



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
AUGUST 23, 2018
HOLIDAY INN NORTH
2805 HIGHWOOD BOULEVARD
RALEIGH, NC 27604**

BOARD MEMBERS PRESENT

David Arndt
Eric Weaver, Sr.
Stacy Buff
Ron Burris
Bud Cesena
Ed Cobbler
Clyde Cook
Debra Duncan
Steve Johnson
William MacRae
Nada Lawrimore
Tammy Owens
Jerry Pitman
Gerald Stickl

BOARD MEMBERS ABSENT

STAFF PRESENT

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

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GUESTS PRESENT

James Russell
Audra Coleman
Mark McNeely
Heather Brown
Tamara Rabenold
Greg Hatten
Wayne Grooms
Dorian Dehnel
Eugene Canegata
Paul Latorre

Jim Geiger
Gary Pastor
Melissa Washington
Deborah Worley
Randall Rabenold
Jody Stacy
Suzanne Creech
Tonia Adams
Randy Johnson

Ruth Reynolds
Jerry Pittman
Jeffrey Kiker
Kathy Broom
Steve Mitchell
Julie Callicutt
Beatrice Powers
Robert Dunn
Denise Martin

CALL TO ORDER

Mr. Weaver called the Private Protective Services Board meeting to order at 9:00 a.m. He led the group in the Pledge of Allegiance followed by a welcoming of 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. Weaver introduced NCAPI President, Tamara Rabenold.

Tamara Rabenold, NCAPI President, introduced herself to new Board members and greeted all guests. She updated everyone on the annual Fall Conference to be held November 4-6, 2018 at Atlantic Beach. She noted registration is ongoing and reminded everyone the early registration special expires August 31st noting they can register by visiting their website.

Mr. Weaver turned the floor over to Attorney Jeff Gray for the elections of officers.

Mr. Gray first explained the process of the elections, then opened the floor for the nomination of Chair.

**MR. CESENA MADE A MOTION TO NOMINATE DAVID ARNDT AS CHAIRMAN;
SECONDED BY MR. COBBLER; MOTION CARRIED.**

MR. ARNDT MADE A MOTION TO NOMINATE BUD CESENA AS VICE CHAIRMAN; SECONDED BY MR. WEAVER. NADA LARIMORE MADE A MOTION TO NOMINATE WILLIAM MACRAE; SECONDED BY ED COBBLER. BY VOTE OF 8 TO 6, MR. CESENA WAS ELECTED TO THE POSITON OF VICE-CHAIR OF THE PRIVATE PROTECTIVE SERVICES BOARD.

RON BURRIS MADE A MOTION TO NOMINATE MR. CESENA AS CHAIRMAN OF THE TRAINING & EDUCATION COMMITTEE; SECONDED BY CLYDE COOK; MOTION CARRIED.

MR. CESENA MADE A MOTION TO NOMINATE MR. BURRIS AS CHAIRMAN OF THE GRIEVANCE COMMITTEE; SECONDED BY STEVE JOHNSON; MOTION CARRIED.

MR. CESENA MADE A MOTION TO NOMINATE MR. COBBLER AS CHAIRMAN OF THE SCREENING COMMITTEE; SECONDED BY MR. ARNDT; MOTION CARRIED.

MR. CESENA MADE A MOTION TO NOMINATE MS. LAWRIMORE AS CHAIRMAN OF THE LAW AND RULES COMMITTEE; SECONDED BY MR. WEAVER; MOTION CARRIED.

MR. ARNDT MADE A MOTION TO NOMINATE WILLIAM MACRAE AS CHAIRMAN OF THE FINANCE COMMITTEE; MR. MACRAE DECLINED THE NOMINATION.

MR. ARNDT MADE A MOTION TO NOMINATE MR. WEAVER AS CHAIRMAN OF THE FINANCE COMMITTEE; SECONDED BY MR. COOK; MOTION CARRIED.

MR. CESENA MADE A MOTION TO NOMINATE DEBORAH DUNCAN AS THE PPSB ETHICS LIASION; SECONDED BY MR. ARNDT; MOTION CARRIED.

The following members were selected to chair of the specified committees:

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

Deborah Duncan - Ethics Liaison

MINUTES:

APPROVAL OF THE JUNE 21, 2018 BOARD MEETING MINUTES

MOTION BY MR. WEAVER TO ACCEPT THE MINUTES; SECONDED BY MR. MACRAE; MOTION CARRIED.

SCREENING COMMITTEE REPORT:

Mr. Arndt stated that the Screening Committee met on Wednesday, August 22, 2018 from 1:35 p.m. to 4:33 p.m. to review a total of 45 applications and two addendum items (see report attached). The Committee members included Mr. Arndt, Mr. MacRae, Mr. Cobbler, Ms. Owens and Mr. Stickl. Mr. Arndt read the report for the record.

MOTION BY MR. JOHNSON TO ACCEPT THE SCREENING REPORT; SECONDED BY MR. COBBLER; MOTION CARRIED.

Mr. Pitman recused himself from the addendum report.

GRIEVANCE COMMITTEE REPORT:

Mr. Cesena reported that the Grievance Committee met on Wednesday, August 22, 2018 from 9:00 a.m. to 1:24 p.m., and heard a total of 12 cases. The Committee members included Mr. Cesena, Mr. Cook, Mr. Johnson, Ms. Lawrimore, Ms. Duncan and Mr. Pitman. Mr. Cesena read the report for the record. (see report attached).

MOTION BY MR. WEAVER TO ACCEPT THE GRIEVANCE COMMITTEE REPORT WITH EXCEPTION OF THE MATTER REGARDING WILLIAM FLETCHER; SECONDED BY MR. MACRAE; MOTION CARRIED.

MOTION BY MR. JOHNSON TO ACCEPT THE GRIVANCE COMMITTEE RECOMMENDATION REGARDING WILLIAM FLETCHER; SECONDED BY MR. MACRAE; MOTION CARRIED.

Mr. Cobbler, Ms. Lawrimore, Mr. Pitman and Mr. Cook recused themselves from voting on case #2018-PPS-014 regarding William Fletcher.

TRAINING & EDUCATION COMMITTEE:

Mr. MacRae reported that the Training & Education Committee met on Thursday, August 23, 2018 from 8:00 a.m. until 8:35 a.m. The Committee members included Mr. MacRae, Mr. Johnson, Mr. Cobbler, Mr. Arndt, Mr. Cook, Mr. Buff and Mr. Cesena.

Mr. MacRae called upon Mr. Ray Bullard to report on the upcoming training schedule.

Mr. Bullard reported the following courses are scheduled for the remainder of 2018:

September 5, 2018 (10am-11pm) FT Re-Certification & Pre-Qualification Course at NCJA
September 10-13, 2018 (8am-5pm) FT Course & Legal Class at NCJA
September 24-28, 2018 (8am-5pm) UGT Course & Workshop at WTCC
October 15-17, 2018 Long Gun Trainer Course/Recertification at Butner
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

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

August 23, 2018 1-5 pm Raleigh, NC
December 20, 2018 1-5 pm Raleigh, NC

Mr. Bullard then reported on the Unarmed Guard Trainer Courses scheduled for 2019:

February 4-8, 2019
March 25-29, 2019
June 24-28, 2019
September 23-27, 2019
December 3-6, 2019

Firearms Recertification/Prequalification Courses for the first half of 2019 are:

March 25, 2019
May 20, 2019

Mr. Bullard also reported on eleven (11) trainer audits he performed where he found no problems and determined each trainer was following the Board's requirements.

Mr. MacRae then asked Mr. Bullard to give his report on weapon discharges.

Weapons discharge:

As a follow-up to the March 26, 2018 report of weapons discharge at Game Time, Moose Lodge, 3740 Owen Drive, Fayetteville, NC, Mr. Bullard reported that the parties involved have been identified. He stated a complaint had been filed as well as a cease and desist order issued. The complaint is to be scheduled for a future Grievance Committee meeting.

Also, following up on the April 8, 2018 report of the shooting and subsequent death of an armed guard at Gone Fishing Sweepstakes, 1365 North Church Street, Burlington, NC, Mr. Bullard reported that all parties involved had been identified. He stated a complaint was filed as well as a cease and desist order issued. The complaint is to be scheduled for a future Grievance Committee meeting.

Training Update:

Mr. MacRae reported that the Training & Education Committee reviewed the following applications for continuing education credits:

Crowd Control Training for Investigators (online) 6.0 hours
Improvised Explosive Device Training (online) 6.0 hours
Bomb Threat Awareness Training for Investigators (online) 6.0 hours
Effective Communication Training for Investigators (online) 4.0 hours
Field Notes Training for Investigators (online) 4.0 hours
Courtroom Testimony (classroom) 6.0 hours
Communication and Body Language (classroom) 4.0 hours
Process Serving in NC (classroom) 4.0 hours
Field Note taking and Report Writing (renew) (classroom) 8.0 hours

MOTION BY MR. COBBLER TO ACCEPT THE COURSES SUBMITTED FOR CONTINUING EDUCATION TRAINING APPROVAL. SECONDED BY MR. BURRIS; MOTION CARRIED.

Mr. MacRae then reported that the Training and Education Committee discussed the necessity of requiring training for all firearms instructors due to the significant rule changes over the past several years. As a result of those changes, the Committee believed it is necessary to require a mandatory class to be held during the October 2018 and December 2018 Board meetings as well as the February 2019 Board meeting. Firearms instructors would be required to attend one of the courses in order to be brought up-to-date on all the changes.

MOTION BY MR. CESENA TO REQUIRE MANDATORY TRAINING FOR ALL FIREARMS TRAINERS; SECONDED BY MR. JOHNSON. MOTION CARRIED.

Mr. MacRae noted there was a discussion regarding a potential conflict between 74C and 14 NCAC regarding certifications. Mr. MacRae also noted that the Committee has requested Mr. Gray evaluate the matter and report back to the Training and Education Committee at the next meeting.

Mr. MacRae stated there had been a request, which had been reviewed for several meetings, to create an additional certification for digital forensics. The matter had been brought before the Board several years ago and the Board had taken steps to institute the certification and then it was set aside. He reported the Training and Education Committee reviewed the documentation that Director Jones supplied and the Committee voted to pursue a certification for digital forensics.

MOTION BY MR. JOHNSON TO CREATE A CERTIFICATION FOR DIGITAL FORENSICS; SECONDED BY MR. COBBLER. MOTION CARRIED.

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

GRIEVANCE COMMITTEE:

NONE

SCREENING COMMITTEE:

NONE

LAW AND RULES COMMITTEE

Ms. Lawrimore reported that the Law and Rules Committee met on Wednesday, August 22, 2018 from 8:10 a.m. to 9:03 a.m. She stated Mr. Gray provided the Committee with a copy of the proposed administrative rule amendments regarding unarmed and armed guard training. She noted that Mr. Gray previously provided a copy of the draft amendments to Mr. Cesena and Mr. Johnson for review and comment due to their concerns about the practical applications of two of the rules. She reported that after the Committee's discussion, one rule amendment had been stricken, and the second rule was amended to clarify its intent. She stated that Mr. Gray had copies of the rule amendments for consideration and vote.

Ms. Lawrimore reported there appeared to have been an oversight when the polygraph portion of NCGS 74C was passed. She explained that under 74C-3(5) the definition of detection examiner does not require it be conducted for a fee, yet other acts requiring a license, such as Security

Guard and Patrol or Private Investigator, must be performed for a fee or valuable consideration. Ms. Lawrimore stated that since the Board will likely be seeking the introduction of desired statutory revisions in January of 2019, she stated the Committee recommends "for a fee" be added to the definition of Polygraph Examiner.

Ms. Lawrimore also detailed that in response to a bill and legislation that has not passed, other boards have amended their administrative rules to spell out the complaint process and since the Board is already amending its administrative rules, the Committee recommends that the complaint process be added to its administrative rules.

Ms. Lawrimore stated the Committee intends to develop additional statutory revisions to have ready for the next legislative session. She expressed hope that HB566 would still pass. Ms. Lawrimore also mentioned that discussions related to emerging technology often arise in the Committee. In response, Mr. Arndt suggested the creation of a new committee, Research and Development for Technology and Methodology, to specifically evaluate emerging technology and related requests.

MOTION BY MR. CESENA TO CREATE THE RESEARCH AND DEVELOPMENT COMMITTEE; SECONDED BY MR. WEAVER. MOTION CARRIED.

Ms. Lawrimore noted a Chairman would need to be elected for that Committee. The selection of the Chair for the new Research and Development Committee would be deferred until the October 25, 2018 Board meeting in order to define the Committee's purpose and outline its objectives.

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

FINANCE REPORT

Mr. MacRae reported that the Finance Committee met on Wednesday, August 21, 2018 from 4:00 p.m. to 4:45 p.m. at the Private Protective Services office at 3101 Industrial Drive, Raleigh, NC. Those in attendance were Mr. MacRae, Mr. Arndt and Ms. Lawrimore. Mr. MacRae reported the Committee reviewed the financial reports for June and July 2018. He reported that the Education Fund has a balance of \$95,782.97; the operating fund has a balance \$1,184,014.84.

MOTION BY MR. CESENA TO ACCEPT THE FINANCE COMMITTEE'S REPORT; SECONDED BY MR. COBBLER; MOTION CARRIED.

Break 10:29 a.m.
Reconvene 10:50 a.m.

ETHICS COMMITTEE

NONE

OLD BUSINESS:

NONE

NEW BUSINESS:

Mr. Jones stated the Board's contract with CriminalRecordCheck.com is up for reconsideration and the Board will need to solicit for bids. He noted it was his understanding the Board created a committee to evaluate submitted proposals. Mr. Jones reported the Alarm Systems Licensing Board selected a committee representative at its last meeting. He stated he had been in contact with Purchasing and Logistics for DPS. Accordingly, the item for consideration before this Board is how to constitute the subcommittee to consider solicitations.

Mr. Cesena suggested that two industry and one non-industry member should serve on the subcommittee. Tammy Owens, Gerry Stickl, and David Arndt volunteered to serve.

Mr. Arndt recognized Mr. Cesena.

Mr. Cesena addressed the Board and industry members and talked about the Republican National Convention (RNC), which will be held in Charlotte, NC in 2020. He remarked that PPS should prepare. Mr. Cesena noted that a significant influx of security professionals will be coming to the Charlotte area. His most significant concern was related to making certain that security guards are properly trained. Mr. Cesena also noted the Board should consider offering additional firearms training classes in preparation for the Convention. Mr. Cesena offered to assist with this undertaking and asked Mr. Jones if Investigator Lee Kelly could work with him since Mr. Kelly recently retired from the Charlotte-Mecklenburg Police Department and it is his opinion that Mr. Kelly would be a great liaison for PPS. Mr. Jones agreed.

Mr. Cesena expressed a desire to foster an understanding of the magnitude of the situation. It was his hope that PPS can hire people to monitor security personnel to ensure compliance with Chapter 74C. He urged the industry members to report potential violations.

Mr. Johnson added that the impact may reach beyond Charlotte because of the anticipated additional security personnel coming into the state. He noted every major city in the State will be sending law enforcement officers to Charlotte, which in turn will leave positions vacant that had been occupied by off-duty law enforcement officers. In turn, clients may look to security personnel to meet the need.

Mr. Gray remarked that Ms. Lawrimore had suggested working with media and communications stakeholders to broadcast information related to rules and laws governing security and executive protection in North Carolina.

The Board discussed creation of a subcommittee to research and prepare for the RNC and Mr. Arndt appointed Mr. Cesena as Chair of the RNC subcommittee.

Mr. Arndt mentioned that the Finance Committee had been meeting on a Tuesday afternoon at the PPSB office prior to each Board meeting. He suggested the Board eliminate that meeting, but allow Mr. Weaver, as Chairperson, to report items of interest at each Board meeting. He noted that Board members may request finance reports if they so desire. He also noted that this process could be amended in the future if need dictated. Mr. Arndt asked if there were any objections or comments.

Mr. MacRae did not believe it was in the best interest of the industry to have only one member on the Finance Committee.

After some discussion, the Board agreed that there would be a Finance Committee, but no standing meeting would be held. Notice would be given if a meeting was to be held.

Mr. Gray referenced his contract as the Board's legal representative, which expired in June 2018. Mr. Gray suggested deferral on the vote until the October Board meeting to give new Board members the opportunity to review the contract, which was accepted.

FINAL AGENCY DECISION

Jody Richard Stacy - 17 DOJ 0765. Mr. Stacy was present. This case was heard by Administrative Law Judge J. Randolph Ward on February 27, 2018. This case involved whether Petitioner should be denied a private investigator license based on Petitioner's unfavorable employment history.

MOTION BY MR. BURRIS TO ADOPT THE DECISION AND RECOMMENDATION OF THE ADMINISTRATIVE LAW JUDGE AND GRANT MR. STACY'S PRIVATE INVESTIGATOR LICENSE; SECONDED BY MR. COOK; MOTION CARRIED. TWO OPPOSED (Recused: Mr. Cesena, Mr. MacRae and Mr. Cobbler,)

DIRECTOR'S REPORT:

Mr. Jones read the report for the record and explained the financial summary was based on fiscal year ending June 29, 2018. He reported \$1,478,227.34 in revenue received for the year with

expenditures of \$1,555,142.17 reflecting a \$76,914.83 decrease from the fund balance. He reported the fiscal year beginning balance was \$1,268,260.83 ending with \$1,191,346.00. The Education Fund had a balance of \$95,460.92. Mr. Jones reported that since the June meeting, PPS had entered 5,908 registration applications, 74 applications for licensure and 52 for certification which brings the active numbers to date for registration to 24,654, 1,966 licensees and 593 certification holders. Staff printed 5,018 cards since the last meeting, a significant increase in the number of cards printed as reported from the last meeting. Mr. Jones stated that the staff had done a phenomenal job trying to catch up with the backlog.

Mr. Jones introduced Andrew Martino, the new investigator in Raleigh who began on June 27th. He noted Mr. Martino retired from the New York Police Department where he served as a detective and most recently conducted complex loss prevention investigations for large retail organizations.

Mr. Jones stated that at the request of the Finance Committee at the June Board meeting, he met with the Department of Public Safety's legislative liaisons to explore potential changes to licensing and registration fee structure. He reported they intend to research similar actions by other boards to determine how to best pursue the legislative change in order to provide the Board greater financial flexibility

Mr. Jones stated that the PPS computers had reached the end of their life cycle, so they are no longer under warranty and ideally should be replaced. Due to the Permittium transition, he noted the investigators would benefit from tablets with cellular service, which would allow them to complete reports in the field without having to return to the office. He stated that while inexpensive tablets were purchased years ago, they would not serve as a computer replacement and were ill-suited for PPS work noting more specifically the investigators would be required to use a laptop in the office and a tablet in the field. He stated the model being considered would replace the laptops but offer the versatility of both office and field use. Plans are currently underway to replace half of the computers/tablets during this fiscal year and the remaining computers the following fiscal year. Based on the financial division between the two Boards, the PPS Board would be responsible for approximately \$9,300.00 of the total cost for tablet acquisition.

Mr. Jones expressed concerns he raised with Permittium related to responsiveness and lingering support issues. Permittium responded by meeting with staff and Board members on August 15 and 16th; Mr. Arndt and Mr. MacRae attended that meeting on the 15th in Raleigh to discuss outstanding defects and customer service issues. In response to those concerns, Permittium committed to provide weekly deployments to address the support items and a Permittium representative will also meet with staff members weekly throughout remaining development phases to discuss progress and issue resolution, with the first weekly meeting scheduled for Monday, August 27th. Mr. Jones invited Board members to attend if they desired. He noted that

Permitium had been incredibly responsive since that meeting and was responding effectively to the concerns and frustrations raised. Further, Permitium was currently working on the remaining development phases including certifications, complaints, audits, and appeals. Permitium was also working simultaneously to address support issues while finishing up the final phases for development. Mr. Jones did make note that Permitium developed the capability for PPS employees to issue login credentials. Accordingly, the turnaround time for Permitium access has been significantly reduced.

Mr. Cesena remarked it was his understanding that DPS had offered project management assistance after Shere McClamb's departure

Mr. Jones replied DPS had offered assistance; however, he questioned whether there would be a need so long as Permitium fulfilled their promise to adequately address issues and finalize development. He noted that staff is currently reporting issues directly to Permitium and he is tracking all reported issues, responsibilities that were previously undertaken by Ms. McClamb.

Mr. Mitchell had some questions related to criminal record checks, Permitium, his armed PI registration, and the new licensing process. Mr. Jones responded to Mr. Mitchell's questions and addressed his concerns.

Mr. Jones reported that the PPS Training Grant was advertised on social media and stated that the application period closed on August 20th. Unfortunately, the Board had not received any applications.

Mr. MacRae asked the Director about the discrepancy between the fund balance reported on his summary and the balance provided on the DPS financial report.

Mr. Jones explained that DPS reflects the fingerprint fee as revenue, which erroneously inflates the fund balance; however, PPS does not keep that money, so it should not be counted as revenue.

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

ATTORNEY'S REPORT:

Attorney Gray discussed the following:

I. CONSENT AGREEMENT, SETTLEMENT AGREEMENTS & CIVIL PENALTIES

1. On October 26, 2017, Daitwan Lamont Hardy/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 is received.
2. On April 26, 2018, Jerry Callicutt/Randolph Security Services entered into a Consent Agreement with the Board in the amount of \$4,896.00 for registration violations. Staff is to conduct a follow up audit in six months. The temporary agreement was not signed. The original Agreement was signed by the QA (Jerry Callicutt) (no date given). Paid in full.

II. OFFICE OF ADMINISTRATIVE HEARINGS

See, Hearings List (attachment 1).

III. RULES

a. The Board began the process for its Periodic Review of Rules which will occur in August 2018 at its meeting on February 22nd. 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 noted 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 and were approved. These rules will be effective September 1, 2018.

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 this morning's Education and Training Committee meeting.

IV. 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 is attached as Attachment 2.)

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.

IV. M.O.U. WITH D.P.S.

At its April 26th meeting, the Board requested that Mr. Gray prepare a proposed amendment to the Memorandum of Understanding with the Department of Public Safety (D.P.S.) requiring it to give the Board advance notice before transferring the funds to reimburse for services. A copy of the proposed amendment was attached to the June 21, 2018 Attorney's Report. Following the meeting Mr. Gray forwarded the amendment to DPS's General Counsel for review. It has been signed by DPS and is awaiting the Board Chair's signature.

VI. 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 yesterday and made an offer.

The hearing on the merits of the Petition has been calendared for Tuesday, September 4, 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 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.

Mr. Gray will calendar the hearing on this Motion in the next few weeks.

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 28th and was impasse 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 are now awaiting further orders from the Court.

MOTION BY MR. JOHNSON TO ACCEPT THE ATTORNEY'S REPORT; SECONDED BY MR. MACRAE; MOTION CARRIED.

MOTION BY MR. ARNDT TO ACCEPT THE ADMINISTRATIVE RULES; SECONDED BY MS. LAWRIMORE; MOTION CARRIED.

PUBLIC COMMENT:

Mr. Gary Pastor presented cost saving suggestions to the Board in light of recent conversations related to potential fee increases.

MOTION BY MR. COBBLER TO ADJOURN; SECONDED BY MR. COOK; MOTION CARRIED.

12:45 P.M. Adjourned

Brian R. Jones, Director

Garcia Graham, Board Secretary