

FILED

NOV 5 2004

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10
11 MARLO T GARNES,

No C 02-4428 VRW

12 Plaintiff,

ORDER

13 v

14 JO ANNE B BARNHARDT, Commissioner
15 of Social Security

16 Defendant.
17
18
19

20 Plaintiff Marlo T Garnes appeals from a decision by the
21 Social Security Administration's (SSA's) Appeals Council to
22 terminate her Social Security Income (SSI) benefits. That decision
23 was based on the SSA's finding that an outstanding 1990 warrant
24 issued against plaintiff in the State of Virginia made her
25 ineligible as "fleeing to avoid prosecution" under 42 USC section
26 1382(e)(4)(A). Plaintiff's underlying entitlement to SSI benefits
27 based on developmental disability and mental illness is
28 uncontested. Before the court are cross-motions for summary

1 judgment on the question of whether the Appeals Council's
2 determination that plaintiff was "fleeing to avoid prosecution"
3 should stand or should be overturned. Based on a careful review of
4 the administrative record and of the applicable law, the court
5 GRANTS the plaintiff's motion and DENIES the defendant's motion.

6 I

7 A

8 According to plaintiff's declaration, she was born in San
9 Francisco in 1967 and raised in Richmond, California. AR 112. She
10 was born with a developmental disability. Id. In 1981, when she
11 was fourteen years old, she moved with her mother to Arlington,
12 Virginia. AR 113. Plaintiff suffered from "severe anxiety and
13 depression," was hospitalized twice for her "mental condition" and
14 was "emotionally incapable of living independently and depended on
15 [her] mother for everything." Id.

16 In 1990, plaintiff was arrested in Virginia for allegedly
17 failing to return a rental car on time. AR 107. Plaintiff cannot
18 remember the details of the 1990 criminal proceedings. Id. On May
19 19, 1990, plaintiff was released on her own recognizance on
20 agreeing to appear in court on May 23, 1990. AR 8, 49. According
21 to plaintiff's brief, there was no court session on May 23, 1990,
22 due to a fire in the courthouse that resulted in asbestos
23 contamination. Pl's Reply at 2, n 1. In June of 1990, plaintiff's
24 mother moved back to Richmond, California to take care of
25 plaintiff's elderly grandfather. AR 51, 73. According to
26 plaintiff, "I was not able to live on my own so I moved back to
27 Richmond with my mother and daughter." Id. Plaintiff's
28 declaration states "I did not leave Virginia in order to avoid

1 prosecution." Id. On June 18, 1990, a court document styled
2 "Capias: Attachment of the Body" (the "warrant") was issued for
3 plaintiff after she failed to appear at a court hearing June 14,
4 1990. AR 117. Plaintiff was later arrested in California based
5 on this outstanding warrant, but was released after being told that
6 Virginia would not extradite her. AR 107, 113.

7 B

8 In January 2001, plaintiff applied for Supplemental
9 Security Income (SSI) benefits, which were approved retroactively
10 to January 2001. AR 113. Plaintiff was found eligible on the
11 basis of a mental impairment. AR 42.

12 On November 28, 2001, the Social Security Office of
13 Inspector General (OIG) forwarded a request for information to the
14 social security office in Richmond, citing the June 18, 1990
15 warrant. AR 53. Two form paragraphs on the request were checked:
16 (1) "SSI recipient was positively identified as the fugitive felon.
17 The relevant law enforcement agency was unable to locate the
18 fugitive at the address shown on SSR records," id; and (2) "Subject
19 is still in a fugitive status * * *," id.

20 On December 14, 2001, the SSA sent plaintiff a notice
21 advising her that her benefits would be terminated effective
22 January 2002 because "you are:

23 Fleeing to avoid trial on a criminal charge of a felony, or
24 attempt to commit a felony; or

25 Fleeing to avoid jail, prison or custody after conviction of
a felony, or attempt to commit a felony; or

26 Violating a condition or your parole or probation."

27 AR 57.

28 Plaintiff timely requested reconsideration, AR 40, which

1 was denied by letter from the SSA dated January 4, 2002. AR 31.
2 Plaintiff then timely requested a hearing before an administrative
3 law judge, AR 47. With the assistance of Bay Area Legal Aid,
4 plaintiff submitted a brief in support of her position. AR 41-77.

5 On April 26, 2002, the ALJ issued a five-page ruling
6 concluding that plaintiff's SSI benefits had been "improperly
7 suspended." AR 91-96. The ALJ focused on the language of 20 CFR
8 416.1339, the implementing regulation for section 1611(e)(5) of the
9 Social Security Act, 42 USC § 1382(e)(4)(A), and identified
10 deficiencies in the record on which the SSA acted to terminate
11 plaintiff's benefits.

12 The ALJ noted that 20 CFR 416.1339(b) authorized the
13 suspension of benefits in the month in which

14 a warrant or order for the individual's arrest or
15 apprehension, an order requiring the individual's
16 appearance before a court or other appropriate
17 tribunal * * * or similar order is issued by a court
18 or other duly authorized tribunal on the basis of an
appropriate finding that the individual - (A) Is
fleeing, or has fled, to avoid prosecution as
described in paragraph (a)(1) of this section . . .

19 or "The first month during which the individual fled to avoid such
20 prosecution * * * if indicated in such warrant or order, or in a
21 decision by a court or other appropriate tribunal." Decision dated
22 April 26, 2002 ("ALJ Decision") at 3, AR 15. The ALJ noted that the
23 record provided to him by the SSA contained neither a copy of the
24 warrant on the basis of which plaintiff's benefits were terminated
25 nor a recitation of the warrant's contents, but that a copy of the
26 warrant had been placed in the record by the plaintiff's
27 representative. Upon inspection of the warrant, the ALJ noted that
28 the warrant was based on plaintiff's "failure to appear" and did not

1 contain a finding that the plaintiff was "fleeing to avoid
2 prosecution." Id. "Of course," the ALJ added, "'failure to appear'
3 is a far cry from fleeing to avoid a felony prosecution." Id.

4 In reversing the SSA and ordering plaintiff's benefits
5 restored, the ALJ stated:

6 I find the facts in this case to be compelling.
7 Most significant, however, is the Administration's
8 failure to abide by the statute and regulations by
9 suspending the claimant's SSI benefits before
10 confirming that the requirements have been met.
11 The regulation clearly requires that a warrant that
12 is the grounds for a suspension of SSI benefits be
13 issued on the basis of "an appropriate finding that
14 the individual is fleeing" * * *. There is no
15 indication in the file that the Administration made
16 any effort to obtain a copy of the warrant before
17 suspending the claimant's benefits. Indeed, they
18 appear to have simply ignored the * * *
19 regulation's requirement * * *.

20 ALJ Decision at 4, AR 16.

21 Plaintiff's victory proved short-lived. The SSA's Appeals
22 Council, acting at the request of the SSA's San Francisco Center for
23 Programs, took up plaintiff's case on its own motion under 20 CFR
24 section 416.1469 to consider "whether the claimant must be
25 considered to be fleeing from felony prosecution as of June 1990 and
26 whether that status precludes her eligibility for supplemental
27 security income as of January 2001, the month of her application."
28 Decision of Appeals Council, July 9 2002, AR 6.

29 The Appeals Council reversed the ALJ. Acknowledging that
30 the relevant legal authorities, 42 USC § 1382(e)(4) and 20 CFR §
31 416.202, "are silent regarding a definition of 'fleeing to avoid * *
32 *' or what entity must establish that an individual is 'fleeing,'"
33 it cited the supplemental information published in the Federal
34 Register with the new regulation for four propositions:

1 (1) the [SSA] will rely on law enforcement agencies
2 to determine whether an individual is fleeing to
avoid prosecution for a crime.

3 (2) prosecution of an individual includes all steps
4 necessary to reach a judicial determination of guilt
or innocence;

5 (3) Congress did not provide exceptions to the
6 fugitive felon rule based on the nature of the
7 originating crime or the State's reluctance to
extradite the individual; and

8 (4) this legislation was passed to purposely prohibit
9 the expenditure of Federal funds to aid those who are
violating the law.

10 Appeals Council Decision at 2, AR 7, citing 65 Fed Reg 40492-96.

11 The Appeals Council's decision further described the SSA's
12 approach to applying the regulation as follows:

13 With the silence of the law and regulation regarding
14 a definition for 'fleeing' and no way to
differentiate 'fleeing' from other reasons an
15 individual may not appear at a court hearing, [SSA]
16 guidelines provide that, regardless of what charge
is indicated on the warrant, the [OIG] will verify
17 with the appropriate law enforcement agency that the
individuals' felony warrant remains active and the
18 individual is still being sought. If so, the
claimant is assumed to be a fugitive felon.

19 Appeals Council Decision at 3, AR 8.

20 In reversing the ALJ, the Appeals Council reached the
21 following conclusions from the evidence:

22 the claimant (1) was aware that she was being
23 prosecuted for a crime; (2) agreed to not depart the
Commonwealth of Virginia prior to the final
24 disposition of the case; and (3) left the state
before the case was closed. The Appeals Council
25 observes that the claimant indicated that she moved
to the State of California to be with family
26 members. Nevertheless, the move was illegal, as she
left * * * Virginia prior to the final disposition
27 of her case.

28 Id.

1 In September 2002, plaintiff filed this action
2 challenging, under 42 USC section 405(g), the Appeals Council's
3 action. After defendant answered, the parties filed cross-motions
4 for summary judgment. Doc # 11, 12. On May 22, 2003, plaintiff
5 filed a "notice of change in circumstances." Doc # 17. It stated
6 that on May 9, 2003, a court in Virginia recalled the order for
7 plaintiff's arrest, thus resolving the issue that led to the
8 suspension of her SSI benefits. Plaintiff contends that a live case
9 or controversy nonetheless remains for this court to adjudicate -
10 that is, the plaintiff's entitlement to the benefits already
11 withheld, which SSA will not pay her without an order of this court
12 stating that she is entitled to them. Id.

13 II

14 The court's jurisdiction is limited to determining whether
15 the SSA's denial of benefits is supported by substantial evidence in
16 the administrative record. 42 USC § 405(g). A district court may
17 overturn a decision to deny benefits only if the decision is not
18 supported by substantial evidence or if the decision is based on
19 legal error. See Andrews v Shalala, 53 F3d 1035, 1039 (9th Cir
20 1995); Magallanes v Bowen, 881 F2d 747, 750 (9th Cir 1989). The
21 Ninth Circuit defines "substantial evidence" as "more than a mere
22 scintilla but less than a preponderance; it is such relevant
23 evidence as a reasonable mind might accept as adequate to support a
24 conclusion." Andrews, 53 F3d at 1039.

25 It is well established that federal courts defer to an
26 agency's reasonable interpretation of its statutes and regulations.
27 Campbell ex rel Campbell v Apfel, 177 F3d 890, 893 (9th Cir 1999).
28 "Legislative regulations, if consistent with statutory

1 authorization, adopted pursuant to proper procedure, and
2 reasonable, have the force of law." Id, citing Chevron USA, Inc v
3 Natural Resources Defense Council, Inc, 467 US 837, 842, 104 S Ct
4 2778 (1984). Interpretations contained in policy statements,
5 agency manuals, and enforcement guidelines, all of which lack the
6 force of law, however, do not warrant Chevron-style deference.
7 Community Hospital of the Monterey Peninsula v Thompson, 323 F3d
8 782, 791 (9th Cir 2003), quoting Christensen v Harris County, 529
9 US 576, 587, 120 S Ct 1655 (2000). An administrative agency's
10 interpretive rules

11 while not controlling on the courts by reason of
12 their authority, do constitute a body of experience
13 and informed judgment to which courts and litigants
14 may properly resort for guidance. The weight of such
15 a judgment * * * will depend upon the thoroughness
16 evident in its consideration, the validity of its
17 reasoning, its consistence with earlier and later
18 pronouncements, and all those factors which give it
19 power to persuade, if lacking power to control.

20 Community Hospital, 323 F3d at 791-92, quoting Skidmore v Swift &
21 Co, 323 US 134, 140, 65 S Ct 161 (1944).

22 Where the final decision of the Secretary is contrary to
23 that of the ALJ who originally heard a particular case, it is
24 appropriate that the decision be reviewed with greater care, since
25 evidence supporting the decision may be less substantial. Valentine
26 v Schweiker, 559 F Supp 644, 647 (D Mont 1983), citing LeMaster v
27 Weinberger, 533 F2d 337 (6th Cir 1980).

28 III

The adjudication of these motions requires determining
whether the Appeals Council employed the correct legal principles
when applying 42 USC section 1382(e)(4) and its supporting
regulations to the facts of plaintiff's case, and whether

1 substantial evidence supported its conclusions.

2 The federal statute from which the administrative actions
3 at issue arise was enacted in 1996, as part of the Personal
4 Responsibility and Work Opportunity Reconciliation Act, Pub L 104-
5 193, a welfare reform law that amended several parts of the United
6 States Code. The statute provides:

7 No person shall be considered an eligible individual
8 or eligible spouse for purposes of this subchapter
9 with respect to any month during such month the
10 person is -

11 (A) fleeing to avoid persecution, or custody or
12 confinement after conviction, under the laws of the
13 place from which the person flees, for a crime, or
14 an attempt to commit a crime, which is a felony
15 under the laws of the place from which the person
16 flees * * *; or

17 (B) violating a condition of probation or parole
18 imposed under Federal or State law.

19 42 USC § 1382(e)(4). The SSA's enabling regulations, cited in
20 pertinent part above as quoted by the ALJ in section I.B, were
21 promulgated in 2000 following a formal public notice and comment
22 period.

23 Defendant takes the position that neither the statute nor
24 the regulation requires the SSA to take any steps to determine that
25 a recipient of SSI benefits is actually "fleeing." The Appeals
26 Council Decision referred to "supplemental information" prepared by
27 SSA in support of 20 CFR section 416.1339 and published in the
28 Federal Register, and later, SSA "guidelines" in support of this
position. AR 7-8. The agency responses to citizen comments in the
Federal Register include the following statement: "We have no way of
determining whether or not an individual is aware that he or she is
wanted for a criminal offense and is knowingly fleeing from

1 prosecution. We must rely on official reports and other similar
2 determinations from various law enforcement agencies that an
3 individual is fleeing to avoid prosecution." 65 Fed Reg 40492.
4 The "guidelines" referred to were neither specifically cited in the
5 Appeals Council Decision nor in defendant's papers. Presumably,
6 reference is to the SSA's Program Operations Manual System (POMS),
7 which provides in pertinent part:

8 SI 00530.030 Why Do We Need a Warrant or Court Order?

9 POLICY

10 The complexities of criminal law that dictate
11 whether or not an individual meets the definition of
12 fugitive felon or parole or probation violator are
13 sometimes unclear and can vary from state to state.
14 For this reason, SSA relies on the expertise of law
15 enforcement agencies and courts for determinations
16 about an individual's legal status. As long as a
17 United States warrant or court order is active, SSA
18 considers an individual to be "fleeing" for SSI
19 eligibility determination purposes. This is true
20 even if the law enforcement agency is unwilling to
21 extradite.

22 In an OIG referral case, the special agent
23 responsible for the case will confirm the warrant
24 information with the appropriate law enforcement
25 agency and supply this information to the FO. An OIG
26 referral case that includes the warrant number and
27 the name, address, and phone number of the warrant
28 issuing agency, is evidence of fugitive status.
* * * Although the warrant may not specifically state
that the individual is a fugitive, or that the
individual is fleeing, SSA still considers the
individual to meet the ineligibility criteria of the
fugitive felon provisions until the warrant is
resolved.

24 POMS SI 530.030, cited in Hull v Barnhart, 2004 WL 1635353 (D Ore
25 2004) (emphasis added).

26 Defendant argues that the statute's failure to define
27 "fleeing to avoid prosecution" means that this court "is constrained
28 to defer to the Commissioner's interpretation and application of the

1 statute," citing Washington Department of Social and Health Services
2 v Chater, 163 F3d 1129 (9th Cir 1998). Specifically, Chater quotes
3 the United States Supreme Court's opinion in Thomas Jefferson
4 University v Shalala, 512 US 504, 512, 114 S Ct 2381 (1994:

5 [W]e must give substantial deference to an agency's
6 interpretation of its own regulations. Our task is
7 not to decide which among several competing
8 interpretations best serves the regulatory purpose.
Rather, the agency's interpretation must be given
controlling weight unless it is plainly erroneous
or inconsistent with the regulation* * *.

9 163 F3d at 1134. "This deference is warranted all the more when
10 'the regulation concerns a complex and highly technical regulatory
11 program, in which the identification and classification of relevant
12 criteria necessarily require significant expertise and entails the
13 exercise of judgment grounded in policy concerns.'" Id.

14 The instant regulation does not implicate an area of
15 special SSA expertise. On the contrary, SSA's guidance explicitly
16 states that "SSA relies on the expertise of law enforcement agencies
17 and courts for determinations about an individual's legal status."
18 POMS SI 530.030. This diminishes the degree of deference due to its
19 interpretation of its regulations.

20 As noted by the ALJ, the plain language of 20 CFR section
21 416.1339(b)(1)(I) states that an individual becomes ineligible for
22 SSI benefits when a warrant "is issued by a court or other duly
23 authorized tribunal on the basis of an appropriate finding that the
24 individual is fleeing, or has fled, to avoid prosecution." SSA's
25 policy would make this language superfluous: the agency learns that
26 there is a warrant outstanding, and takes steps to terminate
27 benefits. An agency interpretation that nullifies part of a
28 formally promulgated regulation deserves no deference. It is

1 inconsistent with the regulation and not even a reasonable reading
2 of it. The plain language of the regulation compels closer scrutiny
3 of the factual basis for terminating an individual's SSI benefits
4 under 42 USC section 1382(e)(4).

5 Another district court reached a similar conclusion in
6 Hull v Barnhart, 2004 WL 1635353 (D Ore 2004). Presented with
7 arguments by the SSA that a claimant's benefits could be terminated
8 based on the existence of a warrant she knew nothing of, the court
9 declined to give deference to SSA's POMS guidance under 20 CFR §
10 416.1339(b)(1)(I) because "an alternative reading is compelled by
11 the regulation's plain language." On that basis, the court ordered
12 the claimant's benefits reinstated.

13 SSA's contention that there is, in effect, no intent
14 requirement for an individual to be found to be "fleeing" is
15 unsupportable. In the Hull case, the court borrowed the meaning of
16 "fleeing from justice" from the case law developed under 18 USC
17 section 3290: "the prosecution need only prove that the defendant
18 knew that he was wanted by the police and that he failed to submit
19 to arrest," *id* at 3, quoting United States v Gonsalves, 675 F2d
20 1050, 1052 (9th Cir 1982), cert denied, 459 US 837, 103 S Ct 83.

21 Black's Law Dictionary defines "flee from justice" as:

22 Removing one's self from or secreting one's self
23 within jurisdiction wherein offense was committed
24 to avoid arrest; or leaving one's home, residence,
25 or known place of abode, or concealing one's self
26 therein, with intent, in either case, to avoid
27 arrest, detention, or punishment for some criminal
28 offense.

27 Black's Law Dictionary 639 (6th Ed 1990). Black's defines "flight
28 from prosecution" as:

1 The evading of the course of justice by voluntarily
2 withdrawing one's self in order to avoid arrest or detention,
3 or the institution or continuance of criminal proceedings,
4 regardless of whether one leaves jurisdiction. Also
5 comprehends continued concealment. Such is considered to
6 exist when an accused departs from the vicinity of the crime
7 under circumstances such as to indicate a sense of fear, or
8 of guilt or to avoid arrest, even before the defendant has
9 been suspected of the crime.

10 Id at 640. All of these formulations of the concept of "fleeing"
11 contain an intent requirement. The fact that 42 USC section
12 1382(e)(4)(A) does not define "fleeing" does not excuse the SSA
13 from its obligation to make a determination that actions by an
14 individual's that are used as the basis for terminating that
15 individual's SSI benefits are, at least in part, motivated by an
16 intent to avoid prosecution.

17 The court turns now to the factual record in support of
18 the competing assertions regarding plaintiff's status as a "fleeing
19 felon." The Appeals Council's analysis makes assumptions about
20 plaintiff's ability to manage her legal and personal affairs that
21 are not supported by any evidence in the record and, indeed, are
22 contradicted by the scant evidence on this subject that the record
23 contains. "The evidence indicates that the claimant (1) was aware
24 that she was being prosecuted for a crime; (2) agreed to not depart
25 the Commonwealth of Virginia prior to the final disposition of the
26 case; and (3) left the state before the case was closed." AR 8.
27 According to the Appeals Council, these evidentiary findings were
28 sufficient to support its determination that plaintiff was "fleeing
prosecution for a felony" when she moved to California.

The Appeals Council made no findings regarding
plaintiff's mental competence at the time of these events, nor
whether it was financially or logistically possible for her to

1 remain in Virginia to resolve her legal problems after her mother
2 left. The record contains little information about the nature and
3 extent of plaintiff's underlying disability. The only references
4 to this subject are in documents submitted by plaintiff's
5 representatives (for example, plaintiff was found eligible "on the
6 basis of a mental impairment," Claimant's Position Statement -
7 Request for on the Record Decision, AR 42). Plaintiff's brief
8 asserts that her disability determination was based on "the
9 combined effects of a developmental disability and mental illness."
10 Pl's Mem at 2:25. Plaintiff's declaration suggests that her
11 problems are serious and long-standing. AR 73. Defendant has
12 introduced no evidence tending to contradict or cast doubt on
13 plaintiff's evidence of mental impairment.

14 SSA determined on the one hand that plaintiff was so
15 severely disabled by mental problems as to qualify for SSI
16 benefits, and on the other that plaintiff had the necessary mental
17 state to be a "fleeing felon." These determinations are
18 inconsistent and must be somehow reconciled in order for the latter
19 determination to stand. The latter determination is not supported
20 by substantial evidence and must be reversed and remanded.

21 The ALJ's decision turned on the fact that the warrant
22 did not contain a finding, as the regulation's language requires,
23 that "plaintiff was fleeing to avoid prosecution" but only that she
24 failed to appear. The court agrees that the plain language of
25 section 416.1339(b)(1)(I) requires more than the existence of a
26 warrant. It requires a finding by a court or other duly authorized
27 tribunal * * * "that the individual is fleeing, or has fled, to
28 avoid prosecution." SSA's guidelines allow the agency to limit the

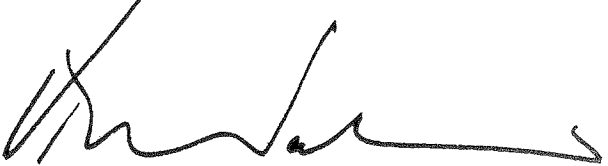
1 investigation to determining that a valid warrant exists, and on
2 that basis to terminate an individual's benefits. This approach
3 may serve the agency's administrative convenience, but they do not
4 satisfy the statute or the plain language of its own regulation.

5 IV

6 For the reasons stated herein, defendant has failed to
7 meet its burden of producing substantial evidence that plaintiff's
8 benefits were rightfully terminated under 42 USC section 1382
9 (e)(4)(A). This case is remanded to the SSA for either (1)
10 reinstatement of benefits withheld, both retrospectively and
11 prospectively; or (2) further proceedings consistent with this
12 order to determine whether or not plaintiff had the necessary
13 mental capacity and/or mental state to be "fleeing to avoid
14 prosecution" when she left Virginia in June 1990 and during her
15 subsequent years in California.

16 The clerk shall enter judgment in accordance with this
17 order and close the file.

18
19 IT IS SO ORDERED.

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21 
22 VAUGHN R WALKER
23 United States District Chief Judge
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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

Garnes,

Plaintiff,

v.

Barnhart,

Defendant.

Case Number: CV02-04428 VRW

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on November 5, 2004, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

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Dated: November 5, 2004

Richard W. Wieking, Clerk
By: Cora Delfin, Deputy Clerk

