

IN THE SUPREME COURT OF OHIO

STATE OF OHIO

Appellee,

CASE: 2001-0871

vs.

NAWAZ AHMED

Appellant.

RECEIVED  
MAR 17 2008  
CLERK OF COURT  
SUPREME COURT OF OHIO

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MAR 17 2008  
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SUPREME COURT OF OHIO

MOTION FOR ASSIGNMENT OF SUBSTITUTE JUDGES

BECAUSE FOUR JUSTICES HAVE JUDICIAL BIAS

AND ARE NOT IMPARTIAL IN THIS MATTER

1. Now comes appellant Nawaz Ahmed pro se and request this court

to assign four substitute judges to hear this case because of the  
judicial bias of four justices on the court who are not impartial

adjudicators in this case and would not consider facts and apply the  
correct state and federal law in this matter, a fact evident from  
their previous decision on 03/02/2005.

2. The decision of the ohio Supreme Court in this case filed on 03/02/  
2005, denying Application For reopening is the central subject of this  
identical application refiled, seeking vacation and correction of the  
previous decision. The Honorable chief Justice Moyer, Honorable Justice  
Stratton. Honorable Justice O'Connor and Honorable Justice O'Donnell  
had participated and rendered the previous decision of 03/02/2005. They  
cannot be considered an impartial adjudicators as their bias is evident  
from their partial decision on 03/02/05. The Judicial bias has been  
held a valid reason for seeking an impartial court in Ohio and in USA.

The Constitution requires that a defendant-appellant be tried by an impartial and an unbiased court. See *Tumey v. Ohio*, 273 U.S. 510(1927). Trial before a partial judge is a structural error requiring no proof of prejudice. The four justices named above refused to even review the "good cause" pled in the previous Application and failed to pass-upon if "good-cause" existed or the good-cause pled was not sufficient. Such deliberate refusal to apply the crucial provision of the S.Ct.Prac.rule 11(6)(A)," unless the appellant shows good cause for filing at a later time" proves that these four Justices had a fixed state of mind which would not be persuaded by the "facts" and they would not or could not apply the applicable law to reach their decision.

3. The fact that these four Justices also refused to amend the Application so that "good cause" can be further modified and fully stated, show that these justices were not interested in the "fair administration of Justice". The arbitrary 10 page limit on the application prevents an Appellant to fully "show the good-cause" because the limited space must be used for "New Propositions of Law and Arguments in support of the propositions of law that previously were not considered on the merits". S.Ct.Prac.Rule 11(6)(B)(3). Those appellants who seek relief under App.Rule 26(B) have an additional opportunity as Claimed Appeal of Right where they do not face the same 10 page limit and plead any error which occurred in the lower Appellate Court. Such procedural due process if not provided under Rule 11(6) proceeding. When by allowing filing of a Reply brief after the Appellee files the 'Opposing memorandum' could easily provide such procedural due process. But Court rules are adopted in secret and unknown deliberation of the court staff and are not open to public comments or any input

from the professional Bar or subjected to amendments by the Ohio legislature. So Rule 11(6) is arbitrary, unintelligent and confusing grouping of various provisions, which are unconstitutional. What reason there can be to "return the record To trial Court" after the decision on Motion For reconsideration (Rule 13) when trial Court is required to make and keep a duplicate copy of the trial record (Rule 19(4)(D)) and then require the mostly indigent appellants to file a copy of record (Rule 11(6)(B)(5)) with the Application for Reopening??

4. What justification can be to require the appellants who decide not to file for reconsideration to file application for reopening within 90-days after entry of Judgment (Rule 11(6)(A)) and then impose the same 90-days deadline upon those who actually file for reconsideration and await a decision in that proceeding?? When U.S. Supreme Court and U.S. Congress have found it logical, prudent, intelligent and commonsensical to have different filing deadlines for those who file for "rehearing" and those who do not file for "rehearing" in all state and Federal lower courts ( 28 USC 2101 and US Supreme court Rule 13.1 and 13.3), then why the Justices of Ohio Supreme Court can not comprehend the same logic, reason, commonsense rationale in its filing deadlines required by the S.Ct.Prac.rule 11(6)(A)?? What is the rush, when every appellant has a right to review in the U.S. Supreme Court by certiorari Petition from the denial of his direct-appeal in State court (28 USC 1257 and US Sup.Ct. Rule 13.1 and 13.3) as declared by Lawrence v. Florida, 127 S.Ct. 1079 citing Clay v. United States, 537 U.S. 522;???Its foolish to sing that Ohio has a legitimate interest to erract procedural barriers to acheive finality of its court judgments, when "finality" only occurs after a DIRECT-REVIEW in the U.S. Supreme court and not any earlier because 'review by certiorari' is part of the "Direct review" of state court judgments. Lawrence v. florida, 127 C.Ct. 1079 holding. The time allowed to file for Direct-review by certiorari in the US Supreme Court is part of "Direct-Review". Lawrence v. Florida, supra , Id.at HELD (b), (2007).

5. Requiring an indigent appellant to face THREE simultaneous proceedings without the right to counsel, can not be any legitimate state interest but the incompetency of the Judicial bureaucracy and closed minded, unreasonable Justices of the OH Supreme Court. So they have imposed simultaneous filing deadlines for "reconsideration", for "reopening" and for "review by cert petition in US Supreme Court", OR when an appeal from the denial of Appeal in lower appellate courts is also underway in the

Ohio Supreme Court. The magistrate Judge in Morgan v. Eads, while referring a certified question to OH Supreme Court had pointed-out to this procedural maze and confusing, irrational multiple filing deadlines. But these Justices of the Ohio Supreme Court failed to consider that good advice, and did not address the issue in Morgan v. Eads, 104 OS.3d 142 at all. It shows incompetence, closed mindedness and failuer to think straight, refusal to consider facts and make rational decisions.

6. If these Justices did not like the advice of a federal magistrate Judge, they also ignored the almost similar suggestion from Justice PFEIFER in State v. Gumm, (2004), concurring. Who essentially said that "time to file for reopening should start after the Court has decided upon the Reconsideration" where reconsideration was sought. Although, Justice PFEIFER framed the issue as "appellant has discharged his allegedly ineffective appellate counsel". When U.S. Supreme Court and Congress starts the time to file for cert review after "reconsideration" in the Ohio Supreme Court has ended ( Rule 13.3 and 28 USC 2101(c)), then why the Justices of OH Supreme Court refuse to adhere to the same tolling of Judgement of OH Supreme Court, under S.Ct.Prac.R.11(6)(A)??

It appears that Morgan v. Eads, 104 Ohio St.3d 142( OH 2004),Id.at P 18 say the same in terms of "Direct Appeal has ended", but then go on to ignore the statutory definition of "Appeal" at ORC 2505.01(A) which includes "all proceedings" related to appeal, reconsideration as APPEAL.

7. These Justices were so closed-minded that they ignore the ORC 2505.03, 2505.04, starting the time to appeal and ORC 2505.39 'Issue of mandate' as the conclusion of Appeal. Similar, provision for the start of appeal (App.R. 3(A)) and the end/finishing of Appeal by 'issuing of Mandate ( App.R. 27) is a well establish law in Ohio for centuries. The Morgan v. Eads, supra, Id., at P18-19 cannot be understood to contradict these "outer-limits of Appellate Jurisdiction" in Ohio. Similarly S.Ct.Prac.Rule XIX(1)(A)(1) starts the appellate Jurisdiction and S.Ct.Prac.Rule 11(4) ends the Appellate Jurisdiction of the Ohio Supreme Court in death penalty cases filed after 1995. The issuing of Mandate has always been held to end the 'appellate jurisdiction'. The Court is required to recall the Mandate if it wish to reopen the Appeal for any reason. The S.Ct.Prac.Rule 11(4) (A)(1) provides the time to issue the Mandate when Reconsideration is denied, upon denial of the reconsideration.

8. These Justices appears to be incapable of comprehending the law of "finality of Judgment" and may find it enlightening that:

" In determining when judgment became final after conviction, time within which to petition United sates Supreme Court for writ of certiorari under Rule 13 was to be included, since finality of Judgment was defined as that point at which courts could no longer provide remedy on Direct review."

In re Pine (1977), 3rd Dist.) 66 Cal. App.3d 593, 136 Cal.Rptr.718;

The Justices of Ohio Supreme Court that that "reconsideration" is a useless formality and serves no purpose and they cannot provide any relief via reconsideration. whereforce, denial of direct appeal is the "final Judgment" and that event must start the clock of filing for reopening Appeal. This understanding is in reality "ignorence of law"

as it contradicts with U.S. Supreme Court Rule 13.3 and related caselaw.

" ... the time to file the petition for a writ of certiorari for all parties runs from the denial of the rehearing or, if rehearing is granted, the subsequent entry of judgment." (US Sup.Ct. Rule 13.3)

Does it matter if Justices of Judicial bureaucrats at the OH Supreme Court call it "entry" on reconsideration is filed with the clerk. S.Ct.Prac.Rule 11(4)(A)(2).

The entry on reconsideration is a "judgment" issued by exercise of same Appellate Jurisdiction under Ohio Constitution Art.IV(2)(B)(2)(c) and ORC 2953.02 in a case involving death penalty after 1995. There is no other separate jurisdiction mentioned anywhere which could separate the "Direct Appeal" from the "reconsideration". The same fact is stated as to the "issue of a certified entry of judgment after denial of reconsideration" shall constitute a Mandate. Rule 11(4).

9. Mandate in this case 2001-0871 was issued on 10/27/2004 upon denial of reconsideration, as per case docket notation. Wherefore, the Direct Appeal ended on 10/27/04 and not on 08/25/04. This appellant was required to file the Application for reopening, 90-days after this 10/27/04 date. Wherefore, the last day to file the Application For reopening 'without showing of any good cause' was 01/25/05. Ahmed or his appointed counsels were not required to show good-cause on 12/21/04 filing of Application for reopening. As it was a timely and premature filing. For these reasons the Application stated that "Application is Timely". Court failed to understand how the application was timely and also wrongly denied Motion To Amend the Application. Therefore, violating due process of law and right to explain, present the "good cause" in a way that court can understand it.

10. CONSTITUTIONAL RIGHT TO COUNSEL REQUIRES FULL TIME ALLOWED TO COUNSELS.

These Justice also forgot that the only reason given to seek

appointment of counsels was that Appellant Ahmed is not an indigent and has his own funds. Wherefore, "Ahmed has Constitutional Right to Counsels" (Application, Id. at 1 and pro se Motion filed on 08/27/04). An affluent appellant has the same constitutional right to counsels which any corporation has, in every proceeding in civil or criminal matters. See 5,6,8,9,14 th amendments to US Constitution. The right to representation by counsel is an inherent right of one who can hire attorneys, just as courts have some inherent jurisdiction and power. ORC 2935.14, 2935.20; Siegwald v. Curry, 40 Ohio App.2d 313 (OApp. 10 Dist. 1974);

11. Ahmed claimed that State has prevented from from hiring his own attorneys since arrest by illegal and unjuristical restraining orders against the personal funds of Ahmed, by Prosecutor's use of abated divorce case 99-Dr-40 via trial Judge Jennifer sargus who continued to make orders in the abated divorce case 99-DR-40 and in the criminal case 99-CR-192 and never dismissed the divorce case even when challanged by defendant in open court at a hearing in criminal case on 12/06/99 Tp 4,6. See also docket entries made sue sponte on 11/24/99( doc.20), 03/09/00 (doc. 63), 03/29/00 (doc. 78), 08/29/00 (doc.105), 09/28/00 (doc.122-123), 11/09/00 (doc. 133), and 01/31/01 ( doc. 231), 02/02/01, and Prosecutor had also taken the charge of 'marital home' as evident from docket entries on 01/12/00 (doc.47) and 02/02/01 (doc. 250), from 9/11/99.

12. The Ohio Supreme Court refused<sup>to</sup> hear the issues of release of personal funds to employ counsels of choic for appeal. See Motion to order release of funds filed 07/15/02, striken sue sponte on 08/16/02 in this case 2001-0871. This court also granted the motion of selected counsel to withdraw on 12/05/2001 sue sponte even when appellant opposed the motion on 10/04/2001. This court did not allow any time to hire other

appellate counsels and appointed OPD for appellate representation on 01/31/2002. The selected trial and appellate counsel Joseph carpino was twice removed from representation of appellant. See trial docket entries on 11/15/00 (doc.134), 12/21/00 (doc.154), 01/03/01 (doc.178), 01/04/01 (doc.182), 01/10/01 (doc.191) and 02/08/01 (doc.254). See also sentencing hearing transcript on 02/02/01, Tp 27-28;

13. Court appointed attorneys for filing Application for reopening appeal on 09/21/04 granting a Motion filed on 08/27/04, but notified the appointment on 09/24/04 by mail. The Court is required to give full 90-days to counsels when it is state of Ohio and the Courts which prevented appellant from hiring his own attorneys by use of his own funds. See McFarland v. Scott, 512 U.S. 849 (1994).

14. The Application pled this late appointment of counsels as "good-cause" in the alternative for filing Application on 12/21/04. The Justices avoided to pass upon this issue and if it was a good-cause or not, and if Appellant as non-indigent had the Constitutional right to counsels of choice. These counsels were selected by appellant but needed an order from the court because court had refused to order release of funds of appellant. So any delay of 30 days is directly attributed to State of Ohio.

The United States Supreme Court has held that:

" The existance of cause for procedural-default must ordinarily turn on whether the prisoner can show that some objective factor external to the defense impeded counsel's efforts to comply with the state's procedural rule... that "some interference by officials," Brown v. Allen, 344 U.S. 443,486 (1953), made compliance impracticable, would constitute cause under this standard."

Murray v. Carrier, 477 U.S. 478, 488 (1986), Id. at HN5.

Why this "good cause" not be acceptable to the Justices of this Court when they have known it all along that Appellant has been continuously preventing from using his own funds to hire counsels?

15. Denial of adequate time to counsels is denial of counsels itself.

The counsels agreed to accept representation upon the condition that court would allow them adequate time to research, prepare and file the Application for reopening, in their Motion filed on 09/14/04. They cited McFarland v. Scott, supra.

16. Court did not fix any date for filing the Application in the appointment order on 09/21/04 and also did not cite S.Ct.Prac.Rule 11(6)(A) at all. Wherefore, it was court wich failed to clearly warn and notice the counsels that filing deadline remains 90-days from the entry of Judgment on 08/25/04. Instead, court cited ambiguous S.Ct.Prac Rule 11(6) in general manner and without any specific date of filing. This failuer of court to set deadlines for filing application after it appoints counsels can not be attributed to appellant Ahmed.

It is disingenous for the Court to later claim that Application is denied for failuer of appellant to comply with the 90-days deadline of S.Ct.Prac.rule 11(6)(A). Such ill-tactics show that Justices were biased and prejudiced against the Appellant and could not be an impatrial adjudicators of facts a-nd law and failed to take responsibility for their own actions, or inactions.

17. UNEQUAL, ARBITRARY, FLUCTULATING ENFORCEMENT OF S.CT.PRAC.RULE 11 (6)(A) IS UNCONSTITUTIONAL AND VIOLATE PROCEDURAL DUE PROCESS

The Justices appear to follow some secret and hidden criteria of marking certain appellants or certain cases or certain times when they suddenly wake-up and think enforcing 90-days filing deadline is the best Policy to show that compliace with rules is essential. While in numerous cases the court simply ignores or deliberately look the otherway or pretend to be dead and avoid enforcing the 90-days filing deadline.

18. From the 1996 to 2006 this court has denied First Applications for reopening only three times in the following cases, as "untimely".

State v. Cassano, Case No. 1999-1268, denied on 10/13/04

State v. Bryan, Case No. 2001-0253, denied on 10/27/04

State v. Ahmed, Case No. 2001-0871, denied on 03/02/05

Mr. Cassano filed the application 714 days after the denial of appeal. Mr. Bryan filed the application 146 days after the denial of appeal. Mr. Ahmed filed the application 118 days after the denial of appeal. Both Cassano and Bryan waited for a long while to file Motions for appointment of counsels. Ahmed filed Motion within two (2) days of denial of appeal. Both Cassano and Bryan were indigent and had no right to representation by court appointed counsels under S.ct.Prac.Rule 11(6), except perhaps under White v. Schotten, (6th Cir. 2000). When Ahmed was not an indigent but prevented by State of Ohio from using his own funds, therefore had 6th,5th,8th,9th,14th amendments to US Constitution right to representation by counsels and asserted such right at every opportunity, in every court and in every case. In all three cases counsels filed the application within 90-days of the notification of their appointment.

19. The only commonality among these three purported violators is the close approximity of Morgan v. Eads, 104 OS.3d 142 (November 22,2004).

The other factor may be that they are non-white appellants.

20. From 1996 to 2006 this Court have failed to or avoided denying Applications due to untimely filing but simply "denied" without any express and clear reason for denial. See the following 10 Cases.

State v. White, case No. 1996-2029, denied on 08/02/2000

(Application filed 742 days after denial of appeal)

State v. White, case no. 1996-2509, denied on 08/02/2000

( Application was filed 742 days after denial of appeal)

State v. Hartman, case no. 1998-1475, denied on 03/02/2002

( Application filed 107 days after denial of appeal)

State v. Carter, case no. 1998-0921, denied on 03/19/2003

(Application filed 854 days after denial of appeal)

State v. Issa, case no. 1998-2449, denied on 09/24/2003

(Application filed 601 days after denial of appeal)

State v. Cowans, case no. 1997-1312, denied on 08/04/2004

( Application filed 1,556 days after denial of appeal)

State v. Franklin, case no. 1998-2061, denied on 08/04/2004

(Application filed 520 days after denial of appeal)

State v. Monroe, case no. 2002-2241, denied on 05/10/2004

( Application filed 237 days after denial of appeal)

State v. Jackson, case no. 2002-1604, denied on 08/02/2006

(Application filed 152 days after denial of appeal)

State v. Getsy, case no. 1996-2346, denied on 11/22/2006

From the above ten(10) cases it is obvious that all have significantly longer delays in filing the Applications, to trigger the Court's attention, notice or engragement, anger to invoke S.Ct.Prac.Rule 11(6)(A). But Court have not applied the untimely-default to any of these cases. Why??

Wherefore, enforcement of the Rule is arbitrary, capricious, and fluctuating, discretionary. The rule 11(6)(A) is not an established and regularly followed state practice/rule. It has not been evenhandedly applied to all similar claims of ineffective-appellate-counsel. Such application of the rule is unconstitutional and violated procedural due process rights of Appellant Ahmed. The Court's application of arbitrary untimeliness-default violate equal protection of laws rights of Ahmed under the 5th and 14th amendment to US Constitution.

21. RAISING MERITOREOUS CLAIMS OR GENUINE ISSUES EXCUSES ANY DEFAULT

The S.Ct.Prac.rule 11(6)(B)(3) requires that all New propositions of Law and arguments in support of those propositions be included in the Application for reopening. The Rule 11(6)(E) provides that,

"The application for reopening shall be granted if there are genuin issues raised as to whether the appellant was deprived of the effective assistance of counsel on appeal".

The Ohio Courts often rely upon this provision of the App.Rule 26(B)(5) to grant applications even when those applications are untimely filed.

" We agree with the state that the application is untimely and that Chu failed to assert any good cause for his untimely filing. However, this court has previously overlooked App. Rule 26(B) procedural deficiencies to reach the merits of an application for reopening.

[ Court list Ten (10) cases within its Jurisdiction ]  
[ in which application was denied upon merits only ]

App.Rule 26(B)(5) further provides that "an application for reopening shall be granted if there is any genuine issue as to whether the applicant was deprived the effective assistance of counsel on appeal". In the matter of subjudice, it would be unjust if we denied Chu's application because of a procedural defect. Moreover, such decision is consistent with our previous holdings that an application that presents a genuine issue as to the effectiveness of counsel on appeal should supercede any procedural deficiency of the application. See State v. Manos (feb.22,1994), Cuyahoga App.No. 64616, reopening granted (Sept. 13,1996), Motion-No. 72558; State v. Smiley (Jan.26,1998), Cuyahoga App.No. 72026, reopening granted (Apr.22, 1998, Motion no. 91903."

Accordingly, the application for reopening is granted."

State v. Chu, and Cheuk Fung, 2002 Ohio App.LEXIS 4689(2002).

22. AHMED RAISED ALL MERITOREOUS AND GENUINE ISSUES INCLUDING MANY STRUCTURAL ERRORS, REQUIRING NO PROOF OF PREJUDICE.

Unlike the practice of Ohio appellate Courts, the Ohio Supreme Court treat the death penalty cases on appeal from App.Rule 26(B) cases in which Court writes detailed reasons for denial of application. The denials in death penalty cases on appeal from trial Courts are only

one sentence generic denials, without any reason given and without showing that any of the Propositions were actually read by the Justices of the Supreme Court, and reviewed for merits or not.

AHMED RAISED THE FOLLOWING PROPOSITIONS OF LAW

1. Denial of Right to Counsel of Choice and use of own funds to plan, execute own defense free from any state interference.

United States v. Lopez, 548 U.S. 140 (2006) requires an automatic reversal without any proof of prejudice. See also Gideon v. Wainwright, 372 U.S. 335 (1963).

2. Denial of Constitutional and statutory Right to speedy trial  
Due to 17 months delay, prejudice is presumed and denial of counsel of choice directly caused the delay in trial.

3. Denial of right to self-representation at trial  
McKaskle v. Wiggins, 465 U.S. 168 requires reversal without showing of any prejudice as structural error.

4. Trial before a partial and biased Judge.  
Tumey v. Ohio, 273 U.S. 510 (1927), requires reversal.

5. Denial of right to public trial.  
Waller v. Georgia, 467 U.S. 39 (1984) Structural error.

6. Denial of right to confront witnesses

7. Unreasonable searches and seizures

8. Prosecutorial misconduct denied right to fair trial

11. denial of instruction on lesser included offense

12. Arresting police officer testified against his written signed statements, at trial without discovery of his allegations of self-incrimination-statements.

13. Unconstitutional removal of prospective Juror by state.

14. extraordinary security and mob police /public at sentencing, courtroom closed to public and juror bussed by police.

9. All propositions grouped as ineffective trial counsel
10. All propositions grouped together as ineffective-appellate-counsel.

From the above listing it is obvious that Court could not twist-facts and hide behind prejudice inquiry because in most cases prejudice is not required or is presumed or self-evident from the record cited.

" A criminal defendant may not be deprived of a speedy trial because of the prosecution or defense counsel is lazy or indifferent or because prosecution seeks to harass the defendant rather than bring him fairly to justice. Nor may counsel effectively waive his client's rights where record reveals that defendant was a victim of inadequate /sham and farce representation [by public defenders or appointed counsels when defendant had constitutional right to representation by counsel of choice but was denied ] HN 6-8,

Townsend v. the Superior Ct.of Los Angeles county, 15 Cal.3d 774, as cited by Ohio Supreme Court in state v. Mcbeen, 54 OS.2d 315 (Ohio. May 31, 1978) at 596 and HN5.

" The 6th amendment right to counsel of choice commands not that trial be fair but that a particular gurantee of fairness be provided... to wit: that accused be defended by the counsel he believes to be best" When denial of reight to representation by counsel of choice is established the reversal is automatic, and there is no need for any harmless error or prejudice analysis."

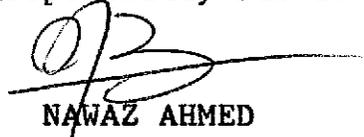
United States v. lopez, 548 U.S. 140 at HN 2 and Held(a).

#### CONCLUSION

The Justices mentioned in this Motion totally ignored their duty to consider the good-cause pled and perform a merit review as required by the S.Ct.Prac.Rule 11(6)(A) and 11(6)(B)(2) and 11(6)(E) due to their bias and prejudice against appellant Ahmed and partiality in selective enforcement of Rule 11(6)(A) provision, when this portion of Rule requires that application be filed out-of-rule by showing good cause and do not impose any 90-days deadline in explit terms.

It is proper to show judicial bias from the analysis of the decisions of judges to prove prejudice and partiality. The foregoing facts and analysis proves that these Justices can not be impartial in this case after they have ignored their duty in reaching the decision of 03/02/2005, which appellant seeks to be VACATED.

Wherefore, it is requested that substitute justices/judges be assigned to this case at the earliest. When application is not identical it cannot be treated as a second Application but the only one. See Appellee's Memorandum in opposition. *It is modified, enlarged, corrected and has additional affidavit, and good cause.* Respectfully Submitted,

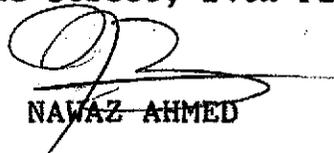


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Certified that a copy of foregoing was served upon Assistant Attorney  
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General Bridget Garty , by regular US Postal mail postage paid on  
March 11,2008 at 30 East Broad Street, 14th Floor, Columbus,OH 43215.



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