

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
19 DOJ 02235

Joseph Trawick Giddeons

Petitioner,

v.

NC Criminal Justice Education and
Training Standards Commission

Respondent.

**PROPOSAL
FOR
DECISION**

THIS MATTER COMES before the Undersigned following a contested case hearing in the Office of Administrative Hearings (“OAH” or “Tribunal”) on 28 August 2019 in Raleigh, North Carolina. The contested case was heard at the request of Respondent N.C. Criminal Justice Education and Training Standards Commission (“Commission”). Petitioner Joseph Trawick Giddeons commenced this contested case against Respondent following its proposed suspension of Petitioner’s law enforcement officer certification.

Given the nature this contested case, the issue before the Tribunal is whether Respondent’s proposed denial of Petitioner’s justice officer certification for failing to meet the minimum standards for certification based upon his lack of good moral character was supported by the preponderance of the evidence. For the reasons explained below, the Undersigned concludes Respondent properly denied Petitioner’s certification.

*Law Office of Robert O. Crawford III P.L.L.C. by Robert O. Crawford for
Petitioner Joseph Trawick Giddeons.*

*North Carolina Department of Justice Marie Hartwell Evitt, Assistant
Attorney General, for Respondent North Carolina Criminal Justice
Education and Training Standards Commission.*

T.S. Jacobs, Administrative Law Judge.

I. PROCEDURAL HISTORY

1. Respondent requested the designation of an Administrative Law Judge to preside at the hearing of this contested case under Article 3A, Chapter 150B of the North Carolina General Statutes. Upon receipt of Respondent's application, the Tribunal gave notice that Tenisha S. Jacobs, Administrative Law Judge, had been assigned to preside over this contested case.

2. After the parties received proper notice, this contested case came on for hearing. Both parties appeared at the hearing, where evidence was introduced, and testimony presented.

II. FINDINGS OF FACT

Based upon careful consideration of the sworn testimony of the witnesses presented at the hearing and the entire record in this proceeding, the Undersigned makes the following factual findings that are material to the resolution of the dispute presented in this contested case. *See Flanders v. Gabriel*, 110 N.C. App. 438, 440, 429 S.E.2d 611, 612 (1993), *aff'd*, 335 N.C. 234, 436 S.E.2d 588 (1993) (recognizing "the trial court need not make a finding as to every fact which arises from the evidence; rather, the court need only find those facts which are material to the resolution of the dispute.") In making the following findings, the Undersigned has

weighed all 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.

A. The Parties

1. Petitioner is an applicant for justice officer certification with the Magnolia Police Department. He was previously a certified justice officer working for the Wallace Police Department from 25 September 1998, until his resignation on 8 May 2017.

2. Respondent is the North Carolina Criminal Justice Education and Training Standards Commission; it has the authority granted under Chapter 17C of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 9A, to certify correctional officers, juvenile justice officers, criminal justice instructors, and law enforcement officers, and to revoke, suspend, or deny such certifications.

B. Respondent's Denial of Petitioner's Certification

3. On 8 and 23 May 2018, Respondent received a Report of Appointment/Application Certification, Form F-5A, both dated 8 May 2018, from the Magnolia Police Department requesting the certification of Petitioner. This

application triggered a review of Petitioner's certification file, which disclosed a prior investigation in the last 18 months of potential criminal action or misconduct by Petitioner. (Respondent's Exhibit 6, p. 2-3).

4. Petitioner resigned while he was under internal investigation by the Wallace Police Department for misconduct, which would later lead to the proposal for suspension of his certification by the Commission. (Respondent's Exhibit 2).

5. Petitioner's first job in law enforcement was with the Wallace Police Department. He started out as a patrol officer and moved up through the ranks over the years as a detective, detective sergeant, and captain. He was sworn in as chief of the Wallace Police Department on 8 May 2014.

6. Respondent's proposed denial of Petitioner's application for justice officer certification is based on the contention that Petitioner lacks the good moral character required of a justice officer, thereby failing to meet or maintain the minimum employment standards required of a justice officer.

7. The contention regarding Petitioner's lack of good moral character is that Petitioner forced Detective Lisa Horning, a female subordinate, to share a hotel room with him while attending a homicide conference in 2015, that Petitioner was sending inappropriate text messages from his town phone to Detective Lisa Horning and a female by the name of Jeri Beringer, that Petitioner wiped his town phone clean by resetting it, and was condoning an officer's sexual harassment behavior.

C. Evidence from Contested Case Hearing Related to the Basis of Respondent's Proposed Denial of Certification

i. Petitioner's Conduct with Detective Lisa Horning

8. Lisa Horning began working with the Wallace Police Department at the beginning of 2015 as a patrol officer. After approximately six months, she was assigned in investigations as a detective – her current position.

9. At the end of 2015, Horning and three other detectives were scheduled to attend a homicide conference at Carolina Beach with Petitioner, who, at the time, was the chief.

10. Horning testified that it was discussed, more than once, that due to budget issues, there were only two hotel rooms available. During his testimony, Petitioner stated that the town would only pay for two rooms for the conference and that he received approval for this expenditure from the finance director and town manager. Mathew Livingston, the then-town manager, testified that he has never complained about an extra hotel room and noted that the cost for an additional room in this case was minuscule when compared to the thousands of dollars being spent for the group to attend the conference.

11. Given the two-room allotment, Horning testified that discussions were had about room assignments. It was ultimately decided that Lieutenant Blanton and Horning would share a room and Jason Brigman and Petitioner would share a room. Horning explained the rationale for this arrangement was that Horning and Blanton were single, and Brigman and Petitioner were both married.

12. Upon arrival at the conference, the group checked in to the hotel and went to inspect the rooms. The rooms were side by side. Horning testified that “she initially walked into one room, and [Petitioner] just walked in and placed his items in the same room.”

13. Petitioner testified that he had no concerns about the optics of sharing a room with a female subordinate officer, as they were both adults and professionals. Petitioner further stated that Horning never expressed to Petitioner that she did not want to stay with him; he believed that if Horning did not want to stay in the room with him, she would not have difficulties telling him.

14. Horning testified that she did not want to share her room with Petitioner. She was puzzled by Petitioner’s actions, but said nothing. Sharing the room with her Chief of Police made her feel uncomfortable. Horning indicated that she did not know what to think, that she did not like conflict, and she did not want to make it any more uncomfortable.

15. Horning felt it could be seen as a breach of command if she questioned Petitioner’s decision. Nothing sexual happened between them and they slept in separate beds. Petitioner stayed two nights and left early. Horning ended up having the room to herself once Petitioner left; she did not express her concerns about the room arrangements with any of the other conference attendees.

16. During the course of her testimony, Horning detailed various other interactions with Petitioner. She testified that Petitioner sent her text messages on

her town issued cell phone. Petitioner sent the messages from his town issued cell phone.

17. The text messages, which were sent over a period of a year and a half, consisted of inappropriate messages from Petitioner to Horning. Examples of Petitioner's inappropriate messages included: "Answer the question fucker," "I'm fucked up," "Fucker I am the one for you," "I am wide awake and I know we are fucking!!!!," "Fuck you," "Send me a selfie," "I want to have sex with you," "You are very sexy," and "10-25 me sexy." (Respondent's Exhibit 5). Horning testified that from time to time she would receive text messages from her work colleagues talking "junk," but none of her other colleagues sent her messages like Petitioner's inappropriate text messages.

18. Petitioner denied sending inappropriate text messages to Horning. However, the evidence indicates that Petitioner sent the inappropriate text messages from his town-issued phone and did so for a significant period of time. (Respondent's Exhibit 5)

ii. Petitioner's Conduct with Jeri Beringer

19. Clarke Forest Beringer testified that while working at the Wallace Police Department he became close friends with Petitioner. Beringer stated that Petitioner was like a brother, but their relationship changed when he became aware that Petitioner was contacting his then-wife Jerri Beringer.

20. During the relevant period, Beringer was married to Jeri Beringer. Beringer testified that, after some time, he noticed that Petitioner was sending

inappropriate text messages to his wife. Beringer asked his wife not to entertain these types of messages.

21. After speaking with his wife, Beringer noticed that the texts were getting more inappropriate. He saw texts where Petitioner would request selfies of his wife. Beringer testified that he knew his wife was deleting pictures and texts from Petitioner.

22. At hearing, Beringer identified some of the inappropriate text messages Petitioner exchanged with his then-wife. Examples of Petitioner's inappropriate messages with Jeri Beringer included: "I promise I'm in love with you", "you're house is probably not good for me to be at is it", "I would be on cloud 9 with you", "I'm here for you", "Thank you, super gorgeous." (Respondent's Exhibit 8). Petitioner sent these inappropriate text messages to Jerri Beringer from his town-issued work phone. Beringer testified that some other text messages on his wife's phone had indicated that Petitioner had bought a house and was going to leave his wife. Beringer printed some of the messages and took them to the mayor. (Respondent's Exhibit 8)

23. Beringer decided to terminate his employment with the Wallace Police Department and formally resign. He delivered his resignation letter to Petitioner, the chief at the time, and told Petitioner not to contact or communicate with his wife any further.

24. Immediately after Beringer's resignation, Petitioner texted Beringer's wife saying, "Clarke just came in and resigned, handed me his stuff and [sic] that if I

ever text or called his wife again he would take the appropriate measures.”
(Respondent’s Exhibit 8)

25. Ronnie Page, a former employee with Parks and Rec for the town of Wallace, testified about an incident he observed involving Petitioner and Jerri Beringer.

26. Page testified that, during baseball season, he frequents the Art Meyer Park. While at the park with a co-worker, Jason Dixon, on one particular day, he observed Petitioner and Jeri Beringer at the park behind a building. Page described their actions as scrambling around. Page stated that this park is known as” a lover’s lane meet-up place.”

27. Petitioner alleges that he went to Art Meyer Park, in his marked police vehicle, in reference to flying drones in the park and he saw Jeri Beringer’s vehicle behind a building. Petitioner pulled up alongside her. She opened his car door and indicated to him that she was looking for one of her kids’ sports equipment. Petitioner denied any sexual activity occurred between him and Jeri Beringer.

iii. Petitioner’s Conduct in the Hiring Process for a Vacant Position in the Wallace Police Department

28. In early 2017, Petitioner needed to fill a vacant captain position within the Wallace Police Department. Petitioner, Livingston, and other individuals from the police department and the community went through the hiring process. The hiring process was two-stage: candidates apply for the position, it was then narrowed down to the best candidates, and then those candidates went through a secondary interview process.

29. Livingston was town manager for the city of Wallace when Petitioner was selected as chief of police. As town manager, Livingston was involved in hiring and firing processes. He participated in the selection of candidates for the captain position and, in particular, served on the selection committee for the position.

30. Matthew English, an applicant for the position, worked for the Duplin County Sheriff's Office and was the only external applicant. Other applicants included Brigman and Jason Dubose, who initially worked with the Wallace Police Department as a patrol officer and later as a detective.

31. English testified that he has been a sergeant with the Wallace Police Department since February 2019, and prior to that, he worked for the Duplin County Sheriff's Office. English has been a law enforcement officer since 2007; he applied for the captain position after hearing about it in the beginning of December 2016, from Henry Campbell, a retired SBI agent, who was part of the interview panel.

32. Petitioner talked to all the applicants, including English. Petitioner met with English, in person, at the Wallace Airport and they talked about the job process. Petitioner later informed him that he had a panel interview on 13 March.

33. English testified that Livingston, the town manager, was in the interview. Campbell was also on the interview panel. After the interview, English called Campbell to ask how he did in the interview, Campbell said he did well.

34. Following the interview, Petitioner called English to let him know that he had made it to the final selection process. After some time went by, English did not hear about the second interview and he called Petitioner to inquire. He told

English that he was waiting on the town manager, Livingston, to decide, but that English was still in the final process.

35. English testified that, during the hiring process, he received a call from Campbell letting him know that he was out of the running because, according to Petitioner, English had been talking about the interview panel scores and that English was “talking trash about the other applicants.” English denies making any of these comments and was upset with Petitioner. English went to confront Petitioner about those comments.

36. English and Petitioner went to speak with Livingston, who told English that one of the issues with him not being chosen to move forward within the process was the fact that he had jumped around a lot in his career and that they decided to go with someone else from within the agency. English said that he understood this.

37. Livingston also spoke with about the captain selection process with Horning, who had many concerns about the process being tainted and Brigman being selected as captain.

38. Horning testified that Brigman does not have a problem expressing his desires when it comes to women, and that she did not want to work under that type of supervision. She explained that Brigman has made inappropriate sexual comments within the department, many in front of Petitioner when he was chief. She has never heard Petitioner reprimand Brigman after making such comments.

39. Petitioner denied any knowledge of Brigman making sexual harassment comments.

iv. Petitioner's Conduct Relating to the Resetting of the Town-Issued Work Phone while on Administrative Leave

40. On 7 April 2017, the town placed Petitioner on administrative leave for the purposes of conducting an internal investigation into various allegations of personal misconduct by Petitioner, including “condoning sexual harassment, intimidation, adultery and dishonesty.” (Respondent’s Exhibit 3).

41. Once Petitioner was on administrative leave, Livingston and the mayor, Charlie Ferrior, tasked Dubose with the responsibility of retrieving Petitioner’s work phone.

42. On 10 April 2017, Dubose called Petitioner at 11:09 a.m. to let him know that he was on his way to collect Petitioner’s work phone. (Respondent’s Exhibit 5). Dubose, who was at the Wallace Police Department, testified that it took him approximately seven minutes to travel from the police department to Petitioner’s home.

43. When Dubose arrived at Petitioner’s home, Petitioner and his wife were standing outside. Dubose noticed the phone sitting on the back of Petitioner’s truck. Petitioner grabbed his telephone off the back of the truck and gave it to Dubose.

44. Dubose testified that at some point he looked at the phone and noticed a black screen. He gave the phone to the mayor and the town manager. Dubose did not reset the phone and did not see Petitioner reset the phone.

45. The Town of Wallace brought in Protus3, an investigation agency, to investigate the various allegations of personal conduct against Petitioner. (Respondent’s Exhibit 5).

46. Protus3 reported that the phone was reset at approximately 11:12 am on April 10, 2017, “three minutes after Petitioner received the call that Jason Dubose was in route to his house to pick up the iPhone.” (Respondent’s Exhibit 5).

47. Petitioner denied resetting the phone or the iPad. He stated he did not have knowledge of anyone else resetting the phone.

48. At the conclusion of the internal investigation, the town came to the decision to ask for Petitioner’s resignation. (Respondent’s Exhibit 4).

D. Other Relevant Facts

49. Petitioner presented several letters of support:

- (a) Bob Roupe, Assistant District Attorney in Onslow County, submitted a letter in support of Petitioner (Petitioner’s Exhibit 2).
- (b) Wilmon Andrews, retired Wallace police officer, submitted a letter in support of Petitioner (Petitioner’s Exhibit 3).
- (c) Tracy Chestnutt, former finance director for the town of Wallace, submitted a letter in support of Petitioner (Petitioner’s Exhibit 4).
- (d) Brian Warwick, employee of the Wallace Communications Dispatch Center, submitted a letter in support of Petitioner (Petitioner’s Exhibit 5).
- (e) Joanne Lasseter, former business owner of Wallace Auto Starter & Generator, submitted a letter in support of Petitioner (Petitioner’s Exhibit 6).
- (f) Harris Mills, owner/operator of Associated Realty of Wallace, submitted a letter in support of Petitioner. (Petitioner’s Exhibit 7).
- (g) Donald Hall, Chief of the Magnolia Police Department submitted a letter in support of Petitioner (Petitioner’s Exhibit 8).

50. Petitioner was afforded the opportunity to appear before the Probable Cause Committee with counsel and witnesses, and present evidence in defense of his application for certification and did so.

51. Petitioner timely responded to the notification that the Committee found Probable Cause to deny his application for certification and properly requested a contested case hearing.

III. CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Undersigned makes the following Conclusions of Law for purposes of this Proposal for Decision. To the extent that the Conclusions of Law are Findings of Fact, and vice versa, they should be so considered without regard to the given labels.

1. The General Assembly has conferred upon Respondent the power to revoke a justice officer's certification and enforce this power through various means, including its own rules and regulations. *See generally* N.C. Gen. Stat. § 17C-6.

2. Of particular relevance in the instant contested case is Respondent's rule set forth in subsection .0204(b)(2) of Title 12 of Chapter 9A, which authorizes Respondent to revoke, deny or suspend the certification of a justice officer when it finds that the applicant for certification lacks good moral character.

3. Every criminal justice officer employed by an agency in North Carolina is required to "be of good moral character[.]" 12 N.C. Admin. Code 9B.0101(3). A criminal justice officer may demonstrate "good moral character" by various means, including:

[N]ot engag[ing] in any conduct that brings into question the truthfulness or credibility of the officer, or involves “moral turpitude.” “Moral Turpitude” is conduct that is contrary to justice, honesty, or morality, including conduct as defined in: *In re Willis*, 299 N.C. 1, 215 S.E. 2d 771 appeal dismissed 423 U.S. 976 (1975); *In re State v. Harris*, 216 N.C. 746, 6 S.E. 2d 854 (1940); *In re Legg*, 325 N.C. 658, 386 S.E. 2d 174(1989); *In re Applicants for License*, 143 N.C. 1, 55 S.E. 635 (1906); *In re Dillingham*, 188 N.C. 162, 124 S.E. 130 (1924); *State v. Benbow*, 309 N.C. 538, 308 S.E. 2d 647 (1983); and later court decisions that cite these cases as authority.

12 N.C. Admin. Code 9B.0101(3)(h).

4. Ensuring the good moral character of criminal justice officers is imperative as it speaks directly to the competence and reliability of the persons assuming and discharging the responsibilities that come with these positions. *See, e.g.*, N.C. Gen. Stat. § 17C-10 (requiring Respondent to fix qualification for employment of criminal justice officers, including “good moral character” and “such other matters as relate to the competence and reliability of persons to assume and discharge the responsibilities of criminal justice officers[.]”) The General Assembly, in enacting Chapter 17C, recognized that “the administration of criminal justice is of statewide concern, and . . . proper administration is important to the health, safety, and welfare of the people of the State [.]” N.C. Gen. Stat. § 17C-1. Thus, the primary obligation and responsibility of Respondent is to ensure the professionalism and integrity of criminal justice officers. *Mullins v. N. Carolina Criminal Justice Educ. & Training Standards Comm’n*, 125 N.C. App. 339, 346, 481 S.E.2d 297, 301 (1997).

5. Here, Respondent found that probable cause existed to suspend Petitioner's certification for an indefinite period of time "for failure to meet or maintain the minimum employment standard that every criminal justice officer shall be of good moral character pursuant to [12 NCAC 09A.0204(b)(2) and 12 NCAC 09B.0101(3)]." (Respondent's Ex. 6)

6. The preponderance of the evidence indicates that Petitioner lacked the good moral character required of every criminal justice officer when he:

- (a) abused his position of power toward a female subordinate, Detective Lisa Horning;
- (b) misused town property by sending: (i) explicit text messages from his town phone to Detective Horning a year and a half and (ii) inappropriate text messages from his town phone to Jeri Beringer, and continued to do so after her husband asked him to stop texting and communicating with his wife; and
- (c) wiped his town phone clean by resetting it while on administrative leave during an internal investigation regarding allegations relating to his personal conduct.

Petitioner's behaviors, when considered in the aggregate, fail to show the trustworthiness and morality that are fundamental attributes of the good moral character required to serve as a criminal justice officer in this State. To permit such behaviors could seriously undermine public confidence in the character of their criminal justice officers, who are responsible for administering criminal justice throughout the State. Indeed, criminal justice officers are so vital that the General Assembly has deemed it to be "in the public interest"¹ to ensure those persons serving in such a capacity are fully able to do so, which includes making sure they have good

¹ N.C. Gen. Stat. § 17C-1.

moral character. Respondent therefore committed no error by concluding that Petitioner failed to demonstrate that he is of such good moral character as to be entitled to criminal justice officer certification.

7. The Undersigned reaches this conclusion notwithstanding the testimony of Petitioner. Petitioner's version of events lacked credibility and substantial evidence exists to find that Petitioner lacks the good moral character required of every criminal justice officer.

8. In conclusion, the preponderance of the evidence shows that Petitioner lacks the good moral character required to be certified as a justice officer in North Carolina and Petitioner did not offer substantial evidence that he currently possesses the good moral character required of a justice officer.

9. Respondent is authorized to indefinitely deny certification to an applicant when it finds that applicant lacks the good moral character required of a justice officer and that deficiency or impairment continues to exist. 12 N.C. Admin. Code 09A.0204(b)(2) and 12 N.C. Admin. Code 09A .0205(c). Accordingly, the Undersigned finds that Respondent's proposed suspension of Petitioner's certification for an indefinite period of time should be upheld.

IV. PROPOSAL FOR DECISION

10. Based on the foregoing Findings of Fact and Conclusions of Law, it is proposed that Respondent **INDEFINITELY DENY** Petitioner's justice officer certification because he lacks the good moral character required of a justice officer.

NOTICE

The **North Carolina Criminal Justice Education and Training Standards Commission** will make the Final Decision in this contested case. As the Final Decision maker, that agency is required to give each party an opportunity to file exceptions to this proposal for decision, to submit proposed findings of fact, and to present oral and written arguments to the agency pursuant to N.C. Gen. Stat. § 150B-40(e).

The undersigned hereby orders that agency to serve a copy of its Final Decision in this case on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6700.

This the 21st day of February, 2020.



Tenisha S Jacobs
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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This the 21st day of February, 2020.



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