

**BEFORE THE KANSAS COMMISSION ON PEACE OFFICERS'
STANDARDS AND TRAINING**

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In the Matter of)	
)	
TERRENCE S. BROWN)	Case No. 2010-0108
Certification No. 21408)	
_____)	

ORDER

Denying Petition for Reinstatement

On March 29, 2021 the above-referenced matter comes before the Kansas Commission on Peace Officers' Standards and Training (Commission) for consideration on the Petition for Reinstatement of Law Enforcement Certification filed by Terrence S. Brown (Petitioner). Under the Kansas Administrative Procedure Act, the Commission has delegated its authority to serve as the Presiding Officer in the above-referenced matter to the Hearing Panel, which is comprised of the following Commissioners: Kirk D. Thompson, Director of the Kansas Bureau of Investigation; Herman Jones, Superintendent of the Kansas Highway Patrol; and Don Scheibler, Chief of the Hays Police Department.

Terrence Brown appeared pro se, remotely via Microsoft Teams. The Commission was represented by Michelle Meier, Special Assistant Attorney General who serves as its litigation counsel. Also present was Janet Arndt and Laine Barnard, Assistant Attorneys General, who serve as legal counsel to the Hearing Panel in this matter.

The proceedings were conducted in accordance with the Kansas administrative procedure act. Brown was advised of his right to an attorney and indicated he wished to proceed pro se. Brown was advised of his right to present evidence, present witnesses and admit exhibits. Brown declined to testify. All witnesses were sworn prior to testifying.

As a preliminary matter, the Commission admitted the parties' stipulated exhibits, which including State's exhibits 1 through 6 and Respondent's exhibits 1 through 7. Also admitted was Petitioner's "Notice of Appeal Brief". During the hearing, the Commission also admitted State's exhibits 7, 8 and 9. The testimony and exhibits are set forth below.

After taking administrative notice of its records and considering the evidence and arguments presented at the hearing, the Commission denies the Petition for Reinstatement based upon the findings and conclusions below.

Findings of Fact

1. In 2004, Terrence S. Brown (Petitioner) received his certification as a law enforcement officer and was employed as a police officer with the Kansas City, Kansas Police Department (Department).

2. On November 3, 2011, the Commission filed a petition charging two claims against Petitioner. On March 28, 2012, the Commission held a hearing on those claims. Although he had notice of the hearing, Petitioner did not appear in person or by counsel. On April 13, 2012, the Commission issued an Order revoking Petitioner's certification as a law enforcement officer. That Order is incorporated herein by reference. Petitioner did not appeal the Order.

3. The Order of revocation found that in August 2009, Petitioner made false representations on several occasions to the Department and knowingly provided a false funeral program to the Department to conceal his false statements concerning his request for three days of funeral leave. Petitioner later admitted that he did not attend any funeral during those three days, but claimed he went to see a sick aunt. However, a member of Petitioner's family told a Department Investigator that Petitioner attended a family reunion during those three days of funeral leave.

4. In the Order of revocation, the Commission concluded that Petitioner's false representations showed he no longer possessed good moral character and the public trust in him was no longer justified due to his deliberately providing false information for personal benefit on multiple occasions to the Department. Based on its findings and conclusions, the Commission determined Petitioner had violated K.S.A. 2011 Supp. 74-5605(f) and K.S.A. 2011 Supp. 44-5616(b)(1) and revoked his certification as a law enforcement officer.

5. Petitioner filed with the Commission a letter dated "March 2014" requesting reinstatement of his law enforcement certification. Petitioner was notified that a hearing on his request was scheduled for June 11, 2014; however, Petitioner did not appear in person, by telephone, or by counsel. On July 16, 2014 the Commission issued an Order denying Petitioner's Request for Reinstatement of his law enforcement certification. That Order is incorporated herein by reference.

6. On November 1, 2020, Petitioner filed a second Petition for Reinstatement which is before the panel today. In his Petition, he stated people live and learn and change for the better. Petitioner asked the Commission to take into account his maturity at that time, his mental and physical health issues and lack of resources at that time.

7. At the March 29, 2021 hearing Commission Investigator George Brown testified to his investigation after being assigned Petitioner's November 1, 2020 Petition for Reinstatement. Investigator Brown testified that he reviewed the petition, Petitioner's Commission file, interviewed the Petitioner, interviewed and requested documents from

MO-POST, reviewed all exhibits provided by Petitioner and interviewed Petitioner's current employer as well as the author of a letter of recommendation submitted by Petitioner. At the conclusion of his investigation, Brown drafted a "Memorandum to the C.I.C."

8. During his investigation, Brown received information that Petitioner was working as a law enforcement officer in Missouri. Brown contacted MO-POST and confirmed Petitioner held a Missouri law enforcement certification. Petitioner's MO-POST records indicate he was employed as a full-time police officer by the Weatherby Lake Police Department from October 2019 to February 2020; and as a reserve officer by the Orrick, Northmoor, and Lake Tapawingo Police Departments since 2015 and that he was currently employed by Lake Tapawingo.

9. Investigator Brown noted that in his petition, Petitioner describes "after years of not being in the law enforcement career field" and his "previous career in law enforcement" which was contrary to the MO-POST records. During his interview with Petitioner, Investigator Brown on several occasions asked Petitioner about his work history and if there had been any positions with law enforcement agencies or law enforcement positions. Petitioner repeatedly denied being employed in law enforcement since his Kansas certification had been revoked and claimed his work was "just court stuff." Petitioner described employment with the Air Force, the Kansas Department of Corrections, Jackson County Family Court and as an account manager for a security company.

10. Investigator Brown interviewed Petitioner about his rehabilitation. Petitioner described his work history, spiritual counseling, clinical treatment, youth coaching and working with outreach programs.

11. Investigator Brown reviewed a letter of recommendation submitted by Petitioner dated March 17, 2021. The letter was written by Retired Master Sergeant David Kearney. Kearney has known the Petitioner 18 years and was a former supervisor at the Kansas City, Kansas Police Department. Kearney describes Petitioner as "a good family man and father" and compliments his work ethic, integrity and character. Investigator Brown contacted Kearney. Kearney reiterated the letter's contents and was asked if he was aware that Petitioner's Kansas law enforcement certification had been revoked. Kearney indicated he was not and had he known he would not have written the letter.

12. Investigator Brown also interviewed Chief Taylor of the Lake Tapawingo Police Department. Chief Taylor indicated Petitioner was hired on February 13, 2020 as a part time officer. Chief Taylor indicated she had no issues with Petitioner and described him as well spoken and very professional. Chief Taylor indicated she was not aware that his Kansas certification was revoked.

13. At the hearing, Petitioner admitted seven exhibits and his "Notice of Appeal Brief". Exhibits 1, 2, 3, 5, 6 and 7 all relate to his employment with Kansas City Kansas

Police Department from 2002 until 2009. They include his letter of resignation, employee commendation, probationary reviews, a memo to the Chief of Police and a memo from the Sergeant who accepted his resignation. Petitioner's Exhibit 4 included twelve letters of recommendation. Only one letter, the letter drafted by Retired Master Sergeant Kearney, appeared to be recently drafted, the others dated between 2012 and 2019. The content of the older, eleven letters appear to be letters of recommendation for job opportunities sought by Petitioner. None address Petitioner's certificate revocation or his actions regarding rehabilitation since revocation.

Conclusions of Law

14. K.S.A. 74-5622 governs the reinstatement of a certification as a law enforcement officer or a police officer. It states:

(2) The commission may reinstate a revoked certificate upon a finding that the petitioner is otherwise qualified for certification under the Kansas law enforcement training act and is sufficiently rehabilitated to warrant the public trust. The burden shall be upon the petitioner to establish rehabilitation by clear and convincing evidence.

(3) In determining whether a petitioner is sufficiently rehabilitated to warrant the trust, the commission may consider any relevant evidence, and may, but shall not be required, to consider the following factors:

- (A) The present moral fitness of the petitioner for performance of duties as a police officer or law enforcement officer;
- (B) the demonstrated consciousness of the wrongful conduct and disrepute which conduct has brought upon the law enforcement profession and the administration of justice;
- (C) the extent of the petitioner's rehabilitation;
- (D) the nature and seriousness of the original misconduct;
- (E) the conduct subsequent to discipline;
- (F) the time elapsed since the original discipline; and
- (G) the petitioner's character, maturity and experience at the time of the original revocation.

15. The considerations in K.S.A. 74-5622(3) were initially set forth by the Kansas Supreme Court in *Vakas v. Kansas Bd. of Healing Arts*, 248 Kan. 589, 600 (1991) and *State v. Russo*, 230 Kan. 5, 9 (1981). The Court explained "[t]he objective in determining whether to reinstate a license is the same objective in determining whether to grant a license initially – to exclude incompetent or unscrupulous persons from being licensed to practice [in the profession]." 248 Kan. at 602; 230 Kan. at 9.

16. The requirements for initial certification as a police officer are set forth in K.S.A. 74-5605(b). One of those requirements is the applicant must “be of good moral character sufficient to warrant the public trust in the applicant as a police officer or law enforcement officer.” K.S.A. 74-5605(b)(5). This is consistent with K.S.A. 74-5622(3)(A) for reinstatement of a certification. Thus, whether the Commission is considering initial certification or reinstatement of certification, a critical requirement is the person’s moral fitness for performance as a police officer or law enforcement officer.

17. Upon seeking reinstatement, the petitioner has an even greater burden than when initially granted a license because the petitioner must overcome the prior finding as to fitness to practice in the licensed profession. 248 Kan. at 608. In a case involving reinstatement to practice as an attorney, the reason for this greater burden was explained as follows:

Woven throughout our disciplinary cases involving attorneys is the thought that they occupy a special position because they are actively involved in administering the legal system whose ultimate goal is the even-handed administration of justice. Integrity and honor are critical components of a lawyer’s character as are a sense of duty and fairness. Because the legal system embraces the whole of society, the public has a vital expectation that it will be properly administered. From this expectancy arises the concept of preserving public confidence in the administration of justice by disciplining those lawyers who fail to conform to professional standards. *Russo*, 230 Kan. 10. (Quoting *In re Brown*, 166 W.Va. 227, 232-33 [1980].)

The above rationale applies equally to law enforcement officers. Like attorneys, law enforcement officers occupy a special position because they are also actively involved in the legal system—for example, responding to calls for assistance; detecting, recording, and reporting crimes; filing sworn statements to obtain warrants and initiate criminal proceedings; and testifying truthfully at court proceedings. Thus, we review the above factors, albeit out of sequence, to determine whether Petitioner has been sufficiently rehabilitated so that he can now conform to the professional standards of a law enforcement officer.

K.S.A. 74-5622 (F): *Time Elapsed Since the Original Discipline*

18. Nine years have elapsed between the revocation of Petitioner’s certification as a law enforcement officer and the current Petition for Reinstatement. Petitioner points to the fact that it’s been eleven years since he left the Department and that he’s learned from his mistake. Contrary to Petitioner’s belief, the mere passage of time alone is not sufficient to warrant reinstatement. Rather, time provides a petitioner an opportunity to become rehabilitated—to build a record of good character and integrity. A lengthy waiting period between revocation and a petition for reinstatement where the petitioner’s conduct was exemplary reinforces a claim of rehabilitation. 166 W.Va. at 235. In other words, the crucial issue is what conduct since the revocation of Petitioner’s certification supports his claim of rehabilitation.

19. In his "Notice of Appeal Brief", Petitioner states that he has made himself better and grown from his past, has sought "mental health help", is a "man of faith" and has "basically learned his lesson". However, Petitioner failed to provide any evidence to indicate the extent of any counseling or the results from such counseling.

20. Petitioner's exhibits included performance appraisals and letters of accommodation he received during his employment with the Kansas City Kansas Police Department prior to the revocation of his certification. These exhibits do not address his rehabilitation or demonstrate growth in Petitioner's character for honesty and integrity since the revocation of his certification.

21. Based upon the above, the Commission determines Petitioner has failed to meet his burden of showing rehabilitation by clear and convincing evidence that he has taken the past nine years to build a record of good character and integrity.

K.S.A. 74-5622 (D): Nature and Seriousness of the Original Misconduct

22. The next consideration is the nature and seriousness of the original misconduct. As discussed in the Order revoking his certification, Petitioner made several intentional false representations to receive three days of paid funeral leave. First, he told the Department that his grandmother had died. Next, when told that he had already received funeral leave for the death of both of his grandmothers, Petitioner stated that his great-grandmother had died. When asked to verify her death, Petitioner did not admit his misrepresentations, but sought assistance from his father to create a false funeral program to conceal his false statements. Petitioner then made another false representation by providing the fictitious funeral program as verification that his great-grandmother had died. When the Department confronted him about these false representations, Petitioner said he requested funeral leave because an aunt was ill. At no time did Petitioner acknowledge that he wanted leave from work to attend a family reunion. All of Petitioner's intentional false statements were made for his own personal benefit.

23. Petitioner's false representations caused the Department to pay Petitioner funeral leave that he was not eligible to receive and to conduct an investigation into his claim for funeral leave. Additionally, his absence meant either fellow officers had to cover Petitioner's shifts for three days or there was a shortage of an officer on Petitioner's shifts for three days. His conduct shows a lack of honesty, trustworthiness, fairness, integrity, sense of duty, and respect for the rights of others—specifically, the rights of the Department, fellow law enforcement officers, and the public. These are critical traits that a law enforcement officer must possess to maintain the trust of his supervisors and other law enforcement officers and to preserve public confidence in the administration of justice.

24. Although he was not charged with a crime, the Commission determines that Petitioner's original misconduct was serious because it involved multiple intentional false

misrepresentations for personal benefit. This type of conduct erodes the public's trust in law enforcement officers and confidence in the administration of justice.

K.S.A. 74-5622 (G): Character, Maturity and Experience When Certification Revoked

25. Factor (G) requires review of Petitioner's character, maturity and experience at the time that his certification was revoked. In 2009 Petitioner was 27 years old and had been certified as a police officer for several years; as such, his conduct was not due to immaturity or inexperience. In the 2012 Order denying his Petition for Reinstatement, the Commission noted he had advised he had "grown totally since the year 2009" but concluded Petitioner provided no insight into his character, maturity, and experience at the time that his certification was revoked. Now, in his "Notice of Appeal Brief", Petitioner claims his conduct was due to a recent divorce and medical issues he was facing at the time. These conclusory statements still provide little insight into Petitioner's character, maturity and experience when his certification was revoked.

26. Honesty and integrity are character traits that are learned and practiced long before adulthood. A person must possess those traits at the time of certification as a law enforcement officer and retain those traits to conform to the professional standards of a law enforcement officer. Having marital and health issues does not justify making multiple false statements to the Department to obtain funeral leave. A law enforcement officer should not lose the character traits of honesty and integrity when experiencing personal crisis. If Petitioner possessed the character traits of honesty and integrity in 2009, he would not have made the numerous false statements to the Department so that he could obtain a personal benefit.

27. Based upon the above, the Commission determines that at the time of revocation Petitioner lacked maturity and the character that a law enforcement officer must possess—honesty, trustworthiness, fairness, integrity, and respect for the rights of others.

K.S.A. 74-5622 (E): Conduct Subsequent to Revocation of Certification

28. The 2014 order addressed Petitioner's failure to appear at the scheduled hearing on his Petition for reinstatement of his certification. Petitioner had advised in an email to the Commission's litigation counsel that he wanted a continuance because his employer refused to grant leave to him. The Commission's counsel reminded Petitioner that he had been subpoenaed and he could show the subpoena to his employer. Petitioner's response was his employer did not "need to know my personal business." Petitioner's refusal to let his employer know why he needed leave from work shows a lack of being forthright with his superiors – this is the same character trait he exhibited in 2009 by providing false information to the Department for his personal gain. Petitioner also demonstrated a lack of character and maturity when he failed to appear for the hearings on the revocation of his certification in 2012 and on his petition for reinstatement in 2014. By failing to appear at those hearings, Petitioner did not take responsibility for his conduct

and showed little respect for the Commission. Thus, the record shows Petitioner had no growth in his rehabilitation between 2009 and 2014.

29. In Petitioner's November 1, 2020 Petition for Reinstatement he cites "his previous career in law enforcement" and "years of not being in the law enforcement career field". Investigator Brown interviewed Petitioner during the course of his investigation.

30. The investigation by the Commission also revealed a lack of rehabilitation by Petitioner. In his current Petition for Reinstatement, Petitioner indicated he had not worked as a law enforcement officer for years. However, Investigator Brown discovered Petitioner was certified in Missouri as a law enforcement officer, had worked as law enforcement officer for several law enforcement agencies in Missouri, and was currently employed in Missouri as a reserve officer. However, Petitioner repeatedly denied this when questioned about being employed as a law enforcement officer since his Kansas certification had been revoked and claimed his work was "just court stuff." Petitioner's explanation at the hearing was that he believed this information was not relevant.

31. Petitioner's responses to Investigator Brown are similar to those in 2009 to the Department and to the Commission's counsel in 2014—a failure to be honest and forthright with others to gain a personal benefit. Petitioner's conduct with Investigator Brown shows Petitioner has not been rehabilitated since the revocation of his certification.

32. Petitioner's repeated false statements to Investigator Brown are evidence that Petitioner lacked honesty, integrity, a sense of duty, and respect for his certification and the Commission.

33. Petitioner's statements in his petition, "Notice of Appeal Brief" and exhibits provide little evidence of the extent of Petitioner's rehabilitation since the revocation of his law enforcement certification. Petitioner's various exhibits regarding his commendations, letters of appreciation and performance appraisals while employed with the Department from 2002 until 2009 have no relevance to his rehabilitation since revocation. Additionally, eleven of twelve of Petitioner's letters of character reference appear to be letters of recommendation for job opportunities sought by Petitioner. None of the letters address his revocation and steps he's taken towards rehabilitation.

34. Based upon the above, the Commission determines that Petitioner has not shown that his conduct subsequent to the revocation of his certification indicates he has been sufficiently rehabilitated to warrant reinstatement of his certification as a law enforcement officer.

K.S.A. 74-5622 (B) Demonstrated Consciousness of the Wrongful Conduct and Disrepute Which the Conduct Has Brought Upon the Law Enforcement Profession and the Administration of Justice

35. Petitioner makes comments in his "Notice of Appeal Brief" that address his consciousness of the wrongful conduct. He states he "may have made a crucial mistake" and that he "takes full responsibility for my actions that caused my license revocation".

36. Petitioner acknowledges the wrongfulness of his conduct but attempts to minimize it by stating he made the misrepresentations due to his aunt's illness, his personal illness and department personnel issues. Petitioner ignores the Commission's findings in the revocation order that he provided false information on multiple occasions to obtain funeral leave so that he could attend a family reunion. Because he did not file an appeal, the findings and conclusions in the 2012 and 2014 orders are final and cannot be relitigated.

37. Petitioner's characterization of his conduct as a "mistake" is a gross understatement. His multiple false statements and presentation of a false funeral program were all intentional acts. These acts, separately and collectively, evidenced the lack of honesty, integrity, a sense of duty, and fairness. Petitioner placed his personal wants above the needs and expectations of the Department and the public. As discussed above, Petitioner's responses to Investigator Brown are also evidence that he continues to place himself above others. A person's conduct can speak louder than their claims of making a mistake, taking responsibility, and being rehabilitated.

38. Additionally, Petitioner's statement he does not "have to feel guilty or shame about the subject anymore" shows that he still places more emphasis on his personal needs than the effect that his misrepresentations had or could have on others.

39. Based upon the above, the Commission finds that Petitioner has not demonstrated a consciousness of his wrongful conduct and the disrepute that his conduct brought upon the law enforcement profession and the administration of justice.

K.S.A. 74-5622 (A): Present Moral Fitness for Performance of Duties as a Law Enforcement Officer

40. To address, Petitioner's present moral fitness for performance of duties as a law enforcement officer, Paragraph numbers 28 through 39 above are hereby incorporated by reference. That discussion shows Petitioner lacks the present moral fitness for performance of the duties as a law enforcement officer.

41. Based upon the above, the Commission determines Petitioner currently lacks the present moral fitness for performance of the duties as a law enforcement officer.

K.S.A. 74-5622 (C): Extent of Petitioner's Rehabilitation

42. The last factor for consideration is the extent of Petitioner's rehabilitation. Petitioner states he went into the US Air Force Reserves and has worked for the Kansas Department of Corrections. He indicates he has sought spiritual counseling, clinical treatment and that he participates in youth coaching and works in community outreach

programs. He describes himself as being a better man now. While these are all positive considerations, they must be weighed with other considerations.

43. Petitioner admitted twelve letters of reference. Only one letter appears to be recently drafted, the others dated between 2012 and 2019. The content of the older, eleven letters appear to be letters of recommendation for job opportunities sought by Petitioner. None address Petitioner's revocation and his actions regarding rehabilitation since revocation. The recent letter, dated March 17, 2021 was written by Retired Master Sergeant David Kearney. Kearney has known the Petitioner 18 years and was a former supervisor at the Kansas City, Kansas Police Department. Kearney describes Petitioner as "a good family man and father" and compliments his work ethic, integrity and character.

44. During his investigation Investigator Brown contacted Kearney. Kearney reiterated the letter's contents but was asked if he was aware Petitioner's Kansas law enforcement certification had been revoked. Kearney indicated he did not and had he known he would not have written the letter. In other words, Petitioner was not forthright and honest with Kearney so that he could obtain a personal benefit from him—a letter to commending Petitioner to the Commission.

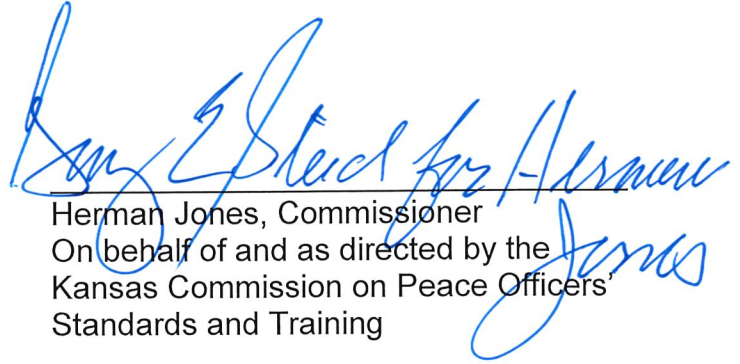
45. Petitioner has failed to provide any relevant documents or testimony to substantiate any claim of rehabilitation, for example, counseling, education or volunteer services. Such evidence assists in the determination of whether Petitioner has recouped the moral fitness for performance of duties as a law enforcement officer (such as the character traits of honesty, integrity, sense of duty, and fairness), thereby preserving public trust in law enforcement officers and confidence in the administration of justice. Without such evidence, it is difficult, if not impossible, to evaluate the extent, if any, of Petitioner's rehabilitation and weigh it against the evidence that Petitioner has not been rehabilitated.

46. To address the extent of his rehabilitation, Paragraph numbers 28 through 41 above are hereby incorporated by reference. That discussion shows Petitioner has shown little or no growth in his rehabilitation as he lacks honesty, integrity, forthrightness, fairness, and respect for others.

47. Based upon the above findings and conclusions, the Commission determines that Petitioner has not shown any significant rehabilitation since his law enforcement officer was revoked in 2012.

The Commission hereby concludes that, based upon the totality of the evidence, the Petition for Reinstatement of Certification as a Law Enforcement Officer filed by Terrence S. Brown should be denied.

IT IS SO ORDERED.


Herman Jones, Commissioner
On behalf of and as directed by the
Kansas Commission on Peace Officers'
Standards and Training

NOTICE OF ADMINISTRATIVE RELIEF

The above Order denying Terrence S. Brown's Petition for Reinstatement of his Certification as a law enforcement officer is a final order. Pursuant to K.S.A. 2020 Supp. 77-529, a party may file with the Commission a petition for reconsideration within 15 days from the date noted below in the Certificate of Service. Such petition must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking judicial review.

Pursuant to K.S.A. 2020 Supp. 77-528, a party may file, if applicable, a petition for stay of effectiveness of the order prior to the expiration of the time in which to file a petition for judicial review. The filing of a petition for a stay of effectiveness is not a prerequisite for seeking judicial review.

NOTICE OF JUDICIAL RELIEF

The above Order denying Terrence Brown's Petition for Reinstatement of his Certification as a law enforcement officer is a final agency action. A party may file within 30 days from the date noted below in the Certificate of Service a petition for judicial review with the appropriate district court as provided in the Kansas Judicial Review Act, K.S.A. 77-601 *et seq.*

The person who may receive service of a petition for reconsideration, a petition for a stay, or a petition for judicial review on behalf of the Commission is:

Gary E. Steed
Executive Director of KS-CPOST
1999 N. Amidon, Suite 350
Wichita, KS 67203.

CERTIFICATE OF SERVICE

This is to certify that on the 12th day of May 2021, a copy of the above Order, Notice of Administrative Relief, and Notice of Judicial Relief was hand-delivered to:

Michelle Meier
Special Assistant Attorney General
KS CPOST Disciplinary Counsel
1999 N. Amidon, Suite 350
Wichita, KS 67203

and deposited in the U.S. mail, first class postage prepaid, and addressed to:

Terrence S. Brown


This is to further certify that on the same day written above the originals of the above Order, Notice of Administrative Relief, and Notice of Judicial Relief were filed in the records of KS-CPOST.



Staff
Kansas Commission on Peace Officers'
Standards and Training