

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

**MARK COOK,**

**Petitioner,**

**Final Order No. DMS 19-0026  
DOAH Case No. 18-6264**

**vs.**

**STATE OF FLORIDA,  
DEPARTMENT OF MANAGEMENT SERVICES,  
DIVISION OF RETIREMENT,**

**Respondent.**

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**FINAL ORDER**

This matter comes before the Department of Management Services (“Department”) for entry of a Final Order in accordance with section 120.569(1), Florida Statutes.

On January 24, 2019, Administrative Law Judge June C. McKinney entered an Order Relinquishing Jurisdiction based on the Petitioner Mark Cook’s (“Mr. Cook”) withdrawal of his petition. A copy of the Order is attached hereto and incorporated herein as “Exhibit A.”

**FINDINGS OF FACT**

The Department hereby finds the following facts:

1. Mr. Cook was a vested member of the Florida Retirement System (“FRS”) by virtue of his employment with the Sarasota County School Board.
2. Mr. Cook was convicted of six (6) counts of sexual battery of a child, in violation of section 794.011(2), Florida Statutes.
3. The offenses of which Mr. Cook was convicted occurred during his employment with Sarasota County School Board, and involved his students.

4. The Department notified Mr. Cook that due to his convictions he had forfeited all rights and benefits under Chapter 121, Florida Statutes. See attached Exhibit B.

5. Mr. Cook timely requested an administrative hearing challenging the forfeiture of benefits.

6. During the pendency of the administrative proceeding at the Division of Administrative Hearings, Mr. Cook, through counsel, withdrew his challenge. See attached Exhibit C.

#### CONCLUSIONS OF LAW

7. The Department is charged with the administration of the FRS pursuant to Chapter 121, Florida Statutes.

8. Section 112.3173, Florida Statutes, provides, in relevant part:

(3) FORFEITURE.— Any public officer or employee who is convicted of a specified offense committed prior to retirement, or whose office or employment is terminated by reason of his or her admitted commission, aid, or abetment of a specified offense, shall forfeit all rights and benefits under any public retirement system of which he or she is a member, except for the return of his or her accumulated contributions as of the date of termination.

9. Mr. Cook was convicted of a specified offense, to wit: the committing of any felony by a public officer or employee who, willfully and with intent to defraud the public or the public agency for which the public officer or employee acts or in which he or she is employed of the right to receive the faithful performance of his or her duty as a public officer or employee, realizes or obtains, or attempts to realize or obtain, a profit, gain, or advantage for himself or herself or for some other person through the use or attempted use of the power, rights, privileges, duties, or position of his or her public office or employment position. Section 112.3173(2)(e)6., Florida Statutes.


10. The offenses of which Petitioner was convicted fall within the definition of specified offense set forth above.

11. Alternatively, Mr. Cook's voluntary withdrawal of his petition constitutes a basis to affirm the forfeiture.

It is hereby **ORDERED and ADJUDGED:**

1. The Department's decision to forfeit Mr. Cook's rights and benefits under Chapter 121, Florida Statutes, is hereby **AFFIRMED**.
2. This Final Order shall become effective on the date of filing with the Department's Agency Clerk.

**DONE and ORDERED** this 25 day of April, 2019.

  
\_\_\_\_\_  
**JONATHAN SATTER**, Agency Secretary  
Department of Management Services  
4050 Esplanade Way, Suite 285  
Tallahassee, Florida 32399-0950

Copies Furnished To:

Benedict P. Kuehne, Esq.  
Benedict P. Kuehne, PA  
100 SW 2nd Street, Suite 3550  
Miami, Florida 33131-2154

Thomas E. Wright, Esquire  
Department of Management Services  
Office of the General Counsel  
4050 Esplanade Way, Suite 160  
Tallahassee, Florida 32399-0950

**NOTICE OF RIGHT TO APPEAL**

Unless expressly waived by a party such as in a stipulation or in other similar forms of settlement, any party substantially affected by this final order may seek judicial review by filing an original Notice of Appeal with the Agency Clerk of the Department of Management Services, and a copy, accompanied by filing fees prescribed by law, with the Clerk of the appropriate District Court of Appeal. The Notice of Appeal must be filed within thirty (30) days of rendition of this order, in accordance with Rule 9.110, Fla. R. App. P., and section 120.68, Florida Statutes.

Certificate of Clerk:

Filed in the office of the Clerk of the  
Department of Management Services  
On this 25 day of April,  
2019.

Sondra Parks  
Agency Clerk      Deputy Agency Clerk

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MARK E. COOK,

Petitioner,

vs.

Case No. 18-6264

DEPARTMENT OF MANAGEMENT  
SERVICES, DIVISION OF  
RETIREMENT,

Respondent.  
\_\_\_\_\_ /

ORDER CLOSING FILE AND RELINQUISHING JURISDICTION

This cause having come before the undersigned on Respondent's unopposed Motion to Relinquish Jurisdiction ("Motion"), filed January 22, 2019, and the undersigned being fully advised in the premises, it is, therefore,

ORDERED that:

1. The Motion is GRANTED.
2. The final hearing scheduled for March 27, 2019, is canceled.
3. The file of the Division of Administrative Hearings is closed. Jurisdiction is relinquished to the Department of Management Services, Division of Retirement.

Exhibit  
A

DONE AND ORDERED this 24th day of January, 2019, in Tallahassee, Leon County, Florida.

*June C. McKinney*

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JUNE C. MCKINNEY  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675  
Fax Filing (850) 921-6847  
[www.doah.state.fl.us](http://www.doah.state.fl.us)

Filed with the Clerk of the  
Division of Administrative Hearings  
this 24th day of January, 2019.

COPIES FURNISHED:

Benedict P. Kuehne, Esquire  
Law Office of Benedict P. Kuehne, P.A.  
100 Southeast 2nd Street, Suite 3550  
Miami, Florida 33131-2154  
(eServed)

Thomas E. Wright, Esquire  
Office of the General Counsel  
Department of Management Services  
4050 Esplanade Way, Suite 160  
Tallahassee, Florida 32399  
(eServed)

07-2881



**FLORIDA DEPARTMENT OF  
MANAGEMENT SERVICES**



**JEB BUSH**  
Governor

**WILLIAM S. SIMON**  
Secretary

**CERTIFIED MAIL RETURN RECEIPT REQUESTED # 7002-2030-0006-4353-9341**

December 11, 2003

Mr. Mark E. Cook  
210 Meredith Drive  
Englewood, FL 34223

SSN: [REDACTED]

Re: NOTICE OF FORFEITURE OF ALL RIGHTS AND BENEFITS UNDER THE FLORIDA RETIREMENT SYSTEM, CHAPTERS 112 AND 121, FLORIDA STATUTES

Dear Mr. Cook:

This is to officially notify you that, pursuant to Rule 60S-4.021, Florida Administrative Code, and Section 112.3173, Florida Statutes, your rights and benefits under the Florida Retirement System have been forfeited as a result of your being found guilty in the Circuit Court of the Twelfth Judicial Circuit, Sarasota County, for acts committed while employed by Sarasota County School Board.

Specifically, in case number 2002 CF 002128 NC, you were found guilty or pled no contest to six counts of sexual battery on a child under 12, in violation of Section 794.011(2)(a), Florida Statutes.

Article II, Section 8(d) of the Florida Constitution provides:

Any public officer or employee who is convicted of a felony involving a breach of public trust shall be subject to forfeiture of rights and privileges under a public retirement system or pension plan in such manner as may be provided by law.

Section 112.3173(2)(e)6., Florida Statutes (2000), provides for forfeiture of retirement benefits for:

The committing of any felony by a public officer or employee who, willfully and with intent to defraud the public or the public agency for which the public officer or employee acts or in which he or she is employed of the right to receive the faithful performance of his or her duty as a public officer or employee, realizes or obtains, or attempts to realize or obtain, a profit, gain, or advantage for himself or herself or for some other person through the use or attempted use of the power, rights, privileges, duties, or position of his or her public office or employment position.

*Division of Retirement*

*Cedars Executive Center, 2639 North Monroe Street, Building C, Tallahassee, Florida 32399-1560*

*Telephone: 850-488-5540 • Fax: 850-921-0371*

Exhibit

**B**

Mr. Mark E. Cook  
 December 9, 2003  
 Page 2

You have no further rights under the Florida Retirement System and you will not be permitted to repurchase as prior service the years of creditable service you earned prior to your conviction.

Accumulated contributions on deposit in the Florida Retirement System Trust Fund are not affected by this forfeiture. We have checked your records with the Division of Retirement and have determined that you have made no employee contributions.

If you believe that any of your rights under Chapter 121, Florida Statutes, have been improperly or wrongfully determined, and you desire an administrative hearing on this matter, it will be necessary for you to file a formal petition to this effect with the Division of Retirement at the above address within 21 days of your receipt of this notice. Enclosed is a copy of Rule 28-106.201 and 28-106.301, Florida Administrative Code, which set forth the requirements for such petitions.

If you fail to file the petition with the Division of Retirement within this 21-day period, then you shall have waived any rights to request a hearing on the forfeiture of your rights and benefits under the Florida Retirement System.

Sincerely,

*Sarabeth Snuggs*

Sarabeth Snuggs  
 Interim Retirement Director

SS:tew  
 cc: Andrew Froman  
 Maurice Helms  
 Pat Connolly

U.S. Postal Service  
**CERTIFIED MAIL RECEIPT**  
 (Domestic Mail Only. No Insurance Coverage Provided)  
 For delivery information visit our website at www.usps.com

**OFFICIAL USE**

Postage: \_\_\_\_\_  
 Certified Fee: \_\_\_\_\_  
 Return Receipt Fee (Endorsement Required): \_\_\_\_\_  
 Restricted Delivery Fee (Endorsement Required): \_\_\_\_\_  
 Total Postage & Fees: **\$4.65**

Stamp No. \_\_\_\_\_  
 City, State, ZIP+4: \_\_\_\_\_

Mark E. Cook  
 210 Meredith Drive  
 Englewood, FL 34223

Postmark: TAMPA FL 33608  
 DEC 12 2003

Thank you for using Return Receipt Service

**1. I also wish to receive the following services (for an extra fee):**

Registered  Insured  Certified  COP  Express Mail  Return Receipt for Merchandise

**2. Addresser's Address**  
 Restricted Delivery   
 Certified postmaster fee

**3. Addresser's Address (Only if requested and fee is paid)**

**7. Date of Delivery:** 12-18

**8. Addressee's Address (Only if requested and fee is paid)**

7002 2030 0006 4353 9341

Mark E. Cook  
 210 Meredith Drive  
 Englewood, FL 34223

Signature (Addresser) \_\_\_\_\_  
 Signature (Post Office) \_\_\_\_\_

PS Form 3811, October 1991 ALE 050-100-000-714 DOMESTIC RETURN RECEIPT

2002 0020 0000 4353 9341



## Rau, Kelly

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**From:** Wright, Tommy  
**Sent:** Friday, January 18, 2019 8:46 AM  
**To:** Rau, Kelly  
**Subject:** Fw: DOAH 18-6264 Cook v DMS

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**From:** Benedict P. Kuehne <[ben.kuehne@kuehnelaw.com](mailto:ben.kuehne@kuehnelaw.com)>  
**Sent:** Thursday, January 17, 2019 4:46:38 PM  
**To:** Wright, Tommy  
**Subject:** DOAH 18-6264 Cook v DMS

Mr. Wright, this email confirms our telephone conversation today. I was finally able to receive communication from Mr. Cook, who is in the custody of the State of Florida Department of Corrections. Mr. Cook authorized me to inform you he does not intend to defend against the revocation of benefits petition. As a result, please let me know what documents are required to implement his non-litigation position.

Thank you for your assistance.  
Benedict P. Kuehne  
Kuehne Davis Law, P.A.  
100 S.E. 2d Street, Suite 3550  
Miami, FL 33131-2154  
305.789.5989 Tel  
305.789.5987 Fax  
786.543.8352 Cell  
[ben.kuehne@kuehnelaw.com](mailto:ben.kuehne@kuehnelaw.com)  
[bkuehne@bellsouth.net](mailto:bkuehne@bellsouth.net)  
[www.kuehnelaw.com](http://www.kuehnelaw.com)

Exhibit

C