



North Carolina Department of Public Safety

Private Protective Services Board

Roy Cooper, Governor
Erik Hooks, Secretary

Pamela Cashwell, Chief Deputy Secretary
Brian Jones, Director

**MINUTES OF THE
PRIVATE PROTECTIVE SERVICES BOARD MEETING
DECEMBER 20, 2018
HOLIDAY INN NORTH
2805 HIGHWOOD BOULEVARD
RALEIGH, NC 27604**

BOARD MEMBERS PRESENT

David Arndt
Stacy Buff
Ron Burris
Bud Cesena
Ed Cobbler
Clyde Cook
Debra Duncan
Steve Johnson
William MacRae
Nada Lawrimore
Tammy Owens
Jerry Pitman
Gerry Stickl

BOARD MEMBERS ABSENT

Eric Weaver, Sr.

STAFF PRESENT

Brian Jones - Director
Phillip Stephenson – Deputy Director
Kim Odom – Field Services Supervisor
Jeff Gray - Attorney
Cynthia Hepburn - Investigator
Ray Bullard – Training Officer/Investigator
Andrew Martino- Investigator
Garcia Graham – PPS Board Secretary

MAILING ADDRESS:
3101 Industrial Drive, Suite 104
Raleigh, NC 27609



www.ncdps.gov/pps
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OFFICE LOCATION:
3101 Industrial Drive, Suite 104
Raleigh, NC 27609
Telephone: (919) 788-5320
Fax: (919) 788-5365

GUESTS PRESENT

Ruth Reynolds
Michael Walker
Donald Miller
Dorian Dehnel
Michael Guadagno
W. Craig Humphrey
Roxon Flowers
Michael Easterday
Chris Green
Ginger Britt
David Kaiser
Gary Pastor

Shannon Bland
Mark Wohlneck
Lyndon Scott Caviness
Marsh Hewman?
Greg Hatten
Phil Hyde
Melissa Washington
James Beverly
Ron Mann
Randy Rabenold
Anthony Troeger
Andy Renfrow

Shaun Marso
William Wilke
Robert J. Dunn
Harry Allen House
Jeff Kiker
David Butler
David E. Bailey
Ruth Cruz-Nichols
Creo M. McIver II
Chris Mayhue
Tamara Rabenold

CALL TO ORDER

Mr. Arndt called the December 20, 2018, Private Protective Services Board meeting to order at 9:35 a.m. Mr. Burris led the group in the Pledge of Allegiance followed by Chairman Arndt welcoming all guests.

GOOD OF THE ORDER:

Attorney Jeff Gray explained the State Ethics Act, which addresses the ethics of public officials. This Act states specifically that if any Board member has any conflict of interest, potential conflict of interest, or the appearance of a conflict, he or she should remove themselves from deliberation and vote on that matter and so state on the record.

MINUTES:

APPROVAL OF THE OCTOBER 25, 2018 BOARD MEETING MINUTES AND OCTOBER 24, 2018 SPECIAL MEETING MINUTES.

MOTION BY MR. CESENA TO ACCEPT THE OCTOBER 24, 2018 SPECIAL MINUTES; SECONDED BY MR. COBBLER; MOTION CARRIED.

MOTION BY MR. CESENA TO ACCEPT THE OCTOBER 25, 2018 MINUTES; SECONDED BY MR. COOK; MOTION CARRIED.

SCREENING COMMITTEE REPORT:

Mr. Arndt stated that the Screening Committee met on Wednesday, December 19, 2018 from 1:36 p.m. to 3:45 p.m. to review a total of 39 applications. The Committee members included Mr. Cobbler, Mr. MacRae, Ms. Owens, Ms. Duncan, Mr. Buff, and Mr. Stickl. Mr. Cobbler read the report for the record.

MOTION BY MR. CESENA TO ACCEPT THE SCREENING REPORT WITH THE EXCEPTION OF #30; SECONDED BY MR. BUFF; MOTION CARRIED.

MOTION BY MR. CESENA TO ACCEPT #30 OF THE SCREENING REPORT; SECONDED BY MR. STICKL; MOTION CARRIED.

Mr. Cook recused himself from #30 of the screening report.

GRIEVANCE COMMITTEE REPORT:

Mr. Burris reported that the Grievance Committee met on Wednesday, December 19, 2018 from 10:15 a.m. to 12:15 p.m. and heard a total of 9 cases. The Committee members included Mr. Burris, Mr. Cook, Mr. Johnson, Ms. Lawrimore and Mr. Pitman. Mr. Burris read the report for the record. (See report attached).

MOTION BY MR. COBBLER TO ACCEPT THE GRIEVANCE COMMITTEE REPORT; SECONDED BY MR. BUFF; MOTION CARRIED.

TRAINING & EDUCATION COMMITTEE:

Mr. Cesena reported that the Training & Education Committee met on Thursday, December 20, 2018 from 8:00 a.m. until 8:50 a.m. The Committee members included, Mr. Cesena, Mr. Johnson, Mr. Cobbler, Mr. Stickl, Mr. Cook, Mr. Pitman, Mr. Buff, and Mr. MacRae.

The following courses are scheduled for the remainder of 2018 and reported the dates of upcoming courses scheduled for 2019:

- February 4-8, 2019 Unarmed Guard Trainer Course & Workshop at WTCC
- March 6, 2019 Firearms Prequalification Only at NCJA
- March 25-29, 2019 Unarmed Guard Trainer Course & Workshop at WTCC
- March 25, 2019 Firearms Trainer Recertification/Prequalification Course at NCJA
- April 1-4, 2019 Basic Firearms Trainer Course at NCJA
- May 20, 2019 Firearms Trainer Recertification/Prequalification Course at NCJA
- June 24-28, 2019 Unarmed Guard Trainer Course & Workshop at WTCC
- July 8, 2019 Firearms Trainer Recertification/Prequalification at NCJA

- September 4, 2019 Firearms Trainer Recertification/Prequalification at NCJA
- September 9-12, 2019 Firearms Instructor Trainer Course at NCJA
- September 23-27, 2019 Unarmed Guard Trainer Course & Workshop at WTCC
- November 6, 2019 Firearms Trainer Recertification/Prequalification at NCJA
- December 2-6, 2019 Unarmed Guard Trainer Course & Workshop at WTCC

The following PPS Trainer courses have been completed:

November 8, 2018 Firearms Trainer Prequalification/Recertification at NCJA
 November 26-30, 2018 Unarmed Guard Trainer Course & Workshop at WTCC
 December 4-6, 2018 Long Gun Instructor Course at Camp Butner
 December 5, 2018 Long Gun Instructor Recertification at Camp Butner

The following PPSB Training Courses for CEU Credit are scheduled:

December 20, 2018	1-5 p.m.	Raleigh, NC
February 21, 2019	1-5 p.m.	Raleigh, NC
April 25, 2019	1-5 p.m.	Raleigh, NC
June 20, 2019	1-5 p.m.	Raleigh, NC
August 22, 2019	1-5 p.m.	Raleigh, NC
December 19, 2019	1-5 p.m.	Raleigh, NC

Trainer Audits:

None

Weapon discharge/incident reports:

Mr. Henry Jackson reported that Wyoming Gilliam, a guard employed by Standing Guard Protective Services had discharged his firearm on November 24, 2018 at the 158 Sweepstakes located at 831 West Main Street, Murphreesboro, North Carolina during an armed robbery. Our records show that Mr. Gilliam is not a registered guard for Standing Guard Protective Services. The Murphreesboro Police Department is investigating this incident and once the case has been closed they will notify Investigator Bullard.

November 28, 2018 Robert Rhodes emailed Investigator Bullard about Frank Brantley, an Armed Security Professional employed by Allied Universal Security Services had accidentally discharged his weapon on November 28, 2018 while near the restroom of the State Employees Credit Union located at 3810 Ben Franklin Blvd., Durham, North Carolina. Investigator Bullard checked PPSM (Permitium) and Brantley is a registered Armed Guard with Allied Universal Security Services. A check of the Firearms Training Certificate submitted with the renewal application indicated that the weapon discharged on November 28, 2018 is the same weapon

Brantley qualified with. Corporal Laeng of the Durham Police Department advised that the Durham Police Department has classified this case as a “Call for Service” and no crimes were committed.

Mr. Cesena then reported there were eighteen courses submitted to the T&E Committee and six were denied.

Surveillance and the Surveillance Sequence - 6.0 hrs.
Advanced Surveillance Techniques - 4.0 hrs.
Surveillance Detection - 4.0 hrs.
Surveillance Team Communications and Protocols – 3.0
Private Security EP Operations – 12.0
The Advancing Role of Electronic and Smart Devices Data Collection in Investigations – 12.0
New Mexico Level II – 12.0
Technical Surveillance Countermeasures 12.0
Business Practices Part I – 2.0
Homeland Security Part I – 2.0
Homeland Security Part II – 2.0
Private Investigation Practices, Part I – 6.0
Private Investigation Practices, Part II – 6.0
Criminal Defense Investigation – 6.0
Scientific Analysis of Physical Evidence – 6.0
Legal Aspects of Physical Evidence – 6.0
Electronic Countermeasures Profession – 12.0

MOTION BY MR. COOK TO ACCEPT THE COURSES SUBMITTED FOR CONTINUING EDUCATION TRAINING APPROVAL. DENIED THE COURSE(S) SUBMITTED BY SCOTT DUKELOW, KIMBERLY HAMILTON AND YOLANDA FARMER; SECONDED BY MR. ARNDT; MOTION CARRIED.

Mr. Cesena also reminded everyone that when you are submitting applications on continuing education courses for approval, make sure to include all the supporting documents and the Biography should not be more than a page.

MOTION BY MR. JOHNSON TO ACCEPT THE REPORT BY THE TRAINING AND EDUCATION COMMITTEE; SECONDED BY MR. COOK. MOTION CARRIED.

GRIEVANCE COMMITTEE:
NONE

SCREENING COMMITTEE:

Mr. Gray reminded Mr. Cobbler that the committee voted on and approved a draft of an interpretation of license requirements for Human Resource firms. This will need to be presented to full Board for approval as well and will be covered by Mr. Cobbler in the Attorney's Report.

LAW AND RULES COMMITTEE

Ms. Lawrimore reported that the Law and Rules Committee met on Wednesday, December 19, 2018 from 9:50 a.m. to 10:38 a.m., and invited certain people to speak to the committee concerning the new bill that is going to be voted on today. She acknowledge the help from the ad hoc committee, Mr. McRae, Mr. Cesena, Mr. Hatten, Mr. Scott, and Mr. Pastor, thanking them for their work.

Ms. Lawrimore reported that the committee had a two-hour discussion about close protection and how it is defined. She stated that there will be two big events coming up that will use a lot of close protection, since we want to protect the public and the industry. The committee would like to make sure that the people who come into our state adhere to the same laws and rules. This is all being addressed in Mr. Gray Attorney's Report and if the board member have not had a chance to review it, they may do so during the break.

MOTION BY MR. COBBLER TO ACCEPT THE LAWS AND RULES COMMITTEE REPORT; SECONDED BY MR. COOK. MOTION CARRIED.

FINANCE REPORT

Mr. Arndt stated that Mr. Weaver cannot be here this morning because he had a family emergency and he wishes everyone have a great Christmas. The Finance committee did meet this morning and discussed some issues about the funds, which will be covered further in the Director's report.

ETHICS COMMITTEE

Ms. Duncan reminded all Board members that their statement of economic interest for 2019 will begin on January 15 with the deadline of April 15, so don't forget to file. Mr. Gray stated that if you have previously file statement of economic interest you can use the short form but if not you will have to use the long form.

MOTION BY MS. LAWRIMORE TO ACCEPT THE ETHICS COMMITTEE'S REPORT; SECONDED BY MR. COOK; MOTION CARRIED.

EMERGING TECHNOLOGY COMMITTEE

Ms. Owens reported that the Emerging Technology Committee met for the first time on Tuesday, December 18, 2018, and had great attendance. Ms. Owens stated that Mr. Stickl introduced Troy Hittle, Regional Manager, North America at SenseFly who gave a great presentation on drones. The committee learned a lot about what's going on with policy and regulations. How the North Carolina DOT and the FAA are looking into regulating the use of drones. Everyone is excited about the new committee and looking forward to the next meeting.

MOTION BY MS. DUNCAN TO ACCEPT THE EMERGING TECHNOLOGY COMMITTEE'S REPORT; SECONDED BY MR. COBBLER; MOTION CARRIED.

Break 10:00 a.m.
Reconvened 10:16 a.m.

OLD BUSINESS:

Mr. Arndt stated everyone should have a copy of the Bill, which is very lengthy, and asked if the Board members had a chance to read it; if so, it can be handled today. He also, asked Ms. Lawrimore if she had any comments or statements to make at this time. Ms. Lawrimore stated that Mr. Gray had some amendments to be added to the Bill and it is attached to his Attorney's report.

Mr. Gary stated that he have one amendment to the bill that was not discussed in Laws and Rules yesterday because time ran out. This will allow out of state armed guards to come into North Carolina on a temporary basis under a certain condition during a disaster and if the Board wishes to adopt this amendment. Ms. Lawrimore read out the proposed amendment to the audience.

Mr. Johnson recommended that Mr. Gray add some additional language to the amendment to include proof of qualification (4hrs block of legal) conducted by a North Carolina PPS Firearm Instructor on the approved PPS Board course of fire both day and night which the certificate will be valid for one year.

MOTION BY MR. JOHNSON TO ADD THE ABOVE CHANGES TO THE AMENDMENT; SECONDED BY MR. CESENA; MOTION CARRIED.

Mr. MacRae states that he had some concerns about the current Bill. Especially the section of 74C-8(2) and 74C-12(6) the severity are different in both section and he feel it needs to be a consistence. Mr. Gray agreed that there is a different level of severity and this he also stated that Mr. Stephenson had brought this same matter to his attention a couple months ago and he drafted a memorandum for staff. He also stated that if the Board wishes to make changes to these sections it need a great discussion.

Mr. Cook addressed the Board regarding having multiple licenses and recommended that if an individual have a Private Investigator License and wishes to preform Executive Protection the License should have an endorsement on it instead of requiring them to apply for an additional License.

After a lengthy discussion regarding the Bill and Mr. Macrae states that he would like to make a motion.

MOTION BY MR. MACRAE TO DEFER THE APPROVAL OF THE PROPOSED BILL UNTIL A SPECIAL MEETING IN JANUARY OF 2019 TO ALLOW MR. GRAY TO UPDATE THE BILL WITH ALL THE CHANGES; SECONDED BY MS. LAWRIMORE; MOTION CARRIED.

Mr. Arndt asked Director Jones to give a brief statement regarding the meeting with CriminalRecordcheck. Mr. Jones stated that representatives from Private Protective Services Board as well as the Alarm System Licensing Board met and discussed the scope services for the background check RFP that will be released. Since then Mr. Jones stated that he have been in contact with purchasing unit and there was a few changes to the scope of the services that he will pass on to them and then they will get the RFP out sometime in January or February 2019.

Mr. Arndt also, asked if there were any other items in old business to discuss. Ms. Lawrimore states that she had requested back in December 2016 and again in February of 2017 the possibility of having public service announcement. This will be helpful for the industry and the non-industry people. Mr. Jones stated that he would be glad to contact the DPS Communication team who have the capability to craft the public service announcement regarding G.S. 74C.

Mr. Pitman asked if Board members could possibly have identification cards or business cards. Mr. Jones stated that he would check with DPS regarding this matter.

NEW BUSINESS:

Mr. Jones gave an update on Permutium. He stated that Permutium representatives met with staff members on December 11 and 12th to discuss development progress and issue resolution. In particular, Permutium has completed development for certifications and intends to make a few minor changes. They're currently working on the remaining development phases, which include complaints, audits and appeals.

Further, they're in process of archiving records and attend to complete scanning by the end of the year. They had scanned 257,887 pages were 73 boxes of paper applications at a cost of \$14,828 and 51 cents

The most notable update I have is the board Michael Blackwood, project management advisor with the North Carolina Department of Information Technology, graciously offered to provide project management assistance as Permitium completes implementation. He provided guidance to Shere McClamb, previous project manager, so he is very familiar with Permitium and will be an invaluable partner as we complete this project.

Break 11:24 a.m.
Reconvened 11:36 a.m.

Mr. MacRae asked how long will it take for Permitium to create or add another license to the system? Mr. Jones stated that he really don't believe that it would be burdensome for Permitium because fundamentally the infrastructure is there to take applications. Once they have the requirements we can convey to Permitium to build the application and possibility it can be rolled out the same time when the rules are passed.

Mr. Arndt asked for a motion to go into close session to deal with a contract matter.

MR. MACRAE MADE A MOTION TO GO INTO CLOSED SESSION TO DISCUSS A CONTRACT MATTER; SECONDED BY MR. CESENA; MOTION CARRIED.

CLOSED SESSION: 11:39 a.m.
RECONVENED: 12:06 a.m.

Mr. Arndt briefly discussed Board members going to the General Assembly to conduct PPSB Business or speaking on the behalf of the Board without permission from the Board Chairperson, or in his/her absence, the Board Vice-Chairperson.

Mr. Arndt recommended that we have a three days Board meeting in February 19-21, 2019 due to the volume of Grievance cases and the Board agreed.

FINAL AGENCY DECISIONS:

NONE

DIRECTOR'S REPORT:

Director Jones read the report for the record. He reported the Board's revenue to date was \$482,706.88 with expenditures in the amount of \$579,631.11, reflecting a decrease to the fund balance of \$96,924.23. The total fund balance was \$1,102,930.77. He reported the Education Fund balance was \$99,202.50 with no disbursements. Director Jones reported that since the August meeting, PPS had received 4,186 registration applications, 81 applications for licensure, and 52 for certification, which brings the active numbers to date for registration to 28,366,

license holders to 2,040 and certification holders 603. Staff had printed 4,070 cards since the last meeting with a steady decline in the number of temporary paper cards and an increase in the issuance of hard plastic cards through Permittium.

Director Jones reported that currently we have two vacancy and in the process of reviewing candidates for the vacant Investigator's position in Fayetteville and a processing assistant position.

Director Jones reported that the Registration Unit has made a tremendous progress addressing the backlog. As of December 17, 2018 employees have processed new and renewal armed application submitted through September 15; renewal unarmed applications submitted through September 23; and new unarmed registration applications submitted through October 2nd.

Director Jones reported that he was invited to attend the North Carolina Association of Private Investigators' Fall Conference in November and was asked to discuss navigating compliance with NCGS 74C. He stated that he had a great time in interacting with private investigators from various parts of North Carolina and benefited from candid conversations about challenges their industry faces.

MOTION BY MR. COBBLER TO ACCEPT THE DIRECTOR'S REPORT; SECONDED BY MR. COOK; MOTION CARRIED.

ATTORNEY'S REPORT:

Attorney Gray discussed the following:

CONSENT AGREEMENT, SETTLEMENT AGREEMENTS & CIVIL PENALTIES

1. On October 26, 2017 Mr. Daitwan Lamont Hardy and Security Contracting, Inc., entered into a consent agreement with the Board in the amount of \$7,466.40 for registration violations. The temporary agreement was not signed. Payment has not been received. On April 26, 2018 the full Board voted to suspend the license until payment of the \$7,466.40 consent amount is received.

2. On August 23, 2018 Otis Cleon Scott/Duke Energy Corp., agreed to a civil penalty in the amount of \$2000.00 for failing to own or lease firearms carried by armed guards. Awaiting signed Consent Agreement.

3. On August 23, 2018 Mark Butler Howell/Securitas Critical Infrastructure Services, Inc., agreed to a civil penalty in the amount of \$2000.00 for failing to own or lease firearms carried by armed guards. Awaiting signed Consent Agreement.

4. On August 23, 2018 Sione Atu Latu/Security On Call, LLC(Screening) enter into a Consent Agreement with the Board in the amount of \$2,040.00 for unlicensed activity. The consent agreement was signed by Sione Latu on October 5, 2018. Received over payment in the amount of \$3,540.00(should be \$2,040.00) on October 10, 2018. Spoke to Mr. Latu on 10/16/18 and instructed him to mail in the correct consent payment. **Paid in full.**

5. On October 25, 2018 David Bailey/Tailormade Protective Service LLC entered into a Consent Agreement with the Board in the amount of \$550.80 for registration violations. The temporary agreement was signed by the QA (David Bailey) on October 24, 2018. Payment has not been received.

6. On October 25, 2018 Scott Austin Merino/Champion National Security, Inc., entered into a Consent Agreement with the Board in the amount of \$5752.80 for registration violations. The temporary agreement was signed by the QA (Scott Merino) on October 24, 2018. Payment has not been received.

I. OFFICE OF ADMINISTRATIVE HEARINGS

See, Hearings List (attachment 1).

II. ADMINISTRATIVE RULES

a. At its meeting on February 22nd, the Board began the process for its Periodic Review of Rules to occur in August 2018. The report for the Board's rules was filed and the Public Comment Period ended May 8, 2018. No public comments were received. The Board voted at its June 21, 2018 meeting to approve its rules.

The Board's rule readoptions were on the Rules Review Commission's August 16th agenda. The report containing the final classification of the entirety of the Board's rules as "Necessary with Substantive Public Interest" was approved. At its October 25, 2018 meeting, the Board voted to readopt these rules. On November 16th the Notice of Text was filed to commence what is essentially the rulemaking process (i.e. 60-day comment period, public hearing, technical change requests, etc.). The Board has until April 2020 to readopt its rules. A copy of the administrative rule readoptions, which include the rule amendments in b., below, are attached as Attachment 2.

b. At its June 21st meeting, the Board authorized me to proceed with drafting proposed amendments to the Board's administrative rules governing unarmed and armed guard courses and trainers. These amendments were prepared and forwarded to Members Bud Cesena and Steve Johnson for review and comment. They had some questions or concerns about the practical application of two of the amendments which were discussed at the August 23rd Education and Training Committee meeting. It was decided to not pursue these two proposed

amendments, but proceed with the remaining proposed amendments. The Board approved these rule amendments at its October 24th meeting. The Notice of Text for these rules was filed on November 16th as part of the rule readoptions in a., above. The Public Hearing will be held on January 10, 2019 at the Board's office. The public comment period ends on February 15, 2019.

III. LEGISLATION

a. Identical House and Senate bills making various changes to Chapter 74C have been introduced in the General Assembly. They are House Bill 566 and Senate Bill 634, both entitled, "Private Protective Services Changes." The House version was referred to the House Committee on Judiciary I with a serial referral to Finance and the Senate Bill was referred to the Senate Committee on Rules and Operations of the Senate. House Bill 566 was heard in committee on Wednesday, June 14, 2017 and received a favorable report following an amendment to replace a reference to "C.F.R." with "federal regulation." It was sent to the House Finance Committee. There has been no further action since.

At the request of the Law & Rules Committee, Mr. Gray have prepared a new proposed bill for introduction in the upcoming 2019-2020 Legislative Session. The bulk of this new bill is identical to House Bill 566/Senate Bill 634 but with the addition of two new provisions voted on by the Board after introduction of these bills, as well as various technical changes you have approved.

The Law & Rules Committee considered this new bill at its meeting yesterday. A copy is attached as Attachment 3.

b. The General Assembly passed House Bill 379, "An Act to Assist the Criminal Law Recodification Working Group," which was ratified as S.L. 2018-69. This Act requires all State agencies, boards and commissions to submit a list of all possible criminal charges arising out of its administrative rules. A copy of S.L. 2018-69 was attached to my August 23, 2018 Attorney's Report.

N.C. Gen. Stat. § 74C-17(b) states that it is a Class 1 misdemeanor to violate "any provision of this Chapter" or "any rule promulgated" by the Board. Therefore, conceivably, this list could be lengthy. However, instead of every possible offense, Mr. Gray only indicated those offenses that the Board would be most likely to charge. The list was filed with two legislative oversight committees on December 1, 2018 as required. A copy of my Memorandum is attached as Attachment 4.

c. As a direct response to the three-judge panel's Order in *Cooper v. Berger, et al.*, 17 CVS 6465 – Wake County (*see*, October 25, 2018 Attorney's Report), three bills have been introduced in the General Assembly effecting the Board and its appointments. Chairman Arndt has been diligently reporting to the members as each of these were introduced.

- Senate Bill 821 introduced by Senator Andy Wells on November 27th would repeal N.C. Gen. Stat. § 74C-4, the Board's appointment provision, as well as similar appointment provisions in the other five boards and commissions that were the subject of *Cooper v. Berger*, effective June 30, 2019.
- House Bill 1117, introduced by Representative David Lewis on December 3rd is primarily focused on the Elections, Ethics, Lobbying, and Campaign Finances, and contains the identical language found in SB 821 but would be effective upon ratification.
- House Bill 1120, introduced by Representative Charles McGrady on December 4th would amend N.C. Gen. Stat. § 74C-4 to reduce the Senate and House appointments from five each to three each and establish the terms of the appointments.

The only one of the three bills to see any action has been SB821. It passed the Senate on December 6, 2018 and is currently pending in the House Rules and Operations of the House Committee.

Copies of each of these three bills are attached as Attachment 5.

IV. BOARD INTERPRETATION

At its October 25, 2018 meeting the Board requested that Mr. Gray prepare a draft of an interpretation of N.C. Gen. Stat. § 74C-3(b) to clarify that a non-profit membership association that provides all the same human resources services that a business or company could provide for itself is not required to use private investigators to conduct internal personnel investigations for its members and may use its own human resources professionals.

This draft policy was considered by the Screening Committee at its meeting yesterday. A copy is attached as Attachment 6.

MOTION BY MR. COBBLER TO ACCEPT THE DRAFT INTERPRETATION OF LICENSE REQUIREMENTS FOR HUMAN RESOURCE FIRMS; SECONDED BY MR. JOHNSON; MOTION CARRIED.

V. PENDING CASES

a. In a rare occurrence for this Board, a disciplined licensee filed a Petition for Judicial Review in Superior Court. Private Investigator Jeffrey Scott Moore's license was suspended for a period of six (6) months for failing to make or offer a client a written report within 30 days after the completion of the investigation. The matter was heard in the Office of Administrative Hearings and the Board voted to adopt the Administrative Law Judge's Proposal for Decision at its August 2017 meeting.

The Petition was filed in Johnston County. Mr. Gray prepared and filed the Official Record on December 8th and filed a response to the Petition on December 11th.

The Petition was heard on Monday, February 12, 2018 in Johnston County Superior Court. Neither Petitioner's attorney nor Petitioner appeared. Mr. Gray made a brief oral argument to the Court and handed up a 1986 Court of Appeals case finding the Private Protective Services Act constitutional. The presiding Judge denied the Petition thereby effectively dismissing the action. When Mr. Gray sent her a draft of the proposed Order for the Judge's signature, the Petitioner's attorney claimed she was not aware of the hearing.

On March 19, 2018, Mr. Gray received a copy of a Motion to Set Aside and Motion for New Hearing in this matter. This Motion was calendared for hearing on Monday, August 13, 2018. Prior to the Motion hearing, Petitioner's attorney asked if an offer could be made to the Board to resolve this matter without a hearing on the merits.

Petitioner and his attorney appeared before the Grievance Committee on August 22nd and made an offer. The offer was rejected and the Board accepted the Grievance Committee's recommendation.

The hearing on the merits of the Petition was calendared and held on September 19th. Superior Court Judge Mary Ann Tally entered an Order Affirming Board Decision, which did just what its title says: it affirmed the Board's Final Agency Decision suspending Petitioner's Private Investigator license for a period of six (6) months. Petitioner's time to appeal this Order expired on October 24, 2018.

Deputy Director Phil Stephenson served Mr. Moore with a letter advising him his six month suspension would begin November 29, 2018, the date of service.

b. On January 9, 2018 Mr. Gray filed a Complaint for Injunctive Relief in Wake County Superior Court against Kendall L. Locklear for failure to register armed proprietary security guards. At the same time Mr. Gray filed a related Motion for Temporary Restraining Order (TRO). Mr. Locklear was served by Sheriff and appeared at the TRO hearing. The presiding Judge issued the TRO and set the hearing on the Preliminary Injunction for Monday, January 22nd. Mr. Locklear appeared at this hearing as well. The Court granted the Board's Motion and a Preliminary Injunction was entered on this date enjoining Mr. Locklear or his alter-ego "Tuscarora Nation," and his or its officers, agents and employees from providing armed private protective services without properly registering the armed guards.

In late October, 2017, a Special Agent of the Alcohol Law Enforcement Section (ALE) of the North Carolina State Bureau of Investigation contacted Investigator Cynthia Hepburn and informed her that Mr. Locklear appeared to be operating an unlicensed security guard and patrol service in a casino in Maxton, North Carolina. Investigator Ronald Broadwell was assigned to investigate the matter.

On November 2, 2017, Investigator Broadwell met with the reporting ALE agent and a Sergeant with the Robeson County Sheriff's Office and was shown an undercover video taken inside the "Tuscarora Nation Casino" located at 1345 Modest Road, Maxton, North Carolina. The video clearly showed a person identified as Mr. Locklear and other persons walking around in security guard-style uniforms armed with handguns. On November 7, 2017, Investigator Broadwell, along with Deputies from the Robeson County Sheriff's Office and agents of the ALE and federal ATF, went to the Tuscarora Nation Casino.

Upon arrival at the scene, Investigator Broadwell and the law enforcement officers encountered Kendall Locklear at his residence (which is adjacent to the casino), and Mr. Locklear informed Investigator Broadwell that he was the owner and operator of the casino and the casino is a "sovereign nation." He further advised that "they" (i.e. he and the Nation) did not abide by any county, state or federal laws and they were their own country; he further advised that they do not pay state or federal taxes. He also advised Investigator Broadwell that he was in charge of security and they provided their own armed guards.

Investigator Broadwell informed Mr. Locklear of the provisions of the Board's law and that even though his security was proprietary the armed guards were required to be registered with the Board. Mr. Locklear told Investigator Broadwell that his lawyer (located in Washington, D.C.) told him that as a sovereign nation they did not need "permission or permits to have armed security guards." He showed Investigator Broadwell a driver's license and a concealed weapon permit issued by the "Tuscarora Nation." He claimed no law enforcement agency could arrest him.

He then voluntarily gave Investigator Broadwell and the law enforcement officers a tour of the casino. With his permission, Investigator Broadwell took approximately ten (10) pictures of the exterior and interior of the casino and employees with uniforms, security insignia and badges armed with handguns. Investigator Broadwell personally observed at least four (4) guards visibly patrolling the interior armed with handguns. Some were in plain clothes and some in uniform.

Mr. Locklear confirmed with Investigator Broadwell that he paid the armed guards through the Tuscarora Nation and that the armed guards were not trained and had never qualified with the firearms they carry. (The "casino" is actually only a building with video poker machines, and is open 24 hours per day, seven (7) days per week, and has three (3) security guards per shift.)

Mr. Locklear was orally advised to cease all armed security guard activity.

Indian tribes recognized by the State of North Carolina can be found in Chapter 71A of the North Carolina General Statutes. The "Tuscarora Nation" is not a recognized tribe in this State. According to the Secretary of State's website section for "Corporations" numerous legal

entities contain the words “Tuscarora Nation” or “Tuscarora Indians.” A website for the “Tuscarora Nation” appears on-line, but does not state which corporate entity it represents.

To be a federally recognized Indian tribe requires an Act of the United States Congress. Only a single tribe - - the Eastern Band of Cherokee Indians residing in Cherokee, Graham, Jackson, Swain and adjoining mountain counties of North Carolina - - is recognized by Congressional act. No other tribe residing in North Carolina is federally recognized. N.C. G.S. § 71A-2 specifically bars any other tribe claiming rights through the Eastern Band of Cherokee’s federal recognition.

The Eastern Band of Cherokee Indians is also the only tribe in North Carolina with Trust land, and considered a “sovereign nation.” Further, the Eastern Band of Cherokee Indians has a compact with the State of North Carolina, approved by the federal Indian Gaming Commission, which allows for legal gambling upon its Trust land. No other tribe has a similar compact.

The “casino” is on land he has deeded to the Tuscarora Nation located in up-state New York but Mr. Gray could find no authority for his claim that his actions are not governed by the laws of the State of North Carolina.

Prior to filing the Complaint Director Jones had attempted to serve Mr. Locklear with a written notice to cease and desist but he refused to sign for the Certified Mail.

On July 23, 2018, agents of the North Carolina Alcohol Law Enforcement Division, along with agents and officers of the Robeson County Sheriff’s Office, U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives, and five other agencies served search warrants on three locations for illegal casinos operated by Defendant and charged Defendant and 25 others, including his employees, with gambling, manufacturing controlled substances, money laundering, and failing to register armed security guards. In the Maxton location (1345 Modest Road), 13 employees of Defendant were arrested and charged with violating N.C. Gen. Stat. 74C-13(a); in the Pembroke location, four employees were charged; and in the Red Springs location 13 were charged.

On August 13, 2018, Mr. Gray filed a Motion to Show Cause as to why Defendant Locklear should not be held in civil and/or criminal contempt for violating the Preliminary Injunction entered on January 22, 2018. An Affidavit from Deputy Director Phil Stephenson, who was personally involved with the execution of the search warrant at 134 Modest Drive and the two other locations on July 23, 2018, was attached to the Motion, which was mailed to the Defendant. The Motion was returned “unclaimed” along with a Notice of Hearing for October 29th, so it was necessary to serve Mr. Locklear by personal service through the Sheriff of Robeson County. At a hearing on the Motion on November 26, 2018 the presiding Judge issued an Order for Mr. Locklear to appear and show cause as to why he should be found in contempt of Court. The contempt hearing is calendared for January 7, 2019.

c. For the past 48 months Mr. Gray have been reporting to the Board the status of a civil action filed against Board Investigator Sarah Conner, the Board, the City of Charlotte, the Charlotte-Mecklenburg Police Department and various officers of the Charlotte-Mecklenburg PD in *Kelly v. Conner, et al.*, No. 3:13-cv-636 - - WDNC. (Mr. Kelly was unlicensed as a security guard business and unregistered as a security guard, but performing armed security guard and patrol services. He was arrested by the Charlotte-Mecklenburg Police Department and charged with violating Chapter 74C.) The Court granted the Board's Motion to Dismiss Pursuant to Fed.R.Civ.P. 12(b)(6) and Motion for Summary Judgment, as well as similar motions filed by the other Defendants, on May 27, 2015 and this action was dismissed with prejudice. The Plaintiff gave notice of appeal on June 24, 2015, and the parties filed their respective Brief with the Fourth Circuit Court of Appeals on November 13, 2015.

Oral arguments in this matter were held on Tuesday, October 25, 2016 in Richmond, Virginia and Robert M. McDonnell, the attorney for the Charlotte-Mecklenburg Police Department, and Mr. Gray shared the Appellees' allotted time. Member Justin Greene attended the arguments as the Board's representative.

Mr. Gray received the opinion of the Court on November 11, 2016. In a very strange and sudden turn of events, the appeal was dismissed and the case remanded to the federal Magistrate Judge who heard the parties' motions for summary judgment.

In its simplest terms, the Court found that the Judge had failed to rule on two counts in the Plaintiff's Complaint and therefore only granted partial summary judgment; the granting of only partial summary judgment is "interlocutory in nature," which means it cannot be appealed until the entire case is concluded.

The attorneys for all parties filed a Motion for Status Conference on December 8, 2016. On April 4, 2017 the Judge ruled on this Motion by way of an Order requiring the parties to confer and file a status report. As a result of the status report filed by the attorneys the Judge ordered that the matter be re-mediated and that two issues -- the two of most importance to the Board -- be re-briefed.

Interestingly, the Plaintiff moved to dismiss four of the five Charlotte-Mecklenburg police officers as individual Defendants (leaving only Kerl) and the Judge granted the request on June 9, 2017. The City of Charlotte, the Board, (retired) Investigator Sarah Conner and CMPD officer Jason Kerl still remain as Defendants.

The second attempt at court-ordered mediation in this matter was to be held on August 16, 2017 in Charlotte, but was postponed due to the Plaintiff's attorney being unexpectedly in a criminal trial an extra day; it was held on August 28th and was impassed by the mediator since there could be no resolution. New motions for summary judgment and to dismiss and a response

to the two counts in Plaintiff's Complaint as ordered by the Fourth Circuit Court, and a supporting Memorandum of Law, were filed by me on behalf of the Board on September 1, 2017. Mr. Gray then filed a Response to Plaintiff's Memorandum of Law in Opposition to the Board's Motion to Dismiss and Second Motion for Partial Summary Judgment on October 13, 2017.

The Judge entered a Supplemental Memorandum and Order addressing counts 11 and 12 in Plaintiff's original Complaint, then reaffirmed his May 27, 2015 Memorandum and Order denying Plaintiff's first Motion for Partial Summary Judgment, granting the Defendants' initial Motions for Summary Judgment and dismissing the Complaint with prejudice. This Order then granted Defendant North Carolina Private Protective Services Board's New Motion to Dismiss and Renew[ed] Motion for Summary Judgment, granted Defendants Kerl, Mickley, Murray, Ford, and Narvaez's Renew[ed] Motion for Summary Judgment, granted Defendant City of Charlotte's Second Motion for Summary Judgment, granted Defendant Sarah A.H. Conner's Renewed Motion to Dismiss and/or Summary Judgment, and denied Plaintiff's Motion for Partial Summary Judgment. The Judge then dismissed the Complaint with prejudice.

Plaintiff gave Notice of Appeal on January 13, 2018.

The parties received a Scheduling Order from the Fourth Circuit Court of Appeals, and following a Consent Motion to Extend Time to File, the Plaintiff-Appellant's Brief was filed on March 29, 2018 and the Defendants-Appellees' Brief was filed on May 17, 2018. Plaintiff-Appellant filed a Reply Brief on May 30th. The parties had received a notice from the Court tentatively calendaring this matter for oral argument for December 11, 12 or 13, 2018; however, since my October 25th Attorney's Report, those tentative dates have been moved to January 29, 30 or 31, 2019.

MOTION BY MR. COBBLER TO ACCEPT THE ATTORNEY'S REPORT; SECONDED BY MR. COOK; MOTION CARRIED.

PUBLIC COMMENT:

Anthony Troeger stated that after listening to discussion yesterday and today he support the Board moving forward with close Protection.

GOOD OF THE ORDER:

Mr. Arndt introduced NCAPI President, Tamara Rabenold.

Tamara Rabenold, NCAPI President, announced that the NCAPI will have their annual meeting on January 12, 2019 in Huntersville, North Carolina and introduce the new NCAPI Board members.

**MOTION BY MR. CESENA TO ADJOURN; SECONDED BY MR. COBBLER;
MOTION CARRIED.**

12:47 P.M. Adjourned

Brian R. Jones, Director

Garcia Graham, Board Secretary