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IN THE DISTRICT COURT OF APPEAL, STATE OF FLORIDA  
FIRST DISTRICT

FILED  
2007 AUG -3 P 3:22  
DIVISION OF  
ADMINISTRATIVE  
HEARINGS

JAMES R. DEMICK,  
Petitioner,

CASE NO. 1D07-3658  
L.T. CASE NO.: 07-2602-RU

v.

STATE OF FLORIDA, DIVISION  
OF ADMINISTRATIVE HEARINGS  
Respondents.

---

**PETITION FOR WRIT OF PROHIBITION**

COMES NOW, Petitioner James R. Demick, *pro se*, by and through the undersigned pursuant to Rule 9.100, Florida Rules of Appellate Procedure, files this petition seeking a Writ of Prohibition to restrain the State of Florida, Division of Administrative Hearings (DOAH) from exceeding its jurisdiction and in support thereof states:

1. James Demick filed an Unpromulgated Rule Challenge petition pursuant to § 120.56(4), Florida Statutes with the DOAH on June 11, 2007. (App. "A").
2. Shortly thereafter, on June 13, 2007, an Order of Assignment was rendered by the Honorable Robert S. Cohen, Chief Judge, indicating, *inter alia*:

This proceeding has been initiated by a petition filed by James R. Demick, pursuant to section 120.56(4), Florida Statutes. It alleges that agency rules, of the respondent, Florida Civil Commitment Center, The GEO Group, Inc., Timothy J. Budz, Herbert T. Caskey, and Department of Children and Families, is an invalid exercise of delegated legislative authority. Upon review, the petition appears to comply with the requirements of section 120.56(4), Florida Statutes, and is assigned to J.D. PARRISH, Administrative Law Judge with the Division of Administrative Hearings. This matter shall be scheduled for hearing within thirty days from the date of this ORDER unless a stipulation from the parties to this proceeding requests that the final hearing be set at a later date.

DONE AND ORDERED this 13<sup>th</sup> day of June, 2007, in Tallahassee, Leon County, Florida.

Original Signed

Robert S. Cohen, Chief Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675  
Fax filing (850) 921-6847  
[www.doah.state.fl.us](http://www.doah.state.fl.us)

(App. "B").

3. On or about June 14, 2007, a Notice of Appearance was filed by counsel John A. Raymaker and Gregory D. Venz on behalf of Respondent Department of Children and Families. (DCF).

(App. "C").

4. The following day, DCF filed a Motion to Consolidate Petitioner Demick's Unpromulgated Rule Challenge with that of *Jacob R. Myers v. Florida Civil Commitment Center*, Case No. 05-4004RU and *Larry Phillips v. Budz*, Case No. 07-1969RU. (App. "D").

5. Although counsel on behalf of respondents; The GEO Group, Inc./GEO Care, Inc. (GEO) and Timothy J. Budz did not file a Notice of Appearance, it nevertheless filed its Motion to Dismiss Petition of Unpromulgated Rule Challenge as an Improper Exercise of Delegated Legislative Authority on June 26, 2007. (App. "E").

6. The aforesaid motions filed by the respective parties prompted the Division to make and enter a "Status Memorandum," which, for the sake of brevity, Petitioner Demick argues is prejudicial in all candor and further violates Demick's due process rights, tantamount to the difficulties encountered in the original Unpromulgated Rule Challenge brought in 2005. *See; Myers v. Florida Civil Commitment Center*, 953 So.2d 726 (Fla. 1st DCA April 9, 2007). (App. "F").

7. Petitioner Demick strenuously argues that the Division be estopped from consolidating his Unpromulgated Rule Challenge with that of *Jacob R. Myers v. Florida Civil Commitment*

Center, Case No. 05-4004RU as Myers abandoned the case following the Division's adverse ruling and entry of an Order of Dismissal.

8. As such, Mr. Demick would therefore be denied his right to present his case, based upon facts and legal issues clearly distinguishable from that brought in *Myers, supra*.

9. At the time Myers filed his Unpromulgated Rule Challenge, the Florida Civil Commitment Center was operated by a private vendor, Liberty Behavioral Health Corporation. (LBHC).

10. However, LBHC was replaced on July 1, 2006, with DCF being granted sole authority to adopt rules to give effect of the Jimmy Ryce Act pursuant to § 394.910, *et seq.*, Fla. Stat. (2005).

DCF awarded GEO a five (5) year contract with three (3) five (5) year renewal option periods on July 1, 2006 for the administrative management and operation of FCCC.

11. The Status Memorandum rendered by Judge Parrish indicates, amongst other things, "that extenuating circumstances have prevented these cases from being scheduled within 30 days." Through no fault of Petitioner Demick himself, have extenuating circumstances been initiated, albeit, petitioner is clearly being denied his due process right to argue the merits of his Unpromulgated Rule Challenge as provided for in § 120.56(4), Fla. Stats. (2006). Moreover, as it appears by a reading of the Status Memorandum, it is respectfully submitted that the memorandum is ostensibly arbitrary and capricious and provides the government an unfair advantage over Petitioner Demick, a *pro se* litigant.

12. Petitioner Demick argues that, like *Myers*, he has presented a *prima facie* challenge alleging that Policy F-24 and other specified internal memorandums and policies propounded by the respondents, being in full force and effect and continuing in nature at FCCC are an improper exercise of delegated legislative authority as *de facto* agency rules that have not been adopted under proper rule making procedures of § 120.56(4), Fla. Stat. (2005). *Myers, id.* at 953.

13. "All parties shall have an opportunity to respond, to present evidence and argument on all issues involved, to conduct cross-examination and submit rebuttal evidence, to submit proposed findings of facts and orders, to file exceptions to the presiding officer's recommended order . . ."

See: § 120.57(1)(b), Fla. Stat. (2005). Hence, Petitioner Demick is entitled to respond to opposing counsel's Motion to Consolidate and Motion to Dismiss and to further be afforded a hearing. The fact that he is an incarcerated litigant does not obviate this statutory and constitutional requirement. For purposes of seeking a hearing, it is of no significance that the petitioner is incarcerated or involuntarily committed. Although Demick is been involuntarily detained pursuant to the Jimmy Ryce Act, presumably, he would be able to attend a telephonic hearing should the DOAH decide to hold one. *Gosby v. Third Judicial Circuit*, 586 So.2d 1056 (Fla.1991) (trial court has discretion to decide whether to hold a telephonic hearing in prisoner's civil case, but may not make prisoner's physical presence a condition precedent to ruling on pending matters). *Chapman v. State*, 883 So.2d 835 at 883 (Fla. 5th DCA 2004) (quoting *Al-Hakim v. State*, 783 So.2d 293, 294 (Fla. 5th DCA 2001).

14. A Writ of Prohibition is the proper vehicle to prevent the Division of Administrative Hearings from exceeding its authority and this Court has inherent authority to issue all writs necessary to complete exercise of its jurisdiction. The Second District Court of Appeal held that the circuit court exceeded its authority by issuing writ of bodily attachment intended to have nationwide applicability nationwide applicability. *Sanders v. Laird*, 865 So.2d 649 at 650 (Fla. 2d DCA 2004); "a litigant who is affected by a judicial assignment "must challenge the assignment in the trial court and then seek review in this Court by way of petition for writ of prohibition or petition for relief under the 'all writs' power.'" *1-888-Traffic Schools v. Chief*

*Circuit Judge, Fourth Judicial Circuit, 734 So.2d 413 at 416 (Fla. 1999) (quoting Wild v. Dozier, 672 So.2d 16 at 18 (Fla.1996).*

**WHEREFORE**, based upon the foregoing reasons, argument and authorities cited herein, Petitioner James R. Demick urges this Court to make and render a written opinion quashing the Division of Administrative Hearing's June 27, 2007 Status Memorandum to the extent that the cases of *Jacob R. Myers v. Florida Civil Commitment Center*, Case No. 05-4004RU and *Larry Phillips v. Budz*, Case No. 07-1969RU be consolidated with *James R. Demick v. Florida Civil Commitment Center*, Case No. 07-2602RU and that a hearing be set down within ten (10) days of this Court's opinion on Petitioner Demick's § 120.56(4), Unpromulgated Rule Challenge wherein respondents may then argue their respective Motions to Dismiss at that time.

Any and all such further relief that this Court deems just and proper, accordingly.


Respectfully Submitted,



James R. Demick, #990624  
Florida Civil Commitment Center  
13613 South East Highway 70  
Arcadia, Florida 34266-7829  
**FOR PETITIONER**

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished to The Honorable **Robert S. Cohen**, Chief Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, FL 32399-3060 by First Class, U.S. Mail on this 1st day of August, 2007:

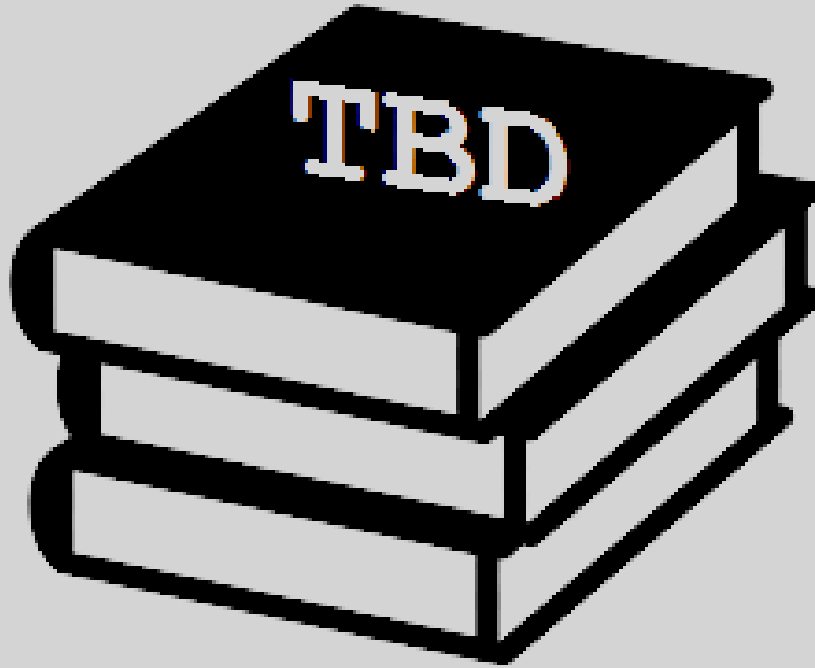


James R. Demick, #990624

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