



# StarNews

T-STORMS  
90°/71°  
FORECAST, 8B



STARNEWSONLINE.COM • WEDNESDAY, JUNE 11, 2014 • 50¢

**AVERY COUNTY** | \$300,000 BAIL SET ON PROBATION VIOLATION, DRUG CHARGES

# Berger arrested again

By Adam Wagner

Adam.Wagner@StarNewsOnline.com

New Hanover County Commissioner Brian Berger is in trouble with the law again, only this time it's in the northwestern part of North Carolina.

Berger was arrested Tuesday in Avery

County and charged with a probation violation, said Avery County Sheriff Kevin Frye. Jail records show Berger was charged with possession of schedule II narcotics, a broad category that includes Oxycodone and raw opium, among others.

Berger's bail is set at \$300,000, Frye

said.

He was arrested by North Carolina Probation officers, Frye said.

New Hanover County Board of Commissioners Chairman Woody White said board members heard the initial reports of Berger's arrest, but did not want to comment

See BERGER | 4A



New Hanover County Commissioner Brian Berger's booking photo from the Avery County Jail, where he was being held Tuesday night on a probation violation charge and several drug charges. His bail was set at \$300,000.

## Free ride?



House plan would end ferry tolls | Money included for aquarium | Teachers would get 5% pay raise, keep tenure and assistants

**TRANSPORTATION:**  
All state ferries would be free.



## Budget does not mention film incentives

From staff and wire reports

at year's end and are top priorities

## UNCW must pay \$700,000 in legal fees in Adams case

By Adam Wagner

Adam.Wagner@StarNewsOnline.com

The University of North Carolina Wilmington has to pay more than \$700,000 in legal fees in a civil suit involving one of its own professors, a federal judge ruled Tuesday.

Malcolm J. Howard, a senior U.S. District Court judge, ruled UNCW has to pay \$698,131.50 in legal fees and \$12,495 in non-taxable costs related to the defense of Mike Adams, according to court documents. As part of his ruling, Howard agreed with UNCW that some of the extra costs, such as expensive lunches and dinners and redundant travel, were excessive.

"UNCW has spent seven years fighting a scorched earth legal battle to deny one professor a promotion that he is rightfully due and now that's going to cost the taxpayers \$700,000," said Travis Barham, one of Adams' attorneys. "It's time for this end."

As of press time, a UNCW spokeswoman was unable to provide comment on the verdict, thus it was not immediately clear whether the uni-

See ADAMS | 4A





New Hanover County Commissioner Brian Berger (center) talks with his attorney, Buddy Allard, before pleading guilty to driving while impaired and drug possession in District Court in Wilmington in February. Berger was arrested in Avery County in the North Carolina mountains on Tuesday and charged with violating the terms of his probation as well as several drug charges. StarNews file photo

## BERGER

*Continued from 1A*

until they had more information.

Berger made his last appearance in New Hanover County at a May 1 board of commissioners meeting. At the time, Berger said he had left the state to seek medical treatment.

That appearance was Berger's first since a Dec. 6 arrest that resulted in driving while impaired and drug possession charges.

As part of a February guilty plea to those charges, Berger was given a 120-day suspended jail sentence for the DWI charge and a 45-day suspended sentence for the drug possession charge. He was placed on probation for a year.

According to the terms of that probation, Berger could leave the area and look for employment so long as his attorney asked for permission first. It was not immediately clear Tuesday if that permission had been obtained.

Other terms of probation in-

cluded 48 hours of community service, a substance abuse evaluation and abiding by any recommendations from that evaluation.

Berger's time on the board has been marred by controversy that was regularly followed by requests that the seemingly troubled commissioner step down.

On March 21, 2013, for instance, Berger was removed by security from the Cape Fear Community College Humanities and Fine Arts Center groundbreaking after unexpectedly approaching Gov. Pat McCrory.

Shortly after, Berger's fellow commissioners upped security at public meetings and revoked Berger's after-hours access to the Government Center.

In further fallout from the McCrory incident, the county commissioners voted on April 10 to begin an amotion process that would attempt to remove Berger from the board. That process would ultimately cost the county nearly \$68,000.

On May 20, the board voted to move ahead with the amotion process, the first time it would be

used to remove a North Carolina public official from office in nearly a century.

Berger appealed the decision to New Hanover County Superior Court, and a special judge ruled Berger could not be removed until after the appeal hearing. That hearing was held in Greensboro on July 16.

On Sept. 5, Berger was reinstated, but the other commissioners were given the power to remove Berger as long as they remained "impartial fact finders."

Later that month, the board of commissioners voted to not hold another amotion process, but instead adopted a set of rules including requiring Berger to be on time, saying Berger couldn't send lengthy or threatening emails to staff members and he had to be escorted by a sheriff's deputy whenever he was in county buildings.

*Staff writer Ashley Withers contributed to this story.*

Adam Wagner: 343-2096  
On Twitter: @AdamWagner1990

## BRIAN BERGER | TIMELINE OF RECENT INCIDENTS

New Hanover County Commissioner Brian Berger's term in public office has been shadowed by drama. Berger has had a series of troubles since being elected in late 2010 to his first four-year term on the board of commissioners. Here are some of the recent incidents:

**May 20, 2013:** Following a four-hour-long amotion hearing, the commissioners voted to remove Berger from the five-member board. The vote was 3-2, with Berger and Commissioner Jonathan Barfield dissenting. This marked the first time an amotion had been successfully used to remove a North Carolina elected official in nearly a century. During the hearing Berger also revealed for the first time that he had been diagnosed with autism.

**June 13, 2013:** Berger appeals to the New Hanover County Superior Court, calling his removal "unconstitutional." Berger requests two court hearings in his appeal — one before the court

to determine whether or not he is fit to serve and another to determine whether he received a "fair and impartial trial" during the amotion hearing.

**June 19, 2013:** Special Superior Court Judge James Gale, a Greensboro-based judge for complex business cases who was assigned to the case, rules that New Hanover County Board of Commissioners cannot fill Berger's seat on the board until after the appeal hearing.

**July 16, 2013:** Berger's appeal hearing held in N.C. Business Court in Greensboro.

**Aug. 19, 2013:** Berger files an employment discrimination charge against the county, claiming he was harassed and eventually forced from office due to his autism. In the complaint filed with the U.S. Equal Employment Opportunity Commission, the county is charged with violating the federal Americans with Disabilities Act.

**Sept. 5, 2013:** Berger is reinstated

to the Board of Commissioners by an order from the Superior Court. However, the order gives Berger's fellow commissioners the ability to hold another hearing to remove him as long as they remain "impartial fact finders."

**Feb. 3, 2014:** Berger pleaded guilty to driving while impaired and misdemeanor drug possession in a Dec. 6, 2013, incident on Masonboro Loop Road. The felony possession of controlled substances charge was reduced to a misdemeanor, and separate DWI and impeding traffic charges were dismissed. Berger was sentenced to a year of probation with 120 days' jail sentence suspended on the DWI charge and 45 days' suspended sentence on the drug charge. He also must serve 48 hours of community service, undergo a substance abuse evaluation and abide by any recommendations from that evaluation. If he successfully completes probation, the drug charge will be dismissed.

## ADAMS

*Continued from 1A*

As of press time, a UNCW spokeswoman was unable to provide comment on the verdict, thus it was not immediately clear whether the university would appeal Howard's decision regarding the legal fees and, if not, how it would pay them.

Adams, who declined comment when reached by phone Tuesday, accused the university of religious- and speech-based discrimination when he was not promoted to full professor in 2006. A Christian, Adams was open about his views in print and on radio and television programs.

"The university needs to recognize that the First Amendment applies to them," Barham said Tuesday, adding that in this instance that means a different viewpoint is not grounds to deny a professor promotion.

Adams' initial lawsuit, dated April 10, 2007, according to court documents, began a winding legal process.

In 2010, a federal district court ruled in favor of UNCW, but a federal appeals court overturned that ruling in 2011. A federal jury in March ruled that Adams' outspokenness about his beliefs had been a "substantial or motivating factor" in the decision to not promote him to full professor.

A federal judge ordered UNCW to pay Adams \$50,000 in back pay and promote him to full professor.

"UNCW could have avoided every single penny of this if they'd initially recognized back in 2006-7 that Dr. Adams was fully qualified for his promotion, and if they'd just treated him fairly like they treat professors of other persuasions and world views," Barham said.

Adams' attorney asked for more than \$1 million in legal fees from UNCW, including \$400 per hour for five attorneys and \$295 per hour for four others.

After consulting with three experts, the court decided a rate of \$350 per hour for the five senior attorneys and \$225 per hour for the junior attorneys was reasonable. Five others received \$90 per hour for work on the case.

"We do not believe it is appropriate to require the taxpayers of North Carolina to underwrite such potentially excessive lawyer fees and costs," said a May UNCW statement.

Howard agreed, at least in part, with the university, pointing specifically to Barham's request to be paid for days of 16 hours, 13.5 hours, 19.1 hours, 25 hours and 18.5 hours as excessive. Because of that, Barham's hours were reduced by 30 percent in the final tabulation.

"While the court recognizes that members of the legal profession often work long hours, these requests are, at best, unfortunate clerical errors and are certainly both excessive and unreasonable," according to court documents.

UNCW also claimed that it should not have had to pay legal fees for the two of Adams' initial three legal claims that were dismissed. Adams' team, meanwhile, argued that because the hours were so intertwined they could not separate them from each other.

Howard agreed, writing, "Considering the closely related nature of plaintiff's claims and by extension, how closely related the work done in furtherance of those claims was, the court cannot delineate specific hours worked on those claims on which plaintiff enjoyed limited success and which claims were not suc-



# Grand jury indicts bomb suspect

## Charges include making unregistered firearms and possessing illegal firearms

By Adam Wagner

Adam.Wagner@StarNewsOnline.com

WILMINGTON | A Wilmington man who police say had two dozen bombs hidden in his home was indicted by a federal grand jury on two charges, court documents

show.

Erik Rudolph Arnebold, 37, was indicted June 3 on one count of making firearms without registering them and one count of possessing illegal firearms. The maximum penalty for Arnebold's charges is 10 years in prison, a \$10,000 fine

and three years of supervised release, said a U.S. Attorney's Office spokesman.

On Oct. 30, Wilmington Police Department officers raided Arnebold's Patrick Avenue home and found 24 bombs. A WPD news release said one bomb was found

in plain sight while 23 more were in a trap door hidden beneath flooring.

Court documents said the bombs were made between December 2012 and the day of his arrest.

Shortly after his arrest, Arnebold said he made the bombs out of cu-

riosity and fear the government was disarming Americans. Because he never intended to set them off, he said, he sealed them in the drywall of his home.

Arnebold, with bail set at \$1.5 million, is in the New Hanover County jail.

Adam Wagner: 343-2096

On Twitter: @AdamWagner1990