

**NORTH CAROLINA CRIMINAL JUSTICE  
EDUCATION AND TRAINING STANDARDS COMMISSION**

**MINUTES**

**DATE:** February 19, 2010

**TIME:** 9:00 A. M.

**LOCATION:** N. C. Department of Correction  
Apex, North Carolina

**SUBMITTED BY:** Wayne Woodard  
Director

The Education and Training Committee, the Planning and Standards Committee, and the Probable Cause Committee met on February 18, 2010 for their regular quarterly meetings. The Executive Committee also met on February 18, 2010.

**MEMBERS PRESENT**

Colonel Randy Glover  
Chief Ira Jones  
Dr. Robert Ruth  
Mr. Eddie Caldwell  
Captain Lee Farnsworth  
Captain Terry Jones  
Chief Wrenn Johnson  
Mr. Terry Waterfield  
Mr. Ray Davis  
Mr. James Festerman  
Mr. Vernon Bryant  
Ms. Linda Hayes  
Chief Scott Cunningham  
Ms. Stephanie Freeman  
Sergeant Lorrie Hersey  
Mr. Kevin Wallace  
Mr. Johnson Britt  
Ms. Tracy McPherson  
Chief Patricia Bazemore  
Mr. Steve Johnson  
Ms. Annie Harvey  
Mr. Ricky Anderson  
Mr. Brent Herron  
Mr. Thomas Thornburg  
Ms. Hilda Spivey

**MEMBERS ABSENT**

Mr. John Glenn  
Mr. Frank Rogers  
Ms. Robin Pendergraft  
Mr. Richard Armstrong

VISITORS

Chief Charles Bowen	Selma Police Department
William K. Batson	Selma Police Department
Tammie Batson	
Judy Ricks	
Gentry Coleman	N. C. Department of Correction
William Rushing	N. C. Department of Correction
Chief Tim Hayworth	Zebulon Police Department
Dennis Brannon	Zebulon Police Department
Scott Finch	Zebulon Police Department
Peggy Schaefer	N. C. Justice Academy
Michael Retort	Charlotte-Mecklenburg Police Department
Sergeant David Sloan	Charlotte-Mecklenburg Police Department
David Shean	
Cindy Thacker	N. C. Juvenile Justice Delinquency Prevention
Joyce Ruth	
Captain James Cappelletti	Pinetops Police Department
Phillip King	N. C. Division of Parks and Recreation
Norman Young	N. C. Department of Justice
Steven DeCillis	Attorney representing Gregory Perry
Selena Summey	
William Summey	
Rachel Hitch	Attorney representing William Summey
Mike Heavner	
Gregory Lewis	Butner Public Safety Police Department
Anthony Moss	Butner Public Safety Police Department
Tommy Lymon	N. C. Department of Correction
Eric Stallings	Winterville Police Department
Jeff Gray	Attorney representing Tommy Lymon
Chet Jernigan	N. C. Justice Academy
Cecilia Warren	
Tracy Warren	
Gregory Warren	High Point Parks and Recreation Department
Chief Chris Riewe	High Point Parks and Recreation Department
Marcus Daniel Crossman	N. C. Division of Parks and Recreation
Michael Warren	
Chris Anderson	N. C. Justice Academy
James Morgan	N. C. Department of Correction
Peggy Morgan	
Tyrone Brown	N. C. Department of Correction
Dan Boyce	Attorney representing Paul Evington
Gregory Perry	
Chief Michael Hobgood	Butner Public Safety Police Department

STAFF

Wayne Woodard	Richard Squires	Claudelle Julien	Jane Gilchrist
Pam Pope	Teresa Marrella	Mark Dearry	Ed Zapolsky
Mike Heavner	Marvin Clark	Joy Strickland	Tim Pressley
Dawn Suffel	Pamela Brooks	Donna Byrd	

I. CALL TO ORDER

Commission Vice-Chairman Eddie Caldwell brought the meeting to order. He read the Ethics Statement into the minutes. Following the roll call, Vice-Chairman Caldwell declared that a quorum was present. He extended a warm welcome to the visitors.

II. AWARDING OF ADVANCED CERTIFICATES

[Agenda Memorandum No. 03-09]

Vice-Chairman Caldwell reported that staff had evaluated the applications of all two hundred and twenty (120) candidates. There were one hundred and four (104) candidates for the Advanced Law Enforcement Certificate and sixteen (16) candidates for the Advanced Criminal Justice Certificate. He noted that each of these applicants had met the requirements to receive the Advanced Certificate and the Advanced Certificate pin.

**MOTION was made by Commissioner Lee Farnsworth that the Commission award the Advanced Law Enforcement Certificate or Advanced Criminal Justice Certificate to each named individual. The MOTION was seconded by Commissioner Terry Jones and carried unanimously.**

The following individuals were present to personally receive their Advanced Law Enforcement and Advanced Criminal Justice Certificates:

Michael Thomas Retort	Charlotte-Mecklenburg Police Department Presented by Sergeant David Sloan
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Gregory C. Warren	High Point Parks and Recreation Department Presented by Chief Chris Riewe
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Marcus Daniel Crossman	N.C. Division of Parks and Recreation Department Presented by Phil King
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William Keith Batson	Selma Police Department Presented by Chief Charles Bowen
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Dennis Barry Brannon	Zebulon Police Department Presented by Tim Hayworth
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Gentry Mark Coleman

N. C. Department of Correction

Presented by William Rushing, Supervisor and Commissioner Kevin Wallace

James Edward Morgan

N. C. Department of Correction

Presented by Tyrone Brown and Commissioner Hilda Spivey

### III. MINUTES OF NOVEMBER 20, 2009 MEETING

Vice-Chairman Caldwell entertained a motion to approve the minutes of the previous Commission meeting. Commissioner Kevin Wallace noted that he was not present at the November meeting.

**MOTION was made by Commissioner Terry Waterfield that the Commission approve the minutes as amended; seconded by Commissioner Hilda Spivey and carried unanimously.**

### IV. STANDING COMMITTEE REPORTS

#### A. Executive Committee - Chairman Eddie Caldwell

Chairman Caldwell reported that the Executive Committee had met on Thursday, February 18, 2010, to discuss a number of issues. He noted that it was presented to the Executive Committee on November 19, 2009, that James Sprunt Community college had started a new day BLET program. Chairman Caldwell stated that there were concerns as to whether or not James Sprunt Community College had been complying with the Commission guidelines. According to staff's knowledge, the college had not complied with the Commission guidelines. Chairman Caldwell reported that at the November meeting, the Executive Committee had authorized Director Wayne Woodard to not administer the state exam to the students of the day time program in December. Also, Chairman Caldwell stated on behalf of the Executive Committee, he made a motion to withhold the administration of the exam for night class as well.

**MOTION was made by Commissioner Caldwell on behalf of the Executive Committee to adopt the meeting minutes of November 19, 2009. The is to: (1) withhold the administration of the State Comprehensive Examination at James Sprunt Community College is clarified to reflect that the motion applied to the day BLET course held July 21, 2009 through December 10, 2009; and (2) Director Wayne Woodard is authorized to withhold administering the State Comprehensive Examination at James Sprunt Community College for the night BLET course scheduled August 19, 2009 through May 14, 2010 until the Commission staff completes their investigation and determines that all course requirements have been completed; seconded by Commissioner Ray Davis. The MOTION carried unanimously.**

Next, Chairman Caldwell reported that the Commission has administrative rules that are being updated, amended and deleted according to the Rules Review process. He stated that the Rules Review Commission not only reviews the portion of the rule that the Commission would like to be changed but reviews the entire rule. He stated that one particular rule dealing with the BLET program went through the process and the Rules Review Commission raised an issue. The rule reads, "A person cannot enroll in a BLET class unless they are at least 20 years of age." This part

of the rule was identified by the Rules Review Commission as being contrary to G.S. 93B-9 which states, "That for any Licensing Board, Certification Board and Occupational Board, there can be no requirement that a person be older than 18 years of age in order to be certified or receive a license." Chairman Caldwell related that our rule is in conflict. He stated that the Commission has a separate rule that specifies the minimum age to be certified that was not before the Rules Review Commission. Ms. Gilchrist, legal counsel, has reviewed the rule and reported that the rule will continue through the review process. The provision which said: "You have to be at least 20 years of age for entry into BLET class will be removed, but this does not effect the rule that specifies the minimum age to be certified. Chairman Caldwell noted that Director Woodard would be notifying the school directors that the rule dealing with the minimum age for entry into BLET has been filed. The minimum age to be certified as an officer has not been filed. Chairman Caldwell reported that staff and legal counsel are going to submit to the General Assembly legislative information to place appropriate wording in our statute that authorizes the Commission to not be bound by G.S. 93B-9. He noted that a student can enroll at the age of 18 but they will not be able to be certified with BLET until they are the legal age of 20.

Vice-Chairman Caldwell next asked Director Wayne Woodard to give an update on the Criminal Justice Standards Division.

Mr. Woodard introduced two staff members with the Criminal Justice Standards Division. He noted that Tim Pressley started with the section on Monday, February 15, 2010. He explained that Mr. Pressley will be in charge of the radar, speed measuring instrument and the Instructor programs. Mr. Woodard reported that Mr. Pressley came from Private Protective Services, where he was a training officer and investigator and that he was also a retired lieutenant from the Chapel Hill Police Department. Mr. Woodard introduced Ms. Dawn Suffel, program assistant for the SMI program. Ms. Suffel came on board as a temporary employee with the division in October and had previously worked in private business. She was hired as a permanent employee in January. Mr. Woodard stated that he was very delighted to have both of them on board.

Next, Mr. Woodard reported that receipts from the new \$2.00 court fees were now being received for funding the Sheriffs' Standards and the Criminal Justice Standards Division. He reported that as of January 2010, our division was being funded entirely by court fees. Financial Services reported that fees were coming in as projected and Criminal Justice Standards was averaging \$158,000 a month.

Mr. Woodard explained that the Department of Justice wants to make the Old Education Building the legal center for attorneys. He stated that presently there were attorneys out in the field that they would like to have at a centralized location. He noted that the State Property Office is working to find a new location for both Criminal Justice Standards Division and Sheriffs' Standards Division.

Mr. Woodard reminded the Commission that all law enforcement agencies are required to submit an in-service training report for their agency by January 15<sup>th</sup> of each year. He reported that for 2009 there were a total of 391 officers who had not completed the in-service training. Of the officers, 45 were suspended, 47 were granted medical waivers and 67 were granted military waivers. Staff has also issued 32 acknowledgment letters which confirm those officers had subsequently completed the training. Mr. Woodard reported that staff has been working very hard to educate agency personnel on the proper completion of the appropriate paperwork and background investigation requirements for certification. He reported that four certification workshops were scheduled for this year across the state. He reported that these classes were a huge success.

Mr. Woodard concluded his report by saying that staff had updated the By-Laws and Probable Cause Policy as approved at the last meeting to reflect that all Probable Cause Committee meetings will be held in Closed Session. Updated copies have been provided to all members.

Mr. Caldwell asked Director Peggy Schaefer to give an update on the Justice Academy.

Ms. Schaefer stated that Wayne Ayers, Deputy Director, has returned from Iraq. Mr. Ayers is a Lieutenant Colonel with the National Guard and has been out of the country since 2008.

She noted that the Justice Academy would be breaking ground for the new indoor firing range the first of April and hopefully it will be operational in 2011. She stated that the Open House for the east campus is scheduled for Sunday, April 11<sup>th</sup>. Ms. Schaefer explained that the Justice Academy will be exhibiting the newly renovated gym.

Ms. Schaefer reported that the academy had hired a new librarian, Mr. Anthony Aycock. She noted that Chris Anderson has been promoted and will be the Support Services Manager. She noted that Mr. Anderson has managed the In-service Training Program for the last five years. He will be supervising the print shop operation, the library video, and managing on-line training.

**B. Education and Training Committee - Chairperson Wrenn Johnson**

Chairperson Johnson reported that the Education and Training Committee met on Thursday, February 18, 2010 at the Department of Correction Office of Staff Development and Training, Apex, North Carolina.

Chairperson Johnson reported that on behalf of the BLET Revision Committee, Bob Yow, N. C. Justice Academy, explained that the Human Trafficking Task Force presented information to the Committee regarding the extent of the human trafficking problem in North Carolina. The Revision Committee considered this information and recommendation the addition of a two-hour block of instruction. The Committee approved this recommendation.

**MOTION was made by Commissioner Wrenn Johnson that the Commission authorize the Planning and Standards Committee to conduct a rule-making hearing to amend 12 NCAC 09B .0205 by adding a two hour Human Trafficking block of instruction to Basic Law Enforcement Training; seconded by Commissioner Steve Johnson. The MOTION carried unanimously.**

Chairperson Johnson noted that Pam Pope, Deputy Director with Criminal Justice Standards Division, reported that the Joint In-service Training Subcommittee reviewed and approved a letter to agency heads and trainers reminding these parties of the importance of in-service training rules and the implementation of training consistent with these rules. The Committee reviewed and approved this letter.

**MOTION was made by Commissioner Johnson that the Commission approve the dissemination of this letter to all agency heads, school directors and in-service training coordinators under the signature of both Standards Division Directors; seconded by Commissioner Jones. The MOTION carried unanimously.**

Chairperson Johnson related that Mr. Yow also reported that the BLET Revision Committee had considered and recommended that a revised course description packet be included in the instructor lesson plan for Specialized Driver Instructor Training. The new packet offers more specific

information on skills testing. The Committee approved this recommendation.

Mr. Yow further reported that the BLET Revision Committee also recommended the removal of the shotgun training portion of the firearms block. He explained that the different weapons being used by agencies make it difficult to design training that is useful to most students. The additional time available will allow for more handgun training. The Committee approved this recommendation.

Next, Chairperson Johnson noted that Commissioner Terry Jones reported that the School Accreditation Committee, in conjunction with the Standards Division staff, found that Piedmont Community College in Roxboro and Vance-Granville Community College in Henderson both meet Commission accreditation standards and thus recommend that each college be reaccredited for a period of five years. The Committee approved this recommendation.

Chairperson Johnson related that Mark Strickland, N. C. Justice Academy, reported that the Joint In-service Training Subcommittee met and approved training objectives for the 2011 calendar year. Topics and hours were previously approved by the Education and Training Committee in November 2009. The Committee approved the objectives as submitted. In addition, the Committee voted to request that the Instructor Notes Section of the Active Shooter In-service lesson plan direct that this block of instruction be delivered in the traditional classroom format, to include practical exercises; and further that this block of instruction not be delivered in any computer format.

Chairperson Johnson reported that Commissioner Stephanie Freeman explained that a job analysis of Probation/Parole Officers was currently being conducted and would likely affect the intermediate level Probation/Parole Officer Training course. The Department of Correction requested authority to pilot the changes ahead of time, so as not to delay the training revisions suggested by the task analysis. The Committee approved this request.

Commissioner Freeman further requested pilot authority for the Department of Correction Firearms Instructor Course. A number of updates have been made to the course. The department would like to pilot the revised course in April of this year. The Committee approved this request.

Chairperson Johnson noted that Commissioner Jones reported that Johnson C. Smith University had been granted "candidate" status in furtherance of the institution's efforts to eventually gain Commission certification as a post-secondary criminal justice education program.

Next, Chairperson Johnson noted that Mr. Yow reported that the BLET Revision Committee had considered a number of informational issues. Mr. Yow noted that the "Physical Activity Readiness Form" used in BLET had been revised to conform to the Genetic Information Nondiscrimination Act (G.I.N.A.).

Chairperson Johnson related that Mark Dearry, Criminal Justice Standards Division, reported that the scenario based BLET exam has completed pilot testing but requires additional study to determine a final implementation strategy.

Chairperson Johnson noted that Stacy Holloman with the N. C. Justice Academy shared with the Committee the latest In-service Firearms Qualification Manual. This version covers the use of reduced-size targets in indoor ranges and certain aspects of qualification for retired officers, consistent with "The Law Enforcement Officer's Safety Act of 2004."

Chairperson Johnson concluded her report by stating that Chet Jernigan, Deputy Director, N. C. Justice Academy, reported that the Police Chiefs' Winter Conference included a pilot four-hour block of instruction on "Legacy Leadership." This training was successfully delivered to 75 in attendance. Each participant has been sent a certification of completion via e-mail.

**C. Planning and Standards Committee - Chairman Kevin Wallace**

Chairman Wallace reported that the Planning and Standards Committee met on Thursday, February 18, 2010. He reported that the Planning and Standards Committee approved the minutes of the November meeting.

Chairman Wallace reported that the Planning and Standards Committee began discussion for a proposed amendment to the F-1 Medical History Statement form. The Committee considered a proposal by legal staff to amend the Medical History Statement form. He explained that the Medical History Statement is a four page questionnaire that all applicants for a criminal justice position must complete for review during the required physical examination before being hired by an agency. This questionnaire deals with the applicant's medical history to assist in determining if the applicant is fit for duty. The Commission's legal staff requested that the family history section of the form be removed due to the passage of the Genetics Information Nondiscrimination Act of 2008, also known as G.I.N.A. that prohibits employment practices that requests employees to provide information regarding the mystification of diseases or disorders of employees family members. This act became effective November 21, 2009. The Commission staff was notified of G.I.N.A. in late November 2009 and after consulting with legal staff took immediate action by notifying all law enforcement agencies in the state with instructions for all applicants to skip this section of the form. However, the form cannot be amended without the approval of the full Commission. Upon approval of this form, the Commission will be in full compliance with G.I.N.A. and federal law.

**MOTION was made by Commissioner Wallace that the Commission approve the Proposed Amendment to the Medical History Statement (F-1) form; seconded by Commissioner Tom Thornburg. The MOTION carried unanimously.**

Next, Chairman Wallace reported that there was discussion of the Seventh Edition System Plan. He explained that the System Plan contains goals and objectives for the Commission for a five-year period. The Sixth Edition Plan had seven goals which were: Goal 1 - Continue to study reading comprehension and writing competency and their relationship to successful completion of Basic Law Enforcement Training (BLET) and success as a criminal justice officer; Goal 2 - Continue examination of professional development, retention, and recruitment of criminal justice officers, with the hope of improving the profession; Goal 3 - Continue to develop a program of activities designed to assist all criminal justice officers in addressing the ever changing societal issues with the state. Consider incorporation of these topics into annual in-service training, or creation of lesson plans that may be used at agencies' discretion or as a part of the "chief's choice" portion of in-service training; Goal 4 - Maintain current funding and seek new funding and staff support from the Department of Justice and the General Assembly; Goal 6 - Evaluate the need for standards in particular areas of criminal justice specialization, including crime scene investigation, Spanish interpretation K-9 handlers, and field training. Standards may range from voluntary guidelines to full certification; and Goal 7 - Continue to develop strategies to promote greater input to the Commission from the criminal justice system and the general public.

Chairman Wallace stated that the Committee was presented a time line for implementation that was created by Teresa Marrella, Criminal Justice Standards Division. He reported that the Planning and Standards Committee will conduct five public meetings across the State this spring. The purpose of the meetings is to solicit input from stakeholders in the criminal justice system regarding issues they believe should be included in the Seventh Edition System Plan. The invitation will go to law

enforcement agency heads, Department of Correction representatives, juvenile justice, and schools directors. The location of these meetings are: Davidson Community College, Fayetteville Technical Community College, Haywood Community College, Pitt Community College and Wake Technical Community College. He noted that the dates have not been set, but will be conducted during the months of March and April. He stated that at the May meeting, they will review the reports from these regional meetings. He asked the Commissioners to give suggestions for the new Seventh Edition System Plan. Also, the Planning and Standards Committee will be drafting the Seventh Edition System Plan to be presented at the full Commission at the August meeting.

Chairman Wallace state that he wanted to thank Bryan Miller with the N. C. Justice Academy for his work and preparation of the Law Enforcement Recruitment Video which would be presented to the full Commission later that day.

Chairman Wallace stated that the white paper on recruitment and retention is on the Criminal Justice Standards website and hopefully will be on the Justice Academy website as well.

#### **D. Probable Cause Committee - Chairman Ray Davis**

Chairman Davis reported that the Probable Cause Committee met on Wednesday February 17<sup>th</sup> and Thursday February 18<sup>th</sup>.

He reported that the Committee reviewed a total of sixteen cases. He stated that the Committee found probable cause in five cases and no probable cause in eleven cases. He explained that the Committee instituted the new policy change of "Closed Session" and found that the meeting went well. Chairman Davis introduced a new Commission member, Annie Harvey with the N. C. Department of Correction, to the Probable Cause Committee. He welcomed Ms. Harvey as well as Ms. Linda Hayes, Secretary of the Department of Juvenile Justice and Delinquency Prevention to the Probable Cause Committee.

Chairman Davis concluded his report by asking the Commission members to review the list of individuals that staff had certified after reviewing their criminal records. He advised that the Probable Cause Committee members reviewed and subsequently approved the issuance of certification to these individuals.

Vice-Chairman Caldwell welcomed the new members to the Commission. He explained that the Commission does a tremendous amount of work with three different Committees: Education and Training, Planning and Standards and Probable Cause. Each Committee works with staff members between meetings to seek out the goals of the System Plan and the Commission.

#### **V. LAW ENFORCEMENT RECRUITMENT VIDEO**

Commissioner Wallace introduced Mr. Bryan Miller with the N. C. Justice Academy. He reported that Mr. Miller has been attending the Planning and Standards Committee to prepare a recruitment and retention video. Commissioner Wallace stated that Mr. Miller has completed this task and was present to show the video to the full Commission. He explained that after the Commission approves the video, the Planning and Standards Committee would discuss how to disseminate the video to law enforcement agencies. He stated that it should be available through the North Carolina Justice Academy's website and Criminal Justice Standards Division website as well.

Vice-Chairman Caldwell stated that this information could be placed on the website of various law enforcement associations as well. He asked the Commission members to contact Commissioner Wallace if they had any information to be added concerning this video. Commissioner Wallace stated that it would be presented to the Planning and Standards Committee for discussion. Commissioner Vernon Bryant suggested that the Department of Correction be added to the video or that a separate video be created for the Department of Correction.

Commissioner Wallace asked that the Commission adopt the video for recruitment and retention.

**MOTION was made by Commissioner Wallace that the Commission approve the adoption of the Recruitment and Retention video; seconded by Commissioner Pat Bazemore. The MOTION carried unanimously.**

## VII. OLD BUSINESS

Ms. Gilchrist noted that Mr. Norman Young, an Assistant Attorney General, would serve as the Commission's Legal Counsel for the Final Agency Decisions.

Vice-Chairman Caldwell read the Recusal Statement to the Commission members and reminded everyone that both the Petitioner and the Respondent would be limited to 30 minutes of oral argument.

### 5. Paul Brian Evington

Mr. Dan Boyce, attorney representing Mr. Evington, explained that this case occurred over twelve (12) years ago when Mr. Evington was 25 years of age. Mr. Boyce stated that a female passenger who was not under arrest and not under investigation had asked Mr. Evington for a ride. He stated that the female had made sexual overtures to Mr. Evington and offered oral sex in 1997. Mr. Boyce stated that Mr. Evington immediately realized that he was wrong. He stated that Mr. Evington immediately contacted his superiors and reported the incident. He lost his job for this single incident and has been out of law enforcement for over twelve years. Mr. Boyce stated that his was a single isolated incident. Mr. Boyce stated that he had sixteen character reference letters with various dates from 1998 and continuing until 2008. He reported that Judge Gray, Administrative Law Judge, had stated that a police officer can rehabilitate one's good moral character for such an indiscretion. He stated that Mr. Evington has been offered on two separate occasions a law enforcement position. He stated that Mr. Evington admitted that he had done wrong. He explained that Mr. Evington has completed Basic Law Enforcement Training (BLET) twice since 1997; April 2003 and August 2008. Mr. Boyce stated that Mr. Evington had provided a written statement to the Asheville Police Department regarding the incident that occurred while he was on duty. He stated that Mr. Evington self reported the incident and the case could not have been proven other than Mr. Evington telling on himself. He explained that Mr. Evington has been offered a job with the Hendersonville Police Department and it is still available. Mr. Boyce stated that the Judge has stated that Mr. Evington has continued to take responsibility for his actions; repeatedly acknowledging his error in judgment; and continues to apologize for his conduct. He stated that no charges were ever brought against Mr. Evington related to this incident. Mr. Boyce stated that Mr. Evington meets the criteria of "a man of good moral character" and he deserves a second chance after twelve years. He asked that the Commission grant the Administrative Law Judge's decision and grant Mr. Evington's law enforcement officer certification.

Ms. Gilchrist stated that Mr. Evington admitted that he had picked up a female who said that she needed a ride. She stated that the female passenger became friendly with him. She stated that Mr. Evington transported the female to a district office of the Asheville Police Department where the female performed oral sex on him. Ms. Gilchrist stated in a letter that Mr. Evington had written that he did not know that she was a prostitute. As a result of this information, the Asheville Police Department terminated his employment. The Report of Separation indicated that the agency would not consider this individual for reappointment. The agency's comments indicated that "under no circumstances would they ever consider this person for rehire" which triggered the Criminal Justice Standards Division to investigate. Ms. Gilchrist stated that in May of 2004, Mr. Evington had applied for certification as a deputy sheriff with the Buncombe County Sheriff's Department. She stated that the Commission asked for an explanation of his resignation with the Asheville Police Department. She stated that he provided a personal history statement. Ms. Gilchrist stated that the Sheriff's Commission found probable cause. There were two grounds on which the Sheriff's Commission denied Mr. Evington certification; Mr. Evington lacked good moral character for the incident that occurred in September 1997 and the Criminal Justice Standards Division had revoked his

certification. Mr. Evington did not appeal the Sheriffs' Commission decision to not certify him in 2004. Ms. Gilchrist asked the Commission to review the exhibits that she had pointed out to the Commission to show that he does not have the good moral character necessary to be a police officer.

**MOTION was made by Commissioner Steve Johnson that the Commission go into Closed Session; seconded by Commissioner Pat Bazemore. The MOTION carried unanimously.**

**MOTION was made by Commissioner Wallace that the Commission return to Open Session; seconded by Commissioner Johnson. The MOTION carried unanimously.**

**MOTION was made by Commissioner Johnson Britt that the Commission adopt the portion of the proposed administrative law judge's decision that Petitioner has met his burden of proof that he is of good moral character and should be certified and not adopt the portion of the administrative law judge's decision regarding disparate treatment; seconded by Commissioner Randy Glover. The MOTION carried unanimously. See Attachment I for the Commission's Final Agency Decision and Attachment II for the roll call vote.**

Vice-Chairman Caldwell instructed the attorneys for the Petitioner and the Commission to come to an agreement on the language in the Final Agency Decision and remove all references to disparate treatment from the administrative law judge's proposed decision. IF the attorneys are unable to come to an agreement as to what the Commission is intended to be removed from the administrative law judge's proposed decision, the matter should be brought back before the Commission at the May meeting.

#### **VI. COMMISSION MEMBER TRAINING (N.C.G.S. § 93B-5)**

Ms. Jane Gilchrist presented Ethics Training for the Commissioners. She reported that this was a new class that is required pursuant to N.C.G.S. § 93B-5. She noted that new Commission members would need to attend an Ethics Training class within six months of their election, appointment, or employment; and a refresher presentation at least every two years thereafter.

#### **VII. OLD BUSINESS**

##### **A. Old Business**

None

##### **B. Legal Counsel Report**

Ms. Gilchrist distributed a document entitled "Pending Administrative Cases" for the membership's review:

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| <ol style="list-style-type: none"> <li>1. Jay Eduard Krueger</li> <li>2. Gregory Brian Perry</li> <li>3. Roy Lee Burgess</li> <li>4. Darryl Emanuel Gerald</li> </ol> | <p>Hearing: March 25, 2010, in 9:00 Raleigh.<br/>To Be Heard by the Commission at the February 2010 meeting.<br/>Petitioner filed Petition for Judicial Review on July 14, 2009; Response to amended petition for Judicial Review filed August 18<sup>th</sup>. Hearing in Wake County Superior Court May 24<sup>th</sup> or May 25<sup>th</sup>.<br/>Proposal for Decision letter sent February 8<sup>th</sup>; 30 days.</p> |
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| 5. Jackie Marie Daniels        | Final Agency Decision letter sent December 21 <sup>st</sup> ; 35 days; February 19th.   |
| 6. Jimmie Ray Edmondson, Jr.   | Final Decision Order of Dismissal sent November 9 <sup>th</sup> ; 35 days; March 4th.   |
| 7. Paul Brian Evington         | To Be Heard at the February 2010 Commission meeting.  |
| 8. George Lee Shaver, III      | Motion for Summary Judgment filed February 12 <sup>th</sup> - Hearing continued, submit status report by March 5, 2010.   |
| 9. Scott Ray Berkley           | Hearing: April 12, 2010; 9:00 am: Yanceyville.  |
| 10. Tommy Keith Lymon          | To Be Heard at the February 2010 Commission meeting.  |
| 11. Tony Blaine Drake          | Proposal for Decision due to Judge February 26th.   |
| 12. Charles Eugene Parker, Jr. | Proposal for Decision letter sent February 8 <sup>th</sup> ; 30 days.   |
| 13. Richard Cale Manning       | to Be Heard at the February 2010 Commission meeting.  |
| 14. William Eugene Summey      | To Be Heard at the February 2010 Commission meeting.  |
| 16. Angelo Anthony Rinaldi     | Proposal for Hearing letter sent February 15 <sup>th</sup> ; 30 days.   |
| 16. Joseph Thomas DePrisco     | Hearing: February 23, 2010; 9:00 am; Raleigh.   |
| 17. Harold Kerwin Bryan        | Interrogatories sent February 12 <sup>th</sup> ; 15 days; Discovery Due: March 22, 2010. Hearing - Week of April 5, 2010; Newton.   |
| 18. Marcus Andrew Fleming      | Respondent filed Prehearing Statement January 29 <sup>th</sup> ; Petitioner received extension to file Prehearing Statement - March 5 <sup>th</sup> - Interrogatories - Discovery Due April 5, 2010. Hearing - Week of April 19, 2010, Halifax. |
| 19. Mitchell Ray Satterthwaite | Interrogatories - Discovery Due April 5, 2010. Hearing - Week of April 19, 2010, New Bern.  |
| 20. Christopher Ben Buff       | Respondent filed Prehearing Statement February 12 <sup>th</sup> ; Prehearing Statement Due: March 12, 2010. Interrogatories Discovery Due: May 24, 2010. Hearing - Week of June 7, 2010, Newton.  |

**VII. 1. Tommy Lymon**

Mr. Mike Heavner stated that Mr. Lymon had a conviction of "Class B misdemeanor" charges. On April 29, 2009, he was found guilty in Pitt County District Court for Domestic Criminal Trespass and Injury to Real Property and a Prayer for Judgment was entered. He explained the case law "Britt v. N. C. Sheriff's Education and Training Standards Commission, which states that a finding of guilty or pleading of guilty or a pleading of no contest", is a conviction. Mr. Heavner stated that a Prayer for Judgment continued does not make it not a conviction. On August 21, 2009, the Commission filed for a Motion for Summary Judgment saying that it is clearly a conviction. On August 24, 2009, the Judge filed for a request for a response to that motion which was also served on the Petitioner. On September 9, 2009, Attorney Oral Brown, filed a notice of representation, saying that he represented Mr. Lymon. On September 14, 2009, Mr. Brown filed a response to the Motion for Summary Judgment. He stated that Mr. Brown admitted that there was a conviction. Mr. Heavner stated that Mr. Brown requested an administrative hearing and stated that this Commission has discretion as far as the sanction. He stated that Mr. Brown pointed out that this Commission does have the discretion to reduce or suspend a sanction and asked for a hearing. On September 15, 2009, the Judge granted Summary Judgment. On November 2, 2009, there was

a clerical correction which stated: "Breaking or Entering" as opposed to "Injury to Real Property." Mr. Heavner stated that Mr. Lymon asked in his Exceptions that this case be remanded for another hearing. Mr. Heavner stated that he did not believe that this body has the authority for an evidential hearing. He explained that if this Commission finds that a violation occurred and the Petitioner does not agree with the sanction, he can petition for a judicial review under 150B 49 or 51 for Superior Court. Also, they could remand it back if they find material facts. Mr. Heavner stated that this case is clearly a conviction.

Mr. Jeff Gray, attorney representing Mr. Lymon, stated that this is the issue of Summary Judgment that they are contesting. He stated that Mr. Lymon was given an opportunity for a hearing and it was calendared for Halifax County and a Motion for Summary Judgment was filed. He explained that he was represented by counsel and his counsel responded; however, Mr. Lymon did not appear at the hearing. Mr. Gray stated that Mr. Lymon's counsel responded in writing; however, he did not present any facts to allow the Commission to do what the rules allow them to. He pointed out the Commission could craft a type of disciplinary action less than five years that is commensurate with the offense that the certified officer was charged with. He stated that this lawyer did not understand the administrative rules nor request a hearing. He stated that Mr. Lymon should be given an opportunity to submit evidence to an Administrative Law Judge where there are findings of fact and conclusions of law that could come back to this Commission by way of Proposal of Decision with a transcript so this Commission could review and decide on other sanctions. Mr. Gray stated that this was a classic domestic dispute. He stated that Mr. Lymon changed the locks at the home for his wife and later returned and was denied entry to gather his belongings, hence, Mr. Lymon forced the door open. He stated that he had only been out of the home for three days. Mr. Gray stated that Lieutenant Eric Stallings with the Winterville Police Department and Captain James Cappelletti with Pinetops Police Department were present on behalf of Mr. Lymon. He stated that Mr. Lymon has twelve years of law enforcement experience. Mr. Gray asked the Commission to let Mr. Lymon keep his certification and overturn the Administrative Law Judge's recommendation.

**MOTION was made by Commissioner Bob Ruth that the Commission go into Closed Session; seconded by Commissioner Farnsworth. The MOTION carried unanimously.**

**MOTION was made by Commissioner Ray Davis that the Commission return to Open Session; seconded by Commissioner Ira Jones. The MOTION carried unanimously.**

**MOTION was made by Commissioner Johnson Britt that the Commission adopt the Proposed Final Agency Decision to suspend Tommy Lymon's law enforcement officer certification for a period of five years; seconded by Commissioner James Festerman. The MOTION carried unanimously. See Attachment III for the Commission's Final Agency Decision and Attachment IV for the roll call vote.**

2. **Gregory Brian Perry**

Steven DeCillis, attorney representing Mr. Perry, stated that he has twenty-one years of law enforcement experience. He stated that Mr. Perry has had the full backing of the Butner Public Safety Department. He reported that Chief Michael Hobgood, Assistant Chief Anthony Moss and Officer Greg Lewis with Butner Public Safety Police Department were present as character witnesses. Mr. DeCillis stated that officers are scrutinized as to how they conduct themselves in the course of duty. He stated that there has not been any issue with Mr. Perry's conduct. He stated that this incident occurred in the late 80's. Mr. DeCillis stated that they had gone back to review his file and all cases were dismissed and expunged from his record. He took the appropriate measure to expunge these records. He stated that Mr. Perry is 47 years old and he has devoted at least one-half of his life to law enforcement. Mr. DeCillis stated that he agreed with the Administrative Law Judge Decision but he disagreed with Ms. Gilchrist's proposal that it should be a five year revocation without a period of suspension.

Ms. Gilchrist stated that Mr. Perry did make a material misrepresentation. The issue today is what sort of punishment to impose on Mr. Perry. Stated that Mr. Perry applied for certification with the Henderson Police Department in 1982. He had several charges and convictions that he did not list on his application. One of those convictions was an "Assault on a Female" charge. Ms. Gilchrist stated that if Mr. Perry had been forthright, he would have not have been eligible for certification. She stated that he did not list the charge on the Henderson Police Department and Butner Public Safety Police Department's, Form F5-A.

**MOTION was made by Commissioner Farnsworth that the Commission go into Closed Session; seconded by Commissioner Hilda Spivey. The MOTION carried unanimously.**

**MOTION was made by Commissioner Steve Johnson that the Commission return to Open Session; seconded by Commissioner Bazemore. The MOTION carried unanimously.**

**MOTION was made by Commissioner Farnsworth that the Commission adopt the Proposed Final Agency Decision to suspend Gregory Brian Perry's law enforcement officer certification for a period of five years based upon Mr. Perry's material misrepresentations of information required for certification. This period of suspension is suspended for five years on condition that Mr. Perry not violate any law (other than infractions and minor traffic offenses) of this state or any other state, any federal laws, any ordinances, any rules of this Commission, the Company and Campus Police Program or the North Carolina Sheriffs' Education and Training Standards Commission; seconded by Commissioner Ruth. The MOTION carried unanimously. See Attachment V for the Commission's Final Agency Decision and Attachment VI for the roll call vote.**

**4. William Eugene Summey**

Mr. Heavner reported that this case involves a material misrepresentation. He stated that Mr. Summey was certified as a criminal justice officer with Mount Holly Police Department in 1997. In filling out the Personal History Statement Form F-3 and the Report of Appointment/Application for Certification, Form F-5A, he did not list the misdemeanor "Noise Ordinance Violation" charge in 1997. In 2007, he applied for certification as a criminal justice officer with the Belmont Police Department. In 2007, he listed the "Noise Ordinance Violation" from 1989. As a result, the Probable Cause Committee found two material misrepresentations and issued a "Written Reprimand" which he accepted. In 2008, he resigned and applied with Monroe Police Department and he did not list the "Noise Ordinance Violation" on his application. At the hearing, the Judge recommended a sixty-day suspension. The Judge stated after receiving a written warning that the Petitioner should have a longer period of suspension. The Judge recommended that Mr. Summey be suspended for six months and be placed on probation for twenty-four months. Any probable cause finding, including but not limited to the failure to list the noise ordinance violation, which is substantiated by the Commission during the twenty-four month period will be cause for immediate suspension.

Rachel Hitch, attorney representing Mr. Summey, stated that Mr. Summey understands the significance of what is happening today. She stated that Mr. Summey understands that he is not before the Commission because of the noise ordinance charge itself. She stated that he greatly realizes the significance of the Commission's need for full disclosure for people being certified as criminal justice officers. Ms. Hitch stated that Mr. Summey said that he did not have any intent to misrepresent anything for filling out the paperwork. She stated that the Mr. Summey made a mistake when he failed to list the charge on the two forms that came to the Commission. Ms. Hitch stated that Mr. Summey is a good law enforcement officer. She reported that Mr. Summey does not have any other issues or violations. She stated that Mr. Summey has been unable to work since 2008. Ms. Hitch asked the Commission to consider his law enforcement officer background. She stated that Mr. Summey was at the Commission's mercy and asked the Commission to review

the facts. Ms. Hitch asked that Mr. Summey receive a lesser sanction.

**MOTION was made by Commissioner Tom Thornburg that the Commission go into Closed Session; seconded by Commissioner Ruth. The MOTION carried unanimously.**

**MOTION was made by Commissioner Wallace that the Commissioner return to Open Session; seconded by Commissioner Steve Johnson. The MOTION carried unanimously.**

**MOTION was made by Commissioner Farnsworth that the Commission adopt the Proposed Final Agency Decision to suspend William Eugene Summey's law enforcement officer certification for a period of five years. Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby ORDERED that this suspension is suspended for five years on condition that Mr. Summey not violate any law (other than infractions and minor traffic offenses) of this state or any other state, any federal laws, any ordinances, any rules of this Commission, the Company and Campus Police Program or the North Carolina Sheriffs' Education and Training Standards Commission. This period of suspension begins on the date this ORDER is signed; seconded by Commissioner Steve Johnson. The MOTION carried unanimously. See Attachment VII for the Commission's Final Agency Decision and Attachment VIII for the roll call vote.**

**VIII. DATE OF NEXT MEETING**

Vice-Chairman Caldwell advised that the next Commission meeting is scheduled for May 27-28, 2010 in Apex.

**IX. MOTION TO ADJOURN**

**MOTION was made by Commissioner Vernon Bryant that the Commission adjourn; seconded by Commissioner Linda Hayes. The MOTION was unanimous.**