

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

CHARLES BULLOCK,)	
)	
Petitioner,)	
)	
vs.)	DOAH Case No. 14-2616
)	SBA Case No. 2010-1774
STATE BOARD OF ADMINISTRATION,)	
)	
Respondent.)	
_____)	

FINAL ORDER

On September 30, 2014, Administrative Law Judge John D.C. Newton, II (hereafter “ALJ”) submitted his Recommended Order to the State Board of Administration (hereafter “SBA”) in this proceeding. A copy of the Recommended Order indicates that copies were served upon counsel for the Petitioner and upon counsel for the Respondent. Both Petitioner and Respondent timely filed Proposed Recommended Orders. Neither party filed exceptions to the Recommended Order which were due October 15, 2014. A copy of the Recommended Order is attached hereto as Exhibit A. The matter is now pending before the Senior Defined Contribution Programs Officer for final agency action.

STATEMENT OF THE ISSUE

The State Board of Administration adopts and incorporates in this Final Order the Statement of the Issue in the Recommended Order as if fully set forth herein.

PRELIMINARY STATEMENT

The State Board of Administration adopts and incorporates in this Final Order the Preliminary Statement in the Recommended Order as if fully set forth herein.

STANDARDS OF AGENCY REVIEW OF RECOMMENDED ORDERS

The findings of fact of an Administrative Law Judge cannot be rejected or modified by a reviewing agency in its final order "...unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings were not based upon competent substantial evidence...." See Section 120.57(1)(I), Florida Statutes. *Accord, Dunham v. Highlands Cty. School Brd*, 652 So.2d 894 (Fla 2nd DCA 1995); *Dietz v. Florida Unemployment Appeals Comm.*, 634 So.2d 272 (Fla. 4th DCA 1994); *Florida Dept. of Corrections v. Bradley*, 510 So.2d 1122 (Fla. 1st DCA 1987). A seminal case defining the "competent substantial evidence" standard is *De Groot v. Sheffield*, 95 So.2d 912, 916 (Fla. 1957), in which the Florida Supreme Court defined it as "such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred" or such evidence as is "sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached."

An agency reviewing a Division of Administrative Hearings ("DOAH") recommended order may not reweigh evidence, resolve conflicts therein, or judge the credibility of witnesses, as those are evidentiary matters within the province of administrative law judges as the triers of the facts. *Belleau v. Dept of Environmental Protection*, 695 So.2d 1305, 1307 (Fla. 1st DCA 1997); *Maynard v. Unemployment Appeals Comm.*, 609 So.2d 143, 145 (Fla. 4th DCA 19932). Thus, if the record discloses any competent substantial evidence supporting finding of fact in the ALJ's Recommended Order, the Final Order will be bound by such factual finding.

Pursuant to Section 120.57(1)(I), Florida Statutes, however, a reviewing agency has the general authority to "reject or modify [an administrative law judge's] conclusions of law

over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction.”

FINDINGS OF FACT

The Findings of Fact set forth in paragraph 1 of the ALJ’s Recommended Order hereby are adopted and are specifically incorporated by reference as if fully set forth herein.

The Findings of Fact in paragraphs 2 and 3 of the Recommended Order hereby are modified to read as follows:

2. Mr. Bullock worked in the Sheriff’s civil process unit. He and the other civil process deputies routinely met for coffee in the afternoon about 2:00 p.m., to discuss business. They usually met at the Starbucks in the Coastland Mall in Collier County. They drove to the location in their patrol cars. [Respondent’s Exhibit 2, page 17, lines 3-5]. Sometimes they met at other locations to avoid drawing public attention and adverse comments. For the same reason, after some unfavorable television coverage, they often dispersed their patrol cars in the parking lot, instead of parking together. The supervisor of Mr. Bullock and the other deputies in the civil process unit was aware of these meetings. Despite the adverse publicity, he did not advise them that the meetings needed to end. In his opinion, the meetings were not inappropriate and they did not violate any policies of the Sheriff’s Office. [Respondent’s Exhibit 2, page 13, lines 10-25; page 14, lines 1-2].

3. Mr. Bullock usually did not wear into the mall a uniform, badge, gun or anything else identifying him as a Collier County deputy or a law enforcement officer. However, the evidence establishes that Mr. Bullock did not clock out for any time that he was attending the regular business meetings with his co-workers or during the use of the food court bathroom before, during or after such regular meetings. [Respondent’s Exhibits 2 and 4].

The Findings of Fact set forth in paragraphs 4 through 7 of the ALJ's Recommended Order hereby are adopted and are specifically incorporated by reference as if fully set forth herein.

The Findings of Fact in paragraph 8 of the Recommended Order hereby are modified to delete the conclusions of law set forth therein and to set forth additional information from the record, so as to read as follows:

8. Mr. Bullock committed the alleged offenses in a public place during normal operating hours. The alleged minor victim was a student at a nearby high school that dismissed pupils at 2:05 p.m. [Petitioner's Exhibit 1, page 11, lines 20-25; page 12, lines 1-9; Respondent's Exhibit 2, pages 7 and 8]. The alleged offenses all occurred after 2:05 p.m. on a weekday. Mr. Bullock's position as a deputy did not provide access to the mall food court bathroom that any other citizen would not have had. However, the business meetings that Petitioner attended were located near the food court bathroom where the alleged abuse of the minor occurred. [Hearing Transcript, page 13, lines 23-25; page 14, lines 1-3].

The Findings of Fact set forth in paragraphs 9 through 14 of the ALJ's Recommended Order hereby are adopted in their entirety.

CONCLUSIONS OF LAW

The Conclusions of Law set forth in paragraphs 15 through 25 of the Recommended Order are adopted and are specifically incorporated by reference as if fully set forth herein.

Paragraphs numbers 26 and 27 of the Conclusions of Law are rejected in toto. This Final Order substitutes and adopts the following Conclusions of Law for those two paragraphs and adds three additional paragraphs as follows:

26. Mr. Bullock's gain or advantage was effectuated through the use of the power, rights, privileges and position of his particular employment with the Collier County Sheriff's Office. Because Mr. Bullock was a civil process deputy covering a certain area, he was entitled to attend business meetings with his fellow deputies covering that area at a local mall over coffee, rather than at the main Sheriff's Office or some other location. Mr. Bullock drove to the mall meetings in a marked patrol car. Even though there was some public scrutiny and negative comments about the congregation of so many patrol cars at the mall during the time of the afternoon meetings, the Sheriff's Office did not prohibit the meetings. The record reveals that the deputies were merely advised to park at different spots in the mall parking lot to avoid drawing additional public attention. Mr. Bullock was fully compensated by the Collier County Sheriff's Office for the time the meetings occurred at the mall, as well as for the time he spent at the restroom before, during, or after such meetings. [Respondent's Exhibits 2 and 4]. He was never officially off duty at any time during these meetings and he received full salary and benefits for the entire amount of time he spent at the mall surrounding the regular business meetings. These regular meetings happened to be located near the bathroom where the acts for which Mr. Bullock was criminally charged occurred. Further, the meetings occurred on weekdays, at or about the same time the alleged minor victim was dismissed from school and walked to the mall to pass some time. There is no evidence that Mr. Bullock engaged in any of the alleged criminal activities with the purported victim at any time other than the times surrounding his regular business meetings with his fellow officers. There is no evidence that Mr. Bullock engaged in the type of crimes to which he pled nolo contendere with any other minors. Mr. Bullock did not, for example, stop by the mall after he clocked out for the day and engage in any of the types of activities that formed the basis for his felony charges.

27. Thus, while receiving full compensation and benefits and using the regularly-scheduled business meetings required of someone in his position as an opportunity to go to the mall in his patrol car to have access to a minor that was also at the mall at or about the same time as the meetings were occurring, Mr. Bullock was able to use the power, rights, privileges and position of his particular employment with the Collier County Sheriff's Office to realize the personal gain, benefit or advantage of sexual gratification. Mr. Bullock's situation is similar to that involved in the case, *Bollone v. Dep't of Mgmt. Servs.*, 100 So.3d 1276 (Fla. 1st DCA 2012), where a college faculty member was found to have violated Section 112.3173(2)(e)6., Florida Statutes. Mr. Bollone, while being compensated for his public position used a computer, paid for with public funds and assigned to him to perform his employment duties, to engage in possessing child pornography. Thus, it can be said that Mr. Bollone used his public position to have the public subsidize his felonious conduct. Similarly in Mr. Bullock's case, he used his position to have the public subsidize his felonious conduct. The public paid for his transportation there, paid for the time he spent at the meetings, and paid him for the time he used the restroom facilities to commit acts for which he was criminally charged.

28. Mr. Bullock has argued that the fact that the alleged victim did not know Mr. Bullock was a law enforcement officer establishes that Mr. Bullock did not the use of the power, rights, privileges, and position of his employment with the Collier County Sheriff's Office. However, there is nothing in Section 112.3173(2)(e)6., Florida Statutes, that requires that the victim of a felony supporting the forfeiture to have knowledge of the public position of the perpetrator. If, for example, a law enforcement officer is off duty, it would help establish that such off-duty officer was gaining an advantage through the use of the power, rights, privileges, and position of his employment, if such off-duty officer still had

on a uniform, and/or had a badge and carried a service weapon. But, there are other ways to demonstrate the gaining of an advantage through the use of the power, rights, privileges and position of one's employment as a law enforcement officer even in the case of an off-duty law enforcement officer. For example, in *Simcox v. Hollywood Police Officers' Ret.*, 988 So.2d 731 (Fla. 4th DCA 2008), a police officer pled guilty to trafficking in drugs when off duty. There was no evidence he wore a uniform, had a badge or carried his service weapon when involved in the criminal activity. He escorted the truck carrying the heroin and apparently encountered no difficulties. The court found forfeiture was appropriate under Section 112.3173(2)(e)6., because Simcox did use the power, rights, privileges, duties, and position as a police officer by the use of the "...expertise he gained as a law enforcement officer to facilitate the scheme." *Id.* at 734.

29. Mr. Bullock was a deputy sheriff for 16 years. Mr. Bullock admitted that law enforcement officers occupy a position of authority over the public. [Hearing Transcript, page 18, lines 24-25; page 19, lines 1-6]. His long-term service as a deputy likely would give him significant expertise as to how that authority can effectively be exercised over another person, especially a minor. There is evidence in the record that indicates that Mr. Bullock acted with force against the minor victim and that he further threatened the minor victim with bodily harm if the minor victim told anyone about what Mr. Bullock had done to him. [Petitioner's Exhibit 1, page 20, lines 17-23; page 21, lines 1-5; page 27, lines 1-8; page 30, lines 18-20; Respondent's Exhibit 2, page 7]. Thus, as in the *Simcox* case, the expertise Mr. Bullock possessed as a long-term deputy sheriff helped facilitate the exercise of authority over the minor victim which culminated in the acts for which Mr. Bullock pled *nolo contendere*.

30. A deputy sheriff may not perform any services as deputy until he or she subscribes to the same oath prescribed for sheriffs, which is to swear that he or she will support, protect, and defend the Constitution and government of the United States and of the State of Florida and will faithfully perform the duties of sheriff. *See*, Fla. Const., Art. II, § 5(b).35; Section 30.09(1)(a), Florida Statutes. Thus, Mr. Bullock was obligated to prevent crimes, not to commit crimes. Here, Mr. Bullock used the privileges of his position to violate his oath of office and to engage in felonious conduct. The fact he was in plain clothes when he committed certain activities for which he was charged is irrelevant. All of the elements required to support forfeiture under Section 112.3173(2)(e)6., Florida Statutes, have been satisfied in this case.

ORDERED

The Petitioner, Charles Bullock, has forfeited his rights and benefits under the Florida Retirement System Investment Plan pursuant to Section 112.3173(2)(e)6., Florida Statutes by having pled nolo contendere to two felony counts of child abuse.

Any party to this proceeding has the right to seek judicial review of the Final Order pursuant to Section 120.68, Florida Statutes, by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the Clerk of the State Board of Administration in the Office of the General Counsel, State Board of Administration, 1801 Hermitage Boulevard, Suite 100, Tallahassee, Florida, 32308, and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate District Court of Appeal. The Notice of Appeal must be filed within thirty (30) days from the date the Final Order is filed with the Clerk of the State Board of Administration.

DONE AND ORDERED this 10th day of December, in Tallahassee, Florida.

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**



Joan B. Haseman

Senior Defined Contribution Programs Officer
Office of Defined Contribution Programs
State Board of Administration
1801 Hermitage Boulevard, Suite 100
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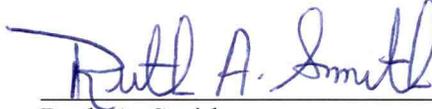
FILED ON THIS DATE PURSUANT TO
SECTION 120.52, FLORIDA STATUTES
WITH THE DESIGNATED CLERK OF THE
STATE BOARD OF ADMINISTRATION,
RECEIPT OF WHICH IS HEREBY
ACKNOWLEDGED.



Tina Joanos,
Agency Clerk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order was sent by electronic mail to Richard A. Greenberg, Esq., Counsel for Petitioner, Rumberger, Kirk and Caldwell, 215 South Monroe Street, Suite 702, Tallahassee, Florida 32301-1858, rgreenberg@rumberger.com and by electronic mail to U.S. mail to Brian Newman and Brandice Dickson, Esq., at Pennington, Moore, Wilkinson, Bell & Dunbar, P.A., P.O. Box 10095, Tallahassee, Florida 32302-2095, brian@pennington.com and brandi@pennington.com, this 10th day of December, 2014.



Ruth A. Smith
Assistant General Counsel
State Board of Administration of Florida
1801 Hermitage Boulevard
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Tallahassee, FL 32308

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CHARLES BULLOCK,

Petitioner,

vs.

Case No. 14-2616

STATE BOARD OF ADMINISTRATION,

Respondent.

RECOMMENDED ORDER

Administrative Law Judge John D. C. Newton II, of the Division of Administrative Hearings (DOAH), heard this case on August 8, 2014, in Tallahassee, Florida.

APPEARANCES

For Petitioner: Richard A. Greenberg, Esquire
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For Respondent: Brian A. Newman, Esquire
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STATEMENT OF THE ISSUE

Should the benefits of the Petitioner, Charles Bullock, under the Florida Retirement System Investment Plan, be forfeited

EXHIBIT A

due to his plea of no contest and adjudication of guilt to two felony counts of child abuse?

PRELIMINARY STATEMENT

The Respondent, State Board of Administration (Board), seeks to forfeit Mr. Bullock's rights and benefits under the Florida Retirement System Investment Plan because of his plea of no contest and adjudication of guilt to two felony counts of child abuse. Mr. Bullock timely requested a hearing. The Board referred the matter to the Division of Administrative Hearings. The undersigned conducted the hearing on August 8, 2014.

The Board presented testimony from Mr. Bullock. Board Exhibits 1 through 5 were admitted into evidence.

Mr. Bullock's Exhibits 1 through 5, deposition transcripts, were accepted into evidence.

The parties provided a transcript, which was filed on August 25, 2014. Both parties timely filed proposed recommended orders, which have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. The Collier County Sheriff's Office employed Mr. Bullock as a law enforcement officer from 1994 through 2010. Due to his employment, Mr. Bullock was a member of the Florida Retirement System Investment Plan.

2. Mr. Bullock worked in the sheriff's office's civil process unit. He and the other civil process deputies routinely met for coffee in the afternoon about 2:00 p.m., to discuss business. They usually met at the Starbucks in the Coastland Mall in Collier County. Sometimes they met at other locations to avoid drawing public attention and adverse comments. For the same reason, after some unfavorable television coverage, they often dispersed their cars in the parking lot, instead of parking together.

3. Mr. Bullock usually did not wear a uniform, badge, gun, or anything else identifying him as a Collier County deputy or a law enforcement officer.

4. On at least three occasions between November 2009 and February 2010, while on duty, Mr. Bullock went to the food court bathroom after these meetings. The evidence does not establish that Mr. Bullock was wearing a uniform, badge, gun, or anything else identifying him as a Collier County deputy or law enforcement officer on those occasions.

5. On the first two of those occasions, Mr. Bullock sexually molested a male, under the age of 16, by forcing him to allow Mr. Bullock to perform oral sex.

6. On the third occasion, Mr. Bullock was approaching the male minor by looking under and over the bathroom stall divider, when he was interrupted by a mall employee.

7. The evidence does not establish that the minor knew on any of the occasions that Mr. Bullock was a deputy or law enforcement officer.

8. The evidence does not otherwise establish that Mr. Bullock's position as a Collier County deputy facilitated, contributed to, provided the opportunity for, or otherwise played a role in his ability to commit the acts described on those three occasions. He committed the offenses in a public place during normal operating hours. His position as a deputy did not provide access to the food court bathroom that any citizen would not have had.

9. As a result of the interruption of the third encounter and the information the mall employee was able to provide, law enforcement conducted an investigation of Mr. Bullock's conduct in the mall bathroom.

10. The investigation culminated on April 19, 2010, in a warrant to arrest Mr. Bullock. The warrant charged Mr. Bullock with lewd or lascivious battery (violation of section 800.04(4)(a), Florida Statutes (2010)), a second-degree felony, and official misconduct (violation of section 838.022, Florida Statutes (2010)), a third-degree felony.

11. On March 10, 2014, Mr. Bullock entered a plea of no contest to a different charge based upon his sexual molestation of the male under the age of 16.

12. The offense to which Mr. Bullock entered a plea of no contest was child abuse, a violation of section 827.03, Florida Statutes (2010), a third-degree felony. At the time of his plea and in this proceeding, Mr. Bullock maintained that he was not guilty of the charges, but chose to plead no contest because of concerns that the nature of the charges would inflame jurors.

13. The court adjudicated Mr. Bullock guilty of the charges to which he pled no contest. It imposed a sentence of two years' probation, prohibited contact with the victim, required payment of \$151.00 in court costs, and required Mr. Bullock to give up his law enforcement certification.

14. On March 20, 2014, the Board notified Mr. Bullock that his rights and benefits under the Florida Retirement System were forfeited as a result of his no contest plea to child abuse. This proceeding followed.

CONCLUSIONS OF LAW

15. DOAH has jurisdiction over the parties and the subject matter of this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes (2014).^{1/}

16. The Board maintains that Mr. Bullock has forfeited his rights and benefits under the retirement system pursuant to section 112.3173, Florida Statutes. The Board bears the burden of proving its charges by a preponderance of the evidence.

Wilson v. Dep't of Admin., Div. of Ret., 538 So. 2d 139, 141-142

(Fla. 4th DCA 1989); Dep't of Transp. v. J.W.C. Co., 396 So. 2d 778, 788 (Fla. 1st DCA 1981).

17. The retirement system is a public retirement system as defined by Florida law. The proposed forfeiture is subject to administrative review. See § 112.3173(5)(a), Fla. Stat.

18. Article II, Section 8(d), of the Florida Constitution provides:

SECTION 8. Ethics in government.--A public office is a public trust. The people shall have the right to secure and sustain that trust against abuse. To assure this right:

* * *

(d) Any public officer or employee who is convicted of a felony involving a breach of public trust shall be subject to forfeiture of rights and privileges under a public retirement system or pension plan in such manner as may be provided by law.

19. Section 112.3173(3) codifies this constitutional provision and provides in relevant part:

(3) FORFEITURE.--Any public officer or employee who is convicted of a specified offense committed prior to retirement . . . shall forfeit all rights and benefits under any public retirement system of which he or she is a member, except for the return of his or her accumulated contributions as of the date of termination.

20. Section 112.3173 provides in part:

(1) INTENT.--It is the intent of the Legislature to implement the provisions of s. 8(d), Art. II of the State constitution.

(2) DEFINITIONS.--As used in this section, unless the context otherwise requires, the term:

(a) "Conviction" and "convicted" mean an adjudication of guilty by a court of competent jurisdiction; a plea of guilty or of nolo contendere [no contest]; a jury verdict of guilty when adjudication of guilt is withheld and the accused is placed on probation; or a conviction by the Senate of an impeachable offense.

21. The forfeiture statute defines a "specified offense" to include any felony under chapter 838 (except sections 838.15 and 838.16), as well as certain felonies relating to bribery, embezzlement, theft of public funds or an impeachable offense. See § 112.3173(2)(e), Fla. Stat.

22. The forfeiture statute also contains a so-called "catch-all" provision. It states:

(2)(e) "Specified offense" means:

* * *

6. The committing of any felony by a public officer or employee who, willfully and with intent to defraud the public or the public agency for which the public officer or employee acts or in which he or she is employed of the right to receive the faithful performance of his or her duty as a public officer or employee, realizes or obtains, or attempts to realize or obtain, a profit, gain, or advantage for himself or herself or for some other person through the use or attempted use of the power, rights, privileges, duties, or position of his or her public office or employment position.

§ 112.3173(2)(e)6., Fla. Stat. In other words, the elements of section 112.3173(2)(e)6. are: (a) any felony; (b) committed by a public employee; (c) willfully and with intent to defraud the public or the employee's public employer of the right to receive the faithful performance of the employee's duty; (d) to obtain a profit, gain or advantage for the employee or some other person; and (e) by use of the power, rights, privileges, duties, or position of the employment position.

23. In this case, Mr. Bullock is a former public employee and a member of a public retirement system. He pled no contest to a crime committed before retirement, child abuse, a third-degree felony, in violation of section 827.03(1), Florida Statutes (2010).

24. The specified offenses listed in section 112.3173(2)(e) do not apply. The only issue here is whether the elements of section 112.3173(2)(e)6. are satisfied by the acts that Mr. Bullock pled no contest to committing and of which he was adjudicated guilty.

25. The crime to which Mr. Bullock pled no contest is a felony. He committed it while on duty. His actions were plainly willful and deprived the public of the right to expect that a law enforcement officer would obey the law. Sexual gratification amounts to a personal gain, benefit, or advantage. Bollone v. Dep't of Mgmt. Servs., 100 So. 3d 1276 (Fla. 1st DCA 2012);

Holsberry v. Dep't of Mgmt. Servs., Case No. 09-0087 (Fla. DOAH July 24, 2009; DMS Oct. 19, 2009).

26. The weight of the evidence does not prove that the "use of the power, rights, privileges, duties, or position of" Mr. Bullock's position played any part in the commission of the offenses. He did not identify himself as a law enforcement officer. He did not exercise the power of a law enforcement officer. The victim did not know Mr. Bullock was a law enforcement officer.

27. Mr. Bullock committed the acts in a public place. The Board has not proven by a preponderance of the evidence that Mr. Bullock committed an offense which forfeits his retirement system rights and benefits.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Respondent, State Board of Administration, enter a final order finding that the Petitioner, Charles Bullock, was not convicted of a specified offense as identified in section 112.3173, Florida Statutes, and directing that he not forfeit his rights and benefits under the Florida Retirement System.

DONE AND ENTERED this 30th day of September, 2014, in
Tallahassee, Leon County, Florida.



JOHN D. C. NEWTON, II
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 30th day of September, 2014.

ENDNOTE

^{1/} All citations to the Florida Statutes are to the 2014
codification of the Florida Statutes, unless otherwise noted.

COPIES FURNISHED:

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and Chief Investment Officer
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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.