

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

LARRY E EALY,

Petitioner,

-vs-

DR. JEROME SCHULTE,

Respondent.

:

Case No. 3:09-cv-098

:

District Judge Thomas M. Rose  
Magistrate Judge Michael R. Merz

:

---



---

**REPORT AND RECOMMENDATIONS**

---



---

Petitioner Larry E. Ealy brought this habeas corpus action as next friend of his son, Larry E. Ealy. Petitioner alleges his son has been unconstitutionally involuntarily committed to the custody of the Respondent by order of the Honorable Alice O. McCollum, Probate Judge of Montgomery County. Petitioner attaches a copy of Judge McCollum's Order to the Petition.

Under 28 U.S.C. § 2254(d), a federal court may exercise habeas corpus jurisdiction with respect to someone in custody pursuant to the judgment of a state court only after that person has exhausted all available remedies in the state courts. It is obvious from the face of the Petition that Petitioner has not exhausted his remedy by way of direct appeal.

It is therefore respectfully recommended that the Petition herein be dismissed without prejudice for lack of exhaustion of state court remedies.

March 11, 2009.

s/ **Michael R. Merz**  
United States Magistrate Judge

## NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within ten days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(e), this period is automatically extended to thirteen days (excluding intervening Saturdays, Sundays, and legal holidays) because this Report is being served by one of the methods of service listed in Fed. R. Civ. P. 5(b)(2)(B), (C), or (D) and may be extended further by the Court on timely motion for an extension. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within ten days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F. 2d 947 (6<sup>th</sup> Cir., 1981); *Thomas v. Arn*, 474 U.S. 140, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985).