



North Carolina Department of Public Safety
Community Corrections

Roy Cooper, Governor
Erik A. Hooks, Secretary

Reuben F. Young, Interim Chief Deputy Secretary
Tracy K. Lee, Director

January 24, 2019

Hand Delivered

Thomas Darnell Aker
Probation/Parole Officer
PERNR: 1367489
Division 2, District 14



Re: Dismissal

Dear Mr. Aker,

This letter is to inform you of Management's decision concerning the recommendation for disciplinary action following our Pre-Disciplinary Conference held on January 23, 2019. Management has decided to dismiss you effective January 24, 2019, based on Unacceptable Personal Conduct as defined in the State Human Resources Manual Section 7, XIII, Definitions.

This decision was made after a review of all of the information available, the current incident of Unacceptable Personal Conduct, and the information you provided during the Pre-Disciplinary Conference.

The specific issues to be discussed during this Pre-Disciplinary Conference are:

- During the months of April 2018 through July 2018, offender [REDACTED] (OPUS # [REDACTED]), alleged that while on house arrest under your supervision, you required him to pay money for additional leave time; and,
- Offender [REDACTED] (OPUS # [REDACTED]), alleged that he gave you approximately \$130.00 to \$140.00 over an unspecified period of time; the money was exchanged during office visits and home visits. Offender [REDACTED] stated the money was to be applied to his probation case because he could not report to the clerk's office during the hours of operation to make the required payment.

As a result, an internal investigation was initiated, and you were placed on Temporary Placement effective July 20, 2018, until the completion of the investigation. An investigation was conducted by Office of Special Investigations [REDACTED]. The investigation revealed the following:

MAILING ADDRESS:
3325 Chapel Hill Blvd. Suite 230A
Durham NC 27707
www.ncdps.gov



An Equal Opportunity employer

OFFICE LOCATION:
3325 Chapel Hill Blvd. Suite 230 A
Durham, NC 27707
Telephone: (919) 560-5423
Fax: (919) 560-5860

Allegations concerning offender [REDACTED] (OPUS # [REDACTED]):

- [REDACTED] alleged that since being under your supervision, he has paid you more than \$200 for leave time to work additional hours or to visit his family in Lexington. The payments ranged from \$50 to \$100. Initially, he believed the money was being applied to his court fines and fees until you told him he had to make a payment. When questioned, you closed the door to your office and responded, "you have to pay to play."
- You admitted to having inappropriate text conversations on your personal cellphone with [REDACTED] who was an offender under your supervision.
- You acknowledged that you texted [REDACTED] with your personal cell phone instead of your state issued cell phone because you did not think anyone would be able to view your text conversations with [REDACTED] if the conversation was conducted on your personal phone.
- You were aware that your state cell phone content could be considered public record.
- You admitted to asking [REDACTED] for money through a text message on June 6, 2018; June 10, 2018; and July 6, 2018. You also admitted texting [REDACTED] on June 17, 2018, with a message stating, "you have to pay to play" when probationer [REDACTED] requested additional leave time while under Electronic House Arrest (EHA) monitoring.
- You admitted that you did in fact accept \$75 from [REDACTED] for the additional leave time you granted him on July 7, 2018. You stated that you did not believe he would agree to do it but once he did, you went through with it.
- You additionally admitted that you facilitated a deal between [REDACTED] and your friend [REDACTED] for [REDACTED] to purchase a cellphone for \$75. You were requested to provide the contact information for [REDACTED] and you failed to provide the requested contact information.
- [REDACTED] recalled telling you that he needed to purchase a new phone because he "sometimes did not receive phone calls on the phone he had at the time." However, [REDACTED] denied purchasing a cell phone from you or from your friend, [REDACTED].
- You admitted that you did not follow EHA policy when you failed to discuss the three EHA leave schedule changes you made for probationer [REDACTED] with your supervisor.

Allegations concerning offender [REDACTED] (OPUS # [REDACTED]):

- Offender [REDACTED] (OPUS # [REDACTED]), alleged that he gave you approximately \$130.00 to \$140.00 over an unspecified period of time; the money was exchanged during office visits and home visits. Offender [REDACTED] stated the money was to be applied to his probation case because he could not report to the clerk's office during the hours of operation to make the required payment because of his work hours. He realized that no money had been applied to his account when he was assigned a new probation officer.
- You denied accepting money from offender [REDACTED] to pay towards his case or for any reason. You further added that "at no time during his probation did he give me money."

The investigation revealed through witness statements, text messages, and your admittance that you accepted money from offender [REDACTED] (OPUS # [REDACTED]) in exchange for leave time; however, there was no substantiated evidence to support the claims of you taking money from offender [REDACTED] (OPUS # [REDACTED]).

As a Probation and Parole Officer, you are expected to follow all departmental policy and procedures. You are expected to exercise independent and sound judgment and represent the Department of Public Safety professionally and ethically both on and off duty. You failed to use sound ethical judgment when you requested payment from probationer [REDACTED] to allow him extra time away from his Electronic House Arrest monitoring on July 7, 2018. In your own words you told probationer [REDACTED] "you have to pay to play." You knowingly and willingly took advantage of probationer [REDACTED] by using your position of authority to obtain financial gain at his expense. By such actions you have also willfully and corruptly violated your oath as a sworn Probation and Parole Officer.

A review of your personnel record found that you began employment with the agency on September 7, 1993. Given your 25 plus years of experience, you are very familiar with and aware of the job requirements and expectations of your position. Your 25 years of employment and training also mean that you are aware that all DPS employees are expected to represent the agency in a professional manner and high standards at all times, both on and off duty, exercise independent judgment and maintain a professional relationship with all community partners, offenders and the general public. In addition, as a Probation/Parole Officer, you are expected to display accountability by demonstrating a commitment to delivering on your public duty and presenting oneself as a credible representative of the agency and state, as well as maintaining public trust.

However, your actions were contrary to this expectation and are considered Unacceptable Personal Conduct or conduct unbecoming of a State employee that is detrimental to State service and conduct for which no reasonable person should expect to receive prior warning. As a result of your actions described above, this agency has lost faith in your ability to represent the Department as a trustworthy professional and to provide honest and truthful information. Your poor judgment described above indicates you cannot perform the essential functions of your job as a Probation/Parole Officer.

State and agency policies establish guidelines for staff professional conduct and the possible consequences in instances where staff fail to meet these expectations or otherwise violate these policies. Policies specific to the incident noted above are as follows:

The State Human Resources Manual states – *"Unacceptable personal conduct may include but is not limited to: conduct for which no reasonable person should expect to receive prior warning; job-related conduct which constitutes a violation of State or federal law; the willful violation of known or written work rules; conduct unbecoming a State employee that is detrimental to State service; the abuse of client(s), patient(s), student(s), or person(s) over whom the employee has responsibility or to whom the employee owes a responsibility, or the abuse of an animal owned by or in custody of the State; material falsification of a State application or other employment documentation (to include falsification of work-related documents); use of professional State credentials for personal gain; serious disruption in the workplace; insubordination; subjecting an employee, client, or customer to intentionally discriminatory treatment or harassment."*

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The North Carolina Department of Public Safety Division of Adult Correction and Juvenile Justice Community Corrections Policy & Procedures, Chapter A – Administration - Fiscal and Personnel, Section 1700 Professional Standards and Conduct of Employees, .1707 Personal Dealings with Offenders states: *“All employees will maintain professional relationships with offenders in accordance with the laws, regulations, and general statutes governing such relationships. Employees are not to knowingly enter into a personal or business relationship with an offender, and inmate, their family members or close associates. Any situations where an employee finds that a prohibited party is involved in a relationship; ex. an employee (offender/their family/close associates) of a business where the DPS employee has entered into an agreement to perform work, etc.; must be reported verbally to the employee’s supervisor followed by a written follow-up. Any employee involved in such relationships with offenders as outlined above will be subject to disciplinary action up to and including dismissal.”*

Chapter A Administration-Fiscal and personnel Section .600 Cash Transactions; .0601 General Provisions: *“Community Corrections has established uniform standards in order to prevent potential misunderstanding and abuse by offender and staff regarding cash transactions.”*

.0602 Prohibited Cash Transactions: *“Cash transactions with offenders, including but not limited to, money orders, checks, and currency are prohibited. Under no circumstances are employees to engage in any such transaction with offenders.”*

The Department of Public Safety Division of Adult Correction requires annual and semi-annual training to remind and reinforce the expectation for employees to comply with certain agency, State and Federal policies. You most recently attended the following training on the following dates:

- LMS - DPS IT: Laptop and Mobile Device 7/10/18;
- LMS – SCC Community Corrections Policy Overview 03/08/2018;
- OSDT – Staff & Offender Relations: Maintaining Professional Boundaries 10/03/2017;
- OSDT – SOP/SCC Block of Professional Ethics: On & Off Duty 10/03/2017;
- LMS – Professional Ethics 01/12/2017.

In addition, you signed off on the Division of Community Corrections Policy Statements on August 10, 2009, which included a section on Professional Relationships with Offenders. You also signed the “No Gift Policy” statement on October 29, 2009, which acknowledges you have read and agree to comply with G.S. 133-32 and Governor Purdue’s Executive Order Number 24 as it pertains to same; on November 24, 2009, you also signed the acknowledgment of having read and agree to comply with Secretary Keller’s Administrative Memorandum dated November 13, 2009, as it related to the department’s Gift Policy.

During the Pre-Disciplinary Conference on January 23, 2019, you asked if it was possible for a lesser outcome than what was being recommended, but you provided no additional information which could mitigate the recommendation. You also stated you wanted to apologize to the managers for letting us down and have known us for a long time. You stated you knew that we believed in you. You also stated that the Pre-D letter was very detailed and you have no questions. You stated you told the investigator the truth and you made a bad decision. You

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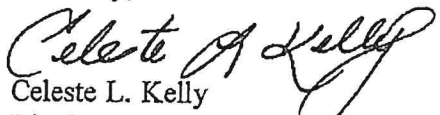
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further added that it was a bad time in your life and the opportunity was there and you took it. You regret the decision you made and you knew it was wrong. You stated you were wrong in doing what you did but overall you have made good decisions over your whole 25 years with the Department. You would like for us to know you were a good officer until now. You did not present any significant information to dispute the facts obtained in the investigation or to change the recommendation.

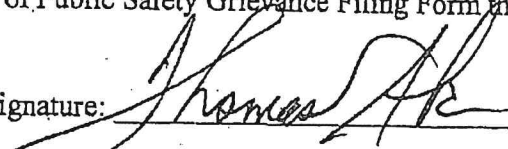
If you are a "career State employee" (as defined in N.C.G.S. §126-1.1) and wish to appeal this decision, you must do so in writing within fifteen (15) calendar days. The appeal must be submitted by using the Step 1 Grievance Filing Form HR 555. The appeal must be mailed to the Grievance Intake Coordinator, Department of Public Safety, 512 N. Salisbury Street, 4201 Mail Service Center, Raleigh, NC 27699-4201. As an alternative to mail, the appeal may be emailed to Grievance.Appeals@ncdps.gov, or hand delivered to the State Capitol Police, 417 N. Salisbury Street, Raleigh, NC 27603, between the hours of 8:00 a.m. and 5:00 p.m. Regardless of the method of filing, the appeal must be received by the Grievance Intake Coordinator on or before the fifteenth (15th) calendar day after receiving this letter in order to be timely filed. Failure to comply with this time frame shall result in your appeal not being accepted and it will be administratively closed. I have attached a copy of the Employee Grievance Policy (North Carolina State Human Resources Manual) for your review. If you are not a "career State employee" (as defined in N.C.G.S. §126-1.1), this action is final and carries no appeal rights.

NCGS 126-23 (a) (11) provides that Dismissal letters are public information and must be released, if requested.

Sincerely,


Celeste L. Kelly
District 14 Judicial District Manager

By signing this letter, I acknowledge receipt of this notice of Dismissal letter, a copy of Employee Grievance Policy (North Carolina State Human Resources Manual) and the Department of Public Safety Grievance Filing Form that are attached.

Employee Signature:  Date: 1/24/19

If Applicable:
Witness:  Date: 1-24-19

Witness Printed Name: Alan Pitstick

Enclosures: State Human Resources Manual, Employee Grievance Policy
Department of Public Safety Grievance Filing Form HR 555

cc: Unit File
Personnel File – Raleigh
Employee Relations
