

NO. COA22-256 THIRTEENTH JUDICIAL DISTRICT

BEFORE THE NORTH CAROLINA COURT OF APPEALS

MAURICE DEVALLE)	
)	
Petitioner/Appellee)	
v.)	<u>From Columbus County</u>
)	No. 20CVS1273
N.C. SHERIFF'S EDUCATION)	
AND TRAINING STANDARDS)	
COMMISSION)	
)	
Respondent/Appellant)		

APPELLEE DEVALLE'S RESPONSE BRIEF

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N.C. SHERIFF'S EDUCATION
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COMMISSION

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I. ISSUES PRESENTED

1. WHETHER THE APPELLANT COMMISSION CAN ESTABLISH THAT THE SUPERIOR COURT ERRED AS A MATTER OF LAW IN GRANTING DEVALLE'S PETITION FOR JUDICIAL REVIEW WHERE THE COMMISSION'S DECISION DENYING DEVALLE'S LAW ENFORCEMENT CERTIFICATION WAS PREDICATED UPON MULTIPLE ERRORS OF LAW?
2. WHETHER APPELLANT CAN ESTABLISH THAT THE SUPERIOR COURT ERRED IN DECLINING TO DISMISS THE PETITION WHERE THE PETITION PLED AN EXCEPTION, FACTS, LEGAL THEORY, ARGUMENTS AND RELIEF SOUGHT?
3. WHETHER THE APPELLANT COMMISSION CAN ESTABLISH THAT THE SUPERIOR COURT ERRED IN FINDING THAT APPELLEE DEVALLE ESTABLISHED THAT HE WAS REHABILITATED FROM ANY GOOD MORAL CHARACTER DEFICIENCY FROM AN INCIDENT FIVE YEARS EARLIER IN 2016 AND THAT HIS *PRESENT* CHARACTER IS GOOD?

4. WHETHER THE SUPERIOR COURT ERRED AS A MATTER OF LAW IN INTERPRETING AND APPLYING TWO REGULATIONS IN ISSUE, INCLUDING THE GOOD MORAL CHARACTER RULE (13 NCAC 10B.0301(a)(8) AND THE RULE REQUIRING THAT AN AGENCY MUST INVESTIGATE THE ACTUAL CHARGE (12 NCAC 10B.0201)?
5. WHETHER THE SUPERIOR COURT ERRED IN FINDING THAT THE APPELLANT COMMISSION FAILED TO CONDUCT A REQUIRED INVESTIGATION OF THE ALLEGED CHARGE AND THEREFORE VIOLATED (12 NCAC 10B.0201)?

II. STATEMENT OF CASE

This administrative law occupational licensing case arose from the denial of Petitioner Maurice Devalle's application for certification by the N.C. Sheriffs' Education and Training Standards Commission (hereafter the "Commission") as a Columbus County Deputy Sheriff. (R.p. 75) The Commission denied Devalle's application for certification indefinitely based upon its determination that Devalle lacks good moral character to serve as a Deputy Sheriff. (R.p 20; 75) This case addresses an enormously important component of law enforcement occupational licensing law: the unusually ambiguous good moral character rule.

This appeal arises from the Superior Court decision granting Devalle's Petition for Judicial Review pursuant to N.C.G.S. §§ 150B-43,

51. (R.pp. 76-87) A Superior Court has jurisdiction to address a Petition for Judicial Review to reverse a police certification decision pursuant to N.C.G.S. § 150B-51. See *Scroggs v. N.C. Criminal Justice Education and Training Standards Commission*, 101 N.C. App. 699, 400 S.E.2d 742 (1991) (affirming Superior Court granting Petition under G.S. § 150B-51 where the Commission decision was arbitrary for not recognizing recent exemplary service by the officer).

The practical issue to be decided is whether Devalle was correctly adjudged by Sheriff Greene, Administrative Law Judge Lassiter and Superior Court Judge Bell to *presently* be of good moral character.

A. Procedural History & Background

Maurice Devalle previously served on the N.C. Highway Patrol and was certified as an officer by the N.C. Criminal Justice Education and Training Standards Commission. Devalle was later hired by Columbus County Sheriff Lewis Hatcher, and subsequently rehired by Columbus County Sheriff Jody Greene. (R.p. 80) Therefore, Devalle applied for certification as a Deputy Sheriff. The Commission denied Devalle's application for certification, which triggered this case.

This case was heard below in the following order: Administrative Law Judge Lassiter heard the case and ruled that Devalle was presently a person of good moral character. (R.p. 44) Judge Lassiter found that:

“The credible and persuasive testimonies by Sheriff Greene and Principal Johnson demonstrated that Petitioner has restored his character so that he now possesses the good moral character required to continue certification as a deputy sheriff.” (R.p. 44; Para. 27).

The case was then heard by the Commission and it overruled Judge Lassiter, concluding that Devalle does not possess good moral character, therefore indefinitely denying his certification. (R.pp. 20-21)

Devalle appealed to Superior Court and the Honorable James Gregory Bell issued a comprehensive 13-page decision, finding and concluding that Devalle is *rehabilitated and is presently a person of good moral character*. (R.pp. 83, 86)

Judge Bell adopted all of the Commission’s 81 findings of fact (R.p. 80) and then made 17 additional Findings of Fact (Paragraphs 26-43) and 14 conclusions of law. (R.pp.83-86) Appellant Commission has appealed to this Court.

B. Judge Lassiter's Hearing of the Case and Key Findings

The administrative law hearing was held on December 3 and 4, 2019 before the Honorable Melissa Lassiter. On 3 June 2020, Judge Lassiter issued a 19-page Proposal for Decision, including a detailed review and analysis of the evidence and issues of law. (R.pp. 28-46) Judge Lassiter made 70 Findings of Fact and 28 Conclusions of Law.

Judge Lassiter found:

27. The credible and persuasive testimonies by Sheriff Greene and Principal Johnson demonstrated that Petitioner has restored his character so that he now possesses the good moral character required to continue certification as a deputy sheriff.

Judge Lassiter concluded at Conclusion of Law 24:

Sheriff Greene and Principal Johnson established that Petitioner has rehabilitated and rebuilt his character, since being fired by the Patrol, and as a deputy sheriff, and as school resource officer and coach at East Columbus High School. For two and a half years, Petitioner's service as a deputy sheriff has been nothing but exemplary both of that service and of Petitioner's character while engaging in that service. Both Sheriff Greene and Principal Johnson, who have supervised and worked with Petitioner since 2017, opined not only was Petitioner of good moral character, but that his absence would actually be harmful to the students of East Columbus High School and to the Sheriff's force, and would make the school less safe. Such testimony was credible, honest, and believable. Even given Petitioner's cross-examination testimony at hearing, the totality of the evidence rebutted the finding by the Probable Cause

Committee that Petitioner lacks the good moral character required of a justice officer and showed that Petitioner has rehabilitated his character since 2017. (R.p. 43)

Judge Lassiter included a section in her decision denominated "Respondent's Investigation." (R.p. 31-33). The evidence and Judge Lassiter's findings reveal that there was *no* independent investigation conducted by the Commission. *Id.* An employee of the Commission obtained and reviewed the Highway Patrol's internal affairs file. She then wrote her report by "essentially writing what someone else said in the Patrol's IA report." (R.p. 32; Judge Lassiter's Finding 16, quoting testimony, T. 57) The employee admitted that no one was interviewed in the Commission investigation. (R.p. 32, referring T. 56-58.)

C. The Commission Decision Under Judicial Review and Key Findings

The Sheriffs' Commission issued a Final Agency Decision on 6 October 2020. (R. pp. 5-22) The Commission found a violation of the offense of failing to discharge duties of office and imposed a 5-year denial of certification but suspended that sanction for five years on the condition that Petitioner not violate any law (other than infractions) of this state or any federal law or any rules of the Sheriffs' Commission. However, as to the charge of an alleged lack of good moral character, the Commission

found a violation and ordered that Devalle's certification be denied indefinitely. (R.p. 20) However, the Commission also found:

81. During his case in chief, Petitioner presented significant evidence demonstrating that Petitioner has rehabilitated and rebuilt his career since 2016 and 2017 while working as a school resource officer at East Columbus High School. Such evidence showed that Petitioner has exhibited highly favorable traits, including but not limited to helping, teaching, and serving as positive role models for students at East Columbus High School not only as a school resource officer, but as a coach in two sports. Sheriff Greene and Principal Johnson opined that Petitioner's absence from their respective entities would have a negative impact on their workplaces. The scope and magnitude of Petitioner's character traits, as witnessed by Sheriff Greene and Principal Johnson, qualify as extenuating circumstances which the Respondent should consider in determining whether Petitioner possesses the good moral character required of a justice officer.

Commission Finding 81 (R.p. 18) effectively found that Petitioner has rehabilitated and rebuilt his law enforcement career.

In Commission Conclusion of Law 24, (R.p. 19) the Commission concluded:

Sheriff Greene and Principal Johnson testified that Petitioner has rehabilitated and rebuilt his character since being fired by the Patrol, and as a deputy sheriff, and as school resource officer and coach at East Columbus High School. Greene and Johnson testified that for two and a half years, Petitioner's service as a Deputy Sheriff has been nothing but exemplary both of that service and of Petitioner's character while

engaging in that service. Such testimony was credible, honest, and believable.

The Commission decision also included a section in its decision denominated as "Respondent's Investigation." (R.p.7-9.) There is no discernible difference between the Commission's findings of fact regarding its own investigation and Judge Lassiter's findings. See R pp 31-33, ¶¶ 10-27; R pp 7-9, ¶¶ 10-27. Both decisions found as a fact that the Respondent agency never conducted an independent investigation and merely used the N.C. Highway Patrol's internal affairs investigation, interviewing no witnesses with knowledge of Devalle's character either before or after 2016.

D. The Superior Court Judicial Review

Devalle's Petition for Judicial Review was heard on 29 October 2021, in the Columbus County Superior Court with the Honorable James Gregory Bell presiding. The Commission obtained a transcript of the arguments before Judge Bell, which is in the record.

The Commission filed a Motion to Dismiss and Response to the Petition, which was twenty-seven-pages long, including 26 pages of very substantial argument addressing the good moral character issues before the Court. (R.p. 47-94)

The Commission devoted only *one paragraph in less than one page* to its motion to dismiss. (R.p. 56) The Commission argued that Devalle's Petition (R.pp. 25-27) was not sufficiently specific and detailed. See Respondent's Motion at 10 (R.p. 56). Judge Bell found that the Petition for Judicial Review was adequate and not subject to dismissal. (R.pp.76-78)

III. STATEMENT OF FACTS

The facts of this case are accurately stated and summarized in the Findings of Facts by Judge Bell, who incorporated all 81 Findings of Fact by the Commission. (R.pp 80-83)

Devalle was hired as a Columbus County Deputy Sheriff by the Columbus County Sheriff in 2017. (R.p. 80) Devalle had previously been certified as a police officer under the other Commission, the N.C. Criminal Justice Education and Training Standards Commission when he was employed by the N.C. State Highway Patrol. When he became a Deputy Sheriff, he had to apply for certification by the Sheriffs' Commission.

Devalle had served with the Highway Patrol for 19 years (1998-2017) and had earned the rank of Sergeant. In all those years up until

termination, he only had one warning. (R.p. 80) However, Devalle was dismissed from the Patrol based on an investigation that concluded that during the year 2016, Devalle had violated Patrol rules implicating his character and integrity. (R.pp. 10-13).

Columbus County Sheriff Steadman Jody Greene was aware that Devalle had been dismissed from the Highway Patrol and hired Devalle in or around August 2017 as a School Resource Officer ("SRO"). (R.p. 6; 14). Sheriff Greene testified that "Everybody in the east end of the County recommended him [Devalle].¹ The principal, school board members, the parents, the students." Sheriff Greene testified that Devalle has good moral character to serve as an SRO. A school board member, Randy Coleman, called the Sheriff and was "constantly bragging on what he's [Devalle has] done" Sheriff Greene testified that Devalle has performed "above and beyond"; and that Devalle is "important" to his agency. (R.p. 81; see also R.p. 14) Given the importance of the school resource officer position, Greene must place someone in that position upon which he has a special trust and

¹ The testimony referenced is the evidentiary hearing before Judge Lassiter; The transcript references as "T" are references to that hearing.

confidence. Sheriff Greene has that special trust and confidence in Devalle. (T. pp. 32-33) (R.p. 81) If Devalle was unable to serve as a deputy sheriff, it would negatively impact Sheriff Greene's agency. Based on Devalle's service as a Deputy Sheriff, Sheriff Greene has no hesitation as to Petitioner's truthfulness. (T. p. 38) (R.p. 81)

Jeremiah Johnson is the principal at East Columbus High School where Devalle was assigned as the school resource officer and also served as an assistant football coach and track coach. (R.p. 14). Johnson has had the opportunity to watch Devalle perform those duties "every day" that school is in session. (T. p. 233) Principal Johnson testified that Devalle was dedicated to the school and the students. "He's almost my right-hand man." He testified that Devalle is "awesome." He is "great." In 13 years as a principal working with SROs, Devalle is "the best so far." He has a "bond with the kids." Principal Johnson testified that he has "trust and confidence in his judgment."

Principal Johnson explained that Devalle has helped to support students with limited resources: "He's bought shoes for kids. He has given them their lunch. He has given them their food." (R.p. 81; see also R.p. 14). When questioned specifically about Devalle's moral character,

Principal Johnson testified that he had “no doubt” that Devalle had the character to serve as a school resource officer and stated that he would not have allowed Devalle to serve in that capacity nor in the capacity of an athletic coach if he had any concerns about Devalle’s moral character. (R.p. 14).

There is no evidence in the record to refute the testimony of Sheriff Greene or Principal Johnson that, at the time of his application, Devalle possessed the good moral character to be a certified sheriff’s deputy. Judge Bell concluded that the testimony of Sheriff Greene and Principal Johnson demonstrated that Devalle has very good moral character. (R.p. 80) Judge Bell noted that Devalle was commended for his professionalism by Superior Court Judge Doug Sasser; and that Mr. Johnson opined that if Devalle was no longer able to serve East Columbus as a school resource officer, the lack of Devalle’s presence would make the school less safe. T. pp 236; 247. (R.pp. 81; 82) Judge Bell also concluded that “The credible and persuasive testimonies by Sheriff Greene and Principal Johnson demonstrated that Petitioner has restored his character so that he now possesses the good moral character required to continue to be certified as a deputy sheriff.” (R.p. 81)

The Commission's Final Agency Decision contains extensive findings of fact admitting that its investigation of Devalle was based solely on a review and repetition of the Highway Patrol's investigation of activities in 2016. (R.pp. 7-8, Findings of Fact #12-21). The Commission did not investigate Devalle's good moral character at the time of his application for certification. (R.p. 81) Judge Bell's decision notes that the record evidence showed that no one from the Commission ever contacted Johnson regarding Devalle's performance of his duties as a school resource officer, his character, or anything else. (T. p. 238) (R.p. 82) Judge Bell also cites the record evidence indicating that, while four witnesses from the Patrol testified regarding Devalle's dismissal from the Patrol, none of those witnesses possessed any first-hand knowledge regarding Devalle's conduct in terms of truthfulness or conformance with policies while employed as a Deputy Sheriff in Columbus County. (T. pp. 168-169) None of those witnesses opined that Devalle lacked good moral character, either generally, or to serve as a deputy sheriff in this State. (R.p. 83) *The Commission did not present any evidence concerning any activities involving Devalle that took place more recently than 2016.* (T. p. 57) (R.p. 83)

Judge Bell found that Sheriff Greene and Principal Johnson established that Devalle has rehabilitated and rebuilt his character as a deputy sheriff, and as school resource officer and coach at East Columbus High School. Judge Bell found that for two and a half years, Devalle's service as a deputy sheriff has been nothing but exemplary both of that service and of Devalle's character while engaging in that service. (R.p. 83) Number 81 of the *Commission's* findings found virtually the same: "Petitioner presented significant evidence demonstrating that Petitioner has rehabilitated and rebuilt his career since 2016..." (R.p. 15)

IV. STANDARD OF REVIEW

The Superior Court correctly identified and applied the standard of review from N.C.G.S. 150B-51 and decisional law. (R.p. 75) The issues of law are subject to *de novo* review. *N.C. Dep't of Env't & Natural Res. v. Carroll*, 358 N.C. 649, 659, 599 S.E.2d 888 (2004). Fact-finding is subject to whole record review. *Id.* "Chapter 150B, the Administrative Procedure Act, specifically governs the scope and standard of this Court's review of an administrative agency's final decision." *Harris v. N.C. Dep't of Pub. Safety*, 252 N.C. App. 94, 98, 798 S.E.2d 127, 132, *aff'd*, 370 N.C. 386, 808

S.E.2d 142 (2017). *In Russell v. N.C. Dep't of Public Safety*, 872 S.E.2d 821, 826 (2021), this Court explained:

“[Q]uestions of law receive *de novo* review, whereas fact-intensive issues such as sufficiency of the evidence to support an agency's decision are reviewed under the whole-record test.” *Id.*

“The ‘whole record’ test requires the reviewing court to examine all competent evidence (the ‘whole record’) in order to determine whether the agency decision is supported by ‘substantial evidence.’ ”

Under the whole record test, the reviewing court “must examine all the record evidence—that which detracts from the agency's findings and conclusions as well as that which tends to support them—to determine whether there is substantial evidence to justify the agency's decision.” *Carroll*, 358 N.C. at 659. “Substantial evidence” means “[r]elevant evidence a reasonable mind might accept as adequate to support a conclusion.” N.C. Gen. Stat. § 150B-2(8c) (2021).

Judge Bell also adopted all of the Commission’s Findings of Fact. (R.p. 80). Judge Bell necessarily had to make some additional findings because the Commission had failed to make findings necessary to apply the law correctly and make proper conclusions on *present* good moral character and rehabilitation.

Judge Bell adopted the Commission's Conclusions of Law, 1 through 24. (R.p. 83) Judge Bell reversed the Commission based on the errors of law. Judge Bell set out an issue of whether the Commission final agency decision was affected by errors of law including whether the Commission erred in its interpretation and application of its good moral character rule. (R.p. 76). Judge Bell's conclusions of law made clear his application of *de novo* review on issues of law. (R.p. 84) "Issues of statutory construction re questions of law, reviewed *de novo* on appeal." *McKoy v. McKoy*, 202 N.C. App. 509, 511, 689 S.E.2d 590, 592 (2010). Judge Bell's conclusions of law made clear his application of *de novo* on issues of law. (R.p.84)

V. SUMMARY OF ARGUMENT

The Superior Court correctly applied good moral character law, appropriately reversed the Commission's erroneous conclusions, and properly granted Devalle's Petition for Judicial Review. The Commission erred by failing to decide this case based on the *present* moral character of Devalle, recognize the rehabilitation found, and by failing to conduct an investigation, as required. The Supreme Court instructs that moral character assessment in occupational licensing cases must be at the

“*present*” time of the application. *Schware v. Board of Bar Examiners*, 353 U.S. 232, 246 (1957) (pertinent time for the assessment of moral character is “his *present* good moral character.” (Emphasis added))

The Commission erroneously sought to establish a lack of good moral character by relying upon a very dated matter, the personnel dispute with the Highway Patrol from 2016 and acted erroneously regarding that without investigating or considering Devalle’s *present* good moral character as required by 12 NCAC 10B.020 and decisional law.

Judge Bell applied the law articulated by the Sheriffs’ Commission, the North Carolina Supreme Court and the United States Supreme Court, and concluded like the Court in *Schware*, that Devalle is *presently* a person of good moral character. The Commission erred as a matter of law by failing to apply the *Schware* standard of *present* moral character.

The Commission also erred as a matter of law by failing to apply the *rehabilitation* principle from good moral character law. The rehabilitation evidence from Sheriff Greene and Principal Johnson, who are admittedly credible witnesses, was ignored in the application of good moral character law. In the trial before Judge Lassiter addressing good

moral character, the Commission failed to call a single witness opining that Devalle has a lack of good moral character but rather attempted to bootstrap an occupational licensing case from a personnel case from over five years earlier without even considering the rehabilitation principle or investigating Devalle's *present* character as required by law.

The Commission misinterpreted the good moral character rule inconsistent with North Carolina law – and inconsistent with the Commission's own interpretation of good moral character in *Jeff Royall v. N.C. Sheriffs Education and Training Standards Commission* and its findings in this case. (R.p. 14- 15; *Royall* final agency decision in Appendix) The *rehabilitation* principle is a core principle in the body of good moral character law, which the Commission erroneously failed to apply. (R.p.85). Here, both highly experienced judges, and Sheriff Greene, found that Devalle presently has good moral character.

VI. ARGUMENT

A. THE SUPERIOR COURT CORRECTLY DENIED THE MOTION TO DISMISS THE PETITION AS THE PETITION WAS FULLY SUFFICIENT, WAS FULLY RESPONDED TO, AND THE COMMISSION HAS NOT ESTABLISHED ANY LEGAL ERROR IN THE CONSIDERATION OF THE PETITION

By a one paragraph argument below (R.p. 56), the Commission raised a hyper-technical issue suggesting that the Petition for Judicial Review was insufficient for judicial review. *Id.* The Superior Court Judge correctly applied the standard articulated in N.C. Gen. Stat. § 150B-46. The statute provides, in pertinent part, that “[t]he Petition shall explicitly state what exceptions are taken *to the decision or procedure* and what relief the petitioner seeks” *Emphasis supplied.* A petition is sufficiently explicit if the reviewing court can determine from the face of the petition what exceptions the petitioner takes to the final agency decision. To be sure, where a petitioner believes that the facts found by the agency are not based upon substantial evidence on the record, the petitioner must explicitly identify those facts it believes are unsupported.

In this case, where the Commission accepted nearly all of the findings of fact made by the Administrative Law Judge who concluded, *based on those same facts*, that Devalle did have good moral character. In

this case, the Devalle identified the central errors of law to which it takes exception: that the Commission failed to assess Petitioner-Appellee's moral character based on evidence after 2016 and failed to consider restoration of character. (R.p. 26).

This petition for judicial review is completely consistent with the standards explicitly expressed in the statute, a standard which has been affirmed by this Court in *Kindsgrab v. State Bd. of Barber Examiners*, 236 N.C. App. 564, 570, 763 S.E.2d 913, 917 (2014). In *Kindsgrab*, the Court held that "[a]lthough petitioner did not except to specific findings or conclusions by the Board, petitioner clearly stated exceptions to the Board's decision." *Id.* The Court then cited the language in the Petition which told the Court what specific issues from the final agency decision the Court should review. Here, as in *Kindsgrab*, the Superior Court correctly concluded that the petition was sufficiently explicit where it "specifically addressed the Commission's good moral character rule including by specific citation to the rule (12 NCAC 10B.0301(a)(8)." (R.p. 77). The Petition further provided summaries of the evidence supporting Devalle's position and that evidence was also referenced in the Commission's Findings of Fact. (R.pp. 25-27)

The Commission cites to the much older decisions in *Gray v. Orange County*, 119 N.C. App. 62, 457 S.E.2d 892 (1995) and *Vann v. N.C. State Bar*, 79 N.C. App. 173, 173-74, 339 S.E.2d 97, 98 (1986). *Kindsgrab* distinguished those cases on the same grounds that apply here. The petitioners in *Gray* and *Vann* did not cite *any* exceptions to the agency decision, and in *Gray*, the petitioner also sought review of a proposed decision. For instance, in *Gray*, the Court stated:

the petition lacked *even a single exception* to particular findings of fact or conclusions of law. Instead, it baldly asserted only that the Department's decision was "contrary to the Recommended Decision of the Administrative Law Judge and the State Personnel Commission."

Gray, 119 N.C. App. at 72, 457 S.E.2d at 899. *Emphasis supplied*.

Likewise, the *Vann* Court concluded:

In his petition, Vann *did not except to any* finding of fact or conclusion of law, but made only generalized complaints as to certain procedural aspects of the hearing

Vann, 79 N.C. App. at 174, 339 S.E.2d at 98. (*Emphasis supplied*) Cf. *Kindsgrab*, 236 N.C. App. at 570, 763 S.E.2d at 917.

The Commission complains that a lack of detail in the petition was insufficient to provide it with notice regarding the exceptions taken to the decision. App. Br. pp 16-18. First, the Commission's position is

clearly attenuated by its twenty-six pages of detailed argument in response to the petition. (R.pp.47-74). The Commission argued the case at great length based on the notice afforded by the Petition. Superior Court Judge Bell agreed, concluding that Appellant's lengthy argument directed precisely at the exception stated in the petition meant that "Respondent was in no way blind-sided by a lack of notice or detail." (R.p. 77, ¶¶ 14, 15, 16)

Judge Bell also noted that the Commission "was aware of Devalle's exception, claims and even the legal theory underlying Devalle's petition." (R.p. 77) Judge Bell found that "[t]he Petition afforded clear notice of the purpose and nature of the of the Petition and key underlying facts and made sufficient and appropriate reference to other documents to afford Respondent detailed notice of the Petition." (R.p. 77) Judge Bell found that the Petition "was a full and clear expression of Devalle's position seeking judicial review under Chapter 150B." (R.p. 77)

Second, the petition vastly exceeds traditional *notice pleading* standards under North Carolina law. *New Hanover Board v. Stein*, 380 N.C. 94, 106, 868 S.E.2d 5, 14 (2022). ("when the allegations in the complaint give sufficient notice of the wrong complained of[,] an incorrect

choice of legal theory should not result in dismissal of the claim if the allegations are sufficient to state a claim under *some* legal theory.") *Internal Citations Omitted*. See also *Wray v. City of Greensboro*, 370 N.C. 41, 46, 802 S.E.2d 894, 898 (2017) ("The system of notice pleading affords a sufficiently liberal construction of complaints so that few fail to survive a motion to dismiss," quoting *Ladd v. Estate of Kellenberger*, 314 N.C. 477, 481, 334 S.E.2d 751, 755 (1985).

Finally, North Carolina is not a jurisdiction which supports *form over substance* as the Commission asks this Court to do by suggesting that every petitioner must explicitly state which sub-paragraph of N.C. Gen. Stat. § 150B-51(b) the Court is asked to use as a review standard. The statute, of course, does not explicitly require what the Commission asserts. Nor did the Court in *Kindsgrab* find that the petitioner was required to cite to the Administrative Procedure Act in order to communicate what exceptions were being pled to the decision below. Such a requirement would also be antithetical to North Carolina's long-favored the principle that courts shall not elevate *form over substance*.

In *Pepper v. Litton*, 308 U.S. 295, 305 (1903), the Supreme Court explained:

“[S]ubstance will not give way to form, that technical considerations will not prevent substantial justice from being done.”

This is because “[t]he substance over form doctrine permits a court to determine a transaction's characterization according to its ‘underlying substance of the transaction rather than its legal form.’” *Estate of Streightoff v. Comm'r*, 954 F.3d 713, 719 (5th Cir. 2020). Many other cases are in accord. See, e.g. *Int’l Broth. of Elec. Workers v. Coral Elec. Corp.*, 576 F. Supp. 1128, 1134 (S.D. Fla. 1983) (“a court should not elevate form over substance in reviewing the pleadings of a case.”) Cf. *Barratt v. Viacom*, 2009 WL 185979 (W.D. Pa. 2009). The Commission’s position amounts to an argument asking this Court to elevate form over substance, which should be rejected.

Under the authority of *Kindsgrab* and other cases cited herein, the petition met the statutory requirements, was consistent with our notice pleading standard, and therefore Judge Bell’s decision rejecting the motion to dismiss should be affirmed because Judge Bell did not err as a matter of law.

B. THE SUPERIOR COURT CORRECTLY INTERPRETED THE GOOD MORAL CHARACTER RULE; THE COMMISSION HAS FAILED TO DEMONSTRATE ANY LEGAL ERROR BY THE SUPERIOR COURT; AND THE COMMISSION'S FINAL AGENCY DECISION IS LEGALLY ERONEOUS WITH ERRORS OF LAW, ARBITRARINESS AND BASED ON UNLAWFUL PROCEDURE

The Commission's errors of law appear in its interpretation of the good moral character rule and the rule requiring that the Commission conduct an investigation. There are two regulations at issue in this case, the Commission's good moral character rule (12 NCAC 10B.0301(a)(9) and the rule requiring an agency investigation of the actual charge (12 NCAC 10B.0201). (R.p. 75) Because the Commission failed to follow its own regulations, its final decision is erroneous, as a matter of law. Both of these regulations were addressed by Judge Lassiter, the Commission and Judge Bell. Thus, they are preserved as errors of law.

Judge Bell reversed the Commission's Conclusions of Law 25 and 28, as those are inconsistent with the applicable law of good moral character and the evidence found in Finding of Fact 81 and otherwise. (R.p. 15) This appears to be the crux of this case.

In *Knox v. N.C. Sheriff's Education and Training Standards Commission*, 11 DOJ 04831, 2014 WL 10794970 (November 19, 2014),

Administrative Law Judge May provided a detailed explanation of the law of good moral character as applied to deputy sheriffs. Judge May explained in pertinent part:

4. Moral character is a vague and broad concept. E.g. *Jeffrey Royall v. N.C. Sheriffs' Education and Training Standards Commission*, 09 DOJ 5859; *Jonathan Mims v. North Carolina Sheriff's Education and Training Standards Commission*, 02 DOJ 1263, 2003 WL 22146102 at page 11-12 (Gray, ALJ) and cases cited therein. See *Mims* at page 11.

5. The United States Supreme Court has described the term "good moral character" as being "unusually ambiguous." In *Konigsberg v. State*, 353 U.S. 252, 262-63 (1957), the Court explained: The term good moral character ... is by itself ... *unusually ambiguous*. It can be defined in an almost unlimited number of ways for any definition will necessarily reflect the attitudes, experiences, and prejudices of the definer. Such a vague qualification, which is easily adapted to fit personal views and predilections, *can be a dangerous instrument* for arbitrary and discriminatory denial ... (emphasis added).

6. Police administrators, officers and others have considerable differences of opinion as to what constitutes good moral character. *Royall* at page 13; *Mims, supra.* at page 12...

7. While having good moral character is an ideal objective for everyone to enjoy, the lack of consistent and clear meaning of that term within the Respondent's rule, and the lack of clear enforcement standards or criteria for application of the rule, renders enforcement actions problematic and difficult. *Royall, supra* at page 14; *Mims, supra.* at page 12, Conclusion of Law 4.

8. Because of these concerns about the flexibility and vagueness of the good moral character rule, any suspension or revocation of an officer's law enforcement certification based on an allegation of a lack of good moral character should be reserved for clear and severe cases of misconduct. *Royall, supra* at 14, *Mims, supra.* at page 12 and 13.

Knox is widely followed including its reliance on *Royall*. *E.g.*, *Campbell v. N.C. Criminal Justice Education and Training Standards Commission*, 2022 WL 290410 (Byrne, ALJ)

1. The Good Moral Character Rule Should Only Be Used As Grounds For Denial, Suspension or Revocation In The Most Severe Cases

12 NCAC 10B.0301(a)(9) requires a justice officer to be of good moral character as defined in: *In re Willis*, 288 N.C. 1, 215 S.E.2d 771 (1975), appeal dismissed 423 U.S. 976 (1975); *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”

The text of the Commission's rule does not provide a definition, criteria or defined elements. The United States Supreme Court has described the term “good moral character” as being “unusually ambiguous:”

The term “good moral character” . . . by itself, is unusually ambiguous. It can be defined in an almost unlimited number of ways for any definition will necessarily reflect the attitudes, experiences, and prejudices of the definer. Such a vague qualification, which is easily adapted to fit personal views and

predilections, *can be a dangerous instrument for arbitrary and discriminatory denial*

Konigsberg v. State, 353 U.S. 252, 262-63 (1957). *Emphasis supplied.*

The good moral character rule is a slippery slope of ill-defined loose verbiage without definitive standards or criteria.² The good moral character requirement has eluded useful definition and has been described as possessing “shadowy rather than precise bounds.” *Schware v. Board of Bar Examiners*, 353 U.S. 232, 249 (1957) (Frankfurter, J., concurring).

The passage below is the well-articulated statement of the law of good moral character stated by the Appellant Sheriffs’ Commission in a leading prior case:

“Police administrators, officers and others have considerable differences of opinion as to what constitutes good moral character [omitting citations] ...The term good moral character ...is by itself ... is unusually ambiguous.... [quoting *Konigsberg*]

² “There are serious problems with the character requirement as it is currently being administered by states today. The problems with administering the character requirement involve timing issues, the lack of a solid definition of ‘good character,’ and the lack of an appropriate standard by which to judge an applicant’s character.” Ratcliff, *The Good Moral Character Requirement: A Proposal for a Uniform National Standard*, 36 Tulsa L. J. 487., 496 (2000).

While having good moral character is an ideal objective for everyone to enjoy, the lack of consistent and clear meaning of that term within the Respondent's rule, and the lack of clear enforcement standards or criteria for application of the rule, renders enforcement actions problematic and difficult ...

Because of these concerns about the flexibility and vagueness of the good moral character rule, any suspension revocation of an officer's law enforcement certification based on an allegation of a lack of good moral character should be reserved for clear and severe cases of misconduct

Jeffrey Gray Royall v. N.C. Sheriffs' Education and Training Standards Commission (Final Agency Decision of Sheriffs' Commission; 27 January 2011 at 13 – 14. Judge Bell cited and followed the principles of *Royall*.

The leading cases considering the term as applied to deputy sheriffs echo the Supreme Court's concerns.³ In *Knox*, Judge May noted that “[m]oral character is a vague and broad concept,” and cited more specific concerns about discriminatory and arbitrary treatment:

[Because of] the lack of clear and consistent meaning of the term” [as applied by the Sheriff's Education and Training

³ While this case construes the good moral character rule as it relates to police officers, the impact of state licensing authorities is broad across the workforce. “More than eleven hundred occupations are licensed in at least one state, and nearly 30 percent of the workforce is covered by licensing laws.” Rhode, *Virtue and the Law: The Good Moral Character Requirement in Occupational Licensing, Bar Regulation and Immigration Proceedings*, 43 Law and Soc In. 1027, 1034 (2018).

Commission, and] “the lack of clear enforcement standards or criteria for application of the rule any suspension or revocation of an officer’s law enforcement certification based on an allegation of lack of good moral character should be reserved for clear and severe cases of misconduct.

Id., at p 22.

Many cases are in accord with this reasoning. See, e.g. *DeCotis v. N.C. Crim. Justice Educ. & Training Stds. Comm.*, 10 DOJ 07779, 2011 NC OAH LEXIS 195, (Dec. 22, 2011, Gray, ALJ presiding, p. 19) (agreeing that actions against law enforcement officers’ certification based on the moral conduct rule should only be taken in the most severe cases); *Mims v. NC Sheriff Educ. & Training Stds. Comm.*, 02 DOJ 1263, 2003 N.C. OAH LEXIS 20 (June 3, 2003) (Gray, ALJ presiding at pp 9-10) (also concluding that actions against an officer’s certification based on the moral conduct rule should only be taken in the most severe cases); *Royall v. N.C. Sheriffs’ Education and Training Standards Commission*, 09 DOJ 5859, 2010 NC OAH LEXIS 236 (Jul 28, 2010; May, ALJ presiding, p 9) (recommending against revocation where petitioner’s evidence of good character outweighed the misconduct at issue); *Campbell v. N.C. Criminal Justice Education and Training Standards Commission*, 21 DOJ 03747, 2022 WL 290410, 2022 NC OAH LEXIS 307)

(June 30, 2022; Byrne, ALJ presiding, pp 10-11)(citing *Royall* and *Mims*).

Perhaps the most recent adjudication of a good moral character charge in a police certification case appears in *Russell v. N.C. Criminal Justice Educ. & Training Standards Commission* where Administrative Law Judge Dills issued an extensive decision reviewing many of the points of good moral character law applicable in this case. *Russell v. N.C. Criminal Justice Education and Training Standards Commission*, 2022 WL 888026), citing *Marcum v. North Carolina Criminal Justice Education and Training Standards Commission*, 2016 WL 6830998, 15 DOJ 07702

In *Russell*, Judge Dills explained how the officer's "present" character is the time for assessment:

"The term "good moral character" does not include any meaningful standards and its use is likely to be 'inconsistent, idiosyncratic and needlessly intrusive.' Rhode, *Moral Character as a Professional Credential*, 94 Yale L.J. 491 (1985). Because of concerns about the flexibility and vagueness of the good moral character rule, any suspension or denial of an officer's law enforcement certification based on an allegation of a lack of good moral character should be reserved for *obvious and severe* cases of misconduct.

The Commission's application of the moral conduct rule here is erroneous because the Commission has not established that Devalle's case is a severe case, particularly in light of the evidence of rehabilitation, and that his *present* character is good.

2. The Superior Court Correctly Held That Good Moral Character Should Be Judged at the Time of The Certification Decision.

In *Schwartz*, the U.S. Supreme Court stressed that the pertinent time for the assessment of moral character is the *present*. 353 U.S. at 246. Furthermore, "A fundamental precept of our system ... is that men can be rehabilitated. 'Rehabilitation' ... is a 'state of mind' and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved 'reformation and regeneration.'" *March v. Committee of Bar Examiners*, 67 Cal.2d 718, 732 63 Cal. Rptr. 399, 433 P.2d 191 (1967). In *Application of Matthews*, 462 A.2d 165, 176 (N.J. Supreme Court 1983), the Court explained:

[A] fundamental rule in bar admission cases is that evidence of reform and rehabilitation is relevant to the assessment of an applicant's moral character. Rehabilitation is pertinent because the Court is interested in an applicant's present fitness to practice law. Where evidence convincingly demonstrates reform and rehabilitation, it can overcome the adverse inference of unfitness arising from past misconduct and, if persuasive, present fitness may be found.

In *Scroggs v. N.C. Criminal Justice Education and Training Standards Commission*, 101 N.C. App. 699, 400 S.E.2d 742 (1991), this Court addressed a police certification case addressing a similar regulation where an officer had been involved in illegal drug use. There, the officer had an exemplary record for over six years, and the reviewing court held that it was arbitrary to not consider the officer's exemplary service. This Court affirmed the Superior Court's decision granting relief to the officer.

Judge Bell concluded that the correct measure of moral character is an assessment of character in the present, including whether there has been rehabilitation following past transgressions. R.p. 85 ("The principle of restoration or rehabilitation of good moral character has been widely recognized"). Judge Bell's conclusion cited to the following cases within the Commission's jurisdiction: *Marcum v. N.C. Criminal Justice Commission*, 2016 WL 6830998 (Lassiter, ALJ); *Rodney Bland v. Criminal Justice Education and Training Standards Commission*, 2013 WL 8116063, 12 DOJ 03839 (Overby, ALJ); *Kevin King v. N.C. Sheriffs' Education and Training Standards Commission*, 2012 WL 928115, 11

DOJ 11631 (Overby, ALJ), *Guyton v. N.C. Sheriffs Education and Training Standards Commission*, 2018 WL 6830630 (Overby, ALJ).

The Commission also acknowledges the relevance of restoration of character in its Final Agency Decision:

During his case in chief, Petitioner presented significant evidence demonstrating that Petitioner has rehabilitated and rebuilt his career since 2016 and 2017 while working as a school resource officer at East Columbus High School. Such evidence showed that Petitioner has exhibited highly favorable traits, including but not limited to helping, teaching, and serving as positive role models for students at East Columbus High School, not only as a school resource officer but as a coach in two sports. Sheriff Greene and Principal Johnson opined that Petitioner's absence from their respective entities would have a negative impact on their workplaces. The scope and magnitude of Petitioner's character traits, as witnessed by Sheriff Greene and Principal Johnson, qualify as extenuating circumstances which Respondent should consider in determining whether Petitioner possesses the good moral character required of a justice officer.

R.p. 15, Finding of Fact 81.

The Commission has argued at length various points from *In Re Dillingham*, 188 N.C. 162, 124 S.E.2d 130 (1924). There is nothing in *Dillingham* that is inconsistent with the approach, reasoning and decision of Judge Bell. While not overruled, *Dillingham* has been eroded. Modern cases reserve good moral character violations for clear and severe

cases, apply the rehabilitation principle and time the analysis of character to the *present* time. Nothing in *Dillingham* conflicts with what Judge Bell applied here. This case shows, by substantial evidence from multiple witnesses, that Devalle is rehabilitated; nothing in *Dillingham* showed that Dillingham was rehabilitated.

3. The Commission Erred by Failing to Assess and Apply the Totality of The Evidence, By Failing to Give Deference To The Credibility Determinations of The Administrative Law Judge, and, By Unlawfully Delegating Its Duty To Conduct An Investigation of Devalle

In *In Re Estes*, 580 P.2d 977 (Ok. 1978), the Oklahoma Supreme Court reversed an administrative decision denying admission to the bar of a bar applicant on moral character grounds. The Court reasoned that the Board below had failed to assess the applicant at the *present* time and had failed to apply the evidence of rehabilitation. The Court explained that “to ascribe controlling weight to applicant’s prior illegal acts and little or no weight to the abundant evidence of his subsequent rehabilitation and present good moral character is error.” *Id.* at 989.

For the following reasons the Commission has committed the same error as the Board of Law Examiners did in *In Re Estes*. That is, the Commission ascribed controlling weight to the events of 2016 and gave

little or no weight to the strong evidence of rehabilitation, even while acknowledging that Devalle had presented "credible, honest and believable" evidence demonstrating "exemplary" character in the present. R.p. 19, Conclusion of Law 24.

First, the Commission came to its conclusion that Devalle did not currently possess good moral character by distorting Judge Lassiter's Findings of Fact/Conclusions of Law. Judge Lassiter found that Petitioner "exhibited a lack of candor and sincerity during cross-examination by Respondent's counsel." R.p. 39. This finding was adopted by the Commission. R.p. 15. However, Judge Lassiter concluded that:

Even given Petitioner's cross-examination testimony at hearing, *the totality of the evidence* rebutted the finding of the Probable Cause Committee that Petitioner lacks the good moral character required of a justice officer and showed that Petitioner has rehabilitated his character since 2017.

R.p. 43. *Emphasis supplied.* Judge Lassiter also concluded that "[t]he credible and persuasive testimonies by Sheriff Greene and Principal Johnson demonstrated that Petitioner has restored his character so that he now possesses the good moral character required to continue certification as a deputy sheriff." R.p. 44. Without hearing the witness testimony and without otherwise being in a position to evaluate the

demeanor of the witnesses at the hearing, the Commission apparently decided it could determine Devalle's *present* moral character based on a description of his testimony that completely ignored the conclusions of the fact-finder who was in a position to judge the credibility of all the witness testimony.

Witness credibility is not within the specialized knowledge of an agency. Our appellate courts have made clear that the administrative law judge is the sole judge of credibility.

In an administrative proceeding, it is the prerogative and duty of [the ALJ], once all the evidence has been presented and considered, to determine the weight and sufficiency of the evidence and the credibility of the witnesses, to draw inferences from the facts, and to appraise conflicting and circumstantial evidence. The credibility of witnesses and the probative value of particular testimony are for the [ALJ] to determine, and [the ALJ] may accept or reject in whole or part the testimony of any witness.

N.C. Dep't of Safety v. Ledford, 247 N.C. App. 266, 300, 786 S.E.2d 50, 64 (2014). *Accord State v. Harris*, 252 N.C. App. 94, 107, 798 S.E.2d 127, 137 (2017) ("As the sole fact-finder, the ALJ has both the duty and prerogative to determine the credibility of the witnesses, the weight and sufficiency of their testimony, to draw inferences from the facts, and to sift and appraise conflicting and circumstantial evidence.") Our

appellate courts have instructed that "a high degree of deference" is to be accorded to the ALJ's findings, when they are supported by substantial evidence in the record. *Id.*

It was error for the Commission to distort Judge Lassiter's credibility determinations and to fail to give deference to her role as the fact-finder and this conduct amounts to arbitrary and capricious decision making on the part of the Commission. *Overton v. Goldsboro City Bd. of Educ.*, 304 N.C. 312, 322, 283 S.E.2d 495, 501 (1981) (reversing the board's decision as arbitrary and capricious, where it had distorted evidence and ignored relevant evidence); *Thompson v. Wake Cnty Bd. of Educ.*, 292 N.C. 406, 414, 233 S.E.2d 538, 543 (1977) (where the Board made findings contrary to those of the impartial reviewers who heard the testimony, the substantiality of the evidence supporting the Board's decision was questioned).

Second, the Commission erred when it failed to follow its own regulations requiring it to conduct its own investigation and relied solely on the personnel investigation conducted by Devalle's employer in 2017. By failing to fulfill its statutory duty, the Commission not only acted

unlawfully, it lacked substantial evidence to refute Devalle's evidence of good moral character. 12 NCAC 10B.0201 provides that:

(b) Before taking action against an agency, school, or individual for a violation, the Division *shall investigate* the alleged violation and, when required by the Director, shall present a report of its findings to the Probable Cause Committee of the Commission. (Emphasis added)

Instead of conducting an investigation as it was required to do, the Commission obtained and reviewed the Highway Patrol's internal affairs file. The investigator then wrote her report by "essentially writing what someone else said" (R.p. 32). No one was interviewed in the Commission investigation. *Id.*

The Commission's procedure amounts to an arbitrary unlawful delegation of its regulatory duty to an outside party. This Court has previously reversed an agency's decision for doing precisely what the Commission has done here. In *Nanny's Korner Care Ctr. v. N.C. HHS - Div. of Child Dev.*, this Court reversed the agency's decision where that was based upon the investigation and determination made by the local social services department. 234 N.C. App. 51, 758 S.E.2d 423 (2014) The Court held that the plain language of the agency's regulation required it

to conduct its own investigation and to independently substantiate the determination of abuse.

Likewise, the Commission's decision should be reversed because it unlawfully delegated its regulatory duty to investigate to the N.C. Highway Patrol. This unlawful delegation is especially egregious where the Highway Patrol's frequent defective and incomplete investigations has been a documented part of our jurisprudence. See e.g. *Bulloch v. N.C. Department of Crime Control*, 223 N.C. App. 1, 732 S.E.2d 373 (2012).

In *Evington v. N.C. Criminal Justice Education and Training Standards Commission*, 09 DOJ 3070, 2009 WL 4912691 (Gray, ALJ), Judge Gray cataloged a dozen cases of serious misconduct in which officers received suspensions or reduced pay but retained both their certifications and their jobs. A recent extensive administrative law decision further recounts and explains some of the examples of horror from *Evington* where insignificant or no discipline was imposed. *Joe T. Locklear v. N.C. Dept. of Public Safety*, 2022 WL 2389874 (Byrne, ALJ).

This failure to comply with its own regulations creates another legal error because an agency is constitutionally required to comply with its own rules. *Tully v. City of Wilmington*, 370 N.C. 527, 810 S.E.2d 208

(2018). The *Tully* principle is simple and vitally important: *Agencies must comply with their own policies*. The failure to do so is arbitrariness. *Tully* relied upon *U.S. v. Heffner*, 420 F.2d 809, 811 (4th Cir. 1969), which held that:

“An agency of the government must scrupulously observe rules, regulations, or procedures which it has established. When it fails to do so, its action cannot stand and courts will strike it down.”

Prior to *Tully*, this Court reaffirmed the fundamental principle that a governmental agency “must follow its own rules . . .,” *Poarch v. N.C. Department of Public Safety*, 223 N.C. App. 125, 132, 741 S.E.2d 315, 320 (2012); *Davis v. N.C. Department of Public Safety*, 2021 WL 5049198 (Gray, ALJ).

However, in addition to basing its decision upon unlawful procedure, the Commission’s conclusions regarding the weight to be given to the evidence amounts to arbitrary and capricious decision making. The Commission has no basis for discounting Devalle’s evidence of good moral character in the present because it did not collect any evidence from any witness.

The fact that Sheriff Greene found that Devalle has good moral character should be accorded greater significance, as Judge Lassiter did.

“The employing agency of a law enforcement officer is generally in the best position to observe and determine an officer's individual ‘character, competence, and fitness to serve’ in a law enforcement capacity.” *Russell v. N.C. Criminal Justice Education and Training Standards Commission*, 22 WL 888026), citing *Marcum v. North Carolina Criminal Justice Education and Training Standards Commission*, 2016 WL 6830998, 15 DOJ 07702.

The only witnesses who testified about Devalle’s present character were Sheriff Greene and Principal Johnson. Their testimony was undisputed. Devalle presented substantial evidence demonstrating that he has rehabilitated and rebuilt his career since 2016 and 2017, while working as an SRO at East Columbus High School. (R.pp. 83-84) Both witnesses testified that, based upon their direct observations of Devalle, they have no doubts that he is a truthful person. R.p. 37; 38.

The evidence also demonstrated that Devalle has exhibited highly favorable traits, including but not limited to helping, teaching, and serving as a positive role model for students at East Columbus High School, not only as an SRO, but as a coach in two sports. Sheriff Greene and Principal Johnson testified that Devalle’s absence from their

respective entities would have a negative impact on their workplaces. (R.p. 84). *Commission* Finding of Fact 81, discussed *supra*, also demonstrates that Devalle's moral character was rehabilitated and restored.

VII. CONCLUSION

Conclusion of Law 24 (R.p.19) in the *Commission* Final Agency Decision sums up this case, according to the Commission itself, and provides:

"Sheriff Greene and Principal Johnson testified that Petitioner *has rehabilitated and rebuilt his character* since being fired by the Patrol, and as a deputy sheriff, and as school resource officer and coach at East Columbus High School. Greene and Johnson testified that for two and a half years, Petitioner's service as a deputy sheriff has been nothing but exemplary both of that service and of Petitioner's character while engaging in that service. Such testimony was credible, honest, and believable." *Emphasis Supplied*

Wherefore, the Superior Court decision is free of prejudicial error and should be affirmed.

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VIII. WORD COUNT CERTIFICATION

I certify that our word processing system indicates that the total word count for this brief is less than 8,750 words excluding the captions and signature lines and information.

/s/ J. Michael McGuinness
J. Michael McGuinness

IX. CERTIFICATE OF SERVICE

I hereby certify that I have served this Response Brief on Ms. Ameshia Cooper, counsel for the Appellant Sheriff's Commission, P.O. Box 629, Raleigh, N.C. 27602 via email to acooper@ncdoj.gov this 25th day of August, 2022.

/s/ J. Michael McGuinness
J. Michael McGuinness
The McGuinness Law Firm

X. APPENDIX

Excerpts of Testimony

(Trial Transcript pages 31-34, 38, 56-58, 168-69,
233-236, 238, 240.247) 1-18

Jeffrey Royall v. N.C. Sheriffs' Commission

(No. 09 DOJ 5859; January 11, 2011) 19-35

1 Q. Okay.

2 A. One year.

3 Q. Now, at the time you hired Mr. DeValle, did you
4 make any conclusions as to what you thought of his moral
5 character?

6 A. I did. It was --

7 Q. Could you tell the Court what they were, please?

8 A. Okay. It was a strange situation. First, don't
9 let me confuse anybody. I knew who Maurice DeValle was
10 prior to me taking office because I was a trooper, too. He
11 walked in my office, and he said, "I guess I'm fired."

12 I said, "Why are you fired?"

13 And he said, "With what happened with the Highway
14 Patrol."

15 I said, "I know nothing about that case."

16 I've done my research on my people that I hired
17 when I took office. Everybody on the east end of the county
18 recommended him: The principal, school board members, the
19 parents, the students. I made my decision solely off that
20 man, not what happened in the past.

21 Q. Okay.

22 A. That's how it came to be.

23 Q. And, sir, did you -- did you form the conclusion
24 satisfactory to yourself that he had the good moral
25 character to serve as a school resources officer on your

1 force?

2 A. I sure have, and it's still there today.

3 Q. And he serves at your pleasure, does he not?

4 A. Absolutely.

5 Q. Okay. And continues to serve at your pleasure,

6 does he not?

7 A. Absolutely.

8 Q. And, now, would I be right in assuming that a
9 school resource officer, that poses special challenges, does
10 it not?

11 A. Very special challenges to me. Back in the old
12 days, I was a deputy prior to being a highway patrolman,
13 that's where they stuck your older people that were getting
14 ready to retire and couldn't work the road. That's just the
15 honest truth. But in today's climate, my school resource
16 officers are trained. They're trained almost to the level
17 of SWAT team, and before next year's out, they will be.
18 Every member of Columbus County Sheriff's Office is going to
19 be SRO trained. That is a very important role in any
20 county. That's your children. That's your future. You
21 better put some time and investment in it. That's my stance
22 on SROs.

23 Q. So you've got to put someone in there dealing with
24 kids and the safety of kids that you have special trust and
25 confidence in?

1 A. Absolutely.

2 Q. And you have that, obviously, in Mr. DeValle.

3 A. I do, sir.

4 Q. And does, in your opinion, Sheriff, does the SRO
5 also serve as -- as any kind of sort of a quiet role model
6 for those kids at all?

7 A. A quiet -- a role model?

8 Q. Yeah.

9 A. He does a little too much from time to time, but
10 yes. But let me say this first now. The people in his area
11 of our county, 954 square miles, so let me kind of paint you
12 a picture. And he's on the far east end. Those people
13 there don't see law enforcement as much as other parts of
14 the county. He's their go-to guy down there.

15 Randy Coleman, one of the school board members,
16 very aggravating, a big politician, but he's the right
17 person we need in that position, if that makes any sense.
18 He'll call me two or three times a day constantly bragging
19 on what he's done, the drug arrests he's made, and then we
20 run into problems with principals and school boards about
21 how many -- stuff they want publicized and don't want
22 publicized. That's where the political tool comes in. And
23 it don't work well with us. We make our arrests. We make
24 our charges. That's the only way we can demonstrate to
25 these folks we have a problem to help get grant money

1 because we're -- we're a poor county. We've got to show a
2 baseline of a problem so we can move forward, and he has
3 been instrumental, instrumental on the east end of helping
4 us with that.

5 Q. All right.

6 THE COURT: Which school does he --

7 THE WITNESS: East Columbus.

8 THE COURT: Okay. Thank you.

9 BY MR. BYRNE:

10 Q. And Mr. Sheriff, if Mr. DeValle -- for whatever
11 reason you were deprived of his services, would that
12 negatively impact your force?

13 A. Yes, sir. Like I said, that's why I'm sitting
14 here today to tell y'all how important this man is to my
15 agency, what he does for us.

16 Q. And you recommend him to serve with no hesitation
17 whatsoever?

18 A. None whatsoever. None.

19 Q. And you are perfectly satisfied with the way he's
20 performed his duties?

21 A. Above and beyond.

22 Q. Okay.

23 MR. BYRNE: I have no further questions. Thank
24 you, Mr. Sheriff.

25 THE COURT: Okay. Cross-examine.

1 BY MR. HAIGH:

2 Q. -- why that was?

3 THE COURT: Sustained.

4 A. I was basing it on what this man does for me.
5 That's exactly what I did.

6 MR. HAIGH: All right. No further questions.

7 THE COURT: Redi rect?

8 MR. BYRNE: Just very briefly, Your Honor.

9 REDIRECT EXAMINATION BY MR. BYRNE:

10 Q. Mr. Sheriff, this was brought up on cross. Based
11 upon Mr. DeValle's service to you as the sheriff, do you
12 have any hesitation as to his truthfulness and his ability
13 to tell the truth?

14 A. No.

15 Q. Thank you, sir.

16 MR. BYRNE: No further questions.

17 A. Can I make one thing clear to you because I don't
18 want to confuse y'all. I knew he was a trooper. I
19 personally did not know him when he was a trooper. I'm way
20 on the other -- I know all the troopers out there just by
21 seeing them, but on a personal level, you just don't have
22 that luxury. I mean, you're talking a thousand miles apart.
23 I mean, I knew he was a trooper, but, personally, I didn't
24 know him on a personal level prior to, no.

25 And what I've seen now, he's got a job with the

1 A. Norfolk State University.

2 Q. And what was your major?

3 A. It was sociology, minor in criminal justice.

4 Q. Okay. Now, you submitted a statement to the
5 Probable Cause Commission asking they consider whether my
6 client, Mr. DeValle, committed a misdemeanor, correct?

7 A. Correct.

8 Q. And you, in that same document, submitted the
9 question to them as to whether my client had the good moral
10 character to serve as a sheriff's deputy. Is that correct?

11 A. That's correct.

12 Q. Were you aware at the time you made these
13 recommendations that he was already serving as a sheriff's
14 deputy?

15 A. Yes.

16 Q. Did you interview his sheriff?

17 A. No.

18 Q. Did you interview his supervisor at the sheriff's?

19 A. No.

20 Q. The conduct that you're referring to in this memo
21 occurred in 2016, did it not?

22 A. Yes.

23 Q. Which is close to four years ago, as you're
24 sitting here today, correct?

25 A. Yes.

1 Q. Did you interview anybody with respect to how my
2 client has discharged his duties as a deputy sheriff at all?

3 A. No.

4 Q. Well, I saw -- there was that list of things that
5 I believe you said you got from the IA report about him
6 checking in on certain times. You remember talking about
7 that, right?

8 A. Yes.

9 Q. Now, when you wrote there, you were essentially
10 writing what someone else said in the IA report, weren't
11 you?

12 A. Yes.

13 Q. All right. These were not the results of an
14 independent investigation by yourself into his time slips,
15 were they?

16 A. No.

17 Q. Did you ever review the time slips in question?

18 A. It was -- I'm not sure. I can't recall. It was
19 -- it should have been included in the IA file, but I -- I
20 can't say for sure.

21 Q. Do you know what Beacon is?

22 A. I do.

23 Q. What is it?

24 A. A personnel center that keeps track of employees'
25 time.

1 Q. All right. Did you ever get any information from
2 Beacon as to what Mr. DeValle had actually checked in on and
3 was doing that day?

4 A. No.

5 Q. Now, as an investigator, I would believe it to be
6 the case that your charge is to find facts, is it not?

7 A. Yes.

8 Q. And would you agree or disagree that one of the
9 primary methods by which one would find facts as an
10 investigator would be to interview the person being
11 investigated? Would you agree with that?

12 A. Yes.

13 Q. All right. So what did Mr. DeValle say about
14 these allegations when you interviewed him, ma'am?

15 A. He was already -- he had already been interviewed
16 by the Highway Patrol.

17 Q. Most definitely, ma'am. My question was what did
18 he say about it when you interviewed him, or did you in fact
19 interview him at all?

20 A. No, sir, I did not.

21 Q. So just to be clear, you sent in a form accusing
22 my client of committing a crime, and during your
23 investigation you never so much as interviewed him. Am I
24 right about that?

25 MR. HAIGH: Objection, Your Honor.

1 THE COURT: Yes, sir.

2 MR. BYRNE: Thank you, ma'am.

3 DIRECT EXAMINATION BY MR. BYRNE:

4 Q. Good afternoon, Mr. Johnson. Now, could you tell
5 the Court where you are, if anywhere, you are employed?

6 A. I'm currently the principal at East Columbus High
7 School in Lake Waccamaw, North Carolina.

8 Q. Okay. Is that a senior high school for the --

9 A. Yes, sir.

10 Q. -- (unintelligible).

11 A. It's a Grade 9 through 12.

12 Q. Okay. And do you know the Petitioner in this
13 case, Mr. Maurice DeValle?

14 A. I do.

15 Q. And in what capacity do you know him?

16 A. He serves two roles -- two roles in my school.
17 First of all, he's my school resource officer, and he also
18 serves as an assistant football coach and track coach.

19 Q. Okay. So starting with the first thing, how long
20 has he served under you as a school resource officer?

21 A. Since August of 2017.

22 Q. Okay. And do you have the opportunity to observe
23 his conduct on a regular basis?

24 A. Every day.

25 Q. All right. Tell the Court a summary of what you

1 observed about how Mr. DeValle conducts himself as a school
2 resource officer.

3 A. He's dedicated to the school, he's dedicated to
4 the students, dedicated to the staff. He comes to school --
5 comes to work every day, is there to serve and protect.
6 He's part of my administrative team. He's almost my
7 right-hand man.

8 Q. All right. What -- have you had a chance or
9 opinion -- strike that. Have you had the opportunity to
10 form an opinion to yourself as to his character?

11 A. I do.

12 Q. What is that opinion?

13 A. He is an awesome person. He is an awesome man
14 And I'm not just saying that for me. I'm saying that for my
15 kids at my school. I've got 425 kids that on a daily basis,
16 I'll be out in the hall, and every day there's a kid, "Is
17 Deputy DeValle here? Is Deputy DeValle here?" and I'm like,
18 "Yes, he's in his office," or "Yes, he's in the hallway," or
19 "Yes, he's in the cafeteria."

20 And they go down there and they're -- they're
21 talking life, they're talking -- he's giving them advice
22 He's telling them how to handle a certain situation with
23 someone maybe that they're having a disagreement with. He's
24 just -- he's great. We came in together. I started in late
25 July of 2017. He came in in August of '17. And he's just

1 awesome.

2 Q. Has he ever committed any act that would cause you
3 to doubt his capacity to be truthful?

4 A. No.

5 Q. Okay. And you said he also serves as a coach?

6 A. Yes.

7 Q. Would I also -- would I be correct in assuming
8 that you would also not allow to serve anyone as a coach
9 that you did not have a satisfactory opinion of their
10 character?

11 A. That is correct.

12 Q. And he coaches two sports?

13 A. He coaches two sports. He just wrapped up the
14 football season, and then he'll start track season in the
15 spring. He's taken a young man to states two years in a
16 row. And, you know, the kids -- like I said, the kids just
17 look up to him.

18 Q. In your mind, what would be the impact on your
19 situation as principal and on the school, in general, if for
20 whatever reason Deputy DeValle was no longer able to perform
21 his function as your SRO?

22 A. The bond between a principal and a SRO is an
23 important bond in the school. I've been an administrator
24 for 13 years, and I've worked with multiple SROs. He's the
25 best so far, and it is that bond that we have with each

1 other. We trust each other. We can read each other's body
2 language from across the gym when something's happening in a
3 basketball game where we need each other for something
4 during a basketball game. Having to relearn and retrain a
5 deputy in the role of a school resource officer would take
6 up time. It's -- again, that bond that's formed, it's just
7 -- it's hard to re-form it with someone else.

8 Q. And do you understand that one of the primary, if
9 not the primary duty of an SRO is to help guarantee the
10 safety of the students and the staff?

11 A. Yes.

12 Q. And in your opinion, sir, as his de facto
13 supervisor, I'd assume, would the lack of Deputy DeValle's
14 presence make your school less safe?

15 A. Absolutely. We were talking about that bond a
16 couple of minutes ago or a couple of seconds ago. He also
17 has that bond with the kids. Kids go to him and say, "Hey,
18 look, Deputy DeValle, so and so has something on him they're
19 not supposed to have at school." Boom. He and I go right
20 there. I handle the school side. And if it's something
21 that's breaking the law, we get Deputy DeValle involved.
22 But it's that bond and that trust that he has with the kids
23 and with the staff.

24 Q. Are you -- is the name Sirena Jones familiar to
25 you in any context?

1 A. Sirena Jones?

2 Q. Yes. That's with an I, S-i-r-e-n-a.

3 A. No.

4 Q. All right. Let me ask you this: Do you ever
5 recall anybody from the North Carolina Sheriffs' Standards
6 Commission reaching out to you as the principal of the
7 school to which Deputy DeValle is assigned to obtain any
8 information about his performance or character?

9 A. No.

10 Q. No one from that entity reached out to you?

11 A. No one from any law enforcement agency has ever
12 contacted me in regards to Deputy DeValle's performance or
13 previous performance.

14 Q. All right. And in terms of Deputy DeValle's
15 equipment, is he armed with a service weapon?

16 A. Yes.

17 Q. Is he armed with a taser?

18 A. Yes.

19 Q. Is he armed with an asp? Do you know what an asp
20 is?

21 A. I have no clue what an asp is.

22 Q. If I said it was a baton, would that help?

23 A. Yeah.

24 Q. All right. Does he have -- so the point is, he is
25 equipped in your school around children with weapons of

1 deadly force --

2 A. Correct.

3 Q. -- is he not?

4 And would that require, at least in your mind, a
5 sort of special trust and confidence in his judgment?

6 A. Yes, absolutely.

7 Q. And do you have that trust and confidence?

8 A. Oh, every day. I look for that silver car every
9 day.

10 Q. And do you feel better when that silver car is
11 there?

12 A. Oh, absolutely. I hate it on the days he has to
13 go to training and we get a substitute SRO, which will be an
14 SRO from the middle school. The good thing is that SRO from
15 the middle school has already been in my school because
16 Deputy DeValle and I assisted in training him into the SRO
17 role.

18 Q. Okay. And to be clear, is there any doubt in your
19 mind based upon what you observed that Deputy DeValle lacks
20 the character to serve in the role he is serving at your
21 institution?

22 A. He does not lack that character.

23 Q. Okay. And in terms of interaction with the
24 students, would that suffer if he was not able to be there?

25 A. Tremendously, it would. Like I said, these kids,

1 they look up to him. And I'll tell you a little bit about
2 my school, if you don't mind.

3 My school's 425 students, and it's predominantly
4 minority. 38 percent of my student population is black, 33
5 percent roughly is white, 20 percent is Native American, and
6 the remaining students are either Hispanic or biracial.
7 Serving as a law enforcement officer in a predominantly
8 minority community is tough, but he is able to break down
9 those barriers with my kids, and he -- he -- he does a great
10 job with it.

11 Q. In your experience working with SROs, has any
12 other predecessor been able to do that better?

13 A. No. He does -- he's done it the best, and I've
14 worked and trained many SROs as a school administrator.

15 Q. All right. And, finally, sir, did you appear at
16 this hearing voluntarily?

17 A. I did.

18 Q. All right. And you spent the entire day here
19 waiting to testify.

20 A. Sitting in that blue chair out there surfing my
21 cell phone, reading the -- reading the news.

22 Q. Is there anything --

23 A. But let me tell you this: I wouldn't want to be
24 anywhere else.

25 Q. Is there anything else you'd like to say about

1 Deputy DeValle before we move on?

2 A. If you don't mind, I want to share a quick story.
3 It was our first year together, and we had a student who --
4 his uncle was on murder for -- was on trial for murder. The
5 uncle murdered this kid's dad. And the kid missed several
6 weeks of school, and the trial did not end favorably and the
7 uncle was ultimately found not guilty. The kid stopped
8 coming to school.

9 About four days in, DeValle came to me and was
10 like, "Mr. Johnson, we've got to go get Tyler."

11 I'm like, "What do you mean we've got to go get
12 Tyler?"

13 "Look, Mr. Johnson, we've got to go get Tyler."

14 So we showed up to his house. Here we are, two
15 white men showing up to this small house in the middle of
16 rural North Carolina, especially a deputy. Everyone's all
17 panicking. And we get the mom out, and we're like, "Look,
18 we're here to get Tyler. We need Tyler to come back to
19 school. We just want to talk to him."

20 And sure enough, we got him on the porch, got Mom
21 out there, ended up getting his brother out there. We had a
22 good 45-minute-long conversation. The next day Tyler came
23 to school. That spring, Tyler signed his letter for
24 Louisburg College to play football, and he graduated in the
25 spring. I couldn't have done it, and this was at a time

1 when DeValle was not coaching. He just was my school
2 resource officer. He volunteered after talking to Coach
3 Ives to go out there and coach that following year.

4 Q. He volunteered to do that.

5 A. Yeah. And then so -- and he's still in contact
6 with Tyler because Tyler ended up getting a -- a -- a girl
7 pregnant, Gabby. And DeValle and his family helped Gabby
8 through the pregnancy; was able to get them some stuff. I
9 went to DeValle's office yesterday, and I'm like, "DeValle,
10 what you got this bag of Nerf toys for?" And he goes,
11 "These are for Artasia's [phonetic] kid." I have a
12 17-year-old kid who's got a 6-year-old son, and he's got
13 some clothes and some toys. He's bought shoes for kids.
14 He's given them their lunch. He's given them their food.
15 You know, we all -- he's where he -- he's where he belongs.

16 Q. All right. Well, sir, thank you very much for
17 your testimony today, and I have no further questions.

18 THE COURT: Do you have any questions?

19 MR. HAIGH: No questions, Your Honor.

20 THE COURT: Okay. Thank you, sir, for your time
21 and your patience. Have a safe trip home.

22 THE WITNESS: Thank you.

23 THE COURT: Okay. Let's take a two-minute break.

24 (Off the record at 4:37:38 p.m.)

25 (Back on the record at 4:40:07 p.m.)

1 material text and so the prosecution's obligated to notify
2 the defendants.

3 Q. All right. I want to ask, sir, since your
4 termination or the time you've been working with the
5 sheriff's office, have you been determined as Giglio
6 impaired to your knowledge by any district attorney?

7 A. No, sir.

8 Q. By any judge in the district or superior court?

9 A. No, sir.

10 Q. Have you ever received any commendations from the
11 court since you came to work as a sheriff's deputy?

12 A. Yes, sir.

13 Q. Briefly describe that, please.

14 A. Just for my professionalism while working in the
15 superior court.

16 Q. And what judge gave that if you recall?

17 A. Douglas Sasser.

18 Q. All right. Just in the past year or so?

19 A. I'm not sure of the exact date, sir.

20 Q. Okay. Now, to your knowledge, has any official
21 other than the Patrol since you began working at the
22 sheriff's office questioned your ability to provide truthful
23 testimony, otherwise to fulfill the duties of a deputy
24 sheriff to your knowledge?

25 A. No, sir.

STATE OF NORTH CAROLINA

COUNTY OF YADKIN

JEFFREY GRAY ROYALL,

Petitioner,

v.

N.C. SHERIFFS' EDUCATION
AND TRAINING STANDARDS
COMMISSION,

Respondent.

BEFORE THE NORTH CAROLINA
SHERIFFS' EDUCATION & TRAINING
STANDARDS COMMISSIONFINAL AGENCY DECISION

THIS MATTER was commenced by a request filed on October 23, 2009 in the Office of Administrative Hearings. Notice of Contested Case and Assignment and Order for Prehearing Statements (09 DOJ 5859) were filed on November 4, 2010. The parties received proper notice of hearing, and the administrative hearing was held on April 27, 2010 before the Honorable J. Randall May, Administrative Law Judge.

The Petitioner was represented by J. Michael McGuinness, Esq. The North Carolina Sheriffs' Education and Training Standards Commission (hereinafter the Commission or Respondent) was represented by Special Deputy Attorney General John J. Aldridge, III and Assistant Attorney General J. Joy Strickland.

On July 28, 2010, Administrative Law Judge May filed his PROPOSAL FOR DECISION. On August 3, 2010, counsel for the Respondent sent by certified mail a copy of the PROPOSAL FOR DECISION to the Petitioner's attorney with a letter explaining Petitioner's rights: (1) to file exceptions to the PROPOSAL FOR DECISION, (2) to submit proposed findings of fact, (3) to file written argument, and (4) to present oral argument to the Commission. On August 30, 2010, Respondent received Petitioner's EXCEPTIONS AND OBJECTIONS TO PROPOSAL FOR DECISION, WRITTEN ARGUMENT AND LEGAL BRIEF, REQUEST FOR ORAL ARGUMENT and PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION.

This matter came before the Commission for entry of its Final Agency Decision at the Commission's regularly scheduled meeting on December 15, 2010.

Having considered all competent evidence and argument and having reviewed the relevant provisions of Chapter 17E of the North Carolina General Statutes and Title 12, Chapter 10B of the North Carolina Administrative Code, the Commission, based upon clear, cogent and convincing evidence, does hereby make the following:

FINDINGS OF FACT

1. Petitioner Jeffrey Gray Royall earned a general deputy sheriff certification which was issued by the Commission and approved on July 3, 2002. See Petitioner's Exhibit 1.

2. On May 6, 2009, Sheriff Michael Cain of Yadkin County communicated a letter to Special Deputy Attorney General John J. Aldridge, III, whereby Sheriff Cain communicated a complaint about Petitioner Jeffrey Royall which gave rise to this proceeding. The complaint appears in the record as Petitioner's Exhibit 2.

3. In pertinent part, Sheriff Cain's letter of complaint alleged that several law enforcement agencies were working on a large scale undercover drug operation in Yadkin County which gave rise to a "bust" which netted close to two million dollars in cash and eight kilos of cocaine. See Petitioner's Exhibit 2. The complaint alleged that Petitioner posted information about the drug bust on a local website called www.yadkinview.com. In addition to the complaint regarding alleged disclosure of information placed on the website, the complaint by Sheriff Cain alleged that Petitioner previously worked for him as a Patrol Sergeant and that Sheriff Cain received a complaint from a dispatcher alleging that Petitioner engaged in inappropriate conduct towards her. Sheriff Cain alleged in his letter of complaint that he relayed his concerns regarding Petitioner to Sheriff Redmond of Iredell County on May 4, 2009, and that it was his understanding that Petitioner was no longer working for Sheriff Redmond in Iredell County as of May 5, 2009. Sheriff Cain alleged that Petitioner had engaged in "constant bashing and lies about my office policies and lack of experience of my staff. This has been going on for several years now and I feel like it's time for it to stop." See Petitioner's Exhibit 2, at page 2. Sheriff Cain posed a question in his letter of complaint as follows: "How long are we going to allow this person to demean the office of Sheriff?" Petitioner's Exhibit 2 at page 2. Sheriff Cain alleged that Petitioner's action in going public with information about him and his office reflects a lack of good moral character. Petitioner's Exhibit 2 at page 2. Sheriff Cain then requested specific relief including the revocation of Petitioner's certification as a deputy sheriff and "hopefully he can never again be allowed to enforce the laws of North Carolina in any capacity as a deputy or police officer in this state." Petitioner's Exhibit 2 at page 2.

4. In response to the complaint by Sheriff Cain, the Commission undertook an investigation of the allegation and afforded Petitioner an opportunity to submit a written response. Petitioner's written response of September 14, 2009 appears as Petitioner's Exhibit 3, whereby Petitioner responded to the complaint and provided his account of the facts and circumstances. Respondent's investigation was summarized in the report of its investigator, Mike McLaughlin. Petitioner's Exhibit 13.

5. The first witness called was Petitioner Jeffrey Royall. T19 Mr. Royall was born on August 18, 1966 and is 43 years of age. T19 Mr. Royall grew up in Yadkin

County. T20 Mr. Royall is married and has three surviving children. T20 Mr. Royall graduated from Starmount High School in 1984. T21 After concluding high school, he considered pursuing a career in the law enforcement field. T21 Mr. Royall came to believe that law enforcement was his "calling." T21

6. Mr. Royall previously served with the N.C. Department of Correction for approximately three years. T21 He thereafter served in a sales position for about three years. T22 Mr. Royall thereafter undertook training to prepare for a career in law enforcement at Wilkes Community College whereby he enrolled in the Basic Law Enforcement Education Training curriculum in the fall of 1994. T22 Mr. Royall successfully completed that program and graduated. T22 Mr. Royall thereafter became a sworn deputy sheriff in the Yadkin County Sheriff's Office under former Sheriff Jack Henderson. T22 Mr. Royall served for approximately three years under Sheriff Henderson's command. T22 Mr. Royall served for approximately six years with the Yadkin County Sheriff's Department. T23 After Sheriff Henderson left office, Michael Cain became the Sheriff of Yadkin County. T23 After Sheriff Cain became Sheriff, Mr. Royall was promoted to Sergeant. T24 Mr. Royall voluntarily left his employment with Yadkin County Sheriff's Department and went to the Iredell County Sheriff's Department and later to the Forsyth County Sheriff's Department. T25 Mr. Royall served approximately five years with the Forsyth County Sheriff's Department. T25

7. Mr. Royall served in different capacities in law enforcement service for the Sheriff's Department including patrol, detective and narcotics. T25 Mr. Royall performed supervisory work in the domestic violence department. T26 Mr. Royall provided instruction to others in the narcotics field. T26 Mr. Royall later left and accepted a position as a detective sergeant with the Iredell County Sheriff's Department. T26 Mr. Royall's employment with the Iredell County Sheriff's Department ended by termination on May 5, 2009. T28

8. Following his termination of employment by the Iredell County Sheriff, Mr. Royall sought a position with the Cherokee County Sheriff's Department with Sheriff Keith Lovin. T29 Sheriff Lovin conducted a background investigation and Sheriff Lovin was informed about the allegation against Mr. Royall in this case including the underlying facts and circumstances in detail. T30 Sheriff Lovin saw fit to have Mr. Royall sworn in as a member of his Department. T30

9. Prior to the allegation in this case, there has never before been any finding that Petitioner had any type of bad moral character. T29 Petitioner has been consistently certified as a sworn deputy sheriff through the Commission. T29 There has never been any prior disciplinary action against Mr. Royall or his certification by the Commission. T29 Mr. Royall's law enforcement certification with the Commission has always been in good standing. T29

10. The YadkinView is a political blog publishing discussions from most

everything involving local politics including law enforcement, commissioners, the school board and other matters. T30 From time to time, over the last several years, Mr. Royall has posted information onto that site so that it would be publicly available. T30 Mr. Royall has been an active and concerned member of his community. T30 Mr. Royall has been active and occasionally outspoken about public affairs in his community. T31 Mr. Royall had been posting information on the YadkinView site for probably two years prior to this matter. T31 Mr. Royall expressed various personal opinions about public affairs generally. T31 Mr. Royall and others have expressed opinions about the operation of the Yadkin County Sheriff's Department. T31-32 Mr. Royall selected the screen name of "Eagle Eye" for use on this site. T32 There was no policy of the Sheriff's Department that prohibited him from expressing opinions in that form. T32 Mr. Royall posted information on the website suggesting that he might be a candidate for the Sheriff of Yadkin County. T33

11. In April of 2009, Mr. Royall heard some information about a narcotics seizure that occurred in Yadkin County. T33 Mr. Royall was in his office in the Narcotics Unit in Iredell County doing work on the computer. T33 Sergeant Gary Simpson was the first person who provided information to Mr. Royall regarding this drug bust in Yadkin County. T33 Sergeant Simpson is a criminal interdiction highway enforcement agent. T33 Sergeant Simpson was a professional colleague of Mr. Royall and served in the Iredell County Sheriff's Department. T34

12. Sergeant Simpson came into Mr. Royall's office and told him that there had been a vehicle stop in Davie County which netted several hundred thousand dollars and went on to describe the vehicle and a search warrant that was done in Yadkin County where they recovered several hundred thousands of dollars. T34 When Sergeant Simpson told him the information about the narcotics seizure, Sergeant Simpson did not say or indicate anything suggesting that this was any type of open or ongoing investigation. T35

13. Based upon what Sergeant Simpson told Mr. Royall at the time, there was nothing that indicated it was an open investigation. T35 It was indicated that the information came from Travis Broughton, who is a Forsyth ABC Officer and is also a DEA Task Force Officer. T35 Due to the fact that the information was coming from the DEA, Mr. Royall had no reason to believe that it was an open investigation. T35

14. Mr. Royall had other discussions regarding the drug bust with Lieutenant Black of the Iredell County Sheriff's Department. T35 Mr. Royall had worked with and knew Lieutenant Black for several years and very much trusted him and respected his integrity. T36 Lieutenant Black came into Mr. Royall's office and asked him if he heard about the big drug bust in Yadkin County. T36 High Point Police Officer Marty Ferrell, also a DEA Task Force Officer, had told Lieutenant Black about the bust. T36 Mr. Royall told Lieutenant Black that he had just heard from Gary Simpson about the drug bust. T36

15. Lieutenant Black did not say anything to Mr. Royall that in any way indicated that the investigation was open. T36 Because the information came directly from DEA Task Force Officers who were directly involved in the case, if they were freely talking about the case, Mr. Royall knew those cases to be closed. T36-37 Officers do not freely talk about open cases. T37

16. On the following day, Mr. Royall heard Lieutenant Harris of the Iredell County Sheriff's Department speak about this drug bust. T37 Lieutenant Harris was on the speaker phone with Chief Rick Thomas of Forsyth ABC, they were talking about the drug case and the magnitude including the large sum of currency. T37 After that conversation, Lieutenant Harris went to Mr. Royall's office and they discussed what they both already knew about the drug case. T37

17. Petitioner's Exhibit 12 is a chart entitled "The Trail of Information." T38 Mr. Royall explained that in working narcotics cases, officers draw out a diagram whereby they lay out where the information came from, the individuals involved, and how the information developed. T38 Mr. Royall constructed the information prepared in this chart with his knowledge and belief as to the true facts and circumstances regarding this case. T39 The Iredell County Sheriff's Department was not actively involved in the underlying DEA investigation of the drug case. T41

18. With respect to the information provided to Mr. Royall about the subject DEA investigation, there was no part of that which indicated to him that the drug case was or might have still been an open and ongoing case. T41 If there had been any information provided to him causing Mr. Royall to believe that it was still an open and ongoing case, Mr. Royall would have not disclosed that information to anyone. T42

19. A large part of Mr. Royall's eighteen year law enforcement career has been in narcotics investigations. T42 Mr. Royall was well aware that officers do not disseminate confidential information and if he had known that the information was confidential, he would have never disclosed it. T42

20. On the following day, Mr. Royall obtained information regarding the drug bust from another law enforcement officer, SBI Agent Jamie Castle. T42 Mr. Royall considered and relied upon what SBI Agent Castle had told him in connection with the drug bust as a part of his decision to provide information to the YadkinView. T43-44

21. Mr. Royall communicated with Officer Mark Dowell of the Yadkinville Police Department regarding the drug bust. T44 Officer Dowell provided specific information to Mr. Royall about the drug bust in question. T45 Mr. Royall considered and relied upon the information from Officer Dowell as a part of his decision to communicate some information to the YadkinView. T45

22. In light of what Mr. Royall was told by SBI Agent Jamie Castle and Yadkinville Police Officer Mark Dowell, at no point from the initial conversation with Gary

Simpson to the last communication with Mark Dowell, was there any indication to Jeff Royall that the drug bust was an open investigation. T47

23 It was significant to Mr. Royall that there were several law enforcement officers that were openly discussing the investigation. Mr. Royall explained that on a closed case and from his training and experience, officers do not openly talk about a case unless they specifically tell you through specific terms such as "whisper stop" and "wire case" that it is an ongoing case. T47 Mr. Royall explained that in this situation, no one used those terms. T47 In this situation, none of the officers used any term to in any way suggest or infer to Mr. Royall that the drug case was open or ongoing. T47-48

24. The general nature of the information that Mr. Royall provided to the YadkinView was that there was a vehicle stop in Davie County with approximately four hundred thousand dollars, and that a search subsequently took place with a seizure of approximately six hundred thousand dollars. T48

25. The purpose of providing information on this blog was that it was congratulatory of the DEA. T49 Other individuals had also posted information about criminal cases or federal cases on the YadkinView. T49

26. After his communication to the YadkinView, Mr. Royall was contacted by Captain David Ramsey of the Iredell Sheriff's Department and Mr. Royall fully cooperated with Captain Ramsey's inquiry. T50

27. Mr. Royall had a discussion with Agent Wally Semiak of the DEA. T51 Mr. Royall explained to Agent Semiak and laid out a full diagram of how Mr. Royall received the information and where it came from. T52 Agent Semiak asked if the leak came from his office and Mr. Royall explained that it did. T52 During the conversation, Agent Semiak stated that his problem was not with Mr. Royall but that it is "within my own office." T52

28. With respect to the alleged complaint in Petitioner's Exhibit 2 regarding an alleged complaint from a dispatcher to Sheriff Cain, that contention is not true. T55 When that contended incident allegedly occurred some nine years ago, there was no notice to Mr. Royall or any opportunity for him to in any way defend himself from that contention. T55 There was no alleged proof offered at the hearing by the Respondent, or otherwise by Sheriff Michael Cain, that this contention from nine years ago was established or substantiated in any way.

29. During the hearing and as reflected on pages 53-59 of the transcript, Mr. Royall identified his other exhibits, which were admitted.

30. The next witness called was Jack Henderson, a former Sheriff of Yadkin County. T81-81 Sheriff Henderson served as Sheriff of Yadkin County from 1978 to 1998. T82 Sheriff Henderson served as the president of the North Carolina Sheriff's

Association in 1998. T82 Sheriff Henderson served on the Training and Standards Council. T82 Sheriff Henderson served as the co-chairman of the Sheriff's Legislative Committee for eight years and in other capacities. T83

31. Sheriff Henderson has known Mr. Royall since he was in elementary school. T83 Sheriff Henderson went to the same church with Mr. Royall for a while. T83 Mr. Royall grew up in the same neighborhood or community that Sheriff Henderson did. T84 When Mr. Royall applied for a position with the Sheriff's Department, Sheriff Henderson's office did the background investigation on him and checked him out again. T84 Sheriff Henderson did a psychological evaluation on every employee that he had and Mr. Royall "passed that with flying colors." T84

32. Sheriff Henderson explained that Mr. Royall "was an excellent employee... he was always honest, truthful." T85 Jeff Royall would do what you tell him to do. T85 Sheriff Henderson testified that Jeff Royall "is a good person all the way around, a moral person, a good person..." T85-86

33. Sheriff Henderson learned what Mr. Royall's reputation was in the community. T87 Jeff Royall's reputation was good. T87 He was a family man and worked hard. T87 Jeff Royall earned the respect of the community. T88 Jeff Royall earned the respect of his colleagues on the Department and other police agencies, and with court officials. T88 Sheriff Henderson did not impose any discipline on Mr. Royall. T88

34. With regard to work performance and work ethic, Sheriff Henderson described that Jeff Royall "produced a hundred and five percent." T89 Sheriff Henderson testified that Jeff Royall was very proud to be a law enforcement officer. T89 When asked about how he would sum up Jeff Royall's moral character, Sheriff Henderson described: "He's the kind of guy, if he's cutting a watermelon, he'll give you the best piece..." T90

35. Sheriff Henderson also heard about this drug bust in the community about the day after the bust. T90 Sheriff Henderson perceived that the investigation was closed based on what he heard. T91

36. The next witness called was Sergeant Gary Simpson of the Iredell County Sheriff's Department, where he has served over four years. T96 He has over 17 years of law enforcement experience. T96 Sergeant Simpson had previously served in Forsyth County and Jeff Royall was assigned to his squad and he served as Jeff Royall's immediate supervisor. T96 Sergeant Simpson described how everybody on the squad, 16 individuals, went to Jeff and looked for advice. T98 "They looked up to him because he had experience and he was a good officer and he could handle himself well." T98 Sergeant Simpson described that Jeff Royall handled himself in a very professional manner; he was a "fine, outstanding officer." T98 Sergeant Simpson

26.

described Jeff Royall as being "very professional." T98 Sergeant Simpson described how Jeff Royall had always been honest with him. T99

37. Sergeant Simpson stated that Travis Broughton of the ABC Commission in Forsyth County who is also on the DEA Task Force provided him information about the DEA investigation in April, 2009. T99-101 Sergeant Simpson had no reason to disbelieve what Officer Broughton told him and he conveyed that information to Jeff Royall. T102 When Sergeant Simpson communicated the information to Jeff Royall about the DEA investigation, he did not in any way tell him that the information that he was providing was confidential and part of an ongoing investigation. T102 Law enforcement officers from time to time blog and provide information to the public after cases are closed. T107 Sergeant Simpson testified that there was not anything that he knew about Jeff Royall which reflected a lack of moral character. T107

38. The next witness called was Lieutenant Kevin Black of the Iredell County Sheriff's Department. T108 Lieutenant Black has over fifteen years of law enforcement service. T109 Lieutenant Black has worked with Jeff Royall at the Iredell County Sheriff's office. T109 Lieutenant Black explained that "Jeff has an honorable reputation. He has a reputation also of being a hard worker, and I saw that both first hand..." T110 Lieutenant Black explained that Jeff Royall was "very driven" as a narcotics enforcement officer and he that he always had a positive attitude and was a pleasure to work with. T110 Lieutenant Black explained that Jeff Royall had "always exemplified professionalism..." T110 Lieutenant Black further explained that Jeff Royall is "very honest..." T111

39. Lieutenant Black received information on the DEA case in Yadkin County from Marty Ferrell. T111 Lieutenant Black had a discussion with Lieutenant Ferrell and an SBI agent assigned to Iredell County about the DEA investigation, and Lieutenant Black conveyed the essence of that information to Jeff Royall indirectly. T112 The substance of what Lieutenant Ferrell had been saying about the DEA investigation was being communicated around the office at the Iredell Sheriff's office. T113 When Lieutenant Black had his conversation with Jeff Royall about the DEA investigation, he did not indicate to Jeff Royall that the investigation was an open or ongoing investigation. T113

40. The next witness called was Lieutenant Clarence Harris Jr. T119 Mr. Harris is a Lieutenant in the Narcotics Division with the Iredell County Sheriff's Department, where he has served for approximately 16 years. T119 Lieutenant Harris has known Jeff Royall for approximately 10 years or more. T120 Lieutenant Harris served as Jeff Royall's direct supervisor. T120

41. Lieutenant Harris testified that Jeff Royall "always had a good reputation." T121 Lieutenant Harris described Jeff Royall as having "hard working abilities in law enforcement." And that he was "very thorough." T121 Lieutenant Harris described Jeff

Royall as being "a great undercover officer." T121 Lieutenant Harris described Jeff Royall as being one who "treated people very well. I never seen him talk down to anyone. No complaints." T122 Lieutenant Harris considered Jeff Royall to be an asset to his Department and his unit in particular. T122 Lieutenant Harris described Jeff Royall as being "very honest." T122

42. In April, 2009, Lieutenant Harris became aware of a seizure of large amounts of currency and possible drugs; it was vague information. T123 The person who provided Lieutenant Harris the information was someone in his department. T123 Jeff Royall was in a position to hear the communication about the investigation to Lieutenant Harris, and there was no reference to the matter as being a "wire case." T123-124 There was no indication that the information that he heard was confidential. T124 The term "wire cases" and "whisper stop" are indications that the information is to be held strictly confidential. T124

43. The next witness called was Darlene Crater. T130 Ms. Crater has known Jeff Royall for twenty five years. T131 Ms. Crater worked with Jeff Royall for a period of time in the Sheriff's Department. T132 Ms. Crater described Jeff Royall as being "a very hard worker." T132 Ms. Crater testified that Jeff Royall has "excellent character." T132

44. Ms. Crater testified that Jeff Royall was very in tune with his children and was very involved in activities. T133 Jeff Royall is an active member of his community. T133 Ms. Crater testified: "I've never heard anyone say anything negative about Jeff. He has a good reputation, and honest reputation, a hard worker, easy to approach and talk to." T133

45. The next witness called was Darryl Bottoms, who served as the Chief of Police of the Pilot Mountain Police Department. T135 Chief Bottoms has served with Pilot Mountain Police Department since 1992 and has served in law enforcement since 1988. T135 Chief Bottoms was aware of Jeff Royall's work in the law enforcement community. T136 Chief Bottoms described Jeff Royall as being "always an honest guy, a heartfelt guy. I trust him." T136 Chief Bottoms has heard favorable comments from his officers about Jeff Royall. T136 In his dealings with Chief Bottoms, Jeff Royall has always exhibited honesty and integrity. T137

46. The next witness called was Barbara Fox. T140 Ms. Fox has known Jeff Royall for about nine years. T141 Ms. Fox has never heard anything but positive things about Jeff Royall. T141 Ms. Fox has found Jeff Royall to be very much honest and trustworthy. T141

47. The next witness called was Scott Moncus, a Trooper with the North Carolina Highway Patrol, who has served with the Patrol since 1995. T143 Trooper Moncus started in law enforcement with Jeff Royall in 1995 with the Yadkin County

Sheriff's Department. T143 Trooper Moncus testified that Jeff Royall has the "utmost integrity." T144 Trooper Moncus further testified that Jeff Royall knew how to handle the people. T144 Trooper Moncus testified that there are a lot of sworn officers that look at Jeff Royall "as a role model." T145 Trooper Moncus testified that Jeff Royall has "upstanding" moral character. T145

48. The next witness called was Diane Konopka. T147 Ms. Konopka is the Deputy Director with the Sheriff's Standards Division. T148 The complaint that was communicated to the Training & Standards Commission came from Sheriff Cain of Yadkin County, and there was no other law enforcement officer or agency that made any type of similar complaint regarding Mr. Royall. T153

49. The memorandum prepared by the Commission's investigator, Mike McLaughlin, was a single page memorandum. Petitioner's Exhibit 13. T154

50. After the communication of his complaint, Ms. Konopka believed that Sheriff Cain had called her office. T156 Ms. Konopka recalled Sheriff Cain calling and requesting some type of certification documents in connection with Mr. Royall. T157 Whatever it was that Sheriff Cain was requesting was not released to him because Mr. Royall was not certified through Yadkin County at that time. T158 It is not routine protocol for a Sheriff of a particular county to be making inquiry about someone certified through another Sheriff. T159

51. The next witness called was Walter Semiak, the resident agent of the DEA in Greensboro, where he has been stationed in North Carolina for almost three years. T162

52. When asked about whether a screen name on a blog with the name Eagle Eye, if it came to his attention in April and May of 2009, Agent Semiak testified that he was not sure how it came to his attention but that there was "some chatter in the office about, you know some information being leaked to the press to the public..." T163

53. Jeff Royall was not a part of the DEA Task Force involving the particular investigation resulting in the subject drug bust. T177 The only authorized persons to have information relating to that investigation would have been the DEA agents and others associated with the Task Force. T177 Agent Semiak testified that there was no formal investigation to determine who within DEA provided the information which ultimately was provided to Jeff Royall. T180 Agent Semiak was unaware as to how the information got to Mr. Royall. T182 As a result of the information about the investigation being provided, nobody was terminated from the Task Force. T182-183

54. Petitioner's Exhibit 13 was marked for identification, which was the report of Investigator McLaughlin of the Commission when he interviewed Agent Semiak. T187 From examining Investigator McLaughlin's report, it was somewhat consistent

with his feelings back at the time on August 18. T188 As reflected in Investigator McLaughlin's report, the disclosure of information "did not jeopardize the investigation in any way" and Agent Semiak acknowledged that was absolutely true. T189

55. Investigator McLaughlin reported that he spoke to Agent Semiak of the DEA on August 18, 2009. In pertinent part, Investigator McLaughlin's report indicated: "I asked him [Agent Semiak] if this had jeopardized his investigation or the officers' investigation, or if any of the information posted compromised the investigation. He stated no to all parts of the questions and said that officers' lives were not in jeopardy and it did not jeopardize the criminal investigation in any way." Petitioner's Exhibit 13, which was admitted into evidence. T215

56. The next witness called was David Ramsey, a Captain with the Iredell County Sheriff's Department. T197 On May 1, 2009, a blog entry came to his attention through Jeff Eddins, an Assistant Special Agent in charge of the Hickory SBI office. T199 Captain Ramsey conferred with Jeff Royall and asked him about the blog entry and he acknowledged that it was his. T201 Captain Ramsey testified that Jeff Royall did not know that it was an ongoing investigation. T201

57. Captain Ramsey found Jeff Royall to be a hard working and dedicated law enforcement officer. T207-208 Captain Ramsey found Jeff Royall to be respected by colleagues and respected in the police and judicial communities. T208 Jeff Royall was consistently a good worker for Captain Ramsey. T208 Captain Ramsey found Jeff Royall to be an honest and trustworthy person. T209

58. Other exhibits were offered in support of Petitioner that provided relevant evidence to whether Jeffrey Royall is a person of good moral character. Petitioner's Exhibit 5 is a letter prepared by the Honorable Jeanie Reavis Houston, a District Judge of the Twenty Third Judicial District. Judge Houston explained that she grew up in the same small community and went to school together with Jeff Royall. Judge Houston observed that "Jeff is a great father." She explained: "he continues to be a good father to his three children, attends all their activities, encourages them in school, and is there for them if they need him. This says a lot for Jeff's character as a father and a man in general." Judge Houston further explained: "I believe my lifelong friendship with Jeff and his family makes me a good person to assess Jeff's character. Jeff is intelligent, capable, dedicated and a personable man. In my dealings with Jeff, both personally and professional, I have always found him to be honest, confident, compassionate and mature. He has an excellent rapport with people of all ages. Jeff Royall would be a valuable asset to any law enforcement organization."

59. Petitioner's Exhibit 6 is a statement executed by Chief Darryl Bottoms of the Pilot Mountain Police Department about Jeff Royall. Chief Bottoms reported that "Jeff has always displayed a high degree of integrity, responsibility, and ambition. He is definitely a leader rather than a follower. In addition to his excellent accomplishments,

he has proven his leadership ability. He is also most dependable team player. His good judgement and mature outlook ensure a logical and practical approach to his endeavors."

60. Petitioner's Exhibit 7 is a letter from Trooper Scott Moncus to the Training & Standards Commission. Trooper Moncus reports that he has observed Jeff Royall perform at the highest levels of his duties and that he has shown integrity and pride in his position with law enforcement, his friends and with his community.

61. Petitioner's Exhibit 8 is a letter from Monty Hutchens of the Lincoln County Sheriff's office. Detective Hutchens reports that he has worked in two Sheriff's offices over the past 24 years. Detective Hutchens reports how Jeff Royall has always been fair with him, has a deep pride in being a law enforcement officer, and that Detective Hutchens has never questioned his character or work ethic.

62. Petitioner's Exhibit 9 is a statement of Barbara Fox. Ms. Fox reports: "I have two grown daughters and no sons. If I had a son, I would want him to be like Jeff. Jeff is a very truthful person..."

63. The totality of the evidence demonstrated that Petitioner Jeffrey Royall acted in good faith when he communicated about the subject drug bust in Yadkin County in April, 2009. Petitioner Royall had heard about this drug bust from several law enforcement officers and believed the case was closed. Under the particular facts and circumstances, Petitioner Royall reasonably believed that his communications were proper and that the underlying criminal case was not open.

64. There was no credible evidence that Petitioner Royall's communications were intended to cause any harm, and there was no harm caused to the investigation or anyone. The underlying criminal investigation was not obstructed or harmed by Petitioner's communications.

65. Petitioner Jeffrey Royall has been fully cooperative and forthcoming about his underlying conduct which gave rise to this case. Mr. Royall did not knowingly disclose any confidential information. Mr. Royall's conduct, as demonstrated by the totality of all credible evidence, does not constitute evidence showing any lack of good moral character.

66. The evidence demonstrates that Petitioner Jeffrey Royall possesses favorable character traits of honesty, trustworthiness, integrity, professionalism, dedication to the law enforcement profession, being a hard worker with good work ethic, highly productive, fair to others, a "role model" for others, a good father, and respected by his community including the law enforcement and judicial communities. See T85-90, 98-99, 107, 110-111, 121-122, 133, 136-137, 141, and 143-145. These character traits were established by the virtually undisputed testimony of Retired Sheriff Jack Henderson, Chief Darryl Bottoms, Sergeant Gary Simpson, Lieutenant Kevin Black,

Lieutenant Clarence Harris, Trooper Scott Moncus, Ms. Barbara Fox, and Ms. Darlene Crater. Other character evidence appears in the record by written statement including that of the Honorable Jeanie Reavis Houston. Petitioner's Exhibit 5.

67. The totality of the credible evidence demonstrates that Petitioner Jeffrey Royall is a person and law enforcement officer of good moral character.

CONCLUSIONS OF LAW

1. Both parties are properly before this Administrative Law Judge. Jurisdiction and venue are proper and both parties received proper notice of the hearing.

2. The North Carolina Sheriff's Education and Training Standards Commission (hereafter the Commission) has certain authority under Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B, to certify justice officers and to suspend, revoke or deny certification under appropriate circumstances with valid proof of a rule violation.

3. 12 NCAC 10B.0301(a)(8) requires that justice officers certified in North Carolina shall be of good moral character.

4. There is no factual or legal basis to conclude that Petitioner Jeffrey Royall lacks good moral character. The totality of the evidence demonstrates that Petitioner Jeffrey Royall is a person of good moral character and has been a dedicated professional law enforcement officer in North Carolina for many years. Petitioner is morally fit to continue to serve as a law enforcement officer in North Carolina. Petitioner Jeffrey Royall has good moral character as required by 12 NCAC 10B .0301(d)(8).

5. Moral character is a vague and broad concept. E.g. *Jonathan Mims v. North Carolina Sheriff's Education and Training Standards Commission*, 02 DOJ 1263, 2003 WL 22146102 at page 11 - 12 (Gray, ALJ) and cases cited therein.¹ Police administrators, officers and others have considerable differences of opinion as to what constitutes good moral character. *Mims, supra.* at page 12, Conclusion of Law 12. In

1. See *Mims* at page 11. The United States Supreme Court has described the term "good moral character" as being "unusually ambiguous." In *Konigsberg v. State*, 353 U.S. 252, 262-63 (1957), the Court explained:

The term good moral character...is by itself...*unusually ambiguous*. It can be defined in an almost unlimited number of ways for any definition will necessarily reflect the attitudes, experiences, and prejudices of the definer. Such a vague qualification, which is easily adapted to fit personal views and predilections, can be a dangerous instrument for arbitrary and discriminatory denial...(emphasis added).

Mims, the Respondent Commission offered the testimony of someone who claimed to be knowledgeable regarding moral character; he testified that there are six components to good moral character of law enforcement officers: trustworthiness, respect, responsibility, fairness, citizenship and being a caring individual. *Mims*, page 7 at Finding of Fact 48. Applying those criteria here, the evidence demonstrates that Petitioner Jeffrey Royall met each of those criteria and other moral character components which demonstrated his good moral character.

6. While having good moral character is an ideal objective for everyone to enjoy, the lack of consistent and clear meaning of that term within the Respondent's rule, and the lack of clear enforcement standards or criteria for application of the rule, renders enforcement actions problematic and difficult. *Mims, supra.* at page 12, Conclusion of Law 4.²

7. Because of these concerns about the flexibility and vagueness of the good moral character rule, any suspension or revocation of an officer's law enforcement certification based on an allegation of a lack of good moral character should be reserved for clear and severe cases of misconduct. *Mims, supra.* at page 12 and 13.

8. Generally, isolated instances of conduct are insufficient to properly conclude that someone lacks good moral character. See *In Re Rogers*, 297 N.C. 48, 58 (1979) ("whether a person is of good moral character is seldom subject to proof by reference to one or two incidents."); *Daniel Brannon Gray v. N.C. Sheriffs Education and Training Standards Commission*, 09 DOJ 4364 (March 15, 2010; May, ALJ). The incident alleged in this case is insufficient to rise to the required level of proof to establish that Petitioner Royall lacks good moral character. Under *In Re Rogers*, a single instance of conduct amounting to poor judgment, especially where there is no malice or bad faith, would not ordinarily rise to the high level required to reflect a lack of good moral character.

9. In *Daniel Brannon Gray v. N.C. Sheriffs Education and Training Standards Commission*, 09 DOJ 4364 (March 15, 2010; May, ALJ), the good moral character rule was interpreted. "Good moral character has been defined as 'honesty, fairness and respect for the rights of others and for the laws of state and nation.'" *Gray*, at page 18,

2. Cases reaffirm fundamental requirements that there must be uniform rules for consistent application to everyone including law enforcement officers. See, e.g., *Mims*, citing *Toomer v. Garrett*, 574 S.E.2d 76 (N.C. App. 2002)(government agencies may not engage in disparate treatment or arbitrariness in treating law enforcement officers; constitutional claims stated); *Village of Willowbrook v. Olech*, 120 S.Ct. 1073, 1074 (2000)(requiring that government conduct be non-arbitrary); *Dobrowolska v. Wall*, 138 N.C. App. 1, 530 S.E.2d 590 (2000). See *Reno v. Bossier Parrish School Board*, 120 S. Ct. 866 (2000) (explaining how imposition of good moral character requirement for voting impermissible).

Conclusion of Law 5, citing *In Re Willis*, 299 N.C. 1, 10 (1975). Gray further explained that "[g]enerally, isolated instances of conduct are insufficient to properly conclude that someone lacks good moral character. However, if especially egregious, even a single incident could suffice to find that an individual lacks good moral character in places [sic] of clear and especially severe misconduct," citing *In Re Rogers*, 297 N.C. 48, 59 (1979). Here, there is clearly no severe, egregious or clear misconduct warranting any finding of a lack of good moral character.

10. Police officers and others make occasional honest mistakes and sometimes exercise poor judgment. For example, in *Andreas Dietrich v. N.C. Highway Patrol*, 2001 WL 34055881, 00 OSP 1039 (August 13, 2001, Gray, ALJ), Administrative Law Judge Gray addressed a case involving very poor communications by a state trooper characterizing state officials harshly. There, Judge Gray reviewed free expression concerns concluded that there was no just cause for formal disciplinary action. Judge Gray reasoned that: "Troopers, like other public employees and officials, will occasionally say things that they should probably not say. Ideally, it is desired that law enforcement officers be near perfect; however, that is not a realistic standard." *Dietrich, supra.*, page 13 at Conclusion of Law 12. In this case, the sole charge of insufficient good moral character does not fit the facts and evidence. At worst, Petitioner Royall had an honest mistaken understanding, which is insufficient to establish a lack of good moral character.

11. The totality of the facts and circumstances surrounding Petitioner Royall's conduct, in light of his exemplary history of good moral character and professionalism in law enforcement, does not warrant any finding that Petitioner Royall lacks good moral character. The substantial evidence of Petitioner's good moral character is clear and compelling. Sheriff Jack Henderson's description of Petitioner Royall is very telling: "He's the kind of guy, if he's cutting a watermelon, he'll give you the best piece..." T90 Therefore, the evidence demonstrates that there is no proper basis for revocation or suspension of Petitioner's law enforcement certification.

12. As to another prong of the complaint against Petitioner Royall, Petitioner's expression regarding Sheriff Cain was constitutionally protected and may not be considered as any basis for a finding of a lack of good moral character. Numerous cases stand for the proposition that law enforcement officers enjoy the constitutional right to free expression.³ The expression of Petitioner Royall regarding Sheriff Cain is

3. In *Rankin v. McPherson*, 483 U.S. 378 (1987) and other cases, the Supreme Court has strongly protected the rights to free expression by deputy sheriffs and police officers. See *Dietrich v. N.C. Highway Patrol*, 2001 WL 34055881, 00 OSP 1039 (August 13, 2001; Gray, ALJ)(addressing free expression rights of police officers); *Lindquist v. N.C. Highway Patrol*, 98 OSP 0170 (Gray, ALJ)(addressing expression rights of police officers); *Edwards v. City of Goldsboro*, 178 F. 3d 231 (4th Cir. 1999)(addressing expression rights of police officers under First Amendment).

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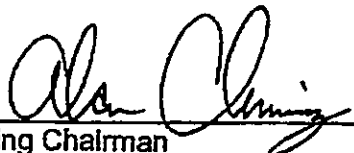
protected because, *inter alia*, it involved an area of expression that courts have historically held protected: the right to criticize law enforcement and public officials regarding policies, practices and conduct.⁴

13. The totality of the facts and circumstances surrounding Petitioner Royall's conduct, in light of his otherwise exemplary history of good moral character and professionalism in law enforcement, do not warrant or justify revoking or suspending Petitioner's law enforcement certification. There has been no violation of Respondent's good moral character rule.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, Respondent finds that there has been no rule violation and that there is no legitimate basis to revoke or suspend Petitioner's law enforcement certification.

This the 5th day of January, 2011.


Acting Chairman

4. E.g., *Worrell v. Sheriff Morris Bedsole*, 1997 WL 153830 (4th Cir. 1997)(N.C. Deputy Sheriff's speech about a Sheriff's actions and inactions regarding police equipment protected; *Brewington v. Bedsole*, 1993 WL 819885 (E.D.N.C. 1993)(expression by N.C. Deputy Sheriff criticizing other police agency management officials held constitutionally protected; partial summary judgement for officer); *Howell v. Town of Carolina Beach, N.C.*, 106 N.C. App. 410, 417 S.E.2d 277 (N.C. App. 1992)(police officer expression about conduct of public officials regarding police equipment held protected), and cases in note 3, *supra*.

35

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the foregoing FINAL AGENCY DECISION was this day served upon the following by depositing a copy of same in the United States Mail, certified mail, return receipt requested, addressed as follows:

Jeffrey Gray Royall
3528 Arnold Road
Hamptonville, North Carolina 27020

J. Michael McGuinness
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P.O. Box 952
Elizabethtown, North Carolina 28337

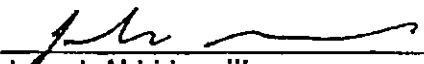
The undersigned also certifies that a copy of the foregoing FINAL AGENCY DECISION was this day served upon the following by depositing a copy of same in the United States Mail, postage prepaid and addressed as follows:

Office of Administrative Hearings
6714 Mail Service Center
Raleigh, North Carolina 27699-6714

Julia Lohman, Director
N.C. Department of Justice
Sheriffs' Standards Division
9001 Mail Service Center
Raleigh, North Carolina 27699-9001

This the 27 day of January, 2011.

ROY COOPER
Attorney General



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