



# North Carolina Department of Public Safety

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## 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  
OCTOBER 25, 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  
Jerry 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

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## **GUESTS PRESENT**

Shannon Bland  
Bill Johnson  
James Gilchrist  
Alton Childers  
Julie Turner  
Roy J. Shipman  
Matthew Martucci

Steve Hale  
Melissa Richardson  
Andy Renfrow  
Michael C. Walker  
Kathy Broom  
Dorian Dehnel  
Beatrice Powers

Lavotta Jennings Wall  
Alexis Milas  
Pam Mayfield  
Creo M McIver Jr.  
Walter Pylypiw  
Ruth Cruz-Nichols

## **CALL TO ORDER**

Mr. Arndt called the Private Protective Services Board meeting to order at 9:00 a.m. Mr. Cook 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.

Mr. Arndt introduced NCAPI President, Tamara Rabenold.

Tamara Rabenold, NCAPI President, announced that the NCAPI fall conference that was originally scheduled for Atlantic Beach on November 4-6, 2018 has been changed to Carolina Beach due to the hurricane. Licensees will receive 12 hours of continuing education credits for attendance. She noted more information about the conference could be found on their webpage.

Mr. Arndt stated that there was a special Board meeting held on October 24, 2018 to elect Board officers. The following members were elected:

David Arndt - Chairman  
Bud Cesena - Vice Chairman  
Ron Burris - Grievance Committee Chair  
Ed Cobbler - Screening Committee Chair  
Bud Cesena - Training & Education Committee Chair  
Nada Lawrimore – Law and Rules Committee Chair  
Eric Weaver - Finance Committee Chair  
Deborah Duncan - Ethics Liaison

**MINUTES:**

**APPROVAL OF THE AUGUST 23, 2018 BOARD MEETING MINUTES**

**MOTION BY MR. COBBLER TO ACCEPT THE MINUTES; SECONDED BY MR. PITMAN; MOTION CARRIED.**

**SCREENING COMMITTEE REPORT:**

Mr. Arndt stated that the Screening Committee met on Wednesday, October 24, 2018 from 2:35 p.m. to 3:45 p.m. to review a total of 33 applications and four addendum items (see report attached). 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. JOHNSON TO ACCEPT THE SCREENING REPORT WITH THE EXCEPTION OF #12, #26 AND ANDY RENFROW ON THE ADDENDUM; SECONDED BY MR. COOK; MOTION CARRIED.**

**MOTION BY MR. COBBLER TO ACCEPT #12 AND #26 OF THE SCREENING REPORT; SECONDED BY MR. STICKL; MOTION CARRIED.**

Mr. Cesena recused himself from #12 and #26 of the screening report.

**MOTION BY MR. JOHNSON TO ACCEPT ANDY RENFROW ON THE ADDENDUM; SECONDED BY MR. COOK; MOTION CARRIED.**

Mr. MacRae recused himself from Andy Renfrow of the addendum report.

**GRIEVANCE COMMITTEE REPORT:**

Mr. Burris reported that the Grievance Committee met on Wednesday, October 24, 2018 from 10:56 a.m. to 12:17 p.m. and heard a total of 6 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 WITH THE EXCEPTION OF CASE NUMBER 2018-PPS-011 DAVID BAILEY AND CASE NUMBER 2018-PPS-024 SCOTT SIANO; SECONDED BY MR. BUFF; MOTION CARRIED.**

**MOTION BY MR. BUFF TO ACCEPT THE GRIEVANCE COMMITTEE RECOMMENDATION REGARDING DAVID BAILEY; SECONDED BY MR. COOK; MOTION CARRIED.**

Mr. Cesena recused himself from voting on case #2018-PPS-011 regarding David Bailey.

**MOTION BY MR. CESENA TO ACCEPT THE GRIVANCE COMMITTEE RECOMMENDATION REGARDING SCOTT SIANO; SECONDED BY MR. COOK; MOTION CARRIED.**

Mr. Stickl recused himself from voting on case #2018-PPS-024 regarding Scott Siano.

**TRAINING & EDUCATION COMMITTEE:**

Mr. Cesena reported that the Training & Education Committee met on Thursday, October 24, 2018 from 8:00 a.m. until 8:51 a.m. The Committee members included, Mr. Cesena, Mr. Johnson, Mr. Cobbler, Mr. Stickl, Mr. Cook, Mr. Buff, and Mr. MacRae.

Mr. Cesena called upon Training Officer Ray Bullard to report on the upcoming training schedule.

Mr. Bullard stated the following courses are scheduled for the remainder of 2018 and reported the dates of upcoming courses scheduled for 2019:

October 29-31, 2018 Long Gun Trainer Course/Recertification at Butner  
November 7, 2018 (10am-11pm) FT Re-Certification & Pre-Qualification Course at NCJA  
November 26-30, 2018 (8am-5pm) UGT Course & Workshop at WTCC  
February 4-8, 2019 Unarmed Guard Trainer Course & Workshop at WTCC  
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  
September 23-27, 2019 Unarmed Guard Trainer Course & Workshop at WTCC  
December 3-6, 2019 Unarmed Guard Trainer Course & Workshop at WTCC

**The following PPS Trainer courses have been completed:**

September 5, 2018 Firearms Recertification/Prequalification Course at NCJA  
September 10-13, 2018 Basic Firearms Instructor Course at NCJA  
September 24-28, 2018 Unarmed Guard Instructor Course & Workshop (Cancelled)

Mr. Bullard noted the following PPSB Training Courses for CEU Credit are scheduled:

December 20, 2018	1-5 pm	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 with no issues to report:**

<u>Trainer</u>	<u>Location</u>	<u>Classroom/Range</u>
1. Christopher Lewis	Burlington	Range
2. Matthew Gidney	Charlotte	Classroom
3. Richard Layton	Burlington	Range
4. Hansel Bumgarner	Salisbury	Classroom
5. Joel VanNorman	Raleigh	Range
6. Julien Duncan	Jackson Springs	Classroom and Range
7. Walter Brock	Raleigh	Range

Mr. Bullard reported on the following weapon discharge/incident reports:

August 31, 2018 an unregistered armed guard discharged his weapon during an armed robbery at the Aquarium Skill Fish Games, located at 306 HWY 70 SW, Hickory, NC. The guard has been identified. A cease and desist order has been issued and a complaint filed against the guard.

September 12, 2018 an armed guard employed by Eagle Eye Security discharged his weapon after being shot at and subsequently struck by a bullet. The guard was patrolling an apartment complex in Durham, NC. The Durham Police Department was called to investigate. The Durham Police Department detective is recommending that this case be placed in inactive status and no charges will be filed at this time. At the time of the incident two weapons were seized from the guard. One handgun was seized from the guard's person and another from the guard's vehicle. The guard was properly registered and the weapon seized from his person was the same weapon that was used for qualification.

September 17, 2018 an armed guard employed by NC Detective Agency was assigned to an apartment complex in Durham, NC. During a physical altercation with a subject and a subsequent struggle over the guard's handgun, the guard discharged one round. The round struck and killed the suspect. The Durham Police Department was called to investigate the incident. Durham Police Department detectives advised that there were two witnesses to the

incident. One witness was an unarmed guard employed by NC Detective Agency and the other was a pizza delivery employee. Both witnesses' statements concurred with the guard's statement. The guard was a properly registered armed guard and the weapon used was the same weapon used for qualification. The Durham Police Department detective and the Assistant District Attorney have met about the case and no charges will be filed at this time.

**Training Update:**

Mr. Cesena reported that there were no applications submitted to the Training & Education Committee's review for continuing education credits.

Clarification on 14B NCAC 16 .0904, 14B NCAC 16 .0911 and 74C-9 (e)(5):

Mr. Bullard stated that there was discussion with regard to the conflict or discrepancy between 14B NCAC 16 .0904, 14B NCAC 16 .0911 and 74C-9 (e)(5) which refers to when armed and unarmed instructors' certificates expire. To clarify, the certificate expires on the date of expiration and there is no 90 day grace period. If the certificate expires, the instructor will be required to submit a new application.

**IN AN ATTEMPT TO GUIDE STAFF AND INFORM INDUSTRY STAKEHOLDERS, MR. CESENA MADE A MOTION THAT REITERATED THE LACK OF A RENEWAL GRACE PERIOD FOR INSTRUCTORS. SECONDED BY MR. JOHNSON. OPPOSED BY MR. MACRAE. MOTION CARRIED.**

Mr. Cesena reported that the Training Committee discussed the unarmed guard training requirement to continue as a firearm's trainer. He stated that currently, firearms trainers must keep their certification as an unarmed guard trainer, teaching at least one class during their two year certification period to continue their armed trainer eligibility. The Committee decided that it would not be necessary to maintain the unarmed guard trainer certification, unless that trainer intends to teach unarmed, and recommends to the full Board that this particular requirement be dropped for the firearms trainers.

**MR. CESENA MADE A MOTION TO ELIMINATE THE REQUIREMENT THAT FIREARMS TRAINERS MAINTAIN AN UNARMED GUARD TRAINER CERTIFICATION UNLESS THEY INTEND TO TEACH UNARMED; SECONDED BY MR. JOHNSON. MOTION CARRIED.**

Mr. Johnson reminded the Board that Mr. Cesena has consistently assisted with the administration of the long gun course. Mr. Johnson requested that the Board allow Mr. Cesena to continue to assist.

**MOTION BY MR. JOHNSON REQUESTING MR. CESENA CONTINUE HIS**

**ASSISTANCE WITH THE LONG GUN PROGRAM AND THE BOARD PAY HIS RELATED EXPENSES. SECONDED BY MR. COOK. MOTION CARRIED.**

Mr. Cesena reported that Mr. Johnson also sits on the Criminal Justice Education & Training Standards Commission. Based on the Board's desire and Mr. Johnson's efforts, the Commission approved two hours of mandatory in-service training related to Private Protective Services effective 2020. Mr. Cesena stated this training will provide a better understanding of the Board's requirements.

Mr. Johnson clarified for the attendees that part of the purpose of this training stems from problems that have arisen from armed guard registration violations at sweepstakes businesses. This training will provide officers with knowledge of the Private Protective Services Act so they can respond effectively to violations.

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

**GRIEVANCE COMMITTEE:**

NONE

**SCREENING COMMITTEE:**

NONE

**LAW AND RULES COMMITTEE**

Ms. Lawrimore reported that the Law and Rules Committee met on Wednesday, October 24, 2018 from 9:50 a.m. to 10:38 a.m., to discuss the recent activities that potentially violate the Private Protective Services Act. In large part, the conversation focused on unregistered security that worked during the recent hurricane. By December, the Committee intends to explore legislative revisions to accommodate security needs during a state of emergency.

Ms. Lawrimore reported the committee also discussed the scope of executive protection and potential overlap of responsibilities related to the security guard and patrol license. This item will be further explored during the December Committee meeting.

Ms. Lawrimore also noted that Director Jones made the Committee aware of a recent inquiry related to investigative efforts undertaken by contract human resource firms. Specifically, the Committee discussed whether a private investigator's license was required for this unique function. At the Committee's request, Mr. Gray will present a draft stator interpretation for the Committee's consideration at the December meeting.

Ms. Lawrimore reported on the Committee's discussion regarding licensing and registration fees noting that fees have not been increased in many years. Ms. Lawrimore reiterated that the Committee continues to monitor the need for potential legislative changes to ensure that the Board remain fiscally effective. As part of this effort, Ms. Lawrimore stated that Director Jones had analyzed the fee structure from several adjacent states.

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

**FINANCE REPORT**

NONE

Break            10:16 a.m.  
Reconvene      10:37 a.m.

**ETHICS COMMITTEE**

NONE

**OLD BUSINESS:**

Mr. Arndt stated that the Board approved a new committee at the August 23, 2018 Board meeting to monitor emerging technology related to the Private Protective Services Act. Mr. Arndt expressed the need to select the chairperson for this new committee. The Board named the Emerging Technology Committee. Mr. Arndt stated that the committee will meet on Tuesday the week of the Board meeting at 4:00 p.m. at the Private Protective Services Board office.

**MR. COBBLER MADE A MOTION TO NOMINATE STACY BUFF AS CHAIR OF THE EMERGING TECHNOLOGY COMMITTEE; HE DECLINED.**

**MR. BUFF MADE A MOTION TO NOMINATE MS. TAMMY OWENS AS CHAIR OF THE EMERGING TECHNOLOGY COMMITTEE; SECONDED BY MR. COBBLER; MOTION CARRIED.**

Mr. Arndt also stated that the Finance Committee will meet at 9:00 a.m. on Thursday, December 20, 2018.

Mr. Arndt reported that the attorney's contractual agreement is up for review.



**MR. CESENA MADE A MOTION TO GO INTO CLOSED SESSION TO DISCUSS TWO CONTRACTS, PERMITIUM AND PERSONNEL MATTERS; SECONDED BY MR. PITTMAN; MOTION CARRIED.**

CLOSED SESSION: 10:40 a.m.  
RECONVENED: 12:02 a.m.

**MOTION BY MS. LAWRIMORE TO RENEW ATTORNEY GRAY'S CONTRACT FOR TWO CALENDAR YEARS; SECONDED BY MS. DUNCAN; MOTION CARRIED**

**NEW BUSINESS:**

Mr. Arndt asked that the committee chairpersons provide him an agenda a week prior to the Board meeting.

Mr. Cobbler requested that members receive the Screening Before Report and Application Presentation Reports on Friday prior to the Board meeting.

Director Jones stated that staff would endeavor to provide all reports at the end of the week prior to the Board meeting.

In other new business, Mr. MacRae read a Proclamation from Governor Roy Cooper marking September 17-21, 2018 as Private Security Officer Memorial Week in North Carolina.

Mr. Cesena suggested that effort be undertaken in the coming year to recognize Private Security Officer Week prior to the event to honor the occasion.

Mr. Jerry Pitman informed the Board that July 24, 2018 was National Private Investigator Day and suggested the Board also show appreciation next year.

**FINAL AGENCY DECISIONS:**

LaVotta Teresa Jennings - 18 DOJ 04254. Ms. Jennings was present. This case was heard by Administrative Law Judge Melissa Owens Lassiter on August 28, 2018. This case involved whether Petitioner should be denied an unarmed guard registration based on Petitioner's lack of good moral character and temperate habits as evidenced by two convictions of Simple Assault, a Class 2 Misdemeanor, within five years of her application.

**MOTION BY MR. BURRIS TO ADOPT THE ADMINISTRATIVE LAW JUDGE'S RULING AND ISSUE REGISTRATION; SECONDED BY MR. COBBLER. MOTION**

**CARRIED.**

Carlos Santino Barbee - 18 DOJ 02717. Mr. Barbee was not present. This case was heard by Administrative Law Judge Augustus B. Elkins II on May 29, 2018. This case involved the summary suspension order of Petitioner's unarmed guard trainer certification based on lack of good moral character and temperate habits as evidenced by a charge of Burglary, Non-forced Entry and Larceny from a Building as a result of a theft that occurred from a property where Mr. Barbee worked as a guard.

**MOTION BY MR. CESENA TO UPHOLD THE SUSPENSION OF HIS UNARMED GUARD TRAINER CERTIFICATION; SECONDED BY MR. JOHNSON; MOTION CARRIED.**

**DIRECTOR'S REPORT:**

Director Jones read the report for the record. He reported the Board's revenue to date was \$355,333.01 with expenditures in the amount of \$334,362.64, reflecting an increase to the fund balance of \$20,970.37. The total fund balance was \$1,220,825.37. He reported the Education Fund balance was \$98,453.75 with no disbursements. Director Jones reported that since the August meeting, PPS had received 6,422 registration applications, 113 applications for licensure, and 62 for certification, which brings the active numbers to date for registration to 27,197, license holders to 2,006 and certification holders 593. Staff had printed 4,260 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 recognized Investigator Cynthia Hepburn's retirement. Ms. Hepburn thanked the Board and staff and stated she had enjoyed her years with Private Protective Services. Director Jones then thanked Cynthia for her 16 years of service to Private Protective Services and wished her the best in her retirement.

Director Jones reported that Ms. Hepburn's position in Fayetteville has been posted. He also reported that the agency has a Processing Assistant vacancy that was posted and a review of applicants for both positions will take place in the near future.

Director Jones stated that pursuant to NCGS 74C-4(h), and in accordance with the Memorandum of Understanding (MOU) between the Department of Public Safety (DPS) and the Board, DPS intends to transfer the annual administrative services fee of \$37,500 in January 2019. He provided this notice as a result of the recent amendment to the MOU, which reflected the Board's request to receive advance notice of the withdrawal for the administrative services fee.

Director Jones reported that Permittium continues to meet with staff members weekly and will do so throughout remaining development phases to discuss progress and issue resolution. Director Jones noted that a meeting with Permittium took place recently to finalize the specifications for

certifications. Permittum was also working on record archival, often referred to as the scanning project. As of the October 23<sup>rd</sup>, they reported they have scanned approximately half of the records (50 boxes).

Director Jones reported that he had received requests from seven companies to utilize a total of 724 out-of-state unarmed guards during the aftermath of Hurricane Florence, acknowledging the provision in the statute that allows for out-of-state unarmed guards to be utilized for a period not to exceed 10 days. He noted that it was not possible to determine if all 724 guards were utilized and learned that many were placed on standby in the event they were needed.

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

**ATTORNEY'S REPORT:**

Attorney Gray discussed the following:

**CONSENT AGREEMENT, SETTLEMENT AGREEMENTS & CIVIL PENALTIES**

1. On October 26, 2017 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 Tracey Lee Burke/East Coast Protection entered into a Consent Agreement with the Board in the amount of \$6,303.60 for registration violations. The temporary agreement was signed by the QA (Tracey Burke) on July 22, 2018. Paid in full.

3. On August 23, 2018 Otis Cleon Scott/Duke Energy Corp., agreed to a civil penalty in the amount of \$2000.00 for allowing armed guards to carry rifles without being properly qualified. Payment has not been received.

4. On August 23, 2018 Mark Butler Howell/Securitas Critical Infrastructure Services, Inc., agreed to a civil penalty in the amount of \$2000.00 for allowing armed guards to carry rifles without being properly qualified. Payment has not been received.

5. On August 23, 2018 Sione Atu Latu/Security On Call, LLC (Screening) entered 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 have been \$2,040.00) on October 10, 2018. Ms. Graham talked with Mr. Latu on October 16, 2018 and instructed him to mail the correct consent payment

amount.

## **OFFICE OF ADMINISTRATIVE HEARINGS**

*See*, Hearings List (attachment 1).

## **ADMINISTRATIVE RULES**

a. The Board began the process for its Periodic Review of Rules which will occur in August 2018 at its meeting on February 22<sup>nd</sup>. 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 16<sup>th</sup> agenda. The report containing the final classification of the Board's rules as "Necessary with Substantive Public Interest" was approved. The Board must now readopt these rules which requires completing what is essentially the rulemaking process (60-day comment period, public hearing, technical change requests, etc.). Therefore the next step is for the Board to vote to begin the readoption of its rules pursuant to a timeline approved by the Rules Review Commission. Today, the Board should vote to readopt the rules not later than April, 2020.

b. At its June 21<sup>st</sup> meeting, the Board authorized Mr. Gray 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 23<sup>rd</sup> Education and Training Committee meeting. It was decided to not pursue these two proposed amendments, but proceed with the remaining proposed amendments. In light of the ruling of the three judge panel in *Cooper v. Berger, et al.* (*see*, below) Mr. Gray intentionally held the Notice of Text for these rules pending action by the legislature or the Governor in response to that case.

**MOTION BY MS. LAWRIMORE TO READOPT THE RULES THAT WERE ADOPTED BY THE RULES REVIEW COMMISSION; SECONDED BY MR. BURRIS; MOTION CARRIED**

## **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.

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 enabling statutes. A copy of S.L. 2018-69 was attached as Attachment 2 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 will be lengthy; everything from operating a security guard and patrol business without a license to a PI badge violation to a failure to obtain continuing education hours.

The list is due to two legislative oversight committees by December 1, 2018 and MR. GRAY will be preparing it over the next 30 days.

## **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 8<sup>th</sup> and filed a response to the Petition on December 11<sup>th</sup>.

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 22<sup>nd</sup> 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 19<sup>th</sup>. 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 expires on October 24, 2018.

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 22<sup>nd</sup>. 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 29<sup>th</sup>, so it will be necessary to serve Mr. Locklear by personal service through the Sheriff of Robeson County.

c. For the past 48 months Mr. Gray has 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 28<sup>th</sup> 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 30<sup>th</sup>. The parties have received a notice from the Court tentatively calendaring this matter for oral argument for December 11, 12, or 13, 2018.

d. In my August 23<sup>rd</sup> Attorney's Report Mr. Gray reported that I had recently learned that the Private Protective Services Board was part of a lawsuit challenging the constitutionality of an action (or in this case "inaction") of the General Assembly. Right after he was sworn in, Governor Cooper challenged two appointments by Governor McCrory to the Industrial Commission and the term of office the legislature gave one of those appointees (nine years instead of filling the expired term of her predecessor) and in the same lawsuit challenged the legislature's action of passing a bill to reduce the Court of Appeals from 15 members to 12. That is not something Mr. Gray would go to the trouble of reading the pleadings, or particularly care about, so only knew what he read in the newspaper. The case, *Cooper v. Berger, et al.*, 17 CVS 6465 – Wake Co., was amended by the attorneys for Governor Cooper in August 2017 claiming, among other things, that six NC boards and commissions – one being the PPSB -- were unconstitutionally constituted because a majority of members on the board/commission are appointed by the legislature. The gist of the amendment to the lawsuit was that after the legislature's loss in *McCrory v. Berger, et al.* where the NC Supreme Court found that the legislature's creation of the Coal Ash Commission was an unconstitutional incursion into the powers of the Executive Branch, the legislature should have gone back and "readjusted" the membership of these six allegedly unconstitutional boards and commissions. The legislature did repeal the provisions enjoined by *McCrory*, but it did not on its own review the enabling acts of all boards and commissions to determine possible violations and repeal those. (As a side note, the Amended Complaint in *Cooper* did recognize the "historic" appointment scheme of these boards and commissions meaning they've been like this a long time.)

On Friday, August 31<sup>st</sup>, a three-judge panel of Superior Court Judges issued an Order in *Cooper v. Berger, et al.* The Court granted the Plaintiff's Motion for Summary Partial Judgment as to Counts 7-12 of the Complaint and denied the Defendant's Motion for a Stay. In so doing, the Court found the Board's appointment structure to be unconstitutional, and a violation of the Separation of Powers doctrine of the State Constitution in that a majority of the Board's members are appointed by the General Assembly.

The immediate effect of this ruling on the Board's functions was not fully understood and Mr. Gray sought clarification. The Court found G.S. 74C-4, which is the section of the statutes that sets forth the membership, terms, vacancy and compensation of Board members, to be the unconstitutional provision; it was silent as to anything else. Subsection (a) of the G.S. 74C-4 states the purpose of the Board as being "to administer the licensing and set educational and training requirements of persons, firms, associations, and corporations..." Albeit, G.S. 74C-5 sets forth the powers of the Board.

A very narrow reading of the Court's Order was that the Board is only enjoined from performing the functions it performs at its meetings such as reviewing and approving all applications for licensure, hearing grievance (i.e. complaint) matters, deciding on statutory and administrative rule changes, making decisions as to education and training matters, and general policy decisions. This view would have no effect on most of the day-to-day operations of the Board staff (with the exception of Cease & Desist letters and Summary Suspensions of licenses and registrations, because that authority has formally been delegated to the Director.) A broad reading was that the entirety of the Board's functions -- as set out in subsection (a), which is to "administer..." -- were enjoined and everything stops until the legislature acts to correct the appointment structure.

While seeking clarification Mr. Gray adopted the narrow view as the correct view. He contacted the attorneys for the parties involved, as well as the Attorney General's Office and the Governor's Legal Counsel Office. (Although the AG's Office was not involved in this case, I had no other place to go to seek advice that would be precedential in a Court if our actions under the narrow view were challenged.)

The Defendants did not file a Notice of Appeal or seek a stay of the Order.

A copy of the Order was attached to my September 4<sup>th</sup> e-mail advising you of the above.

Following the three judge panel's Order and during the appeal period, both he and Mr. Jones were advised that the Governor was going to address the issues raised by the Court's Order by Executive Order. On Tuesday, September 11<sup>th</sup> we were advised that the Governor was delaying action in light of the pending storm (i.e. Hurricane Florence.)

The anticipated Executive Order reconstituting the Board was issued by Governor Cooper on October 8<sup>th</sup>. A copy was attached to an e-mail to all former Board members.

Its overall terms are simple. It recognizes that G.S. 74C-4 regarding the Board composition was the portion of the law found to be unconstitutional, then set out to correct it in the interim until the legislature has a chance to do so on its own, if it so chooses. The Reconstituted Board is now made up of seven (7) appointees by the Governor, the Secretary's designee, and six (6) members to be considered legislative appointees for a total of 14 members (which is the existing number.) The Executive Order did not make those appoints. The term of each appointment is spelled out, which Mr. Gray presumes is included in the event that the legislature does not act in the near future. Once appointed, each member of the Reconstituted Board will be required to take the oath of office even if that appointee is an existing member and is reappointed to the Reconstituted Board. New elections will have to be held, as well.

The Order made clear it is only addressing the Board appointment issue from the three judge panel's Order and that the remainder of Chapter 74C is unaffected and still in force and effect.

By letter dated October 18, 2018, the Governor appointed 13 members of the previous Board to the "Reconstituted Board" with six as legislative appointees and seven as appointees of the Governor; the Secretary of the Department of Public Safety reappointed Steve Johnson as his designee.

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

**PUBLIC COMMENT:**

None.

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

1:02 P.M. Adjourned

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Brian R. Jones, Director

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Garcia Graham, Board Secretary