

**IN THE SUPREME COURT OF OHIO**

State ex rel. Schwartz, :  
 :  
 Relator, : Case No. 07-0303  
 :  
 -vs- :  
 :  
 Turner, Judge : Original Action in Prohibition  
 :  
 Respondent. :

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**RESPONDENT'S MOTION TO DISMISS**

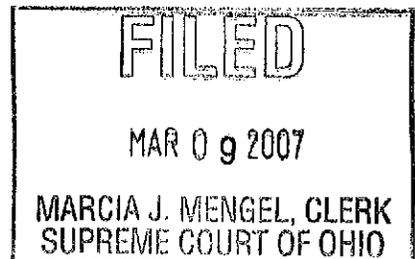
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## MOTION TO DISMISS

### **I. INTRODUCTION**

Pursuant to S.Ct.Prac.R. X(5) and Civ.R. 12(B)(1) and (6), Respondent, Judge Lawrence S. Turner, hereby moves this Court to dismiss Relator's Verified Complaint, which seeks a writ of prohibition, on the grounds that the alleged claim is moot, Relator lacks standing, Respondent did not engage in any activity that exceeded his judicial authority, and Relator has an adequate remedy at law. For all of these reasons, which will be set forth in detail below, Relator's Verified Complaint must be dismissed.

### **II. PROCEDURAL HISTORY AND FACTS**

On February 13, 2007, Relator, Richard F. Schwartz, the Law Director and Prosecuting Attorney for the city of Newton Falls, Ohio, filed a Verified Complaint asking this Court to issue a writ of prohibition permanently enjoining Respondent from conducting any judicial proceedings of the Newton Falls Municipal Court outside the territorial boundaries of the Newton Falls Municipal Court and from enforcing any provisions of a January 9, 2007 Journal Entry. (Jan. 9, 2007 Journal Entry attached to Verified Complaint.) Relator also filed a Motion for an Alternative Writ, seeking to temporarily enjoin the enforcement of any provisions of Respondent's January 9, 2007 Journal Entry. On February 23, 2007, Respondent filed a Memorandum in Opposition to Relator's Motion for an Alternative Writ.

Relator's request for a writ of prohibition stems from a Journal Entry filed by Respondent on January 9, 2007. In the January 9, 2007 Journal Entry, Respondent determined, among other things, that the current practice of transporting defendants in the custody of the Trumbull County Sheriff to the Newton Falls Municipal Court involved an inherent danger to the defendants and law enforcement officers and constituted an excessive use of manpower, manpower that could

far better serve the citizens of the county by being out patrolling the roads and highways and investigating criminal activity. (See Jan. 9, 2007 Journal Entry at p. 1.) The January 9, 2007 Journal Entry also stated that it was far more fiscally responsible for one person, the judge, to travel to the county seat (at his own expense) and hold arraignments in the Trumbull County Jail rather than transporting many defendants to Newton Falls. *Id.* The Journal Entry also indicated that the county commissioners had pledged to provide a system of electronic, video arraignments to the Newton Falls Municipal Court in the near future. *Id.*

The January 9, 2007 Journal Entry ordered, in part, that the Newton Falls Municipal Court judge “hold arraignments of defendants in the custody of the Sheriff’s Department in the Trumbull County Jail[.]” *Id.* at 2. The Journal Entry stated that the order did not preclude the Sheriff’s Department or other law enforcement agencies from transporting defendants to the Newton Falls Municipal Court for arraignments or the court from directing that defendants appear in the Newton Falls Municipal Court for arraignments, and that if a defendant or his/her counsel objected or sought re-arraignment, such arraignment would be held at the Newton Falls Municipal Court. *Id.* at 1-2. In addition, the Journal Entry indicated that such proceedings would not continue if the Sheriff’s Department was not in accord with the arrangements. *Id.*

Respondent conducted two arraignments on January 22, 2007 and two probation violation hearings on January 18, 2007 at the Trumbull County Jail. (See Verified Complaint at ¶¶ 10-11.) The Trumbull County Jail is located in Warren, Ohio which, according to the Verified Complaint, is outside of the “territorial jurisdiction of the Newton Falls Municipal Court.” *Id.* at ¶12. On January 23, 2007, a Journal Entry was filed regarding the in-jail arraignments conducted by the Newton Falls Municipal Court in the Trumbull County Jail. (See Jan. 23, 2007 Journal Entry attached to Verified Complaint.) The January 23, 2007 Journal Entry indicated

that the court had met with the Trumbull County Sheriff to review the results of the first week of such in-jail arraignments. *Id.* at 1. The court found that the Sheriff had opened the Trumbull County Jail's judicial suite to the general public for the purposes of having open court for arraignments but that such arrangements had caused concern regarding the jail's internal integrity and security. *Id.* Accordingly, the court ordered that arraignments be held at the court in Newton Falls. *Id.*

Relator asserts that proceedings held by Respondent at a location outside the territorial boundaries of the Newton Falls Municipal Court are "legally impermissible" and "extra-territorial" and that pursuant to R.C. 1901.01, et seq., a judge of a municipal court may only exercise judicial authority within the territorial "jurisdiction" of the municipal court. (Verified Complaint at ¶¶15-17.) Relator asks this Court to enjoin Respondent from conducting any judicial proceedings outside the territorial jurisdiction of the Newton Falls Municipal Court and from enforcing any provisions of the January 9, 2007 Journal Entry. *Id.* at p. 5.

### **III. REQUIREMENTS FOR PROHIBITION**

In order to be entitled to a writ of prohibition, Relator must establish that Respondent is about to exercise judicial power, the exercise of that power is unauthorized by law, and denial of the writ will cause injury for which there is no other adequate remedy at law. See *State ex rel. Westlake v. Corrigan*, 112 Ohio St. 3d 463, 2007-Ohio-375, ¶12. A writ of prohibition is to be used with great caution and shall not issue in doubtful cases. *State ex rel. Merion v. Tuscarawas Cty. Court of Common Pleas* (1940), 137 Ohio St. 273. In the absence of a patent and unambiguous lack of jurisdiction, a court having general subject matter jurisdiction can determine its own jurisdiction, and a party challenging that jurisdiction has an adequate remedy by appeal. *State ex rel. Shimko v. McMonagle* (2001), 92 Ohio St.3d 426, 428-429.

Relator's request for a writ of prohibition must be dismissed because Relator's alleged claim is moot, Relator lacks standing, the conduct about which Relator complains does not implicate the subject matter jurisdiction of Respondent, and Relator has an adequate remedy at law for any alleged procedural violations.

#### IV. LAW AND ARGUMENT

##### A. Relator's Claim is Moot Because the Conduct About Which Relator Complains Has Been Discontinued.

As indicated in the Verified Complaint, the conduct alleged by Relator to be extra-judicial—Respondent's holding of proceedings in the Trumbull County Jail—has been discontinued. As set forth above, on January 23, 2007, Respondent decided, for a variety of reasons, to discontinue the in-jail arraignments. (See Verified Complaint and Jan. 23, 2007 Journal Entry attached thereto.) Yet, Relator filed this prohibition action a full three weeks after Respondent had ceased the in-jail arraignments, and there is no allegation in the Verified Complaint that Respondent had resumed these arraignments.

A prohibition claim can be rendered moot when the act sought to be prevented is discontinued by the respondent. Compare *State ex rel. Mason v. Griffin*, 104 Ohio St.3d 279, 2004-Ohio-6384, ¶18 (wherein this Court determined that a prohibition action was not moot or premature because the respondent, unlike in the case at bar, had not discontinued the alleged extra-judicial proceeding). See also, *State ex rel. Denton v. Bedinghaus*, 98 Ohio St.3d 298, 2003-Ohio-861, ¶26 (to the extent relator seeks to prevent a policy that is discontinued by a judge, the prohibition claim is moot).

Here, Respondent has discontinued the in-jail proceedings, thereby rendering Relator's prohibition claim moot. In *State ex rel. Cruzado v. Zaleski*, 111 Ohio St.3d 353, 2006-Ohio-5795, ¶15, this Court determined that a prohibition action will not necessarily be rendered moot

when the act sought to be prevented occurs before a court can rule on the prohibition claim. This principle, however, applies only where the lower court patently and unambiguously lacked jurisdiction to proceed, because prohibition will issue to prevent any *future* unauthorized exercise of jurisdiction and to correct the results of prior jurisdictionally defective actions. *Id.* In the case at bar, however, the acts complained of have not simply been performed already—the acts complained of have actually been discontinued.

More importantly, Relator has utterly failed to present any principled or applicable legal authority to support his position that Respondent patently and unambiguously lacked subject matter jurisdiction to conduct proceedings at a location outside of the territorial jurisdiction of the Newton Falls Municipal Court. For this reason, coupled with the fact that Respondent has discontinued the alleged unauthorized activity, Relator's claim is moot, and therefore, the Verified Complaint must be dismissed.

**B. Relator Lacks Standing Because He Was Not a Party to Any of the Alleged Unauthorized Proceedings and Can Demonstrate No Injury in Fact to a Legally Protected Interest.**

A prohibition action may only be commenced by a person who is a party to the proceedings sought to be prohibited or who demonstrates an injury in fact to a legally protected interest. *State ex rel. Matasy v. Morley* (1986), 25 Ohio St.3d 22, 23. Standing in a prohibition action requires that the relator have a sufficient stake in the outcome of a justifiable controversy, and a sufficient stake in the outcome exists when the relator can demonstrate injury in fact, in that the relator has suffered or will suffer a specific injury as a result of the challenged action and that the court can redress such injury. *Local Union 1886, United Mine Workers of Am. v. Reclamation Bd. of Review* (1996), 116 Ohio App.3d 371, 373-374. Standing requires a concrete injury in fact rather than an abstract or suspected injury. *Id.* at 374.

Relator here can demonstrate none of the prerequisites for standing. Relator has not alleged that he was a party to any of the proceedings below. In fact, Relator has not alleged that he or any other representative of his office was even present, or desired to be present, at any of the proceedings at issue. Indeed, nothing in the Criminal Rules of Procedure requires the presence or involvement of the prosecutor at arraignments or probation violation hearings. (See Crim. R. 5 and 10.) As the attorney representing the municipality and prosecuting crimes before the Newton Falls Municipal Court, Relator may have a general interest in the subject matter of this lawsuit; however, this does not give rise to an actual, concrete injury suffered by Relator. Because Relator has not pointed and cannot point to any legally protected interest that *he* has suffered or will suffer as a result of Respondent's alleged extra-judicial acts, Relator lacks standing and, accordingly, his prohibition claim fails.

C. **Relator Cannot Demonstrate that Respondent Has Exercised or is About to Exercise Unauthorized Judicial Power or That Denial of the Requested Writ Will Cause Injury For Which There is No Other Adequate Remedy at Law.**

Relator asserts, in essence, that Respondent's act of conducting judicial proceedings at a location that is physically outside of the territory that otherwise defines the Newton Falls Municipal Court's jurisdiction implicates Respondent's subject matter jurisdiction. In doing so, it appears that Relator is either confusing or correlating a municipal court's power or authority to act in a criminal matter with the location of where such judicial acts may occur. The former—a court's power to act—is synonymous with subject matter jurisdiction. The latter—where a court may conduct its proceedings—is not.

As will be set forth below, while there is a dearth of authority addressing the issue of where a court may actually conduct judicial proceedings, the law is well-established as to the scope of a municipal court's subject matter jurisdiction over criminal matters. The law that

confers a municipal court's subject matter jurisdiction is the yardstick by which to measure whether Respondent has acted extra-judicially in conducting proceedings in the Trumbull County Jail. This law clearly and unambiguously confers subject matter jurisdiction upon Respondent to hear the type of cases at issue in the proceedings that took place at the Trumbull County Jail. The fact that the Trumbull County Jail is located outside of the territorial jurisdiction of the Newton Falls Municipal Court is immaterial to and has no bearing on Respondent's subject matter jurisdiction to conduct those proceedings.

**1. The Subject Matter Jurisdiction of the Newton Falls Municipal Court.**

Section 18, Article IV of the Ohio Constitution states that the "several judges of the supreme court, of the common pleas, and of such other courts as may be created, shall, respectively, have and exercise such power and jurisdiction, at chambers, or otherwise, as may be directed by law." Ohio Revised Code Section 1901.01(A) establishes municipal courts in various municipal corporations, including Newton Falls, Ohio. Ohio Revised Code Section 1901.20 specifically defines the criminal jurisdiction of the Newton Falls Municipal Court and states, in pertinent part:

(A)(1) The municipal court has jurisdiction of the violation of any ordinance of any municipal corporation within its territory, \* \* \* and of the violation of any misdemeanor committed within the limits of its territory.  
\* \* \*

(B) The municipal court has jurisdiction to hear felony cases committed within its territory. In all felony cases, the court may conduct preliminary hearings and other necessary hearings prior to the indictment of the defendant or prior to the court's finding that there is probable and reasonable cause to hold or recognize the defendant to appear before a court of common pleas and may discharge, recognize, or commit the defendant.

Under R.C. 1901.20, a municipal court's criminal jurisdiction is limited to violations of the ordinances of any municipal corporation, misdemeanors, and felonies *committed within the*

*limits of its territory.* R.C. 1901.02 defines the limits of the Newton Falls Municipal Court's territory and states:

(A) The municipal courts established by section 1901.01 of the Revised Code have jurisdiction within the corporate limits of their respective municipal corporations \* \* \*.

\* \* \*

(B) In addition to the jurisdiction set forth in division (A) of this section, the municipal courts established by section 1901.01 of the Revised Code have jurisdiction as follows:

\* \* \*

The Newton Falls municipal court has jurisdiction within Bristol, Bloomfield, Lordstown, Newton, Braceville, Southington, Farmington, and Mesopotamia townships in Trumbull county.

Together, R.C. 1901.20 and 1901.02 define the scope of the Newton Falls Municipal Court's subject matter jurisdiction. Under these provisions, Respondent has subject matter jurisdiction over alleged violations of any Newton Falls ordinance that occurred in Newton Falls, Ohio, and over alleged misdemeanors and felonies that were committed in Newton Falls or in Bristol, Bloomfield, Lordstown, Newton, Braceville, Southington, Farmington, and/or Mesopotamia townships.

Indeed, this exact analysis for determining the subject matter jurisdiction of an R.C. 1901.01 municipal court has been used countless times by courts in rejecting criminal defendants' assertions that the respective municipal court lacked jurisdiction to hear and decide their cases. See, for example, *State v. Davis*, Stark App.No. 2006 CA 00035, 2006-Ohio-6399, ¶¶20-22; *State v. Davis*, Stark App.No. 2004-CA-00202, 2004-Ohio-494, ¶¶39-41, 49; *State v. Gordon*, Mahoning App.No. 03 MA 81, 2004-Ohio-3365, ¶11 (finding the respective municipal court was invested with subject matter jurisdiction to hear and decide the case because the

misdemeanor offense/municipal ordinance violation was committed within the territorial limits of the court).

Relator has not alleged, nor is there any evidence, that Respondent is conducting proceedings over alleged violations of Newton Falls ordinances, misdemeanors, or felonies that *were not* committed within the territorial jurisdiction of the Newton Falls Municipal Court. Rather, Relator simply finds fault with the location of Respondent's exercise of his jurisdiction. As set forth above, however, R.C. 1901.02 and 1901.20—the statutes that establish the subject matter jurisdiction of municipal courts—say *nothing* about the location of where such jurisdiction may be exercised. Simply put, the location of the judicial proceedings has absolutely no bearing on the subject matter jurisdiction of a municipal court. Because Respondent clearly had subject matter jurisdiction to conduct the proceedings over the criminal matters at issue, he did not exercise extra-judicial authority by ordering and conducting in-jail arraignments and other proceedings at the Trumbull County Jail. Accordingly, Relator is not entitled to a writ of prohibition, and this cause should be dismissed.

**2. R.C. 1901.021 does not address or otherwise define the scope of a municipal court's subject matter jurisdiction.**

In support of his prohibition claim, Relator relies primarily on R.C. 1901.021(A), which states:

The judge or judges of any municipal court established under division (A) of section 1901.01 of the Revised Code having territorial jurisdiction outside the corporate limits of the municipal corporation in which it is located *may sit* outside the corporate limits of the municipal corporation *within the area of its territorial jurisdiction*. [Emphasis added.]

Relator suggests that the term “sit,” as set forth in R.C. 1901.021(A), should be defined as “[t]o hold court; to do any act of a judicial nature. To hold a session, as of a court \* \* \*.” (See Relator's Motion for an Alternative Writ, at p.5, footnote 1.) Relator concludes from this, not

only that a municipal court is strictly limited to conducting proceedings only within its territorial boundaries (even though the statute does not contain such restrictive language), but Relator takes the enormous leap that if a municipal court holds proceedings outside of the geographical confines of the court's territory, then the court's subject matter jurisdiction that otherwise exists pursuant to R.C. 1901.02 and 1901.20 suddenly vanishes. R.C. 1901.021(A) simply does not provide as such and, in fact, has absolutely nothing to do with a municipal court's subject matter jurisdiction.

It is well established that subject matter jurisdiction connotes the power and authority of a court to *hear and decide* particular *types* of cases upon their merits. See *Morrison v. Steiner* (1972), 32 Ohio St.2d 86, 87. As set forth above, R.C. 1901.02 and 1901.20 establish those types of (criminal) cases over which a municipal court has the authority to hear and decide, i.e., its subject matter jurisdiction. R.C. 1901.021 contains no provision that defines the type of cases a municipal court may hear and decide. Instead, by its very terms, R.C. 1901.021 merely sets forth where a municipal court *may* "sit."

Even if one accepts Relator's definition of the term "sit" as used in R.C. 1901.021, such provision is simply delineating the various sites where the court *may* exercise its jurisdiction—jurisdiction that it already has pursuant to R.C. 1901.02 and 1901.20. Although the meaning of the words "may sit," as such language is used in R.C. 1901.021(A), is irrelevant to the scope of a municipal court's subject matter jurisdiction, Respondent suggests that an equally appropriate interpretation of such language is that it defines where the "courthouse" may be located, including the clerk's office, courtrooms, law library and the judges' offices. Under such definition, R.C. 1901.021(A) would prohibit a municipal court from placing its courthouse outside of the territorial boundaries of the court. Again, it would not follow from this

interpretation that a municipal court may not exercise its subject matter jurisdiction at a location away from that courthouse, including a location that is outside of the physical boundaries of the court's territory. Thus, utilizing any reasonable interpretation of the word "sit," R.C. 1901.021(A) still does not limit a municipal court's *subject* matter jurisdiction.

The cases cited by Relator in his motion for an alternative writ also provide no support for his assertions and, instead, actually confirm Respondent's position. For example, in the case of *Goody v. Scott* (October 18, 1995), Richland App. No. 95CA31, R.C. 1901.021(A) was not even addressed. Instead, the court of appeals properly determined the scope of a municipal court's subject matter jurisdiction over civil matters based on the applicable jurisdictional statutes, R.C. 1901.021(A) *not* being one of them. In addition, while the court of appeals in *Rose v. Mays* (November 1, 1995), Montgomery App. No. 15084, correctly stated that the pertinent municipal court statutes (including 1901.021[A]) "literally" confer territorial jurisdiction, nothing in that case suggests the conclusion reached by Relator. Significantly, R.C. 1901.021 is never mentioned in the *Rose* analysis of what makes up a municipal court's subject matter jurisdiction. Indeed, R.C. 1901.021 is mentioned no where in the court's opinion

There is sparse case law addressing the authority of a judge to conduct proceedings at a locale outside of chambers or even outside of the court's territorial boundaries. The cases Respondent has found, however, clearly find no fault—at least certainly not as to subject matter jurisdiction—with a judge conducting official business at a location outside of the court's territorial borders. See *Hollen Parker, Petitioner* (1889), 131 U.S. 221, 224 (wherein the United States Supreme Court rejected a claim that a district court judge was without subject matter jurisdiction to accept a pleading simply because, when doing so, the judge was not located within his court's territorial "jurisdiction"); *Wheeler v. Taft* (1919), 261 F. 978, cert. denied

(1920), 253 U.S. 490 (“[w]hen the order is one which may be made at the chambers of the judge, it is not necessary that it be made where the judge at the time is performing the duties of his office, as the judge’s chambers are considered to be where he is, and is authorized to be, engaged in performing his judicial duties.”); and *In re American Home Furnishers’ Corp. v. Willcox* (1924), 296 F. 605, 609 (stating that where there is no objection, a judge may sign any order, even when he is outside of his district on vacation and that when the law allows the proceeding to be taken at the judge’s chambers, such does mean that those proceedings must necessarily be within the territorial limits of the judge’s district).

In summary, because R.C. 1901.021(A) clearly does not implicate a municipal court’s subject matter jurisdiction, Respondent did not exceed his judicial authority by conducting proceedings at a location outside of the territorial boundaries of the Newton Falls Municipal Court. Having failed to establish that Respondent patently and unambiguously lacked the judicial authority to conduct proceedings in the Trumbull County Jail, in the type of cases over which Respondent clearly had subject matter jurisdiction, Relator is not entitled to a writ of prohibition.

- 3. Because the location of Respondent’s exercise of his clear judicial authority does not implicate subject matter jurisdiction, any challenge to Respondent holding proceedings in the Trumbull County Jail may be raised in the respective proceeding itself or in a declaratory judgment action. Relator, therefore, has an adequate remedy at law.**

In the case at bar, Respondent made procedural determinations about the location of certain proceedings, using the logic of efficiency, economy, and safety. In so deciding, Respondent was not only acting pursuant to lawful authority over the subject matter, he was acting within his sound discretion. As with any procedural decision, a person with standing

could challenge Respondent's decision, but certainly not on the basis of a lack of subject matter jurisdiction.

At best, Relator's claim asserts an alleged violation of R.C. 1901.021(A) which, as set forth above, does *not* implicate Respondent's subject matter jurisdiction. Because any such alleged violation does not go to subject matter jurisdiction, asserting such a claim by way of an original action in prohibition is entirely improper. See *State ex rel. Jones v. Suster* (1998), 84 Ohio St.3d 70, 73 (a writ of prohibition tests and determines solely and only the *subject matter* jurisdiction of the lower court). If Relator believes (albeit erroneously) that R.C. 1901.021(A) restricts the location of where a municipal court may exercise its lawful jurisdiction, the remedy for any alleged violation of that statute lies in an ordinary action at law (for example, by way of a declaratory judgment action).

As for the criminal defendants that may be involved in a particular proceeding held in the Trumbull County Jail, if they had an issue with the manner of or location of such proceedings, they too would have an adequate remedy at law by way of an objection made in the underlying matter itself or by way of appeal.<sup>1</sup> The actions of Respondent here simply did not implicate his inherent authority (subject matter jurisdiction) to hear and conduct proceedings in these criminal matters. The manner in which Respondent conducted those proceedings is subject to attack only in the ordinary course of the law.

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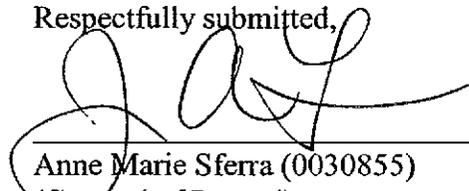
<sup>1</sup> The record itself demonstrates just a few of the various ways Respondent's decision could be challenged in the ordinary course of law. Respondent's January 9, 2007 Journal Entry specifically noted that if a defendant objected, or if a defendant's constitutional or civil rights would be prejudiced, the arraignment would be held at the court. In addition, in the February 9, 2007 newspaper article attached to the Verified Complaint, an attorney for one of the criminal defendants stated that he had no plans to object to the in-jail proceeding held regarding his client. (See Verified Complaint, Tribune Chronicle article at 2.)

Because Relator's claim does not implicate Respondent's subject matter jurisdiction, he has an adequate remedy at law, and his request for a writ of prohibition must be dismissed.

## V. CONCLUSION

A writ of prohibition is a high prerogative writ, issued only in rare circumstances where there is no adequate remedy at law and where a court attempts to adjudicate a cause over which it has or had no jurisdiction. See *State ex rel. Gyurcsik v. Angelotta* (1977), 50 Ohio St.2d 345, 346. As set forth above, Relator has failed to establish that Respondent has exercised or will be exercising unauthorized judicial power, or to otherwise show that he is entitled to a writ of prohibition. Relator's Verified Complaint, therefore, must be dismissed.

Respectfully submitted,



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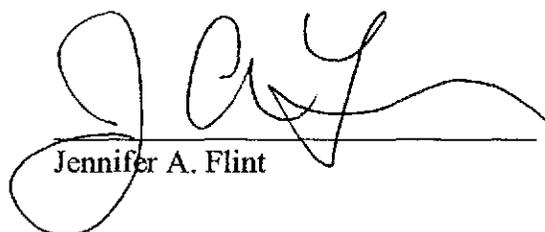
Lawrence S. Turner, Judge

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Respondent's Motion to Dismiss was sent via regular U.S. mail, postage prepaid this 9<sup>th</sup> day of March 2007, to the following:

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