

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
22 DOJ 00770

<p>Terry Wayne Sutherland Jr Petitioner,</p> <p>v.</p> <p>NC Private Protective Services Board Respondent.</p>	<p><b>PROPOSAL FOR DECISION</b></p>
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**THIS MATTER**, a contested case under Article 3A, Chapter 150B of the North Carolina General Statutes, came on for hearing before Administrative Law Judge J. Randolph Ward on March 29, 2022 in Raleigh.

#### **APPEARANCES**

Petitioner: Joel Hart Miles, Jr.  
Cheshire Parker Schneider, PLLC  
Raleigh, N.C.

Respondent: Jeffrey P. Gray  
Bailey & Dixon, LLP  
Raleigh, NC 27602

#### **ISSUE**

Whether Petitioner's Private Investigator license should be denied for lack of good moral character?

#### **RULES AND STATUTES AT ISSUE**

N.C. Gen. Stat. § 74C-12(a)(25); 14B NCAC 16 .0401; and, 14B NCAC 16 .0106(a);

#### **WITNESSES**

Petitioner: Terry Wayne Sutherland  
Wayne Delancey  
Brent Douglas

Respondent: Paul Sherwin  
Daniel Cheatham

## **EXHIBITS**

*The following exhibits were admitted with the stipulation of the parties:*

Petitioner: Exhibits 1-5

Respondent: Exhibits 1-3

**UPON DUE CONSIDERATION** of the arguments and stipulations of counsel; the exhibits admitted; and the sworn testimony of each of the witnesses, viewed in light of their opportunity and ability to know of relevant facts and occurrences, any interests they may have in the outcome of the case, and whether their testimony is reasonable and consistent with other credible evidence; and, upon assessing the greater weight of the evidence from the record as a whole in accordance with applicable law, the undersigned makes the following:

## **FINDINGS OF FACT**

1. On February 22, 2022, the Respondent Private Protective Services Board denied the application of Petitioner Terry Wayne Sutherland, Jr. for a Private Investigator license on the grounds that he had "...demonstrated lack of good moral character related to employment history and falsification of reference forms." (Res. Ex. 2) The information leading to this decision was obtained during the background check performed by the Respondent's Investigator Daniel Cheatham.

2. During his investigation, Mr. Cheatham found irregularities in the notarization of Personal Reference Questionnaire forms presented in support of Petitioner's application. He contacted two of the three signators, and was told that they had no contact whatsoever with the notary public. None of the original character reference forms were determined to be fraudulent in any way other than that the signatures were not notarized in the presence of the notary.

3. Petitioner readily admitted to Investigator Cheatham that his sister notarized the personal reference forms for Petitioner without the personal presence of the signators. At the hearing Petitioner testified that the signators were all personally known to his sister and the notarizations were done this way due to time pressure and COVID-19 concerns.

4. Petitioner credibly testified that his sister and he were confused as to the rules for notaries during the COVID-19 state of emergency. Due to the pandemic, the Legislature had enacted N.C. Gen. Stat. § 10B-25, titled "Emergency video notarization," which allowed a notary who was "satisfied that the principal's [signator's] identity [was] proven by satisfactory evidence" to notarize a signature without meeting the normal requirement that the document be signed in the physical "presence of" the notary. Petitioner is not a notary and relied on his sister's judgment.

She did not testify at the hearing. Investigator Cheatham correctly considered the documents improperly notarized because the “emergency” statute, which expired at the end of 2021, required that the signator and notary be capable of “communicating simultaneously by sight and sound through an electronic device or process.” N.C. Gen. Stat. § 10B-25(b)(2).

5. Following his interview with Investigator Cheatham, the Petitioner promptly collected new Personal Reference Questionnaire forms with proper notarizations.

6. Investigator Cheatham also found that Petitioner had been among a group of officers investigated while employed with the Guilford County Fire Marshall’s Office after the Guilford County human resources department discovered he had not obtained the Chief’s actual signature, as required, on a form to attend training. It had become regular practice of officers there to attach a pre-printed form bearing the Chief’s signature and the office’s equal opportunity statement to documents when the Chief was unavailable. After the human resources’ investigation, a policy was changed to specifically prohibit this. The investigation report remained in his file, but Petitioner continued in his employment as before.

7. Investigator Cheatham testified that Petitioner’s training portfolio was “impressive,” and that his former supervisors spoke highly of him both as a fire investigator and as a person.

8. Petitioner currently is employed at Donan Engineering as a fire investigator and is licensed as a private investigator in Virginia, South Carolina, Tennessee and Georgia.

9. Petitioner was employed as a fire inspector and fire fighter in North Carolina for over 31 years and has 3000 plus hours of investigative experience. He was in a supervisory position for more than 5 years.

10. Wayne Delancey, N.C. Deputy State Fire Marshal, testified that he had known Petitioner for 17 years and that he was an excellent investigator, of “impeccable character,” and that he had no reason to question his moral character.

11. Brent Douglas, a former Deputy Sheriff presently employed by Home Depot, testified that he had known Petitioner all of his life and worked with him while a Deputy Sheriff. He described Petitioner as a “meticulous investigator” and “over the top in a good way,” with unquestioned integrity. He also knew Petitioner’s sister, and the issue regarding the false notary has not changed his opinion of them. He believes Petitioner to be of good moral character.

12. Petitioner is a youth baseball coach, active in his church and community, and one of two members on the Board of the International Association of Arson Investigators representing North Carolina.

13. All of the Petitioner’s Personal Reference Questionnaires (Pet. Ex. 1-5) indicated that he was of good moral character.

14. The Respondent gave the Petitioner due notice of his right to a hearing in the Office of Administrative Hearings by letter dated February 22, 2022, and Petitioner timely requested a hearing. (R Ex 2 & 3)

*Based on the foregoing Findings of Fact, the undersigned makes the following*

### **CONCLUSIONS OF LAW**

1. The Office of Administrative Hearings has jurisdiction of the parties and the cause. N.C. Gen. Stat. § 150B-40(e).2.

2. The Respondent the N.C. Private Protective Services Board, established pursuant to N.C. Gen. Stat. § 74C-1, *et seq.*, may "[c]onduct investigations regarding alleged violations" by its licensees of Chapter 74C or the Board's rules, and punish misconduct by suspending or revoking a perpetrator's license. N.C. Gen. Stat. § 74C-5(3) and (6). The Board's Director is empowered to summarily suspend a licensee pursuant to N.C. Gen. Stat. § 150B-3(c) if it is found "that the public health, safety, or welfare requires emergency action."

3. In this contested case, subject to Article 3A of the Administrative Procedure Act, the facts must be established, upon consideration of the record as a whole, by evidence admissible in the General Court of Justice, or if necessary, "the most reliable and substantial evidence available." N.C. Gen. Stat. §§ 8C; 150B-2(c); 150B-41(a).

4. Except as otherwise provided by statutes or by rules adopted under G.S. 150B-38(h), the rules contained in Title 26, Chapter 03 shall govern the conduct of contested case hearings under G.S. 150B-40 when an Administrative Law Judge has been assigned to preside in the contested case. 26 NCAC 03 .0101(d).

5. The preponderance of the credible evidence adduced at the hearing shows that the Petitioner did not knowingly and willfully seek to deceive the board, and that he is of good moral character.

*Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned respectfully offers the following*

### **PROPOSAL FOR DECISION**

That the Petitioner Terry Wayne Sutherland, Jr. be **GRANTED** Private Investigator license.

### **NOTICE**

The agency that will make the final decision in this contested case is the **North Carolina Private Protective Services Board**.

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this Proposal for Decision, to submit proposed Findings of Fact and to present oral and written arguments to the agency. N.C.G.S. § 150B-40(e).

A copy of the final agency decision or order shall be served upon each party personally or by certified mail addressed to the party at the latest address given by the party to the agency and a copy shall be furnished to any attorney of record. N.C.G.S. §150B-42(a).

**SO ORDERED.**

This the 3rd day of June, 2022.



J Randolph Ward  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service:

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Attorney For Petitioner

Jeffrey P Gray  
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Attorney For Respondent

This the 3rd day of June, 2022.



Daniel Chunko  
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