



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
FEBRUARY 22, 2018
DOUBLETREE BY HILTON HOTEL
1707 HILLSBOROUGH STREET
RALEIGH, NC 27605**

BOARD MEMBERS PRESENT

Eric Weaver Sr.
Ed Cobbler
Clyde Cook
William Fletcher, Jr.
William MacRae
Steve Johnson
Richard Epley
Nada Lawrimore
David Arndt
Bud Cesena
Larry Proctor
Brian Lowman

BOARD MEMBERS ABSENT

Marcus Benson

STAFF PRESENT

Brian Jones - Director
Phillip Stephenson – Deputy Director
Jeff Gray - Attorney
George Daniel - Investigator
Ronald Broadwell - Investigator
Garcia Graham – PPS Board Secretary

GUESTS PRESENT

Chris Lewis
Foster Russell
Warren Hall
Kathy Broom
Heather Brown
Phil Hyde

Christopher Rodeman
Robert Haimes
Robert Santiago
Sandra Epley
Stoney Hooker
Mack Donaldson

Sandra Russell
Andy Renfrow
Charles Johnson
Tamara Rabenold
Melissa Richardson
Donald Grantham

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



OFFICE LOCATION:
3101 Industrial Drive, Suite 104
Raleigh, NC 27609
Telephone: (919) 788-5320
Fax: (919) 788-5365

Deborah Worley
David Martinez
Phillip Mcguire
Chris Hilton

Creo McIver Jr.
Timothy Saunooke
Jeffrey Kiker
Dorian Dehnel

James Zopp
David Wall
Harry House

CALL TO ORDER

Chairman Eric Weaver called the February 22, 2018 Private Protective Services Board meeting to order at 9:30 a.m. Mr. Weaver led the group in the reciting of the Pledge of Allegiance followed by him 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.

Ms. Tamara Rabenold, NCAPI President, addressed the Board on behalf of the Association and greeted the Board and all guests. She stated that NCAPI is making good progress on the Fall 2018 Conference that will be held in Atlantic Beach, NC November 6-9, 2018 and she conveyed her excitement about the agenda. She also encouraged any investigator who is not a current member to join the NCAPI. She announced that Mr. Flannery was in the hospital and asked that everyone keep him in their thoughts and prayers.

MINUTES:

APPROVAL OF THE DECEMBER 21, 2017 BOARD MEETING MINUTES.

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

SCREENING COMMITTEE REPORT:

Mr. Arndt stated that the Screening Committee met on Wednesday, February 21, 2018, from 1:35 p.m. to 4:40 p.m. to review a total of 47 applications. (See report attached). The Committee members included Mr. Arndt, Mr. Fletcher, Mr. MacRae, Mr. Proctor, Mr. Lowman and Mr. Cobbler. Mr. Arndt read the report for the record (see report attached).

Mr. Arndt recused himself from #24 of the Screening report.

MOTION BY MR. JOHNSON TO ACCEPT THE SCREENING REPORT WITH THE EXCEPTION OF #11 DAKOTA COVIL; SECONDED BY MR. COBBLER; MOTION CARRIED.

Mr. Arndt stated that Mr. Covil was approved for his Security Guard and Patrol license by the committee along with an \$85.00 consent agreement for unlicensed activity.

After a brief discussion, the Board voted on this matter.

MOTION BY MR. FLETCHER TO ACCEPT THE APPROVAL OF #11, MR. COVIL'S APPLICATION FOR SECURITY GUARD & PATROL LICENSE; SECONDED BY MR. COBBLER; MOTION CARRIED. ONE OPPOSED.

GRIEVANCE COMMITTEE REPORT:

Mr. Cesena reported that the Grievance Committee met on Wednesday, February 21, 2018 from 9:00 a.m. to 11:35 a.m., and heard a total of eight cases. The Committee members included Mr. Cesena, Mr. Johnson, Mr. Cook, Mr. Epley, Mr. MacRae and Ms. Lawrimore. Mr. Johnson read the report for the record (see report attached).

Mr. Cesena recused himself from case 2017-PPS-019 of the Grievance report.

MOTION BY MR. MACRAE TO ACCEPT THE GRIEVANCE COMMITTEE REPORT WITH THE EXCEPTION OF CASE #2017-PPS-016 JEFFREY KIKER; SECONDED BY MR. COBBLER; MOTION CARRIED.

MOTION BY MR. CESENA TO GO INTO CLOSED SESSION TO RECEIVE LEGAL ADVICE FROM THE BOARD'S ATTORNEY REGARDING THE AMOUNT OF MR. KIKER'S CONSENT AGREEMENT, CASE #2017-PPS-016; SECONDED BY MR. CESENA; MOTION CARRIED.

CLOSED SESSION: 9:54 a.m.

RECONVENED: 10:13 a.m.

MOTION BY MR. JOHNSON TO AMEND THE CONSENT AGREEMENT APPROVED DURING THE OCTOBER 26, 2017 BOARD MEETING OF CASE # 2017-PPS-016, AND THAT JEFFREY LEE KIKER AND P AND G SECURITY GUARD, INC., ENTER INTO AND PAY A CONSENT IN THE AMOUNT OF \$7,441.92 FOR REGISTRATION VIOLATIONS; CIVIL PENALTY IN THE AMOUNT OF \$2000.00 (REMAINED UNCHANGED) FOR KNOWINGLY AUTHORIZING OR PERMITTING ARMED SECURITY GUARDS TO CARRY A RIFLE DURING THE COURSE OF PERFORMING THEIR DUTIES WITHOUT FIRST MEETING THE QUALIFICATIONS OF THE BOARD. THE CONSENT TO BE PAID IN THREE MONTHLY INSTALLMENTS. ONE OPPOSED.

TRAINING & EDUCATION COMMITTEE:

Mr. MacRae reported that the Training & Education Committee met on Thursday, February 22, 2018 from 8:00 a.m. until 9:09 a.m. The Committee members included Mr. MacRae, Mr. Arndt, Mr. Cobbler, Mr. Johnson, Mr. Epley, Mr. Cesena and Mr. Cook.

Mr. MacRae called on Mr. Broadwell to give the report on the upcoming PPS training courses.

Mr. Broadwell reported that the following training courses are scheduled:

March 12-16, 2018, Unarmed Guard Trainer Class, Wake Tech, Raleigh
March 19, 2018, Re-Certification and Pre-Qualification at Salemburg NCJA
April 2-5, 2018, Firearms Trainer Class (32 hour) Salemburg NCJA
April 4-6, 2018, Firearms Trainer Long-Gun Course, Camp Butner
May 14-18, 2018, Unarmed Guard Trainer Class, Wake Tech, Raleigh
May 21, 2018, FT Re-Certification and -Qualification at Salemburg NCJA
July 9, 2018, FT Re-Certification and -Qualification at Salemburg NCJA
September 5, 2018, FT Re-Certification and -Qualification at Salemburg NCJA
September 10-13, 2018, Firearms Trainer Class (32 hour) Salemburg NCJA
September 24-28, 2018, Unarmed Guard Trainer Class, Wake Tech, Raleigh
November (date to be determined), 2018, FT Re-Certification and Pre-Qualification, Salemburg
November 26-30, 2018, Unarmed Guard Trainer Class, Wake Tech, Raleigh

Presently there are 381 PPS certified unarmed guard trainers and 138 PPS certified firearms trainers.

The following PPS Training course for CEU Credit are scheduled:

February 22, 2018, 1-5 pm - Raleigh, NC
April 26, 2018, 1-5 pm - Raleigh, NC
June 21, 2018, 1-5 pm - Raleigh, NC
August 23, 2018, 1-5 pm - Raleigh

Mr. Johnson stated attempts were being made to reschedule the April 4-6, 2018 long gun course in Butner. He stated he contacted representatives at the range and was waiting to hear back. Mr. Johnson stated he did not want that course to conflict with the firearms training class in Salemburg. He wanted to give those participating in the long gun course the option to choose which course they want to attend.

Mr. Broadwell gave an update on weapons discharges since the last meeting. During the December PPS Training and Education presentation, he stated that a shooting occurred on August 24, 2017 at a sweepstakes location in Robeson County called NC 72 West Gameroom which resulted in the death of an individual. The PPSB found out about the incident in December and has hand delivered a cease and desist to the NC 72 West Gameroom location as well as another sweepstakes location. He reported that there have been several illegal sweepstakes businesses located in Robeson County and PPS has delivered three cease and desist notifications related to unlicensed armed security officers.

Training Update:

Mr. Broadwell reported that he conducted two training audits, Triangle Mall and Cary Town Center. During his first visit at both locations, neither were in full compliance with the PPSB uniform rules. Accordingly warnings were issued.

He reported that upon the unannounced visit one month later, both locations were in full compliance with their uniforms and registration cards.

Mr. MacRae stated that the Committee received a request from a retired Harnett County Deputy Sheriff Lt. Kevin Matthews. Lt. Matthews is a NC Law Enforcement Certified Firearms Instructor and a NC Law Enforcement General Instructor. He requested to teach the 16 hour Unarmed Guard class to his students. The request was not granted because a trainer must receive a favorable recommendation from the employing or contracting licensee according to the requirements of 14B NCAC 16 .0909(a) (4). Mr. MacRae noted that the Committee requested that Mr. Gray draft an amendment to that rule to include favorable recommendations from other sources. Mr. MacRae also stated that the Committee had been working with Dr. Barber from the Department of Public Instruction to offer unarmed guard security certification classes.

Mr. MacRae reported that it has become apparent that there are individuals (approximately 35 altogether) who have a handgun certification expiration that differs from their long gun certification expiration. The Committee made a motion that Mr. Gray draft a rule change that separated the shotgun and long gun certification programs into two distinct certifications, which will bring them in compliance with the current shotgun rule.

Mr. MacRae stated the following two (2) continuing education training courses have been submitted for approval:

Alexis Bell, Debt Analysis for Fraud, online 5.25 hrs.

Michael Harrison, Landmark Continuing Ed., classroom 12 hrs.

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

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

GRIEVANCE COMMITTEE:

NONE

SCREENING COMMITTEE:

NONE

LAW AND RULES COMMITTEE

Ms. Lawrimore reported that the Law and Rules Committee met on Wednesday, February 21, 2018 from 8:00 a.m. to 8:59 a.m. The Committee members included Ms. Lawrimore, Mr. MacRae, Mr. Fletcher, Mr. Arndt, Mr. Cesena, Mr. Cook, Mr. Cobbler and Mr. Proctor.

Ms. Lawrimore stated the Committee briefly discussed two bills, HB 236 and a bill related to guardian ad litem that may impact the industry. Ms. Lawrimore stated the Committee also discussed the security guard & patrol badges and identification. The Committee recommended Mr. Gray draft some amendments to rule 14B NCAC 16.0104 Section 3 (d) & (e). After reviewing the rules, the Committee believed that the wording related to the size of the badge, the location, and where it is to be worn should be addressed. She also mentioned that the Committee discussed the fact that there had not been an increase in PPS fees since 2010. She stated that there has been no decision on the increasing the fees, but it may need to be addressed in the future.

Mr. Johnson asked to address to the Board with regard to the current bill in the General Assembly. Specifically, he inquired whether the bill contains a provision related to required submission of a DD214 if applicable. He noted that it had been brought to his attention that the National Guard members are no longer provided a DD214. Rather, they receive an AGB2. He stated that it would be beneficial to add this to the current bill since National Guard members can no longer provide a DD214.

Ms. Lawrimore stated they would discuss this issue with Mr. Gray.

MOTION BY MR. LOWMAN TO ACCEPT THE LAW AND RULES COMMITTEE REPORT; SECONDED BY MR. MACRAE. MOTION CARRIED

Break: 10:30 AM
Reconvened: 10:55 AM

FINANCE REPORT:

Mr. Fletcher stated the Finance Committee met on Tuesday, February 20, 2018 at 4:00 p.m. until 4:50 p.m. at the PPS offices. The committee members were Mr. Fletcher, Mr. MacRae, Mr. Lowman and Mr. Arndt. Mr. Fletcher reported the Education Fund balance is \$91,004.50, cash receipts of \$835,354, and disbursements of \$985,881. A recommendation was made to the Laws & Rules Committee to discuss raising fees if the expenditures continue to outweigh cash received.

MOTION BY MR. PROCTOR TO ACCEPT THE FINANCE COMMITTEE REPORT; SECONDED BY MR. JOHNSON. MOTION CARRIED.

ETHICS COMMITTEE

Mr. Lowman reported that everyone is in compliance.

MOTION BY MR. FLETCHER TO ACCEPT THE ETHICS LIASON'S REPORT; SECONDED BY MR. JOHNSON; MOTION CARRIED.

OLD BUSINESS:

Memorandum of Understanding.

MOTION BY MR. CESENA TO ACCEPT THE MEMORANDUM OF UNDERSTANDING WITH THE DEPARTMENT OF PUBLIC SAFETY AND SIGN IT; SECONDED BY MR. JOHNSON.

Mr. Cook had some concerns regarding the MOU and made a substitute motion.

MOTION BY MR. COOK TO DEFER ACTION ON THE MEMORANDUM OF UNDERSTANDING UNTIL THE NEXT BOARD MEETING TO ALLOW THE FINANCE CHAIR TO REVIEW THE FIGURES FURTHER; SECONDED BY MR. FLETCHER; MOTION FAILED.

After a lengthy discussion Mr. Cesena renewed his original motion.

MOTION BY MR. CESENA TO ACCEPT THE MEMORANDUM OF UNDERSTANDING AND SIGN IT; SECONDED BY MR. JOHNSON. MOTION CARRIED. TWO OPPOSED. MR. ARNDT RECUSED HIMSELF FROM THE DISCUSSION AND VOTE IN THIS MATTER.

Mr. Jones reminded the Board to vote on the October 2018 Board meeting location.

MOTION BY MR. JOHNSON TO HOLD THE OCTOBER 24-25 BOARD MEETING IN RALEIGHG; SECONDED BY MR. CESENA. MOTION CARRIED.

NEW BUSINESS:

None.

FINAL AGENCY DECISION

Randy Scott High, 17 DOJ 06014- Mr. High was present. This matter was heard before Administrative Law Judge Donald W. Overby on November 28, 2017. The issue is whether Petitioner should be denied an unarmed guard registration based on Petitioner's lack of good

moral character and temperate habits as evidence by a conviction of misdemeanor Simple Assault in Anson County, North Carolina.

MOTION BY MR. JOHNSON TO ACCEPT THE ADMINISTRATIVE LAW JUDGE'S DECISION AND GRANT MR. HIGH'S UNARMED GUARD REGISTRATION RENEWAL APPLICATION; SECONDED BY MR. CESENA. MOTION CARRIED.

Ikey Lee Moser, 17 DOJ 05780 - Mr. Moser was not present. This matter was heard before Administrative Law Judge Stacey B. Bawtinheimer on September 26, 2017. The issue was whether Petitioner should be denied a Private Investigator license based solely on Petitioner's unfavorable employment history.

MOTION BY MR. FLETCHER TO UPHOLD THE BOARD'S INITIAL DECISION AND DENY MR. MOSER'S PRIVATE INVESTIGATOR'S LICENSE; SECONDED BY MS. LAWRIMORE. MOTION CARRIED

DIRECTOR'S REPORT.

Mr. Jones read the report for the record. The current PPS fund balance as of January 31, 2018 was \$1,117,773.80; the Education Fund balance is \$91,004.50. He reported that there are still invoices for the scanning project that are outstanding and will need to be paid.

Mr. Jones reported that since the last Board meeting, PPS has received 3844 registration applications and 1217 submitted through Permitium which is encouraging; however, PPS has received over 2600 paper applications during the same time. There were 233 licensing and 34 certification applications that were entered in PPS2000; which brings the active to date to an estimated 21,250 registrants, 1,856 license holders, and 602 certifications. Mr. Jones reported that there have been 1277 registration cards printed since the last meeting.

Mr. Jones announced that Kim Odom has been promoted to Field Services Supervisor and Training Officer Melvin Turner resigned on January 30, 2018. He also stated that Mr. Broadwell would be serving as the Interim Training Officer.

Mr. Jones gave an update on the Permitium system and the registration backlog. He stated that there have been additional training sessions that were available to the industry that began on February 5, 2018 and to date over 70 people have participated through video conferencing and 16 people have attended in person at the PPS office. Permitium was in the process of finalizing the development for licensing and the Permitium representatives provided an overview of the licensing portal on February 13, 2018. They will return on March 6, 2018 at 9:00 a.m. to discuss their progress. All Board members were invited to attend.

Mr. Jones stated that he is committed to addressing the registration backlog problem by using temporary employees and providing overtime compensation to existing employees. He also stated that measures have been taken to streamline the data entry process. Some registrants may not receive the plastic registration cards but instead a paper notice that resembles our identification card and that it contains all of the relevant information.

Mr. Jones noted that there have been 600 registration applications processed during the overtime project that began in January and staff members have also processed an additional 3,947 paper registration applications during their regular workdays.

Mr. Jones reported that there have been a delay with user names and passwords and reminded the industry members to check their spam folder for their login information. Also, he stated that a memorandum that was mailed to all industry members on January 29, 2018 that details the Permitium updates.

**MOTION BY MR. LOWMAN TO APPROVE THE DIRECTOR'S REPORT;
SECONDED BY MR. FLETCHER. MOTION CARRIED**

Mr. Arndt requested that Paul Blake, owner of Permitium, appear before the Board at the April 2018 meeting.

ATTORNEY'S REPORT

Consent Agreements

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 Return Receipt was signed by Michelle Benammor on November 9, 2017 but the signed Consent Agreement has not been returned and payment has not been received. (A temporary agreement was not signed.)

The Board requested staff to re-notice Daitwan Lamont Hardy and Security Contracting, Inc. to appear before the April 25, 2018 Grievance Committee.

2. On December 21, 2017 Scott Siano/Allied Universal Security Services, entered into a Consent Agreement with the Board in the amount of \$74,908.80 for registration violations. The Agreement was signed by the QA (Scott Siano) on December 20, 2017. Paid in full.
3. On December 21, 2017 David Bailey/Garda CL East, entered into a Consent Agreement with the Board in the amount of \$29,743.20 for registration violations and agreed to a civil penalty in the amount of \$2,000.00 for failing to own or lease firearms carried by armed armored car guards. The temporary agreement was signed by the QA (David Bailey) on December 21, 2017. The Agreement and the Acceptance of Civil Penalty were mailed to Garda's attorney for signature by me on February 12, 2017. Payment has not been received.

Office of Administrative Hearings

See, Hearings List (attachment 1).

I. RULES

a. At its meeting on June 22, 2017 the Board adopted proposed rule changes to allow the payment of application and renewal fees by electronic check or similar methods. The Notice of Text was filed July 11, 2017 for publication in the August 1st version of the North Carolina Register. The rule amendments were also posted on the Board's website. The Public Hearing was noticed for September 7, 2017 at 2:00 p.m. at the Board's office in Raleigh; no one from the public attended and no oral or written comments were received. The public comment period closed October 2, 2017. The Board voted at its October meeting to approve these rules. The Rules Review Commission considered them at its December 14th meeting and they were approved. These rule amendments will be effective January 1, 2018. A copy of these rules, as approved, were attached to my December 21, 2017 Attorney's Report.

b. With the completion of a., above, the Board has no rule adoptions or amendments pending, however, the Board must begin the process for its Periodic Review of Rules which will occur in August 2018. This is a separate Agenda item for today's meeting.

II. LEGISLATION

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 14th 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.

III. 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. (Note: Since that time Mr. Gray has been contacted by Petitioner's attorney who claims she was not aware of the hearing.)

b. For the past 44 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 have 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 impass 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 have received a Scheduling Order and this case is again headed to the Fourth Circuit Court of Appeals.

On a related note, Lauren Earnhardt, the very able Assistant Attorney General who has represented the Board's former Investigator, Sarah Conner, in this matter has left the Attorney General's Office to be Deputy General Counsel for the North Carolina Sheriff's Association. A replacement attorney has been named to represent Defendant Conner.

c. 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. (It does, however, have a link to the Tuscarora Nation Tribal Advocates for Justice, Inc., formed on September 27, 2017. Its Registered Agent is Jennifer Locklear. A "Jennifer Locklear" resides on Modest Road, Maxton, North Carolina, but this corporation - - nor any of the others - - appear to be connected to Kendall Locklear.)

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.

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

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

Initial Determination for Periodic Review of Rules.

Mr. Gray explained that each state agency must perform a periodic review of its administrative rules. After a brief discussion by the Board, Mr. MacRae made a motion.

MOTION BY MR. MACRAE TO DECLARE THE PRIVATE PROTECTIVE SERVICES RULES SET FORTH IN 14B NCAC 16 NECESSARY WITH SUBSTANTIAL PUBLIC INTEREST. SECONDED BY MS. LAWRIMORE. MOTION CARRIED.

PUBLIC COMMENT:

NONE

MOTION BY MR. MACRAE TO GO INTO CLOSED SESSION TO RECEIVE LEGAL ADVICE FROM THE BOARD'S ATTORNEY REGARDING THE KENDALL L. LOCKLEAR LAWSUIT; SECONDED BY MR. COBBLER; MOTION CARRIED.

CLOSED SESSION: 12:35 p.m.

RECONVENED: 1:02 p.m.

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

1:03 P.M. Adjourned

Brian R. Jones, Director

Garcia Graham, Board Secretary