

MEMORANDUM IN OPPOSITION TO MOTION FOR ALTERNATIVE WRIT

I. PROCEDURAL HISTORY

On February 13, 2007, Relator, Richard F. Schwartz, filed a Verified Complaint seeking, in part, a writ of prohibition permanently enjoining Respondent, Judge Larry Turner, from “conducting any judicial proceedings of the Newton Falls Municipal Court outside the territorial jurisdiction of the Newton Falls Municipal Court” and from enforcing any provisions of a January 9, 2007 Journal Entry filed by Judge Turner. (See Verified Complaint at p. 5.) In addition to seeking a writ a prohibition, the Verified Complaint also requests that this Court issue an alternative writ temporarily enjoining the enforcement of any provisions of the January 9, 2007 Journal Entry. *Id.*

Under Sup.Ct.Prac.R. X(5), Respondent has twenty-one (21) days *after service* of the summons and complaint to file an answer (and, possibly, a motion for judgment on the pleadings) or a motion to dismiss. This Rule further contemplates that action by this Court on any request for the issuance of an alternative writ will not occur until after the time for the filing of an answer or motion to dismiss. See Sup.Ct.Prac.R. X(5). Relator, however, on the same date he filed the Verified Complaint, also filed a motion seeking an alternative writ of prohibition, requesting the same temporary relief that is sought in the Verified Complaint, namely, the temporary enjoinder of enforcement of any provisions of the January 9, 2007 Journal Entry. This Court’s Rules relating to original actions do not address motions for alternative writs. It would appear, therefore, that this Court’s Rule relating to motions in general would apply, and such Rule indicates that a memorandum in opposition to a motion, in general, is due ten (10) days after the motion was *filed*. See S.Ct.Prac.R. XIV(4)(B).

Respondent submits that this Court's Rules contemplate that no action will be taken on a request for an alternative writ until Respondent has had the chance to file an answer to the complaint or a motion to dismiss. Because, however, Relator has filed a superfluous motion seeking the same alternative writ that is sought in the Verified Complaint, Respondent feels compelled at this time, and in an abundance of caution, to submit this brief opposition to Relator's motion for an alternative writ. In doing so, Respondent notes that, within twenty-one (21) days of service of the Verified Complaint, he will be responding in detail, via an answer (and, possibly, a motion for judgment on the pleadings) or a motion to dismiss, to Relator's requests for a writ of prohibition and for an alternative writ. Notwithstanding this filing, Respondent reserves the right to assert any and all defenses and arguments in so responding.

II. ARGUMENT

A. Relator's Motion for an Alternative Writ of Prohibition Should be Denied.

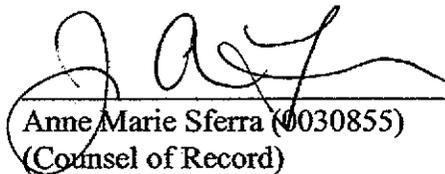
Respondent anticipates several grounds that will support an outright dismissal and/or denial of Relator's request for a writ of prohibition in its entirety. In the context of Relator's present motion for an alternative writ, the issuance of such an alternative writ at this time is entirely inappropriate because there is no underlying proceeding that this Court may temporarily enjoin. As this Court has noted, an alternative writ in a prohibition case stays the proceedings in the action sought to be prohibited. See *State ex rel. Downs v. Panioto*, 107 Ohio St. 3d 347, 2006-Ohio-8, ¶21, citing S.Ct.Prac.R. X(6). In the present case, however, there is no "action" or proceeding occurring. Indeed, the Verified Complaint itself establishes as much.

The underlying "action" Relator seeks to enjoin is Respondent's conducting of proceedings in the Trumbull County Jail. This "action" by Respondent was pursuant to a January 9, 2007 Journal Entry. (See Jan. 9, 2007 Journal Entry attached to Verified Complaint.)

On January 23, 2007, however, Respondent ceased this "action," and there is no evidence that such "action" has resumed. (See Verified Complaint and Jan. 23, 2007 Journal Entry attached thereto.) Accordingly, there is no proceeding(s) occurring below and, therefore, no action to temporarily enjoin.

On this basis alone, Relator's Motion for an Alternative Writ should be denied.

Respectfully submitted,



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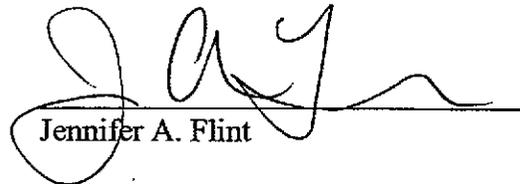
Counsel for Respondent, Judge Larry Turner

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Respondent's Memorandum in Opposition to Relator's Motion for Alternative Writ of Prohibition was sent via regular U.S. mail, postage prepaid this 23rd day of February 2007, to the following:

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