SERVED: June 30, 2010

NTSB Order No. EA-5529

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 30th day of June, 2010

J. RANDOLPH BABBITT, Administrator, Federal Aviation Administration, Complainant, v. HAROLD B. SINGLETON, Respondent.	Docket SE-18389RM

OPINION AND ORDER

On remand from the United States Court of Appeals for the District of Columbia Circuit,[1] we revisit respondent's appeal of

[1] Singleton v. Babbitt et al., 588 F.3d 1078 (D.C. Cir. 2009) (per curiam). Although respondent named the National Transportation Safety Board (NTSB) as a respondent in his petition for review before the Court of Appeals, the NTSB performed a quasi-judicial function in that it adjudicated respondent's appeal from the Administrator's order of suspension. The Federal Aviation Administration is the party in

the written decisional order of Administrative Law Judge William A. Pope, II, in which the law judge granted the Administrator's motion for summary judgment.[2] The law judge's decision affirmed the Administrator's revocation of respondent's airline transport pilot and medical certificates, and any other airman or medical certificates that respondent holds. The Administrator had based the order on respondent's alleged intentional falsification of an application for his airman medical certificate.[3] Prior to a hearing, the Administrator submitted a motion for summary judgment, based on the assertion that no genuine issues of material fact required resolution, because the evidence established that respondent supplied a false answer on the application. The law judge granted the Administrator's motion, and we affirmed the law judge's decision.

The emergency order of revocation,[4] which became the complaint in this case, alleged that respondent, on the

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interest, not the NTSB, which does not typically participate in the judicial review of its decisions. See 49 C.F.R. § 821.64(a).

[2] A copy of the law judge's order is attached.

[3] The Administrator charged respondent with violating 14 C.F.R. § 67.403(a)(1), which provides that no person may make or cause to be made a fraudulent or intentionally false statement on any application for a medical certificate.

[4] The case below originally proceeded pursuant to the Administrator's authority to issue immediately effective orders

application that he submitted on June 3, 2008, answered that he had no history of:

> (1) any conviction(s) involving driving while intoxicated by, while impaired by, or while under the influence of alcohol or a drug; or (2) history of any conviction(s) or administrative action(s) involving an offense(s) which resulted in the denial, suspension, cancellation, or revocation of driving privileges or which resulted in attendance at an educational or rehabilitation program.

Compl. at ¶ 4 (quoting question 18v of medical certificate application). The complaint alleged, however, that the state of North Carolina had suspended respondent's driver's license on March 14, 2008, "for a cause related to alcohol." Id. at ¶¶ 3, 8. As a result, the Administrator charged respondent with intentionally falsifying the application.

After the FAA Security and Investigations Division contacted respondent about the driver's license suspension and his medical certificate application, respondent stated that he believed he did not need to report the suspension, because he believed that the application only required reports of *convictions*. Respondent asserted that he had been stopped at a driver's license checkpoint and was charged with driving under the influence of alcohol (DUI). He stated that, upon his

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under 49 U.S.C. §§ 44709(e) and 46105(c); however, respondent subsequently waived the applicability of the expedited procedures.

release, his driver's license was suspended, and that it was returned to him at the end of 30 days. Under these circumstances, respondent contended that he did not believe he had been *convicted* of any violation.

Based on the fact that respondent admitted that his driver's license had been suspended, and that he did not report the suspension on his medical certificate application, the Administrator filed a motion for summary judgment. The Administrator also obtained documents verifying that North Carolina had indeed suspended respondent's driver's license. The Administrator sought revocation of respondent's certificates, based on the allegation that respondent violated § 67.403(a)(1). Respondent opposed the Administrator's motion, and argued that, "whether or not he had actual knowledge of falsity or intentionally made false statements presents a material issue of fact to be resolved after a hearing on the merits." Resp. to Mot. for Summ. J. at 6. Respondent stated that he "emphatically denies giving any intentionally false answers." Id.

The law judge granted the Administrator's motion, and concluded that the evidence established that respondent made a material, intentionally false statement on his medical application by answering "no" to question 18v. The law judge determined that respondent knew the answer he provided in

response to question 18v was false, and that such knowledge of the falsity established that respondent had intentionally falsified the application. We affirmed the law judge's decision. In our opinion below, we reviewed the three-prong standard that we apply to intentional falsification cases, in which we have long held that, in order to prove such a charge, the Administrator must establish that a person (1) made a false representation, (2) in reference to a material fact, (3) with knowledge of the falsity of the fact.[5]

We found that the law judge evaluated the evidence in light of this standard, and agreed that the evidence established that respondent's driver's license was revoked for an alcohol-related offense, and that he knew his driving privileges were revoked because he applied for limited temporary driving privileges during the revocation period. We further verified that the evidence established that, several weeks later, respondent completed an application for an airman medical certificate, on which he indicated that he did not have a history of an "administrative action[] involving an offense[] which resulted in the … revocation of driving privileges." We also cited previous cases in which we held that a respondent's failure to consider a question on a medical application carefully before

[5] Hart v. McLucas, 535 F.2d 516, 519 (9th Cir. 1976) (citing Pence v. United States, 316 U.S. 332, 338 (1942)).

providing an answer did not establish a lack of intent to provide false information.[6] We did not find respondent's argument that he did not understand the meaning of "administrative action" and, therefore, did not know his answer was false, to be persuasive. In this regard, we stated that the term "administrative action" was not confusing, and that, when the question is not confusing, where the wording has a literal meaning, and where the DUI infraction at issue clearly begs candidness with the Administrator, respondent could not claim he did not knowingly provide a false response.

The D.C. Circuit disagreed with our conclusion that it was appropriate to dispose of the case via summary judgment. In particular, the court stated that a hearing is necessary in order to determine whether the Administrator has proven the third element of the Hart v. McLucas test, which involves whether the respondent had knowledge of the falsity of the answer at issue on the application. We recognize that the D.C. Circuit issued the opinion for this case in tandem with the opinion for Dillmon v. NTSB, 588 F.3d 1085 (D.C. Cir. 2009), wherein the court held that a finding of whether the

[6] Administrator v. Singleton, NTSB Order No. EA-5437 at 7—8 n.11 (2008) (citing Administrator v. Boardman, NTSB Order No. EA-4515 (1996)). In the opinion below, we also cited Administrator v. Sue, NTSB Order No. EA-3877 at 5 (1993), for the notion that, "the two questions about traffic and other convictions are not confusing to a person of ordinary intelligence."

Administrator has proven that the respondent knowingly falsified an application is a factual issue if a respondent raises the argument that he misunderstood the question, the resolution of which may involve a credibility determination. In the case at issue, the D.C. Circuit also stated that the FAA admitted that a respondent's knowledge of the falsity under the third prong, as described above, may rest upon the respondent's alleged subjective understanding of the question.

Given the court's holding, we remand the case to the law judge for a hearing, in which the law judge should determine whether respondent misunderstood the question to an extent that excuses his incorrect answer. We note that the law judge should expressly make, on the record, a credibility finding concerning the testimony on this issue. We also believe that the record should fully develop the factual circumstances surrounding respondent's completion of the application.

ACCORDINGLY, IT IS ORDERED THAT:

This case is remanded to the law judge for further proceedings consistent with this opinion and order.

HERSMAN, Chairman, HART, Vice Chairman, and SUMWALT, Member of the Board, concurred in the above opinion and order.

Served: November 19, 2008

UNITED STATES OF AMERICA

NATIONAL TRANSPORTATION SAFETY BOARD

OFFICE OF ADMINISTRATIVE LAW JUDGES

ACTING ADMINISTRATOR,
FEDERAL AVIATION ADMINISTRATION,

Complainant,

v. Docket No.: SE-18389

HAROLD B. SINGLETON,

Respondent.

AMENDED ORDER GRANTING ACTING ADMINISTRATOR'S MOTION FOR SUMMARY JUDGMENT

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Respondent Harold Burgin Singleton has appealed to the National Transportation Safety Board from the Acting Administrator's Emergency Order of Revocation, dated October 2, 2008, which, pursuant to § 831.31(a) and § 821.55(a) of the Board's Rules of Practice in Air Safety Proceedings, serves as the complaint in this proceeding.[1] By that emergency order, the Acting Administrator revoked the Respondent's First Class Airman Medical Certificate, Airline Transport Pilot Certificate, or any other medical or airman certificate held by him, because he allegedly violated FAR § 67.403(a)(1), by making an intentionally false or fraudulent statement on an application for a medical certificate.

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[1] The Respondent waived proceeding under the Board's rules applicable to emergency proceedings on October 23, 2008.

The complaint alleges that:

1. You currently are the holder of Airline Transport Pilot Certificate [omitted] and a First Class Airman Medical Certificate.
2. On or about March 14, 2008, your driver license was suspended by the State of North Carolina, for a cause related to alcohol ("had an alcohol concentration of 0.08 or more at any relevant time after the driving").
3. On or about June 3, 2008, you applied for and were issued a First Class Airman Medical Certificate.
4. On the above-mentioned application, in response to Item 18.v., "Medical History – HAVE YOU EVER IN YOUR LIFE . . . HAD ANY OF THE FOLLOWING? . . . Conviction and/or Administrative Action History, History of (1) any conviction(s) involving driving while intoxicated by, while impaired by, or while under the influence of alcohol or a drug; or (2) history of any conviction(s) or administrative action(s) involving an offense(s) which resulted in the denial, suspension, cancellation, or revocation of driving privileges, or which resulted in attendance at an educational rehabilitation program," you answered "**no"**.
5. On Item 20 of the referenced application, you certified that the entries were complete and true, knowing that said entries and certifications were neither complete nor true.
6. Based on paragraph 2 your answer to Item 18.v. on the application was not correct.
7. Based on paragraphs 3 through 5, the referenced First Class Airman Medical Certificate was issued without consideration of your actions as described in paragraphs 2 and 3.
8. Based on paragraphs 3 through 6, your answer to Item 18.v. on the application was fraudulent or intentionally false.

By reason of the foregoing facts and circumstances, you:

a. Based on paragraphs 2 through 6, violated Section 67.403(a)(1) of the Federal Aviation Regulations in that you made, or caused to be made a fraudulent or intentionally false statement on an application for a medical certificate;
   [Section 67.403(c)(1), provides for revocation or revocation of a medical certificate on which an incorrect statement was entered on an application for a medial certificate, upon which the FAA relied. If it is determined that your answer and explanation were not intentionally false or fraudulent as alleged, then your incorrect statement is still the basis for revocation of your medical certificate.]
b. Failed to exercise the degree of care, judgment, and responsibility required of the holder of an airman certificate; and
c. Have demonstrated that you presently lack the qualifications required of the holder of an Airman Medical Certificate.

Pursuant to Section 67.403(b) of the Federal Aviation Regulations, a fraudulent or intentionally false statement entered on an application for a medically certificate is a basis for revocation of your First Class Medical Certificate, Airline Transport Pilot Certificate, and any other medical and airman certificates issued to you.

As a result of the foregoing, the Acting Administration finds that you lack the qualifications necessary to hold a First Class Airman Medical Certificate, Airline Transport Pilot Certificate, or any other medical or airman certificate. The Acting Administrator has therefore determined that safety in air commerce or air transportation and the public interest require the revocation of the above-mentioned certificates. The Acting Administrator further finds that emergency requiring immediate action exists with respect to safety in air commerce or air transportation. Accordingly, the Order is effective immediately.

In his answer to the complaint, the Respondent admitted paragraphs 1, 3, and 4, and denied the remainder of the complaint.

The hearing in this matter is set for November 24 and 25, 2008, in Charlotte, North Carolina.

The Administrator's "Motion for Summary Judgment" was filed on October 27, 2008. The Administrator submits that the falsity of the Respondent's "no" answer to Item 18.v. on his application for a medical certificate is demonstrated by the certified copy of the Respondent's driving record (Exhibit A-2) and by the documents submitted by the Respondent, himself. (Exhibit A-4). The "Revocation Order When Person Present" shows that Respondent's driver license was revoked/suspended because "he had an alcohol concentration of 0.08 or more at any relevant time after the driving." The Administrator asserts that the Respondent chose to interpret the language of Item 18.v. to require a "yes" answer only after a conviction.

In "Opposition of Respondent Harold Burgin Singleton to Complainant's Motion for Summary Judgment," filed on November 6, 2008, the Respondent contends that a genuine issue of material fact exists, because at the time he completed the application, he believed he was answering truthfully, and, therefore, summary judgment is not appropriate.

I.

It is undisputed that the Respondent answered "no" to Item 18.v. on his application for a medical certificate, dated June 3, 2008. Item 18.v, among other things, asks if the applicant had ever in his life had any of the following: "(2) history of any conviction(s) or administrative action(s) which resulted in the denial, suspension, cancellation, or revocation of driving privileges, or which resulted in attendance at an educational or rehabilitation program." He signed the application, and certified that all of the answers on the application were complete and true to the best of his knowledge. The application shows that the Aviation Medical Examiner issued a medical certificate on June 3, 2008. Administrator's Exhibit A-1.

A certified report from the North Carolina Division of Motor Vehicles, dated April 15, 2008, shows that on 3-14-08, the Respondent's driver license was "susp: 30 day civil revocation (suspension)." An entry for 3-13-08 to 3-14-08 says: "Conv.: (026) 30 day civil revocation(conviction) 3L in Priv." "Court: Gaston County Court." Administrator's Exhibit A-2.

On July 24, 2008, Special Agent Cristina M. Johnson, FAA Regulatory and Support Branch, sent the Respondent a certified letter stating the FAA had received information from the State of North Carolina that the Respondent intentionally had provided false or fraudulent information on his medical application, in that he did not reference his alcohol-related offenses. The letter stated that the matter was under investigation, and said that the FAA would appreciate receiving any evidence or statements he might care to make regarding the matter. Administrator's Exhibit A-3.

In a response to the FAA's letter, dated July 31, 2008, the Respondent said he was stopped at a license checkpoint on March 14, 2008, and had replied "yes" when asked if had had anything to drink. He said that he two drinks at dinner over the course of 1.5 hours. He said he was erroneously, in his opinion, charged with DUI and a third breathalyzer test produced what he considered to be a false report since he was not intoxicated. He said that upon his release his driver license was retained in what he thought to be a perfunctory part of the proceeding. He was given a temporary license 10 days later, and his license was returned to him 30 days later. He said he did not look upon this as revocation due to conviction, but only a part of the process. He said after checking the FAA Regulations Handbook, he interpreted the requirement to be to provide information to the FAA after the date of any DUI convictions. He said that in retrospect he wished that he had asked the FAA for clarification of the meaning of "Administrative Action." He said that a court date was scheduled for 8-18-08, but following this another court date would be set. Administrator's Exhibit A-4.

On March 24, 2008, the Gaston County, North Carolina, District Court issued an order entitled, "Limited Driving Privilege, Pretrial Revocation (Implied Consent Offense)," which reflects that the applicant (Respondent) surrendered his driver license. The court ordered "the applicant (Respondent) be allowed limited driving privileges to be effective on the date indicated below (March 24, 2008) to be used in accordance with the restrictions imposed on the reverse side of this form, and to expire on the expiration date specified below (April 12, 2008). This limited driving privilege is conditioned upon the maintenance of any financial responsibility required by G.S. 20-179.3(l) during the period of this privilege." The restrictions include not driving with alcohol or controlled substances (other than by prescription) remaining in his body. On the reverse side is the Respondent's signature, dated March 24, 2008, under "Notice/Acknowledgement of Receipt:" which states "I have received a copy of this limited driving privilege which contains the restriction on my driving privilege. I may be subject to arrest and loss of this limited driving privileges; I understand that this is my limited license to drive; that I must keep it my possession during the period of revocation; that if my driver's license is revoked for any other reason, this limited driving privilege is invalid; that a violation of any restriction imposed in connection with this limited driving privilege constitutes the offense of driving while license is revoked under G.S. 10-18(a)." Administrator's Exhibit A-4.

On April 14, 2008, the Gaston County, North Carolina, District Court issued a "Revocation Order When Person Present," which includes a finding (belief) that the Respondent "had an alcohol concentration of 0.08 or more at any relevant time after the driving." The Court "ordered that the above-named person's (Respondent) driver's license or privilege to drive be revoked." The order states: "The above-named person (Respondent) is prohibited from operating a motor vehicle on the highways of North Carolina during the period of revocation. The revocation remains in effect at least 30 days from" April 14, 2008." The court's order further provided that the revocation would remain in effect for at least 30 days from April 14, 2008, and until a payment of $100 is made to the Clerk of Superior Court. (The amount of $100 was paid to the Gaston County Clerk of Court on 4/14/08.) Administrator's Exhibit A-4.

II.

The elements of the charge of intentional falsification are a false statement, made with knowledge of its falsity, with reference to a material fact. *Hart v. McLucas,* 535 F.2d 516, 519 (9th Cir. 1976). Proof of fraud requires proof of two additional elements, an intent to deceive and action taken in reliance upon the representation. *Twomey v. NTSB,* 821 F.2d 63, 66 (1st Cir. 1987). In order for a statement to be material, it need only be capable of influencing the decision of the agency. *Twomey v. NTSB, supra at* 66; *Administrator v. Cassis,* NTSB Order EA-1831 (1982); *Administrator v. Anderson,* NTSB Order EA-4564 (1997); *Administrator v. Richards,* NTSB Order EA-4813 (2000).

The Respondent, while admitting the he answered "no" to Item 18.v., of his application for a medical certificate on June 3, 2008, contends that he mistakenly, but in good faith, believed that he did not have disclose the alcohol related administrative revocation/suspension of his driver license until after he was convicted of DUI.

Item 18.v., however, is stated in plain English. No literate person could reasonably misunderstand it. The Respondent does not claim to be illiterate, only mistaken. He answered "no" to question 18.v., which clearly and unambiguously asks if he had "a history of any convictions involving driving while intoxicated by, while impaired by, or while under the influence of alcohol, <u>or a history of any convictions or administrative actions involving an offense which resulted in the denial, suspension, cancellation, or revocation of driving privileges</u>, or which resulted in attendance at an educational or rehabilitation program (emphasis supplied)." His answer of "no" to that question was plainly and undeniably false, as attested to by the court documents submitted by the Administrator, the authenticity of which the Respondent has in no way challenged.

As described above, the court documents bear the Respondent's signature and certification of understanding, and clearly and unequivocally show that his North Carolina driver license was revoked/suspended for an offense involving having 0.08 or greater blood alcohol level after he was stopped and charged with DUI on March 14, 2008. From March 24, 2008, to April 12, 2008, the Gaston County, North Carolina, District Court granted him limited driving privileges. On April 14, 2008, the same court revoked/suspended the Respondent's North Carolina driving privileges for 30 days.

In light of the court documents that he signed, see above, it is patently absurd and unbelievable that he did not know that his North Carolina driver license had been administratively revoked/suspended for 30 days on April 14, 2008. Indeed, the Respondent, to his credit, does not claim that he was unaware of the revocation/suspension of his driver license; he only claims that he did not believe that he had to report this alcohol-related revocation/suspension until after he was convicted of DUI, and, that had not happened before June 3, 2008, when he applied for a First Class Airman Medical Certificate. As noted above, Item 18.v. to which he answered "no" on his medical certificate application, as well as all of the court documents, at least some which he was personally present for, are stated in plain English. The Respondent

makes no claim that he did not read or understand the court documents; only that he thought that Item 18.v. did not require an affirmative answer until after a conviction. But, Item 18.v. does not say that on its face, and he presented no reasonable basis for such a misunderstanding. Nowhere in the language of Item 18.v. is there anything to support such a strained interpretation. That interpretation after the fact is plainly, and I so find, an attempt to excuse knowingly making an intentionally false answer to Item 18.v.

I find that the Respondent's "no" answer was not only false, it was beyond any reasonable doubt a material intentional and knowing false statement, capable of influencing the Administrator's decision concerning whether to issue the medical certificate for which the Respondent applied.

While the Respondent asserts as a defense that he mistakenly believed that he did not have to report his administrative revocation/suspension until after he was convicted of DUI, his basis for that belief simply is not clear from the record. He does no more than make an unsupported claim to that effect. He has offered nothing tending to substantiate this is a genuine belief on his part.

It is noteworthy here that even though the Respondent professes to have been confused or uncertain as to what and when he was required to report to the FAA when he made his application for a first class medical certificate on June 3, 2008, he does not contend that he took any reasonable steps to clarify the situation by disclosing his alcohol-related motor vehicle actions and seeking guidance from the FAA or the aviation medical examiner. That would have been an eminently reasonable and prudent thing for him to have done under the circumstances, but for reasons he does not explain now, he did not do that. The logical and compelling conclusion is that by knowingly and intentionally giving a false answer to Item 18.v., he hoped to delay having to disclose the alcohol-related motor vehicle actions on his record to the FAA for as long as possible, and, in any event until after he was issued a new First Class Medical Certificate on June 3, 2008.

I find it unnecessary to reach the question of whether his knowing and intentionally false and material statement was fraudulent. The sanction is the same whether it was an intentionally false or fraudulent statement. Board precedent firmly supports revocation as the appropriate sanction for intentional falsification of an application for a medical certificate. *Administrator v. Martinez,* NTSB Order No. EA-5409 (2008); *Administrator v. Butchkosky,* NTSB Order No. EA-4459 (1996). In *Administrator v. Bodovinitz,* NTSB No. EA-4179 (1994), the Board made it clear that revocation for intentional falsification of an application for a medical certificate is appropriate for all airman certificates held by the respondent, not just his medical certificates.

III.

A party may file a motion for summary judgment on the basis that the pleadings and other supporting documentation establish that there are no genuine material issues

of fact to be resolved and that party is entitled to judgment as a matter of law. 49 C.F.R. § 821.17(d).

The burden of establishing that there are no genuine material issues of fact rests upon the Administrator. I find that the Administrator has met that burden. The record here, taken as a whole could not lead a rational trier of fact to find for the Respondent. Here, unquestionably the Respondent's false statement concerned a material fact, because it could influence the Administrator's decision concerning the certificate for which the Respondent applied. The Respondent's attempt to justify his false answer on the medical certificate application as the result of a misunderstanding is unavailing. The Board has held that failure to read a question on a medical application carefully and closely enough to supply accurate answers is not a basis for disputing a charge of intentional falsification. Similarly unavailing is the argument that Item 18.v. is vague. *Administrator v. Martinez, supra, at pp. 8-10.*

In another recent case, *Administrator v. Dillmon,* NTSB Order No. EA-5413 (2008), the Board said that the proper inquiry should have been whether the respondent in that case provided the incorrect answer while cognizant of its falsity, and not whether he had any specific intent to deceive or falsify at the time the answer was provided. The Board also said that a question was not vague where it is not confusing to a person of ordinary intelligence.

In this case, likewise, I find that the Respondent knew his answer was false when he gave it. His contention that he thought that it was necessary to admit alcohol-related actions only if they result in a conviction for DUI, and therefore he did not make a knowing and intentional false statement, is unavailing. Also unavailing is his contention that Item 18.v. was vague. A reading of the item clearly shows that it is not confusing to a person of ordinary intelligence, and there is no evidence here that the Respondent somehow lacked ordinary intelligence.

The pleadings, including the Respondent's answer to the complaint and to the FAA's letter of investigation, and the unquestionably authenticate court documents, prove by a preponderance of the evidence that the Respondent made a knowing and intentionally false statement of material fact on his application for a First Class Medical Certificate on June 3, 2008. There being no genuine issues of material fact remaining to be resolved at a hearing, no useful purpose would be served by a hearing. The appropriate sanction for this violation of the Federal Aviation Regulations is revocation of his First Class Medical Certificate, his Airline Transport Pilot Certificate, and any other medical or airman certificates he holds.

There being no genuine issues of material fact remaining to be resolved at a hearing in this case, and there being no question to be resolved at a hearing as to the appropriateness of the sanction of revocation of the Respondent's First Class Medical Certificate, Airline Pilot Certificate, and any other medical or airman certificate held by him, I find that summary judgment is appropriate.

The Acting Administrator's "Motion for Summary Judgment" is GRANTED. The Acting Administrator is entitled as a matter of law to Summary Judgment. The Acting Administrator's Emergency Order of Revocation is AFFIRMED. The hearing scheduled for November 24, 2008, in Charlotte, North Carolina is cancelled.

ENTERED this 19th day of November 2008, at Washington, D.C.

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WILLIAM A. POPE, II
Judge