

STATE OF NORTH CAROLINA
COUNTY OF WAYNE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 DOJ 08607

GEORGE TRACY BROGDEN,)
Petitioner,)
)
v.)
)
NORTH CAROLINA SHERIFFS')
EDUCATION AND TRAINING)
STANDARDS COMMISSION,)
Respondent.)
_____)

PROPOSAL FOR DECISION

This case came on for hearing on April 21, 2016 before Administrative Law Judge Melissa Owens Lassiter in New Bern, North Carolina. This case was heard 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. On May 16, 2016, the undersigned issued an Order ruling that based upon the preponderance of evidence presented at the April 21, 2016 administrative hearing, there was sufficient evidence to support Respondent's decision to revoke Petitioner's justice officer certification for:

- (1) committing the Class B misdemeanor offenses of "Harassing Phone Calls" in violation of N.C. Gen. Stat. § 14-196, and "Cyberstalking" in violation of N.C. Gen. Stat. § 14-196.3 in February 2015, and thus, failing to comply with 12 NCAC 10B .0204(b)(2),
- (2) failing to notify Respondent within five working days that he was a defendant in a Domestic Violence Report, in violation of 12 NCAC 10B .0301(a)(7), and
- (3) lacking good moral character based on the circumstances surrounding his commission of the above-cited Class B misdemeanor offenses while holding a justice officer certification, based on Petitioner's continued harassment of his estranged wife after Sampson County Sheriff's Office members warned Petitioner not to do so, based on Petitioner being disrespectful with deputies who served him with a separation notice, based on Petitioner posting pictures on social media depicting him holding his service weapon to his head, and based on Petitioner engaging in harassing and controlling behavior towards Ms. Brogden throughout his marriage.

Respondent filed a proposed Proposal for Decision with the Office of Administrative Hearings on June 1, 2016.

APPEARANCES

Petitioner: George Tracy Brogden
434 Baker Chapel Church Road
Mount Olive, North Carolina 28365

Respondent: Matthew L. Boyatt, Assistant Attorney General
Attorney for Respondent
Department of Justice
Law Enforcement Liaison Section
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ISSUES

1. Does the evidence support a finding that Petitioner committed the Class B misdemeanor offenses of "Harassing Phone Calls" and "Cyberstalking"?
2. Is there sufficient evidence to support a finding that Petitioner failed to notify Respondent within five (5) working days that he was a defendant in a Domestic Violence Order of Protection?
3. Does Petitioner lack the good moral character required of all sworn law enforcement officers?

APPLICABLE RULES

12NCAC 10B .0204(d)(1)
12 NCAC 10B .0301(a)(7)
12 NCAC 10B .0301(a)(8)

FINDINGS OF FACT

BASED UPON careful consideration of the sworn testimony of the witnesses at the hearing, the documents, and exhibits received and admitted into evidence, and the entire record in the proceeding, having weighed all the evidence and assessed the credibility of the witnesses by judging credibility, including, but not limited to the demeanor of the witnesses, any interests, bias or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case, the undersigned finds as follows:

1. Both parties were properly before the Administrative Law Judge, in that jurisdiction and venue are proper, both parties received Notice of Hearing, and Petitioner received by mail the Notification of Probable Cause to Revoke 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. Petitioner received his General Deputy Certification from the Respondent Commission on July 21, 2008. (Respondent's Exhibit 2) Petitioner was thereafter employed at the Sampson County Sheriff's Office until his termination on February 11, 2015, for engaging in a pattern of harassing and threatening behavior towards his estranged wife, Rebekah Brogden.

4. 12 NCAC 10B .0204(d)(1) provides that 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. The crime of Harassing Phone Calls in violation of N.C.G.S. § 14-196 is classified as a Class B misdemeanor pursuant to 12 NCAC 10B .0103 (10)(b) and the Class B Misdemeanor Manual adopted by Respondent. Additionally, the crime of Cyberstalking in violation of N.C.G.S. § 14-196.3 is classified as a Class B misdemeanor pursuant to 12 NCAC 10B .0103 (10)(b) and the Class B Misdemeanor Manual adopted by Respondent.

6. 12 NCAC 10B .0301(a)(8) provides that every justice officer employed or certified in North Carolina shall be of good moral character. 12 NCAC 10B .0204(b)(2) further provides the Sheriffs' Commission shall revoke, deny, or suspend a justice officer's certification when the Commission finds that the justice officer no longer possesses the good moral character that is required of all sworn justice officers.

7. 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.

8. 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 and/or domestic violence protective orders with which the officer is charged and shall also give notification, in writing, to the Sheriffs' Standards Division and the appointing department head following the adjudication of these matters.

9. Ms. Rebekah Brogden testified at the administrative hearing, and her testimony was credible. Petitioner married Rebekah Brogden in 1992. Petitioner and Ms. Brogden have two children together. During the course of their marriage, Petitioner engaged in threatening and

abusive behavior towards his wife. This included, but was not limited to threatening Ms. Brogden verbally and physically, threatening to kill himself, and damaging property within the home during arguments, such as by punching holes in walls and smashing dishes. Ms. Brogden and Petitioner sought counseling on more than one occasion, but Petitioner failed to correct his abusive behavior towards his wife.

10. Ms. Brogden separated from Petitioner in December of 2014. She obtained a divorce from Petitioner on March 7, 2016.

11. On or about February 1, 2015, during their separation, Ms. Brogden invited Petitioner to her residence on Superbowl Sunday so Petitioner could spend some time with his children. Petitioner began to harass Ms. Brogden in an attempt to reunite with her. Petitioner began to argue with Ms. Brogden, and refused to leave the residence. Petitioner called Ms. Brogden a "slut," because he believed Ms. Brogden was dating. Petitioner also threatened to kill himself if the couple did not get back together.

12. Ms. Brogden was finally able to get Petitioner to leave her residence. Ms. Brogden made it clear to Petitioner that she was not going to get back together with Petitioner, and that she did not want him contacting her and harassing her. Ms. Brogden left her home to watch the Superbowl with friends and family at the home of Ms. Brogden's cousin. During the game, Petitioner called Ms. Brogden repeatedly on the cell telephone. When Ms. Brogden refused to pick up the phone, Petitioner left her a voicemail stating he was going to kill himself. Petitioner also texted Ms. Brogden repeatedly, and texted their children to have them convince Ms. Brogden to call Petitioner. Petitioner's conduct of continually calling and texting Ms. Brogden on February 1, 2015 was harassing in nature, constituted an annoyance to Ms. Brogden, and violated N.C.G.S. § 14-196 and N.C.G.S. § 14-196.3.

13. Petitioner's threatening and abusive behavior on February 1, 2015 caused Ms. Brogden to seek the assistance of the Sampson County Sheriff. On or about February 2, 2015, Ms. Brogden met with Captain Grady of the Sampson County Sheriff's Office. Ms. Brogden advised Captain Grady that Petitioner was harassing her via telephone and text messaging, and that she wanted Petitioner to leave her alone. Ms. Brogden played Petitioner's voicemail message, where Petitioner threatened to kill himself, for Capt. Grady.

14. Captain Grady testified at the administrative hearing, and his testimony was credible. During their meeting on February 2, 2015, Captain Grady observed that Ms. Brogden was upset by her husband's continued harassment. Captain Grady could tell that Petitioner was texting Ms. Brogden. Ms. Brogden advised Capt. Grady that Petitioner would not leave her alone. Immediately thereafter, Petitioner sent a photograph to Ms. Brogden, via text message, showing Petitioner pointing his service weapon to his temple. Petitioner then texted to Ms. Brogden that he was going to kill himself. Ms. Brogden showed Captain Grady these texts and photograph. Petitioner's texts and photograph caused Capt. Grady grave concern. Captain Grady observed at least five threatening and harassing texts from Petitioner during his 20-minute meeting with Ms. Brogden. Petitioner's conduct of continually texting Ms. Brogden on February 2, 2015 was threatening and harassing in nature, and constituted a violation of N.C.G.S. § 14-196.3, which

makes it a crime to cyberstalk by texting threatening messages for the purpose of harassment or annoyance.

15. After meeting with Ms. Brogden, Captain Grady met with Petitioner, and encouraged Petitioner to seek treatment for his conduct. Petitioner agreed to seek treatment. Captain Grady advised Petitioner that he was to have no contact with Ms. Brogden, and that he was not to harass her.

16. Notwithstanding the warning by Captain Grady, Petitioner continued to harass Ms. Brogden by continually calling her while he was in the hospital from February 3, 2015 through February 8, 2015. Once discharged from the hospital on February 8, 2015, Petitioner continued to call Ms. Brogden, and leave her threatening voicemail messages. Petitioner threatened to come to Ms. Brogden's home if she did not respond to his multiple messages. By continuing to call Ms. Brogden repeatedly from February 3, 2015 through February 8, 2015, Petitioner violated N.C.G.S. § 14-196 and committed the crime of cyberstalking by texting threatening messages to harass or annoy Ms. Brogden.

17. Ms. Brogden was required to seek a protective order against Petitioner due to his continued harassment. On February 16, 2015, Petitioner and Ms. Brogden appeared before the Honorable Judge Foster in Sampson County District Court. Following a hearing, Judge Foster found Petitioner had committed acts of domestic violence and harassment against Ms. Brogden during the month of February 2015. (Respondent's Exhibit 9) Judge Foster also entered a protective order for one (1) year based on Petitioner's unlawful conduct.

18. Petitioner failed to notify the Respondent Commission about his domestic violence protective order. Petitioner was advised in writing on numerous occasions of his duty to report a domestic violence protective order. (See Respondent's Exhibits 3, 4, 5, and 6)

19. At the administrative hearing, Petitioner's testimony regarding his failure to report the domestic violence protective order was indifferent and evasive. Petitioner claimed that he did not read everything when he signed the Personal History Statements and Reports of Appointment that advised Petitioner, in writing, of his duty to report domestic violence protective orders to the Commission. Petitioner's testimony was also argumentative in that Petitioner appeared to suggest the reporting requirement was irrelevant and pointless.

20. Based on Petitioner's testimony at the administrative hearing, it was clear that Petitioner has no remorse for his repeated acts of harassment and threatening behavior towards Ms. Brogden. Petitioner was not credible, and exhibited a lack of respect for the laws of this State and for the rights of Ms. Brogden. Petitioner's actions demonstrate he no longer possesses the good moral character that is required of a sworn justice officer in this State.

21. The evidence also established that Petitioner committed numerous Class B misdemeanor offenses in violation of N.C.G.S. § 14-196 and N.C.G.S. § 14-196.3 by engaging in cyberstalking and harassing phone calls against Ms. Brogden for the purpose of threatening, annoying, and harassing her.

CONCLUSIONS OF LAW

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

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

3. The North Carolina Sheriffs' Education and Training Standards 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.

4. 12 NCAC 10B .0204(d)(1) provides that 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. The crime of "Harassing Phone Calls" in violation of N.C.G.S. § 14-196 is classified as a Class B misdemeanor pursuant to 12 NCAC 10B .0103 (10)(b) and the Class B Misdemeanor Manual adopted by Respondent. Furthermore, the crime of "Cyberstalking" in violation of N.C.G.S. § 14-196.3 is classified as a Class B misdemeanor pursuant to 12 NCAC 10B .0103 (10)(b) and the Class B Misdemeanor Manual adopted by Respondent.

6. A preponderance of the evidence presented at the administrative hearing established that Petitioner intentionally engaged in harassing phone calls to Ms. Brogden from February 1, 2015 through February 8, 2015, as described in greater detail above. These actions constitute a violation of N.C.G.S. § 14-196. During this period, Petitioner called Ms. Brogden repeatedly for the purpose of harassing and annoying her. Petitioner also left threatening messages on Ms. Brogden's voicemail in an attempt to solicit a response from Ms. Brogden. Petitioner was warned not to contact Ms. Brogden, yet he continued to engage in this unlawful behavior.

7. A preponderance of the evidence presented at the administrative hearing also established that Petitioner intentionally engaged in cyberstalking from February 1, 2015 through February 8, 2015, as described in greater detail above. Petitioner sent Ms. Brogden numerous threatening and harassing text messages during this period, and also sent Ms. Brogden a photograph of Petitioner with a gun to his head. This conduct was corroborated by the Sampson County Sheriff's Office. These actions constitute a violation of N.C.G.S. § 14-196.3.

8. Petitioner is not in compliance with 12 NCAC 10B .0204(d)(1), and his certification is therefore subject to revocation for the commission of multiple Class B misdemeanor offenses between February 1, 2015 and February 8, 2015.

9. Furthermore, Petitioner exhibits a lack of integrity through his actions, and also exhibits a lack of respect for the laws of this state. Petitioner engaged in unacceptable criminal conduct while holding certification as a sworn justice officer.

10. Pursuant to 12 NCAC 10B .0301(a)(8), every justice officer employed or certified in North Carolina shall be of good moral character. 12 NCAC 10B .0204(b)(2) further provides the Sheriff's Commission shall revoke, deny, or suspend a justice officer's certification when the Commission finds that the justice officer no longer possesses the good moral character that is required of all sworn justice officers.

11. Good moral character has been 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 (1975).

12. Given the totality of the evidence presented at the administrative hearing, Petitioner no longer possesses the good moral character that is required of a sworn justice officer in this state. Petitioner engaged in repeated acts of harassment towards his estranged wife at a time when Petitioner held a justice officer certification through the State of North Carolina. In addition, Petitioner's testimony at the administrative hearing was evasive, and at times argumentative. It is clear from Petitioner's demeanor that he has no remorse for his actions, and continues to minimize and deny his unlawful behavior.

13. A preponderance of evidence presented at the administrative hearing proved that Respondent's proposed revocation of Petitioner's justice officer certification, due to Petitioner's lack of good moral character and failure to maintain the minimum standards required of all sworn justice officers under 12 NCAC 10B .0301, should be UPHELD.

14. In addition, a preponderance of the evidence at hearing showed that Petitioner failed to make timely notification of his domestic violence protective order in 15 CVD 146, which constitutes a violation of 12 NCAC 10B .0204(b)(2) and 12 NCAC 10B .0301(a)(7).

15. Respondent's proposed revocation of Petitioner's justice officer certification for an indefinite period is supported by substantial evidence.

PROPOSAL FOR DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned proposes that Petitioner's justice officer certification be revoked indefinitely.

NOTICE

The North Carolina Sheriffs' Education and Training Standards Commission will make the Final Decision in this case. That agency 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).

This the 7th day of June, 2016.

Melissa Owens Lassiter
Administrative Law Judge