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**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

ELSA MARTINEZ,

Petitioner

vs.

JOHN WINN,

As Commissioner of Education,

Respondent.

Case Number:

07-3576

06-0057-RT

**PETITIONER'S MOTION IN LIMINE AND MOTION TO SUPPRESS DEPOSITION**

Elsa Martinez ("Martinez" or "Petitioner") files this Motion in Limine and Motion to Suppress the Deposition of Elsa Martinez and states :

Martinez seeks to exclude certain documents, information and witnesses from use as evidence at trial by Respondent or for use by the court in rendering its decision.

1. The following matters relating to the General Knowledge Skills Test should be excluded:
  - A. Test Administration Manual for the General Knowledge Skills Test. Respondent has produced to date only the front page and pages 37 and 38 of this multi-page document.
  - B. Grading criteria used to grade the essay answers to the General Knowledge Skills Test. Any evidence regarding grading of the essays in question should be precluded as a result of the Respondent's failure to produce evidence of this criteria.
  - C. Essay answers used as exhibits in the deposition. Martinez served Respondent with her first request for production, admissions and interrogatories on August 20, 2007. As part of that initial request, Martinez sought, inter alia, the production of all essays, essay questions, testing booklet, grading criteria, etc. On September 24, 2007, Respondent's production to Martinez was due. That same day, the Respondent requested *and received* a one week extension on the basis that the requested discovery was unavailable. Three days later, on September 27, 2007, the

Respondent deposed Martinez. During that deposition, the Respondent attempted to introduce, over objection, *the same documents that were claimed to have been unavailable three days earlier*. Martinez had the right to review these documents in preparation for her deposition. Respondent's actions were obviously designed and intended to thwart that right.

2. Suppression of the deposition of Elsa Martinez and exhibits based on Respondent's violation of Florida Rules of Civil Code of Procedure, Rule 1.310(e). That rule requires a deponent be offered the opportunity to read the deposition if transcribed.

(a). Martinez did not waive reading of the transcript. She was not provided the transcript prior to Respondent's filing it with the court and use of it as an exhibit to his Motion to Relinquish Jurisdiction. Respondent's delay in providing Martinez a copy has not cured the

(b) Martinez's deposition was taken through a Spanish language translator. There is no certification verifying the accuracy of the translation from Spanish to English. In fact, a review of the deposition evidences that the current transcription is not accurate. For example, the court reporter misidentifies the location of the deposition, misidentifies the identity of attorney Rhonda Goodman and misidentifies the identity of Martinez's lawyer.

3. Respondent's unsworn and unverified answers to Martinez's first and second interrogatories must be excluded from evidence due to Respondent's failure to comply with Florida Civil Procedure Rule 1.340(a) which requires "...[e]ach interrogatory shall be answered separately and fully in writing under oath unless it is objected to. . . ."

4. All witnesses identified by Respondent in the unsworn answers to interrogatories as set forth in paragraph 4 above.

5. All exhibits and/or other evidence/testimony Respondent previously declared as confidential or privileged, Respondent may seek to use at the final hearing.

### **CONCLUSION**

The pretrial acts and conduct of this Respondent have seriously prejudiced Martinez. The Respondent has not disclosed the actual subject essay-test question(s), any grading criteria, or any information regarding the examinees who allegedly wrote similar essay answers. The Respondent had not produced the complete test manual for the General Knowledge Skills Test. That being the

case, these documents and related testimony should be excluded from their use at trial.

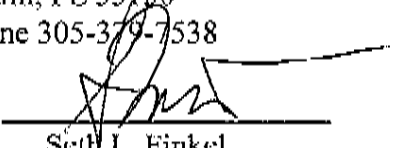
**WHEREFORE**, Petitioner Elsa Martinez respectfully requests this court enter an Order in *Limine* preventing and precluding the Respondent from introducing testimony or other evidence as noted above and suppressing the use of the Deposition of Elsa Martinez.

Respectfully submitted this 12<sup>th</sup> day of January, 2008.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY the forgoing has been furnished on January 13, 2008 by mail to: Charles Whitelock, Esq., 300 S.E. 13<sup>th</sup> Street, Ft. Lauderdale, FL 33316 and faxed to 1954-463-0410; Division of Administrative Hearings, DeSoto Bldg, 1230 Apalachee Parkway, Tallahassee, FL 32399-3060 by fax filing at 850-921-6847.

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By:   
Seth L. Finkel  
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