt explained how Petitioner was active in several community service activities, active in the Police Athletic League, and active in other charitable work raising money, which resulted in some “outstanding press coverage.” (T50-51)

24. Schmidt described Petitioner as “excellent” police officer. (T52) That is, Petitioner was “outstanding” in how he testified in court, including acknowledging things that were favorable toward the defense. He did not “color outside the lines, there was no filling gaps. If there’s something he didn’t know, he acknowledged that.” (T52) Schmidt opined that Petitioner’s accident reports:

were some of the best I have ever seen. . . they were detailed oriented, they were specific and they were accurate, and they were very helpful in my handling of those claims. . . Petitioner was ‘always a straight shooter. . .’

(T52-53) Regarding Petitioner’s reputation, Schmidt noted that “the way he handled himself, his truthfulness, his trustworthiness - I mean, was exemplary.” (T53) Based on Schmidt’s experience in dealing with Petitioner, he did not have to check behind Petitioner or go validate. “If Luke told us something, I took it to the bank.” (T54)

25. Schmidt was familiar with Petitioner’s involvement and activities with youth baseball programs. Petitioner was active with the community, and was active with his children in their activities. (T54) Some of the things that Petitioner did for his fellow officers really stood out to Mr. Schmidt. (T56) Schmidt was generally familiar with some of the training work that Petitioner had done for other officers. (T57)

26. Mr. Schmidt was disappointed when Petitioner left the Wilson Community. In other words, the Wilson Police Department “took a hit” when Petitioner left. (T60)

27. Mr. Schmidt opined that how a person recovers from mistakes defines who that person is.

28. Mr. Schmidt had not heard people in Wilson chattering about Petitioner’s conduct [with Ms. Thompson]. (T61) Mr. Schmidt is relatively “plugged into” his community, and he believes that he would have heard about it if the matter was being discussed. (T61)

29. The Elizabeth City Police Department conducted a background investigation into Petitioner’s application for employment with the Elizabeth City Police Department. (Pet. Exh. 2, T67). Captain Young completed an appraisal form, and rated Petitioner as “A plus.” (T68) Sgt. Larry James conducted the background investigation of Petitioner for the Elizabeth City Police.

a. Sgt. James’ investigation revealed that Petitioner participated in inappropriate sexual activities with Tammy Thompson while Petitioner was employed, and on-duty at the Wilson Police Department and Wilson Community College. Petitioner was forthcoming about his actions, took full responsibility for each and every act, and resigned from the Wilson Police Department. Petitioner was honest with the Wilson Police Department and Wilson Community College during the investigation. Wilson Community College suspended Petitioner. Petitioner held himself accountable for his inappropriate actions there.

b. Sgt. James interviewed ten individuals who consistently observed Petitioner exhibits various favorable traits, including being family-oriented, well-respected, and very knowledgeable in the law enforcement profession. James' investigation supported substantial and strong support for Petitioner, and demonstrated that Petitioner possessed very good moral character and other traits highly favorable for law enforcement officers. (Pet. Exh. 2)

30. John Young is a Captain of the Administrative Division at the Elizabeth City Police Department. (T64) Captain Young has served in law enforcement for about 28 years, and has served in every department in the Elizabeth City Police Department. (T65) Captain Young met Petitioner when Young participated in the appraisal interview of Petitioner for employment with the Elizabeth City Police Department. Young thought that Petitioner "was a superior candidate: very educated, seemed to have a heart for law enforcement, and I liked his answers." (T 68) Petitioner candidly explained to the appraisal interview board what happened regarding his relationship with Ms. Thompson. (T69)

31. Captain Young has not seen anything, but professionalism from Petitioner while Petitioner has worked for the Elizabeth City Police Department. He opined that Petitioner has earned the respect of colleagues and supervisors on the Elizabeth City Police Department. (T70-71) Captain Young described how Petitioner is "very honest and a straight forward guy, always willing to help. He does whatever it takes." (T71-72) Petitioner has been involved in several community functions in Elizabeth City. (T70-71)

32. Capt. Young explained that the affidavit of Elizabeth City Police Chief Eddie Buffaloe, Petitioner's Exhibit 6, is consistent with Young's knowledge of Chief Buffaloe's feelings about Petitioner. (T69) Petitioner was assigned to work directly under Chief Buffaloe. Petitioner has worked on a lot of projects including the body-worn camera project. According to Captain Young, Petitioner has "done an exceptional job" on that project. (T70) Petitioner's tenure of service with the Elizabeth City Police Department has been successful. (T70)

33. In his affidavit, Chief Buffaloe stated in pertinent part that Petitioner "was very respected . . . Petitioner has served very honorably and appropriately . . . I strongly believe that Petitioner is a person of very high moral character . . ." (Pet. Exh. 6). In his affidavit, Chief Buffaloe described various community services attributes of Petitioner including church related programs. "We have found him to be a hardworking and very professional officer." *Id.*

34. James Anderson is a retired Captain with the Wilson Police Department. Captain Anderson got to know Petitioner in 1998, and supervised Petitioner at the Wilson Police Department. (T76) Captain Anderson described Petitioner as "wide open" officer, who was "very professional, very meticulous in report writing," and "very productive in terms of his work." (T77)

35. Captain Anderson cannot recall Petitioner's performance evaluations were anything less than "Exceeds Expectations," the highest level of evaluation. (T78) At hearing, Captain Anderson explained how Petitioner worked "beyond the call of duty." (T79) Captain Anderson never had a concern as to Petitioner's veracity in any capacity. (T81) Captain Anderson opined that Petitioner is "absolutely fit for duty," and has good moral character. (T83-84) Captain

Anderson explained that it would be a blow to the profession to lose Petitioner as an officer. (T83) Petitioner's teaching was not just locally, but also regionally, statewide, and nationally. (T83)

36. Gina Childress met Petitioner when she was a crime reporter at the newspaper in Wilson. (T86) She worked a lot with Petitioner in educating the public about law enforcement issues. (T87) Ms. Childress described how Petitioner handled things in an "extremely professional. . ." manner, was "extremely polite, very even tempered," and was effective at defusing situations. (T87 - 92) Petitioner was also involved in providing talks at schools. Childress opined that Petitioner had excellent relationships with attorneys, assistant district attorneys, district attorneys. (T92)

37. Lori Brown has worked as the State Program Specialist for Mothers Against Drunk Driving ("MADD") for ten years. (T98-99) Petitioner has worked with other MADD workers who have talked highly about Petitioner, and about what a good job he has done for MADD, including raising money for MADD. (T100) Petitioner has "became our [MADD] number one as far as" MADD trainings. (T101)

38. Petitioner has been trained on all of MADD's programs, and volunteers to teach across the state any time he is needed. (T101) Petitioner has conducted teaching programs for the last four or five years for MADD on a volunteer basis. (T101) Ms. Brown described Petitioner as "so professional." (T102) Law enforcement officers, who attended MADD programs, thanked Ms. Brown for the great job that Petitioner has done in the MADD training. (T102) Ms. Brown is also aware that Petitioner has served as a youth baseball coach, and for other law enforcement programs. (T105)

42. Petitioner's admitted exhibits included a number of affidavits from the following persons who know Petitioner in various capacities: Elizabeth City Police Chief Eddie M. Buffaloe, Jr., Kimberly N. Overton and Jacqui K. Boykin.

a. Captain Jaqui Boykin is a former co-worker of Petitioner at Wilson. (Pet. Exh. 8) Captain Boykin attested that Petitioner was a very strong father, teacher and officer. *Id.*

b. These affidavits were consistent with testimony of the witnesses at hearing on Petitioner's material issue of good moral character and related components within that concept. These affidavits demonstrated that numerous individuals have very strong positive opinions of Petitioner's traits including honesty, integrity, trustworthiness, truthfulness, being a good parent, being involved in community activities, being a caring person, and being a fair person in his treatment of others.

c. These affidavits and other evidence demonstrated that Petitioner has made exceptional and extraordinary contributions to the criminal justice system as a law enforcement officer, as a law enforcement instructor and teacher, and through his contributions to many community activities. Petitioner's years of contributions in helping others have been truly extraordinary.

43. At the time of the contested case hearing, Petitioner was 38 years of age. In 1997, he received an Associate Degree in Criminal Justice, and completed his Bachelor's Degree in

Criminal Justice in 2004. (T107) In 1998, Petitioner completed his basic law enforcement education training at Pitt Community College. (T109) Petitioner has also initiated studies for a Master's Degree where he is studying forensic toxicology. (T108-109)

44. Petitioner's Exhibit 1 is a compilation of Petitioner's education, work experience, completed training, and training and courses taught, including an extensive array of professional activities and accomplishments. Petitioner is certified as a general instructor, a certified SMI instructor, previously served as a hazmat instructor and first responder instructor. (T108-110) He is also certified as a Intoxilyzer operator, as a certified crash reconstructionist, a radar operator and basic life support instructor. (T110) Petitioner has received his certification as a traffic enforcement specialist, as drug recognition expert, and has become a field sobriety test instructor. (T110) Petitioner became certified as a child safety passenger technician. (T110)

45. Petitioner has conducted training for the North Carolina Conference of District Attorneys, the North Carolina Forensic Alcohol Branch, the National Highway Traffic Safety Administration, Wilson Community College, Pitt Community College and other community colleges. (T111-112) Petitioner has also taught in the public schools in Wilson County, for the North Carolina Department of Public Instruction, and the National Interdiction Conference. (T113) Petitioner obtained certifications through the International Association of Chiefs of Police as a drug recognition expert. (T114) Petitioner has testified in court as an expert witness on several occasions. (T114) Petitioner also served as an emergency medical technician for approximately ten years with Wilson County EMS. (T114)

46. Petitioner currently lives in Camden County with his wife and two children. (T116) Petitioner is very active with his children's activities, including sports activities. (T117)

47. Petitioner initially served as a patrol officer with the Wilson Police Department. He served in Criminal Investigations as a detective and a major case detective with Wilson Police. (T119) After being promoted to Sergeant with Wilson Police, Petitioner was transferred back to patrol to begin services as a supervisor. (T119) Petitioner was selected to be the first supervisor of the Traffic Enforcement Program in Wilson. (T119)

48. When Petitioner applied for employment with the Elizabeth City Police Department, he was completely open and forthcoming regarding what had occurred in Wilson. (T131) Since September 2015, Petitioner has worked as the Administrative Services Liaison for the Elizabeth City Police Department, working directly for Chief Eddie Buffaloe. (Pet. Exhs. 1 and 6)

49. Petitioner has effectively used his employment opportunity in the Elizabeth City Police Department to rebuild his life and career. (T134) Petitioner has engaged in various community activities in Elizabeth City. (T134) Petitioner has never had any civil judgments against him from any civil claims or non-payment of debt. (T137) Petitioner has never received a criminal conviction, other than a traffic citation. (T138)

50. Petitioner has worked with Kimberly Overturn of the Conference of District Attorneys in various teaching events and classes. (T138) Ms. Overton's affidavit was admitted



into evidence at the contested case hearing. In that affidavit, Overton opined that Petitioner has very good moral character (Pet. Exh. 7). Ms. Overton has interacted with Petitioner including training and church activities. "I have consistently observed Petitioner conduct himself at the highest levels of professionalism. . . Luke is honest." (Pet. Exh. 7)

51. At hearing, Petitioner acknowledged his lapse of judgment in his relationship with Ms. Thompson, and is very remorseful regarding his behavior. (T140) Petitioner acknowledged that he got carried away with the situation with Ms. Thompson. (T149) However, he noted there was never a time when Petitioner did not respond to a call because he was with Ms. Thompson. (T151)

52. While serving with the Wilson Police, Petitioner began to serve as a law enforcement instructor and teacher. For many years, he regularly taught various types of courses through several continuing education providers at the local, state and national levels, including at national conferences. (Pet. Exh. 1).

53. Petitioner has previously served as an emergency medical technician, and taught in that field as well. Petitioner is a traffic reconstructionist, and has developed an expertise in "Driving While Impaired" cases. He is also certified and has testified as a drug recognition expert in a number of cases. (Pet. Exh. 1).

54. The preponderance of the evidence at hearing showed that Petitioner has a number of traits that are relevant criteria for determining good moral character. Petitioner has been a good citizen, is a caring person, has been fair in his treatment of other people, and has been respectable and responsible. He has helped many others, including those in his community, and earned a reputation for being honest, truthful and a person of integrity. (Pet. Exhs 6, 7, 8 and testimony of several witnesses, *infra*).

55. A preponderance of the evidence established that Petitioner has made many positive contributions to the criminal justice community for nearly twenty years. (Pet. Exhs 6, 7, 8, and testimony *infra*) Petitioner has been very active with MADD, and active in youth programs both in Wilson, and presently, in Camden County. Petitioner has been active in his church.

56. Petitioner's conduct in engaging in the relationship with Ms. Thompson was an unacceptable. However, Petitioner recognized his relationship with Ms. Thompson was a mistake. Petitioner's conduct since he terminated his relationship with Ms. Thompson, and has demonstrated that he has been substantially and completely rehabilitated. He has successfully rebuilt his life and career.

57. This case involves especially extenuating circumstances. Here, the scope and magnitude of Petitioner's highly favorable traits, including but not limited to his history of helping others, teaching, promoting law enforcement and other education, supporting community service programs and long term police service substantially outweighs his lapse of judgment in his personal behaviors in issue. Further, his resumption of a broad range of very positive conduct demonstrates that Petitioner is rehabilitated from his previous lapse of judgement.

58. The undersigned finds that Petitioner and his supporting witnesses are credible and believable. These witnesses have provided substantial evidence of facts supporting a conclusion that Petitioner is currently a person of very good moral character, and is fit for continued service as a sworn law enforcement officer.

59. Despite finding that Petitioner currently has excellent good moral character, and is otherwise fit to hold a law enforcement certification and serve as a sworn officer, his conduct with Ms. Thompson warrants some sanction for such behavior. The undersigned has carefully weighed and balanced the totality of evidence before the Undersigned including all exhibits and testimony. The totality of the supporting evidence, the mitigation evidence and other factors demonstrates that the overall compelling good conduct of Petitioner outweighs the aberrational behavior that he engaged in previously with Ms. Thompson, which is the subject of this contested case.

60. The undersigned finds that a suspension of Petitioner's law enforcement certification for one year is an appropriate sanction for Petitioner under these circumstances. However, the undersigned also recommends that such suspension should be suspended for a period of one year, while Petitioner remains on probation under the supervision of Chief Buffaloe and the Elizabeth City Police Department, and the Commission. The undersigned believes and recommends that this sanction would be fair, equitable, just and commensurate with the underlying conduct at issue in light of Petitioner's complete history and rehabilitation.

61. The evidence demonstrates that Petitioner possesses highly favorable character traits of honesty, trustworthiness, integrity, professionalism, dedication to the law enforcement profession, being a hard worker with good work ethic, highly productive, fair to others, a role model for others, a community servant, a long term educator, a good father, and respected by his community including the law enforcement and judicial communities. These character traits were established by the virtually undisputed testimony of several witnesses and exhibits.

62. The totality of the credible evidence demonstrates that Petitioner Luke Petitioner is currently a person and law enforcement officer of good moral character.

### **CONCLUSIONS OF LAW**

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case, and the parties received proper notice of the hearing in this matter. To the extent that the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels.

2. Chapter 17C of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 09A authorizes Respondent, North Carolina Criminal Justice Education and Training Standards Commission, to certify law enforcement officers, and to revoke, suspend, or deny such certification.

3. 12 NCAC 09A .0204(b)(2) states the Commission may suspend, revoke, or deny the certification of a criminal justice officer when the Commission finds that the applicant for certification or the certified officer:(2) fails to meet or maintain one or more of the minimum

employment standards required by 12 NCAC 09B .0100 for the category of the officer's certification or fails to meet or maintain one or more of the minimum training standards required by 12 NCAC 09B .0200 or 12 NCAC 09B .0400 for the category of the officer's certification.

4. 12 NCAC 09B .0101(3) state that every criminal justice officer employed by an agency in North Carolina shall be of good moral character pursuant to G.S. § 17C-10, and as determined by a thorough background investigation.

5. The United States Supreme Court has described the term "good moral character" as being "unusually ambiguous." *In Konigsberg v. State*, 353 U.S. 252, 262-63 (1957), the Court explained:

The term good moral character ... is by itself ... unusually ambiguous. It can be defined in an almost unlimited number of ways for any definition will necessarily reflect the attitudes, experiences, and prejudices of the definer. Such a vague qualification, which is easily adapted to fit personal views and predilections, can be a dangerous instrument for arbitrary and discriminatory denial ...

(Emphasis Added)

6. Good moral character is defined as "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, 215, S.E.2d 771, 776 (1975). "Good moral character has many attributes, but none are more important than honesty and candor." *In re Legg*, 325 N.C. 658, 386 S.E.2d 174, 182 (1989).

7. Generally, isolated instances of conduct are insufficient to properly conclude that someone lacks good moral character. *In Re Rogers*, 297 N.C. 48, 58 (1979) ("whether a person is good moral character is seldom subject to proof by reference to one or two incidents")

8. In this case, Petitioner engaged in an extramarital affair with Ms. Thompson for one year while married, and for four years while separated from his wife. Petitioner admitted he engaged in sexual intercourse with Ms. Thompson in his patrol vehicle, at a Wilson Community College training center, at Thompson's home while Petitioner was on duty, and at Petitioner's home while he was on duty. Petitioner's conduct in such manner was indicative of lack of good moral character under 12 NCAC 09A .0204(b)(2).

9. Petitioner recognized his relationship with Ms. Thompson was a mistake, terminated such relationship, accepted responsibility for such actions, and has exhibited remorse.

10. Since terminating his relationship with Ms. Thompson, Petitioner has successfully and completely rehabilitated and rebuilt his life and his career. The substantial evidence presented at hearing demonstrated that Petitioner possesses and exhibits highly favorable traits, including but not limited to a history of helping others, teaching, promoting law enforcement and other education, supporting community service programs and long term police service. The scope and magnitude of Petitioner's character traits substantially outweighs Petitioner's lapse in judgment in

his personal behaviors at issue. Further, Petitioner's resumption of a broad range of very positive conduct demonstrates that Petitioner is rehabilitated from his previous lapse of judgement.

11. The substantial evidence presented at hearing proved that Petitioner is now a person of good moral character, as required by 12 NCAC 09A .0204(b)(2), who has been a dedicated professional law enforcement officer in North Carolina for many years. Petitioner is morally fit to continue to serve as a law enforcement officer in North Carolina.

### **PROPOSAL FOR DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned proposes that Respondent issue a law enforcement certification to Petitioner. Given the nature of the conduct Petitioner committed while he was on-duty as a law enforcement officer, the undersigned proposes that Respondent suspend Petitioner's law enforcement certification for one year, but suspend such suspension, and place Petitioner on probation for one year.

### **NOTICE**

The North Carolina Criminal Justice Education and Training Standards Commission will make the Final Decision in this case. Before that Agency makes the Final Decision, it shall give each party an opportunity to file exceptions to this PROPOSAL FOR DECISION, and to present written arguments to those in the agency who will make the Final Decision. N.C.G.S. 150B-40(e).

This the 19th day of October, 2016.

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Melissa Owens Lassiter  
Administrative Law Judge