

No. 158PA23

FIFTEENTH DISTRICT

NORTH CAROLINA SUPREME COURT

MAURICE DEVALLE,

Petitioner/Appellee,

v.

N.C. SHERIFF'S EDUCATION
AND TRAINING STANDARDS
COMMISSION,

Respondent/Appellant.

From Columbus County
COA 158PA23

MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF BY NORTH
CAROLINA ADVOCATES FOR JUSTICE and STATE EMPLOYEES
ASSOCIATION OF NORTH CAROLINA, INC. IN SUPPORT OF
MAURICE DEVALLE

The North Carolina Advocates for Justice (“NCAJ”) and State Employees Association of North Carolina (“SEANC”) hereby request permission, pursuant to Rule 28.1(b)(1) and (2) of the North Carolina Rules of Appellate Procedure, to file an *amicus curiae* brief in support of Petitioner/Appellee, Maurice Devalle, in this matter. Pursuant to Rule 28.1(b)(1), the proposed *amicus curiae* brief is being filed contemporaneously with this motion.

NATURE OF AMICUS CURIAE INTEREST IN THE CASE

Amicus curiae NCAJ is a non-profit advocacy group dedicated to protecting people, preventing injustice, promoting fairness, and safeguarding the constitutional rights of all North Carolinians, including the employees whose professional licenses and certifications may be impacted by this case. The NCAJ is a non-profit, non-partisan professional association of more than 2,500 North Carolina attorneys dedicated to protecting people, preventing injustice, and promoting fairness.

Amicus curiae SEANC is a North Carolina non-profit corporation whose members are current and retired State employees. With approximately 42,250 active members, of whom approximately 23,500

are current employees of the State of North Carolina, the guiding purpose of SEANC is the promotion of the best interests of current, retired, and future employees of the State of North Carolina. Thousands of SEANC members currently hold certification or licensure subject to the jurisdiction of executive branch occupational licensing agencies such as respondent North Carolina Sheriff's Education and Training Standards Commission.

The issues the Court may consider are consistent with both *amici's* missions to protect North Carolinians' inalienable right to enjoy the fruits of their labor and work in their chosen profession.

**THE REASONS WHY THE *AMICUS CURIAE* BRIEF IS
BENEFICIAL**

Amici curiae seek to fulfill the “classic role of *amicus curiae* by assisting in a case of general public interest, supplementing the efforts of counsel, and drawing the court’s attention to law that escaped consideration.” *Miller-Wohl Co., Inc. v. Comm’r. of Labor & Indus.*, 694 F.2d 203, 204 (8th Cir. 1982). As commentators have stressed, an *amicus curiae* is often in a superior position to “focus the court’s attention on the broad implications of various possible rulings.” R. STERN ET AL.,

SUPREME COURT PRACTICE, 570–71 (1986) (quoting Bruce J. Ennis, *Effective Amicus Briefs*, 33 Cath. U.L. Rev. 603 (1984)).

This case is of considerable importance to NCAJ and SEANC, to state and local law enforcement officers, and to everyone earning a living in a licensed profession across the state. It presents this Court with an opportunity to bring consistency to current disparate approaches to interpreting the “good moral character” standard across executive branch licensing boards and agencies. An opinion affirming the Court of Appeals holding in this case would curtail arbitrary and discriminatory application of the good moral character standard in law enforcement certifications and other professional licensing proceedings statewide.

Although the facts of the present case are of particular concern to citizens who have devoted or plan to devote their adult lives to serving the public in law enforcement careers, ultimately this Court’s decision will have far-reaching effects in dozens of fields and professions. The impacted workers include teachers, electricians, barbers, lawyers, doctors, nurses, veterinarians, mental health professionals, police officers, corrections officers, engineers, pharmacists and pharmacy technicians, bail bond agents, real estate agents, insurance agents, private investigators,

auctioneers, cosmetologists, contractors, plumbers, surveyors, pest control technicians, school bus drivers, and many more that must pass these character tests. One in every five North Carolina workers is regulated by occupational licensing law.¹

A reversal of the Court of Appeals decision would deepen the uncertainty already inherent in North Carolina's vague concept of good moral character, while at the same time undermining the legal requirement that executive branch agencies actually investigate matters in which they exercise the power to exclude North Carolina citizens from careers of their choosing.

Reversal of the Court of Appeals decision in this case would discourage or outright ignore the potential for restoration of good moral character and send the wrong message to law enforcement agencies, other professional boards, and the broader public, about the capacity for rehabilitation in the criminal justice system.

Finally, it is a matter of vital concern to NCAJ, SEANC, and their members that evidence of rehabilitation and restoration of good moral

¹ Institute of Justice, Occupational Licensing in North Carolina, <https://ij.org/issues/economic-liberty/occupational-licensing/north-carolina/>

character is not arbitrarily disregarded in the context of law enforcement certifications and other occupational licensing disputes.

THE ISSUES TO BE ADDRESSED IN THE *AMICUS CURIAE* BRIEF

The *amicus curiae* brief will address the issues raised by Respondent on appeal. *Amici* will specifically address whether the courts below erred in finding that Mr. Devalle was rehabilitated from any good moral character deficiency from conduct back in 2016 and that his *present* moral character is good. The brief also will address whether the courts below erred in finding that the North Carolina Sheriff's Education and Training Standards Commission failed to conduct the required investigation of the alleged charge against Mr. Devalle and therefore violated 12 N.C. Admin. Code 10B.0201. And finally, *amici* will address whether a state occupational licensing agency's failure to meet its legal duty to investigate prior to imposing discipline is arbitrary or capricious and a violation of procedural or substantive due process.

THE POSITION OF *AMICI CURIAE* ON THOSE ISSUES

Amici's position on the issues raised by Respondent is that the trial court and Court of Appeals correctly held that the Commission did not

abide by its own good moral character standard when it denied Mr. Devalle's justice officer certification indefinitely; and correctly held the Commission's decision was arbitrary and capricious, and unsupported by substantial evidence.

More specifically, *amici's* position is that a policy discouraging rehabilitation by allowing agencies and commissions to arbitrarily discount that evidence, as it did with Mr. Devalle, would undermine the legislature's recent efforts to reform occupational licensing law to promote consideration of evidence of rehabilitation of good moral character. *Amici's* position is that there is a great need to reaffirm and more clearly define the rehabilitation principle of the good moral character standard.

Finally, *amici's* position is that this Court should reaffirm the principle that occupational licensing agencies, boards, and commissions must engage in "reasoned decision-making" which includes following their own rules and adopting findings consistent with due process principles. More specifically, the decision of the Commission to deny Mr. Devalle's application for certification, while failing to provide the specific testimony on cross-examination that it claims drove the decision, is a

violation of basic due process principles and the North Carolina Constitution's "Law of the Land" clause at Article I, Section 19.

CONCLUSION

For all of these reasons, *amici* respectfully request that this Court grant this motion and give them permission to file an *amicus curiae* brief in this matter.

Respectfully submitted this 6th day of December, 2024.

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N.C. R. App. P. 33(b) Certification:
I certify that all of the
attorneys listed below have
authorized me to list their names
on this document as if they had
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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing document has been served on the following counsel of record by e-mail on this the 6th day of December, 2024.

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