



## MOTION

Respondent, Judge Thomas J. Capper of the Clark County Common Pleas Court, Domestic Relations Division, Juvenile Section, by and through counsel, hereby moves for leave to amend his answer in the present action. The proposed amended answer is attached to this Motion.

This Court, by its scheduling order of February 24, 2012, ordered the parties to brief the issues of subject-matter jurisdiction and in personam jurisdiction over the Relators and the child that Relators have adopted. In reviewing the underlying juvenile court case, 2010-JUV-0536, it is clear that in personam jurisdiction does not exist, and that Respondent does in fact patently and unambiguously lack jurisdiction to proceed in the matter. Respondent wishes to amend his answer accordingly to admit this fact, in order to resolve this matter more expeditiously.

R.C. 3111.07(A) dictates who the proper parties of a paternity action must be. The statute provides in relevant part: "The child shall be made a party to the action unless a party shows good cause for not doing so." In the underlying action, the alleged putative father did not name the child as a party, as a "Baby Doe" or otherwise, and did not even attempt to show good cause from being relieved from this requirement. Likewise, the alleged putative father made no attempt to name Relators in the underlying action.

Civ.R. 15(A) (applicable by operation of S.Ct.Prac.R. 10.2) states in pertinent part that after the time for amendments without leave has expired, "a party may amend his pleading only by leave of court or by written consent of the adverse party." Attached to this Motion is an email communication from counsel for Relators, giving his consent to this amendment. In addition, this amendment will further the interests of justice and efficiency for the Court and the parties by allowing this Court to grant the writ without presentation of evidence or briefing by the parties.

CONCLUSION

For the foregoing reasons, the Supreme Court of Ohio should grant Respondent's motion to amend his answer.

Respectfully submitted,



ANDREW P. PICKERING #0068770  
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Fax (937) 328-2657  
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Counsel for Respondent

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Motion for Leave to File Amended Answer of Respondent was served upon Michael R. Voorhees, Esq., Counsel for Relators, by e-mailing a copy to [mike@ohioadoptionlawyer.com](mailto:mike@ohioadoptionlawyer.com), on this 7<sup>th</sup> day of March, 2012.



ANDREW P. PICKERING #0068770  
ASST. CLARK COUNTY PROSECUTOR  
Counsel for Respondent



## AMENDED ANSWER

NOW COME Respondent, Judge Thomas J. Capper of the Clark County Common Pleas Court, Domestic Relations Division, Juvenile Section, by and through counsel, and files the following Amended Answer to Relators' Complaint filed in the within case as follows:

### FIRST DEFENSE

1. Respondent admits the allegations in paragraph 1 of the complaint. In the underlying case, Clark C.P. 2010-JUV-0536, the child was not named as a party, and the plaintiff in the underlying case did not show good cause why the child should not be named or attempt to amend the complaint, pursuant to R.C. 3111.07(A). Therefore, in personam jurisdiction over the child and Relators is lacking, and Respondent does not have jurisdiction to order the genetic testing or to order the filing of a social and medical history by the claimed putative father of the child, and the underlying matter must be dismissed.
2. Respondent admits the allegations in paragraph 2 of the complaint.
3. In response to the allegations in paragraph 3 of the complaint, Respondent states that the statutes cited speak for themselves. Respondent is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 3 of the complaint.
4. Respondent admits the allegations in paragraph 4 of the complaint.

5. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5 of the complaint.
6. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6 of the complaint.
7. Respondent admits the allegations in paragraph 7 of the complaint, and that Exhibits B, C, and D are redacted copies of the documents referenced therein.
8. In response to the allegations in paragraph 8 of the complaint, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations as to the date the adoption became final, whether any objections were filed in the adoption proceedings, and whether any appeal was filed from the adoption proceedings. Respondent otherwise denies all remaining allegations in paragraph 8 of the complaint.
9. In response to the allegations in paragraph 9 of the complaint, Respondent admits that Relators are entitled to the writ requested in the complaint, for the reasons stated in paragraph 1 of this Amended Answer. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations as to whether Relators or the child reside in Ohio, whether the child was born in Montgomery County, how the child was placed with Relators, or whether the child or Relators have even resided in or been in Clark County. Respondent otherwise denies all remaining allegations in paragraph 9 of the complaint.

**10.** In response to the allegations in paragraph 10 of the complaint, Respondent admits that Relators are entitled to the writ requested in the complaint, for the reasons stated in paragraph 1 of this Amended Answer. To the extent that the allegations in paragraph 10 of the complaint are inconsistent with the above statements, they are denied.

**11.** In response to the allegations in paragraph 11 of the complaint, Respondent admits that Relators are entitled to the writ requested in the complaint, for the reasons stated in paragraph 1 of this Amended Answer. Respondent further states that the statutes cited speak for themselves. Respondent is otherwise without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 11 of the complaint.

**12.** In response to the allegations in paragraph 12 of the complaint, Respondent admits that Relators are entitled to the writ requested in the complaint, for the reasons stated in paragraph 1 of this Amended Answer. To the extent that the allegations in paragraph 12 of the complaint are inconsistent with the above statement, the allegations are denied.

**13.** In response to the allegations in paragraph 13 of the complaint, Respondent admits that Relators are entitled to the writ requested in the complaint, for the reasons stated in paragraph 1 of this Amended Answer. To the extent that the allegations in paragraph 13 of the complaint are inconsistent with the above statement, the allegations are denied.

14. In response to the allegations of paragraph 14 of the complaint, Respondent states that Exhibits B, C, and D are redacted copies of the documents as stated in the complaint. Respondent is otherwise without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 14 of the complaint.

15. Respondent denies any other allegation not otherwise admitted.

WHEREFORE, Respondent concedes that this Court must grant the writ sought in Relators' Complaint, for the reasons stated above.

Respectfully submitted,



ANDREW P. PICKERING #0068770  
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E-mail: [apickering@clarkcountyohio.gov](mailto:apickering@clarkcountyohio.gov)  
Counsel for Respondent

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing Amended Answer of Respondent was served upon Michael R. Voorhees, Esq., Counsel for Relators, by e-mailing a copy to mike@ohioadoptionlawyer.com, on this 7<sup>th</sup> day of March, 2012.



ANDREW P. PICKERING #0068770  
ASST. CLARK COUNTY PROSECUTOR  
Counsel for Respondent

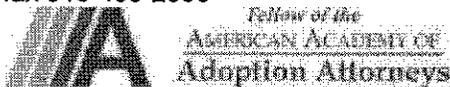
**Pickering, Andrew**

**From:** Mike Voorhees [mike@ohioadoptionlawyer.com]  
**Sent:** Wednesday, March 07, 2012 8:29 AM  
**To:** Pickering, Andrew  
**Subject:** RE: State ex rel Doe v Capper  
 Andrew -

yes - I support your motion for leave to file the amended answer

Mike

Michael R. Voorhees  
 Voorhees & Levy LLC  
 11159 Kenwood Road  
 Cincinnati, Ohio 45242  
 phone 513-489-2555  
 fax 513-489-2556




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**From:** Pickering, Andrew [mailto:apickering@clarkcountyohio.gov]  
**Sent:** Friday, March 02, 2012 2:05 PM  
**To:** Mike Voorhees  
**Subject:** RE: State ex rel Doe v Capper

Mike:

Attached is the proposed motion for leave, accompanied by the proposed amended answer. Please let me know if this is satisfactory to obtain your written email consent to amend the answer.

Andrew P. Pickering  
 Assistant Clark County Prosecutor

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**From:** Mike Voorhees [mailto:mike@ohioadoptionlawyer.com]  
**Sent:** Friday, March 02, 2012 10:30 AM  
**To:** Pickering, Andrew  
**Subject:** RE: State ex rel Doe v Capper

Andrew -

I think the Judge can dismiss because the stay only prohibits the court from proceeding - however, if you do not agree - then I will certainly agree with the motion for leave to file an amended answer as you have suggested - procedurally, I think you can file the Motion for Leave to File Amended Answer (with consent of counsel) and the Amended Answer - if you e-mail it to me before filing then I can approve by e-mail and authorize my consent to the Motion - so you may want to have my signature line on the Motion -

Thanks,  
 Mike

Michael R. Voorhees  
 Voorhees & Levy LLC

3/7/2012

11159 Kenwood Road  
Cincinnati, Ohio 45242  
phone 513-489-2555  
fax 513-489-2556




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**From:** Pickering, Andrew [mailto:apickering@clarkcountyohio.gov]  
**Sent:** Thursday, March 01, 2012 1:25 PM  
**To:** Mike Voorhees  
**Subject:** RE: State ex rel Doe v Capper

Mike:

I don't think the judge can do that, given the stay. What I would do is file the amended answer (copy attached) with a "notice of filing of amended answer with written consent of counsel," assuming the Sup Ct would accept something with your signature from a fax machine or scanned doc.

The amended answer doesn't concede on the merits, but does admit that the judge lacks jurisdiction and concedes in the granting of the writ.

Let me know if you have alternative suggestions.

Andrew P. Pickering  
Assistant Clark County Prosecutor

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**From:** Mike Voorhees [mailto:mike@ohioadoptionlawyer.com]  
**Sent:** Thursday, March 01, 2012 11:26 AM  
**To:** Pickering, Andrew  
**Subject:** RE: State ex rel Doe v Capper

Andrew -

yes, of course - what exactly do you suggest ? should the Judge enter an order dismissing all proceedings in his court - then file that entry with the Sup Ct ?

Mike

Michael R. Voorhees  
Voorhees & Levy LLC  
11159 Kenwood Road  
Cincinnati, Ohio 45242  
phone 513-489-2555  
fax 513-489-2556




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**From:** Pickering, Andrew [mailto:apickering@clarkcountyohio.gov]  
**Sent:** Thursday, March 01, 2012 10:34 AM

3/7/2012

**To:** mike@ohioadoptionlawyer.com  
**Subject:** State ex rel Doe v Capper

Mr. Voorhees:

After discussing the case with Judge Capper, we have concluded, based on the Court's order regarding jurisdiction, that there is in fact a lack of in personam jurisdiction, based on the failure of joinder of the child in the underlying case. We would like to ask for your written consent to the Judge filing an amended complaint, admitting that there is no in personam jurisdiction over the child and the Does, and asking the Court to grant the writ.

Please advise.

Thank you,

Andrew P. Pickering  
Assistant Clark County Prosecutor

3/7/2012