

# ***NORTH CAROLINA REGISTER***

**VOLUME 28 • ISSUE 06 • Pages 518 - 594**

**September 16, 2013**

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For questions or concerns regarding the Administrative Procedure Act or any of its components, consult with the agencies below. The bolded headings are typical issues which the given agency can address, but are not inclusive.

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**NORTH CAROLINA REGISTER**  
Publication Schedule for January 2013 – December 2013

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment period	Deadline to submit to RRC for review at next meeting	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule 31st legislative day of the session beginning:	270 <sup>th</sup> day from publication in the Register
27:13	01/02/13	12/06/12	01/17/13	03/04/13	03/20/13	05/01/13	05/2014	09/29/13
27:14	01/15/13	12/19/12	01/30/13	03/18/13	03/20/13	05/01/13	05/2014	10/12/13
27:15	02/01/13	01/10/13	02/16/13	04/02/13	04/22/13	06/01/13	05/2014	10/29/13
27:16	02/15/13	01/25/13	03/02/13	04/16/13	04/22/13	06/01/13	05/2014	11/12/13
27:17	03/01/13	02/08/13	03/16/13	04/30/13	05/20/13	07/01/13	05/2014	11/26/13
27:18	03/15/13	02/22/13	03/30/13	05/14/13	05/20/13	07/01/13	05/2014	12/10/13
27:19	04/01/13	03/08/13	04/16/13	05/31/13	06/20/13	08/01/13	05/2014	12/27/13
27:20	04/15/13	03/22/13	04/30/13	06/14/13	06/20/13	08/01/13	05/2014	01/10/14
27:21	05/01/13	04/10/13	05/16/13	07/01/13	07/22/13	09/01/13	05/2014	01/26/14
27:22	05/15/13	04/24/13	05/30/13	07/15/13	07/22/13	09/01/13	05/2014	02/09/14
27:23	06/03/13	05/10/13	06/18/13	08/02/13	08/20/13	10/01/13	05/2014	02/28/14
27:24	06/17/13	05/24/13	07/02/13	08/16/13	08/20/13	10/01/13	05/2014	03/14/14
28:01	07/01/13	06/10/13	07/16/13	08/30/13	09/20/13	11/01/13	05/2014	03/28/14
28:02	07/15/13	06/21/13	07/30/13	09/13/13	09/20/13	11/01/13	05/2014	04/11/14
28:03	08/01/13	07/11/13	08/16/13	09/30/13	10/21/13	12/01/13	05/2014	04/28/14
28:04	08/15/13	07/25/13	08/30/13	10/14/13	10/21/13	12/01/13	05/2014	05/12/14
28:05	09/03/13	08/12/13	09/18/13	11/04/13	11/20/13	01/01/14	05/2014	05/31/14
28:06	09/16/13	08/23/13	10/01/13	11/15/13	11/20/13	01/01/14	05/2014	06/13/14
28:07	10/01/13	09/10/13	10/16/13	12/02/13	12/20/13	02/01/14	05/2014	06/28/14
28:08	10/15/13	09/24/13	10/30/13	12/16/13	12/20/13	02/01/14	05/2014	07/12/14
28:09	11/01/13	10/11/13	11/16/13	12/31/13	01/21/14	03/01/14	05/2014	07/29/14
28:10	11/15/13	10/24/13	11/30/13	01/14/14	01/21/14	03/01/14	05/2014	08/12/14
28:11	12/02/13	11/06/13	12/17/13	01/31/14	02/20/14	04/01/14	05/2014	08/29/14
28:12	12/16/13	11/21/13	12/31/13	02/14/14	02/20/14	04/01/14	05/2014	09/12/14

## **EXPLANATION OF THE PUBLICATION SCHEDULE**

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2C .0302 and the Rules of Civil Procedure, Rule 6.

### **GENERAL**

The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:

- (1) temporary rules;
- (2) notices of rule-making proceedings;
- (3) text of proposed rules;
- (4) text of permanent rules approved by the Rules Review Commission;
- (5) notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165;
- (6) Executive Orders of the Governor;
- (7) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H;
- (8) orders of the Tax Review Board issued under G.S. 105-241.2; and
- (9) other information the Codifier of Rules determines to be helpful to the public.

**COMPUTING TIME:** In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.

### **FILING DEADLINES**

**ISSUE DATE:** The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month after the first or fifteenth that is not a Saturday, Sunday, or holiday for State employees.

**LAST DAY FOR FILING:** The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.

### **NOTICE OF TEXT**

**EARLIEST DATE FOR PUBLIC HEARING:** The hearing date shall be at least 15 days after the date a notice of the hearing is published.

**END OF REQUIRED COMMENT PERIOD**  
An agency shall accept comments on the text of a proposed rule for at least 60 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

**DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION:** The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.

**FIRST LEGISLATIVE DAY OF THE NEXT REGULAR SESSION OF THE GENERAL ASSEMBLY:** This date is the first legislative day of the next regular session of the General Assembly following approval of the rule by the Rules Review Commission. See G.S. 150B-21.3, Effective date of rules.



# State of North Carolina

**PAT McCRORY**  
GOVERNOR

August 7, 2013

## **EXECUTIVE ORDER NO. 19**

### **DISASTER DECLARATION FOR CATAWBA COUNTY**

**WHEREAS**, the North Carolina Emergency Management Act, Chapter 166A of the North Carolina General Statutes authorizes the issuance of a disaster declaration for an emergency area as defined in N.C.G.S. § 166A-19.3(7) and categorizing the disaster as a Type I, Type II or Type III disaster as defined in N.C.G.S. § 166A-19.21(b); and

**WHEREAS**, from on or about July 12, 2013 to July 27, 2013, Catawba County, North Carolina and the contiguous counties of Alexander, Burke, Caldwell, Iredell, and Lincoln were impacted by severe weather that produced heavy rains which caused severe flooding; and

**WHEREAS**, as a result of the severe weather Catawba County proclaimed a local state of emergency on July 27, 2013; and

**WHEREAS**, due the impact of the severe weather, a joint preliminary damage assessment was done by local, state and federal emergency management officials on July 31, 2013; and

**WHEREAS**, I have determined that a Type I disaster, as defined in N.C.G.S. § 166A-19.21(b)(1), exists in the State of North Carolina, specifically in Catawba County, North Carolina and the contiguous counties of Alexander, Burke, Caldwell, Iredell, and Lincoln; and

**WHEREAS**, pursuant to N.C.G.S. § 166A-19.21(b)(1), the criteria for a Type I disaster are met if: (1) the Secretary of the Department of Public Safety has provided a preliminary damage assessment to the Governor and the General Assembly; (2) Catawba County declared a local state of emergency pursuant to N.C.G.S. § 166A-19.22; (3) the preliminary damage assessment has met or exceeded the criteria established for the Small Business Disaster Loan Program pursuant to 13 C.F.R. § 123; and (4) a major disaster declaration by the President of the United States pursuant to the Stafford Act has not been declared; and

**WHEREAS**, pursuant to N.C.G.S. § 166A-19.41(b), if a disaster is declared, the Governor may make State funds available for emergency assistance in the form of individual assistance and public assistance for recovery from those disasters for which federal assistance under the Stafford Act is either not available or does not adequately meet the needs of the citizens of the State in the emergency area.

**NOW, THEREFORE**, pursuant to the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED:**

**Section 1.** Pursuant to N.C.G.S. § 166A-19.21(b)(1), a Type I disaster is hereby declared for Catawba County, North Carolina and the contiguous counties of Alexander, Burke, Caldwell, Iredell, and Lincoln.

**Section 2.** I authorize state emergency assistance funds in the form of grants to individuals and families located within the emergency area that meet the terms and conditions under N.C.G.S. § 166A-19.41(b)(1).

**Section 3.** I hereby order this declaration: (a) to be distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (b) to be promptly filed with the Secretary of the Department of Public Safety, the Secretary of State, and the clerks of superior court in the counties to which it applies; and (c) to be distributed to others as necessary to ensure proper implementation of this declaration.

**Section 4.** This Type I disaster declaration shall expire 60 days after issuance unless renewed by the Governor or the General Assembly. Such renewals may be made in increments of 30 days each, not to exceed a total of 120 days from the date of first issuance.

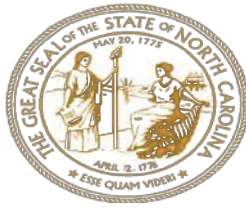
**IN WITNESS WHEREOF**, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 7<sup>th</sup> day of August in the year of our Lord two thousand and thirteen, and of the Independence of the United States of America the two hundred and thirty-eight.

  
Pat McCrory  
Governor

**ATTEST:**

  
Elaine F. Marshall  
Secretary of State





# State of North Carolina

PAT McCrORY  
GOVERNOR

August 13, 2013

## EXECUTIVE ORDER NO. 20

### DISASTER DECLARATION FOR THE TOWN OF BAKERSVILLE

**WHEREAS**, the North Carolina Emergency Management Act, Chapter 166A of the North Carolina General Statutes authorizes the issuance of a disaster declaration for an emergency area as defined in N.C.G.S. § 166A-19.3(7) and categorizing the disaster as a Type I, Type II or Type III disaster as defined in N.C.G.S. § 166A-19.21(b); and

**WHEREAS**, starting on July 2, 2013, the Town of Bakersville, located in Mitchell County, North Carolina was impacted by severe flooding caused by heavy rains; and

**WHEREAS**, as a result of the flooding the Town of Bakersville proclaimed a local state of emergency on July 3, 2013; and

**WHEREAS**, due the impact of the flooding, a joint preliminary damage assessment was done by local, state and federal emergency management officials on July 22, 2013; and

**WHEREAS**, I have determined that a Type I disaster, as defined in N.C.G.S. § 166A-19.21(b)(1), exists in the State of North Carolina, specifically in the Town of Bakersville; and

**WHEREAS**, pursuant to N.C.G.S. § 166A-19.21(b)(1), the criteria for a Type I disaster are met if: (1) the Secretary of the Department of Public Safety has provided a preliminary damage assessment to the Governor and the General Assembly; (2) the Town of Bakersville declared a local state of emergency pursuant to N.C.G.S. § 166A-19.22; (3) the preliminary damage assessment meets or exceeds the State infrastructure criteria set out in G.S. 166A-19.41(b)(2)a.; and (4) a major disaster declaration by the President of the United States pursuant to the Stafford Act has not been declared; and

**WHEREAS**, pursuant to N.C.G.S. § 166A-19.41(b), if a disaster is declared, the Governor may make State funds available for emergency assistance in the form of individual assistance and public assistance for recovery from those disasters for which federal assistance under the Stafford Act is either not available or does not adequately meet the needs of the citizens of the State in the emergency area.

**NOW, THEREFORE**, pursuant to the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED:**

**Section 1.** Pursuant to N.C.G.S. § 166A-19.21(b)(1), a Type I disaster is hereby declared for the Town of Bakersville in Mitchell County, North Carolina.

**Section 2.** I authorize state disaster assistance in the form of public assistance grants to eligible governments located within the emergency area that meet the terms and conditions under N.C.G.S. § 166A-19.41(b)(2). The public assistance grants are for the following:

- a. Emergency protective measures.
- b. Roads and bridges.

**Section 3.** I hereby order this declaration: (a) to be distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (b) to be promptly filed with the Secretary of the Department of Public Safety, the Secretary of State, and the clerks of superior court in the counties to which it applies; and (c) to be distributed to others as necessary to ensure proper implementation of this declaration.

**Section 4.** This Type I disaster declaration shall expire 60 days after issuance unless renewed by the Governor or the General Assembly. Such renewals may be made in increments of 30 days each, not to exceed a total of 120 days from the date of first issuance.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this thirteenth day of August in the year of our Lord two thousand and thirteen, and of the Independence of the United States of America the two hundred and thirty-eight.

  
Pat McCrory  
Governor

ATTEST:

  
Elaine F. Marshall  
Secretary of State







# State of North Carolina

PAT McCrory  
GOVERNOR

August 14, 2013

## EXECUTIVE ORDER NO. 21

### STRENGTHENING FUGITIVE APPREHENSION AND PROTECTING PUBLIC BENEFITS

**WHEREAS**, states shall not use federal grants under the Temporary Assistance for Needy Families program to assist an individual who is:

- (i) fleeing to avoid prosecution, or custody, or confinement after conviction, under the laws of the place from which the individual flees, for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the individual flees (hereinafter, a "fleeing felon"), or
- (ii) violating a condition of probation or parole imposed under federal or state law; and

**WHEREAS**, federal law shall not prevent the states from providing federal, state or local law enforcement with applicant information upon request if certain conditions are met; and

**WHEREAS**, the State has invested in criminal justice information systems to provide centralized access to criminal information in accordance with federal and State law.

**NOW, THEREFORE**, pursuant to the authority vested in me as Governor by the Constitution and laws of the State of North Carolina, **IT IS ORDERED**:

#### Section 1. Compliance with Federal Law.

The Department of Health and Human Services shall ensure that county departments of social services, to the extent allowed by federal or State law, check the criminal history of a new or recertification applicant in the Work First Program or Nutrition Services Program using existing resources to verify whether an applicant is a fleeing felon or probation or parole violator.

Nothing herein shall require fingerprints to be taken of a new or recertification applicant to the Work First Program or Nutrition Services Program.

The Department of Health and Human Services shall ensure that fleeing felon and probation or parole violators are not provided Work First Program or Food and Nutrition Services Program assistance in conflict with 42 U.S.C. § 608.

An applicant's status as a fleeing felon or probation or parole violator shall not affect the eligibility for assistance of other members of the applicant's or recipient's household.

Section 2. Disclosure.

The Department of Health and Human Services shall ensure that all new and recertification applicants for Work First Program or Food and Nutrition Services Program assistance are notified that if there exists an outstanding warrant for arrest of the applicant, confidential information from the applicant's records may be disclosed to federal, state or local law enforcement officers.

Section 3. Law Enforcement.

The Department of Health and Human Services shall study how an applicant's status as a fleeing felon or probation or parole violator may be shared with federal, state or local law enforcement officers consistent with federal and state law.

The Office of the State Chief Information Officer and the Department of Health and Human Services are directed to study and develop a plan and recommendations whereby databases containing criminal information may be queried on behalf of the Department of Health and Human Services to check the criminal history of a new or recertification applicant in the Work First Program or Nutrition Services Program and whereby databases used by law enforcement may query Department of Health and Human Services databases exclusively for information to assist state and local law enforcement in locating fleeing felons or probation or parole violators in a manner consistent with federal law.

Section 4. Effect and Duration.

This Executive Order is effective immediately and shall remain in effect until rescinded.

**IN WITNESS WHEREOF**, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this fourteenth day of August, in the year of our Lord two thousand thirteen, and of the Independence of the United States of America the two hundred and thirty-eighth.

  
Pat McCrory  
Governor

ATTEST:

  
Elaine F. Marshall  
Secretary of State





# State of North Carolina

PAT McCrORY  
GOVERNOR

August 22, 2013

## EXECUTIVE ORDER NO. 22

### TO PROTECT THE PUBLIC FROM SOLID WASTE

**WHEREAS**, the General Assembly has enacted legislation concerning vehicles and containers used for the collection and transportation of solid waste to be moved on highways of North Carolina; and

**WHEREAS**, the Department of Environment and Natural Resources implements rules adopted by the Commission for Public Health concerning vehicles transporting solid waste by observing trucks at solid waste management facilities, and the Department of Public Safety ensures compliance with statutes requiring that vehicles transporting loads on highways in North Carolina be constructed and loaded to prevent any of its load from escaping; and

**WHEREAS**, the Department of Environment and Natural Resources is prohibited by House Bill 74, as enacted by the 2013 General Assembly, from requiring that vehicles or containers used for collection and transportation be leak-proof but may require that they be designed and maintained to be leak resistant, and the Department of Public Safety is given guidance through House Bill 74, as enacted by the 2013 General Assembly, that the terms "load" and "leaking" do not include water accumulated from precipitation; and

**WHEREAS**, the provisions enacted may be perceived to be in conflict with one another in that any part of a load of solid waste, including liquids that may be mixed with precipitation, escaping from a vehicle driven or moved on a highway, violates statutes the Department of Public Safety is charged with enforcing; while, the Department of Environment and Natural Resources shall apply a standard of leak resistance to containers and vehicles used to collect and transport solid waste; and

**WHEREAS**, reasonable and consistent application of the law and rules governing the collection and transportation of solid waste is needed to ensure the protection of public health, safety, and the environment throughout North Carolina.

**NOW, THEREFORE**, by the power vested in me as Governor by the Constitution and laws of the State of North Carolina, **IT IS ORDERED**:

The State Highway Patrol and law enforcement officers of the Department of Public Safety (hereinafter "DPS") shall continue to exercise their powers under Article 3 of Chapter 20 of the General Statutes to ensure no vehicle is driven or moved in violation of N.C.G.S. § 20-116(g)(1) and that leachate is not permitted to escape from containers or vehicles transporting solid waste on North Carolina highways.

Before issuing a citation to the driver of a vehicle used for transporting solid waste, the State Highway Patrol and law enforcement officers of DPS shall consider recent weather conditions and the accumulation of rainwater, snowmelt, and other forms of precipitation. If a member of the State Highway Patrol or law enforcement officer of DPS determines that any rainwater, snowmelt, or other form of precipitation leaking, or otherwise escaping from a vehicle has passed through or emerged from solid waste, the officer shall issue a citation.

This Executive Order is effective immediately and shall remain in effect until rescinded.

**IN WITNESS WHEREOF**, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this twenty-second day of August, in the year of our Lord two thousand thirteen, and of the Independence of the United States of America the two hundred and thirty-seventh.

  
Pat McCrory  
Governor

ATTEST:

  
Elaine F. Marshall  
Chief/Deputy Secretary of State





# State of North Carolina

PAT McCrORY  
GOVERNOR

August 23, 2013

## EXECUTIVE ORDER NO. 23

### LIMITING CLEAR CUTTING AROUND LOCAL BILLBOARDS

**WHEREAS**, the General Assembly has determined that outdoor advertising is a legitimate commercial use of private property adjacent to roads and highways; and

**WHEREAS**, the erection and maintenance of outdoor advertising in the vicinity of the roadways within the State should be controlled and regulated in order to promote the safety, health, welfare of our local communities and the convenience and enjoyment of travel on and protection of the public investment in highways within the State; and

**WHEREAS**, the Department of Transportation is charged with enforcing the laws and regulations related to outdoor advertising in order to promote highway safety while preserving and enhancing the natural scenic beauty of the highways, and to promote the prosperity, economic well-being and general welfare of the State by ensuring the reasonable, orderly and effective display of outdoor advertising; and

**WHEREAS**, the Department of Transportation can better promote the prosperity, economic well-being and general welfare of the State by consulting with local municipalities about the display of outdoor advertising in local communities.

**NOW, THEREFORE**, pursuant to the authority vested in me as Governor by the Constitution and laws of the State of North Carolina, **IT IS ORDERED:**

#### Section 1.

Pursuant to N.C. General Statute 136-133.1, as rewritten in Section 8.(a) of House Bill 74, as enacted by the 2013 General Assembly, the Department of Transportation, upon a request by a selective vegetation removal permittee to modify the cut or removal zone pertaining to an outdoor advertising sign as defined in GS 136-133.1(a), may authorize a one-time modification or adjustment of the cut or removal zone that will permit the sign to be more clearly viewed.

#### Section 2.

The Department of Transportation shall establish and record the new cut zone as the permanent cut or removal zone in accordance with SL2011-397. If any existing trees, as defined in GS 136-



133.1 (b) are pruned, cut, thinned, or removed outside the cut or removal zone as defined in SL2011-397, GS 136-133.1 (b), (c), (d), and (e) would be applicable.

Section 3.

The Department of Transportation shall apply the provisions of Title 19A NCAC 02E .0609 (b) (4) in the event of removal of vegetation planted as part of a local, State, or Federal beautification project.

Section 4.

The Department shall consult with local municipalities before approving plans for the cutting, thinning, pruning, or removal of vegetation outside of the cut or removal zone pursuant to N.C.G.S. § 136-133.1.

Section 5.

The Department shall conform to the provisions set out in SL2011-397.


Section 6.

This Executive Order is effective immediately and shall remain in effect until rescinded.

**IN WITNESS WHEREOF**, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this twenty-third day of August, in the year of our Lord two thousand thirteen, and of the Independence of the United States of America the two hundred and thirty-eight.

  
Pat McCrory  
Governor

ATTEST:

  
Elaine F. Marshall  
Secretary of State  
*Chief Deputy*



Notice of Application for Innovative Approval of a Wastewater System for On-site Subsurface Use

Pursuant to NCGS 130A-343(g), the North Carolina Department of Health and Human Services (DHHS) shall publish a Notice in the NC Register that a manufacturer has submitted a request for approval of a wastewater system, component, or device for on-site subsurface use. The following applications have been submitted to DHHS:

Application by: David Presby  
Presby Advanced Enviro-Septic (AES)  
143 Airport Rd  
Whitefield, NH 03598

For: Innovative Approval of Presby Advanced Enviro-Septic (AES) treatment/nitrification system with distribution

DHHS Contact: Nancy Deal  
1-919-707-5875  
Fax: 919-845-3973  
Nancy.Deal@dhhs.nc.gov

These applications may be reviewed by contacting Nancy Deal, Branch Head at 5605 Six Forks Rd., Raleigh, NC, On-Site Water Protection Branch, Environmental Health Section, Division of Public Health. Draft proposed innovative approvals and proposed final action on the application by DHHS can be viewed on the On-Site Water Protection Branch web site: <http://ehs.ncpublichealth.com/oswp/approvedproducts.htm>.

Written public comments may be submitted to DHHS within 30 days of the date of the Notice publication in the North Carolina Register. All written comments should be submitted to Nancy Deal, Branch Head, On-site Water Protection Branch, 1642 Mail Service Center, Raleigh, NC 27699-1642, or Nancy.Deal@dhhs.nc.gov, or fax 919-845-3973. Written comments received by DHHS in accordance with this Notice will be taken into consideration before a final agency decision is made on the innovative subsurface wastewater system application.

**Note from the Codifier:** The notices published in this Section of the NC Register include the text of proposed rules. The agency must accept comments on the proposed rule(s) for at least 60 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. If the agency adopts a rule that differs substantially from a prior published notice, the agency must publish the text of the proposed different rule and accept comment on the proposed different rule for 60 days.

Statutory reference: G.S. 150B-21.2.

## TITLE 12 – DEPARTMENT OF JUSTICE

**Notice** is hereby given in accordance with G.S. 150B-21.2 that the Criminal Justice Education and Training Standards Commission intends to amend the rules cited as 12 NCAC 09B .0235, .0236; and 09E .0105.

### Agency obtained G.S. 150B-19.1 certification:

- ☐ OSBM certified on:  
☒ **RRC certified on:** August 15, 2013; 12 NCAC 09E .0105 also certified on May 16, 2013  
☐ Not Required

### Link to agency website pursuant to G.S. 150B-19.1(c):

<http://ncdoj.gov/About-DOJ/Law-Enforcement-Training-and-Standards/Criminal-Justice-Education-and-Training-Standards/Forms-and-Publications.aspx>

**Proposed Effective Date:** February 1, 2014

### Public Hearing:

**Date:** November 21, 2013

**Time:** 1:00 p.m.

**Location:** Wake Technical Community College, 321 Chapanoke Road, Raleigh, NC 27502

**Reason for Proposed Action:** To keep current the required training for Juvenile Justice Officers, Juvenile Court Counselors and Law Enforcement Officers. 12 NCAC 09E .0105 is inclusive of revisions certified on May 16, 2013 and August 15, 2013.

**Comments may be submitted to:** Trevor Allen, 1700 Tryon Park Drive, Raleigh, NC 27602; phone (919) 779-8211; fax (919) 779-8210; email [tjallen@ncdoj.gov](mailto:tjallen@ncdoj.gov)

**Comment period ends:** November 21, 2013

### Procedure for Subjecting a Proposed Rule to Legislative Review:

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or

facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

### Fiscal impact (check all that apply).

- ☐ State funds affected  
☐ Environmental permitting of DOT affected  
☐ Analysis submitted to Board of Transportation  
☐ Local funds affected  
☐ Date submitted to OSBM:  
☐ Substantial economic impact (≥\$500,000)  
☒ Approved by OSBM  
☒ No fiscal note required by G.S. 150B-21.4

## CHAPTER 09 - CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS

### SUBCHAPTER 09B - STANDARDS FOR CRIMINAL JUSTICE EMPLOYMENT: EDUCATION: AND TRAINING

#### SECTION .0200 - MINIMUM STANDARDS FOR CRIMINAL JUSTICE SCHOOLS AND CRIMINAL JUSTICE TRAINING PROGRAMS OR COURSES OF INSTRUCTION

#### 12 NCAC 09B .0235 BASIC TRAINING – JUVENILE COURT COUNSELORS AND CHIEF COURT COUNSELORS

(a) The basic training course for juvenile court counselors and chief court counselors shall consist of a minimum of 444 160 hours of instruction designed to provide the trainee with the skills and knowledge to perform those tasks essential to function as a Juvenile Court Counselor and a Chief Court Counselor.

(b) Each basic training course for Juvenile Court Counselors shall include training in the following ~~identified~~ topical areas:

- |   |          |
|---|----------|
| (1) Orientation to Basic Training                           | 8 Hours  |
| (2) Juvenile Law  | 8 Hours  |
| (3) Roles and Responsibilities of Juvenile Court Counselors | 6 Hours  |
| (4) Special Program Procedures                              | 2 Hours  |
| (5) Report Writing, Documentation and Correspondence        | 8 Hours  |
| (6) Interpersonal Communication Skills                      | 8 Hours  |
| (7) Interviewing  | 8 Hours  |
| (8) Basic Individual Counseling Skills                      | 16 Hours |
| (9) Working with Families of Delinquents                    | 4 Hours  |



- (10) Risk and Needs Assessment 4 Hours
- (11) Intake 8 Hours
- (12) Safety Issues 4 Hours
- (13) First Aid/CPR and Blood Borne Pathogens 8 Hours
- (14) Restraint, Control and Defense Techniques 28 Hours
- (15) Defensive Driving 8 Hours
- (16) Secure Transportation 8 Hours
- (17) Review and Examinations 8 Hours
- (1) Juvenile Justice Common Core:
  - (A) Juvenile Justice Overview;
  - (B) Counseling and Communication Skills;
  - (C) Characteristics of Delinquents;
  - (D) Unlawful Workplace Harassment;
  - (E) Professional Ethics;
  - (F) Staff and Juvenile Relationships;
  - (G) Gang Awareness;
  - (H) Situational Awareness and Risk Assessment;
  - (I) Restraints, Controls and Defensive Techniques;
  - (J) Secure Transportation;
  - (K) Mental Health; and
  - (L) Basic Life Support: CPR and First Aid; and
- (2) Juvenile Court Counselor Specific:
  - (A) Roles and Responsibilities;
  - (B) Juvenile Law;
  - (C) Intake;
  - (D) Risk and Needs Assessment;
  - (E) Report Writing and Documentation;
  - (F) Interviewing; and
  - (G) Driver Safety.

(c) The "Juvenile Court Counselor Basic Training Manual" as published by the North Carolina Department of Public Safety shall be applied as the basic curriculum for delivery of Juvenile Court Counselor basic training courses. Copies of this publication may be inspected at the office of the agency:

The Office of Staff Development and Training  
 North Carolina Department of Public Safety  
 2211 Schieffelin Road  
 Apex, North Carolina 27502

(d) Upon successful completion of a Commission-certified training course for Juvenile Court Counselors and Chief Court Counselors, the Director of the school conducting such course shall notify the Commission of the satisfactory achievement of trainees by submitting a Report of Training Course Completion for each successful trainee.

(e) Employees of the Division of Juvenile Justice who have successfully completed the minimum 160 hour training program accredited by the Commission pursuant to Rule .0236 of this Section after January 1, 2013 who transfer from a Juvenile Justice Officer position to a Juvenile Court Counselor position shall be required to successfully complete only the portions of the course identified as specific to the duties and responsibilities of a Juvenile Court Counselor under Subparagraph (b)(2) of this Rule.

Authority G.S. 17C-2; 17C-6; 17C-10.

## **12 NCAC 09B .0236 BASIC TRAINING - JUVENILE JUSTICE OFFICERS**

(a) The basic training course for Juvenile Justice Officers shall consist of a minimum of 160 hours of instruction designed to provide the trainee with the skills and knowledge to perform those tasks essential to function as a juvenile justice officer.

(b) Each basic training course for Juvenile Justice Officers shall include training in the following identified topical areas:

- (1) Facility Specific Safety, Security and Supervision 24 Hours
- (2) Orientation, Roles and Responsibilities of the JJO 8 Hours
- (3) Interpersonal Communication Skills 12 Hours
- (4) Basic Group Leadership Skills 8 Hours
- (5) Adolescent Development 4 Hours
- (6) Characteristics of Delinquents 4 Hours
- (7) Gang Awareness 2 Hours
- (8) Basic Individual Counseling Skills 16 Hours
- (9) Effective Behavior Management of Juveniles 12 Hours
- (10) Crisis Intervention Techniques 8 Hours
- (11) Working with Families of Delinquent Juveniles 4 Hours
- (12) Treatment Program Operation 6 Hours
- (13) Maintaining Documentation of Activities and Behaviors 8 Hours
- (14) First Aid/CPR and Blood Borne Pathogens 8 Hours
- (15) Restraint, Control and Defense Techniques 28 Hours
- (16) Review and Examinations 8 Hours
- (1) Juvenile Justice Common Core:
  - (A) Juvenile Justice Overview;
  - (B) Counseling and Communication Skills;
  - (C) Characteristics of Delinquents;
  - (D) Unlawful Workplace Harassment;
  - (E) Professional Ethics;
  - (F) Staff and Juvenile Relationships;
  - (G) Gang Awareness;
  - (H) Situational Awareness and Risk Assessment;
  - (I) Restraints, Controls and Defensive Techniques;
  - (J) Secure Transportation;
  - (K) Mental Health; and
  - (L) Basic Life Support: CPR and First Aid; and
- (2) Juvenile Justice Officer Specific:
  - (A) Treatment Program Operation;
  - (B) Maintaining Documentation of Activities and Behaviors;
  - (C) Basic Group Leadership Skills;
  - (D) Crisis Intervention Techniques;
  - (E) Effective Behavior Management;

(F) Health Services Overview; and

(G) Trauma and Delinquents.

(c) The "Juvenile Justice Officer Basic Training Manual" as published by the North Carolina Department of Public Safety shall be applied as the basic curriculum for delivery of Juvenile Justice Officer basic training courses. Copies of this publication may be inspected at the office of the agency:

The Office of Staff Development and Training  
North Carolina Department of Public Safety  
2211 Schieffelin Road  
Apex, North Carolina 27502

~~(e)(d)~~ Upon successful completion of a Commission-certified training course for Juvenile Justice Officers the Director of the school conducting such course shall notify the Commission of the satisfactory achievement of trainees by submitting a Report of Training Course Completion for each successful trainee.

(e) Employees of the Division of Juvenile Justice who have successfully completed the minimum 160 hour training program accredited by the Commission under Rule .0235 of this Section after January 1, 2013 who transfer from a Juvenile Court Counselor position to a Juvenile Justice Officer position shall be required to successfully complete only the portions of the course identified as specific to the duties and responsibilities of a Juvenile Justice Officer pursuant to Subparagraph (b)(2) of this Rule.

*Authority G.S. 17C-2; 17C-6; 17C-10.*

## **SUBCHAPTER 09E – IN-SERVICE TRAINING PROGRAMS**

### **SECTION .0100 - LAW ENFORCEMENT OFFICER'S IN-SERVICE TRAINING PROGRAM**

#### **12 NCAC 09E .0105 MINIMUM TRAINING SPECIFICATIONS: ANNUAL IN-SERVICE TRAINING**

(a) The following topical areas and specifications are established as minimum topics, specifications and hours to be included in each law enforcement officer's annual in-service training courses. For the purposes of this Subchapter, a credit shall be equal to one hour of traditional classroom instruction. These specifications shall be incorporated in each law enforcement agency's annual in-service training courses:

- (1) ~~Firearms~~ (4): 2014 Firearms Training and Qualification (6 credits);
  - (A) ~~Use of Force: review the authority to use deadly force [G.S. 15A-401(d)(2)] including the relevant case law and materials;~~
  - (B) ~~Safety:~~
    - (i) ~~range rules and regulations;~~
    - (ii) ~~handling of a firearm; and~~
    - (iii) ~~malfunctions;~~
  - (C) ~~Review of Basic Marksmanship Fundamentals:~~
    - (i) ~~grip, stance, breath control and trigger squeeze;~~
    - (ii) ~~sight and alignment/sight picture; and~~

(iii) ~~nomenclature; and~~

(2) 2014 Legal Update (4 credits);

(3) ~~Career Survival: Social Networking and Digital Communications (4);~~

(4)(3) ~~Juvenile Minority Sensitivity Training: Interaction Skills in Building Rapport (2); 2014 JMST: A Juvenile – Now What? (2 credits);~~

(5)(4) ~~Awareness of Issues Surrounding Returning Military Personnel (2); and 2014 Officer Safety: The First Five Minutes (4 credits); and~~

(6)(5) ~~2014 Department Topics of Choice (8); (12 credits).~~

(b) The "Specialized Firearms Instructor Training Manual" as published by the North Carolina Justice Academy shall be applied as a guide for conducting the annual in-service firearms training program. Copies of this publication may be inspected at the office of ~~the agency; the:~~

Criminal Justice Standards Division  
North Carolina Department of Justice  
1700 Tryon Park Drive  
Raleigh, North Carolina 27610

(c) ~~The In-Service Lesson Plans~~ The "In-Service Lesson Plans" as published by the North Carolina Justice Academy shall be applied as a minimum curriculum for conducting the annual in-service training program. Copies of this publication may be inspected at the office of ~~the agency; the:~~

Criminal Justice Standards Division  
North Carolina Department of Justice  
1700 Tryon Park Drive  
Raleigh, North Carolina 27610

and may be obtained at cost from the Academy at the following address:

North Carolina Justice Academy  
Post Office Drawer 99  
Salemberg, North Carolina 28385

(d) Lesson plans are designed to be delivered in hourly increments. A student who completes an online in-service training topic shall receive the number of credits that correspond to the number of hours of traditional classroom training, regardless of the amount of time the student spends completing the course.

(e) Successful completion of training shall be demonstrated by passing a written test for each in-service training topic, as follows:

- (1) A written test comprised of at least five questions per credit shall be developed by the delivering agency, or the agency may use the written test developed by the North Carolina Justice Academy, for each in-service training topic requiring testing. Written courses which are more than four credits in length are required to do a written test comprising of a minimum of 20 questions. The Firearms Training and Qualifications in-service course is exempt from this written test requirement.
- (2) A student shall pass each test by achieving 70 percent correct answers.

- (3) A student who completes a topic of in-service training in a traditional classroom setting or online and fails the end of topic exam shall be given one attempt to re-test. If the student fails the exam a second time, the student must complete the in-service training topic in a traditional classroom setting before taking the exam a third time.

*Authority G.S. 17C-6; 17C-10.*

## **TITLE 16 – DEPARTMENT OF PUBLIC INSTRUCTION**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the NC State Board of Education intends to adopt the rule cited as 16 NCAC 06D .0508.*

**Agency obtained G.S. 150B-19.1 certification:**

- ☐ OSBM certified on:  
☒ RRC certified on: *May 16, 2013*  
☐ Not Required

**Link to agency website pursuant to G.S. 150B-19.1(c):**

<https://eboard.eboardsolutions.com/Meetings/Attachment.aspx?S=10399&AID=12267&MID=804>  
<http://stateboard.ncpublicschools.gov/rules-apa>

**Proposed Effective Date:** *February 1, 2014*

**Public Hearing:**

**Date:** *October 15, 2013*

**Time:** *1:00 p.m. – 3:00 p.m.*

**Location:** *Education Building, 301 N. Wilmington Street, 7<sup>th</sup> Floor Board Lounge, Raleigh, NC 27601*

**Reason for Proposed Action:** *In the 2011-12 Session, Senate Bill 795, Excellent Public Schools Act, was passed. This legislation made changes to the G.S. 115C-83. The legislation created the Read to Achieve Program. The North Carolina Department of Public Instruction is required to ensure that the Read to Achieve Program is followed by the local education agencies (LEAs) and charter schools. The purpose of the rule is to notify the LEAs and charter schools that the State Board of Education required implementation of the Read to Achieve Program.*

**Comments may be submitted to:** *Lou Martin, 6302 Mail Service Center, Raleigh, NC 27699-6302; phone (919) 807-3658; fax (919) 807-3198; email lou.martin@dpi.nc.gov*

**Comment period ends:** *November 15, 2013*

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed

objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

**Fiscal impact (check all that apply).**

- ☒ State funds affected  
☐ Environmental permitting of DOT affected  
☒ Analysis submitted to Board of Transportation  
☒ Local funds affected  
☐ Date submitted to OSBM: *March 15, 2013*  
☐ Substantial economic impact (≥\$500,000)  
☒ Approved by OSBM *August 20, 2013*  
☐ No fiscal note required by G.S. 150B-21.4

## **CHAPTER 06 - ELEMENTARY AND SECONDARY EDUCATION**

### **SUBCHAPTER 06D – INSTRUCTION**

#### **SECTION .0500 – DEFINITIONS**

#### **16 NCAC 06D .0508 NC GENERAL ASSEMBLY'S READ TO ACHIEVE PROGRAM**

(a) Local education agencies (LEAs) shall enact third grade retention and promotion policies consistent with G.S. 115C-83.1, 83.3, and 83.7.

(b) Pursuant to G.S. 115C-83.3(2) LEAs shall use the Read to Achieve test as the alternative assessment in connection with G.S. 115C-83.7, 83.8.

*Authority G.S. 115C-83.1, 83.3, 83.7 and 83.8.*

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the NC State Board of Education intends to adopt the rule cited as 16 NCAC 06G .0504.*

**Agency obtained G.S. 150B-19.1 certification:**

- ☐ OSBM certified on:  
☒ RRC certified on: *May 16, 2013*  
☐ Not Required

**Link to agency website pursuant to G.S. 150B-19.1(c):**

<https://eboard.eboardsolutions.com/Meetings/Attachment.aspx?S=10399&AID=11094&MID=767>  
<http://stateboard.ncpublicschools.gov/rules-apa>

**Proposed Effective Date:** *February 1, 2014*

**Public Hearing:**

**Date:** *October 9, 2013*

**Time:** 1:00 p.m. – 3:00 p.m.

**Location:** Education Building, 301 N. Wilmington Street, 7<sup>th</sup> Floor Board Lounge, Raleigh, NC 27601

**Reason for Proposed Action:** *Session Law 2011-306: HB 342 empowered the State Board of Education to accredit schools in North Carolina, upon request of a local board of education. This framework is an examination of what accreditation is and how the North Carolina Department of Public Instruction may proceed with implementing an accreditation process for high schools.*

**Comments may be submitted to:** Lou Martin, 6302 Mail Service Center, Raleigh, NC 27699-6302; phone (919) 807-3658; fax (919) 807-3198; email [lou.martin@dpi.nc.gov](mailto:lou.martin@dpi.nc.gov)

**Comment period ends:** November 15, 2013

**Procedure for Subjecting a Proposed Rule to Legislative Review:**

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

**Fiscal impact (check all that apply).**

- ☒ State funds affected
- ☐ Environmental permitting of DOT affected
- ☐ Analysis submitted to Board of Transportation
- ☒ Local funds affected
- ☐ Date submitted to OSBM: March 15, 2013
- ☐ Substantial economic impact (≥\$500,000)
- ☒ Approved by OSBM August 20, 2013
- ☐ No fiscal note required by G.S. 150B-21.4

**CHAPTER 06 – ELEMENTARY AND SECONDARY EDUCATION**

**SUBCHAPTER 06G – EDUCATION AGENCY RELATIONS**

**SECTION .0500 – CHARTER SCHOOLS**

**16 NCAC 06G .0504 HIGH SCHOOL ACCREDITATION FRAMEWORK**

The High School Accreditation Framework is the process whereby schools or school districts (public and private) undergo a quality assurance process that includes self-reflection and outside peer review or audit. The processes to request an

accreditation review and determine high school accreditation includes the following:

- (1) The NCDPI will use the school's performance composite and other indicators, such as the cohort graduation rate and post-secondary readiness measures to determine high school accreditation. The cohort graduation rate is the percentage of ninth graders who successfully complete high school within the same four-year period. Factors of post-secondary readiness measures include:
  - (a) successful completion of Algebra II/Integrated Mathematics III,
  - (b) ACT, a college readiness assessment; and
  - (c) WorkKeys, a career readiness assessment.
- (2) The district superintendent must request a high school accreditation review:
  - (a) The district superintendent submits a request to the SBE for an accreditation review.
  - (b) The NCDPI conducts the review using three years of data.
  - (c) The NCDPI provides findings to the SBE.
  - (d) The LEA is notified of the SBE decision.
  - (e) If the school(s) meets acceptable levels of quality, the accreditation is valid for five years.

*Authority G. S. 115C-12(39); N.C. Const. Art. IX, Sect 2 and 5.*

**TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS**

**CHAPTER 12 - LICENSING BOARD FOR GENERAL CONTRACTORS**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Licensing Board for General Contractors intends to adopt the rule cited as 21 NCAC 12 .0309 and amend the rules cited as 21 NCAC 12 .0103, .0202, .0204-.0205, .0209, .0503, .0701-.0703, .0901 and .0906.*

**Agency obtained G.S. 150B-19.1 certification:**

- ☐ OSBM certified on:
- ☐ RRC certified on:
- ☒ Not Required

**Link to agency website pursuant to G.S. 150B-19.1(c):** [www.nclbgc.org](http://www.nclbgc.org)

**Proposed Effective Date:** April 1, 2014

**Public Hearing:**

**Date:** October 9, 2013

**Time:** 10:00 a.m.

**Location:** 5400 Creedmoor Road, Raleigh, NC 27612

**Reason for Proposed Action:**

**21 NCAC 12 .0103** – This amendment restates the definition of a quorum, in order to proactively address problems that may arise when there are vacancies on the Board.

**21 NCAC 12 .0202** – Because of some confusion in the industry, this amendment revises the definition of the building contractor classification.

**21 NCAC 12 .0204** – Upon recommendation of the Board's auditor, this rule sets out the accounting and reporting standards under which applicants must submit financial statements.

**21 NCAC 12 .0205** – This amendment is necessary to conform to recent changes in G.S. 87-10, which extended the period from non-renewal to active from two years to four years.

**21 NCAC 12 .0209** – This amendment provides that an applicant or licensee may only use one assumed name and such name may not be confusingly similar to a name used by another licensee.

**21 NCAC 12 .0309** – This rule is proposed for adoption to comply with G.S. 93B-15.1 in setting out the procedure and requirements for application for licensure by a military trained applicant or military spouse.

**21 NCAC 12 .0503** – This amendment requires a corporate licensee to notify the Board within 30 days of a withdrawal of its Certificate of Authority.

**21 NCAC 12 .0701** – This amendment is intended to reflect a more streamlined process with regard to complaints filed against licensees.

**21 NCAC 12 .0702** – This amendment is intended to reflect a more streamlined process with regard to complaints filed with the Board against unlicensed individuals.

**21 NCAC 12 .0703** – This amendment clarifies provisions regarding how bad checks are handled and provides that if the fee is not paid and the license is invalid for four years, the person must then meet all of the requirements of a new applicant.

**21 NCAC 12 .0901** – This amendment revises and more accurately describes a reference to the residential building code.

**21 NCAC 12 .0906** – This amendment reflects a more streamlined procedure for review of an application submitted to the Recovery Fund Review Committee.

**Comments may be submitted to:** Anna Baird Choi, P.O. Box Drawer 1270, Raleigh, NC 27602; phone (919) 755-0505; fax (919) 829-8098; email AChoi@allen-pinnix.com

**Comment period ends:** November 15, 2013

**Procedure for Subjecting a Proposed Rule to Legislative Review:**

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in

G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

**Fiscal impact (check all that apply).**

- ☐ **State funds affected**
- ☐ **Environmental permitting of DOT affected**
- ☐ **Analysis submitted to Board of Transportation**
- ☐ **Local funds affected**
- ☐ **Date submitted to OSBM:**
- ☐ **Substantial economic impact (≥\$500,000)**
- ☐ **Approved by OSBM**
- ☒ **No fiscal note required by G.S. 150B-21.4**

**SECTION .0100 - ORGANIZATION OF BOARD**

**21 NCAC 12 .0103 STRUCTURE OF BOARD**

(a) Organization. The Board consists of nine members who are appointed by the Governor of North Carolina, with its composition in terms of its members being specified in G.S. 87-2.

(b) Officers. Annually, during the April meeting, the Board elects from its members a Chairman and Vice-Chairman. The Chairman shall preside over all meetings of the Board and perform such other duties as he may be directed to do by the Board. The Vice-Chairman shall function as Chairman in the absence of the Chairman.

(c) Secretary-Treasurer. In addition to those duties and responsibilities required of him by the North Carolina General Statutes, the Secretary-Treasurer, as the Board's Chief Administrative Officer, specifically has the responsibility and power to:

- (1) employ the clerical and legal services necessary to assist the Board in carrying out the requirements of the North Carolina General Statutes;
- (2) purchase or rent whatever office equipment, stationery, or other miscellaneous articles as are necessary to keep the records of the Board;
- (3) make expenditures from the funds of the Board by signing checks, or authorizing the designee of the Secretary-Treasurer to sign checks, for expenditures after the checks are signed by the Chairman or Vice-Chairman; and
- (4) do such other acts as may be required of him by the Board.

(d) Meetings of the Board.

- (1) Regular meetings shall be held during January, April, July and October of each year at the main office of the Board or at any other place so designated by the Board.
- (2) Special Meetings. Special meetings of the Board shall be held at the request of the Chairman or any two of the members at the

- main office of the Board or at any place fixed by the person or persons calling the meeting.
- (3) Notice of Meetings. Regular meetings of the Board shall be held after each Board member is duly notified by the Secretary-Treasurer of the date of the meeting. However, any person or persons requesting a special meeting of the Board shall, at least two days before the meeting, give notice to the other members of the Board of that meeting by any usual means of communication. Such notice must specify the purpose for which the meeting is called.
- (4) Quorum. ~~Any five members of the Board which includes either the Chairman or Vice-Chairman~~ A majority of the members of the Board shall constitute a quorum.

Authority G.S. 87-1 to 87-8.

## SECTION .0200 - LICENSING REQUIREMENTS

### 21 NCAC 12 .0202 CLASSIFICATION

(a) A general contractor must be certified in one of five classifications. These classifications are:

- (1) Building Contractor. This classification covers all building construction activity including: commercial, industrial, institutional, and all residential building construction; includes parking decks, decks, all site work, grading and paving of parking lots, driveways, sidewalks, curbs, gutters, storm drainage, retaining or screen walls, and water and wastewater systems which are ancillary to the aforementioned structures and improvements hardware and accessory structures, indoor and outdoor recreational facilities including natural and artificial surface athletic fields, running tracks, bleachers, and seating. Covers ~~and~~ work done under the specialty classifications of S(Concrete Construction), S(Insulation), S(Interior Construction), S(Marine Construction), S(Masonry Construction), S(Roofing), S(Metal Erection), S(Swimming Pools), and S(Asbestos).
- (2) Residential Contractor. This classification covers all construction activity pertaining to the construction of residential units which are required to conform to the residential building code adopted by the Building Code Council pursuant to G.S. 143-138; all site work, driveways, sidewalks, and water and wastewater systems ancillary to the aforementioned structures and improvements; and the work done as part of such residential units under the specialty classifications of S(Insulation), S(Interior Construction), S(Masonry Construction), S(Roofing), S(Swimming Pools), and S(Asbestos).

- (3) Highway Contractor. This classification covers all highway construction activity including: grading, paving of all types, installation of exterior artificial athletic surfaces, relocation of public and private utility lines ancillary to the principal project, bridge construction and repair, culvert construction and repair, parking decks, sidewalks, curbs, gutters and storm drainage. It includes installation and erection of guard rails, fencing, signage and ancillary highway hardware; covers paving and grading of airport and airfield runways, taxiways, and aprons, including the installation of fencing, signage, runway lighting and marking; and work done under the specialty classifications of S(Boring and Tunneling), S(Concrete Construction), S(Marine Construction), S(Railroad Construction), and H(Grading and Excavating).
- (4) Public Utilities Contractor. This classification includes those whose operations are the performance of construction work on water and wastewater systems and on the subclassifications of facilities set forth in G.S. 87-10(b)(3). The Board may issue a license to a public utilities contractor that is limited to any of the subclassifications set forth in G.S. 87-10(b)(3) for which the contractor qualifies. A public utilities contractor license covers work done under the specialty classifications of S(Boring and Tunneling), PU(Communications), PU(Fuel Distribution), PU(Electrical-Ahead of Point of Delivery), PU(Water Lines and Sewer Lines), PU(Water Purification and Sewage Disposal), and S(Swimming Pools).
- (5) Specialty Contractor. This classification covers all construction operation and performance of contract work outlined as follows:
- (A) H(Grading and Excavating). This classification covers the digging, moving and placing of materials forming the surface of the earth, excluding air and water, in such a manner that the cut, fill, excavation, grade, trench, backfill, or any similar operation can be executed with the use of hand and power tools and machines commonly used for these types of digging, moving and material placing. It covers work on earthen dams and the use of explosives used in connection with all or any part of the activities described in this Subparagraph. It also includes clearing and grubbing, and erosion control activities.

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|---|--|
| <p>(B) S(Boring and Tunneling). This classification covers the construction of underground or underwater passageways by digging or boring through and under the earth's surface including the bracing and compacting of such passageways to make them safe for the purpose intended. It includes preparation of the ground surfaces at points of ingress and egress.</p>  | <p>(F) PU(Fuel Distribution). This classification covers the construction, installation, alteration, maintenance or repair of systems for distribution of petroleum fuels, petroleum distillates, natural gas, chemicals and slurries through pipeline from one station to another. It includes all excavating, trenching and backfilling in connection therewith. It covers the installation, replacement and removal of above ground and below ground fuel storage tanks.</p>  |
| <p>(C) PU(Communications). This classification covers the installation of the following:</p> <ul style="list-style-type: none"> <li>(i) All types of pole lines, and aerial and underground distribution cable for telephone systems;</li> <li>(ii) Aerial and underground distribution cable for Cable TV and Master Antenna TV Systems capable of transmitting R.F. signals;</li> <li>(iii) Underground conduit and communication cable including fiber optic cable; and</li> <li>(iv) Microwave systems and towers, including foundations and excavations where required, when the microwave systems are being used for the purpose of transmitting R.F. signals; and installation of PCS or cellular telephone towers and sites.</li> </ul> | <p>(G) PU(Water Lines and Sewer Lines). This classification covers construction work on water and sewer mains, water service lines, and house and building sewer lines as defined in the North Carolina State Building Code, and covers water storage tanks, lift stations, pumping stations, and appurtenances to water storage tanks, lift stations and pumping stations. It includes pavement patching, backfill and erosion control as part of such construction.</p>  |
| <p>(D) S(Concrete Construction). This classification covers the construction and installation of foundations, pre-cast silos and other concrete tanks or receptacles, prestressed components, and gunite applications, but excludes bridges, streets, sidewalks, curbs, gutters, driveways, parking lots and highways.</p>  | <p>(H) PU(Water Purification and Sewage Disposal). This classification covers the performance of construction work on water and wastewater systems, water and wastewater treatment facilities and all site work, grading, and paving of parking lots, driveways, sidewalks, and curbs and gutters which are ancillary to such construction of water and wastewater treatment facilities. It covers the work done under the specialty classifications of S(Concrete Construction), S(Insulation), S(Interior Construction), S(Masonry Construction), S(Roofing), and S(Metal Erection) as part of such work on water and wastewater treatment facilities.</p> |
| <p>(E) PU(Electrical-Ahead of Point of Delivery). This classification covers the construction, installation, alteration, maintenance or repair of an electrical wiring system, including sub-stations or components thereof, which is or is intended to be owned, operated and maintained by an electric power supplier, such as a public or private utility, a utility cooperative, or any other properly franchised electric power supplier, for</p>  | <p>(I) S(Insulation). This classification covers the installation, alteration or repair of materials classified as insulating media used for the non-mechanical control of temperatures in the construction of residential and commercial buildings. It does not include the insulation of mechanical equipment and ancillary lines and piping.</p> <p>(J) S(Interior Construction). This classification covers the installation</p>   |

- of acoustical ceiling systems and panels; drywall partitions (load bearing and non-load bearing), lathing and plastering, flooring and finishing, interior recreational surfaces, window and door installation, and installation of fixtures, cabinets and millwork. It includes the removal of asbestos and replacement with non-toxic substances.
- (K) S(Marine Construction). This classification covers all marine construction and repair activities and all types of marine construction in deep-water installations and in harbors, inlets, sounds, bays, and channels; it covers dredging, construction and installation of pilings, piers, decks, slips, docks, and bulkheads. It does not include structures required on docks, slips and piers.
- (L) S(Masonry Construction). This classification covers the installation, with or without the use of mortar or adhesives, of the following:
- (i) Brick, concrete block, gypsum partition tile, pumice block or other lightweight and facsimile units and products common to the masonry industry;
  - (ii) Installation of fire clay products and refractory construction; and
  - (iii) Installation of rough cut and dressed stone, marble panels and slate units, and installation of structural glazed tile or block, glass brick or block, and solar screen tile or block.
- (M) S(Railroad Construction). This classification covers the building, construction and repair of railroad lines including:
- (i) The clearing and filling of rights-of-way;
  - (ii) Shaping, compacting, setting and stabilizing of road beds;
  - (iii) Setting ties, tie plates, rails, rail connectors, frogs, switch plates, switches, signal markers, retaining walls, dikes, fences and gates; and
  - (iv) Construction and repair of tool sheds and platforms.
- (N) S(Roofing). This classification covers the installation and repair of roofs and decks on residential, commercial, industrial, and institutional structures requiring materials that form a water-tight and weather-resistant surface. The term "materials" for purposes of this Subparagraph to includes cedar, cement, asbestos, clay tile and composition shingles, all types of metal coverings, wood shakes, single ply and built-up roofing, protective and reflective roof and deck coatings, sheet metal valleys, flashings, gravel stops, gutters and downspouts, and bituminous waterproofing.
- (O) S(Metal Erection). This classification covers
- (i) The field fabrication, erection, repair and alteration of architectural and structural shapes, plates, tubing, pipe and bars, not limited to steel or aluminum, that are or may be used as structural members for buildings, equipment and structure; and
  - (ii) The layout, assembly and erection by welding, bolting or riveting such metal products as curtain walls, tanks of all types, hoppers, structural members for buildings, towers, stairs, conveyor frames, cranes and crane runways, canopies, carports, guard rails, signs, steel scaffolding as a permanent structure, rigging, flagpoles, fences, steel and aluminum siding, bleachers, fire escapes, and seating for stadiums, arenas, and auditoriums.
- (P) S(Swimming Pools). This classification covers the construction, service and repair of all swimming pools. It includes:
- (i) Excavation and grading;
  - (ii) Construction of concrete, gunite, and plastic-type pools, pool decks, and walkways, and tiling and coping; and
  - (iii) Installation of all equipment including pumps, filters and chemical feeders. It does



not include direct connections to a sanitary sewer system or to portable water lines, nor the grounding and bonding of any metal surfaces or the making of any electrical connections.

- (Q) S(Asbestos). This classification covers renovation or demolition activities involving the repair, maintenance, removal, isolation, encapsulation, or enclosure of Regulated Asbestos Containing Materials (RACM) for any commercial, industrial, or institutional building, whether public or private. It also covers all types of residential building construction involving RACM during renovation or demolition activities.
- (R) S(Wind Turbine). This classification covers the construction, installation and repair of wind turbines, wind generators and wind power units. It includes assembly of blades, generator, turbine structures and towers. It also includes ancillary foundation work, field fabrication of metal equipment and structural support components.

(b) An applicant may be licensed in more than one classification of general contracting provided the applicant meets the qualifications for the classifications, which includes passing the examination for the classifications in question. The license granted to an applicant who meets the qualifications for all classifications will carry with it a designation of "unclassified."

*Authority G.S. 87-1; 87-4; 87-10.*

## **21 NCAC 12 .0204 ELIGIBILITY**

(a) Limited License. The applicant for a limited license must:

- (1) Be entitled to be admitted to the examination given by the Board in light of the requirements set out in G.S. 87-10 and Section .0400 of this Chapter;
- (2) Be financially stable to the extent that the total current assets of the applicant or the firm or corporation he represents exceed the total current liabilities by at least seventeen thousand dollars (\$17,000) or the total net worth of the applicant or firm is at least eighty thousand dollars (\$80,000);
- (3) Successfully complete 70 percent of the examination given the applicant by the Board dealing with the specified contracting classification chosen by the applicant; and
- (4) Provide to the Board an audited financial statement with a classified balance sheet as

part of the application, if the applicant or any owner, principal, or qualifier is in bankruptcy or has been in bankruptcy within seven years prior to the filing of the application. This requirement does not apply to shareholders of an applicant that is a publicly traded corporation.

(b) Intermediate License. The applicant for an intermediate license must:

- (1) Be entitled to be admitted to the examination given by the Board in light of the requirements set out in G.S. 87-10 and Section .0400 of this Chapter;
- (2) Be financially stable to the extent that the total current assets of the applicant or the firm or corporation he represents exceed the total current liabilities by at least seventy-five thousand dollars (\$75,000), as reflected in an audited financial statement prepared by a certified public accountant or an independent accountant who is engaged in the public practice of accountancy; and
- (3) Successfully complete 70 percent of the examination given the applicant by the Board dealing with the specified contracting classification chosen by the applicant.

(c) Unlimited License. The applicant for an unlimited license must:

- (1) Be entitled to be admitted to the examination given by the Board in light of the requirements set out in G.S. 87-10 and Section .0400 of this Chapter;
- (2) Be financially stable to the extent that the total current assets of the applicant or the firm or corporation he represents exceed the total current liabilities by at least one hundred fifty thousand dollars (\$150,000), as reflected in an audited financial statement prepared by a certified public accountant or an independent accountant who is engaged in the public practice of accountancy;
- (3) Successfully complete 70 percent of the examination given the applicant by the Board dealing with the specified contracting classification chosen by the applicant.

(d) In lieu of demonstrating the required level of working capital or net worth under Subparagraph (a)(2) of this Rule, an applicant may obtain a surety bond from a surety authorized to transact surety business in North Carolina pursuant to G.S. 58 Articles 7, 16, 21, or 22. The surety shall maintain a rating from A.M. Best, or its successor rating organization, of either Superior (A++ or A+) or Excellent (A or A-). The bond shall be continuous in form and shall be maintained in effect for as long as the applicant maintains a license to practice general contracting in North Carolina or until the applicant demonstrates the required level of working capital. The application form and subsequent annual license renewal forms shall require proof of a surety bond meeting the requirements of this Rule. The applicant shall maintain the bond in the amount of three hundred

fifty thousand dollars (\$350,000) for a limited license, one million dollars (\$1,000,000) for an intermediate license, and two million dollars (\$2,000,000) for an unlimited license. The bond shall list State of North Carolina as obligee and be for the benefit of any person who is damaged by an act or omission of the applicant constituting breach of a construction contract or breach of a contract for the furnishing of labor, materials, or professional services to construction undertaken by the applicant, or by an unlawful act or omission of the applicant in the performance of a construction contract. The bond required by this Rule shall be in addition to and not in lieu of any other bond required of the applicant by law, regulation, or any party to a contract with the applicant. Should the surety cancel the bond, the surety and the applicant both shall notify the Board immediately in writing. If the applicant fails to provide written proof of financial responsibility in compliance with this Rule within 30 days of the bond's cancellation, then the applicant's license shall be suspended until written proof of compliance is provided. After a suspension of two years, the applicant shall fulfill all requirements of a new applicant for licensure. The practice of general contracting by an applicant whose license has been suspended pursuant to this Rule shall subject the applicant to additional disciplinary action by the Board.

(e) Reciprocity. If an applicant is licensed as a general contractor in another state, the Board, in its discretion, need not require the applicant to successfully complete the written examination as provided by G.S.87-15.1. However, the applicant must comply with all other requirements of the rules in this Chapter to be eligible to be licensed in North Carolina as a general contractor.

(f) Accounting and reporting standards. Financial statements submitted by applicants to the Board shall conform to United States "generally accepted accounting principles" (GAAP). The Board ~~shall accept~~ may require non-GAAP financial statements from ~~individual~~ applicants wherein the only exception to GAAP is that such presentation is necessary to ascertain the working capital or net worth of the particular applicant. Examples of such circumstances when non-GAAP presentation is necessary to ascertain the working capital or net worth of the applicant are when the only exception to GAAP is that assets and liabilities are classified as "current" and "noncurrent." "noncurrent" on personal financial statements and when ~~The Board shall accept non GAAP financial statements from applicants wherein the only exception to GAAP is that the particular applicant is not combined with a related entity into one financial statement pursuant to AICPA Financial Interpretation 46R (ASC 810). FIN 46R-~~ The terminologies, working capital, balance sheet with current and fixed assets, ~~and~~ current and long term liabilities, and any other accounting terminologies, used herein shall be construed in accordance with those standards referred to as "generally accepted accounting principles" (GAAP) as promulgated by the Financial Accounting Standards Board (FASB). The terminologies, audited financial ~~statements and statements,~~ unqualified opinion, and any other auditing terminologies used herein shall be construed in accordance with those standards referred to as "generally accepted auditing standards" (~~GAAS~~). "GAAS" as promulgated by the American Institute of Certified Public Accountants (AICPA).

*Authority G.S. 87-1; 87-4; 87-10.*

## **21 NCAC 12 .0205 FILING DEADLINE/APP SEEKING QUAL/EMP/ANOTHER**

(a) Any application made pursuant to G.S. 87-10 for a new applicant seeking qualifications by employment of a person who has already passed an examination shall be completed and filed at least 30 days before any regular or special meeting of the Board. At such meeting, the Board shall consider the application. The regular meetings of the Board are in January, April, July and October of each year.

(b) The qualifier for the applicant shall be a responsible managing employee, officer or member of the personnel of the applicant, as described in G.S. 87-10 and Rule .0408(a) of this Chapter. A person may serve as a qualifier for no more than two licenses. A person may not serve as a qualifier under this Rule if such person has not served as a qualifier for a license of the appropriate classification for more than ~~two~~ four years prior to the filing of the application found to be in complete order. Subject to the provisions of G.S. 150B and Section .0800 of these Rules, the Board may reject the application of an applicant seeking qualification by employment of a person who has already passed an examination if such person has previously served as qualifier for a licensee which has been disciplined by the Board.

(c) The holder of a general contractors license shall notify the Board immediately in writing as to the termination date in the event the qualifying individual or individuals cease to be connected with the licensee. After such notice is filed with the Board, or the Board determines that the qualifying individual or individuals are no longer connected with the licensee, the license shall remain in full force and effect for a period of 90 days from the termination date, and then be cancelled, as provided by G.S. 87-10. Holders of a general contractors license are entitled to reexamination or replacement of the qualifying individual's credentials in accordance with G.S. 87-10, but may not engage in the practice of general contracting for any project whose cost exceeds the monetary threshold set forth in G.S. 87-1 after the license has been cancelled, until another qualifying individual has passed a required examination.

*Authority G.S. 87-1; 87-10.*

## **21 NCAC 12 .0209 APPLICATION**

(a) Any application made pursuant to G.S. 87-10, shall be accompanied by a Certificate of Assumed Name when filing is required with the Register of Deeds office in the county in which the applicant is to conduct its business, pursuant to G.S. 66-68. A copy of such certification must be provided with the application to the Board. Applications submitted to the Board on behalf of corporations, limited liability companies and partnerships must be accompanied by a copy of any documents (Articles of Incorporation, Certificate of Authority, etc.) filed with the North Carolina Secretary of State's office.

(b) All licensees must comply with the requirements of G.S. 66-68 and must notify the Board within 30 days of any change in the name in which the licensee is conducting business in the State of North Carolina.

(c) Applicants for license and licensees may use only one assumed name.

(d) No applicant or licensee shall use or adopt an assumed name used by any other licensee, or any name so similar to an assumed name used by another licensee that could confuse or mislead the public.

*Authority G.S. 87-1; 87-4; 87-10.*

### **SECTION .0300 - APPLICATION PROCEDURE**

#### **21 NCAC 12 .0309 LICENSURE FOR MILITARY-TRAINED APPLICANT; LICENSURE FOR MILITARY SPOUSE**

(a) Licensure for a military-trained applicant. Upon receipt of a request for licensure pursuant to G.S. 93B-15.1 from a military-trained applicant, the Board shall issue a license upon the applicant satisfying the following conditions:

- (1) Submit a complete Application for License to Practice General Contracting;
- (2) Submit a license fee in accordance with G.S. 87-10;
- (3) Submit written evidence demonstrating that the applicant is currently serving as an active member of the U.S. military;
- (4) Provide evidence to satisfy conditions set out in G.S. 93B-15.1(a)(1) and (2); and
- (5) Demonstrate that the applicant has not committed any act in any jurisdiction that would constitute grounds for refusal, suspension, or revocation of a license in North Carolina at the time the act was committed.

(b) Licensure for a military spouse. Upon receipt of a request for licensure pursuant to G.S. 93B-15.1 from a military spouse, the Board shall issue a license upon the applicant satisfying the following conditions:

- (1) Submit a complete Application for License to Practice General Contracting;
- (2) Submit a license fee in accordance with G.S. 87-10;
- (3) Submit written evidence demonstrating that the applicant is married to an active member of the U.S. military;
- (4) Provide evidence to satisfy conditions set out in G.S. 93B-15.1(b)(1) and (2); and
- (5) Demonstrate that the applicant has not committed any act in any jurisdiction that would constitute grounds for refusal, suspension, or revocation of a license in North Carolina at the time the act was committed.

*Authority: G.S. 87-1; 93B-15.1.*

### **SECTION .0500 - LICENSE**

#### **21 NCAC 12 .0503 RENEWAL OF LICENSE**

(a) Form. A licensee's application for renewal requires the licensee to set forth whether there were any changes made in the status of the licensee's business during the preceding year and

also requires the licensee to give a financial statement for the business in question. The financial statement need not be prepared by a certified public accountant or by a qualified independent accountant but may be completed by the licensee on the form itself.

(b) The Board shall require a licensee to submit an audited financial statement if there is any evidence indicating that the licensee may be unable to meet its financial obligations. A licensee shall be required to provide evidence of continued financial responsibility satisfactory to the Board if there are indications that the licensee is insolvent, financially unstable, or unable to meet its financial responsibilities. Except as provided herein, evidence of financial responsibility shall be subject to approval by the Board in accordance with the requirements of Rule .0204 of this Chapter. A licensee shall provide the Board with a copy of any bankruptcy petition filed by the licensee within 30 days of its filing. A licensee in bankruptcy shall provide to the Board an audited financial statement with a classified balance sheet as part of any application for renewal. A corporate licensee shall notify the Board of its ~~dissolution or suspension~~ dissolution, suspension of its corporate charter or withdrawal of its Certificate of Authority within 30 days of such ~~dissolution or suspension~~ dissolution, suspension or withdrawal.

(c) Display. The certificate of renewal of license granted by the Board, containing the signatures of the Chairman and the Secretary-Treasurer, must be displayed at all times by the licensee at his place of business.

(d) Upon receipt of a written request by or on behalf of a licensee who is currently in good standing with the Board, is serving in the armed forces of the United States, and to whom G.S. 105-249.2 grants an extension of time to file a tax return, the Board shall grant that same extension of time for complying with renewal application deadlines, for paying renewal fees, and for meeting any other requirement or conditions related to the maintenance or renewal of the license issued by the Board. A copy of the military orders or the extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue shall be furnished to the Board.

*Authority G.S. 87-1; 87-10; 93B-15.*

### **SECTION .0700 - BOARD DISCIPLINARY PROCEDURES**

#### **21 NCAC 12 .0701 IMPROPER PRACTICE**

(a) Preferring Charges. Any person who believes that any licensed general contractor is in violation of the provisions of G.S. 87-11 may prefer charges against that person or corporation by setting forth in writing those charges and swearing to their authenticity. The charges shall be filed with the Secretary-Treasurer of the Board at the Board's address in Rule .0101 of this Chapter.

(b) Preliminary or Threshold Determination:

- (1) A charge, properly filed, shall be initially referred to the review committee. shall be forwarded to a staff investigator for investigation. Simultaneously,
- (2) The review committee shall be a committee made up of the following individuals:

- ~~(A) one member of the Board,~~
- ~~(B) the Secretary-Treasurer or his designee, and~~
- ~~(C) either a staff person or Board member agreed upon by the individuals listed in Parts (A) and (B) of this Subparagraph.~~
- ~~(3) Once a charge is referred to the review committee, it the Board shall forward a written notice of and explanation of the charge to the person or corporation against whom the charge is made. The review committee notice shall request a response from the person or corporation so charged to show compliance with all lawful requirements for retention of the license. The review committee Board shall send Notice of the charge and of the alleged facts or alleged conduct by first class mail to the last known address of the person or corporation.~~
- ~~(4) If the respondent denies the charge brought against him, then the review committee may direct that a field investigation be performed by an investigator retained by the Board.~~
- ~~(5)(2) After all preliminary evidence has been received by the review committee, it shall make a threshold determination of the charges brought. From the evidence, it shall recommend to the Board that: After the investigation is complete, the charge shall be referred to the review committee. The review committee is made up of the following individuals:~~
  - ~~(A) one member of the Board;~~
  - ~~(B) the Secretary-Treasurer or his designee, and~~
  - ~~(C) either a staff person or Board member agreed upon by the individuals listed in Parts (A) and (B) of this Subparagraph.~~
- ~~(3) The review committee shall make a threshold determination of the charges brought. From the evidence, it shall recommend to the Board that:~~
  - ~~(A) The charge be dismissed as unfounded or trivial;~~
  - ~~(B) When the charge is admitted as true by the respondent, the Board accept the respondent's admission of guilt and order the respondent not to commit in the future the act or acts admitted by him to have been violated and, also, not to violate any of the acts of misconduct specified in G.S. 87-11 at any time in the future; or~~
  - ~~(C) The charge, whether admitted or denied, be presented to the full Board for a hearing and determination by~~

the Board on the merits of the charge in accordance with the substantive and procedural requirements of the provisions of Section .0800 of this Chapter and the provisions of G.S. 87-11. Prior to the matter being heard and determined by the Board, it may be resolved by consent order.

- ~~(6)(4)~~ The review committee shall not be required to notify the parties of the reasons of the review committee in making its threshold determination.

(c) Board Determination. After a hearing, in accordance with the hearing requirements of Section .0800 of this Chapter, the Board shall make a determination of the charge in light of the requirements of G.S. 87-11.

*Authority G.S. 87-11; 150B-3; 150B-38.*

## **21 NCAC 12 .0702 UNLAWFUL PRACTICE**

(a) Preferring Charges. Any person who believes that any person or corporation is in violation of the acts specified in G.S. 87-13 may prefer charges against that person or corporation. The charges shall be filed with the Secretary-Treasurer of the Board at the Board's office in Rule .0101 of this Chapter.

(b) Preliminary or Threshold Determination:

- (1) A charge of unlawful practice, properly filed, shall be referred to the review committee; shall be forwarded to a staff investigator for investigation.
- ~~(2) The review committee is a committee made up of the following individuals:~~
  - ~~(A) one member of the Board,~~
  - ~~(B) the Secretary-Treasurer or his designee, and~~
  - ~~(C) either a staff person or Board member agreed upon by the individuals listed in Parts (A) and (B) of this Subparagraph;~~
- ~~(3) With or without notifying any of the parties involved, the review committee The Board shall investigate the charge to determine whether there is probable cause to believe that a party against whom a charge has been brought in fact has violated the provisions of G.S. 87-13; and G.S. 87-13.~~
- ~~(4)(2) After all preliminary evidence has been received, by After the investigation is complete, the charge shall be referred to the review committee, it shall: committee. The review committee is a committee made up of the following individuals:~~
  - ~~(A) one member of the Board;~~
  - ~~(B) the Secretary-Treasurer or his designee; and~~
  - ~~(C) either a staff person or Board member agreed upon by the individuals listed in Parts (A) and (B) of this Subparagraph.~~

(3)(A) If the review committee finds probable ~~cause~~ ~~is found~~, cause, they shall forward the decision along with the reasons for the decision and any evidence accumulated by it to Board counsel for appropriate ~~action; or action.~~

(B) If no probable cause is found, the review committee shall notify the party preferring charges.

*Authority G.S. 87-1; 87-13.*

## **21 NCAC 12 .0703 FEE FOR SUBMITTAL OF BAD CHECK**

(a) The Board shall charge any fee allowed by law if a check submitted to the Board is subsequently returned due to insufficient funds at or no account in a ~~bank~~ financial institution.

(b) Until such time as the ~~payor drawer~~ of the bad check has ~~made the check good and paid the prescribed fee~~, Prescribed Fee, the ~~payor drawer~~ will not be eligible to take an examination, review an examination, obtain a license or have ~~his~~ the license renewed. For the purpose of this Rule, "Prescribed Fee" shall mean the sum of:

- (1) the fee described in Paragraph (a) of this Rule;
- (2) the renewal or application fee, whichever is applicable, and
- (3) the late payment fee described in G.S. 87-10(e).

(c) Any license which has been issued or renewed based on ~~the payment of~~ a check which is subsequently returned to the Board for reasons stated in Paragraph (a) of this Rule will be declared invalid until such time as the ~~payor drawer~~ has ~~made the check good and paid the prescribed fee~~. Prescribed Fee. The invalidity of the license or renewal shall be deemed to have ~~commence~~ commenced from the date of the issuance of the license or renewal.

(d) ~~Payment of the Prescribed Fee to the Board for making good such bad check and for the prescribed fee shall be made in the form of a cashier's check or money order.~~

(e) In the event the drawer of the bad check fails to pay the Prescribed Fee during which time the license or renewal lapses for four years, no renewal shall be effected and the drawer shall fulfill all requirements of a new applicant set forth in G.S. 87-10.

~~(e)(f)~~ All examination, license and license renewal applications provided by the Board shall contain information in a conspicuous place thereon clearly advising the applicant of any applicable bad check fee.

*Authority G.S. 87-10; 25-3-506.*

## **SECTION .0900 - HOMEOWNERS RECOVERY FUND**

### **21 NCAC 12 .0901 DEFINITIONS**

The following definitions apply to the Board's administration of the Homeowners Recovery Fund established pursuant to Article 1A, Chapter 87 of the General Statutes:

- (1) "Constructing or altering" includes contracting for the construction or alteration of a single-family residential dwelling unit.

(2) "Dishonest conduct" does not include a mere breach of a contract.

(3) "Incompetent conduct" is conduct which demonstrates a lack of ability or fitness to discharge a duty associated with undertaking to construct or alter a single-family residential dwelling or the supervision of such construction or alteration.

(4) "Owner or former owner" includes a person who contracted with a general contractor for the construction or purchase of a single-family residential dwelling unit. "Owner or former owner" does not include a person who is a spouse, child, parent, grandparent, sibling, partner, associate, officer, or employee of a general contractor whose conduct caused a reimbursable loss. In addition, the term does not include general contractors or any financial or lending institution, or any owner or former owner of a single-family residential dwelling unit which has been the subject of an award from the Homeowners Recovery Fund resulting from the same dishonest or incompetent conduct. "Owner or former owner" does not include the owner ~~or former owner~~ of real property who purchased, owned, constructed, altered, or contracted for construction or alteration of a single-family residential dwelling unit without intending to occupy the single-family residential dwelling unit.

(5) "Substantial completion" means that degree of completion of a project, improvement or specified area or portion thereof whereupon the owner can use the same for its intended use.

(6) "Separately owned residence" means a building whose construction is governed by ~~Volume VII of the North Carolina State Building Code~~. the residential building code adopted by the Building Code Council pursuant to G.S. 143-138.

*Authority G.S. 87-15.6.*

## **21 NCAC 12 .0906 PROCESSING OF APPLICATION**

(a) Staff shall refer a properly filed application to the Recovery Fund Review Committee. The Recovery Fund Review Committee is a committee made up of the following individuals:

- (1) one member of the Board,
- (2) the legal counsel of the Board, and
- (3) the Secretary-Treasurer.

(b) The Committee shall determine, prior to a hearing, whether or not an application is meritless. The decision of the Committee is final. Within 30 days after service of a copy of the application upon the general contractor, the general contractor may file a response to the application setting forth answers and

defenses. Responses shall be filed with the Board and copies shall be served on the applicant.

~~(e) If the general contractor denies the charges contained in the application, then, an investigator, retained by the Board, may perform a field investigation.~~

~~(d)~~(c) The Committee may dismiss a claim if an applicant fails to respond to an inquiry from the Committee or its representative within six months of receipt of the inquiry.

~~(e)~~(d) After all preliminary evidence has been received by the Committee, it shall make a threshold determination regarding the disposition of the application. From the evidence, it shall recommend to the Board that:

- (1) The application be dismissed as meritless; or

- (2) The application and charges contained therein be presented to the Board for a hearing and determination by the Board on the merits of the application.

~~(f)~~(e) The Committee shall give notice of the threshold determination to the applicant and the general contractor within 10 days of the Committee's decision. The Committee is not required to notify the parties of the reasons for its threshold determination.

*Authority G.S. 87-15.6; 87-15.7; 87-15.8.*

*This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 431-3000. Also, the Contested Case Decisions are available on the Internet at <http://www.ncoah.com/hearings>.*

**OFFICE OF ADMINISTRATIVE HEARINGS**

**Chief Administrative Law Judge**  
JULIAN MANN, III

**Senior Administrative Law Judge**  
FRED G. MORRISON JR.

**ADMINISTRATIVE LAW JUDGES**

Beecher R. Gray  
Selina Brooks  
Melissa Owens Lassiter

Randall May  
A. B. Elkins II  
Don Overby

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>DATE</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
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Moses Leon Faison v. Department of Correction	13 DOC 10227	04/08/13	

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Tommy Keith Lymon v. Criminal Justice Education and Training Standards Commission	09 DOJ 03751	07/30/12	27:06 NCR 649
Greary Michael Chlebus v. Criminal Justice Education and Training Standards Commission	11 DOJ 4829	04/27/12	
Dillan Nathaniel Hymes v. Criminal Justice Education and Training Standards Commission	11 DOJ 10315	07/23/12	27:06 NCR 661
Barbara Renay Whaley v. Criminal Justice Education and Training Standards Commission	11 DOJ 10316	04/25/12	
Robert Kendrick Mewborn v. Criminal Justice Education and Training Standards Commission	11 DOJ 10318	04/23/12	
Athena Lynn Prevatte v. Sheriffs' Education and Training Standards Commission	11 DOJ 13148	05/25/12	27:04 NCR 529
Shatel Nate Coates v. Sheriffs' Education and Training Standards	11 DOJ 13151	07/05/12	
James Lee Ray v. Sheriffs' Education Training Standards	11 DOJ 13152	08/27/12	
Ko Yang v. Sheriff's Education and Training Standards Commission	11 DOJ 13153	06/14/12	
Dustin Edward Wright v. Sheriffs' Education and Training Standards Commission	11 DOJ 13154	08/08/12	
Walter Scott Thomas v. Sheriff's Education and Training Standards Commission	11 DOJ 13155	05/10/12	
Darryl Howard v. Criminal Justice Education and Training Standards Commission	11 DOJ 13157	04/12/12	
John Jay O'Neal v. Criminal Justice Education and Training Standards Commission	11 DOJ 13158	07/06/12	27:07 NCR 749
Charlesene Cotton v. Criminal Justice Education and Training Standards Commission	11 DOJ 13159	06/05/12	27:04 NCR 538
William James Becker v. Criminal Justice Education and Training Standards Commission	11 DOJ 13160	08/16/12	
Steve Michael Galloway, Jr, Private Protective Services Board	11 DOJ 14434	04/23/12	

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**CONTESTED CASE DECISIONS**

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Justin Thomas Medlin v. Alarm Systems Licensing Board	11 DOJ 14493	04/23/12	
Argentina Rojas v. Department of Justice, Campus Police Officer Commission	12 DOJ 00394	11/02/12	
Bruce Clyde Shoe v. Private Protective Services Board	12 DOJ 00556	09/26/12	
Angela Louise Giles v. Private Protective Services Board	12 DOJ 00557	04/18/12	
Marshall Todd Martin v. Sheriffs' Education	12 DOJ 00650	07/13/12	
Frances Gentry Denton v. Sheriffs' Education and Training Standards Commission	12 DOJ 00651	08/30/12	
James Philip Davenport v. Criminal Justice Education and Training Standards Commission	12 DOJ 00653	11/21/12	
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Robert John Farmer v. Alarm Systems Licensing Board	12 DOJ 00887	05/04/12	
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Ryan Patrick Brooks v. Private Protective Services Board	12 DOJ 01696	06/05/12	
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Jerome Douglas Mayfield v. Private Protective Services Board	12 DOJ 02381	06/15/12	
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Timmy Dean Adams v. Department of Justice, Company Police Program	12 DOJ 02778	12/21/12	
Carlito Soler v. Alarm Systems Licensing Board	12 DOJ 03457	09/26/12	
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JonPaul D. Wallace v. Private Protective Services Board	13 DOJ 02422	04/26/13	
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Cameron Imhotep Clinkscale v. Private Protective Services Board	13 DOJ 05095	04/26/13	
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LaMarcus Jarrel Outing v. Criminal Justice Education and Training Standards Commission	13 DOJ 11932	08/07/13	

**DEPARTMENT OF TRANSPORTATION**

Lorie Cramer v. NC Quick Pass Customer Service Center and DOT 13 DOT 08753 07/19/13 28:06 NCR 589

**DEPARTMENT OF STATE TREASURER**

Dwaine C. Coley v. Department of State Treasurer 10 DST 00233 04/05/13 28:02 NCR 81

Ella Joyner v. Department of State Treasurer Retirement System Division 11 DST 02437 07/12/12 27:07 NCR 758  
 William R. Tate v. Department of Treasurer, Retirement System Division 11 DST 04675 09/07/12 27:15 NCR 1574  
 Brenda C. Hemphill v. Department of Treasurer, Retirement System Division 11 DST 10252 09/26/12  
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 Myra F. Moore v. NC Board of Education 11 EDC 11927 05/01/12  
 Dwayne White v. Department of Public Instruction, NC State Board of Education 11 EDC 11864 07/18/12 27:07 NCR 769  
 Jeffery Sloan v. NCDPI 11 EDC 14077 11/09/12 27:21 NCR 1974

Lia C Long v. DPI 12 EDC 00805 10/18/13 27:16 NCR 1716  
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**DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES**

Pamlico-Tar River Foundation, NC Coastal Federation, Environmental Defense Fund, and  
 Sierra Club v. DENR, Division of Water Quality and PCS Phosphate Company,  
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ALCHEM Inc., v. NCDENR 10 HER 00296 02/05/13  
 Don Hillebrand v. County of Watauga County Health Dept 10 HER 00933 05/10/12  
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Lacy H Caple DDS v. Division of Radiation Protection Bennifer Pate 11 HER 11454 05/09/12  
 Friends of the Green Swamp and Blue Ridge Environmental Defense League, Inc v. DENR  
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Holmes Development & Realty, LLC, and H.L. Homes v. DENR – Land Quality Section  
 (Re: LQS 11-018) 11 HER 13208 06/29/12 27:07 NCR 774

Ik Kim IT and K Enterprise v. DENR 11 HER 13910 11/06/12  
 Edward Dale Parker v. DENR 11 HER 14390 02/22/13

Janezic Building Group LLC v. Orange County 12 HER 01104 12/03/12 27:21 NCR 2008  
 Save Mart of Duplin LLC v. DENR 12 HER 02328 07/25/12

James D. Halsey v. DENR, Division of Environmental Health 13 HER 10216 06/05/13

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Dwight Marvin Wright v. Department of Commerce, Division of Employment Security 12 ESC 05042 07/27/12

**DEPARTMENT OF INSURANCE**

Susan E. Montgomery Lee v. State Health Plan; Blue Cross Blue Shield 12 INS 10145 03/25/13  
 Lori Matney v. Blue Cross Blue Shield of NC, State Health Plan 12 INS 10790 08/20/13  
 Jean Kirkland and John Ritchie v. State Health Plan 12 INS 11957 04/11/13

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Richard Lee Taylor v. City of Charlotte 11 MIS 14140 05/15/12  
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Teresa J. Barrett v. DENR	10 OSP 04754	10/22/12	27:16 NCR 1726
Daniel Chase Parrott v. Crime Control and Public Safety, Butner Public Safety Division	10 OSP 04792	05/30/12	
Steven M Mukumgu v. DAG	10 OSP 05199	08/07/12	
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Fortae McWilliams v. DOC	11 OSP 06236	05/30/12	27:06 NCR 684
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Tammy Cagle v. Swain County, Department of Social Services	11 OSP 10307	09/26/12	27:16 NCR 1747
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Raeferd Quick v. DOC	11 OSP 14436	05/22/12	
Tawana McLaurin v. DOC	12 OSP 00116	08/21/12	
Marva G. Scott v. Edgecombe County Social Services Board (Larry Woodley, Fate Taylor, Ernest Taylor, Viola Harris and Evelyn Johnson), Edgecombe County Commissioners and Edgecombe county manager, Lorenzo Carmon	12 OSP 00430	12/20/12	27:22 NCR 2152
Ladeana Z. Farmer v. Department of Public Safety	12 OSP 00460	04/10/13	28:06 NCR 564
Thomas B. Warren v. DAG, Forest Services Division	12 OSP 00615	11/27/12	
Bon-Jerald Jacobs v. Pitt County Department of Social Services	12 OSP 00634	06/12/12	
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Natalie Wallace-Gomes v. Winston-Salem State University	12 OSP 01627	05/15/12	
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Larry C. Goldston v. UNC-Chapel Hill	12 OSP 02222	09/26/12	27:16 NCR 1754
Larry Batton v. Dept of Public Safety	12 OSP 02320	02/18/13	
Sandra Kay Tillman v. County of Moore Department of Social Services, John L. Benton, Director	12 OSP 02433	07/29/13	
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Ronald Gilliard v. N.C. Alcoholic Law Enforcement	12 OSP 02618	09/26/12	
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James B. Bushardt III v. DENR, Division of Water Quality	12 OSP 02872	02/19/13	
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Ronald Wayne Crabtree Jr., v. Butner Public Safety	12 OSP 03846	10/09/12	
Natalie Wallace-Gomes v. Winston Salem State University	12 OSP 03910	10/22/12	

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Michelle Houser v. Department of Public Safety, Division of Prisons	12 OSP 04826	09/26/12	
Audrey Melissa Tate v. Department of Public Safety, Division of Juvenile Justice	12 OSP 05182	08/03/12	
Jonathan Ashley Stephenson v. UNC-Chapel Hill	12 OSP 05223	01/15/13	
Charles E. Rouse v. DMV, Dist Sup Stacey Wooten	12 OSP 05315	09/05/12	
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Barry L. Pruett v. DMV, Driver and Vehicle Services	12 OSP 05785	09/11/12	
Joseph Sandy v. UNC Chapel Hill	12 OSP 06152	09/05/12	
Natalie Wallace-Gomes v. Winston Salem State University	12 OSP 06309	10/22/12	
Paul Jeffrey Treadway v. Department of Public Safety, Division of Adult Supervision	12 OSP 06634	12/18/12	
Phillip W Smith v. Department of Commerce, Division of Employment Security	12 OSP 06821	09/20/12	
Asia T. Bush v. DOT	12 OSP 06980	04/23/13	28:03 NCR 293
Bonnie S. Rardin v. Craven Correctional Institution, Department of Public Safety	12 OSP 07443	04/19/13	
Shirley M. Parker v. Department of Public Safety Caledonia Correctional Institution	12 OSP 07617	04/04/13	
Christopher Rashad Pippins v. PCS BOE PCS Facility Services	12 OSP 07744	10/18/12	
Wanda Edwards v. UNC School of Dentistry	12 OSP 07851	01/09/13	
Gary C. Clement v. DHHS	12 OSP 08105	11/14/12	
Oswald Woode v. DHHS, Central Regional Hospital	12 OSP 08664	01/09/13	
Gary C. Clement v. DHHS	12 OSP 09581	01/04/13	
Judy Knox v. UNC at Charlotte	12 OSP 10856	07/11/13	
Jeffrey Wayne Ellis v. North Carolina A & T University	13 OSP 09564	08/08/13	
Alphonsus U. Nwadike v. DHHS, Central Regional Hospital (Butner)	13 OSP 10977	07/15/13	
Kevin D. Terry v. State of NC Office of State Controller	13 OSP 11088	07/15/13	
Lionel James Randolph v. NC Office of State Personnel	13 OSP 11170	07/15/13	
Cynthia C. Goodwin v. Department of Revenue	13 OSP 11232	08/02/13	
Natalie Wallace-Gomes v. Winston-Salem State University	13 OSP 11293	08/13/13	
Stephanie K. Willis v. Montgomery County Board of Education	13 OSP 13012	08/07/13	

#### **DEPARTMENT OF REVENUE**

Jerry Lamont Lindsey v. Department of Revenue	11 REV 1914	07/25/12	
Thomas E Gust v. Department of Revenue	11 REV 13557	08/15/12	
James Cooper III Sui Juris v. Department of Revenue	11 REV 13792	11/14/12	
Brian Daniel Reeves v. Department of Revenue	12 REV 01539	06/04/12	
David Roser v. Department of Revenue	12 REV 01694	09/10/12	
Ronnie Lee Nixon v. Department of Revenue	12 REV 01881	10/03/12	
James M. Slowin, REFS LLC v. Department of Revenue	12 REV 02218	02/11/13	28:06 NCR 583
William S. Hall v. Department of Revenue	12 REV 04115	08/27/12	
Noah D. Sheffield v. Department of Revenue	12 REV 07074	11/14/12	
Jenny M. Sheffield v. Department of Revenue	12 REV 07075	11/14/12	
Jesus A. Cabrera v. Department of Revenue	12 REV 08968	01/03/13	
Sybil Hyman Bunn v. Department of Revenue	12 REV 08973	05/06/13	
William Scott v. Department of Revenue	13 REV 06646	04/29/13	28:06 NCR 593

#### **OFFICE OF SECRETARY OF STATE**

Michael Anthony Farrow-Bey v. Department of Secretary of State	12 SOS 07865	12/14/12	
Jennifer Lynn Pierce-Founder Share Our Shoes v. Secretary of State's Office	12 SOS 01653	07/11/12	
Bethany Thompson v. Department of the Secretary of State	12 SOS 11648	05/02/13	
Holley Shumate Knapp v. Ann Wall, General Counsel Department of the Secretary	13 SOS 09039	05/23/13	
Trvuun B. Alston v. Department of the Secretary of State	13 SOS 10113	07/08/13	

#### **UNC HOSPITALS**

Onyedika C Nwaebube v. UNC Hospitals	12 UNC 01110	06/25/12	
Nephathiya Wade v. UNC Hospitals Chapel Hill NC	12 UNC 01209	07/17/12	
Fredia R Wall v. UNC Physicians & Associates	12 UNC 02256	10/04/12	
Carolyn A. Green v. UNC Hospitals	12 UNC 02259	09/19/12	
Annie E. Jarrett v. UNC Hospitals	12 UNC 03716	10/09/12	
Vikki J Goings v. UNC Hospital	12 UNC 04109	09/18/12	
Elonnie Alston v. UNC Hospitals	12 UNC 04551	09/11/12	
Diara Z Andrews v. UNC Hospitals	12 UNC 04827	08/15/12	
David Ryan Pierce v. UNC Hospitals, Patient Account Services, SODCA	12 UNC 05306	03/20/13	
Shonte Hayes v. UNC P&A	12 UNC 05746	09/10/12	

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**CONTESTED CASE DECISIONS**

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Tracy A. Spaine (Currier) v. UNC Hospitals 12 UNC 06822 11/06/12

Jason Paylor v. UNC Hospitals Patient Accounts 13 UNC 12636 07/26/13

**WILDLIFE RESOURCES COMMISSION**

People for the Ethical Treatment of Animals, Inc., v. NC Wildlife Resources Commission 12 WRC 07077 11/13/12 27:22 NCR 2165



STATE OF NORTH CAROLINA  
COUNTY OF ROBESON

Filed  
2013 JAN 24 AM 11:36  
IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
12 DOJ 03838

DANIELLE MARIE TAYLOR  
Petitioner,

Office of  
Administrative Hearings

v.

PROPOSAL FOR DECISION

NORTH CAROLINA CRIMINAL JUSTICE  
EDUCATION AND TRAINING STANDARD  
COMMISSION,  
Respondent.

In accordance with North Carolina General Statute §150B-40(e), Respondent requested the designation of an administrative law judge to preside at an Article 3A, North Carolina General Statute § 150B, contested case hearing of this matter. Based upon the Respondent's request, Administrative Law Judge Donald W. Overby heard this contested case in Fayetteville, North Carolina on October 9, 2012.

**APPEARANCES**

Petitioner: Danielle Marie Taylor (Pro Se)  
1501 Sea Biscuit Drive  
Parkton, North Carolina 28371

Respondent: Lauren D. Tally, Assistant Attorney General  
N.C. Department of Justice  
9001 Mail Service Center  
Raleigh, North Carolina 27699-9001

**ISSUE**

Does substantial evidence exist to suspend Petitioner's correctional officer certification for commission of the Class B Misdemeanor "False Report to Law Enforcement"?

**RULES AT ISSUE**

12 NCAC 09G.504(b)  
12 NCAC 09G .0102(9)(dd)  
12 NCAC 09G .0505(b)

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, and the entire

record in this proceeding, the undersigned Administrative Law Judge makes the following FINDINGS OF FACT.

In making the FINDINGS OF FACT, the undersigned Administrative Law Judge has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including, but not limited to, the demeanor of the witness, 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.

**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 the Petitioner received by certified mail, the Proposed Suspension of Correction Officer's Certification letter, mailed by Respondent, the North Carolina Criminal Justice Education and Training Standards Commission, on March 14, 2012. (Respondent's Exhibit 2)

2. The Respondent, North Carolina Criminal Justice Education and Training Standards Commission has the authority granted under Chapter 17C of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 9G, to certify correctional officers and to revoke, suspend, or deny such certification.

3. 12 NCAC 09G.0504(b) provides that the North Carolina Criminal Justice Education and Training Standards Commission shall suspend the certification of a correctional officer . . . when the Commission finds that the officer has committed or been convicted of a misdemeanor offense as defined by 12 NCAC 09G.0102.

4. 12 NCAC 09G.0102(9)(dd) provides that "False Reports to Law Enforcement Agencies or Officers" is a class B misdemeanor offense pursuant to N.C.G.S. §14-225.

5. 12 NCAC 09G.0505(b) provides that when the North Carolina Criminal Justice Education and Training Standards Commission suspends the certification of a correction officer, the period of sanction shall be not less than three years where the cause of the sanction is: "(3) the commission or conviction of a misdemeanor offense."

6. Petitioner was awarded probationary correctional officer certification by the North Carolina Criminal Justice Education and Training Standards Commission on June 24, 2004, and received general correctional officer certification on June 24, 2005. (Respondent's Exhibit 1)

7. The Criminal Justice Standards Division, on behalf of the Respondent, received notification from the North Carolina Department of Corrections on December 30, 2009, that the Petitioner had been charged on July 10, 2009 with the misdemeanor offense of false report to law enforcement. Edward Zapolsky, an investigator with the Criminal Justice Standards Division,

then obtained certified copies of the court paperwork related to the Petitioner's criminal charges from the Clerk of District Court in Cumberland County file number 09 CR 09248. (Respondent's Exhibit 2)

8. On July 10, 2009, Petitioner was charged in Cumberland County on a criminal citation with the misdemeanor offense of false report to law enforcement in violation of North Carolina General Statute §14-225. The date of offense was alleged to have been May 11, 2009. This incident involved Petitioner allegedly making or causing to be made a false report to law enforcement when Petitioner knew that the crime had not been committed. (Respondent's Exhibit 2) While the citation charges a violation of a criminal law statute and tracks the language of that statute, the citation actually states that Petitioner's wrongful act was "conspiracy."

9. An initial incident report was prepared by Deputy C.R. Murphy of the Cumberland County Sheriff's Office. This incident report by Deputy Murphy dated May 11, 2009, lists Petitioner's sister, Michelle McDaniel, as the alleged victim. Petitioner is listed on the incident report as an "other involved," a heading used on the side of the report for listing others tangential to the incident under investigation. The suspect on the incident report is James Richard Harrison, the boyfriend of Petitioner's Mother who was also listed as "other involved." (Respondent's Exhibit 1 pp. 6-8) There is no evidence that Deputy Murphy interviewed Petitioner or Mr. Harrison. There is no evidence as to why Petitioner is listed on the initial report form.

10. Detective Yovana Vest (hereinafter Detective Vest) a member of the Cumberland County Sheriff's Office since 2005, testified at the hearing. In May of 2009, she was a detective in the special victims unit and she received the incident report prepared by Deputy Murphy detailing an alleged sex offense. Detective Vest began her investigation by reviewing and recapitulating Deputy Murphy's report. She stated that she did not know why Petitioner's name was listed on that report, but hypothesized that it could have been because Petitioner was present or because she was just mentioned in conversation.

11. Detective Vest testified that Deputy Murphy's incident report contained a statement by Michelle McDaniel where she alleged sometime in the middle of April, in her home, Mr. Harrison approached her, started grabbing her breasts and inserted his finger into her vagina. Mr. Harrison was Michelle McDaniel's mother's boyfriend who lived in the home. Ms. McDaniel, age 17 at the time, reported that she got the courage to report this to law enforcement because Mr. Harrison was moving out of the home. (Respondent's Exhibit 1 p. 9)

12. Detective Vest attempted to contact the victim's mother, Karen Metcalfe, by telephone on May 18, 2009. Ms. Metcalfe did not return her call. On June 1, 2009, Detective Vest went to the home of the victim and interviewed her. Miss McDaniel was extremely standoffish towards Detective Vest and claimed she was "over it now." When pressed, Miss McDaniel provided a statement; however, it was inconsistent with the original report. Miss McDaniel now claimed she was on the couch in the living room watching TV when the assault occurred and did not indicate Mr. Harrison touched her breasts. (Respondent's Exhibit 1 p. 10)

13. Detective Vest then interviewed the victim's mother, Karen Metcalfe. Ms. Metcalfe indicated Mr. Harrison never touched her daughter. Ms. Metcalfe further disclosed that her daughter made the whole thing up with the help of her older sister, Petitioner. According to Ms. Metcalfe, Petitioner and Miss McDaniel hatched the plan while driving to a funeral in New Jersey in order to get back at Mr. Harrison for leaving their mother.

14. After interviewing Ms. Metcalfe, Detective Vest re-interviewed Miss McDaniel. Detective Vest confronted Miss McDaniel, the alleged victim, who admitted that no sex offense had occurred. (Respondent's Exhibit 1 p. 11) During this second interview with Miss McDaniel, her mother Ms. Metcalfe encouraged Miss McDaniel to tell Detective Vest what had happened during the ride home from the funeral in New Jersey. Miss McDaniel stated that "nothing happened."

15. Detective Vest then attempted to contact Petitioner who did not return her first phone call. Detective Vest and Petitioner exchanged several phone calls and left each other messages. Eventually Detective Vest interviewed Petitioner near the end of June 2009. She asked if Petitioner had anything to do with falsifying a report. Petitioner, clearly irritated, answered: "Not that I'm aware of. Even if I did, I didn't make the report." Petitioner was asked if she conspired to falsify a report, to which she responded "I might have. I don't remember." Petitioner claimed not to remember events around that time because of her cousins passing. (Respondent's Exhibit 1 p. 12)

16. Detective Vest spoke again with Miss McDaniel who this time stated that on the way to or from New Jersey, she and Petitioner, together, made up the whole story. Miss McDaniel claimed she and Petitioner were in the car when they came up with the idea to accuse Mr. Harrison of sexual abuse after hearing that Mr. Harrison had broken up with their mother. Detective Vest then wrote citations for Petitioner, her sister and her mother. (Respondent's Exhibit 1 pp. 2, 12)

17. The case against Petitioner came before Cumberland County District Court on October 28, 2009. Petitioner's charge of false report to a police station was voluntarily dismissed by the State. (Respondent's Exhibit 1 p. 5) According to Respondent's investigator, Miss McDaniel and Ms. Metcalfe were convicted.

18. Petitioner testified at the hearing that she was not a part of the conspiracy to file a false police report alleging her mother's boyfriend had assaulted her sister. Petitioner claims that she, along with her sister and grandmother, drove to New Jersey on May 8, 2009 to attend a funeral. The car trip was about eight hours one way, with her grandmother sitting in the back seat, and her sister sitting in the front passenger seat while Petitioner drove. Petitioner claims she had no conversations with her sister during the sixteen (16) hour round trip car ride because her sister slept the whole time.

19. During the trip, Petitioner received a call from her mother who explained Mr. Harrison (Mother's Boyfriend) had left her. Petitioner claims she was not upset or worried about her mother. Petitioner testified that the next day she returned to North Carolina and went to her mother's house to pick up her children, but did not have a conversation with her mother, even

though her mother was distraught over the breakup with Mr. Harrison. Petitioner did not live with her mother and picked up her children and went home. After she left, she would not have been part of anything that transpired between her mother and her sister.

20. Petitioner claimed to have no idea about the police report alleging a sexual offense. Petitioner testified that only after Detective Vest started calling her, did she call her mother to ask what was going on. Petitioner claims that it was only then that her mother told her that Mr. Harrison had sexually assaulted Petitioner's sister, Miss McDaniel. There is no evidence that refutes her assertion. Petitioner also stated that she told her mother she wanted nothing to do with any of the assertions of sexual assault of her sister, even though Petitioner admitted she had been sexually assaulted in the past. She did not seek out her sister to offer assistance and claims she did not want to know anything about it.

21. Petitioner admitted she did not immediately tell Detective Vest she had concerns about the validity of the police report. When Detective Vest called her, she had no memory of conspiring with her sister to falsify a police report. Petitioner explained that her memory was clouded during that time because she was in a state of grief where all she thought about was her cousin to whom she had been close lying in a coffin.

22. Petitioner testified she often provides money to her sister and mother and could not think of a reason they would add her name to a police report, possibly causing her to lose her job.

23. Miss McDaniel and Petitioner's mother did not testify at the hearing. Petitioner was the only person with first-hand knowledge of the events who testified under oath. Petitioner's first-hand testimony must be given more credence than statements not made under oath and not subject to examination and cross-examination. Both Ms. Metcalfe's and Miss McDaniel's stories were not consistent each time they were interviewed.

24. Edward Zapolsky, hereinafter "Zapolsky," testified at the hearing. Zapolsky has been employed with the Criminal Justice Standards Division for twelve years. Zapolsky serves as an investigator and acted as the lead investigator regarding the allegations against Petitioner.

25. Based on his investigation regarding Petitioner's commission of a Class B Misdemeanor, Zapolsky prepared a memorandum with thirteen (13) pages attached in support (Respondent's Exhibit 1). This information was presented to the members of the Probable Cause Committee of the North Carolina Criminal Justice Education and Training Standards Commission on February 22, 2012. The Probable Cause Committee found probable cause to believe that the Petitioner had committed the misdemeanor offense of false report to law enforcement officer in violation of N.C.G.S. §14-225 "by conspiring to make a false police report knowing a crime had not been committed." The Petitioner was notified of the findings of the Probable Cause Committee via a certified letter sent to her on March 14, 2012. (Respondent's Exhibit 2)

26. Detective Vest is a credible witness in this case; however, her testimony is based entirely on reporting what she has been told by others who have not appeared and been subject to

examination and cross-examination. In particular, Miss McDaniel changed her story every time she was questioned. Ms. Metcalfe's version was not consistent. The versions of the events as related by Miss McDaniel and Ms. Metcalfe as offered through Detective Vest have little to no credibility.

27. Petitioner's contention that she and her sister had no conversations and that her sister slept the entire sixteen hours as they drove to and from New Jersey for a funeral is somewhat implausible. Her claim to have a better memory at the time of the hearing than she did soon after the incident at question seems somewhat suspect and such claims may or may not be reliable. While Petitioner lacks credibility in some regards, she is the only person with first-hand knowledge who testified in this matter. While she did not directly and straight-forward deny the assertions of wrong-doing when interviewed, she likewise did not admit to wrong-doing.

BASED UPON the foregoing FINDINGS OF FACT and upon the preponderance or greater weight of the evidence in the whole record, the Undersigned makes the following:

#### **CONCLUSIONS OF LAW**

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case. The parties received proper notice of the hearing in the 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. At the conclusion of this administrative hearing this Tribunal articulated a proposed decision. After careful review of the evidence and the testimony as well as the applicable law, it is concluded that decision as articulated in open court should be modified as set forth herein.

3. The Respondent, the North Carolina Criminal Justice Education and Training Standards Commission, has the authority granted under Chapter 17C of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 9G, to certify correctional officers and to revoke, suspend, or deny such certification.

4. Pursuant to 12 NCAC 09G .0504(b), the Commission shall suspend the certification of a correctional officer when the Commission finds that the officer has committed or been convicted of a misdemeanor offense.

5. Petitioner was not convicted of any criminal offense and her charge was dismissed. Respondent seeks to prove she "committed" the offense of filing a false police report as opposed to her having been convicted of the crime. Her mother and sister were apparently convicted of filing the false report.

6. Pursuant to 12 NCAC 09G.0505(b), when the North Carolina Criminal Justice

Education and Training Standards Commission suspends the certification of a correction officer pursuant to 12 NCAC 09G.0504(b) of this Section, the period of sanction shall be not less than three years where the cause of sanction is: (3) the commission or conviction of a misdemeanor offense.

7. "False Report to Law Enforcement", in violation of N.C.G.S. § 14-225 is a Class 2 misdemeanor. A person is guilty of "False Report to Law Enforcement" if that person:

- (1) willfully
- (2) makes or causes to be made
- (3) to a law enforcement agency of officer
- (4) a false or misleading or unfounded report
- (5) for the purposes of
  - (a) interfering with the operation of a law enforcement agency or
  - (b) hindering or obstructing any law enforcement officer in performing official duties.

8. 12 NCAC 09G.0102(9)(dd) provides that "false reports to law enforcement agencies or officers" is a class B misdemeanor offense pursuant to N.C.G.S. §14-225.

9. The Probable Cause Committee seeks to suspend Petitioner's certification based upon a commission of the class B Misdemeanor of filing a false report to a law enforcement officer by conspiring. The only allegation asserted against Petitioner, and therefore the only allegation for which her certification is to be suspended, is a violation of N. C. G. S. §14-225, which is listed in 12 NCAC 09G.0102(9)(dd). All evidence in this case indicates that what the Petitioner did, if anything, and taken in the light most favorable to Respondent, was to conspire with her mother and sister to perform an illegal act, i.e., file a false police report.

10. 12 NCAC 09G.0102(9) provides a very long and exhaustive listing of the various criminal laws violation of which is sufficient to suspend a corrections officer's certification. 12 NCAC 09G.0102(9)(dd) is the basis of this action against Petitioner as stated in the probable cause letter to Petitioner. There is no specific criminal law statute listed in the rule for conspiracy. 12 NCAC 09G.0102(9)(vvvv) very specifically lists common law misdemeanors for which corrections officers would be subject to punishment by Respondent for a violation. Conspiracy is not listed among those common law offenses. Conspiracy is not to be found at all in 12 NCAC 09G.0102(9).

11. Conspiracy is a specific crime in North Carolina as it is in every jurisdiction in this country. It is a specific crime with a specific punishment assessed. In North Carolina, conspiracy is a common law crime, which is punished at one level below the actual crime the conspirators conspired to commit. North Carolina is unlike the majority of states in that in North Carolina conspiracy is complete once the agreement to commit the crime is made and no overt act in furtherance of the conspiracy is required.

12. Conspiracy is not a lesser included offense of filing a false police report. The sole basis upon which Petitioner was charged in the criminal offense and upon which Respondent

seeks to suspend her certification is her conspiring to file a false report. Assuming *arguendo*, that Petitioner entered into discussions with her sister and her mother about filing such a report, there is no evidence that an agreement was made with Petitioner that either her sister or her mother would file the report with the police. Merely discussing the commission of acts which might be criminal with nothing more showing may be extremely imprudent, but it is not a crime in and of itself.

13. Assuming *arguendo* that Petitioner did in fact make such agreement and the conspiracy was complete, conspiracy is not a criminal offense listed in 12 NCAC 09G.0102(9) which would subject Petitioner's certification to any suspension for commission of that criminal offense.

14. The charge of filing a false report to the police requires that the person "make or cause to be made" the false report. This Tribunal, having practiced criminal law and/or presided over criminal court as a district court judge for twenty six years, as well as having taught criminal law for nine years, is of the opinion that a conspiracy cannot be used as the bootstrap of causing the report to be made; i.e., changing the commission of a conspiracy into a wholly different substantive offense. However, assuming *arguendo* that such could in fact be allowed, there is no evidence that the conspiracy was complete; no agreement was made by Petitioner for others to file the false report.

15. The charge of filing a false report to the police requires that the person commit an act for the specific purpose either of interfering with the operation of a law enforcement agency or of hindering or obstructing any law enforcement officer in performing official duties. The law in North Carolina is clear that the offense of filing a false police report is committed only if the person acted with one of the required purposes. In this regard, the offense of filing a false police report is a "specific intent" crime.

16. Taking the evidence in the light most favorable to Respondent and assuming *arguendo* those facts to be true, there is no evidence that Petitioner had a purpose of interfering with the operation of any law enforcement agency. There is no evidence that Petitioner had a purpose of hindering or obstructing any law enforcement officer in the performance of his or her official duties. The purpose of reporting any sexual offense to the police was to get Mr. Harrison into trouble, not with any intent or purpose to in any manner infringe on the performance of the police officers official duties. The fact that the law enforcement officer may have been hindered or obstructed in some way, or that the investigation caused a waste of police resources, is not sufficient—that is not the test.

17. Many of the foregoing paragraphs make a specific point based upon assumptions for the sake of argument of that specific point. It must be made clear that this Tribunal is not finding nor concluding that any of those points have been established by the evidence presented, but merely that even if it had been shown by credible evidence, such was not sufficient to support the conclusion that Petitioner committed an act that would support the contentions of Respondent. In that regard it is not necessary to find as fact or conclude as a matter of law each of those specific points in that they would lack legal sufficiency even if so found.



18. The party with the burden of proof in a contested case must establish the facts required by N.C.G.S. § 150B-23(a) by a preponderance of the evidence. N.C. Gen. Stat. § 150B-29(a). The administrative law judge shall decide the case based upon the preponderance of the evidence. N.C. Gen. Stat. § 150B-34(a).

19. Respondent has the burden of proof in the case at bar. Respondent has failed to show by a preponderance of the evidence that Respondent's proposed suspension of Petitioner's correctional officer certification is supported by substantial evidence. The Respondent has failed to prove by a preponderance of the evidence that Petitioner committed the offense of filing a false police report in violation of N.C.G.S. § 14-225.

20. The findings of the Probable Cause Committee of the Respondent are not supported by substantial evidence.

**PROPOSAL FOR DECISION**

NOW, THEREFORE, based upon the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, the undersigned Administrative Law Judge recommends that Respondent should not suspend Petitioners Correctional Officer certification.

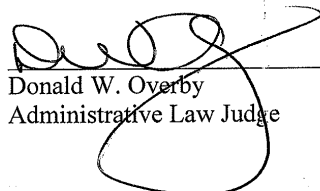
**NOTICE**

The Agency making the Final Decision in this contested case is required to give each party an opportunity to file Exceptions to the Proposal for Decision, to submit Proposed Findings of Fact and to present oral and written arguments to the Agency. N.C. Gen. Stat. §150B-40(e).

The Agency that will make the Final Decision in this contested case is the North Carolina Criminal Justice Education and Training Standards Commission.

**IT IS SO ORDERED.**

This the 24<sup>th</sup> day of January, 2013.

  
Donald W. Overby  
Administrative Law Judge

On this date mailed to:

Danielle Marie Taylor  
1501 Sea Biscuit Drive  
Parkton, NC 28371-  
Petitioner

Lauren D Tally  
Assistant Attorney General  
NC Department of Justice  
9001 Mail Service Center  
Raleigh, NC 27699  
Attorney - Respondent

This the 24th day of January, 2013.



N. C. Office of Administrative Hearings  
6714 Mail Service Center  
Raleigh NC 27699-6714  
919 431 3000  
Facsimile: 919 431 3100

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

Filed

2013 APR 10 PM 3:43

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
12 OSP 00460

LADEANA Z. FARMER,  
Petitioner,

v.

NORTH CAROLINA DEPARTMENT OF  
PUBLIC SAFETY,  
Respondent.

Office of  
Administrative Hearings

FINAL DECISION

This contested case was heard before Administrative Law Judge Melissa Owens Lassiter on November 5, 2012 in Raleigh, North Carolina. On February 2, 2013, Respondent filed its proposed Decision. On February 13, 2013, Petitioner filed its proposed Decision. On March 27, 2013, Chief Administrative Law Judge Julian Mann III extended the deadline for filing the Decision in this case until May 15, 2013.

**APPEARANCES**

For Petitioner: J. Heydt Philbeck  
Bailey & Dixon  
PO Box 1351  
Raleigh, NC 27602-1351

For Respondent: Kimberly D. Grande  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602

**ISSUE**

Whether Respondent had just cause to terminate Petitioner from employment for engaging in unsatisfactory job performance by conducting warrantless searches during the home visits of two different probationers on May 3, 2011, and on May 16, 2011?

**WITNESSES**

For Petitioner: Petitioner

For Respondent: Rita Dimoulas, Timothy Moose, Anthony Taylor

**EXHIBITS ADMITTED INTO EVIDENCE****For Petitioner:**

7. Maintenance of Case Records, North Carolina Department of Correction, Division of Community Corrections, Policies - Procedures, Number: V.L, Page: 1, Date: February 1, 2008.
11. Written Warning issued to Petitioner by Anthony Taylor, January 12, 2011.
12. Written Warning issued to Petitioner by Anthony Taylor, January 26, 2009.
14. North Carolina Department of Correction, Office of Staff Development and Training, Probation/Parole Officer Basic Training Program, Course Topics, and Subjects, Bates-stamp Nos.: BS607 - BS618; North Carolina Department of Correction, Office of Staff Development and Training, Probation/Parole Officer Refresher Training, Bates-stamp Nos.: BS619 - BS638.
15. Administrative Re-assignment letter to Petitioner from Anthony Taylor, dated June 6, 2011.
16. Statement by Petitioner, dated June 23, 2011.
18. Pre-disciplinary Conference Notice issued to Petitioner from Anthony Taylor, dated July 28, 2011.
20. Letter to Petitioner from Anthony Taylor regarding Recommendation for Disciplinary Action, dated July 29, 2011.
22. Memo from Anthony Taylor to Kevin Wallace regarding Pre-Disciplinary Conference Summary, dated August 1, 2011.
23. Opening Statement for Employee Relations Committee Hearing, dated November 22, 2011.
24. Summary regarding investigation of Petitioner.
31. Chapter C - Section .0300, Parole Investigations, Section: .0305 Residence and Employment Investigations, dated 07/01/2012, Bates-stamp Nos.: BS1140 - BS1141.
97. Deposition transcript of Timothy Moose, Deposition date: 12/2/2012.
98. Deposition transcript of Anthony Taylor, Deposition date: 12/2/2012.

99. Deposition transcript of Petitioner, LaDeana Farmer, Deposition date: August 30, 2012.

For Respondent:

2. North Carolina Department of Correction, Division of Community Corrections, Policies - Procedures, Chapter D: Offender Supervision, Section .0100 General Statement on Officer Expectations, Issue Date: September 1, 2010, Bates-stamp Nos. BS1145 - BS1146.
5. North Carolina Department of Correction, Division of Community Corrections, Policies - Procedures, Chapter D: Offender Supervision, Section .0800 Searches, Issue Date: September 1, 2010, Bates-stamp Nos. BS1202 - BS1203.
8. Impaired Driving - Judgment Suspending Sentence, File No.: 09CR50634, Reginald Alonzo Johnson, dated 1-26-10, Bates-stamp Nos.: BS1637 - BS1638; Judgment Suspending Sentence - Misdemeanor(s), Imposing Community Punishment (Structure Sentencing), File No.: 09CR710487, Reginald Alonzo Johnson, dated 1-26-10, Bates-stamp Nos.: BS1639 - BS1640.
9. Judgment Suspending Sentence - Misdemeanor(s), Imposing Community Punishment (Structure Sentencing), File No.: 08CR1905, Valerie Elizabeth Jordan, dated 11/15/10, Bates-stamp Nos.: BS1714 - BS1715; Judgment Suspending Sentence - Misdemeanor(s), Imposing Community Punishment (Structure Sentencing), File No.: 08CR1845, Valerie Elizabeth Jordan, dated 11/15/10, Bates-stamp Nos.: BS1716 - BS1719.
12. Dismissal Letter to Petitioner, LaDeana Farmer, from Anthony Taylor, dated September 14, 2011, Bates-stamp Nos.: BS24 - BS26.
13. Transcript, PPO LaDeana Farmer, Recommendation for Disciplinary Action, July 29, 2011, Bates-stamp Nos.: BS45 - BS46.
14. Disciplinary Conference Acknowledgment Form, To: LaDeana Farmer, From: Anthony W. Taylor, dated 7-29-11, Bates-stamp No.: BS47.
15. Memo from Anthony Taylor to Kevin Wallace regarding Internal Investigation - PPO LaDeana Farmer, dated June 29, 2011, Bates-stamp Nos.: BS49 - BS50.
16. Offender Comments, DOC#: 0521970, Name: Jordan, Valerie Elizab, Bates-stamp Nos.: BS51 - BS55.

17. Offender Comments, DOC#: 0561961, Name: Johnson, Reginald Alon, Bates-stamp Nos.: BS56 - BS57.
18. Narrative/Contacts, DOC#: 0521970, Name: Jordan, Valerie Elizab, Bates-stamp No.: BS58.
19. Narrative/Contacts, DOC#: 0521970, Name: Jordan, Valerie Elizab, Bates-stamp No.: BS59.
20. Narrative/Contacts, DOC#: 0561961, Name: Johnson, Reginald Alon, Bates-stamp No.: BS60.
21. Narrative/Contacts, DOC#: 0561961, Name: Johnson, Reginald Alon, Bates-stamp No.: BS61.
26. Staff Training History, Staff ID: FLZ01, Name: Farmer, LaDeana Z., Bates-stamp Nos.: BS71-BS77.
27. N.C. Department of Correction, Performance Log, Employee: LaDeana Farmer, dated 1-11-11, Bates-stamp No.: BS78.
36. North Carolina Department of Correction, Office of Staff Development and Training, Probation/Parole Officer Refresher Training, Bates-stamp Nos.: BS619 - BS638.
37. Memorandum, dated November 30, 2009, To: All DCC Employees, Fr: Tim Moose, Re: Senate Bill 920, Bates-stamp Nos.: BS603 - BS606.
38. Probation/Parole Officer II, III (Intermediate/Intensive Officer), Essential Job Functions, signed: LaDeana Farmer, dated 7/22/09, Bates-stamp Nos.: BS593 - BS595.
41. North Carolina Department of Correction, Division of Community Corrections, Date: 08/12/11, To: Tim Moose, Director, From: Kevin Wallace, Acting Division Administrator, Second Judicial Division, Re: Disciplinary Package: PPO LaDeana Farmer, District 14, Bates-stamp No.: BS114.
43. Deposition transcript of Petitioner, LaDeana Farmer, Deposition date: August 30, 2012.

**FINDINGS OF FACT**

**Procedural Background**

1. On September 14, 2011, Respondent's Assistant Judicial District Manager, Anthony W. Taylor, notified Petitioner that he was recommending her dismissal from employment for unsatisfactory job performance. Specifically, Taylor advised Petitioner that she had "failed to properly perform the duties of your position" after she "conducted a warrantless search without the search condition on two (2) offenders," and after being issued three written warnings for failing to follow Respondent's policies regarding offender violations, and Respondent's policies regarding offender searches. See Document Constituting Agency Action.

2. On December 19, 2011, Respondent's Special Assistant to the Secretary upheld the recommendation to dismiss Petitioner from employment. See Document Constituting Agency Action.

3. On January 19, 2012, Petitioner filed a contested case petition with the Office of Administrative Hearings, appealing her dismissal from employment, and alleging that Respondent wrongfully discharged her from employment without just cause.

**Adjudicated Facts**

4. On June 1, 2006, Respondent hired Petitioner as an Intensive Surveillance Officer. In 2007, shortly after Petitioner's first year of employment, Respondent promoted Petitioner to the position of Probation and Parole Officer ("PPO"). T. p. 207-208; (T. pp. 207-08, Pet Ex 23)

5. Respondent is a state agency within the government of North Carolina, and at all times has been subject to N.C. Gen. Stat. § 126-1, *et seq.*

6. As a PPO, Petitioner's job duties consisted of supervising offenders/probationers by conducting drug-screens, warrantless searches, and curfew checks, keeping records relating to offender supervision, and testifying in court about offenders who were assigned to Petitioner. (T. p. 208)

7. Probation officers enter "case narratives" into Respondent's computerized OPUS system. (T. pp. 20-21) Probation officers continually update their OPUS entries and case narratives as the officer engages with the probationers. (T. p. 21)

8. Probation officers document information pertaining to the officer's contact with the offenders, including documenting whether a warrantless search was conducted. (T. p. 22)

9. Areti Dimoulas ("Dimoulas") served as the Chief Probation/Parole Officer for Respondent's Division of Community corrections, 14<sup>th</sup> Judicial District Office. Ms. Dimoulas served as Petitioner's immediate supervisor from approximately September 2010 to September 14, 2011. (T. pp. 9-11, 58, 125)

10. Anthony W. Taylor ("Taylor") served as an Assistant Judicial District Manager ("JDM") for Respondent's Division of Community Corrections, 14<sup>th</sup> Judicial District Office. (T. p. 209) In 2011, the 14<sup>th</sup> District DCC office was comprised of nine units. Mr. Taylor was responsible for supervising half of those units, including supervising the Chief Probation and Parole Officers ("CPPO") and PPOs assigned to each unit. (T. pp. 122-124) As JDM, Taylor was within Petitioner's line of supervision. *Id.* Taylor was responsible for conducting the investigation into the allegation that Petitioner conducted two unauthorized warrantless searches which were the subject of Petitioner's termination. (T. pp. 126, 162)

11. Timothy D. Moose ("Moose") served as the Deputy Director of Respondent's Division of Community Corrections. (T. p. 80)

12. As CPPO, Dimoulas would periodically conduct case reviews of the files of the officers under her supervision. (T. p. 12.) Dimoulas' case reviews included:

looking at the judgment to ensure that conditions were enforced by the officer and that the officer was having the offender do those things that were ordered -- court ordered, . . .

making sure that the regular conditions were complied with; making sure that the special conditions were complied with.

*Id.* It is standard practice for a PPO and a CPPO to check the probation terms by looking at the OPUS system, and the probationary sentence paperwork from the Court; namely the Judgment and Commitment. (T. pp. 14-15, 32.)

13. During her case reviews, Dimoulas would "also look for deficiencies and note those deficiencies" and "note good things." (T. p. 12.) Dimoulas "would look for case planning, that case planning would be done properly, and that the risk needs assessment was calculated correctly." *Id.*

14. If Dimoulas noted a deficiency during a case review, she would "give direction to that officer to do whatever needed to be completed" by noting that case electronic file in OPUS. (T. p. 13) Such notation would notify the PPO of the case review. Dimoulas would also print a copy of the case review, and place it in the officer's case file. (T. p. 14) Depending on the nature of the deficiency, Dimoulas would have conversations with the officers regarding the deficiency. (T. p. 12) In cases with deficiencies, Dimoulas would also schedule either a ten-day or a thirty-day follow-up case review. (T. p. 14)



15. In conducting their duties, PPOs are to write case narratives of their contacts with offenders into the OPUS system within 24 hours of that contact. (T. p. 20-21; Pet Ex 7; Resp Ex 2) When the officer inputs the narrative, the OPUS system will time stamp the narrative entry of the officer, and indicate the officers initials and staff ID. *Id.* The narratives are "supposed to be very detailed and methodical" and document what type of contact the PPO had with the offender, what was discussed, and what conditions have been met. (T. pp. 21-22)

16. When the PPO wrote a contact into OPUS as a narrative, the PPO would type "WS" into the "Contact Type" field of the narrative if he or she conducted a warrantless search during the contact with the offender. (T. pp. 25-26)

17. In January 2011, Asst. Judicial District Manager Anthony Taylor issued a written warning to Petitioner for conducting an unauthorized warrantless search of the residence of a potential offender in the offender's absence. (T. p. 134-136; Pet Ex 11)

a. Petitioner had investigated the residence of an inmate before the inmate was released from prison, and returned home, to verify the residence was safe, and met all policy requirements. During this investigation, Petitioner conducted a warrantless search of the premises in the presence of, and with the consent of, the inmate/offender's reported wife. Petitioner admitted that the search took place without the offender being present. (Pet Ex 11)

b. Taylor advised Petitioner that conducting unauthorized warrantless searches was a violation of Respondent's policies and procedures and constituted unsatisfactory job performance. (Pet Ex 11) He informed Petitioner that continued unsatisfactory job performance would result in disciplinary action up to and including dismissal. *Id.* Petitioner was informed that her CPPO or District Office was available to her if she had questions regarding "this issue." *Id.*

18. Taylor also issued an Employee Action Plan to Petitioner, and counseled her regarding warrantless searches. Petitioner's Employee Action Plan instructed Petitioner to read and review Respondent's policies and procedures regarding searches. (Pet Ex 11; Resp Ex 27)

19. On February 16, 2011, Petitioner attended a training course, titled "Advanced Search and Seizure." This training explained the authority to conduct warrantless searches, and instruction on when and how to conduct warrantless searches. (T. p. 139; Resp Ex 36)

20. Some time thereafter, Dimoulas conducted a case review of offender Valerie Jordan's file, and read that Petitioner had made contact with Ms. Jordan on May 3, 2011. (T. p. 25-29; Resp Exs 16, 18) In Petitioner's narrative of that contact,

Petitioner noted the "contact type" with Jordan was "WS" or warrantless search. (T. p. 25-26; Resp Ex 18) In the text of the narrative, Petitioner wrote:

The offender was home. She stated she did not have to work tonight. She was getting some much needed rest. The offender was advised that it was time for a warrantless search in her home. She stated go ahead. Nothing illegal was found in her home. PPO reminded her of her office.

(Resp Ex 18) Petitioner had entered her contact information at 8:39:47 on May 4, 2011. Petitioner did not modify her narrative thereafter. (T. p. 27; Resp Ex 19)

21. Dimoulas examined the Court-ordered Judgment for offender Jordan, and verified that the Court had not ordered warrantless searches as a condition of Jordan's probation. (T. p. 30; Resp Exs 9, 16)

22. Dimoulas also conducted a case review of offender Reginald Johnson's file. Dimoulas reviewed Petitioner's case narrative of her contact with offender Reginald Johnson on May 16, 2011. (T. pp. 33, 36-37; Resp Exs 17, 20). Petitioner's narrative of that contact, Petitioner indicated that the "contact type" with Johnson was "WS" or warrantless search. (T. p. 35; Resp Ex 20) Petitioner wrote the following narrative of that contact:

The offender was home for contact and warrantless search. The offender stated that he would be in court on Friday and wanted to know what would or should happen on Friday. PPO advised the offender that he would get some jail time for the new conviction. Nothing illegal was found in the home.

(Resp Ex 20)

23. An OPUS screen indicated that at 09:12:20 on May 18, 2011, Petitioner entered her case narrative regarding his May 16, 2011 contact with Jordan. Petitioner did not modify such entry. (T. p. 34; Resp Ex 21)

24. Dimoulas reviewed the Court-ordered Judgment on offender Johnson, and verified that the Court had not ordered warrantless searches as a condition of Johnson's probation. (T. p. 37; Resp Exs 8, 17)

25. During her supervision of Petitioner, Dimoulas was aware that Petitioner was issued a written warning in January 2011 for conducting warrantless searches in violation of Respondent's policies. (T. pp. 16, 41) Dimoulas opined that she and the Petitioner had a "fair" working relationship, and she had a "fair" working relationship with the other PPOs within Petitioner's unit. *Id.*

26. After discovering the warrantless search narratives regarding offenders Jordan and Johnson, Dimoulas informed Anthony Taylor of the unauthorized warrantless searches of Jordan and Johnson performed by Petitioner. (T. p. 48)

27. Taylor alerted his supervisor of the searches by Petitioner. *Id.* Taylor was directed by his supervisor to conduct an internal investigation of the Petitioner regarding the warrantless searches. *Id.* On June 6, 2011, Taylor reassigned Petitioner from her duties as a PPO, to an office position at her district office. (Pet Ex 15)

28. During his investigation, Taylor reviewed the case narratives entered by Petitioner, the case reviews of Dimoulas, and verified Jordan and Johnson's conditions of probation by referring to their Judgment paperwork. (T. p. 128-134) Taylor determined that Petitioner entered the narratives in the OPUS system that she conducted warrantless searches of Jordan and Johnson. (T. p. 131) Taylor also verified that neither Jordan nor Johnson was subject to warrantless searches according to their conditions of probation imposed by the Court. *Id.*

29. During his investigation, Taylor met with Petitioner, showed her the documentation regarding the warrantless searches, and collected a written statement from Petitioner. (T. p. 131-132; Pet Ex 16) When Taylor met with Petitioner regarding the investigation, Petitioner told Taylor that she believed that she "did the coding of the warrantless search wrong." (T. p. 134)

30. In her written statement, Petitioner stated that on the dates in question, she "was doing field work." She "talked with both offenders while looking around in the area PPO was in." She "did not touch or place a hand on anything in the home" of either offender Jordan or offender Johnson. Petitioner wrote that:

PPO coded the narratives as WS when it should have just been left blank.  
A warrantless search was never conducted on either of the offenders listed in this statement.

(Pet Ex 16)

31. At the conclusion of his investigation, Taylor drafted a memorandum summarizing his findings, and submitted it to Kevin Wallace, Assistant Division II Administrator. (T. p. 132-133; Resp Ex 15) In the memorandum, Taylor noted that Petitioner told him she did not actually perform warrantless searches on these offenders, but coded it that way. Taylor determined that, "The only conflicting information is from PPO Farmer who has written one thing in the narratives and is now stating that she did another." (Resp Ex 15)

a. Taylor found that whether Petitioner conducted a warrantless search or coded it incorrectly, "either issue comes back to a lack of attention to detail." (Resp Ex 15) Taylor concluded that, if Petitioner had conducted warrantless

searches of offender Jordan and Johnson's homes, she had violated Respondent's policies. (Resp Ex 15)

b. Taylor also concluded that if Petitioner had incorrectly coded the narratives of Jordan and Johnson, as Petitioner alleged, then she had violated Respondent's policies by failing to keep accurate and detailed narrative entries. (Resp Exs 2, 15)

c. The undersigned hereby Denies Petitioner's motion to strike Taylor's testimony at hearing that Petitioner had other corrective action plans, and such evidence is hereby allowed into the record.

32. On July 28, 2011, Taylor issued a Notice of Pre-disciplinary Conference to Petitioner for a pre-disciplinary conference the next day. ( T. p. 143; Pet Ex 18)

33. On July 29, 2011, Taylor conducted a pre-disciplinary conference with the Petitioner. (Resp Exs 13, 14) At that conference, Taylor read the Notice of Pre-disciplinary Conference to Petitioner, and informed her that she was facing discipline up to and including dismissal. Taylor explained the reasoning behind the discipline, and allowed Petitioner the opportunity to provide any feedback or documents regarding the potential discipline. (T. p. 144; Resp Ex 13) Petitioner provided Taylor with a prepared typed memorandum, denying that she conducted a warrantless search of either offender's homes. (T. p. 144-146) In the memorandum, Petitioner also stated that she made an error in entering "WS" regarding the contact with each offender. *Id.*

34. On August 17, 2011, Director Tim Moose approved the recommendation to dismiss Petitioner from employment, based on the disciplinary package submitted to him. (Resp Ex 41)

35. On September 14, 2011, Anthony Taylor informed Petitioner by letter that she had been terminated from employment for unsatisfactory job performance. (T. p. 155-156; Resp Ex 12) Petitioner's unsatisfactory job performance was based on:

- (1) a January 26, 2009 written warning for failing to endorse Respondent's policies regarding offender violations,
- (2) a December 1, 2009 written warning for failing to maintain minimum supervision requirements, failing to enter narratives, and failure to ensure policy and procedures were followed regarding offender violations.
- (3) the January 12, 2011 written warning for searching the residence of a potential offender in the absence of the offender and failure to follow Respondent's offender search policy and procedure.

(4) the current incidents of conducting warrantless searches of offender Valerie Jordan and Reginald Johnson.

Respondent further informed Petitioner that:

[D]espite efforts to assist you in correcting your deficiencies, your performance continues to be unsatisfactory. . . . Your failure to perform the duties of your position is considered unsatisfactory job performance.

(Resp Ex 12)

36. At deposition, Petitioner admitted that performing warrantless searches on the homes of Jordan and Johnson would have been a violation of policy. (T. pp. 54-55; Resp Ex 43) She admitted that incorrectly coding that she had performed warrantless searches, when she had not, was a failure to follow Respondent's policies. *Id.* Petitioner also admitted that a narrative containing incorrect coding was inaccurate and in violation of Respondent's policies. *Id.* at pp. 68-69.

37. At hearing, in contradiction to her deposition testimony, Petitioner denied conducting the searches of offenders Jordan and Johnson. Similar to her deposition testimony, Petitioner indicated that she incorrectly entered that she performed warrantless searches on Jordan and Johnson in the OPUS system. (T. p. 220) According to the Petitioner, her error in coding the warrantless searches constituted inaccurate offender OPUS records in violation of Respondent's policies. *Id.*; (Pet Ex 16; Resp Ex 2).

38. Later in her hearing testimony, Petitioner explained that she conducted warrantless "plain view" searches of offenders Jordan and Johnson's homes. (T. pp. 220, 225) Petitioner acknowledged that she understood that Respondent's policy required that she view criminal activity before conducting a plain view search. (T. p. 226) Petitioner stated that she did not view any evidence of criminal activity in Jordan or Johnson's homes before conducting the search. (T. p. 227) Petitioner conceded that Jordan and Johnson were not subject to warrantless searches as a condition of their probation. (T. p. 233)

39. Petitioner believed that Respondent's policies regarding searches authorized her to conduct a warrantless "plain view" search, for her safety, of any offender at any time. (T. p. 235) But later in her testimony, Petitioner acknowledged that she was confused as to what was the definition of a "warrantless search" at the time she allegedly searched the homes of offenders Jordan and Johnson. (T. p. 244)

40. Petitioner admitted at hearing that she never sought guidance from her supervisors to aid her in understanding warrantless searches, despite Taylor's January 2001 instruction to do so. (T. p. 245; Pet Ex 11)

41. At her deposition, Petitioner indicated that offenders who are subject to warrantless searches are "the ones that are ordered by the court systems." (Resp Ex 43, p. 18) She explained that offenders who are *not* subject to warrantless searches are "the ones that are not ordered by the judge, by the court system." *Id.* Petitioner stated that Respondent had trained her on determining when searches could be performed and when searches could not be performed. *Id.* During her deposition, Petitioner also stated that she understood that "a warrantless search was when you physically put your hand on things." *Id.* at p. 32. Petitioner knew that neither Jordan nor Johnson were offenders who were subject to warrantless searches. (Resp Ex 43, pp. 46 - 47.)

42. Petitioner admitted during her deposition that she told offender Jordan it was time for a warrantless search, despite Jordan not being subject to warrantless searches as a condition of her probation. *Id.* (T. p. 54)

43. Petitioner further stated during her deposition that she had been terminated from employment with Respondent for "[c]oding my narratives wrong and not articulating my narratives for other people to understand what I was saying." (Resp Ex 43, p. 37)

44. Petitioner admitted, at hearing, that the essential job functions of a PPO included:

[T]he ability to read, comprehend, and abide by legal and nonlegal documents, policy and procedure manuals, statutory guidelines, and administrative memorandums, including the processing of such documents as court orders, parole commission documents and other legal writs.

(T. p. 231 - 232; Resp Ex 38)

45. Director Timothy Moose's responsibilities included the areas of daily field-operations, budget, personnel, and legislative policies. (T. p. 81) Moose was also responsible for any approving any personnel actions of Respondent's employees such as termination or demotion. (T. p. 82)

46. Moose explained that Respondent does not terminate employees with unsatisfactory job performance without a "progression." (T. p. 86) Employees are "normally given a written warning to begin with, and then, hopefully, that person does what they need to do to improve performance and -- and it's not an issue again." (T. p. 83) A dismissal or demotion for unsatisfactory job performance is "usually a continuation of things that will occur, and the employees normally will receive some written warnings prior to getting to the point of it being a dismissal or demotion." *Id.*

47. Moose was aware that Petitioner had at least one active written warning for unsatisfactory job performance at the time of the investigation, and that Petitioner had a continuation of unacceptable or unsatisfactory job performance. (T. p. 83, 85-86) Based on the prior written warning and the investigation of Petitioner, Moose approved the termination of Petitioner on August 17, 2011. (T. p. 82; Resp Ex 41)

48. Moose noted that Respondent's policies are revised on an ongoing basis. (T. p. 88) Changes to Respondent's policies may be the result of legislation regarding Respondent or any probation. *Id.* Generally, Respondent reviews such legislation before its enactment in order to advise Respondent's employees of the legislation, resulting statutory changes, and resulting policy changes. *Id.*

49. If new legislation that affects probation or Respondent is enacted, Moose distributes an administrative memorandum regarding legislative or policy changes to all Respondent's employees electronically. The judicial district managers also meet with Respondent's employees and discuss the changes with each judicial district office. (T. p. 89)

50. Respondent's policies are available to Respondent's employees, including PPOs, at any time, and online. (T. p. 92) PPOs have a responsibility, according to Moose, to review the Respondent's policies, be knowledgeable regarding Respondent's policies, and to conduct their job duties in accordance with Respondent's policies. (T. p. 93)

51. According to Moose, on December 1, 2009, Senate Bill 920 changed the law regarding supervision of probationers in several areas. (T. p. 96; Resp Ex 37) One specific change was that probationers who committed offenses on or after December 1, 2009 would automatically be required to submit to warrantless searches, unless the probationer was exempted from warrantless searches by the Judge at sentencing. (Resp Ex 37)

52. On November 30, 2009, Moose sent a memorandum to Respondent's staff informing staff of the change in the law. (T. p. 96; Resp Ex 37) The requirements of Senate Bill 920 were also incorporated into Respondent's policy and staff training. (T. p. 97-99; Resp Ex 37) Any changes due to Senate Bill 920 occurred approximately eighteen months prior to Petitioner's termination. *Id.*

53. After issuing his memorandum regarding Senate Bill 920 in 2009, Moose instructed all CPPOs under his supervision to meet with their individual units and discuss the changes with the PPOs under their supervision. (T. pp. 140-142)

54. Offender Jordan had a conviction date before December 1, 2009, and, thus, was not subject to Senate Bill 920. (Resp Exs 9, 37)

55. Offender Johnson had a conviction date before December 1, 2009, and, thus, was not subject to Senate Bill 920. (Resp Exs 8, 37)

56. The February 16, 2011 "Advanced Search and Seizure" training that Petitioner attended incorporated the changes made by Senate Bill 920. (T. p. 102-103; Resp Ex 36)

57. During his deposition, Moose explained that narrative entries made by PPOs "are the foundation and the cornerstone of what an officer does." (Pet Ex 97, p. 19) These narratives "are the basis for understanding the work that an officer does or doesn't do," and the narratives are "the basis and foundation for what's reported to court and violation processes." *Id.* According to Moose, the narratives are central to the Respondent's "integrity with the court system," because "[i]t is a key component of what an officer does." *Id.* Respondent and the courts must be able to "trust and proceed" based upon the information PPOs provide in the narratives. *Id.* at pp. 19-20.

58. Any warrantless search of an offender, who was not subjected to warrantless searches as a condition of their probation by the Courts, is a violation of Respondent's policies. (Resp. Ex. 5)

59. Petitioner's failure to keep accurate, detailed narratives regarding offender contact is a violation of Respondent's policies. (Resp. Ex. 2)

60. The preponderance of the evidence demonstrated that Respondent counseled, trained, and instructed Petitioner on Respondent's policies regarding warrantless searches. Petitioner failed to seek further guidance from Respondent regarding warrantless searches. Petitioner was aware that offenders Jordan and Johnson were not subject to warrantless searches as a condition of their probationary sentences. At hearing, Petitioner admitted that she performed warrantless searches at the homes of offenders Jordan and Johnson for her safety. Petitioner knowingly violated Respondent's policy regarding warrantless searches by performing warrantless searches of Jordan and Johnson when she was not authorized to do so.

61. Nonetheless, assuming *arguendo* that Petitioner did not perform warrantless searches of the homes of offenders Jordan and Johnson, Petitioner knowingly violated Respondent's policy regarding maintenance of case records and entry of case narratives. Petitioner admitted that entering "WS" in the OPUS system, indicating that she had performed warrantless searches of Jordan and Johnson's homes if she had not done so, was a failure to enter detailed and accurate case narratives as required by Respondent's policies. The preponderance of the evidence showed that Petitioner continued to make errors in performing her PPO duties even after being placed on a Performance Action Plan, and receiving written warnings for the same errors.



62. Respondent's Personnel Manual defines "unsatisfactory job performance" as "work-related performance that fails to satisfactorily meet job requirements as specified in the relevant job description, work standard, or as directed by the supervisor(s) or manager(s) of the work unit." (Resp. Ex. 12)

63. Based on an evaluation of documentary evidence, and the testimony and demeanor of Respondent's witnesses, versus that of Petitioner, the undersigned finds that Petitioner willfully failed to follow the Respondent's policies by performing warrantless searches of Jordan and Johnson when she was not authorized to do so by the terms of their probationary sentences.

#### **CONCLUSIONS OF LAW**

1. The parties are properly before the Office of Administrative Hearings, and the Office of Administrative Hearings has subject matter jurisdiction over this case.

2. Petitioner was a career State employee subject to the provisions of the State Personnel Act, N.C.G.S. § 126-1 et seq. at the time of her discharge.

3. Pursuant to N.C. Gen. Stat. § 126-35, no career State employee subject to the State Personal Act shall be discharged for disciplinary reasons, except for just cause. Although "just cause" is not defined in N.C. Gen. Stat. § 126-35, the words are to be accorded their ordinary meaning. *Amanini v. Dep't of Human Resources*, 114 N.C. App. 668, 443 S.E.2d 114 (1994) (defining "just cause" as, among other things, good or adequate reason).

4. Respondent has the burden of showing by a preponderance of the evidence that it had "just cause" to discharge Petitioner from employment. N.C. Gen. Stat. § 126-35(d); N.C. Gen. Stat. § 150B-29(a). See *Teague v. N.C. Dep't of Transportation*, 177 N.C. App. 215, 628 S.E.2d 395, disc. rev. denied, 360 N.C. 581 (2006).

5. 25 NCAC 1J.0604(b) provides that employees may be disciplined or dismissed, under the statutory standard for "just cause" set out in G.S. 126-35, on the basis of unsatisfactory job performance, including grossly inefficient job performance, or unacceptable personal conduct.

6. State Personnel Manual, "Disciplinary Action, Suspension, and Dismissal," Section 7, Page 3 - 4, provides, in part:

Unsatisfactory Job Performance - Work-related performance that fails to satisfactorily meet job requirements as set out in the relevant job description, work plan, or as directed by the management of the work unit or agency.

Dismissal for unsatisfactory job performance requires a progressive disciplinary system.

7. In *N.C. D.E.N.R. v. Clifton Carroll*, 358 N.C. 649, 599 S.E.2d 888 (2004), the Court stated that the fundamental question in determining just cause is whether the disciplinary action taken was just in that:

Inevitably, this inquiry requires an irreducible act of judgment that cannot always be satisfied by the mechanical application of rules and regulations." There is no bright line test to determine 'just cause'—it depends upon the facts and circumstances in each case. Furthermore, "not every violation of law gives rise to 'just cause' for employee discipline.

8. 25 NCAC 01I .2305 WRITTEN WARNING provides in pertinent part that:

(a) The supervisor shall monitor and promote the satisfactory performance of work assignments and acceptable standards of personal conduct. All types of performance-related job inadequacies may constitute unsatisfactory job performance under this Section. When the supervisor determines that disciplinary action is appropriate for unsatisfactory job performance, a written warning is the first type of disciplinary action that an employee must receive. The supervisor may elect to issue a written warning for grossly inefficient job performance or unacceptable personal conduct. The written warning must:

- (1) Inform the employee that this is a written warning, and not some other non-disciplinary process such as counseling;
- (2) Inform the employee of the specific issues that are the basis for the warning;
- (3) Tell the employee what specific improvements, if applicable, must be made to address these specific issues;
- (4) Tell the employee the time frame allowed for making the required improvements/corrections. Absent a specified time frame, 60 days is the time frame allowed for correcting unsatisfactory job performance. Immediate correction is required for grossly inefficient job performance or unacceptable personal conduct;
- (5) Tell the employee the consequences of failing to make the required improvements/corrections.

9. In *Walker v. North Carolina Dep't of Human Resources*, 100 N.C. App. 498, 397 S.E.2d 350 (1990), review denied, 328 N.C. 98, 402 S.E.2d 430 (1991), the Court stated:

The standard of employee conduct implied in every contract of employment is one of reasonable care, diligence, and attention. *Wilson v. McClenny*, 262 N.C. 121, 136 S.E.2d 569 (1964); *McKnight v. Simpson's Beauty Supply, Inc.*, 86 N.C. App. 451, 358 S.E.2d 107 (1987). We cannot say that a state employee undertakes any greater duty. In attempting to establish that it had just cause to terminate an employee, then, an agency is bound to make a showing that the employee has not performed with reasonable care, diligence, and attention. Failure to fulfill certain quotas and complete certain tasks to the complete satisfaction of a supervisor is not enough.

10. *Walker* requires that the Respondent agency show "that these quotas and job requirements were *reasonable*, and if so, that the employee made no reasonable effort to meet them." *Id.* at 504 [Court emphasis].

11. In this case, Petitioner was an employee with multiple instances of disciplinary action for unsatisfactory job performance. The preponderance of the evidence demonstrated, and Petitioner admitted, that she failed to perform her job duties with reasonable care, diligence, and attention. Petitioner admitted that she performed warrantless searches at the homes of offenders Jordan and Johnson when she was not authorized to do so by their probationary sentences. Petitioner also admitted to failing to maintain detailed and accurate case narratives regarding her contact with these offenders.

12. Respondent complied with 25 NCAC 01J .0605 by giving Petitioner three written warnings for poor job performance before Respondent dismissed Petitioner from employment. Petitioner had one active written warning at the time of her dismissal. Respondent demonstrated, and Petitioner admitted, that Petitioner made no reasonable effort to meet her job expectations. Respondent demonstrated a deliberate, good faith process where the Petitioner was given a reasonable chance to improve.

13. Based on foregoing factual circumstances, Respondent proved by a preponderance of the evidence that Petitioner should be dismissed from employment for engaging in unsatisfactory job performance.

14. Based on the foregoing facts and conclusions, Respondent had just cause to dismiss Petitioner from employment for unsatisfactory job performance.

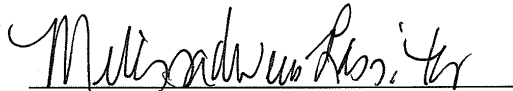
**DECISION**

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned **AFFIRMS** Respondent's dismissal of Petitioner from employment for engaging in unsatisfactory job performance.

**NOTICE**

Under the provisions of North Carolina General Statute 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of Wake County or in the Superior Court of the county in which the party resides. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule 26 N.C. Admin. Code 03.012, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. §150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. §150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 10<sup>th</sup> day of April, 2013.

  
Melissa Owens Lassiter  
Administrative Law Judge


**CERTIFICATE OF SERVICE**

I do hereby certify that I have served a copy of the foregoing FINAL DECISION on counsel for Petitioner by placing said document in the United States mail, first-class postage prepaid addressed as follows:

J. Heydt Philbeck  
BAILEY & DIXON  
PO Box 1351  
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ATTORNEY FOR PETITIONER

Kimberly Grande  
Assistant Attorney General  
North Carolina Department of Justice  
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Raleigh, North Carolina 27602

This the 11<sup>th</sup> day of April, 2013,

  
\_\_\_\_\_  
Office of Administrative Hearings  
6714 Mail Service Center  
Raleigh, NC 27699-6714  
Phone: 919-431-3000

Filed

STATE OF NORTH CAROLINA

COUNTY OF WAKE

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Office of  
Administrative Hearings

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
12 REV 2218

JAMES M. SLOWIN,  
REFS LLC

Petitioner,

v.

N.C. DEPARTMENT OF REVENUE,

Respondent.

FINAL DECISION

This matter came to be heard before Fred G. Morrison Jr, Senior Administrative Law Judge, on December 3, 2012, at the Office of Administrative Hearings located in Raleigh, North Carolina, and after considering the entire record in this case, hereby enters the following decision.

Petitioner was present throughout the hearing and appeared *pro se*. The North Carolina Department of Revenue ("Department") was represented by Perry J. Pelaez of the North Carolina Attorney General's Office.

At issue in this contested case is whether Petitioner, as a manager of REFS, LLC ("REFS"), is a responsible person for the sales and use tax liabilities incurred by REFS for the periods from December 1, 2009, through January 31, 2010, and March 1, 2010, through March 31, 2010 ("Periods at Issue").

The applicable statute is N.C. Gen. Stat. § 105-242.2, entitled "Personal Liability When Certain Taxes Not Paid," which provides that "each responsible person in a business entity is personally and individually liable for all of the taxes listed in this subsection." N.C. Gen. Stat. § 105-242.2(b).

**FINDINGS OF FACT**

Petitioner testified at the hearing. Ginny Upchurch, Assistant Director of the Sales and Use Tax Division of the North Carolina Department of Revenue, also testified at the hearing.

Based on a review of all the evidence, and after evaluating the credibility of the witnesses, the undersigned makes the following findings of fact:

1. Petitioner filed a timely appeal to the Office of Administrative Hearings from the Notice of Final Determination issued by the Department on February 28, 2012.
2. REFS, LLC was a limited liability company that was formed on or about July 2009 by Petitioner and several other individuals.
3. Petitioner invested \$75,000.00 in REFS, which provided him with a 30% ownership interest in the company.
4. REFS was a manager-managed limited liability company. Petitioner was appointed a manager of the company. At all times during the Periods at Issue, Petitioner served as manager of REFS.
5. REFS was established to operate a restaurant/sports bar in Greensboro, North Carolina, and opened for business in September 2009.
6. During the Periods at Issue, REFS sold food and beverages at the restaurant/sports bar, collected the sales tax, and did not remit the sales tax to the Department.
7. REFS failed to timely file its North Carolina Sales and Use Tax returns and failed to pay the sales tax for October, November, and December 2009, and January and March 2010.
8. For the Periods at Issue, REFS submitted untimely Sales and Use Tax Returns to the Department without payment. The returns reflected that there was a tax due for the Periods.

9. At all times during the Periods at Issue, Petitioner served as manager and was a member of REFS when the company failed to pay sales tax.

10. On or about May 19, 2010, Petitioner, on behalf of REFS, entered into an Installment Agreement to repay the outstanding sales tax, including interest and penalties, for the Periods at Issue. Petitioner made good faith efforts to get payments made to the Respondent.

11. On or about June 13, 2010, Petitioner entered into an agreement to transfer his ownership interest in REFS to several other individuals who agreed to fulfill the Installment Agreement and indemnify Petitioner as needed in the future. The Department was not a party to this agreement, but it knew about it and continued to accept payments under it.

12. During the month of November 2010, REFS' new managers ceased its business operations and closed the doors to the restaurant without having paid the taxes due on the returns for the Periods at Issue as they had agreed. Revenue was lax in enforcing the Installment Agreement and not seizing REFS' assets under its lien.

13. At the time when REFS ceased its business operations, REFS failed to repay in full the sales tax for the Periods at Issue as required by the Installment Agreement dated May 19, 2010, or any amendments thereto. In November 2010, there remained due and owing to the Department, outstanding sales tax, interest, and penalties for the Periods at Issue.

14. On March 2, 2011, the Department issued proposed assessments against Petitioner, as a responsible person, for the balances due for the Periods at Issue.

#### **CONCLUSIONS OF LAW**

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



2. Under Article 5 of the North Carolina Revenue Act ("Act"), N.C. Gen. Stat. § 105-164.1 *et. seq.*, retailers have a statutory duty to collect "the tax due on an item when the item is sold at retail." N.C. Gen. Stat. § 105-164.7.

3. Retailers act as trustees on behalf of the state and hold taxes collected in trust for the state. *See* N.C. Gen. Stat. § 105-164.7 ("A retailer is considered to act as a trustee on behalf of the state when it collects tax from the purchaser of a taxable item.").

4. To prevent these trustees from diverting the taxes collected in trust for the state to their own personal use, North Carolina has extended the statutory duty to collect and hold such taxes in trust for the state to certain responsible persons within the business entity.

5. N.C. Gen. Stat. § 105-242.2, entitled "Personal liability when certain taxes not paid," specifically addresses responsible person liability, which provides that "each responsible person in a business entity is personally and individually liable for all of the taxes listed in this subsection." N.C. Gen. Stat. § 105-242.2(b).

6. These taxes include, "all sales and use taxes collected by the business entity upon its taxable transactions." N.C. Gen. Stat. § 105-242.2(b)(1).

7. A "responsible person" is defined as "[a] manager of a limited liability company." N.C. Gen. Stat. § 105-242.2(a)(2)b.

8. Pursuant to N.C. Gen. Stat. § 105-242.2(a)(2)b, Petitioner, as a manager of the limited liability company, is a responsible person for the tax due on the returns of REFS during the Periods at Issue. During the Periods at Issue, REFS collected the sales tax and did not remit the tax to the Department. As a manager of REFS, Petitioner is a responsible person as defined by N.C. Gen. Stat. § 105-242.2(a)(2) and the assessments for sales taxes, penalties, and interest

against Petitioner are lawful and correct under the statutes. Petitioner is liable for tax as assessed, including penalties and interest. N.C. Gen. Stat. § 105-228.90(b)(7).

**DECISION**

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby determines that while the Department did not err in issuing its Notice of Final Determination, it is recommended that the parties enter into negotiations toward a 24-month payment plan which includes waiver of penalties due to Petitioner's good faith efforts to get the taxes paid.

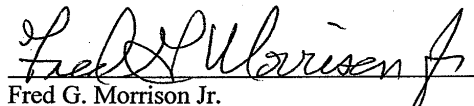
**NOTICE**

Pursuant to N.C. Gen. Stat. § 150B-45, a party who desires to appeal this Final Decision in a contested tax case arising under N.C. Gen. Stat. § 105-241.15 may commence such an appeal by filing a Petition for Judicial Review in the Superior Court of Wake County and in accordance with the procedures for a mandatory business case set forth in N.C. Gen. Stat. § 7A-45.4(b) through (f) within 30 days after being served with a written copy of this Final Decision. Before filing a Petition for Judicial Review, a taxpayer must pay the amount of taxes, penalties, and interest that this Final Decision states is due. N.C. Gen. Stat. § 105-241.16. The tax, penalties, interest, and rate of interest accrues are calculated as of January 10, 2012 as follows:

State Tax (as shown on Notice of Final Determination)	\$16,325.31
County Tax (as shown on Notice of Final Determination)	\$5,678.37
Penalties (as shown on Notice of Final Determination)	\$5,746.72
Interest (updated through January 10, 2013) *	<u>\$3,810.35</u>
<b>Total due as of January 10, 2013</b>	<b>\$31,560.75</b>

\*Plus daily interest which accrues at the rate of \$3.01 per day.

This the 14<sup>th</sup> day of February, 2013.

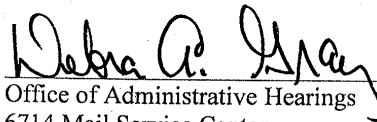
  
Fred G. Morrison Jr.  
Senior Administrative Law Judge

A copy of the foregoing was mailed to:

James M Slowin  
REFS LLC  
4807 Clarkson Road  
Greensboro, NC 27410-  
PETITIONER

Perry J. Pelaez  
Assistant Attorney General  
NC Department of Justice  
9001 Mail Service Center  
Raleigh NC 27699-9001  
ATTORNEY FOR RESPONDENT

This the 11<sup>th</sup> day of February, 2013.

  
Office of Administrative Hearings  
6714 Mail Service Center  
Raleigh, NC 27699-6714  
(919) 431 3000  
Fax: (919) 431-3100

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OFFICE OF ADMINISTRATIVE HEARINGS  
7/19/2013 11:38 AM

STATE OF NORTH CAROLINA  
  
COUNTY OF WAKE

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
13DOT08753

<p>LORIE CRAMER Petitioner</p> <p>v.</p> <p>NC QUICK PASS CUSTOMER SERVICE CENTER &amp; DEPT OF TRANSPORTATION Respondent</p>	<p><b>FINAL DECISION ORDER OF DISMISSAL</b></p>
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THIS MATTER comes before the Honorable Donald W. Overby, Administrative Law Judge presiding, for consideration of Respondent's Motion for Summary Judgment filed with the Office of Administrative Hearings (OAH) on June 14, 2013 and Petitioner's response thereto filed with OAH on July 1, 2013. Having reviewed the submissions of the parties and other matters of record appropriate for consideration, it is concluded as a matter of law that genuine issues of material fact exist, and therefore summary judgment is not appropriate.

This Tribunal has given great consideration to this matter. Factually, this contested case begins with the assessment of an \$.80 (Eighty CENTS) toll. Petitioner was assessed two \$6.00 penalties. Ultimately Petitioner paid the Eighty cents toll and the Twelve dollar penalties. Even by Respondent's account, the twelve dollar payment was received at most one day late. Because of that tardiness, Respondent now attempts to collect a Twenty-five dollar civil penalty pursuant to N.C.G.S. § 136-89.216. That section states that a person with unpaid tolls is "subject to" that twenty-five dollar penalty which does not make that assessment mandatory.

In chasing that twenty-five dollars, the Respondent has now employed the use of the Attorney General's Office, requiring the time, energy and efforts of an attorney and support staff, at great further expense to the State of North Carolina and its citizens. The Office of Administrative Hearings now has jurisdiction which has required the use of the Clerk's Office, the administrative hearings section's support staff and the administrative law judge, further great expense to the State of North Carolina and its citizens.

The United States Supreme Court articulated in Mathews v. Eldridge, 424 U.S. 319, 348 (1976) that there must be a balance of weighing the costs associated with pursuing a legal remedy against the use of scarce fiscal and administrative resources. Mathews held that requiring an evidentiary **hearing** upon demand in all cases could entail fiscal and administrative burdens that would be out of proportion to any countervailing benefits. In Mathews v. Eldridge, the Supreme Court said:

\*348 Financial cost alone is not a controlling weight in determining whether due process requires a particular procedural safeguard prior to some administrative decision. But the Government's interest, and hence that of the public, in conserving scarce fiscal and administrative resources is a factor that must be weighed. At some point the benefit of an additional safeguard to the individual affected by the administrative action and to society in terms of increased assurance that the action is just, may be outweighed by the cost. (Emphasis added) See Friendly, *supra*, 123 U.Pa.L.Rev., at 1276, 1303.

The ultimate balance involves a determination as to when, under our constitutional system, judicial-type procedures must be imposed upon administrative action to assure fairness. We reiterate the wise admonishment of Mr. Justice Frankfurter that differences in the origin and function of administrative agencies "preclude wholesale transplantation of the rules of procedure, trial and review which have evolved from the history and experience of courts." *FCC v. Pottsville Broadcasting Co.*, 309 U.S. 134, 143, 60 S.Ct. 437, 441, 84 L.Ed. 656 (1940).

Mathews v. Eldridge, 424 U.S. 319, 348, 96 S. Ct. 893, 909, 47 L. Ed. 2d 18 (1976)

In this instant case, the Respondent has received the Eighty cents toll as well as twelve dollars in fines which amounts to fifteen times the original debt. Under other circumstances that would be considered usurious. The State has received its pound of flesh in this case. The State's scarce resources can be put to better use.

Based upon the foregoing, Respondent's Motion for Summary Judgment is **DENIED**; however, this Tribunal *sua sponte* concludes as a matter of law that the ends of justice would best be served by dismissing this matter. The holding in this case is specific to this contested case alone, and is not to imply that collecting tolls should not be the business of the Respondent.

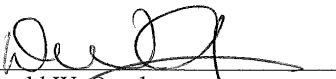
Now, therefore, this matter is **DISMISSED**.

#### NOTICE

Under the provisions of North Carolina General Statute 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of Wake County or in the Superior Court of the county in which the party resides. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. §150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. §150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of

Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 19th day of July, 2013.


  
Donald W. Overby  
Administrative Law Judge

A copy of the foregoing was mailed to:

Lorie Cramer  
12105 Queensbridge Court  
Raleigh, NC 27613  
Petitioner

Ebony J Pittman  
Assistant Attorney General  
NC Department of Justice  
1505 Mail Service Center  
Raleigh, NC 27699  
Attorney For Respondent

This the 19th day of July, 2013.

  
\_\_\_\_\_  
Office of Administrative Hearings  
6714 Mail Service Center  
Raleigh, NC 27699-6714  
(919) 431 3000  
Fax: (919) 431-3100

FILED  
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4/29/2013 1:28 PM

STATE OF NORTH CAROLINA  
  
COUNTY OF WAKE

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
13REV06646

WILLIAM SCOTT Petitioner  v.  NC DEPARTMENT OF REVENUE Respondent	<b>FINAL DECISION ORDER OF DISMISSAL</b>
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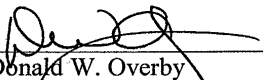
THIS MATTER comes before the Honorable Donald W. Overby, Administrative Law Judge presiding, for consideration Respondent's Motion to Dismiss filed with the Office of Administrative Hearings on March 28, 2013 and Petitioner's Request for Extension. Having reviewed the file and matters of record proper for consideration, this Tribunal finds that Petitioner has failed to state a claim for which relief can be granted. While Petitioner is a *pro se* litigant, he has extensively relied upon recitation of citations to the law in his petition, his prehearing statement, and his Request for Extension. Good cause does not exist for extending the time in which the Petitioner might respond to Respondent's Motion to Dismiss.

Now, therefore, Petitioner's petition should be and is hereby **DISMISSED** in its entirety for failure to state a claim upon which relief can be granted, pursuant to N.C.R. Civ. P. 12(b)(6).

**NOTICE**

Under the provisions of North Carolina General Statute 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of Wake County or in the Superior Court of the county in which the party resides. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.012, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. §150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. §150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 29th day of April, 2013.

  
 Donald W. Overby  
 Administrative Law Judge

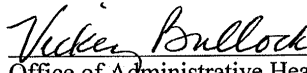


A copy of the foregoing was mailed to:

William Scott  
150 Lake Vista Trail  
Rural Hall, NC 27045  
Petitioner

Peggy S. Vincent  
Assistant Attorney General  
NC Department of Justice  
9001 Mail Service Center  
Raleigh, NC 27699  
Attorney for Respondent

This the 29th day of April, 2013.

  
Office of Administrative Hearings  
6714 Mail Service Center  
Raleigh, NC 27699-6714  
(919) 431 3000  
Fax: (919) 431-3100