



BEFORE THE KANSAS COMMISSION ON PEACE OFFICERS' STANDARDS AND TRAINING

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In the Matter of)
)
NATHAN D. TALCOTT)
 #28228)
_____)

Case No. 2017-0123

CONSENT AGREEMENT AND ORDER OF REVOCATION

Now on this 8th day of JUNE, 2018, the above-referenced matter comes on for consideration by the Kansas Commission on Peace Officers' Standards and Training (Commission). Under the Kansas Administrative Procedure Act, the Commission has delegated its authority to hear and decide the above-referenced matter to the Hearing Panel, which is comprised of the following Commissioners: Richard Powell, Undersheriff of Sedgwick County Sheriff's Office; Herman Jones, Sheriff of Shawnee County Sheriff's Office; and Bradley Schoen, Director of Riley County Police Department. The Commission is represented by its litigation counsel, Michelle R. Meier, Special Assistant Attorney General. Nathan D. Talcott appears in person and by his counsel, Timothy C. Hodge of Adrian & Pankratz, P.A.

To resolve this matter, the parties have agreed to enter into this Consent Agreement and Order of Revocation.

Procedural History

Nathan D. Talcott (Talcott) agrees, stipulates, and acknowledges that if this matter were to proceed to hearing, the following information or statements would be presented by clear and convincing evidence to the Hearing Panel.

1. The Commission received information concerning Talcott's qualifications for certification as a law enforcement officer. As a result, the Commission investigated the information and the Commission Investigative Committee determined Talcott is in violation of provisions in the Kansas Law Enforcement Training Act (KLETA), K.S.A. 74-5601 *et seq.* or regulations adopted thereunder. Based upon that determination, the Committee issued a

Summary Order or Revocation that revoked his certification as a law enforcement officer.

2. The Summary Order of Revocation was issued on August 9, 2017 and properly served upon Talcott on August 10, 2017. Legal counsel for Talcott filed a request for a hearing on the Summary Order of Revocation. A hearing in this matter was scheduled for October 2, 2017 and subsequently continued until December 7, 2017 upon Talcott's motion. On September 4, 2017, Talcott filed with the Commission a letter indicating that he will be unable to effectively participate in the proceedings, and the desire to resign from his law enforcement post(s) effective immediately. Due to a conflict with a member of the Hearing Panel, the hearing was continued to February 28, 2018. Prior to the hearing, the parties agreed that an evidentiary hearing was not necessary and cancelled the hearing set for February 28, 2018. A status conference was set in this matter for June 4, 2018.

Stipulated Facts

3. The Commission issued a part-time law enforcement certification to Talcott, certification number 28228. Respondent received his part-time certification on April 24, 2015.
4. Respondent was employed as a part-time police officer with the Halstead Police Department from December 4, 2014 to April 27, 2017.
5. On November 7, 2008, Respondent entered into a diversion agreement in Harvey County District Court, case number 08CR000279, for one count of Domestic Battery in violation of K.S.A. 21-3412a(a)(2) (prior to its repeal), a Class B Person Misdemeanor; and Battery, in violation of K.S.A. 21-3412(a)(2) (prior to its repeal), a Class B Person Misdemeanor.
6. On February 28, 2013, Respondent was granted an Order of Expungement pursuant to K.S.A. 21-6614. Respondent's diversion and related arrest for Domestic Battery and Battery in Harvey County District Court, case number 08CR000279, was expunged.
7. At the time Respondent applied for certification under the KLETA, he believed that, due to the expungement, his Domestic Battery diversion did not disqualify him for certification as a law enforcement officer.
8. The above factual statements are true and correct and provide legally sufficient grounds to determine whether Talcott is in violation of the KLETA or regulations adopted thereunder.

Conclusions of Law

9. Pursuant to K.S.A. 74-5616(b)(1) The commission may revoke the certification of a police or law enforcement officer who fails to meet

and maintain the requirements of K.S.A. 74-5605 or 74-5607a, and amendments thereto.

10. K.S.A. 74-5605 sets forth the minimum requirements for an applicant for certification under the jurisdiction of the Kansas Law Enforcement Training Act.

11. K.S.A. 74-5605(b)(3) states that each applicant for certification shall meet the following requirements:

“not have been convicted of ... a misdemeanor crime of domestic violence....”

12. K.S.A. 74-5605(d) states that as used in this section, “conviction” includes rendering of judgment by a military court martial pursuant to the uniform code of military justice, by a court of the United States or by a court of competent jurisdiction in any state, whether or not expunged; and any diversion or deferred judgment agreement entered into for a misdemeanor crime of domestic violence or a misdemeanor offense that the commission determines reflects on the honesty, trustworthiness, integrity or competence of the applicant as defined by rules and regulations by the commission and any diversion agreement or deferred judgment entered into on or after July 1, 1995, for a felony.

13. Talcott’s diversion and subsequent expungement for Domestic Battery in case number 08CR000279 is a conviction under the KLETA.

14. These legal conclusions are correct and sufficient legal grounds to revoke Talcott’s certification as a law enforcement officer.

15. CPOST asserts Talcott is in violation the following KLETA provisions and regulations adopted thereunder:

K.S.A. 2016 Supp. 74-5616(b)(1), K.S.A. 2016 Supp. 74-5605(b)(3) — failing to meet and maintain the requirement of not having been convicted of a misdemeanor crime of domestic violence.

16. According to CPOST, the revocation of Talcott’s certification as a law enforcement officer is appropriate for his violations of the KLETA or regulations adopted thereunder as set forth above and is not arbitrary or capricious regardless of whether those violations are considered separately or collectively.

17. Talcott does not dispute any of the above facts or conclusions and waives any further proof in this or any other proceeding before or initiated by the Commission.

Acknowledgements and Agreement

Nathan D. Talcott (Talcott) fully understands, agrees, and stipulates to the following.

18. The Commission is the Kansas agency vested with the authority to carry out and enforce the provisions of the KLETA. Under the KLETA, the Commission is vested with the authority to conduct proceedings and hearings to condition, suspend, or revoke the certification of a police officer or law enforcement officer.
19. Talcott states he is of sound mind and not under the influence of or impaired by alcohol, any medication, or any drug. By signing this Consent Agreement and Order of Revocation, Talcott knowingly and voluntarily submits to the jurisdiction of the Commission in this matter.
20. Talcott and the Commission enter into this Consent Agreement and Order of Revocation in lieu of any proceeding or hearing on the issue or issues of whether Talcott violated any provision in the KLETA or any regulation adopted pursuant to the KLETA, and if so, whether his certification should be conditioned, suspended, or revoked.
21. In lieu of an adjudicatory hearing in this matter, Talcott hereby voluntarily surrenders his certification as a law enforcement officer in the State of Kansas, certification number, 28228. Talcott knowingly and voluntarily acknowledges and stipulates to the facts, legal conclusions, conditions, and orders as stated herein.
22. By surrendering his certification and voluntarily entering into this Consent Agreement and Order of Revocation, Talcott acknowledges and agrees that he waives all rights to a hearing and an adjudication by the Hearing Panel regarding the applicable facts, law, and penalty, as well as reconsideration of such adjudication, under the Kansas Administrative Procedure Act (KAPA), K.S.A. 77-507 *et seq.* Talcott acknowledges and agrees he also waives all rights for review under the Kansas Judicial Review Act (KJRA) K.S.A. 77-601 *et seq.* Talcott further understands his waivers will result in the waiver of the following rights under the KAPA and the KJRA.
 - A. The right to contest any alleged violation of the KLETA or regulations adopted thereunder;
 - B. the right to have a public hearing on the issues in this matter;
 - C. the right to confront and cross-examine witnesses called to testify against me;
 - D. the right to present evidence on my own behalf;
 - E. the right of compulsory process to secure attendance of witnesses to testify on my own behalf;
 - F. the right to testify on my own behalf;
 - G. the right to receive written findings of fact and conclusions of law to support the decision on the merits of the issues in this matter; and
 - H. the right to obtain judicial review of the Commission's decision.
23. Talcott acknowledges he is represented by counsel of his own choosing and expense, Timothy C. Hodge of Adrian & Pankratz, P.A.. Talcott voluntarily enters into this Consent Agreement and Order of Revocation after having been given the opportunity to consult with his counsel.

24. Talcott acknowledges he has read this Consent Agreement and Order of Revocation in its entirety, he understands its legal consequences, and he agrees that none of its provisions or terms are unconscionable, arbitrary, or capricious.
25. The parties agree this Consent Agreement and Order of Revocation is intended to resolve only violations arising out of the facts set forth in the Summary Order of Revocation in this matter. The Commission reserves jurisdiction regarding any other potential complaints arising from circumstances or incidents other than those concerning the Summary Order of Revocation in this matter.
26. Talcott understands the Commission is free to accept or reject this Consent Agreement and Order of Revocation, and if rejected, the Commission will begin proceedings authorized under the KAPA. If either party should reject this Consent Agreement and Order of Revocation, it shall be regarded as null and void and will not be regarded as evidence against either party at a subsequent proceeding or hearing in this matter. Talcott will be free to present a defense and no inferences will be made from his willingness to consider this Consent Agreement and Order of Revocation. It is further agreed that neither the presentation of this Consent Agreement and Order of Revocation nor the commission's consideration of the same will be deemed to have unfairly or illegally prejudiced the Commission or its individual members and thereby Talcott agrees to waive any rights he may have to challenge the impartiality of the Commission or its members to conduct any proceeding or hearing regarding the incident or incidents in this matter if either party rejects this Consent Agreement and Order of Revocation.
27. The parties agree this Consent Agreement and Order consists of a total of eight (8) pages, including the signature and certificate of service pages, and constitutes the entire agreement between Talcott and the Commission. This Consent Agreement and Order of Revocation may only be changed, modified, or amended by a written agreement signed by the parties and a member of the Hearing Panel and filed with the Commission.
28. By signing this Consent Agreement and Order of Revocation, Talcott consents to the submission of this Consent Agreement and Order of Revocation to the Hearing Panel, and understands that upon approval by the Hearing Panel, this Consent agreement and Order becomes a final order of the Commission. Talcott understands that the Consent Agreement and Order of Revocation shall become effective on the day it is approved, accepted, signed and entered as an order of the Commission.
29. Upon execution by all parties and entry as an order by the Commission, Talcott acknowledges this Consent Agreement and Order of Revocation becomes a public record and is subject to disclosure under the Kansas Open Records Act.

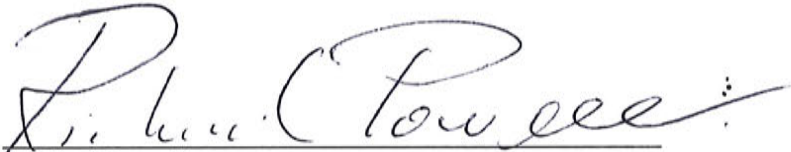
30. Talcott acknowledges this Consent Agreement and Order shall remain a part of his permanent certification record and be considered as disciplinary action.
31. Talcott does hereby fully, completely, and finally release the Commission and its agents, staff, or employees from any and all claims, charges, demands, damages, costs, expenses, actions and causes of action of every kind and whatsoever related to this Consent Agreement and Order of Revocation. The Commission admits to no liability in any way related to this Consent Agreement and Order of Revocation.
32. Talcott acknowledges this Consent Agreement and Order of Revocation is in conformance with Kansas and federal laws and the Commission has jurisdiction to enter into this Consent Agreement and Order of Revocation and to revoke his certification as a law enforcement officer. Talcott further agrees that the KLETA is constitutional on its face and as applied in this case. Additionally, this Consent Agreement and Order of Revocation shall be interpreted under Kansas law and construed as if jointly prepared and written by the parties, and any uncertainty or ambiguity shall not be interpreted against either party.
33. The parties agree this Consent Agreement and Order of Revocation shall be interpreted under Kansas law and in the event a Kansas court of competent jurisdiction deems any provision of this Consent Agreement and Order of Revocation invalid or unenforceable, the remaining provisions of this Consent Agreement and Order of Revocation shall be given full force and effect.
34. By surrendering his certification and signing this agreement, Talcott agrees and acknowledges the Commission will revoke his certification as a law enforcement officer and this disposition is just and appropriate under the above stated facts, conclusions, stipulations, and acknowledgments.
35. Talcott further agrees not to seek or request reinstatement or certification as a law enforcement officer in Kansas for a period of five (5) years from the effective date of this Consent Agreement and Order of Revocation. If Talcott makes such a request after that time, he acknowledges he must provide evidence to show he meets the qualifications for certification as a law enforcement officer as well as the factors stated in K.S.A. 2016 Supp. 74-5622 and amendments thereto for reinstatement or certification as a law enforcement officer.

ORDER

Based upon the above acknowledgements, agreements, and stipulations of applicable facts, law, and conclusions, the Commission hereby accepts Nathan D. Talcott's surrender of his certification as a law enforcement officer and orders the revocation of his law enforcement officer certificate.

It is the further decision and Order of the Commission that Nathan D. Talcott must return to the Commission all evidence of his certification as a law enforcement officer within thirty (30) days from the date entered on the certificate of service below.

IT IS SO ORDERED.

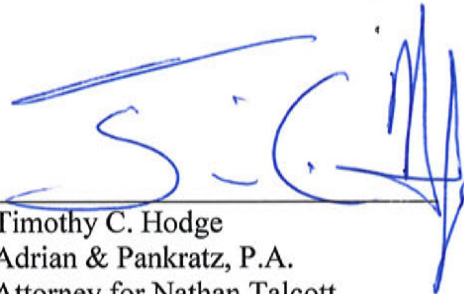


Richard Powell
Commissioner and Chair of Hearing Panel
As authorized by and on behalf of the
Kansas Commission on Peace Officers' Standards and Training

AGREED AND APPROVED BY:



Nathan Talcott



Timothy C. Hodge
Adrian & Pankratz, P.A.
Attorney for Nathan Talcott



Michelle R. Meier
Special Assistant Attorney General
Litigation Counsel for the Commission

CERTIFICATE OF SERVICE

This is to certify that on the 8th day of June, 2018, a copy of the above Consent Agreement and Order of Revocation, with a copy of the Summary Order of Revocation, was deposited in the United States mail, first-class postage prepaid, and addressed to:

NATHAN D. TALCOTT



Timothy C. Hodge
Adrian & Pankratz, P.A.
301 N Main, Ste 400
Newton, Kansas 67114

I further certify that on the same day a copy of the above Consent Agreement and Order, with a copy of the Summary Order of Revocation was personally delivered to:

Michelle R. Meier
Special Assistant Attorney General
Kansas Commission on Peace Officers' Standards and Training
1999 N. Amidon, Ste 350
Wichita, Kansas 67203

Staff

Kansas Commission on Peace Officers'
Standards and Training