

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

JAMES R. DEMICK, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 07-2602RU  
 )  
 DEPARTMENT OF CHILDREN AND )  
 FAMILY SERVICES, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

FINAL ORDER OF DISMISSAL

This matter came on for consideration on January 25, 2008, without hearing, on Respondent, Department of Children and Family Services' Motion to Dismiss First Amended Petition. Having considered Respondent's motion, Petitioner's Response in Opposition and Motion to Strike Respondent Department of Children and Families' Motion to Dismiss First Amended Complaint, and being otherwise fully advised,

The following Findings of Fact are made:

1. Respondent, pursuant to Section 394.9151, Florida Statutes (2007), has contracted with private entities, The GEO Group, Inc., and GEO Care, Inc. ("GEO"), to use and operate a facility, Florida Civil Commitment Center, to comply with the requirements of Chapter 395, Part V, Florida Statutes (2007)

(entitled "Involuntary Civil Commitment of Sexually Violent Predators").

2. Petitioner, James R. Demick, is a person subject to Chapter 395, Part V, Florida Statutes (2007), and is confined in the Florida Civil Commitment Center.

3. Petitioner has filed a First Amended Petition of Unpromulgated Rule Challenge as an Improper Exercise of Delegated Legislative Authority in which he seeks a determination that certain internal memoranda and policies of GEO, including Policy No. F-24, the FCCC Resident Handbook, and the C.A.R.E. Program, that are "imposed on Florida Civil Commitment Center residents, are an improper exercise of delegated legislative authority as de facto agency rules that have not been adopted under proper rule making procedures of section 120.54(1)(a)."

4. Subsection 120.52(1), Florida Statutes (2007), defines "Agency" as:

(a) The Governor in the exercise of all executive powers other than those derived from the constitution.

(b) Each:

1. State officer and state department, and each departmental unit described in s. 20.04.

2. Authority, including a regional water supply authority.

3. Board, including the Board of Governors of the State University System and a state university board of trustees when acting pursuant to statutory authority derived from the Legislature.

4. Commission, including the Commission on Ethics and the Fish and Wildlife Conservation Commission when acting pursuant to statutory authority derived from the Legislature.

5. Regional planning agency.

6. Multicounty special district with a majority of its governing board comprised of nonelected persons.

7. Educational units.

8. Entity described in chapters 163, 373, 380, and 582 and s. 186.504.

(c) Each other unit of government in the state, including counties and municipalities, to the extent they are expressly made subject to this act by general or special law or existing judicial decisions.

This definition does not include any legal entity or agency created in whole or in part pursuant to chapter 361, part II, any metropolitan planning organization created pursuant to s. 339.175, any separate legal or administrative entity created pursuant to s. 339.175 of which a metropolitan planning organization is a member, an expressway authority pursuant to chapter 348 or transportation authority under chapter 349, any legal or administrative entity created by an interlocal agreement pursuant to s. 163.01(7), unless any party to such agreement is otherwise an agency as defined in this subsection, or any multicounty special district with a majority of its governing board comprised of elected

persons; however, this definition shall include a regional water supply authority.

5. Subsection 120.52(15), Florida Statutes (2007), in pertinent part, defines "Rule" as:

(15) "Rule" means each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule. The term also includes the amendment or repeal of a rule. (Emphasis added.)

6. Subsections 120.56(1)(a) and (4)(a), Florida Statutes (2007), read, in pertinent part:

(1)(a) Any person substantially affected by a rule or a proposed rule may seek an administrative determination of the invalidity of the rule on the ground that the rule is an invalid exercise of delegated legislative authority.

\* \* \*

(4)(a) Any person substantially affected by an agency statement may seek an administrative determination that the statement violates s. 120(1)(a). (Emphasis added.)

7. Section 394.930, Florida Statutes (2007), reads, as follows:

The Department of Children and Family Services shall adopt rules for:

(1) Procedures that must be followed by members of the multidisciplinary teams when

assessing and evaluating persons subject to this part;

(2) Education and training requirements for members of the multidisciplinary teams and professionals who assess and evaluate persons under this part;

(3) The criteria that must exist in order for a multidisciplinary team to recommend to a state attorney that a petition should be filed to involuntarily commit a person under this part. The criteria shall include, but are not limited to, whether:

(a) The person has a propensity to engage in future acts of sexual violence;

(b) The person should be placed in a secure, residential facility; and

(c) The person needs long-term treatment and care.

(4) The designation of secure facilities for sexually violent predators who are subject to involuntary commitment under this part;

(5) The components of the basic treatment plan for all committed persons under this part;

(6) The protocol to inform a person that he or she is being examined to determine whether he or she is a sexually violent predator under this part.

Based on the foregoing, the following Conclusions of Law are made:

8. GEO is not an "agency" as defined in Subsection 120.52(1), Florida Statutes (2007). Florida Department of Insurance v. Florida Association of Insurance Agents, 813 So. 2d

981 (Fla. 1st DCA 2002); Department of Corrections v. Adams,  
458 So. 2d 354 (Fla. 1st DCA 1984).

9. The internal memoranda and policies of GEO, including Policy No. F-24, the FCCC Resident Handbook, and the C.A.R.E. Program, are not agency rules as defined by Subsection 120.52(15), Florida Statutes, and are not subject to challenge pursuant to Subsection 120.56(4), Florida Statutes.

10. The rule making authority extended to Respondent in Section 394.930, Florida Statutes (2007), does not extend to the internal memoranda and policies of a private contractor as authorized by Section 394.9151, Florida Statutes.

It is, therefore,

ORDERED that the Division of Administrative Hearings lacks jurisdiction to consider the internal operating policies of GEO as defined and challenged in Petitioner's First Amended Petition; therefore, the First Amended Petition is dismissed with prejudice.

DONE AND ORDERED this 25th day of January, 2008, in  
Tallahassee, Leon County, Florida.

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JEFF B. CLARK  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 25th day of January, 2008.

COPIES FURNISHED:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to Section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing the original notice of appeal with the Clerk of the Division of Administrative Hearings and a copy, accompanied by filing fees prescribed by law, with the District Court of Appeal, First District, or with the District Court of Appeal in the Appellate District where the party resides. The notice of appeal must be filed within 30 days of rendition of the order to be reviewed.