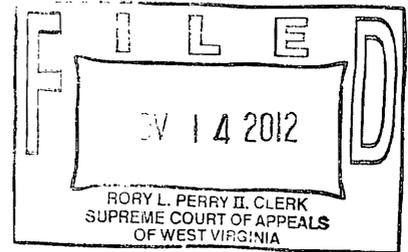


12-1253



BEFORE THE WEST VIRGINIA SUPREME COURT OF APPEALS

**STATE OF WEST VIRGINIA, ex rel.
JOE E. MILLER, Commissioner,
West Virginia Division of Motor Vehicles
Petitioner,**

v.

Case No: 12-AA-02

**JOSEPH C. POMPONIO, JR., Judge of the
Circuit Court of Pocahontas County
Respondent,**

and

**ERIK T. LARSON,
Party in Interest.**

**BRIEF IN OPPOSITION TO VERIFIED
PETITION FOR WRIT OF PROHIBITION**

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ERIK T. LARSON,

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**BRIEF IN OPPOSITION TO VERIFIED
PETITION FOR WRIT OF PROHIBITION**

I.

QUESTION PRESENTED

Did the Circuit Court of Pocahontas County properly exercise its legitimate authority by accepting as timely an administrative appeal filed less than thirty days after Respondent Larson received the Final Order?

II.

STATEMENT OF THE CASE

Erik T. Larson, the respondent and party in interest in this matter (“Mr. Larson”), accepts as accurate most of the procedural facts alleged in ¶¶ 1-6 of the Statement of the Case as set out in the Verified Petition for Writ of Prohibition (“the Verified Petition”), filed by Joe E. Miller (“Commissioner Miller”), the Commissioner of the West Virginia Division of Motor Vehicles (“DMV”). That is, Mr. Larson accepts that the procedural steps outlined in the Verified Petition, Statement of the Case ¶¶ 1-6 at pp. 1-2 took place essentially as therein related, except that he avers that he received the Final Order on March 17, 2012, not on March 15, 2012 as Commissioner Miller now alleges. Mr. Larson does not, however, admit any facts relating to the alleged offences that gave rise to the administrative proceedings described in those paragraphs.

Accordingly, Mr. Larson alleges that he received a copy of the Final Order on March 17, 2012. As the Court will note, the dispute between Commissioner Miller and Mr. Larson over the March 15 and March 17 dates is actually no dispute at all, It was settled by the trial judge, who found “it is *not contested* that the Petitioner received notice of the ruling of the chief examiner on March 17th, 2012, making his thirty (30) deadline Monday, April 16, 2012” (Order Regarding Respondent’s Motions to Dismiss and Petitioner’s Motion for Stay of Chief Examiner’s Order ¶ 1 (Pocahontas Circuit Court, filed August 24, 2012)(“the Order”)(emphasis supplied). In any

event, it is undisputed that Mr. Larson “appealed his Order of Revocation for the offence of driving a motor vehicle and refusing to submit to the designated secondary chemical test, which was Affirmed by the Chief Hearing Examiner on March 15th, 2012” (Order ¶ 1). The issue is whether the appeal is timely.

. . . Commissioner Miller’s position is that Mr. Larson’s administrative appeal (“the Petition for Appeal”), was filed on April 26, 2012 (Verified Petition, Statement of the Case ¶ 7 at p. 2), which is, needless to say, more than thirty days after March 17, 2012. Mr. Larson, by contrast, alleges that he filed his appeal on April 13, 2012. As evidence of that timely filing, Mr. Larson presents the fax cover sheet which accompanied the Petition for Appeal, a Motion to Stay and a proposed Order, all of which were faxed on that date to the Pocahontas County Clerk for filing (Larson Appendix, Exhibit A).

Those faxes were sent by Tabatha L. Frazier (“Ms. Frazier”), legal assistant to John D. Wooton, Jr. (“Mr. Wooton”), Mr. Larson’s attorney (Affidavit of Tabatha L. Frazier dated August 17, 2012 [“Frazier Aff.”] ¶ 3)(Larson Appendix, Exhibit B). On that same date, April 13, 2012—unquestionably less than thirty days after Mr. Larson had received the Final Order, Ms. Frazier called Valery Hylton (“Ms. Hylton”), the assistant to the Honorable Joseph C. Pomponio, Jr., Judge of the Circuit Court of Pocahontas County, and the respondent in the present proceeding (“Judge Pomponio”), and was told by Ms. Hylton to forward the Petition for Appeal, a Motion to Stay and a proposed Order to Judge Pomponio’s chambers, after which the Judge would sign the documents and file them with the Pocahontas County Circuit Clerk’s office

(Frazier Aff. ¶ 1). Accordingly, Ms. Frazier mailed those three documents to Judge Pomponio's chambers on that April 13, 2012 date (Frazier Aff. ¶ 2).¹ Also on April 13, 2012, Ms. Frazier carbon copied the same three documents to Commissioner Miller and the Office of Administrative Hearings ("OAH")(Frazier Aff. ¶ 4).² Thus, On April 13, 2012—well within the thirty-day time limit for filing an administrative appeal in this matter, copies of Mr. Larson's Petition for Appeal were transmitted to three separate offices—the office of the County Clerk, the office of the presiding Judge and the office of Commissioner Miller himself (Frazier Aff. ¶¶ 2-4).³ Finally, a check dated April 11, 2012 in the amount of the \$155.00 filing fee for the Petition for Appeal was made out to Pocahontas County Circuit Clerk and was noted on its face as relating to Mr. Larson's appeal; a copy of the check is included as Exhibit E. In addition, the check was noted as being enclosed with the materials referenced in the April 13, 2012 cover letter signed by Mr. Wooton and then mailed to Judge Pomponio (Larson Appendix, Exhibit G).

Mr. Larson does not believe it can be contested that the circuit clerk received the facsimile transmission of the documents on April 13, 2012, or that Judge Pomponio did not receive the same documents and the fee check no later than April 16, 2012. The sole issue, Mr.

¹ The cover letter accompanying these transmissions is included in the Larson Appendix as Exhibit G.

² Mr. Wooton, Mr. Larson's attorney, had earlier, *i.e.*, on April 11, 2012 notified both the DMV office and the Office of Administrative Hearing ("OAH"), by letter of the pendency of the appeal (Exhibit D). In addition, Mr. Wooton served both DMV and the OAH by certified mail; the certificate of service is included in the Larson Appendix as Exhibit E.

³ In addition, Ms. Frazier place notations of these transmissions into her mail log (Larson Appendix, Exhibit C & Frazier Aff. ¶ 5).

Larson believes, is the effect of the April 26, 2012 time stamp placed on the documents by the circuit clerk That is, notwithstanding the mailing of the documents to the Pocahontas County Clerk on April 13, 2012, that office “stamped the Petition filed on April 26th, 2012” (Order ¶ 3). That filing date, if correct, was concededly beyond the thirty-days available for timely filing, and would, if indeed correct, render the appeal untimely.⁴ In fact, however, that filing date is not correct.

In response to the Pocahontas County filing, Commissioner Miller filed a Respondent’s Motion to Dismiss as Untimely on August 9, 2012 (Verified Petition, Statement of the Case ¶ 9 & Appendix, Exhibit 2). Mr. Larson responded on August 17, 2012 by filing Petitioner’s Response to Motion to Dismiss as Untimely (Larson Appendix, Exhibit H); and Petitioner’s Response to Motion to Dismiss for Lack of Jurisdiction and Improper Venue (Larson Appendix, Exhibit I). In the meantime, a hearing was held before Judge Pomponio on August 9, 2012 (Verified Petition, Statement of the Case ¶¶ 10-11; Order ¶ 4).

In the wake of the hearing, Judge Pomponio issued his Order, which (a) denied Commissioner Miller’s Motion to Dismiss for Lack of Jurisdiction and Improper Venue; (b) denied the Commissioner’s Motion to Dismiss as untimely; (c) directed the Circuit Clerk to

⁴ In an apparent abundance of caution, Mr. Larson also filed an administrative appeal of the Final Order in Kanawha County on May 1,, 2012 (Order ¶ 2). That petition was dismissed as untimely on July 27, 2012 (Order ¶ 2).

correct the filing date of the Petition for Appeal from April 26, 2012 to April 13, 2012; and (d) granted Mr. Larson's Motion for a Stay of the Commissioner's Order (Order pp. 7-8).

III.

SUMMARY OF ARGUMENT

The evidence in the record supports the contention that the Petition for Appeal was timely filed. Commissioner Miller points to no probative evidence in the record effectively to impeach that contention. Accordingly, Judge Pomponio's Order is factually and legally correct, and so the Verified Petition should be denied on that ground.

Even if, *arguendo* only, Judge Pomponio's Order were deemed incorrect, any error should appropriately be taken up on appeal. The unusual, indeed singular, facts and outcome of this dispute do not justify the issuance of an extraordinary remedy like a writ of prohibition.

IV.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Mr. Larson submits that review of the record alone should allow the Court to dispose of the pending case without either issuance of a Rule or oral argument. If the Court schedules oral argument, however, Mr. Larson submits that the argument should proceed under W.Va.R.App.P.

19.

V.

ARGUMENT

**COMMISSIONER MILLER IS NOT ENTITLED TO A WRIT
OF PROHIBITION AGAINST THE TRIAL COURT'S ORDER.**

A. Jurisdiction and Scope of Review.

Commissioner Miller seeks a writ of prohibition on the ground that the trial court “exceeded its jurisdiction in accepting an untimely filed petition for administrative review” (Verified Petition p. 3). At the same time, the Commissioner argues that “Judge Pomponio has exceeded his legitimate authority” (Verified Petition p. 3), and “legitimate power” (Verified Petition p. 4). Accordingly, it is clear that Commissioner Miller does not charge that Judge Pomponio issued his Order out of an entire absence of jurisdiction. Under such circumstances, the applicable legal test as recently explained by the Court is as follows:

"In determining whether to entertain and issue the writ of prohibition for cases not involving an absence of jurisdiction but only where it is claimed that the lower tribunal exceeded its legitimate powers, this Court will examine five factors: (1) whether the party seeking the writ has no other adequate means, such as direct appeal, to obtain the desired relief; (2) whether the petitioner will be damaged or prejudiced in a way that is not correctable on appeal; (3) whether the lower tribunal's order is clearly erroneous as a matter of law; (4) whether the lower tribunal's order is an oft repeated error or manifests persistent disregard for either procedural or substantive law; and (5) whether the lower tribunal's order raises new and important problems or issues of law of first impression. These factors are general guidelines that serve as a useful starting point for determining

whether a discretionary writ of prohibition should issue. Although all five factors need not be satisfied, it is clear that the third factor, the existence of clear error as a matter of law, should be given substantial weight." Syl. Pt. 4, *State ex. rel. Hoover v. Berger*, 199 W.Va. 12, 483 S.E.2d 12 (1996). Syl. pt. 1, *Davis v. Fox*, ___ W.Va. ___, ___ S.E.2d ___, 2012 W.Va. Lexis 781 (W.Va., filed November 8, 2012)(petition for writ of prohibition denied).

At the same time, the issuance of writs of prohibition is by no means a favored judicial act:

This Court looks with disfavor upon the use of the extraordinary writ process to address problems which should have been handled by an appeal. The writ of prohibition is truly an extraordinary remedy, one which should be reserved for extraordinary cases.

State ex rel. McGraw v. King, ___ W.Va. ___, 729 S.E.2d 200, 206 (2012)(issuance of writ of prohibition denied). As the Court will see below, whether it applies the five-point test announced in *Davis* or instead demonstrates its general disfavor of the writ of prohibition device as expressed in *King*, the outcome should be the same; the Verified Petition should be denied. See also *State ex rel. Richmond American Homes of West Virginia, Inc. v. Sanders*, 228 W.Va. 125, 717 S.E.2d 909, 916 (2011)(issuance of writ of prohibition denied); W. Va. Code § 53-1-1..

B. The Circuit Court of Pocahontas County properly accepted Respondent Larson's administrative appeal because it was properly filed less than thirty days after receipt of the Final Order.

1. Introduction.

The record shows that Mr. Larson's Petition for Appeal was filed not once but twice on April 13, 2012, a date that is unquestionably within the thirty-day period allowed for

administrative appeals of this type. One set of papers was faxed on that date to the Pocahontas County Clerk. A second set was sent by U.S. Mail on that same date to Judge Pomponio. In addition, a letter informing the DMV and the OAH had been mailed two days earlier, or on April 11, 2012.

Commissioner Miller offers no factual basis for his conclusion that “the Petition was not filed until April 26, 2012” (Verified Petition p. 8), apart from the undoubted fact that the Pocahontas County Clerk undoubtedly did date stamp the papers with that date. *See* Order p. 5. Yet, as Judge Pomponio pointed out, that mere April 16, 2012 date stamp, standing alone, is not sufficient to mark the Petition as untimely. For that reason alone, the Verified Petition should be denied.⁵

2. The Petition for Appeal was timely filed.

Commissioner Miller’s argument, simply put, is that W. Va. Code § 29A-5-4(b).requires a petition for appeal to be filed with the circuit clerk within thirty days of the Final Order (Verified Petition p. 4), but that the Petition for Appeal in this case was filed after forty days had elapsed (Verified Petition p. 8). For Commissioner Miller, it is as simple as that. As we will see below, however, it is by no means as simple as that, for the applicable law as applied to the facts at hand entails that Mr. Larson’s Petition for Appeal was indeed filed in a timely fashion.

⁵ Based on the issues discussed in the Verified Petition, it appears that Commissioner Miller has abandoned the issues raised in his Motion to Dismiss for Lack of Jurisdiction and Improper Venue to focus exclusively on his parallel Motion to Dismiss as Untimely. *See* Order p. 2.

W. Va. Code § 29A-5-4(b).provides that a petition for review shall be filed “in the circuit court of the county in which the petitioner ... resides or does business or with the judge thereof in vacation.” Thus, even § 29A-5-4(b).provides that a petition for appeal may be filed in some circumstances with the judge instead of the court. Moreover, the requirement that a filing be made with the “circuit court” does not specify which specific organ of the court, *i.e.*, the circuit clerk or the circuit judge, is the one with which the filing must be made.

Nevertheless, Commissioner Miller insists that the “[f]iling must be completed with the circuit clerk” (Verified Complaint p. 5). He relies for that proposition on Syl. Pt. 2, *Moten v. Stump*, 220 W.Va. 652, 648 S.E.2d 639 (2007). *Moses v. Stump, supra*, however, involved a Petition for Appeal to the Supreme Court of Appeals in which the procedure is governed by W. Va. Code § 56-5-2 and W.Va.R.App.P. 3. Neither that statute nor that Rule applies here, however; hence the issue of how to file a Petition for Appeal in the Supreme Court of Appeals may be “well settled by this Court” (Verified Petition p. 5), but the holding in *Moses v. Stump, supra*, because it is dealing with an entirely different sort of petition for appeal, cannot provide the governing law in this case.

Commissioner Miller also points out (Verified Petition p. 4), that W. Va. Rules of Procedure for Administrative Appeals 2(b) provides that “[t]he petition shall be filed in the office of the circuit clerk of the circuit court in which venue lies by law[.]” Commissioner Miller underscores the word “shall,” seemingly to suggest the mandatory nature of its use. *See Verified Petition p. 4.*

This provision in Rule 2(b) is less compelling that Commissioner Miller would have the Court believe. First, W. Va. Code § 29A-5-4(b), which is a narrower and more specific provision than Rule 2(b) because it deals with administrative appeals of this precise type, requires filing with the “circuit court” but does not specify what official within the circuit—the clerk of the judge—is the proper recipient of that filing. Moreover, W.Va.R.Civ.P. 5(e), which is broader than either § 29A-5-4(b) or Rule 2(b). provides as follows:

The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, who shall note thereon the filing date, *except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk;* the notation by the clerk or the judge of the filing date on any such paper constitutes the filing of such paper, and such paper then becomes a part of the record in the action without any order of the court.

(Emphasis supplied). Thus Rule 5(e) allows for papers to be filed with the judge instead of the circuit clerk. That Rule 5(e) governs this case to the exclusion of any parallel rules is implicit in W.Va.R.Civ.P. 1, which provides for the general and overall applicability of those rules to all cases pending in circuit court. As the Supreme Court of Appeals noted:

Since March 3, 1969, the *Rules* have been applicable to any appellate review conducted by a trial court of record except as qualified in *Rule* 81. See, *Rules* 1, 81(a)(1), W. Va. R.C.P., as amended.

Abulla v. Pittsburgh and Weirton Bus Co., 158 W.Va. 592, 213 S.E.2d 810, 816 (1975). Here, Rule 81 does not apply; hence Rule 5(e) correspondingly does apply and so the filing of the

Petition of Appeal in this case with Judge Pomponio was proper, effective and consistent with the Rules.

This conclusion is underscored by the provisions of the *West Virginia Clerk Procedural Manual*, Chapter 5.1(c), which provide:

A judge may accept case-initiating documents for filing and should note the date of filing on the document. (Rule 5(e), RCP). If a judge accepts the case for filing, the clerk should file the case as of the date noted by the judge....

Accordingly, the Petition for Appeal was timely filed in this case. It follows that Commissioner Miller's argument that "[b]ecause the petition for appeal was not filed with the clerk below, this matter must be dismissed" (Verified Petition p. 6), finds no support whatever in the law.

Commissioner Miller does cite additional authority in support of his Verified Petition; however, these cases do not mandate a contrary result. The case of *Guido v. Guido*, 222 W.Va. 528, 667 S.E.2d 867 (2008), cited by Commissioner Miller in his Verified Petition p. 6, involved a situation in which the appellant failed to complete the certificate of service and also to serve all necessary parties. On that basis the circuit court was deemed to have lacked jurisdiction. The relevance of *Guido* to the case at hand is unclear, however, because those issues are absent here.

Commissioner Miller also cites a number of cases in which parties lodged allegedly untimely appeals. *West Virginia Department of Energy v. Hobet Mining and Construction Co.*, 178 W.Va. 262, 358 S.E.2d 823 (1987)(Verified Petition p. 6)(party waited six months after expiration of time allotted for appeal to seek enlargement of time to appeal; appeal dismissed); *Cronin v. Bartlett*, 196 W.Va. 324, 472 S.E.2d 409 (1996)(Verified Petition p. 7)(petition for

appeal to Supreme Court filed late; appealed dismissed); ⁶ *McCourt v. Oneida Coal Co.*, 188 W.Va. 647, 425 S.E.2d 602 (1992) (Verified Petition p. 7)(late appeal from Human Rights Commission dismissed); *Naylor v. West Virginia Human Rights Commission*, 180 W.Va. 634, 378 S.E.2d 843 (1989)(Verified Petition p. 8)(late appeal from Human Rights Commission dismissed).⁷ Clearly, these cases do no more than to beg the question before the Court, which is whether Mr. Larson's Petition for Appeal was late at all. As we have seen, it was timely. Accordingly, Commissioner Miller's Verified Petition cannot succeed.

In addition to arguing that Mr. Larson's Petition for Appeal should have been filed with the circuit clerk, Commissioner Miller also contends that "the filing fee must be paid to the clerk" (Verified Petition p. 5). As we have seen, the Notice of Appeal can be filed with the judge or the clerk, as the party chooses. It is not clear, then, why the filing fee can only be paid to the circuit clerk. In any event, Commissioner Miller asserts that this filing fee only came into the hands of the circuit clerk on April 26, 2012 (Verified Complaint, Statement of the Case ¶ 7 at p. 2).

⁶ The appeal in that case was eight days late. 472 S.E.2d at 411. Commissioner Miller misquotes the opinion and increases the tardiness to ten years and eight days. *See* Verified Complaint p. 7.

⁷ Commissioner Miller's citation of the case of *Wright v. Myers*, 215 W.Va. 162, 597 S.E.2d 295 (2004)(Verified Petition p. 7), is inapposite. The Commissioner cites it for the proposition that the appeal was untimely (Verified Petition p. 7). In fact, the larger issue on appeal was whether the circuit clerk had time stamped the wrong date on the complaint. The court reversed the case for a consideration of that issue. 597 S.E.2d at 298. For that reason, the case is actually more supportive of Mr. Larson's position than that of the Commissioner.

Mr. Larson avers that the filing fee was sent to Judge Pomponio. *See* Frazier Aff. ¶ 2 & Larson Appendix, Exhibit G. Indeed, the Judge supports that notion in his statement that “[t]his Court did not deliver the original [Petition for Appeal] *and filing fee* to the clerk until April 26th, 2012, and the clerk properly filed and property date stamped the document at that time” (Order p. 5) (emphasis supplied). Thus, as the Frazier Aff. ¶ 2 and Larson Appendix, Exhibit G suggest, Judge Pomponio received the Petition for Appeal and the \$155.00 fee check by way of the April 13, 2012 letter from Mr. Wooton to the Judge’s chambers. The submissions were thus timely when he received them. The Judge then retained the documents and the check until April 26, 2012, when he turned all the material over to the circuit clerk for time-stamping and processing. Because, however, W.Va.R.Civ. P. 5(e) permitted the Judge to be the officer with whom those matters were initially filed, their timeliness under W. Va. Code § 29A-5-4(b) is beyond peradventure.

In addition, however, it was proper for the Judge to receive the filing fee but then to transfer it to the circuit clerk thereafter:

If a judge accepts the case for filing, the clerk should file the case as of the date noted by the judge, *even if a filing fee has not been collected ... When this situation arises the clerk may collect the filing fee after the actual filing.*

West Virginia Clerk Procedural Manual, Chapter 5.1(c)(emphasis supplied). If the circuit clerk can collect the filing fee for the first time *after* the initiating papers had first been filed with the Judge, then it is clear that a receipt of the fee before the filing deadline is not jurisdictional. So long as the papers (minus the filing fee) are timely filed with the Judge, then the filing (even

absent the fee), is timely. Here, on the other hand, the Petition for Appeal and the filing fee were both timely filed with the Judge; hence, the late fee filing provision did not have to come into play. What the provision does do, however, is to underscore the timeliness of Mr. Larson's filing of his Petition for Appeal.

The truth is that Commissioner Miller's very act of seeking a writ of prohibition smacks of frivolity. The timeliness of Mr. Larson's filings is, he believes, clear beyond any reasonable doubt. Indeed, the approach taken by the Commissioner in this case invokes a familiar judicial West Virginia observation as to DMV overreaching:

Of course, "sauce for the goose" is also "sauce for the gander." We do not believe that it is intended in our statutory scheme, absent specific legislative direction, that either the DMV *or* a driver should be denied important rights (such as an opportunity for a hearing on the merits) due to inadvertent, *de minimis*, nonprejudicial, good-faith, or other "technical" failures to meet the time deadlines that are set forth in DMV administrative procedures. As we stated in *Sprouse v. Clay Communication, Inc.*, 158 W. Va. 427, 460, 211 S.E.2d 674, 696:

This Court's policy with regard to procedural irregularities which needlessly interfere with a disposition on the merits was succinctly stated in the recent case of *Rosier v. Garron*, W.Va., 156 W. Va. 861, 199 S.E.2d 50 (1973), where the Court said:

(T)he distinction between procedural rules and substantive rights is frequently illusory. However, to the extent possible, under modern concepts of jurisprudence, legal contests should be devoid of those sporting characteristics which gave law the quality of a game of forfeits or trial by ambush.

In re Burks, 206 W.Va. 429, 525 S.E.2d 310, 313 n.1 (1999).

C. ***The Court need not address the issues in this case pursuant to a writ of Prohibition.***

Commissioner Miller insists that “[t]his Court must address the issues herein as they are subject to be oft repeated” (Verified Petition p. 8). This demand has no merit. First, and most simply of all, Judge Pomponio’s Order is correct in every respect. The Court need not issue a writ of prohibition because there is no need to review that Order.

Second, even if, for the sake of argument only, the Order were flawed, Judge Pomponio’s Order does not involve issues that are likely to be repeated. As the Court can appreciate from its review of the facts of this case, the dispute involves an unusual set of circumstances that is highly likely to be repeated. There may indeed be 10,000 DUI license revocation order a year in this State, followed by some 2,500 appeals. Very few filing are made with the judge; however, and of those that are lodged, one doubts that the papers so filed ever run a gauntlet similar to that involved here. There is simply no need for writ of prohibition in this case. If indeed a party finds himself aggrieved after an adjudication of this appeal in circuit court, a request for an appeal to this Court will suffice as an adequate remedy.

VI.

CONCLUSION

For the reasons set out above, Respondent and Party in Interest Erik T. Larson respectfully asks the Court to deny Petitioner's Verified Petition to Writ of Prohibition and to sustain the Order Regarding Respondent's Motions to Dismiss and Petitioner's Motion to Stay for Stay of Chief Examiner's Order.

Dated: November 14, 2012

RESPECTFULLY SUBMITTED
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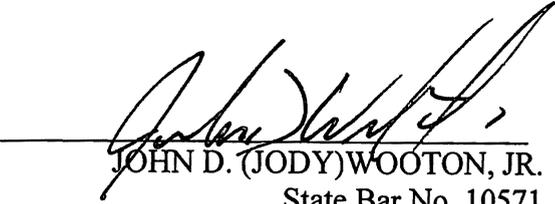
**ERIK T. LARSON,
Party in Interest**

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that the forgoing Brief in Opposition to Verified Petition for Writ of Prohibition was mailed on this 14th day of November, 2012 to the following, postage prepaid, addressed as follows:

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