

PLEASE PRINT CLEARLY OR TYPE

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS

PETER DUANE DEEVER)
PETITIONER,)
v.)
NORTH CAROLINA STATE BUREAU OF INVESTIGATION)
AND NORTH CAROLINA DEPARTMENT OF JUSTICE,)
RESPONDENTS.)
PETITION
FOR A
CONTESTED CASE HEARING
(N.C. Gen. Stat. § 126)

I hereby ask for a contested case hearing as provided for by North Carolina General Statutes §§ 126-34.1 and 126-37 because the Respondent has acted as follows:

MY APPEAL IS BASED ON: (check all that apply)
* X discharge without just cause X suspension without just cause demotion without just cause
failure to receive priority consideration X other (explain) I believe the evidence will show that the NCSBI and NCDOJ abused their discretion in terminating me and such an abuse of discretion violates my legal rights through the unlawful use of power under color of state law.

* The following occurred due to discrimination and/or retaliation for opposition to alleged discrimination:
employment demotion
promotion layoff
training AND/OR termination
transfer
other (explain)

* If your appeal is based upon alleged discrimination and/or retaliation for opposition to alleged discrimination, you must specify the type of discrimination:
Race Religion Color Creed National Origin
Sex Age Handicapping Condition Political Affiliation

Briefly state facts showing how you believe you have been harmed by the State/local agency or board:

SEE EXHIBIT "A," attached hereto and incorporated herein by reference.

Paygrade: 74 PDD Months of continuous State employment: 301 Job title: Assistant Special Agent in Charge

If applicant, I applied for:

Date: May 16, 2011 Your phone number:: (919) 662-9323 (h)

Print your address: 3320 La Costa Way, Raleigh, NC 27610.

Print your name: P.D. Deaver

Your signature: P.D. Deaver

You must mail or deliver a COPY of this Petition to the agency or board named on line (3) of this form. You should contact the agency or board to determine the name of the person to be served.

CERTIFICATE OF SERVICE

I certify that this Petition has been served on the agency or board named below by depositing a copy of it with the United States Postal Service with sufficient postage affixed OR by delivering it to the named agency or board:

Barbara Gibson, Director of Human Services, NC Department of Justice and NC State Bureau of Investigation, Old Education Building, 114 West Edenton Street, Raleigh, NC 27602 (919) 716-6490.

This the 16th day of May, 2011

P.D. Deaver
(P.D. Deaver)

When you have completed this form, you MUST mail or deliver the ORIGINAL AND ONE COPY to the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714.

Filing a Petition for a Contested Case Hearing does not constitute the filing of a discrimination charge with the EEOC or the Civil Rights Division of the Office of Administrative Hearings. Should you decide to file such a charge, you should contact the Office of Administrative Hearings, Civil Rights Division or the EEOC office nearest you; EEOC offices are located in the following cities: Charlotte, Raleigh, and Greensboro.

Statement of P. D. Deaver

**(Attached to Petition for Contested Case Hearing as evidence of
harm/damage by DOJ/SBI)**

Submitted May 16, 2011

Introduction

- ASAC Deaver, per Agency policy, has represented himself throughout the grievance process and has presented tangible, competent evidence to lawfully require his reinstatement to the SBI/DOJ.
- ASAC Deaver believes that the Grievance Panel commissioned by the DOJ recommended immediate reinstatement to the NCSBI, however, this recommendation was unlawfully ignored.
- Rather than follow the internal procedures and policies of the SBI/DOJ, ASAC Deaver has been terminated contrary to law, the weight of the evidence presented by ASAC Deaver in the SBI/DOJ investigations and the grievance process, and in violation of ASAC's legal and civil rights.
- The actions of the SBI/DOJ in terminating ASAC Deaver are arbitrary and capricious.

Termination for the reasons set forth in the January 7, 2011 Memorandum (See Exhibit #1) is not justified, lawful or otherwise pursuant to OSP or SBI policy.

Termination issue #1

- The SBI made the request to ASAC Deaver for a profile not Henderson County.
- In a conversation with SA Van Williams in the spring of 2010, ASAC Deaver made SA Williams aware that a second profile in the Charity Williams case was a violation of International Criminal Investigative Analysis Fellowship (ICIAF) ethics rules and should not be performed.
- ASAC Deaver did not initiate ANY inquiry into an investigation of ethics against SA Bo Barton, SC SLED agent. ASAC Deaver did not approve or endorse such action to Jon Perry or SSA Ron Tunkel, who are the individuals initiating the complaint.
- SSA Tunkel, one of the initiating parties to the ethics investigation, was not interviewed in this investigation though his contact information was provided by ASAC Deaver. The fact that he was not interviewed was provided by AD Tucker and ASAC Hicks.
- ASAC Deaver asked Jon Perry to not include his name in the letter and told Perry that he could not be involved in this situation. Perry and Tunkel told ASAC Deaver they were handling the situation, however, the Rules of the ICIAF required ASAC Deaver's name on the letter.

- The SBI signed a contract stating that "the nominee must agree to abide by all rules and regulations outlined in the ICIAF constitution." (See Exhibit # 2, pg. 7)
- SBI has no prohibition on giving criminal investigative information to third parties and routinely does so through talks to law enforcement and civilian groups, through the SBI's participation in the North Carolina Criminal Information Exchange and in forums such as the North Carolina Homicide Investigators Association and other such organizations.
- In May of 2010, the SBI sent Agents to the ICIAF annual conference to present cases to the same people who saw the information on the Henderson County homicide.
- ADs Weis, Tulley, Hooks and Director Pendergraft gave permission for criminal cases to be shared with other ICIAF trainees in exchange for the same to be given to Deaver from other states in order to speed training. Jon Cromer of the Virginia State Police received SBI cases and assisted on them regularly.
- ASAC Deaver did not start or initiate any complaint process related to the SC SLED matter.
- ASAC Deaver provided copies of the SBI report to trainers for their review of the case. The approval to send reports to the trainers came from Director Pendergraft, and ADs Weis and Hooks. Deaver reviewed a copy of the ethics letter from Jon Perry without an attached report. The letter with the attached report was sent to the ICIAF and copied to Deaver. Deaver never read the final letter until he received it.
- The failure to report this situation is an issue of performance and not one of conduct.
- There has not been another example of a similar situation in ASAC Deaver's work history.

Termination issue #2

- ASAC Deaver has not been held in contempt of court, nor has any hearing been held or scheduled by Judge Osmond Smith, presiding Judge over this matter. There are a number of situations where agents have been the subject of similar allegations, but are not disciplined prior to any proof being submitted in a court of competent jurisdiction.
- The SBI, in its own internal investigation, found that allegations of perjury made against ASAC Deaver based on his testimony in the NCIIC hearing should be dismissed. The results of this SBI internal investigation are contrary to the allegations filed by the NCIIC. Despite, the SBI's own investigation clearing ASAC Deaver, the SBI arbitrarily and capriciously used the filing of the NCIIC Contempt motion as grounds for dismissal.
- AD Marshall Tucker told Deaver in the spring of 2010 that he believed that Deaver had simply answered the question too early during his testimony indicating that a serious mistake was not made by Deaver during his testimony.
- Testimony when not done to intentionally mislead seems from the OSP definition to be a performance and not a conduct issue.

- It appears that no one has ever been disciplined by the SBI based on mere allegations and indeed there are many presently working who have been seriously damaged in the media by similar allegations. In terminating ASAC Deaver, the SBI and DOJ have treated ASAC Deaver differently than others in the SBI for what appears to be political cover. Such disparate treatment should not be condoned or permitted by the State of North Carolina.

Termination issue #3


- The Memorandum of Termination dated January 7, 2011 indicates that ASAC Deaver said this was "embarrassing" but that is incorrect. ASAC Deaver's comment was in reference to the way this utterance was portrayed in the media.
- An SBI analyst was visible during the Michael Peterson trial, dancing on a tape played before a national television audience. The local, state and national media scrutinized and commented negatively about these actions. The analyst was verbally admonished by a manager for the act but was not disciplined in any other way.
- There appears to be a double standard with ASAC Deaver and others in the SBI who are still gainfully employed. In terminating ASAC Deaver, the SBI and DOJ have treated ASAC Deaver differently than others in the SBI. Such disparate and unlawful treatment should not be condoned or permitted by the State of North Carolina.

The Memorandum of Termination dated January 7, 2011 is the culmination of an unprecedented media and internal investigation into the 25 year career of ASAC Deaver. Indeed, all of the "Termination issues" used to discipline ASAC Deaver occurred after February 12, 2010 when ASAC Deaver testified in the Innocence Inquiry Commission Hearing for Gregory Taylor. ASAC Deaver has maintained very good or outstanding job performance ratings, a stellar personnel file and an impeccable reputation among law enforcement officers, state and nationwide. This agent has always been open to evaluation of his work and has welcomed oversight in an effort to produce the highest quality results. This agent addressed each and every "Termination issue" mentioned in the Memorandum of Termination dated January 7, 2011 openly, honestly and with integrity¹. These are values this agent has taken seriously and committed his entire career to since 1985.

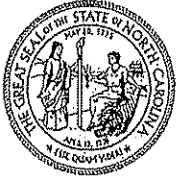
ASAC Deaver respectfully submits this document as evidence for the basis of this grievance and for the continuing request that ASAC Deaver be reinstated by the NCDOJ and NCSBI.

¹ It should be pointed out that based upon this agent's efforts, three (3) of the six (6) issues contained in the letter of pre-disciplinary conference were dismissed.

Dated: May 16, 2011

A handwritten signature in cursive script, appearing to read "P. D. Deaver", is written above a horizontal line.

P. D. Deaver



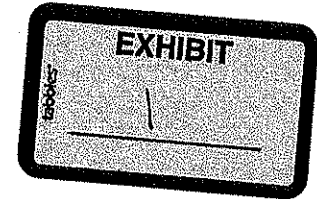
ROY COOPER
ATTORNEY GENERAL

NORTH CAROLINA
STATE BUREAU OF INVESTIGATION
DEPARTMENT OF JUSTICE

3320 GARNER ROAD
PO BOX 29500
RALEIGH, NC 27626-0500
(919) 662-4500
FAX: (919) 662-4523



GREGORY S. MCLEOD
DIRECTOR



January 7, 2011

Memorandum

To: Assistant Special Agent in Charge Duane Deaver

From: Assistant Director R.M. Tucker *RMT*

This letter is to communicate the decision concerning the recommendation by the North Carolina State Bureau of Investigation to impose disciplinary action based upon your unacceptable personal conduct. You are hereby given notice that you are dismissed from your position as Assistant Special Agent in Charge with the North Carolina State Bureau of Investigation effective January 7, 2011.

On January 4, 2011 at approximately 3:15 p.m., you met with Assistant Director R. M. Tucker and Assistant Director F. D. Brown, Jr. and were provided with a copy of your pre-disciplinary conference memorandum. On January 5, 2011 at approximately 3:00 p.m., you met with Assistant Director R.M. Tucker and Assistant Director F. D. Brown Jr. for your pre-disciplinary conference. During the course of the pre-disciplinary conference you were allowed to present any and all information which you felt was related to the issues of your personal conduct which had been outlined in the pre-disciplinary conference notice. Each item outlined in the letter was discussed with you and you provided written and verbal responses. The specific acts that form the basis of this action and your responses are as follows:

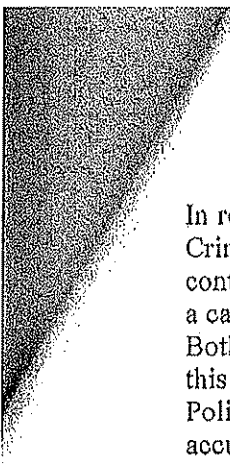
1. Following a December 17, 2008 murder in Hendersonville, North Carolina, the Henderson County Sheriffs' Office requested your assistance in this investigation. While participating in this official SBI criminal investigation, you completed, under the supervision of a retired Virginia State Police Agent, a criminal investigative analysis report for the SBI, dated May 7, 2009. This report was appropriately shared with law enforcement personnel involved in the investigation in 2009. In the Fall of 2010, a South Carolina Law Enforcement Division Special Agent similarly provided assistance to the Henderson County Sheriff's Office at their request in this murder investigation. This request for assistance was endorsed by the SBI. While on investigatory placement, on or about October 25, 2010, without approval from your supervisor, you reviewed, corrected, approved, and endorsed the filing of a professional standards complaint and ethics violation against the SLED Agent with an outside independent organization. The submission of this complaint included your endorsement of the dissemination of confidential SBI criminal investigation information to the International Criminal Investigative Analysis Fellowship, a private organization, who was not authorized to receive such information.



A Nationally Accredited State Agency

An ASCLD/LAB Accredited Laboratory Since 1988





In regard to the dissemination of confidential SBI Criminal Investigation Information to the International Criminal Investigative Analysis Fellowship, you advised that around the first of October 2010, you were contacted by an ATF Agent about a second profile being conducted by a SLED Agent. You also received a call around the same time frame from a retired Virginia State Police Agent concerning the same matter. Both the ATF Agent and the retired Virginia State Police Agent wanted a copy of your report concerning this matter and you electronically sent it to both of them. At some point later, the retired Virginia State Police Agent emailed a draft complaint to you asking you to determine if the complaint was factually accurate. You admitted that you looked at the complaint and you asked the retired Virginia State Police Agent to remove your name from the complaint and you indicated that he said no. You admit you did offer corrections to the complaint by designating the proper county name.

2. On October 7, 2010 the Innocence Inquiry Commission filed a Motion to Show Cause against you requiring you to show cause as to why you should not be held in criminal contempt. The allegations in this motion are based on your prior statements before the September 3, 2009 meeting of the Commission when you testified about your analysis and test results reported out in the matter of State v. Taylor. The Commission alleges your testimony misrepresented the true tests performed and the true results from those tests. This show cause action further impedes your ability to effectively act as a Special Agent in that your credibility is significantly impaired. Your actions further bring the SBI and the Department of Justice in disrepute.

In regard to the Motion to Show Cause from the Innocence Inquiry Commission, you stated that you have not been convicted of anything and that allegations do not mean proof. You stated that the allegations have to do with if you withheld negative Takayama test. You stated that you did not and that the specific reference to Takayama was clearly and specifically addressed in the hearing. You stated that there was testimony that indicated to you that the panel members understood your testimony. You stated that this indicated to you that your testimony was not confusing. You stated that your testimony before the eight member Commission Panel and the Three Judge Panel was true. You stated that if your reputation is ruined, it is based on false information and people not telling the truth, when in fact, you have been telling the truth. You stated that none of your actions have brought the SBI into disrepute.

3. On May 13, 2009, at the request of Special Agent G. R. Thomas, you participated in a re-construction test examining blood stain on a t-shirt in the matter of State v. Turner. At the conclusion of the video re-creation, you are heard to state words to the effect, "that's a wrap, baby". This comment was unprofessional and adversely impacts on your duties and credibility as a Special Agent.

In regard to your participation in the re-construction test in State v. Turner and comments of "that's a wrap, baby" you indicated that the audio should have never been on. You indicated that it was embarrassing. You stated that you knew little about the circumstance of the case and only were assisting SA Thomas. You stated that something happened in this case that you did not expect and not a situation where I thought I had "got the person". You stated that you don't make up evidence and don't try to get people.

The information you offered does not constitute sufficient mitigation to excuse said conduct.

This behavior exhibited by you is in violation of SBI Policy and Procedure Section 5-2, 5-1, 5-3, 5-10, and 5-12. Based on the results of the administrative internal investigations, as well as your statements during the pre-disciplinary conference, I find you are in violation of the following sections of SBI Policy and Procedure:

CONDUCT (POLICY 5-2)

1. Conduct, as set forth in this Section, shall at all times govern the official and unofficial actions of each employee of the State Bureau of Investigation, whether their status is "sworn," "non-sworn," "on-duty" or "off-duty."
2. This rule applies to both the professional and private conduct of all employees. It prohibits conduct which is contrary to the intent and purpose of Bureau policies or goals, or which would reflect adversely upon the Bureau or its employees. It includes not only all unlawful acts by employees, but also all acts, which although not unlawful in themselves, would degrade or bring disrespect upon the employee or the Bureau.
3. Conduct toward the public and fellow employees: Employees shall at all times be respectful, courteous, and impartial when dealing with the public and other employees.
4. Employees shall not use coarse, violent, profane, derogatory, or insolent language or gestures, and shall not maliciously express any prejudice concerning race, religion, politics, sex, or national origin.
5. Employees are encouraged to bear in mind the sensitivity of others and should exercise good judgment when making remarks that may be offensive to others even though these remarks are not meant to be malicious.

GENERAL ETHICS (POLICY 5-1)

- A. Employees shall conduct themselves in such a manner as to reflect most favorably upon the Department of Justice, the State Bureau of Investigation, and the profession of Law Enforcement.
- B. Employees shall conduct their private and professional lives in such a manner as not to impede the State of North Carolina, Department of Justice, or the SBI's efforts to achieve its policies and goals, nor bring discredit upon these agencies or upon the employees of any of these agencies.
- C. All employees will receive ethics and conduct training, at a minimum, biennially.

UNBECOMING CONDUCT (POLICY 5-3)

- A. Conduct which tends to bring the Bureau into disrepute.
- B. Conduct which reflects discredit upon any employee of the Bureau.
- C. Conduct which tends to impair the operation and efficiency of the Bureau or its employees.
- D. Conduct which impairs an employee's ability to complete work assignments objectively and diligently or to handle classified information.

ETHICS AND CONDUCT (POLICY 5-10)

ENDORSEMENTS AND REFERRALS

- A. No employee will write any letter or otherwise communicate any recommendation or censure for any person, group, product, or item in the capacity of a Bureau representative and using the image and prestige of the Bureau, without the approval of the Director.
- B. An employee shall not recommend or censure in any manner, except in the transaction of personal business, the employment or procurement of a particular product, professional service, or commercial service such as bondsman, mortician, or private detective.

ETHICS AND CONDUCT (POLICY 5-12)

CONFIDENTIALITY OF INFORMATION

- A. Records of criminal investigations, intelligence records, and evidence collected and compiled by the Director and his or her assistants shall not be considered public records within the meaning of G.S. 132-1.4, and following, of the General Statutes of North Carolina and may be made available to the public upon an order of a court of competent jurisdiction. Provided that all records and evidence collected and compiled by the Director of the Bureau and his or her assistants shall, upon request, be made available to the District Attorney of any district if the same concerns persons or investigations in his or her district (G.S. 114-15).
- B. No employee will divulge any information concerning an investigation, evidence, or other non-administrative matter relative to official business of the Bureau, or any other agency to which the employee is privy by virtue of their employment, except to the following:
 - 1. District Attorney if applicable under paragraph A above.
 - 2. Individuals so designated by an order of competent jurisdiction.
 - 3. Individuals entitled to an exception by another section of the Bureau Policy and Procedure Manual.
 - 4. Other Bureau employees or officials of another agency actively engaged in the investigation together.
 - 5. Others, including Bureau employees, on a need-to-know and right to know basis.

You are dismissed from your position as Assistant Special Agent in Charge effective January 7, 2011. You may appeal this decision. A copy of the NC Department of Justice Grievance Policy and Procedure is attached. If you wish to file a grievance pursuant to the aforementioned policy, it must be received in Human Resources within fifteen (15) calendar days of receiving this letter by submitting your written grievance form to the Human Resources Director, Barbara Gibson. Grievance forms are accepted at 114 West Edenton Street, Raleigh, NC or by fax at (919) 716-6710. NCGS 126-3 (a) (11) provides that dismissal letters are public information and must be released if requested. If you have questions about your dismissal or appeal rights, you may contact Mari Marsh, Employee Relations Manager at 919-716-6493.