

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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_____AD3d_____

HOWARD MILLER, J.P.
FRED T. SANTUCCI
ANITA R. FLORIO
MARK C. DILLON, JJ.

2007-07423

DECISION & JUDGMENT

In the Matter of M. Eugene Gibbs, etc.,
petitioner, v Andrew P. O'Rourke, et al., respondents.

M. Eugene Gibbs, Montgomery Village, Maryland, petitioner pro se.

Alice Barno, Philadelphia, Pennsylvania, respondent pro se.

Proceeding pursuant to CPLR article 78 in the nature of mandamus, inter alia, to compel the respondent Andrew P. O'Rourke, a Justice of the Supreme Court, Putnam County, to "enter into the minutes the amended complaint and TRO/Injunctions filed by [the petitioner in] May and July 2003."

ADJUDGED that the petition is denied and the proceeding is dismissed, without costs or disbursements.

The extraordinary remedy of mandamus will lie only to compel the performance of a ministerial act and only when there exists a clear legal right to the relief sought (*see Matter of Legal Aid Society of Sullivan County v Scheinman*, 53 NY2d 12, 16). The petitioner has failed to demonstrate a clear legal right to the relief sought.

MILLER, J.P., SANTUCCI, FLORIO and DILLON, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

September 25, 2007

MATTER OF GIBBS v O'ROURKE