

Attachment #1

BEFORE THE POLICE STANDARDS ADVISORY COUNCIL

STATE OF NEBRASKA,)	
)	Case No. LR-085-11
Complainant,)	
)	
v.)	Council Findings, Conclusions and Decision
)	
)	
TIMOTHY J. DECKER,)	
)	
Respondent.)	

STATE OF NEBRASKA
COUNTY OF HALL

THIS MATTER was commenced by the filing of a formal revocation complaint by the Office of the Attorney General on behalf of the State of Nebraska on or about July 1, 2014. The hearing date before the Police Standards Advisory Council (hereinafter Council) was set for August 20, 2014. The respondent filed an answer to this complaint on or about August 5, 2014. In this answer, the respondent requested and was granted a continuance of the revocation hearing (See Journal Entry & Order dated August 17, 2014).

Prior to the actual revocation hearing in this matter on the merits of the revocation complaint, prehearing conferences were conducted on September 11, 2014, and October 3, 2014. These hearings were conducted in order to address various issues raised by the parties pursuant to Title 79 NAC, Chapter 9, §009. Lt. Col. Thomas Schwarten, the chairperson of the Council, served as the presiding officer over all of these hearings on behalf of the Council. The prehearing conferences and orders are contained in the hearing file of this matter.

After two prehearing conferences, the respective parties agreed to a new hearing date of November 4, 2014. Additionally, the respondent requested that this hearing be conducted in accordance with the formal rules of evidence and supplied a written request that satisfied Neb. Rev. Stat. §84-914 (Reissue 2008). No objection was made by the complainant.

Subsequent to these prehearing conferences, the complainant filed an amended complaint on or about September 15, 2014, and the respondent filed an amended answer on or about September 18, 2014. It is upon the amended complaint and answer that the Council considered the evidence at the revocation hearing on November 4, 2014.

Pursuant to Neb. Rev. Stat. §81-1403(6), §81-1406 and Title 79, NAC, Chapter 9 (Effective June 8, 1998), the Police Standards Advisory Council served as the hearing board for the matter. The Council conducted the revocation hearing at 9:00 a.m. on November 4, 2014. The following Council members were present: Lt. Col. Thomas Schwarten, Nebraska State Patrol, Chief Timothy Larby, Atkinson Police Department, Chief Robert Lausten, LaVista Police Department, Captain Genelle Moore, Lincoln Police Department and Mr. Matthew McCarthy, Citizen Representative, Northeast Community College, Norfolk, Nebraska. Sheriff Jerry Watson, Hall County Sheriff's Office was absent and Sheriff Larry Koranda, Cedar County Sheriff's Office, was absent having recused himself due to a conflict of interest. (See Exhibit 13).

Ms. Jody Gittins of the Nebraska Attorney General's Office appeared on behalf of the complainant. The respondent was present and was represented by his counsel, Mr. Clarence E. Mock.

At the start of the proceeding, the respondent stated that he did not note any procedural defects in the notice that he received from the executive director of Commission on Law Enforcement and Criminal Justice or in the amended complaint filed against him that prejudiced

his preparation of his case. The parties to this action did not contest the Council's authority to hear this case; however, the respondent raised the issue that the statute, Neb. Rev. Stat. §81-1403, and the version of Title 79 of the Nebraska Administrative Code, Chapter 9 that were in effect in 2006, should govern the revocation determination. While the complainant did not challenge this assertion; the Council believes that it must first make this determination so as to render a correct ruling in this revocation matter.

The Council is mindful that the general rule in Nebraska is that statutes are not to be given retroactive application unless the legislature has clearly expressed a contrary intent. Therefore, the statute operates prospectively unless otherwise clearly indicated. See Young v. Dodge County Bd of Sup'rs, 242 Neb. 1 5-6, 493 N.W.2d 160, 163-164 (1992) & Moore v. Peterson, 218 Neb. 615, 617, 358 N.W.2d 193, 195 (1984). Statutes covering substantive matters in effect at the time of the operative facts govern and not the later enacted statutes. See State ex rel. B.M. v. Brian F., 288 Neb. 106, 846 N.W.2d 257 (2014). The Council sees no justification for departing from this standard when reviewing administrative law. The Council has been presented no evidence from the complainant that the legislature intended the most recent revision of 81-1403 to be applied retroactively or that the Crime Commission intended that the current revision of Chapter 9 that took effect on December 31, 2012, to be applied retroactively. Therefore, it is the conclusion of the Council that the grounds and process outlined in §81-1403 and Title 79 of the Nebraska Administrative Code, Chapter 9, in effect in 2006 should govern this matter. These findings are premised on this version that was submitted as evidence. [Exhibit 12]

THE MERITS

The rules governing proceedings for the revocation of a Law Enforcement Officer Certificate in effect in 2006 do not specify the State of Nebraska's burden of proof before the Council. Title 79 NAC, Chapter 9 §010.09, indicates that the Crime Commission is to review the Council's findings under a "preponderance of the evidence" standard. This may suggest that the "preponderance of the evidence" would be the appropriate burden of proof for the proceedings before the Council. However, case law from the Nebraska Supreme Court provides that the burden in professional license revocation proceedings is "clear and convincing evidence." See Hauser v. Neb. Police Stds. Advisory Council, 269 Neb. 541, 694 N.W.2d 171 (2005) and Davis v. Wright, 243 Neb. 931, 503 N.W.2d 814 (1993). As such, the State of Nebraska was held to the "clear and convincing evidence" standard.

The respondent through his amended answer and in the prehearing conferences has admitted that the following allegations as contained in the amended complaint are true:

1. The respondent, Timothy J. Decker, was awarded his Law Enforcement Certification on April 17, 2000, and his Nebraska Law Enforcement Training Center Management Certificate on March 11, 2011.
2. The respondent worked as a deputy sheriff in Thurston County, Nebraska, until August 1, 2001, when he accepted a law enforcement position in South Dakota.
3. The respondent returned to Nebraska to accept a deputy sheriff's position with Thurston County, Nebraska, on or about May 24, 2006, and resigned to work outside law enforcement on or about December 27, 2007.
4. The respondent returned to Thurston County to take a part-time officer position on April 10, 2008, and became a full-time officer on October 1, 2009.
5. The respondent became a part-time officer for Thurston County on January 5, 2011 and a full-time officer for Dakota County Sheriff's Office, Dakota County, Nebraska, on January 6, 2011, and resigned his position with Thurston County on January 3, 2012.
6. The respondent remains employed by the Dakota County Sheriff's Office.

7. While employed as a law enforcement officer, the respondent is and was responsible for performing the duties of a law enforcement officer, including those specified in Neb. Rev. Stat. §81-1401(6)(a) (Cum. Supp. 2012).
8. On September 27, 2011, Mr. William Muldoon, Director of the Nebraska Law Enforcement Training Center filed an informal complaint with the Nebraska Commission on Law Enforcement and Criminal Justice requesting that the respondent's law enforcement and management certificates be revoked.
9. Mr. Muldoon had determined that the respondent, who was a certified law enforcement officer in South Dakota, had been involved in an off-duty incident that occurred in September, 2005. This off-duty incident resulted in the respondent indicted by a grand jury and charged with Simple Assault, a class I misdemeanor, on November 10, 2005, in Union County, South Dakota.
10. Court documents reflect that the respondent pled guilty to a reduced charge of disorderly conduct, a class II, misdemeanor and was convicted of this offense on June 15, 2006. He was sentenced to pay a fine of \$144.00 and to surrender his South Dakota Law Enforcement Certificate.
11. On May 24, 2006, prior to the respondent's guilty plea, the respondent signed an Applicant Attestation Form which was sworn to by the respondent and notarized. The respondent swore that he had "... read the Nebraska Code of Ethics and Attest that no acts or events have transpired in my personal life that would be in violation of the Nebraska Code of Ethics and that I will abide by the Code of Ethics during my active certification status."
12. On October 3, 2011, the Executive Director of the Nebraska Commission on Law Enforcement and Criminal Justice sent notice of the complaint to the respondent by certified mail. Said notice provided copies of the pertinent statutes and rules and regulations concerning the procedures of the Commission and the Police Standards Advisory Council and his rights thereunder.
13. On April 28, 2014, the Executive Director of the Nebraska Commission on Law Enforcement and Criminal Justice sent notice that the investigation involving the respondent was completed and that a formal complaint would be filed against him. This notice informed the respondent of his rights under state statute and rules and regulations concerning the procedures of the Commission and the Police Standards Advisory Council and his rights thereunder.

The facts to this case are not disputed; however, the ultimate conclusions based upon these facts are disputed. Upon consideration of the facts, the Council is called upon to determine whether the respondent (1) was required to disclose his criminal investigation and grand jury

indictment for Simple Assault when he completed his "Applicant Attestation Form;" and (2) whether his actions in not disclosing his criminal investigation and resulting disorderly conduct conviction warrant revocation of his law enforcement certificates pursuant to Neb. Rev. Stat. 81-1403(6). For clarity of the record, the Council's findings and conclusions on these issues are discussed separately.

APPLICANT ATTESTATION FORM

Counsel for the respondent has argued that the respondent only had a duty to disclose his South Dakota criminal indictment to the agencies which hired him and that there was no other duty to disclose to any other agency; however, that argument has overlooked the fact that it is the Council that promulgates various documents, including the attestation form, that must be submitted upon applications for training, reactivation and certification. The Council has been given the regulatory responsibilities of law enforcement certification and training. See Neb. Rev. Stat. §81-1406. These requirements for gaining certification and reactivation of certificates are embodied in Title 79 of the Nebraska Administrative Code, which was promulgated by this body and approved by the Crime Commission. The completion of the attestation form is a requirement of Title 79 NAC, Chapter 4, §004.02B(1) (Effective June 26, 2005). As such, the respondent did have an affirmative duty to disclose those acts as prescribed in the attestation form. The question before this body is whether the respondent failed to meet this responsibility.

The record before the Council reflects that the respondent signed the attestation form May 24, 2006. The date was after the respondent had been indicted by a grand jury in Union County, South Dakota for Simple Assault, a class I misdemeanor. As previously noted, the attestation form provides the applicant to swear under oath that "no acts or events have transpired in my personal life that would be in violation of the Nebraska Law Enforcement Code of Ethics and

that I will abide by the Code of Ethics during my active certification status." [Paragraph #11 of admitted facts and Exhibit #7]. The Nebraska Law Enforcement Officer Code of Ethics provides in part that the officer will "safeguard lives," "conduct himself at all times in a manner that does not damage or have the likely result of damaging...the reputation of my agency or myself," and that the officer "shall obey the...criminal laws of the city, county, state and federal government."

The complainant alleges that the respondent should have disclosed this information at the time the attestation was completed; however, this argument ignores the basic premise of the American criminal justice system that one is innocent until proven guilty. The fact that there was an indictment for simple assault does not require one to conclude that the respondent was guilty of such conduct simply because he was indicted. As representatives of the law enforcement community, the Council is ever mindful that an indictment does not equate to guilt beyond a reasonable doubt. The testimony offered at this hearing reflects that the respondent signed the attestation form while believing that he was innocent of the indicted charge.

Sheriff Kleinberg's testimony provides insight behind the accusation made against the respondent. Sheriff Kleinberg, who was Chief Deputy for Thurston County at the time the respondent completed the attestation form, was aware of the allegation made against the respondent and was aware of the general circumstances that occurred during the South Dakota incident. [Hearing Transcript, Kleinberg testimony, pages 28-29]. Sheriff Kleinberg stated that the respondent informed him that the incident arose when the respondent was off-duty at a bar in Union County, South Dakota, and that a convicted pedophile was in this bar as well. Words were exchanged between the two parties and a "scuffle" broke out between the respondent and the other party, wherein the respondent broke his ankle. [Hearing Transcript, Kleinberg testimony, page 29]. Sheriff Kleinberg further testified that the respondent stated that he was acting in self

defense and that based upon this, the respondent had pled not guilty to the charge of simple assault. [Hearing Transcript, Kleinberg testimony, page 30, lines 15-21]. Sheriff Kleinberg's testimony regarding this matter was made without objection or challenge from the complainant.

Sheriff Kleinberg testified that he has known the respondent since he was in basic training with the respondent and has worked with him as a law enforcement officer over the years and that it did not appear that the respondent was trying to hide anything from either Sheriff Obermeyer or himself. And, Sheriff Kleinberg stated that the respondent was "Very much a man of his word." [Hearing Transcript, Kleinberg testimony, page 31, lines 1-14]. Additionally, Sheriff Kleinberg characterized the respondent as having a reputation of being honest and truthful. [Hearing Transcript, Kleinberg testimony, page 32, lines 10-12]. Again, Sheriff Kleinberg's testimony regarding this matter was made without objection or challenge from the complainant.

Deputy Doug Johnson, an investigative supervisor with the Dakota County Sheriff's Office, stated that the respondent had a reputation of truthfulness as well. Johnson described the respondent as "honest as the day is long." [Hearing Transcript, Johnson testimony, page 49, lines 18-23]. Johnson's characterization of the respondent was not challenged by the complainant.

The record before the Council demonstrates that the respondent, who is characterized as an honest and truthful person and law enforcement officer, completed the attestation form on May 24, 2006, swearing that "no acts or events have transpired in my personal life that would be in violation of the Nebraska Law Enforcement Code of Ethics..." As previously mentioned, the Nebraska Law Enforcement Officer Code of Ethics provides in part that the officer will "safeguard lives," "conduct himself at all times in a manner that does not damage or have the

likely result of damaging...the reputation of my agency or myself," and that the officer "shall obey the...criminal laws of the city, county, state and federal government." If it was the respondent's belief that he acted in self defense when confronted by a convicted pedophile, then he would not have been in violation of this code when he signed it. As such, he did not fail to disclose and did not falsely swear when he completed the attestation form. Had the attestation form included that the respondent disclose citations, arrests or charges, then the matter would result in a different finding; however, that is not the situation before the Council.

It should be noted that it was the complainant's burden to demonstrate to this body, by clear and convincing evidence that the events were such as to require this disclosure of his indictment. The complainant offered no evidence to refute the self defense claim. No witnesses were called or documentary evidence offered that would contradict the respondent's belief of self defense when he completed the attestation form. Consequently, the allegations made in the amended complaint that the respondent's failure to provide this information about his South Dakota conviction provides good and sufficient reason to warrant revocation of his certificates are without merit. The respondent was not convicted and maintained a belief that he acted in self defense at the time he completed the attestation form. Therefore, it does not constitute separate grounds for revoking the respondent's certificates.

DISORDERLY CONDUCT CONVICTION AS GROUNDS FOR REVOCATION

The next issue that is presented to the Council is whether the respondent's conviction for disorderly conduct warrants revocation of his law enforcement and management certificates.

The statutory grounds in effect in 2006 permit revocation of an officer's certificate for incompetence, neglect of duty and emotional, mental or physical incapacity. See Neb. Rev. Stat.

§81-1403(6) (Cum. Supp. 2006). The grounds as outlined in Title 79 of the Nebraska Administrative Code, Chapter 9 (Effective date June 8, 1998), merely restate the statutory grounds.

There is no dispute that the respondent was indicted for simple assault by a Union County grand jury on November 10, 2005. [Exhibit 5] The fact that a grand jury heard evidence and returned an indictment against the respondent is of limited value. The respondent contended that he acted in self defense and this body has no way of knowing whether this argument was ever presented to the grand jury to consider or even what information that the grand jury relied upon. As law enforcement practitioners, we are mindful that the prosecutor can present whatever evidence he or she desires to the grand jury. The ultimate test to the veracity of the grand jury indictment is by having a trial where both sides are able to be present and whereby evidence is offered and contested. Such a test did not take place.

Instead of a trial, the respondent pled guilty, through his attorney, to disorderly conduct, a class 2 misdemeanor. He was sentenced to pay a \$144.00 fine and agreed to surrender his South Dakota law enforcement certificate. [Exhibit 6]

Based upon South Dakota law, SDCL 22-13-1(1), a person commits the offense of disorderly conduct when he "did intentionally cause serious public inconvenience, annoyance, or alarm to any other person, or creates a risk thereof by engaging in fighting or in violent or threatening behavior." [Exhibit 6] Was the respondent's plea of guilty based upon his actions that constituted (1) a serious public inconvenience, annoyance, or alarm to any other person, or was it based upon his actions that (2) created a risk thereof by engaging in fighting or in violent or threatening behavior? The record before this Council is not clear on this fact. In the closing arguments, the complainant stated that the conviction was based upon the respondent's assault; however, the

respondent was never convicted of assault. The respondent's counsel urged this body to consider that the respondent's plea was one of expediency to dispose of the case; however, arguments are not evidence. The complainant presented no evidence as to the factual basis for this conviction. And so the Council is left with the evidence as presented by the respondent.

As previously mentioned in these findings, the respondent was in a bar when there was a confrontation between him and a convicted pedophile. This confrontation escalated into a "scuffle" between the two, wherein, the respondent suffered a broken ankle. A very important question remains unanswered; who was the initial instigator? This distinction is of critical importance to the determination.

If the evidence reflected that the respondent was the initial instigator, one could argue that his actions could constitute a neglect of duty of a law enforcement officer to refrain from violating the laws or perhaps, constitute grounds demonstrating emotional incapacity; however, if he wasn't the instigator, then the request to revoke his certificates is tenuous at best.

While not dispositive, the record reflects that the respondent's underlying behavior and his conviction was known to the Thurston County Attorney [Hearing Transcript, Kleinberg testimony, page 30, lines 8-14] and was independently investigated by the Dakota County Attorney's Office [Hearing Transcript, Kleinberg testimony, pages 36 and 37]. Neither office expressed concern.

The complainant could have attempted to prove the underlying facts that resulted in the disorderly conduct conviction or even attempted to prove the alleged assault. If proven, it could have served as a basis for revocation. See Hauser v. Nebraska Police Standards Advisory Council and the Nebraska Commission on Law Enforcement and Criminal Justice, 269 Neb. 541, 694 N.W.2d 171 (2005). However, that was not done in this case.

There is no evidence before the Council to reflect that respondent was incompetent or conducted himself in such a way to demonstrate that he should be considered emotionally, mentally or physically incapable of performing the duties of a law enforcement officer. The evidence is to the contrary. Sheriff Kleinberg testified that the respondent was an excellent leader and respected deputy while he worked for Thurston County [Hearing Transcript, Kleinberg testimony, page 24, lines1-9] and that he was respected for his work in South Dakota. [Hearing Transcript, Kleinberg testimony, page 32, lines1-9] Deputy Johnson expressed no reservation in the respondent and stated that he knew of nothing of the respondent's behavior that would constitute mental, physical or emotional incapacity. [Hearing Transcript, Johnson testimony, page 50, lines1-4] Deputy Johnson stated that the respondent was a competent officer. [Hearing Transcript, Johnson testimony, page 50, lines 8-10]

One might consider the relinquishment of the respondent's South Dakota law enforcement certificate should serve as a basis for revocation; however, it should be pointed out the manner in which the respondent surrendered his South Dakota Law Enforcement Certificate is vague. It was clear that he did agree to surrender it as part of his conviction to disorderly conduct [Exhibit 6]; however, the hearing transcript also reflects that his certificate was due to expire due to the respondent's inactivity as a law enforcement officer in the state of South Dakota. [Hearing Transcript, Kleinberg testimony, pages 29-30] While the relinquishment of a law enforcement officer certificate could constitute grounds for revocation under the current version of Title 79 NAC, Chapter 9, §003.5 (Effective December 31, 2012), this ground did not exist in the version of Title 79 NAC, Chapter 9 (Effective June 8, 1998). As such, it was not a basis for the Council to consider.

It was the complainant's burden to demonstrate by clear and convincing evidence that the respondent's conduct constituted incompetence, neglect of duty or emotional, mental or physical incapacity. Based upon the record before this body, the complainant has failed to meet this burden.

Wherefore, it is the judgment of this Council that the Respondent's law enforcement officer and management certificates should not be revoked and that the revocation action should be dismissed.

Order

Based on the foregoing Findings and Conclusions, the Police Standards Advisory Council hereby finds and orders that the Nebraska Law Enforcement Officer Certificate and Management Certificate issued to Timothy J. Decker not be revoked and the revocation complaint be dismissed, subject to the review and approval of the Nebraska Commission on Law Enforcement and Criminal Justice.

Dated this 8th day of December, 2014.

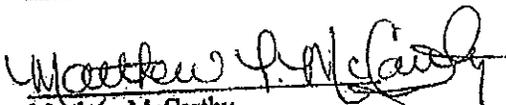
By the Council:



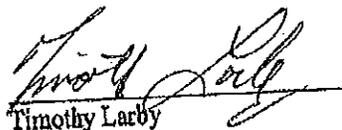
Thomas Schwarten
Chairperson & Presiding Officer



Robert Lausten
Member



Matthew McCarthy
Member



Timothy Larby
Member

Genelle Moore
Member

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Wherefore, it is the judgment of this Council that the Respondent's law enforcement officer and management certificates should not be revoked and that the revocation action should be dismissed.

Order

Based on the foregoing Findings and Conclusions, the Police Standards Advisory Council hereby finds and orders that the Nebraska Law Enforcement Officer Certificate and Management Certificate issued to Timothy J. Decker not be revoked and the revocation complaint be dismissed, subject to the review and approval of the Nebraska Commission on Law Enforcement and Criminal Justice.

Dated this 29 day of December, 2014.

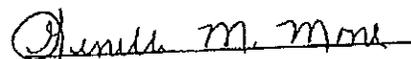
By the Council:

Thomas Schwarten
Chairperson & Presiding Officer

Robert Lausten
Member

Matthew McCarthy
Member

Timothy Larby
Member


Genelle Moore
Member

Attachment #2

BEFORE THE POLICE STANDARDS ADVISORY COUNCIL

STATE OF NEBRASKA,)	CASE NO. LR-085-11
Complainant,)	
vs.)	TRANSCRIPT
TIMOTHY J. DECKER,)	(Pages 1-60, incl.)
Respondent.)	

PROCEEDINGS HAD BEFORE THE LT. COL. THOMAS SCHWARTEN, PRESIDING OFFICER; CHIEF TIMOTHY LARBY; CHIEF ROBERT LAUSTEN; MR. MATTHEW MCCARTHY; and CAPT. GENELLE MOORE at the Nebraska Law Enforcement Training Center, Grand Island, Nebraska 68801, on November 4, 2014, commencing at 9:09 a.m.

APPEARANCES:

For the Plaintiff:	MS. JODY GITTINS OFFICE OF NEBRASKA ATTORNEY GENERAL 2115 State Capitol P.O. Box 98920 Lincoln, NE 68509-8920
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For the Defendant:	MR. CLARENCE E. MOCK, III JOHNSON & MOCK 307 North Oakland Avenue P.O. Box 62 Oakland, NE 68045
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I N D E X

1				
2	OPENING STATEMENTS.....			Pages 8 to 21
3	CLOSING ARGUMENTS.....			Pages ^ to ^

4	<u>WITNESSES</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
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FOR THE RESPONDENT:

5					
6	Sheriff Chris Kleinberg...	23	39	43	-
7	Deputy Doug Johnson.....	45	-	-	-

8	<u>EXHIBITS:</u>	<u>Marked</u>	<u>Offered</u>	<u>Ruled</u>	<u>Found</u>
9					<u>on</u>

10	1. 4/17/2000 Certificate...	3	13	13	*
11	2. 3/11/2011 Certificate...	3	13	13	*
12	3. Change of Status Reports	3	13	13	*
13	4. Complaint Request.....	3	13	13	*
14	5. Indictment.....	3	13	13	*
15	6. Court Documents.....	3	13	13	*
16	7. Attestation Form.....	3	13	13	*
17	8. Signed Code of Ethics...	3	13	13	*
18	9. 10/3/11 Complaint Letter	3	13	13	*
19	10. 4/28/14 Complaint Letter	3	13	13	*
20	11. 7/17/14 Complaint Letter	3	13	13	*
21	12. Regulations.....	3	16	17	*
22	13. Recusal Letter.....	7	7	7	*

*All exhibits retained by Ms. Kay Fielding in a separate file.

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1 (At 9:09 a.m. on November 4, 2014, at the Law
2 Enforcement Training Center in Grand Island, Nebraska,
3 before the Police Standards Advisory Council, with Ms. Jody
4 Gittins appearing as counsel for the complainant and
5 Mr. Clarence E. Mock appearing as counsel for the
6 respondent, and the respondent being personally present, the
7 following proceedings were had:)

8 (Exhibits 1 - 12 marked for identification.)

9 LT. COL. SCHWARTEN: Thank you. Let the
10 record reflect that the hearing for Case No. LR-085-11 is
11 beginning at 9:09 a.m. on November 4, 2014. I'd like to
12 note the following Council members are present here today:
13 Myself, Lieutenant Colonel Tom Schwarten, Nebraska State
14 Patrol; Chief Timothy Larby, Atkinson Police Department;
15 Chief Robert Lausten, La Vista Police Department;
16 Mr. Matthew McCarthy, Northeast Community College in
17 Norfolk; and Captain Genelle Moore, Lincoln Police
18 Department. Sheriff Jerry Watson is absent and unable to
19 attend here today.

20 The Council will hear this matter pursuant to
21 Title 79, the Nebraska Administrative, Chapter 9, Revocation
22 of Law Enforcement Officers. The allegations for revocation
23 are contained in the complaint filed by the State of
24 Nebraska on July 1, 2014. I'll further state for the record
25 that the Council members each have a copy of this complaint.

1 The Council is here pursuant to its authority as stated in
2 Nebraska Revised Statute Section 81-1403 and its related
3 statutes.

4 David Stolz is here as Legal Advisor to the
5 Council and pursuant to Chapter 9. He will be ruling on any
6 evidentiary issues that arise in this hearing. Jody Gittins
7 is appearing on behalf of the State of Nebraska. I will
8 further note that the Respondent, Mr. Decker, is present and
9 is represented by counsel, Mr. Clarence E. Mock. Also, I
10 would note for the record that our court reporter here today
11 is Amanda L. Yendra. Thank you, Amanda, for being here.

12 Does either party contest to the Council's
13 authority to hear this type of case? Ms. Gittins?

14 MS. GITTINS: No.

15 LT. COL. SCHWARTEN: Mr. Mock?

16 MR. MOCK: No.

17 LT. COL. SCHWARTEN: I would note that for the
18 record there is no objection in the Council's authority to
19 hear this case.

20 Mr. Decker, I would like to go over your
21 administrative -- your rights in this administrative hearing
22 before we begin. You have the right to be heard either in
23 person or by counsel, who you have hired at your own
24 expense. You also have the right to formal rules of
25 evidence to govern these proceedings. I will note for the

1 record you have made such a motion, which was granted at the
2 prehearing conference. You have the right to notice, and
3 that is to receive a statement from the State of Nebraska
4 Commission on Law Enforcement and Criminal Justice detailing
5 or justifying its actions in this matter. In this case it
6 would be a letter from the Executive Director of the Crime
7 Commission informing you that a revocation complaint was
8 going to be filed against you and that a revocation hearing
9 was going to be convened before the Police Standards
10 Advisory Council. Do you understand these rights?

11 MR. DECKER: Yes.

12 LT. COL. SCHWARTEN: Thank you. Did you
13 receive such notice via the formal complaint and notice of
14 hearing stating the reason or reasons for the
15 decertification?

16 MR. DECKER: Yes.

17 LT. COL. SCHWARTEN: Thank you. Did you
18 notice any defects in this letter that prevented you from
19 preparing for your case?

20 MR. DECKER: No.

21 LT. COL. SCHWARTEN: I would note for the
22 record that there were no defects noted by Mr. Decker for
23 preparing for his case.

24 Additionally, you have the right to this formal
25 hearing where the burden will be on the State of Nebraska --

1 excuse me -- to prove by clear and convincing evidence that
2 the allegations contained in the complaint warrant the
3 revocation of your law enforcement certificates based upon
4 the grounds contained in Nebraska Revised Statutes
5 Section 81-1403, Subsection 6.

6 At this hearing you have the right to present
7 evidence and the right to cross-examine any witnesses that
8 may testify on behalf of the State, a right to a copy of the
9 testimony presented in this hearing at a cost affixed to
10 yourself, and the right to the Council's findings and a
11 right for the case reviewed by the Nebraska Commission on
12 Law Enforcement and Criminal Justice at its next available
13 meeting, which has been set for January 23, 2015, and you
14 have the right to seek judicial review thereafter. Do you
15 understand those rights?

16 MR. DECKER: Yes.

17 LT. COL. SCHWARTEN: The Police Advisory
18 Standards Council shall act as hearing board for this
19 appeal. Neither I, nor any other Council member present
20 today will be a witness for either side, and I'm not aware
21 of any matter which I believe may be grounds for challenge
22 by either side against me or any other members present. I
23 will note that Sheriff Larry Koranda of the Cedar County
24 Sheriff's Office, who is a member of the Police Standards
25 Advisory Council, has recused himself from this hearing

1 today.

2 I would like to have his letter marked and
3 received into evidence, please.

4 MR. STOLZ: Mr. Chairman, I will mark this --
5 based on prehearing conferences, this will be marked as
6 Exhibit 12. I offer to show it to Council right now.

7 MR. MOCK: I think it would be 13.

8 MR. STOLZ: Thirteen? That's easy enough.
9 (Exhibit 13 marked for identification.)

10 LT. COL. SCHWARTEN: Thank you, Mr. Stolz.
11 Is there any objections to Exhibit 13?

12 MS. GITTINS: State has no objections.

13 MR. MOCK: No objection.

14 LT. COL. SCHWARTEN: Thank you, sir. I will
15 receive the item marked Exhibit 13 from Sheriff Larry
16 Koranda requesting recusal from this hearing.

17 (Exhibit 13 is made a part of this
18 transcript and is found in a separate
file.)

19 LT. COL. SCHWARTEN: I have not had any
20 personal information conveyed to me, nor do I have any
21 personal knowledge of this case. Does any Council member
22 have any personal knowledge of this case?

23 Chief Timothy Larby?

24 CHIEF LARBY: No.

25 LT. COL. SCHWARTEN: Chief Robert Lausten?

1 CHIEF LAUSTEN: No.

2 LT. COL. SCHWARTEN: Mr. Matthew McCarthy?

3 MR. McCARTHY: No.

4 LT. COL. SCHWARTEN: Captain Genelle Moore?

5 CAPT. MOORE: No.

6 LT. COL. SCHWARTEN: Does either side have any
7 further questions or challenge for cause against any member
8 of the Council? Ms. Gittins?

9 MS. GITTINS: No.

10 LT. COL. SCHWARTEN: Mr. Mock?

11 MR. MOCK: Mr. Chairman, I assume that you
12 have a copy and the members have a copy of the answer that
13 was filed to the complaint?

14 LT. COL. SCHWARTEN: They do, sir.

15 MR. MOCK: Thank you. I have no questions.

16 LT. COL. SCHWARTEN: Thank you. Does either
17 side wish to address any preliminary matters prior to the
18 presentation of evidence? Ms. Gittins?

19 MS. GITTINS: No.

20 LT. COL. SCHWARTEN: Mr. Mock?

21 MR. MOCK: No.

22 LT. COL. SCHWARTEN: Thank you. At this time
23 parties may make any opening statements. Ms. Gittins, your
24 opening statement, please?

25 MS. GITTINS: Thank you, Mr. Chairman. I am

1 Jody Gittins, Assistant Attorney General for the State of
2 Nebraska. Members of the Council, I'm going to give a brief
3 description of this case. And then Mr. Mock, counsel for
4 the Respondent, and I have agreed on exhibits being entered
5 into evidence without objection. Those exhibits have been
6 marked 1 through 12, 1 through 11 being the exhibits of the
7 State. Exhibit 12 is the exhibit of the Respondent.

8 This case is about the failure of Timothy Decker
9 to conduct himself in a matter consistent with a law
10 enforcement officer. Mr. Decker was awarded his law
11 enforcement certificate on April 17, 2000, as evidenced by
12 Exhibit 1. Mr. Decker was awarded his Law Enforcement
13 Training Center Management certificate on March 11, 2011, as
14 identified in Exhibit 2.

15 Mr. Decker was employed by the Cedar County
16 Sheriff's Office as a part-time deputy sheriff from
17 February 8, 1999, until he resigned at the request of the
18 agency on January 6, 2000. Mr. Decker was employed by the
19 Thurston County Sheriff's Office from March 11, 2000, until
20 August of 2001 when he resigned to accept a law enforcement
21 position with another law enforcement agency in
22 South Dakota.

23 On May 24, 2006, Mr. Decker became employed by the
24 Thurston County Sheriff's Office as a full-time officer
25 until his resignation on December 27, 2007. On April 10,

1 2008, Mr. Decker was again hired by the Thurston County
2 Sheriff's Office as a part-time officer. On October 1,
3 2009, the Thurston County Sheriff's Office employed
4 Mr. Decker as a full-time officer. On January 5, 2011,
5 Mr. Decker had a change in status from a full-time officer
6 to a part-time officer in Thurston County Sheriff's Office.
7 On January 3, 2012, Mr. Decker resigned his position with
8 the Thurston County Sheriff's Office.

9 On January 6, 2011, Mr. Decker accepted a deputy
10 sheriff's position with the Dakota County Sheriff's
11 Department and is currently in that position. While so
12 employed, Mr. Decker is and was responsible for employing
13 the duties of a law enforcement officer. All of the
14 information contained in those preceding paragraphs are in
15 the change of status reports, which is filed as Exhibit 3.

16 On September 27, 2011, Mr. William Muldoon, in his
17 capacity as director of the Nebraska Law Enforcement
18 Training Center, sent a letter to Nebraska Commission on Law
19 Enforcement and Criminal Justice, requesting the Commission
20 to file a formal complaint against Mr. Decker to revoke his
21 law enforcement certificates. This is identified as
22 Exhibit 4.

23 Mr. Muldoon had determined that Mr. Decker, a
24 certified law enforcement officer in South Dakota at the
25 time of the incident, had been under investigation for an

1 assault that occurred in September 2005 in South Dakota
2 while Mr. Decker was off duty. Mr. Muldoon also discovered
3 as a result of that investigation Mr. Decker was indicted
4 and charged with simple assault, a Class 1 misdemeanor, on
5 November 10, 2005, in Union County, South Dakota, by the
6 Union County grand jury. That grand jury indictment is
7 attached as Exhibit 5.

8 Certified court documents reflect that Mr. Decker
9 pled guilty to a reduced charge of disorderly conduct, a
10 Class 2 misdemeanor, and was convicted of said offense on
11 June 15, 2006, and subsequently sentenced to pay a fine of
12 \$144 and to surrender his South Dakota Law Enforcement
13 certificate. Mr. Decker's engaging in fighting or in
14 violent, threatening behavior resulted in his conviction for
15 disorderly conduct under the South Dakota Law CL 22-13-1(1)
16 as reflected in the court documents which have been marked
17 as Exhibit 6.

18 On May 24, 2006, prior to Mr. Decker's guilty
19 plea, Mr. Decker signed an application attestation form,
20 which was sworn to by him and notarized. This reactivated
21 Mr. Decker's Nebraska Law Enforcement certification.
22 Mr. Decker swore that he had "read the Nebraska Code of
23 Ethics and attests that no acts or events have transpired in
24 my personal life that would be in violation of the Nebraska
25 Law Enforcement Code of Ethics and that I will abide by the

1 Code of Ethics during my active certification." That
2 attestation form has been marked Exhibit 7.

3 Mr. Decker also signed a copy of Nebraska Law
4 Enforcement Officer Code of Ethics on May 24, 2006. A copy
5 of that has been marked Exhibit 8.

6 On October 3, 2011, a certified letter was sent
7 from the executive director of the Commission on Law
8 Enforcement and Criminal Justice to Mr. Decker, informing
9 him of the complaint and his rights. Mr. Decker's
10 representative signed for that letter. A copy of that
11 letter and the certified receipt is attached as -- or is
12 marked as Exhibit 9.

13 On April 28, 2014, a certified letter was sent
14 from the executive director of Commission of Law Enforcement
15 and Criminal Justice to Mr. Decker, informing him that a
16 formal complaint will be filed, informing him of his right
17 under the statute and the rules and regulations regarding
18 the procedures of the Commission and the Police Standards
19 Advisory Council. Mr. Decker signed for that letter. A
20 copy of that letter and a copy of the return receipt are
21 marked as Exhibit 10.

22 On July 17, 2014, a certified letter was sent from
23 the executive director of the Commission on Law Enforcement
24 and Criminal Justice to Mr. Decker, informing him that a
25 formal complaint had been filed; the date, time, and place

1 of hearing on the formal complaint; and his rights.
2 Mr. Decker signed for that letter. A copy of that letter
3 and his signature card are marked Exhibit 11.

4 This revocation proceeding is based upon the
5 conviction of Mr. Decker on the charge of disorderly conduct
6 and his failure to disclose his indictment at the time he
7 signed his attestation form and code of ethics.
8 Mr. Decker's conviction for disorderly conduct and his
9 failure to disclose the indictment provide good and
10 sufficient reason to revocation of his law enforcement
11 certificate as authorized by Nebraska Revised Statute
12 Section 81-1403. At this time, I would ask that the Council
13 accept into evidence State's Exhibits marked 1 through 11.

14 MR. MOCK: No objection.

15 LT. COL. SCHWARTEN: Thank you, Mr. Mock.
16 Thank you, Ms. Gittins. Exhibits 1 through 11 are received.

17 (Exhibits 1-11 are made a part of this
18 transcript and are found in a separate
19 file.)

20 LT. COL. SCHWARTEN: Anything further,

21 Ms. Gittins?

22 MS. GITTINS: No. That would conclude my
23 opening remarks.

24 LT. COL. SCHWARTEN: Thank you. Mr. Mock, you
25 may make any opening statements at this time or you may
reserve it for the start of your case in chief. Which would

1 you prefer?

2 MR. MOCK: I prefer to just make a brief
3 statement at this time.

4 LT. COL. SCHWARTEN: Go ahead, please, sir.

5 MR. MOCK: Thank you. Good morning, Members
6 of the Council. I think the time line and understanding of
7 it is really essential in this particular case because this
8 matter began in an incident that occurred in September 2005,
9 in which Mr. Decker was accosted in a restaurant bar
10 establishment in South Dakota and defended himself against
11 attack by an individual there in that bar who he had
12 investigated before for previous crimes.

13 It is true that he was charged by the prosecutor
14 in South Dakota with simple assault and -- but he pled not
15 guilty to that charge, which was not told to you by
16 Ms. Gittins, and he maintained that not guilty plea until
17 June of 2006. The reason why he maintained that not guilty
18 plea is because he raised the defense of self-defense
19 through his counsel at that time and litigated this matter
20 clear through into the spring of 2006.

21 At that time he became aware that there was a job
22 opening in Thurston County and decided to explore that job
23 opening. And how he explored that job opening was by
24 contacting then-Sheriff Chuck Obermeyer in Thurston County
25 and also the Chief Deputy Chris Kleinberg about the opening.

1 And at that time he disclosed exactly what his position was
2 related to this litigation in South Dakota. He did not
3 withhold any information from either Sheriff Obermeyer or
4 Chief Deputy Kleinberg.

5 They had every opportunity to explore anything
6 they wanted to about that litigation in South Dakota, and it
7 just simply was not a secret. Now, I'm not aware that
8 whether or not at the time that this investigation was
9 conducted that anyone ever talked to Sheriff Obermeyer or
10 chief -- or then-Chief Deputy Chris Kleinberg, now the
11 county sheriff in Dakota County. But if they had, I think
12 you will learn that through Mr. -- Sheriff Kleinberg, who is
13 here to testify, that they had discussions with Tim Decker
14 about exactly what the situation was in South Dakota. And
15 they had known him for some time, and they decided to go
16 ahead and hire him.

17 So on May 24 of 2006, I think it's really
18 important to understand that at that time Tim Decker had
19 pled not guilty, was still of the belief and is of the
20 belief today that his conduct was simply one of
21 self-defense, and that he didn't think that he had violated
22 the law and was intending to determine how that case could
23 be disposed of in South Dakota at the time he signed the
24 Code of Ethics and his paperwork to become an officer in
25 Thurston County.

1 Well, in June of 2006 on the advice of his
2 counsel, the matter was disposed of by Tim pleading -- not
3 personally, but through his counsel -- under South Dakota's
4 misdemeanor practice for petty offenses in which he was to
5 receive and did receive a fine of \$144 and agreed that he
6 would no longer have a South Dakota certification, which
7 would have expired anyway. And so that conviction and the
8 sentence was all disclosed to Sheriff Obermeyer and to
9 Chris Kleinberg as well.

10 And so, since that time, Tim Decker has conducted
11 himself admirably, effectively, and appropriately as a law
12 enforcement officer, and for that reason, at the conclusion
13 of this case, we're going to ask you to dismiss this
14 complaint.

15 Exhibit 12, which I will offer to you, is also
16 somewhat important, I think, because the law has changed in
17 terms of your regulatory authority between 2006 and December
18 of 2012. And I would ask the Chair to take administrative
19 notice of the regulations that were in effect in May of
20 2006.

21 LT. COL. SCHWARTEN: So noted, sir. Thank
22 you.

23 MR. MOCK: Because when you compare the
24 regulations that were in existence in 2006 to the
25 regulations that exist now, you will notice that they are

1 very different in many respects. May I approach?

2 LT. COL. SCHWARTEN: Please.

3 MR. MOCK: I would offer Exhibit 12.

4 LT. COL. SCHWARTEN: Thank you, sir.

5 Ms. Gittins, any objection?

6 MS. GITTINS: None.

7 LT. COL. SCHWARTEN: Thank you. Exhibit 12 is

8 received.

9 (Exhibit 12 is made a part of this
10 transcript and is found in a separate
11 file.)

12 LT. COL. SCHWARTEN: Mr. Mock, please

13 continue.

14 MR. MOCK: In 2006, if you go look at the
15 regulations that existed at that time, the Council's
16 authority under the regulations was -- simply mirrored the
17 provisions of 81-1403, which are still basically the same
18 today, that an officer's certification cannot be suspended
19 or revoked except for incompetence; physical, mental, or
20 emotional incapacity; the conviction of a felony or neglect
21 of a duty, period.

22 Now, you will note that the regulations are much
23 more specific about what can be -- what can be done. And
24 now your regulations talk specifically about conviction of a
25 misdemeanor, for example, that has a rational connection
with the officer's fitness and capacity and the commission

1 of an act that would violate the officer's oath of office,
2 code of ethics, or statutory duties and also willful failure
3 to provide information. That's not what the regulation said
4 at that time.

5 So, when you put that in context, what you have
6 here is a situation that occurred in September 2005 that was
7 disposed of by Mr. Decker as a petty misdemeanor for a fine
8 in a South Dakota in 2006. And at the time that he signed
9 these documents, he still maintained a not guilty plea in
10 South Dakota, and he was presumed innocent at that time, had
11 a right to that presumption of innocence and the maintenance
12 of that position and still to this day takes that position.
13 But to dispose of the matter, on the advice of his counsel,
14 decided to plea to a misdemeanor and pay a fine, and so he
15 could then move on and make his position in Thurston County,
16 which he has done.

17 So I want to point out one other -- so I think
18 that there's one issue in this case for sure, and that is:
19 Who is it under your regulatory scheme that an officer must
20 disclose information to? Is it the people that hire him?
21 The police department? The sheriff's department? The state
22 patrol? Or is it somehow to the Council? And if it's to
23 the Council, in 2006, what was the mechanism for that
24 disclosure?

25 I submit to you that in 2006 that it was

1 sufficient to disclose to the hiring agency what questions
2 there may be, which is what Tim Decker did, and that that
3 was all that was required at that time. There's nothing on
4 any of the forms, nothing in the regulations that talks
5 about who has to be the person to receive any disclosure of
6 information. And so that is an issue that I think you're
7 going to have to decide, simply as a matter -- I think, in
8 this particular case if the evidence comes out as I think it
9 will be, as a matter of fairness to Tim Decker because I
10 think you're going to learn that he did disclose everything,
11 contrary to what the allegations have been if you --
12 throughout this matter.

13 And if you look at every single one of these
14 exhibits, for example, the letter of September 27 of 2011,
15 the accusation is that Mr. Decker withheld information from
16 Nebraska officials. I think the evidence is going to show
17 that that's not true and that the basis for the neglect of
18 duty charge is by not disclosing his pending criminal
19 complaint and attesting that he had read the code. Well, he
20 did disclose his pending criminal case, you will learn. And
21 he obviously did attest that he had read the Code of Ethics.
22 And then if you -- that's Exhibit 4.

23 And then if you go to Exhibit 10, you will see
24 once again that the accusation on Exhibit 10 in April of
25 2014 was limited to not disclosing the pending criminal

1 complaint and attesting that you had read the Code of
2 Ethics. If you look at Exhibit 11, again, it's failure to
3 provide the necessary information, it's failing to disclose
4 the misdemeanor, and now it's changed to the conviction for
5 the misdemeanor and failure to provide necessary
6 information, which is where we're at now.

7 So the second issue, I think, if we're talking
8 about -- it's unclear whether exactly we're talking about
9 the failure to disclose the information in 2006, and that's
10 the basis, or it's now migrated into, not only that, but the
11 conviction of a petty misdemeanor in South Dakota for
12 conduct in September of 2005 that was disposed of by \$144
13 fine. If that is the basis, then I think it calls into
14 question then what the regulations were at the time, because
15 obviously it's not a felony, and question of whether or not
16 the conduct that occurred there in September of 2005 is one
17 that would be sufficient in light of all the evidence in
18 this case to result in a revocation in light of Tim Decker's
19 performance as an officer since May of 2006, I think, is the
20 other question then.

21 And I believe that when you look at the evidence
22 carefully in this particular case, because I know as the
23 Advisory Council that you're here, I would assume, to try
24 and weed out officers who simply shouldn't have the honor of
25 performing the duties of a law enforcement here in Nebraska

1 because they engage in conduct or have engaged in conduct
2 that reflects so poorly upon them that they should no longer
3 be allowed to do so. I think that the evidence in this
4 particular case, when you look at it fairly and
5 appropriately, keeping in context what was happening at the
6 time and in looking back at the -- as to what the
7 regulations were and what he actually did do, I think you're
8 going to find that, number one, he did disclose the
9 information, and he did it properly under the rules and
10 regulations at the time. And, number two, that this
11 incident in September of 2005, though unfortunate, is not
12 one in which you should impose the most heavy sanction that
13 you have, which is revocation. Thank you.

14 LT. COL. SCHWARTEN: Thank you, Mr. Mock.

15 Again, just for the record we have Exhibits 1 through 11,
16 which are offered by the State, and those have been
17 received. And Exhibit 12 was offered by Mr. Mock. That was
18 also received. And Exhibit 13 was a recusal letter request
19 from Sheriff Koranda. That was received too, so 1 through
20 13 are here. Thank you.

21 Ms. Gittins, you may proceed with any additional.

22 Do you have anything additional?

23 MS. GITTINS: I have no additional

24 information.

25 LT. COL. SCHWARTEN: Thank you. Mr. Mock,

1 this is your opportunity. You will be, as I understand it,
2 calling a witness or witnesses -- or excuse me -- people to
3 testify. And they will have a seat up here. They will be
4 sworn in and formally before the Council. And based upon
5 Ms. Gittins has her information in and submits, it's your
6 opportunity, sir.

7 MR. MOCK: Thank you. My first witness I'd
8 call on behalf of Mr. Decker is Sheriff Chris Kleinberg.

9 LT. COL. SCHWARTEN: Thank you,
10 Sheriff Kleinberg. Good morning, sir.

11 SHERIFF KLEINBERG: Morning.

12 LT. COL. SCHWARTEN: As I said, you will be
13 sworn in for this hearing today, and if you would please
14 raise your right hand.

15 SHERIFF CHRIS KLEINBERG,

16 Called as a witness on behalf
17 of the Respondent, first having been duly sworn,
18 testified as follows:

19 LT. COL. SCHWARTEN: Please, sir, have a seat.
20 And if you would -- just so everybody gets it in the record,
21 if you would spell your entire name as well as your title
22 there as Dakota County Sheriff so that we can get it
23 entered, please.

24 THE WITNESS: Chris Kleinberg, C-h-r-i-s,
25 K-l-e-i-n-b-e-r-g. I'm sheriff of Dakota County, Nebraska.

LT. COL. SCHWARTEN: Thank you, Sheriff.

1 Mr. Mock?

2 MR. MOCK: Thank you.

3 DIRECT EXAMINATION

4 BY MR. MOCK:

5 Q. How long have you served as sheriff of Dakota County?

6 A. Dakota County, a term. My term, four years
7 approximately. It's going to be up first of year.

8 Q. Did you know Tim Decker before May of 2006?

9 A. Yes.

10 Q. How did you know him?

11 A. Well, Tim and I actually went through camp together
12 here. I know that's where I first met him.

13 Q. What year was that?

14 A. '99.

15 Q. Then after 1999, did you maintain contact with him?

16 A. Yes.

17 Q. Tell us how.

18 A. Well, Tim -- at that particular time there was an issue
19 in the county that he was sponsored by, and upon the
20 completion of the camp, he came to work for
21 Thurston County on a full-time basis.

22 Q. For -- and we have, I believe, the years. Ms. Gittins
23 told us what those years were.

24 How would you describe Mr. Decker's performance at
25 that time?

- 1 A. Tim was an excellent leader when it comes to being a
2 brother out there with us. We had -- we was in
3 Thurston County so it was very difficult in
4 Thurston County with two reservations and understanding
5 the laws that applied to the two reservations. Tim was
6 one of the guys that taught me a lot about understanding
7 these different jurisdictional issues, and, you know, it
8 was something we learned together. So a respected
9 deputy I would say.
- 10 Q. Did he have any verified, trustworthy complaints that
11 were ever filed against him at that time?
- 12 A. Not to my recollection, no.
- 13 Q. So at some point he left the Thurston County employment;
14 is that correct?
- 15 A. Correct.
- 16 Q. And do you know where he went?
- 17 A. Union County, South Dakota.
- 18 Q. At some point did there come an occasion where there was
19 a job opening in Thurston County in 2006?
- 20 A. Yes, we -- the sheriff and I were faced with having to
21 take over a contract for the town of Walthill for their
22 police, and that created a job opening.
- 23 Q. Did Mr. Decker apply for that position?
- 24 A. Yes.
- 25 Q. When did he apply for it?

1 A. I agree with her dates. It was the spring of '06, I
2 think -- or actually it had been something that had been
3 transpiring since the first of the year in '06, so the
4 sheriff and myself -- the sheriff wasn't quite sure when
5 this contractual thing was going to take place, so it
6 was kind of up in the air at that particular time. But
7 somewhere in that winter, spring area, I guess.

8 Q. This "contractual thing" would be a contract to provide
9 police services to a particular village in
10 Thurston County?

11 A. Correct.

12 Q. Would that village have been Walthill, Nebraska?

13 A. Yes.

14 Q. Was there a formal application process that was employed
15 by the Thurston County Sheriff's Department in 2006 when
16 a deputy would be hired by that --

17 A. Yes.

18 Q. -- entity?

19 A. Yes, there was.

20 Q. What -- could you tell us what it was?

21 A. Well, basically we would -- well, first I got to start
22 by saying that there -- whenever we applied for -- or
23 advertise the job opening, we very rarely had people
24 applying for those jobs. It's kind of a rough
25 neighborhood, if you know what I mean. So it wasn't --

1 the pay was low, and it wasn't a lot of applications.
2 But basically they'd apply, go through some testings,
3 and it was basically the sheriff that pretty much
4 handled most of the hiring process.

5 Q. Was there any particular paperwork that was involved in
6 that?

7 A. Oh, it would be the required paperwork for your
8 certification, if you wasn't certified, or
9 recertification in Tim's case.

10 Q. So did Tim Decker apply?

11 A. Yes.

12 Q. During that application process, was there discussions
13 about an incident that had occurred between Tim Decker
14 and another man in South Dakota in September of 2005 in
15 which he had been charged with the crime of assault in
16 South Dakota?

17 A. Yes.

18 Q. Tell us about that.

19 A. Well, basically, I knew Tim. Even after he left
20 Thurston County, Tim and I would talk once in a while,
21 so I kind of had an idea what was going on since then.
22 I knew that he was laid up. He had broke his ankle at
23 that particular time.

24 Q. Are we talking about he broke his ankle in the
25 September 2005 incident?

1 A. Whenever that -- from that incident, he had broken his
2 ankle, so he was off work at that time.

3 Q. Okay.

4 A. I do believe that I may have even contacted Tim. Now,
5 he might be able to verify this for sure, but I know
6 that when myself and the sheriff had talked about taking
7 this contract, it was pretty important that we had
8 somebody that understood what was going on as far as the
9 jurisdictional issues, and we knew Tim had went through
10 cross-deputization with us, so he was very aware of what
11 was going on.

12 So I think maybe at the time, when Chuck and I
13 -- the sheriff -- discussed taking over this contract,
14 Tim was already at the top of the list as far as his
15 knowledge and what he could bring for us to be able to
16 make a decent decision on whether we were going to take
17 this on or not. Again, it's been quite a while.
18 Twelve, thirteen years ago.

19 So, yeah, Tim -- I think, when I contacted him
20 or I had spoken with him somehow in reference to this,
21 he had said that, "I broke my ankle. It's going to be a
22 while before I heal up."

23 And I said that's all right. I think it's
24 going to be a while before we work out all the bugs in
25 this contract. So I think that's the initial contact I

1 had with him.

2 Q. So at that point you knew that there had been an
3 incident that occurred. You don't recall exactly when,
4 but it had been sometime in 2005?

5 A. Yes.

6 Q. During that incident, he actually broke his ankle, and
7 he was laid up for that. And you knew -- did you know
8 at that time that there were criminal charges?

9 A. Yes, he said -- he had -- he told myself and the
10 sheriff, basically, what the situation was. And when
11 looking at it, we're like: Well, what's the problem?
12 You know.

13 Q. What did he tell you had happened?

14 A. I think this was even before he might have applied. I
15 think it -- I think it might have been prior when we
16 were thinking about advertising for this job and seeing
17 if he was going to apply for it or if he would because
18 we knew he was off work, healing up. So I'm fairly
19 certain that in the interim where this was all taking
20 place that we had spoken with him about this, and he
21 said: Well, this is what's going on with me right now.

22 So that's where it came up with the -- with

23 the issue in the sports bar in North Sioux.

24 Q. So did he talk to you about what he, from his point of
25 view, believed happened in that incident?

1 A. Yes.

2 Q. What did he tell you?

3 A. Basically, there was a convicted pedophile that was in
4 the bar with him that night, and there was some words
5 that exchanged. And Tim was in the actual community
6 that he was policing in, so it was kind of a difficult
7 situation for him. And it ended up being a scuffle --
8 or I don't even know if there was a fight. I don't know
9 if there was punches exchanged or not. I haven't read
10 the reports from any of that.

11 And at that particular time, he was actually
12 working for North Sioux Police Department. He was no
13 longer working for the Union County Sheriff's Office.
14 It was the Union County Sheriff's Office that initiated
15 the investigation in the bar, so that's what he had
16 explained to us, and this is kind of the process that he
17 was going through.

18 And our first question -- I know the sheriff's
19 first question was: Well, is it something that's going
20 to affect your certification?

21 He said: As far as my South Dakota
22 certification, no, because I'm not going to be able to
23 work as law enforcement in this state in the time frame
24 that his certification --

25 I guess South Dakota certifications, when your

1 out-of-work lapse longer than Nebraska -- six months or
2 something if I remember -- and he wouldn't even be
3 healed up to do that.

4 So he said: As far as my South Dakota
5 certification, it's basically already gone because
6 there's no way I can go back to work until I'm healed
7 up.

8 So, does it affect your Nebraska?

9 No. We went through it. The sheriff spoke
10 with the county attorney at the time, and there was no
11 issue on -- even with the charges that he was going to
12 get with the disorderly conduct -- to even affect his
13 Nebraska certification, so it really wasn't an issue at
14 the time.

15 Q. So, Sheriff Kleinberg, when Tim Decker was talking to
16 you during this process about what had happened to him,
17 was it your understanding that he had claimed that he
18 had defended himself in that incident?

19 A. Absolutely.

20 Q. So did he tell you that he had pled not guilty?

21 A. Yes.

22 Q. And was that the basic state of the knowledge then that
23 you had in May of 2006 when he filled out the paperwork?

24 A. Yes.

25 Q. Was there anything that you observed about Tim Decker

1 that led you to believe that he was trying to hide what
2 had happened in South Dakota from you or
3 Sheriff Obermeyer?

4 A. Absolutely not. As a matter of fact, like I said
5 before, I worked with Tim for quite a few years. I went
6 to camp with him. We knew him very well, myself and
7 Chuck and the rest of the deputies in the office. Very
8 much a man of his word. If he told that's what happened
9 -- if there was a question about his certification, he'd
10 have brought that up. If he thought there would have
11 been something that would have affected it, he would
12 have said: Guys, I got to wait until this is over.

13 So, yes, he completely -- we talked about it
14 many times with him as a matter of fact.

15 Q. Do you know whether or not Sheriff Obermeyer ever made
16 any inquiries in South Dakota?

17 A. No, I don't know that.

18 Q. Did you?

19 A. No, I did not.

20 Q. At the time in May of 2006, you had known Tim Decker; is
21 that right?

22 A. Yes.

23 Q. And what was his reputation as a law enforcement officer
24 at that time in that area?

25 A. I know from hearing -- when he was in Union County, he

1 was very much a traffic -- we would -- I would get bits
2 of information and talk to him once in a while about
3 some of his arrests and his quantity of drugs he was
4 taking off the Interstate 29 there. I know that he was
5 respected by a lot of Sioux City, North Sioux guys that
6 we both do together, working with him. A lot of the
7 veteran law enforcement folks in our area knew him. He
8 was making quite a name for himself because he was a
9 hard driving deputy up there.

10 Q. Did he have a reputation for truthfulness at that time?

11 A. Absolutely. There was no one in my neck of the woods
12 that would question anything Tim would say.

13 Q. All right. So in May of 2006, based on the disclosures
14 that Officer Decker had made to you, you were satisfied
15 that under the current existing regulations at the time
16 and the law that that incident should not have any
17 effect on his certification and that he would be
18 eligible to be hired in Thurston County; is that
19 correct?

20 A. Absolutely. To be quite frank, we were more worried
21 about his ankle healing up than the charges he may have
22 had in South Dakota at that time because it seemed so
23 insignificant.

24 Q. So after May of 2006, were you aware -- did Officer
25 Decker keep you and, to your knowledge,

1 Sheriff Obermeyer informed as to the progress of that
2 criminal litigation in South Dakota?

3 A. Yeah. Not me as much. Sheriff was his boss more than
4 myself. We more worked together so, yeah, Chuck knew.

5 Q. Did you know that he ultimately pled to a petty
6 misdemeanor?

7 A. Yes.

8 Q. And that he got a \$144 fine?

9 A. Yes.

10 Q. And were you aware that as part of that plea agreement
11 that he allowed his South Dakota certification to lapse?

12 A. Yes. It was my understanding that had already happened
13 by the time the...

14 Q. Did any of that have any effect on your opinion of
15 Tim Decker's worthiness at that time to serve as an
16 officer in the state of Nebraska?

17 A. Absolutely not.

18 Q. Did Sheriff Obermeyer ever express any reservations
19 about Mr. Decker's abilities to serve as an officer here
20 in the state of Nebraska following the conviction of the
21 misdemeanor in South Dakota?

22 A. No.

23 Q. Was there anything about -- that you could tell from --
24 about his reputation as an officer amongst other
25 officers in the area that changed because of this

1 conviction and misdemeanor in South Dakota?

2 A. The only issue that comes up with me as the chief
3 deputy -- and I've got to be honest with you -- is I am
4 a person that strayed away from the sports bar scene
5 just due to the fact that it's kind of difficult. And I
6 think, to be totally honest with you, the only question
7 I might have asked him is: Why are you even going to a
8 bar?

9 You guys know in our profession that that can
10 -- especially in a small area like that. Union County
11 is a small area. So I think the only question that
12 would have ever came up, that did, is: Don't put
13 yourself in those situations. Don't go there.

14 So that's it. That would be the only thing
15 that I would have the question about at that particular
16 time, and I'm sure Chuck was under a different opinion,
17 but he was very adamant about this isn't going to be an
18 issue with his Nebraska certification. We were very
19 confident it wasn't going -- or at least we thought at
20 that time it wasn't, according to the county attorney
21 and what she had read in the laws.

22 Q. Sir, do you agree with the accusation that Tim Decker
23 didn't disclose fully what had happened in South Dakota?

24 A. I don't know -- like we've discussed, I don't know when
25 that would have been disclosed. When would he have the

1 opportunity and to whom would he have the opportunity?
2 My understanding of that was -- disclosure to something
3 like that to the agency that's hiring him.

4 Q. And do you believe that he did that appropriately?

5 A. Absolutely, on multiple occasions before we even
6 probably advertised for this position, when it was still
7 a concept that we were thinking about.

8 Q. Did anybody from the Advisory Council or Crime
9 Commission ever contact you to try and investigate
10 whether or not Tim Decker had failed to disclose any
11 aspect of litigation in South Dakota that is shown in
12 the exhibits that have been offered into evidence?

13 A. Never with the Advisory Council. When I took over
14 office in Dakota County -- real quick history -- not to
15 waste your time, but I was not willing to run for
16 sheriff. That county -- if you don't know anything
17 about that county, what we had taken over in that
18 county, we had our hands full. It was a very
19 dysfunctional office, so to speak. My -- the only
20 reasons why I ran were -- both of them are sitting --
21 well, I shouldn't say the only reasons why I ran. The
22 only purpose -- between Tim and Doug, with their
23 commitment -- that Doug was going to retire and come
24 work for me, and Tim was going to stay working because
25 he was working for me at the time in Thurston County

1 too. If I ran in one, for me to file, they would have
2 to commit to that.

3 Q. Sheriff Kleinberg, who is Doug?

4 A. Okay. Excuse me. Doug Johnson. Doug was a -- don't
5 hold it against him. He was a former trooper. He was
6 up for retirement, and for me to file for sheriff in
7 Dakota County and take on all this, I wanted him to come
8 on board with us. So that's what he did, and he's
9 sitting over here.

10 But back to what we were talking about. We
11 knew we had a difficult situation. When I won sheriff,
12 Tim came to work. Doug committed to come to work in
13 April. I went up and spoke with the county attorney at
14 that particular time with Doug and Tim, actually. And
15 we said this is the issue. Is there anything --

16 They actually brought it up to us about Tim's
17 charges in South Dakota.

18 Q. What did you tell them?

19 A. Well, actually Tim did the talking. I kind of just sat
20 there, and he said: Well, this is what happened. What
21 do you need to know?

22 And they said: Well, we heard different, if I
23 remember the conversation correctly.

24 And I've known Tim a long time and worked with
25 him a long time and know that when he said that -- what

1 he says I take full stock in it, or he would not work
2 for me. I was very comfortable with it. They wanted a
3 disclosure signed so they could investigate because
4 their -- the prosecutor's question was something that
5 may come up on the stand and cause problems.

6 Tim didn't have any problem with that. He
7 signed the waiver. They investigated it. Nothing ever
8 came of it. So as far as your question about the
9 Advisory Council, no, that was the only time, aside from
10 when we hired him and him disclosing this to us, this
11 ever come up again, when I took office in Dakota County
12 and the county attorney wanted to look into it for their
13 own purposes.

14 Q. To your knowledge, was there even any thought back in
15 2006 between you and Sheriff Obermeyer that somehow you
16 had some kind of independent duty to provide information
17 to the Council or the Crime Commission?

18 A. For me, no, not at all.

19 Q. You based that upon what the regulations were at the
20 time and the law?

21 A. My understanding and the county attorney and the
22 sheriff, yes. You got to remember he was the sheriff.
23 It wasn't me. I was -- but for me personally, no.

24 Q. All right. So he's -- to get back to the time line
25 then, Officer Decker is -- Deputy Decker is -- at that

1 time in Thurston County is employed for Thurston County
2 for some time; is that correct?

3 A. Mm-hmm.

4 Q. And then ultimately you hire him again in Dakota County?

5 A. Correct.

6 Q. And what year was that?

7 A. Took office in '11, 2011.

8 Q. Between his hiring at Thurston County in 2006 and when
9 you hired him in 2011, were you aware of any incidents
10 or verified, trustworthy complaints that were made
11 against Officer Decker for any form of misconduct?

12 A. Misconduct, no. A few bad guys had made some complaints
13 about him, yeah.

14 Q. Because --

15 A. Not to the office, no. I shouldn't have probably said
16 that. But, no, I'd heard rumors with people. Tim had
17 arrested a known person from Thurston County on the
18 South Dakota highways with a quantity of substance --
19 illegal substance. So he -- there was a few comments
20 from that particular person because I was still sheriff
21 in Thurston County when I hired him. This particular
22 citizen didn't much like Tim.

23 Q. I'm talking about complaints from citizens or other
24 officers that would indicate that Deputy --

25 A. Aside from that, no.

1 Q. -- Decker is not a sufficient moral character or
2 competence or mental, physical, or emotional capacity to
3 serve as an officer in Nebraska?

4 A. Quite the contrary. The deputy is very supported.

5 Q. Has anything of that nature occurred since you hired him
6 in 2011?

7 A. No. Aside from the county attorney's questioning that
8 he signed the waiver for when he first took office, no.

9 Q. Does Deputy Decker at this time still maintain the same
10 sort of reputation as an officer that you described that
11 he had in 2006?

12 A. That's why he's in that uniform, yes.

13 Q. Has his reputation for truthfulness changed any?

14 A. Increased.

15 Q. In your opinion, do you think he's the type of officer
16 who should continue to serve?

17 A. In my opinion he's the type of chief deputy that I very
18 much rely on and so does the rest of my office, yes.

19 MR. MOCK: I have no further questions.

20 LT. COL. SCHWARTEN: Thank you, Mr. Mock.

21 Ms. Gittins, any questions?

22 MS. GITTINS: I do have a few. Thank you.

23 CROSS-EXAMINATION

24 BY MS. GITTINS:

25 Q. Sheriff Obermeyer, did you sign a law enforcement

1 agency --

2 LT. COL. SCHWARTEN: Ms. Gittins, Sheriff

3 Kleinberg.

4 Q. (BY MS. GITTINS) I'm sorry, Sheriff Kleinberg. Please
5 accept my apology.

6 A. That's fine.

7 Q. Sheriff Kleinberg, did you sign a law enforcement agency
8 background verification statement when you employed
9 Mr. Decker as your chief deputy?

10 A. As my chief deputy?

11 Q. Mm-hmm.

12 A. Yes.

13 Q. Okay. And would that have been around March 1 of 2011?

14 A. Yes, March 1.

15 Q. Are you familiar with that form?

16 A. Yes. It's part of the academy here or the state
17 certification, yeah.

18 Q. Okay. Are you familiar with the form statement written
19 wherein it says, "Statements should be verified by means
20 other than relying on the applicant's statement alone"?

21 A. I would have to see the form and reread it to be --
22 yeah, I would imagine that...

23 MS. GITTINS: May I approach?

24 LT. COL. SCHWARTEN: Yes.

25 Q. (BY MS. GITTINS) This is just being used to help

1 refresh your memory. Right now it's not an exhibit, but
2 it may be.

3 In looking at page one of the form, the second
4 paragraph -- the very last statement in that paragraph,
5 would you mind reading that statement for the record?

6 A. Sure. The information which is being covered by -- in
7 this section is a state requirement through statute and
8 rule and regulation. It is obtained through the hiring
9 process and completion of a thorough background
10 investigation. Statements should be verify by means
11 other than relying on applicant's statements alone.

12 Q. Okay. And Subsection A of that same form requires that
13 a checking of records for citations, arrests, or
14 criminal charges regardless of disposition; is that
15 correct?

16 A. Yes.

17 Q. And it says it should include law enforcement record
18 checks in the area of applicant's residence; is that
19 correct?

20 A. Yes.

21 Q. Did you check with Union County where the -- where
22 Mr. Decker resided?

23 A. As far as running a Triple I, we call it, or a driving
24 history, yes.

25 Q. And did you check for any additional criminal charges?

1 A. As far as running a Triple I or criminal history, yes,
2 we did.

3 Q. And that did not -- what did that disclose?

4 A. It disclosed no driving history and -- or no citations
5 on his driving history and this incident in question
6 here.

7 Q. Okay. Subsection B says checking records and running
8 criminal history checks for any criminal convictions
9 regardless of criminal classification of disposition; is
10 that correct?

11 A. Yes.

12 Q. So did you do that?

13 A. Yes.

14 Q. In 2011?

15 A. Yes, I...

16 Q. And what did that record show?

17 A. The South Dakota incident that we're in question over
18 right now.

19 Q. And was that a conviction?

20 A. Yes. Well, it was a -- yeah.

21 MS. GITTINS: No further questions.

22 MR. STOLZ: For the record, Ms. Gittins, could
23 you make reference to the document you're referring to?

24 MS. GITTINS: The document that I'm referring
25 to that we used for refreshing --

1 MR. STOLZ: Yeah, that's -- all I want to know
2 is what the title says. That's all.

3 MS. GITTINS: Law Enforcement Agency
4 Background Verification.

5 MR. STOLZ: Thank you.

6 MR. MOCK: And I assume, Mr. Chairman, that
7 the -- since we're under the rules of evidence, that this
8 was merely for purpose of refreshing recollection.

9 MR. STOLZ: That is correct.

10 LT. COL. SCHWARTEN: Yes.

11 MR. MOCK: And for no other purpose.

12 LT. COL. SCHWARTEN: That was noted by

13 Ms. Gittins.

14 MR. MOCK: All right. Thank you.

15 LT. COL. SCHWARTEN: Mr. Mock, any cross,
16 please? Redirect. Excuse me.

17 REDIRECT EXAMINATION

18 BY MR. MOCK:

19 Q. And to refresh your recollection, the purpose of the
20 background investigation resulted in your determination
21 that you felt that Mr. Decker met the minimum standards
22 to receive certification as a law enforcement officer;
23 is that correct?

24 A. There was no lapse in time. Tim was already working for
25 me when I took office in Dakota County.

1 Q. And obviously -- and obviously, the background check,
2 you already had known since May or even earlier --
3 sometime in 2006 -- both of the accusation itself and
4 the later conviction?

5 A. Correct.

6 Q. So that wasn't really any news to you?

7 A. No, absolutely not, but according to this, it's
8 necessary that I run his Triple I and driving record.

9 Q. And you did that?

10 A. Yes.

11 MR. MOCK: I have further questions.

12 LT. COL. SCHWARTEN: Thank you, Mr. Mock.

13 Anything further, Ms. Gittins?

14 MS. GITTINS: No.

15 LT. COL. SCHWARTEN: Thank you for Ms. Gittins
16 and Mr. Mock. This is an opportunity at this stage with
17 Sheriff Kleinberg -- please don't get up yet, sir -- as your
18 witness for Council members to ask questions, and there is a
19 specific protocol that the Council members have been
20 instructed on in presenting any questions.

21 So at this time I would ask: Are there any
22 questions from members of this Council in this matter for
23 Sheriff Kleinberg?

24 No further questions from the Council. Thank you,
25 Sheriff.

1 THE WITNESS: Thank you.

2 LT. COL. SCHWARTEN: Mr. Mock, any further

3 witnesses?

4 MR. MOCK: Yes, one more witness.

5 Doug Johnson.

6 LT. COL. SCHWARTEN: Mr. Johnson, if you would

7 raise your right hand please.

8 DEPUTY DOUG JOHNSON,

9 Called as a witness on behalf
10 of the Respondent, first having been duly sworn,
11 testified as follows:

12 LT. COL. SCHWARTEN: Please have a seat. And
13 if you would -- for Ms. Yendra, if you would state your name
14 and spell your name for the record please.

15 THE WITNESS: Doug Johnson, D-o-u-g,
16 J-o-h-n-s-o-n.

17 LT. COL. SCHWARTEN: And, Mr. Johnson, what is
18 your current role at the sheriff's office in Dakota County.

19 THE WITNESS: I'm the investigative
20 supervisor.

21 LT. COL. SCHWARTEN: Thank you. Mr. Mock?

22 MR. MOCK: Thank you.

23 DIRECT EXAMINATION

24 BY MR. MOCK:

25 Q. Deputy Johnson, you have spent the majority of your
career with the State Patrol; is that correct?

1 A. Yes, sir.

2 Q. In what capacity?

3 A. I was a uniform traffic trooper from 1980 to about 1988,
4 and then from '88 to '92, I was in the drug division.
5 And then from '92 to my retirement in 2011, I was with
6 the criminal division.

7 Q. Over that period of time, did you have an occasion to
8 get to know Officer Tim Decker -- Deputy Decker?

9 A. Yes, I did.

10 Q. Tell us about that.

11 A. Well, originally, when I was a traffic trooper, I worked
12 with his father, Jim Decker, who was a part-time police
13 officer in Ponca when they were little, and so I knew of
14 them. And then I did not cross paths with him again
15 until he was in Cedar County, and I was involved in an
16 investigation up there of the then-Sheriff Loren
17 Trautman, who had been accused by one of the deputies of
18 providing a firearm to a convicted a felon who was being
19 housed at the sheriff's office in his jail.

20 And the result of the investigation was
21 Mr. Trautman ended up being charged with a criminal
22 charge, he was convicted, and then he was also
23 decertified by this Commission for that conviction. But
24 during the investigation, I talked to all the deputies,
25 and that's when I first crossed paths with Tim

1 officially.

2 And it was quite a polarizing investigation of
3 haste just because they were divided into two camps.
4 There were those that supported the sheriff and those
5 that did not. And it wasn't hard to figure out where
6 people stood on the issue. But there were actually two
7 of them who never did disclose anything as far as their
8 personal feelings and only related to what they had seen
9 or heard with their own ears and eyes to the case, and
10 that was Mr. Decker and Sheriff Koranda, who was then a
11 deputy of Cedar County.

12 And then, of course, dealt with him in
13 Thurston County when we -- we don't have a whole lot of
14 criminal cases in Thurston County because it's primarily
15 tribal and federal jurisdiction, but every now and then
16 we do get involved in cases down there. And I worked
17 with about the entire department in Thurston County on
18 various criminal cases, including rape of a jailor that
19 had taken place by an inmate. Some of the more
20 sensitive cases, and I worked with both
21 then-Deputy Kleinberg and Deputy Decker.

22 And to be quite honest with you, for as small
23 as Thurston County is and the issues that they faced, I
24 was impressed with the professionalism of both of these
25 gentlemen. And then when Tim was brought into

1 Dakota County, I relied on him in a case involving an
2 infant homicide where the babysitter had sexually
3 assaulted and drowned an infant, and Tim had had
4 previous contacts with this individual. And he was also
5 the first one on the scene at the time of the homicide,
6 and so I basically relied on him exclusively for the
7 first several hours of that case. Because, like
8 anything else, you're coming into a very fluid
9 situation, and you're trying to get your feet on the
10 ground, and so I relied heavily on him and his
11 expertise, as well as his credibility, while
12 investigating that particular matter.

13 And then Sheriff Kleinberg referred to the
14 situation with the Dakota County Attorney reviewing the
15 file of the South Dakota authorities involving
16 Mr. Decker. And I talked to the county attorney, Kim
17 Watson, and she expressed some concerns about Brady
18 issues or impeachment and credibility issues that may
19 stem from Tim's employment.

20 And that is when they obtained the case file
21 from South Dakota authorities, and they reviewed it.
22 And I did ask Kim Watson, basically, what they came up
23 with. And she said that she and her staff did not see
24 any issues regarding any issues involving Brady or
25 impeachable issues of credibility with the

1 investigation. Perhaps in poor judgment, but nothing
2 that would lead to any type of credibility issues for
3 trial purposes.

4 Q. So over the years that you have known Deputy Decker,
5 while you're with the State Patrol and now with the
6 Dakota County Sheriff's Office, were you aware of what
7 his reputation is as an officer in the law enforcement
8 community?

9 A. Yes.

10 Q. What is that reputation?

11 A. Basically, it was a credible, honest, hardworking
12 individual, and I think Sheriff Kleinberg said it, that
13 anything that he told you was as good as gold. And that
14 certainly bore through on the investigations that I
15 dealt with, the homicide, the sheriff, and other
16 situations that weren't quite as serious that have come
17 up since then.

18 Q. Does he have a reputation for truthfulness?

19 A. Yes.

20 Q. What is it?

21 A. As far as I'm concerned, he's as honest as the day is
22 long. I've dealt with guys just as good as him, but
23 none better.

24 Q. Is there anything about your knowledge of Tim, including
25 the South Dakota incident that occurred in September of

1 2005, that would lead you to believe that he's not
2 mentally, physically, or emotionally capable of serving
3 as a law enforcement officer here in Nebraska?

4 A. No, sir.

5 Q. Have you ever heard of him neglecting his duty in any
6 way that you've known him?

7 A. No, sir.

8 Q. And I gather that, from what you've talked about, you
9 certainly believe that he's a very competent officer?

10 A. Yes, sir, extremely.

11 Q. You think he's the type of officer that should be
12 allowed to maintain certification?

13 A. Yeah, I absolutely do.

14 MR. MOCK: I don't have any further questions.

15 LT. COL. SCHWARTEN: Thank you, Mr. Mock.

16 Ms. Gittins?

17 MS. GITTINS: I have no questions for this

18 witness.

19 LT. COL. SCHWARTEN: Thank you. Mr. Johnson,

20 also, as we did with Sheriff Kleinberg, this is an
21 opportunity for the Council to offer any formal questions
22 through our procedure.

23 Are there any questions from any member of the Council?

24 Thank you.

25 THE WITNESS: Thank you.

1 LT. COL. SCHWARTEN: Mr. Mock?

2 MR. MOCK: That concludes our presentation,

3 Your Honor.

4 LT. COL. SCHWARTEN: Thank you.

5 Any rebuttal from Ms. Gittins?

6 MS. GITTINS: No rebuttal, but do I have a

7 closing.

8 LT. COL. SCHWARTEN: We will move into that
9 stage at this point. Ms. Gittins, if you would offer your
10 closing, please.

11 MS. GITTINS: Sure then. The oath of office
12 placed an affirmative duty on Mr. Decker to conduct himself
13 in accordance with that oath. That oath imposes mandatory
14 obligations and responsibilities to conduct himself in a
15 proper manner, both on and off duty. As such, it imposes a
16 standard of conduct to which Mr. Decker was obliged to
17 follow. The fact of his conviction for an assault, even
18 though a misdemeanor, even though minor, shows a true
19 neglect of duty. And that conviction, regardless of what
20 other people may assume that it may not disqualify him from
21 holding a law enforcement certificate, does, in fact, do so.
22 It shows a neglect of duty.

23 The oath of office requires that you maintain and
24 you uphold the law. That's your duty. The conviction was a
25 dereliction of duty, and for that reason, Mr. Decker 's law

1 enforcement certificates, both of them, need to be revoked.
2 I would ask that the Police Standards Advisory Council would
3 revoke Mr. Nickel's [verbatim] law enforcement certificates
4 subject to the review and approval of the Commission on Law
5 Enforcement and Criminal Justice. Thank you for your time.

6 LT. COL. SCHWARTEN: Thank you, Ms. Gittins.

7 Mr. Mock?

8 MR. MOCK: As I indicated in the opening
9 statement, I believe the evidence will show that, in fact,
10 Deputy Decker is a truthful, honest individual, who is very
11 competent and has performed admirably as an officer over the
12 course of his career, and that the accusation that was made
13 against him originally in this matter, that goes full --
14 completely through until the point that the complaint was
15 filed that he didn't disclose. And I think the evidence is
16 overwhelming, the fact that he did tell the truth, that he
17 did disclose, and that just has no factual basis whatsoever.

18 And at the time that he made the disclosure in
19 2006, that he made it to the appropriate authorities, the
20 people that hired him. And that was the practice. That was
21 all that was required. There was nothing to indicate that
22 anything else was required. He did that, and so I think
23 that aspect of this case just has not been demonstrated at
24 all.

25 So then we come to an incident that happened in

1 September of 2005 in which the only evidence before you is
2 that Officer Decker defended himself against a past criminal
3 offender in a bar and ended up breaking his own ankle and
4 gets charged with assault, pleads not guilty, and then
5 decides on the advice of counsel to dispose of the matter
6 through a misdemeanor and a fine.

7 Now, I suppose, technically, in some people's
8 minds maybe it is you ought to fight everything all the way
9 through no matter what, and that's the way it should be if
10 you're a law enforcement officer. That if you think you
11 haven't done anything wrong that you should never plea
12 bargain any accusation against you to avoid the cost and the
13 problems and the time that is necessary to defend yourself
14 against a not valid criminal accusation. But there are
15 sometimes when I think, Members of the Council, that that is
16 appropriate if you simply want to dispose of the case.

17 And if you look at the record in this case, this
18 case wasn't -- didn't even require Officer Decker to appear.
19 He did it through his attorney. It was understood that he
20 was going to pay a minimal fine. It was simply a way of
21 disposing of the case and so -- but the main thing is that
22 that incident itself, the fact that you happen to be a law
23 enforcement officer and you're in a restaurant and you get
24 accosted by somebody that you investigated and there's an
25 altercation which you defend yourself and you end up

1 breaking your ankle, doesn't seem to be the kind of offense
2 that would require the draconian nuclear option of revoking
3 an officer who has a record as fine and as consistently good
4 as what Tim Decker's had.

5 Now, I could see if this was a case in which
6 Tim Decker concealed from sheriff -- Deputy Kleinberg and
7 Sheriff Chuck Obermeyer back in 2006 that he had an
8 investigation pending against him in South Dakota and later
9 that there was a conviction that wasn't disclosed, and he
10 concealed all that and he took efforts -- made efforts to do
11 that in a way that would indicate that he has no respect for
12 the law, that he has no respect for truthfulness. I can see
13 that would be a different case, but that's not what happened
14 here.

15 What Ms. Gittins is asking you to do is to revoke
16 Deputy Decker's certification to end his career, to destroy
17 his livelihood, because of an incident that happened in
18 September of 2005 that he disclosed fully, has been vetted
19 by not only Sheriff Obermeyer and by Chris Kleinberg, also,
20 apparently, by the Dakota County Sheriff's Office in a
21 conclusion that it's not the kind of offense that bothers
22 them about using Tim Decker as an official.

23 And throughout this whole time, the evidence is
24 uncontradicted that what we have here is an officer whose
25 qualifications, his character, his conduct as an officer has

1 really been unimpeachable and since September of 2006. And
2 that, on that basis alone, I think that your discretion of
3 such, that the real just result in this case really should
4 be a dismissal because the basis for the complaint has been
5 demonstrated to be just simply not proven that he didn't
6 disclose, and number two is that the incident in 2005 that
7 led to him pleading to a petty misdemeanor is not the kind
8 of offense that should be the basis of a revocation.

9 Thank you for listening carefully. I commend
10 Officer Decker -- Deputy Decker's fate to you to make the
11 right decision in this particular case.

12 LT. COL. SCHWARTEN: Thank you, Mr. Mock. Now
13 that both sides have rested in this matter, is there a
14 motion from a member of Council?

15 CHIEF LAUSTEN: Mr. Chair, I would like to
16 make a motion to go into executive session for the purpose
17 of protection to the reputation of the Respondent.

18 LT. COL. SCHWARTEN: There is a motion by
19 Chief Lausten to go into executive session. Is there a
20 second?

21 CAPT. MOORE: Second.

22 LT. COL. SCHWARTEN: Second by Captain Moore.

23 Kay, will you call the roll, please?

24 MS. FIELDING: Chief Robert Lausten?

25 CHIEF LAUSTEN: Yes.

1 MS. FIELDING: Lieutenant Colonel Schwarten?

2 LT. COL. SCHWARTEN: Yes.

3 MS. FIELDING: Chief Timothy Larby?

4 CHIEF LARBY: Yes.

5 MS. FIELDING: Captain Genelle Moore?

6 CAPT. MOORE: Yes.

7 MS. FIELDING: Mr. Matthew McCarthy?

8 MR. MCCARTHY: Yes.

9 MS. FIELDING: Motion carried.

10 LT. COL. SCHWARTEN: Thank you all. I will

11 note the time as 10:25. We are going to executive session.

12 I would ask that Mr. Stolz remain and Ms. Fielding remain

13 for the Council and for recording purposes, and everyone

14 else please exit the room. We will notify you shortly when

15 we come back. Thank you.

16 (Whereupon, Council recessed for
executive session.)

17
18 LT. COL. SCHWARTEN: The hearing of the case
19 of LR-085-11 will again come to order. All parties present
20 when the Council recessed for executive session are again
21 present.

22 Do I have a motion by a member of Council on the
23 executive session order?

24 CHIEF LAUSTEN: Mr. Chair, I would like to
25 make a motion to come out of executive session.

1 LT. COL. SCHWARTEN: Motion to come out of
2 executive session by Chief Lausten. Is there a second?

3 CAPT. MOORE: Second.

4 LT. COL. SCHWARTEN: Second by Captain Moore.

5 Kay, will you call the roll, please?

6 MS. FIELDING: Lieutenant Colonel Tom

7 Schwarten?

8 LT. COL. SCHWARTEN: Yes.

9 MS. FIELDING: Chief Timothy Larby?

10 CHIEF LARBY: Yes.

11 MS. FIELDING: Captain Genelle Moore?

12 CAPT. MOORE: Yes.

13 MS. FIELDING: Mr. Matthew McCarthy?

14 MR. MCCARTHY: Yes.

15 MS. FIELDING: Chief Robert Lausten?

16 CHIEF LAUSTEN: Yes.

17 MS. FIELDING: Motion carried.

18 LT. COL. SCHWARTEN: Thank you, Kay. I will

19 note for the record we returned out of executive session at
20 10:53 hours.

21 Do I have a motion on this matter today,
22 LR-085-11, on the law enforcement certification on
23 Timothy J. Decker?

24 MR. LAUSTEN: Mr. Chairman, based on the
25 evidence before this body in Case No. LR-085-11, I move that

1 Mr. Timothy J. Decker's Nebraska Law Enforcement
2 Certificates remain certified in the state of Nebraska and
3 his law enforcement certificate and manager certificate
4 remain active.

5 LT. COL. SCHWARTEN: Thank you, Chief Lausten.

6 Is there a second?

7 CHIEF LARBY: Second.

8 LT. COL. SCHWARTEN: Second by Chief Larby.

9 Kay, will you call the roll?

10 MS. FIELDING: Chief Timothy Larby?

11 CHIEF LARBY: Yes.

12 MS. FIELDING: Captain Genelle Moore?

13 CAPT. MOORE: Yes.

14 MS. FIELDING: Mr. Matthew McCarthy?

15 MR. MCCARTHY: Yes.

16 MS. FIELDING: Chief Robert Lausten?

17 CHIEF LAUSTEN: Yes.

18 MS. FIELDING: Lieutenant Colonel Thomas

19 Schwarten?

20 LT. COL. SCHWARTEN: Yes.

21 MS. FIELDING: Motion carried.

22 LT. COL. SCHWARTEN: Thank you. And for the

23 record here today I need to again inform both Mr. Mock and
24 Sheriff Deputy Decker and Ms. Gittins that this matter will
25 be reviewed by the Nebraska Commission on Law Enforcement

1 and Criminal Justice at their January meeting, which can
2 either accept or reject the findings of this Council.

3 Mr. Decker you have the right to be provided with
4 a written finding of the Council's action either in person
5 or by mail. A copy of this decision and accompanying
6 findings and conclusions are to be delivered to you upon
7 request. Do you want these sent to you personally or to
8 your attorney, Mr. Mock?

9 MR. DECKER: Attorney is fine.

10 LT. COL. SCHWARTEN: Thank you. This portion
11 of the Council meeting and hearing today is adjourned. I
12 will note the time as 10:55.

13 END OF PROCEEDINGS

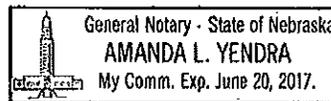
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C E R T I F I C A T E .

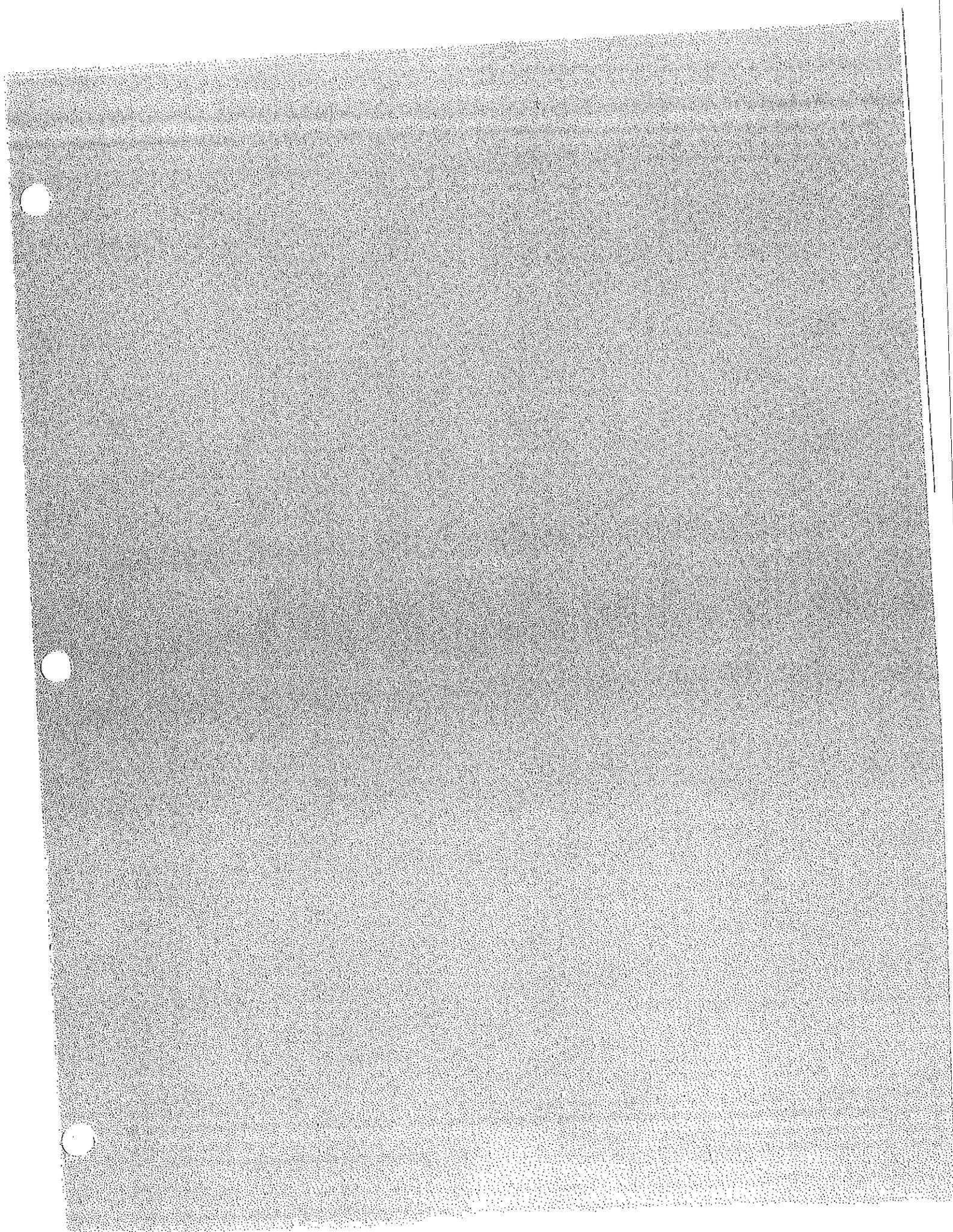
I, Amanda L. Yendra, General Notary Public, duly commissioned, qualified, and acting under a general notarial commission within and for the State of Nebraska, do hereby certify that the foregoing proceedings were taken by me at the time and place herein specified; that I am not counsel, attorney, or relative of any party or otherwise interested in the event of this matter.

IN TESTIMONY WHEREOF, I have hereunto set my hand officially and attached my notarial seal at Kearney, Nebraska, this 13th day of November, 2014;

Amanda L. Yendra
General Notary Public



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