

**IN THE SUPERIOR COURT OF DEKALB COUNTY  
STATE OF GEORGIA**

**GEORGIACARRY.ORG, INC., and  
RYAN GILL,**

**Plaintiffs,**

v.

**WILLIAM O'BRIEN, in his official capacity  
of chief of police of DeKalb County, Georgia,**

**Defendant.**

---

**CIVIL ACTION FILE NO.  
11CV7100-6**

**DEFENDANT'S BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

COMES NOW Defendant William O'Brien, by and through counsel, and files this brief in support of motion for summary judgment and shows this court as follows:

**INTRODUCTION AND FACTS**

Plaintiffs allege that on or about May 4, 2011 Plaintiff Ryan Gill (hereafter "Mr. Gill") applied for a weapons carry license with the DeKalb County Probate Court. (Complaint ¶ 8). Mr. Gill contacted the DeKalb County Police Department ("DKPD") to arrange to be fingerprinted as a part of the background check process required by OCGA § 16-11-129 on the same day that he applied for the weapons license. (Complaint ¶¶ 10 & 11). Plaintiffs allege DKPD requires weapons license applicants to make appointments to be fingerprinted. (Complaint ¶ 12). Plaintiffs allege DKPD routinely takes longer than 30 days to schedule fingerprint appointments for weapons license applicants, and routinely takes more than 30 days to provide the DeKalb Probate Court with a report indicating whether the applicant is eligible to

obtain a weapons carry license based on information found from the background check. (Complaint ¶¶ 16, 18 & 25).

Plaintiffs claim O'Brien (former police chief) and DKPD are in violation of O.C.G.A. § 16-11-129 (d)(4) because DKPD maintains a policy or practice of not scheduling fingerprint appointments within 30-days from when a weapons carry license application is submitted. (Complaint ¶ 40). Plaintiffs seek a writ of mandamus from this court ordering O'Brien to comply with O.C.G.A. § 16-11-129 (d)(4) and to issue a declaration that O'Brien must complete fingerprinting and background reports within 30-days from when requested.

However, as stated in Major Karen Anderson's Affidavit, DKPD no longer requires weapons carry license applicants to schedule fingerprinting appointments in order to do the required background check. (See attached Affidavit of Major Karen Anderson, ¶ 4, p. 2). Clearly Plaintiffs' claims are now moot. Therefore this court should deny mandamus relief to Plaintiffs.

### **ARGUMENT AND CITATION OF AUTHORITIES**

#### **I. Standard for Summary Judgment**

Under Georgia law, summary judgment is warranted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. O.C.G.A. § 9-11-56 (c); Garrett v. Hanes, 273 Ga.App. 894, 616 S.E.2d 202 (2005). The burden of establishing the nonexistence of any genuine issue of fact is upon the moving party, and all doubts are to be resolved against the movant. Williams v. Trust Co., 140 Ga.App. 49, 230 S.E.2d 45 (1976).

A defendant is entitled to summary judgment if he can demonstrate that there is no evidence to support at least one essential element of the plaintiff's case. Garrett v. Hanes, 273 Ga.App. 894, 616 S.E.2d 202 (2005); King v. Comfort Living, Inc., 287 Ga.App. 337, 651 S.E.2d 484 (2007). A defendant need not affirmatively disprove the plaintiff's case, but may prevail simply by pointing to the lack of evidence. King, supra. If the defendant does so, the plaintiff cannot rest on his pleadings, but must point to specific evidence that gives rise to a triable issue of fact. Id.

Defendant O'Brien is entitled to summary judgment because Plaintiffs' claims are now moot. A moot case is one which seeks to determine an abstract question which does not arise upon existing facts or rights. Perdue v. Baker, 276 Ga. 822, 823 (2003); Kappers v. DeKalb County Board of Health, 214 Ga.App. 117, 446 S.E.2d 794 (1994). Mootness is a question of court policy based on the theory that courts do not give opinions on abstract propositions of law that do not involve an actual controversy between the parties." See In the Interest of I.S., 278 Ga. 859, 861 (2005) (quoting Hopkins v. Hambry Corp., 273 Ga. 19 (2000)). The existence of an actual controversy is fundamental to a decision on the merits by this court. See Bowers v. Bd. of Regents, 259 Ga. 221-222, 378 S.E.2d 460 (1989).

The record shows that DKPD no longer requires weapons carry license applicants to schedule fingerprinting appointments to obtain the required background check for the application process. (Anderson Affidavit, ¶ 4, p. 2). Therefore, Plaintiffs cannot establish that O'Brien and the County failed to comply with the Georgia law as it related to weapons carry license applicants obtaining fingerprints. Thus, Plaintiffs no longer have a viable claim against O'Brien. No "actual controversy" exists between Plaintiffs and O'Brien. As it stands now, there are no


issues for the court to decide. As a result, this Court should dismiss Plaintiff's complaint, and grant O'Brien's motion.

**CONCLUSION**

As stated previously, Plaintiffs' claims are now moot, thus he is not entitled to mandamus relief. Therefore this court should grant summary judgment to Defendant William O'Brien in this action.

Respectfully submitted this 13th day of August 2013.

DUANE D. PRITCHETT  
CHIEF ASSISTANT COUNTY ATTORNEY  
Georgia Bar No. 588330

  
BREND A. RASPBERRY  
SENIOR ASSISTANT COUNTY ATTORNEY  
Georgia Bar No. 595130

PLEASE ADDRESS ALL  
COMMUNICATIONS TO:

Brenda A. Raspberry  
Sr. Assistant County Attorney  
DeKalb County Law Department  
1300 Commerce Drive, 5th Floor  
Decatur, GA 30030  
(404) 371-3011 (phone)  
(404) 371-3024 (fax)

**IN THE SUPERIOR COURT OF DEKALB COUNTY  
STATE OF GEORGIA**

<b>GEORGIACARRY.ORG., et al.,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>CIVIL ACTION FILE NO</b>
	)	<b>11CV7100-6</b>
<b>v.</b>	)	
	)	
<b>WILLIAM O'BRIEN, in his official capacity of chief of police of the DeKalb County Police Department,</b>	)	
	)	
<b>Defendant,</b>	)	

---

**AFFIDAVIT OF KAREN ANDERSON**

STATE OF GEORGIA

COUNTY OF DEKALB

Personally appeared before me, the undersigned officer, duly authorized to administer oaths, Karen Anderson who, after being duly sworn, deposes as follows:

1.

I, Karen Anderson, am above the age of majority and I am competent to testify. I have personal knowledge of the facts set forth in this Affidavit, which I am giving for use in this action and for any other lawful use or purpose.

2.

I am currently a Major with the DeKalb County Police Department, and I hold the position of assistant division commander in the Support Services Division, which I have held since in or around February 2009. My job duties involve overseeing the Permits, Taxi and Wrecker Unit as well as other units within the Support Services Division.

IN THE SUPERIOR COURT OF DEKALB COUNTY  
STATE OF GEORGIA

GEORGIACARRY.ORG, INC., and  
RYAN GILL,

Plaintiffs,

v.

WILLIAM O'BRIEN, in his official capacity  
of chief of police of DeKalb County, Georgia,

Defendant.


CIVIL ACTION FILE NO.  
11CV7100-6

**CERTIFICATE OF SERVICE**

This is to certify that I have this day served the opposing party in the foregoing matter with a copy of the attached **Defendant's Brief In Support Of Motion for Summary Judgment** by depositing a copy of the same in the United States mail in a properly addressed envelope with adequate postage thereon to ensure delivery, addressed to:

John R. Monroe, Esq.  
Law Offices  
9640 Coleman Road  
Roswell, Georgia 30075

Respectfully submitted this 13th day of August 2013.

  
BRENDA A. RASPBERRY  
SENIOR ASSISTANT COUNTY ATTORNEY  
Georgia Bar No. 595130