

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF OHIO

STATE OF OHIO *ex rel.*)
JOHN J. ROHRER,)
Petitioner/Relator,)

-vs-)

Case No. 2014-0268

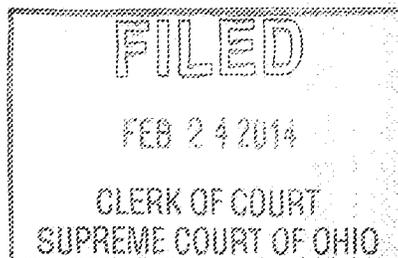
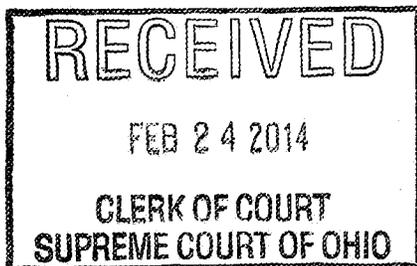
THE HONORABLE LEONARD.)
HOLZAPFEL, Judge of the Court of)
Common Pleas of Ross County,)
Ohio, et al.,)
Respondents.)

ORIGINAL ACTION IN
HABEAS CORPUS, PROHIBITION,
AND MANDAMUS

AFFIDAVIT OF ATTORNEY FOR PETITIONER/RELATOR
WITH ATTACHED TRANSCRIPT

David L. Kastner (#0078355)
Attorney for Petitioner/Relator
3434 North Drive
Beavercreek, Ohio 45432
dlkastner@sbcglobal.net
937-431-1327
937-477-8394

COUNSEL FOR PETITIONER/RELATOR, JOHN J. ROHRER



STATE OF OHIO)
) SS:
COUNTY OF GREENE)

I, David L. Kastner, of lawful age, being first duly sworn upon my oath, allege and state as follows:

1. That I am the attorney for the petitioner/relator above named in the within case and in Ross County Case No. 09 CR000393, which is the subject of the original action before this Court.
2. That I was present on 2/21/14 before respondent Holzapfel and an attorney for the plaintiff.
3. That although I had filed a pleading seeking a pre-trial hearing that would be on the record so as to present witnesses on the issues of transportation to court and to doctors, and subpoenaed one of the witnesses to appear, and who did appear, respondent would not allow the proceedings to be on the record or to allow the taking of any evidence from my witnesses.
4. My client was excluded from the proceedings, which were conducted entirely off-the-record.
5. Respondent stated that he did not know whether there would be a proceeding on February 27, 2014.
6. During these proceedings I continued to state that I did not believe that the trial court had jurisdiction except to discharge my client under Sec. 2945.40(B)
7. Respondent indicated that, in the event proceedings occurred before him on February 27, 2014, that my client would be presumed to be "mentally ill" and subject to hospitalization by court order" because of the original commitment proceedings, and would have the burden of proof and of going forward as to all issues. When I protested as to the lack of validity of the initial proceedings (see transcript attached), both the Respondent and prosecutor indicated that they supported the original commitment proceeding and presumed it to be valid, as well as, common in their experience to combine competency hearings, trial on the merits, hearings to determine a

defendant "mentally ill", hearings for "least restrictive alternative", institution for commitment, et al.

8. Respondent indicated that, in the event proceedings occurred before him on February 27, 2014, that the issues would be limited to "least restrictive alternative".

9. Respondent stated that he did not know whether he had continuing jurisdiction in the case below, but that he probably did.

10. Neither party has sought a continuance of the 2/27/14 scheduled proceeding in that case. Respondent indicated that he had signed an Order addressing the outstanding warrants but I have not seen it.

11. That respondent and plaintiff's attorney continue to refuse to authorize my client to obtain medical treatment from his own doctor, Dr. Pinkham, or from Dr. DeMio, continually referring to an undisclosed "statute" that requires even medical doctors to go to the mental hospital to examine or treat my client.

12. All three of us stated we were hesitant to proceed because of not knowing how this Court would rule on the issue of respondent's jurisdiction. Besides the absence of jurisdiction issue, I am also more hesitant to proceed because of the new statements of respondent about his concept of the burden of proof and the continuing lack of access to our medical witnesses.

13. That the attached transcript of "Hearing on Stipulation of Reports/Wavier of Jury Trial/Trial to Court" is a true and accurate copy of the original filed on 2/20/14 with the Common Pleas Clerk's office in Ross County Case Number 09 CR000393.

Respectfully Submitted,

David L. Kastner

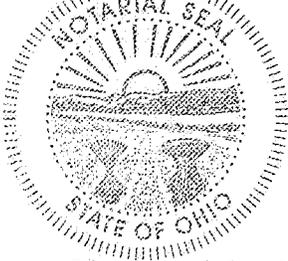
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PRAECIPE

To the Clerk of the Ohio Supreme Court:

You are requested to provide copies of the within Affidavit with attached transcript to the respondents by U.S. certified mail, return receipt requested, to each one as follows:

The Honorable Leonard Holzapfel, Ross County Courthouse Courtroom No. 1, 2 North Paint Street, Chillicothe, Ohio 45601,
Ross County Sheriff George W. Lavender Jr., 28 N. Paint Street, Chillicothe, Ohio, 45601 ,
ABH CEO Jane Krason, 100 Hospital Drive, Athens, Ohio 45701.



KELLY J. MCATEE
NOTARY PUBLIC
STATE OF OHIO
Comm. Expires
December 26, 2016

David L. Kastner

David L. Kastner

VERIFICATION

I have read the above and foregoing Affidavit, know the contents therein referenced and can personally confirm that all averments contained therein are true and correct.

David L. Kastner

David L. Kastner

SUBSCRIBED AND SWORN to before me this 22 day of February, 2014.

[Signature]

Notary Public

CERTIFICATION

This is to certify that on this 22 day of February, 2014 I mailed a true and correct copy of the above and foregoing Affidavit with attached transcript, to attorney Jeffrey Marks, 72 N. Paint Street, Chillicothe, Ohio 45601 by ordinary U.S. mail, with sufficient postage thereon affixed.

David L. Kastner

David L. Kastner

Transcript

COURT OF COMMON PLEAS

IN THE COURT OF COMMON PLEAS

ROSS COUNTY, OHIO 2014 FEB 20 PM 12:52

FILED
ROSS COUNTY COMMON PLEAS
CLERK OF COURTS
T. D. HINTON

STATE OF OHIO,
PLAINTIFF,

CASE NO. 09 CR 393

-VS-

JUDGE CORZINE

JOHN J. ROHRER,
DEFENDANT.

HEARING ON STIPULATION OF
REPORTS/WAIVER OF JURY
TRIAL/TRIAL TO COURT

* * * * *

COUNSEL FOR STATE:

RICHARD CLAGG
ASSISTANT ROSS COUNTY
PROSECUTING ATTORNEY
72 NORTH PAINT ST.
CHILLICOTHE, OH 45601

COUNSEL FOR DEFENDANT:

JOHN SCHERFF
OHIO PUBLIC DEFENDER
14 SOUTH PAINT ST.
CHILLICOTHE, OH 45601

A TRUE COPY
2/20/14 TB

REPORTER: TAMMY COTTRILL

1 THE COURT: NEXT MATTER BEFORE THE COURT IS CASE
2 NUMBER 09 CR 393, STATE OF OHIO V. JOHN J. ROHRER. THE
3 RECORD SHOULD REFLECT DEFENDANT IS PRESENT WITH HIS
4 ATTORNEY JOHN SCHERFF WHO IS STANDING FOR ATTORNEY
5 DANIEL SILCOTT WHO IS ON VACATION. STATE OF OHIO IS
6 REPRESENTED BY ASSISTANT ROSS COUNTY PROSECUTING
7 ATTORNEY RICHARD CLAGG.

8 FIRST MATTER WE NEED TO TAKE UP IS THE ISSUE OF THE
9 DEFENDANT'S COMPETENCY TO STAND TRIAL. THE COURT HAS
10 RECEIVED A REPORT CONCERNING THAT ISSUE FROM BOB
11 STINSON, BOARD CERTIFIED FORENSIC PSYCHOLOGIST.

12 COUNSEL, ARE YOU WILLING TO STIPULATE TO DR.
13 STINSON'S REPORT CONCERNING THE DEFENDANT'S COMPETENCY
14 TO STAND TRIAL?

15 CLAGG: YES YOUR HONOR.

16 SCHERFF: YES YOUR HONOR.

17 THE COURT: VERY WELL. BASED UPON THAT REPORT
18 THERE BEING NO OTHER ARGUMENT OR EVIDENCE TO
19 PRESENT...AM I CORRECT COUNSEL?

20 CLAGG: THAT IS CORRECT.

21 SCHERFF: CORRECT.

22 THE COURT: THE COURT FINDS THAT THE DEFENDANT IS
23 COMPETENT TO STAND TRIAL. THE COURT FINDS THAT HE DOES
24 UNDERSTAND THE NATURE AND OBJECTIVES OF THE
25 PROCEEDINGS AGAINST HIM AND HAS THE ABILITY TO ASSIST IN

1 HIS OWN DEFENSE.

2 WE ARE NOW READY FOR TRIAL IN THIS MATTER. THE
3 COURT, MR. ROHRER, UNDERSTANDS THAT YOU WISH TO GIVE UP
4 YOUR RIGHT TO TRIAL BY JURY, AND SO I'M GOING TO ASK YOU
5 SOME QUESTION AT THIS POINT IN TIME.

6 IS YOUR FULL NAME JOHN J. ROHRER?

7 ROHRER: YES IT IS.

8 THE COURT: MR. ROHRER, HOW OLD ARE YOU?

9 ROHRER: 29 YEARS OLD.

10 THE COURT: HOW FAR DID YOU GET IN SCHOOL?

11 ROHRER: I HAVE A ASSOCIATES DEGREE. I WAS A
12 PSYCHOLOGY MAJOR IN COLLEGE, BUT I DROPPED OUT, AND I
13 REALIZED THAT I HAD ENOUGH CREDITS TO GET AN ASSOCIATES
14 DEGREE, AND SO I DID THAT.

15 THE COURT: OKAY. ARE YOU A CITIZEN OF THIS COUNTRY?

16 ROHRER: YES.

17 THE COURT: AND I TAKE IT YOU CAN READ AND WRITE, AND
18 THAT ENGLISH IS THE LANGUAGE THAT YOU NORMALLY USE?

19 ROHRER: YES.

20 THE COURT: MR. ROHRER, I'M AWARE OF YOUR MENTAL
21 CONDITION. DO YOU TAKE MEDICATION?

22 ROHRER: YES.

23 THE COURT: WHAT MEDICATION DO YOU TAKE?

24 ROHRER: INVEGA, CELEXA, BUSPAR, NEURONTIN, AND
25 ONE...I DON'T KNOW WHAT IT'S CALLED FOR BI-POLAR.

1 THE COURT: WHEN WAS THE LAST TIME THAT YOU TOOK
2 YOUR MEDICATION?

3 ROHRER: THIS MORNING.

4 THE COURT: OKAY. DO YOU FEEL LIKE YOU ARE ABLE TO
5 MAKE DECISIONS TODAY?

6 ROHRER: YES YOUR HONOR.

7 THE COURT: DO YOU FEEL LIKE YOU'RE CLEAR HEADED?

8 ROHRER: REASONABLY SO.

9 THE COURT: OKAY. HAVE YOU UNDERSTOOD EVERYTHING
10 THAT WE HAVE TALKED ABOUT SO FAR?

11 ROHRER: YES.

12 THE COURT: OKAY. MR. ROHRER, UNDER THE
13 CONSTITUTIONS OF THE UNITED STATES AND THE STATE OF OHIO,
14 YOU HAVE THE RIGHT TO A TRIAL BY JURY. IN THIS CASE THAT
15 WOULD BE TWELVE PEOPLE. EACH OF THOSE TWELVE PEOPLE
16 WOULD HAVE TO AGREE, IN OTHER WORDS, THE VERDICT WOULD
17 HAVE TO BE UNANIMOUS THAT THE STATE HAD PROVED ALL THE
18 ELEMENTS OF THE CHARGE AGAINST YOU BEYOND A REASONABLE
19 DOUBT BEFORE YOU CAN BE CONVICTED OF THAT CHARGE
20 AGAINST YOU. YOU HAVE THE RIGHT TO WAIVE OR GIVE UP YOUR
21 RIGHT TO TRIAL BY JURY AND HAVE THIS MATTER PROCEED BY
22 TRIAL TO COURT, IF IT'S TRIED, THAT WOULD BE TO ME. IF IT IS
23 TRIED TO ME, I WOULD HAVE TO DECIDE WHETHER THE STATE
24 HAD PROVED BEYOND A REASONABLE DOUBT ALL THE ESSENTIAL
25 ELEMENTS OF THE CHARGE AGAINST YOU BEFORE YOU COULD BE

1 FOUND GUILTY OF THAT CHARGE.

2 DO YOU UNDERSTAND THAT?

3 ROHRER: YES YOUR HONOR.

4 THE COURT: YOU ALSO UNDERSTAND THE CHARGE AGAINST
5 YOU, FELONIOUS ASSAULT, IS A FELONY OF THE SECOND DEGREE.
6 YOU COULD GO TO PRISON FOR EITHER TWO, THREE, FOUR, FIVE,
7 SIX, SEVEN, OR EIGHT YEARS, AND OR BE FINED UP TO \$15,000.00.
8 YOU COULD HAVE TO PAY RESTITUTION, COURT COSTS, AND ONCE
9 YOU GOT OUT OF PRISON, BE SUBJECT TO MANDATORY THREE
10 YEARS OF SUPERVISION BY THE ADULT PAROLE AUTHORITY.

11 DO YOU UNDERSTAND ALL OF THAT?

12 ROHRER: YES.

13 THE COURT: HAVE YOU HAD AN OPPORTUNITY TO DISCUSS
14 WITH MR. SCHERFF, GIVING UP YOUR RIGHT TO TRIAL BY JURY
15 AND TO BE TRIED BY A JUDGE?

16 ROHRER: YES YOUR HONOR.

17 THE COURT: IS IT YOUR DESIRE TO VOLUNTARY WAIVE AND
18 RELINQUISH YOUR RIGHT TO GIVE YOUR RIGHT TO TRIAL BY JURY
19 AND TO BE TRIED BY ME.

20 ROHRER: IT IS.

21 THE COURT: MR. SCHERFF, COULD YOU PLEASE HAVE MR.
22 ROHRER EXECUTE THE JURY WAIVE PLEASE IN OPEN COURT.

23 VERY WELL, THE DEFENDANT HAVING EXECUTED THE
24 WRITTEN WAIVER OF JURY IN OPEN COURT. THE COURT FINDS
25 THAT DEFENDANT HAS VOLUNTARILY, INTELLIGENTLY

1 KNOWINGLY WAIVED HIS RIGHT TO TRIAL BY JURY. THE WAIVER
2 HAS NOW BEEN FILED WITH THE COURT. WE ARE NOW READY TO
3 PROCEED TO TRIAL IN THIS MATTER.

4 I UNDERSTAND THAT THERE WILL BE SOME STIPULATIONS
5 COUNSEL?

6 CLAGG: YES, THAT IS CORRECT YOUR HONOR. THE PARTIES
7 ARE GOING TO SUBMIT AN EXHIBIT MARKED AS JOINT EXHIBIT A.
8 THIS IS A POLICE REPORT FROM THE CHILlicothe POLICE
9 DEPARTMENT, DATED ON OR ABOUT SEPTEMBER 1, 2009, PREPARED
10 BY OFFICER DANNY COOK OF THE POLICE DEPARTMENT. THE
11 PARTIES WILL STIPULATE TO THE ADMISSION OF THAT EXHIBIT
12 AND STIPULATE TO THE FACTS THAT ARE SET OUT IN OFFICER
13 COOK'S REPORT AS BEING THE FACTS OF THIS PARTICULAR CASE.

14 THE COURT: ARE WE ALSO STIPULATING TO DR. STINSON'S
15 REPORT ON THE DEFENDANT'S MENTAL CONDITION AT THE TIME
16 OF THE COMMISSION OF THE ALLEGED OFFENSE?

17 CLAGG: YES YOUR HONOR, THAT IS CORRECT. I BELIEVE
18 ULTIMATELY WE WILL ALSO BE STIPULATING TO A REPORT BY DR.
19 ESHBAUGH.

20 THE COURT: NOT YET. NOT YET. IT'S IRRELEVANT FOR
21 PURPOSES OF THIS PROCEEDING.

22 CLAGG: I THOUGHT THAT WOULD BE THE CASE BUT I
23 WANTED TO MAKE SURE THAT IT WAS COVERED.

24 THE COURT: OKAY. THAT CORRECTLY STATE THE
25 STIPULATIONS FOR THE TRIAL?

1 SCHERFF: IT DOES YOUR HONOR, YES.

2 THE COURT: WILL THERE BE ANY FURTHER EVIDENCE OR
3 ARGUMENT?

4 CLAGG: NO, I DON'T BELIEVE SO YOUR HONOR.

5 SCHERFF: NO YOUR HONOR.

6 THE COURT: COULD I SEE THE REPORT PLEASE. VERY
7 WELL. THE COURT FINDS THAT HAVING REVIEWED JOINT EXHIBIT
8 A, THE STATE HAS PROVED BEYOND A REASONABLE DOUBT THAT
9 ON OR ABOUT THE FIRST DAY OF SEPTEMBER, 2009 IN ROSS
10 COUNTY, THAT THE DEFENDANT JOHN ROHRER, DID KNOWINGLY
11 CAUSE PHYSICAL HARM TO ANOTHER BY MEANS OF A DEADLY
12 WEAPON.

13 THE COURT FURTHER FINDS REVIEWING THE REPORT OF DR.
14 STINSON THAT THE DEFENSE HAS PROVED BY PREPONDERANCE OF
15 THE EVIDENCE THAT AT THE TIME OF THE OFFENSE THAT AS A
16 RESULT OF SEVERE MENTAL DISEASE OR DEFECT MR. ROHRER DID
17 NOT KNOW THE WRONGFULNESS OF HIS ACTS.

18 THEREFORE THE COURT FINDS MR. ROHRER TO BE NOT
19 GUILTY BY REASON OF INSANITY.

20 BY AGREEMENT OF COUNSEL, WE ARE NOW READY TO
21 PROCEED WITH THE HEARING PROVIDED FOR BY OHIO REVISED
22 CODE SECTION 2945.40 (B).

23 MR. ROHRER, YOU HAVE THE RIGHT TO COUNSEL AND MR.
24 SCHERFF WILL BE REPRESENTING YOU, THE RIGHT TO HAVE
25 INDEPENDENT EXPERT EVALUATION PROVIDED AT NO COSTS TO

1 YOU, THE RIGHT TO SUBPOENA WITNESSES AND DOCUMENTS, THE
2 RIGHT TO TESTIFY ON YOUR OWN BEHALF, AND YOU CANNOT BE
3 FORCED TO TESTIFY, AND THE RIGHT TO HAVE COPIES OF ANY
4 RELEVANT, MEDICAL, OR MENTAL HEALTH DOCUMENT IN THE
5 CUSTODY OF THE STATE. YOU HAVE THE RIGHT TO LOOK AT
6 THAT.

7 MY UNDERSTANDING WILL BE THAT THE PARTIES ARE
8 WILLING TO STIPULATE TO THE REPORT OF DR. ESHBAUGH THAT
9 WAS ACTUALLY PREPARED ON 12/13/09. MR. SCHERFF, YOU WOULD
10 PROBABLY LIKE A COPY OF THAT TO LOOK OVER BEFORE
11 WE.....MR. CLAGG, HERE'S A COPY. WHY DON'T WE TAKE A
12 COUPLE OF MINUTES SO YOU GUYS CAN LOOK THAT OVER. WE'LL
13 STAND IN RECESS.

14 THE COURT: WE ARE BACK ON RECORD. ARE WE WILLING
15 TO STIPULATE TO THAT?

16 CLAGG: YES YOUR HONOR.

17 SCHERFF: YES YOUR HONOR.

18 THE COURT: ANY OTHER EVIDENCE OR TESTIMONY OR
19 ARGUMENT TO BE OFFERED WITH REGARDS TO THE 2945.40
20 HEARING?

21 CLAGG: NO YOUR HONOR.

22 SCHERFF: NO THANK YOU YOUR HONOR.

23 THE COURT: VERY WELL. THE COURT FINDS BY CLEAR AND
24 CONVINCING EVIDENCE BASED UPON THE STIPULATED REPORT OF
25 DR. ESHBAUGH THAT THE DEFENDANT IS A MENTALLY ILL PERSON

1 SUBJECT TO HOSPITALIZATION BY COURT ORDER, AND IT IS THE
2 ORDER OF THE COURT THAT THE DEFENDANT IS COMMITTED TO
3 THE TIMOTHY MORITZ CENTER, I THINK IT'S GOING TO BE
4 CRIMINAL END RATHER THAN THE CIVIL END BECAUSE HIS
5 RECOMMENDATION WAS BASED ON WHAT WOULD HAPPEN
6 BECAUSE OF THE DEFENDANT'S COMMITMENT IN 06 CR 217 WAS
7 EXPIRING, THIS WILL BE A NEW COMMITMENT IN 09 CR 393.

8 THE COURT FINDS THIS IS THE LEAST RESTRICTIVE
9 COMMITMENT ALTERNATIVE AVAILABLE THAT IS CONSISTENT
10 WITH PUBLIC SAFETY AND THE WELFARE OF THE DEFENDANT AND
11 GIVING PREFERENCE TO PROTECTING PUBLIC SAFETY. THE
12 FACILITY WILL MAKE THE REPORTS CALLED FOR BY 2945.40. THE
13 FIRST ONE IS DUE IN SIX MONTHS.

14 JOHN, I TOLD YOU IF YOU DIDN'T TAKE YOUR MEDICINE BAD
15 THINGS WOULD HAPPEN TO YOU. WHAT HAPPENED, YOU DIDN'T
16 TAKE YOUR MEDICINE, BAD THINGS HAPPENED TO YOU AND TO
17 SOMEBODY ELSE.

18 JOHN, YOU HAVE TO STAY ON YOUR MEDICINE. YOU'RE NICE
19 YOUNG MAN WHEN YOU ARE TAKING YOUR MEDICINE. YOU'RE
20 BEHAVIOR IS GOOD, YOU'RE FINE. IT'S WHEN YOU DECIDE YOU
21 DON'T HAVE TO TAKE YOUR MEDICINE, THINGS LIKE THIS HAPPEN
22 AND AS A RESULT SOMEBODY GOT HURT, AND GOT HURT PRETTY
23 BADLY. YOU KNOW IT'S ONE THING IF YOU HURT YOURSELF, IT'S
24 ANOTHER THING WHEN YOU'RE HURTING OTHER PEOPLE.

25 JOHN. I KNOW YOU DON'T LIKE TO TAKE YOUR MEDICINE.

1 BUT YOU HAVE TO REALIZE THAT THAT'S PART OF THE ILLNESS
2 THAT YOU HAVE, AND THE ONLY WAY TO CONTROL IT IS TO TAKE
3 YOUR MEDS, SO PLEASE DO THAT.

4 ROHRER: I HAVE THAT INSIGHT AS WELL.

5 THE COURT: OKAY.

6 ROHRER: I KNOW ABOUT IT.

7 THE COURT: ANYTHING FURTHER...WE'LL GET YOU BACK
8 UP THERE AS QUICKLY AS WE CAN JOHN. ANYTHING FURTHER?

9 CLAGG: NO YOUR HONOR.

10 SCHERFF: NO YOUR HONOR.

11 THE COURT: WE'RE IN RECESS.

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AND THESE WERE ALL THE PROCEEDINGS AS HAD AND
17 REPORTED IN THIS CASE ON THIS DATE.

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1 STATE OF OHIO

2 COUNTY OF ROSS:

3

4 I, ROBIN BUSKIRK, COURT REPORTER FOR THE COMMON
5 PLEAS COURT, COURTROOM NUMBER 1, ROSS COUTY, OHIO, DO
6 HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND
7 ACCURATE TRANSCRIPT OF STIPULATION TO REPORTS/WAIVER OF
8 JURY TRIAL/TRIAL TO COURT HEARING IN THE MATTER OF STATE
9 OF OHIO VS. JOHN J. ROHRER, CASE NUMBER 09 CR 393, ON
10 JANUARY 25, 2010, TO THE BEST OF MY KNOWLEDGE AND BELIEF
11 HELD BEFORE THE HONORABLE WILLIAM J. CORZINE.

12

13 GIVEN UNDER MY HAND THIS 20TH DAY OF FEBRUARY, 2014.

14


ROBIN BUSKIRK
COURT REPORTER

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ROBIN BUSKIRK
Notary Public, State of Ohio
My Commission Expires
November 17, 2017