

STATE OF NORTH CAROLINA  
COUNTY OF CLEVELAND

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
16 DOJ 04999

<p>BOBBY JEROD JONES PETITIONER,</p> <p>v.</p> <p>NC SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION RESPONDENT.</p>	<p><b>PROPOSAL FOR DECISION</b></p>
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On October 6, 2016, Administrative Law Judge J. Randall May heard this case in Lenoir, 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. After hearing testimony, arguments of counsel, and considering the entire file, the undersigned adopts in part the proposed decision submitted by Counsel for the Commission.

**APPEARANCES**

Petitioner: Daniel R. Talbert  
Attorney at Law  
Teddy Meekins & Talbert PLLC  
1219 Fallston Road  
Shelby, North Carolina 228150

Respondent: Matthew L. Boyatt, Assistant Attorney General  
N.C. Department of Justice  
9001 Mail Service Center  
Raleigh, North Carolina 27699-9001

**ISSUE**

1. Is the proposed revocation of Petitioner's justice officer certification supported by substantial evidence?

**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 Petitioner received by mail the proposed Revocation of Justice Officer's Certification letter, mailed by Respondent Sheriffs' Commission on April 7, 2016. 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. The two (2) witnesses that testified at the administrative hearing were Petitioner and Lieutenant Jon M. Wright of the Cleveland County Sheriff's Office. Lieutenant Wright conducted the internal affairs investigation, which led to Petitioner's termination from the Cleveland County Sheriff's Office on August 24, 2015. This court found the testimony of Lieutenant Wright to be credible.

4. Petitioner obtained employment as a justice officer with the Cleveland County Sheriff's Office on March 1, 2005. Respondent's Exhibit 4. Petitioner received his General Deputy Certification from Respondent Commission on June 24, 2005. Petitioner was, therefore, subject to the rules and regulations governing justice officers as established by Respondent. Respondent's Exhibit 2.

5. 12 NCAC 10B .0301 (a)(8) provides that all justice officers employed or certified in the State of 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.

6. Petitioner testified at the administrative hearing and does not dispute that he intentionally used illegal anabolic steroids without a valid prescription while holding certification as a sworn justice officer. Petitioner's admitted unlawful steroid use occurred while Petitioner was employed as a deputy sheriff with the Cleveland County Sheriff's Office.

7. Petitioner's unlawful steroid use came to light during an investigation into allegations that Petitioner was engaged in making malicious statements regarding the Sheriff of Cleveland County (hereinafter the "Sheriff"). It was alleged that Petitioner had spread a rumor that the Sheriff was engaged in an illicit affair with Petitioner's mother-in-law.

8. On August 21, 2015, the Sheriff of Cleveland County met with Petitioner regarding the allegation of malicious statements. During this meeting Petitioner denied making any derogatory statements regarding the Sheriff. At the conclusion of the meeting, the Sheriff inquired as to whether Petitioner had ever engaged in any illegal activity while employed as a deputy sheriff, including the use of any illegal anabolic steroids. Petitioner candidly admitted to the Sheriff that he had, in fact, engaged in the illegal use of anabolic steroids while holding certification as a sworn justice officer.

9. Petitioner requested that he be given a polygraph examination in order to determine his truthfulness regarding malicious statements. The Sheriff arranged for such a test and Petitioner submitted to the examination on August 24, 2015. Although the results of the polygraph are

inadmissible, Petitioner did make several admissions prior to the examination in his pre-polygraph interview. In that interview on August 24, 2015, Petitioner again admitted that he was engaged in illegal drug use while employed as a deputy sheriff. Petitioner admitted that he had used illegal steroids for several months and that he obtained the drugs from a high school friend. Petitioner would not disclose to the pre-polygraph interviewer the name of the individual from whom he obtained the illegal drugs.

10. Following the polygraph examination, Petitioner again met with the Sheriff and Lieutenant Wright. The Sheriff asked Petitioner again if he used illegal steroids while employed as a deputy and Petitioner indicated that he had used steroids one (1) time. When pressed on the frequency of use, Petitioner admitted that he used steroids for one cycle, which lasted approximately six months.

11. Petitioner was terminated by the Sheriff immediately on August 24, 2015, based on his admitted illegal drug use while employed as a deputy sheriff in Cleveland County. Lieutenant Wright opined that the malicious statements allegation was not addressed during the polygraph examination process because the Petitioner admitted to repeated criminal activity while holding office as a deputy sheriff. Petitioner's employment was, therefore, terminated because of this illegal drug use.

12. Lieutenant Wright opined that Petitioner was not drug tested by the Sheriff because he openly admitted to illegal steroid use over the course of several months. Therefore, the Sheriff used his discretion to terminate Petitioner's employment.

13. Petitioner testified at the administrative hearing and does not dispute that he was engaged in illegal steroid use while employed as a deputy sheriff. Petitioner's admitted drug use occurred toward the end of 2014. Petitioner testified that he got the anabolic steroids from a high school friend. Petitioner would inject the steroid into his hip every two to three weeks. Petitioner admitted under oath that his illegal steroid use lasted approximately 4 months, which constituted a "cycle." Petitioner testified that he was using this controlled substance because of his low sex drive.

14. Petitioner held the rank of a narcotics investigator with the Cleveland County Sheriff's Office at the time he was engaged in the illegal use of steroids. A sworn justice officer's intentional use of an illegal drug is unacceptable. Petitioner's status as a narcotics investigator makes the illegal activity even more egregious.

15. Petitioner is not currently employed by a sheriff's office in this State.

16. Petitioner argues there was no drug screen conducted and that this case amounts to nothing more than an employment issue. Petitioner believes he should be free to obtain a sworn position at another sheriff's office. This Court is in disagreement. The Respondent Commission is charged with ensuring that only qualified individuals remain certified as sworn justice officers. Respondent did not seek to revoke Petitioner's certification based on a positive drug screen under 12 NCAC 10B .0206. Rather, Respondent seeks to revoke Petitioner's certification based on his lack of good moral character under rule 12 NCAC 10B .0301 (a)(8) and 12 NCAC 10B.0204(b)(2).

A sworn justice officer who intentionally engages in illegal drug use while holding certification as a justice officer does not possess the good moral character required of justice officers in this State. Respondent has a duty to prevent unqualified justice officers from jumping from one agency to the next.

17. Substantial evidence exists to support the revocation of Petitioner's justice officer certification based upon Petitioner no longer possessing the good moral character required of a sworn justice officer in this State. Petitioner bears the burden of proof in this contested case. Overcash v. N.C. Dep't of Env't and Natural Res., 179 N.C. App. 697 (2006); Raeford Farms v. D.E.N.R., 774 S.E. 2d 911 (2015). Petitioner has failed to demonstrate that the revocation of his certification is not justified pursuant to the Commission's Rules.

### **CONCLUSIONS OF LAW**

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

2. 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.

3. 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).

4. Given the totality of the evidence presented at the administrative hearing, Petitioner no longer possess the good moral character that is required of a sworn justice officer in this state. Petitioner's actions exhibited a tremendous lack of honesty and integrity. Over several months at the end of 2014, Petitioner was engaged in illegal steroid use while holding certification as a sworn justice officer in this State, and while employed as a deputy sheriff in Cleveland County. Petitioner would obtain the illegal steroids from a friend and would inject the drug into his hip every two to three weeks. Petitioner engaged in this illegal steroid use while he was employed as a narcotics investigator in Cleveland County. Petitioner's actions not only demonstrate his lack of honesty and integrity, they also demonstrate Petitioner's lack of respect for the laws of this State. Petitioner's disregard for the law was not isolated to one incident, but spanned a several month period in which Petitioner repeatedly engaged in illegal drug use.

5. Petitioner's continued certification would be an affront to the office of the sheriff in this State, and would also breach the public trust bestowed upon that office.

6. Petitioner has the burden of proof in this contested case. Overcash v. N.C. Dep't of Env't and Natural Res., 179 N.C. App. 697 (2006); Raeford Farms v. D.E.N.R., 774 S.E. 2d 911 (2015). Petitioner has failed to show that the proposed revocation of his certification is not supported by substantial evidence.

**PROPOSAL FOR DECISION**

BASED UPON the foregoing Findings of Fact and Conclusions of Law, the undersigned recommends that Respondent REVOKE Petitioner's Justice Officer Certification indefinitely. Petitioner no longer possesses the good moral character that is required of a sworn justice officer in this State.

**NOTICE AND ORDER**

The North Carolina Sheriffs' Education and Training Standards Commission is the agency that will make the Final Decision in this contested case. As the final decision-maker, 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 pursuant to N.C. Gen. Stat. § 150B-40(e).

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6700.

This the 23rd day of November, 2016.

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J Randall May  
Administrative Law Judge