

IN THE SUPREME COURT OF OHIO

Richard Ruffier III
6401 Jeffers
Swanton, Ohio 43558

Relator,

v.

Judge Gary Byers
Maumee Municipal Court
400 Conant Street
Maumee, Ohio 43537-7136

Respondent.

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07-1496

Original Action in Prohibition

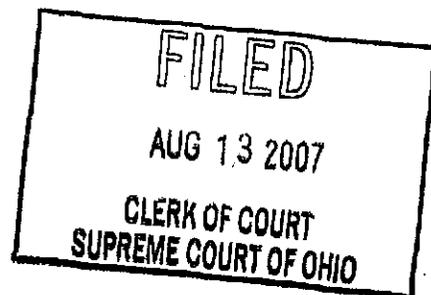
COMPLAINT FOR A WRIT OF PROHIBITION

J. Michael Salmon (0064258) (COUNSEL OF RECORD)
Salmon Law Office
8263 Woodbrier Lane
Grand Rapids, Ohio 43522
419-260-0263
mksalmon@adelphia.net

COUNSEL FOR RELATOR, RICHARD RUFFIER III

Judge Gary Byers
Maumee Municipal Court
400 Conant Street
Maumee, Ohio 43537-7136
419-897-7136
Fax: 419-897-7129

RESPONDENT



Statement of the Law & Facts

On July 2, 2007 Counsel for Relator filed an Affidavit of Disqualification in State v. Ruffier, case number 2007-TRD-2148 based on ex-parte conversation between the Prosecutor, Gary Smith and the Judge, Gary Byers. (See attached Affidavit of Disqualification)

Ohio Revised Code section 2701.031 sets out the requirements for an Affidavit of Disqualification against a Municipal Court Judge. Upon presenting the Affidavit to be filed, Counsel for Relator gave the clerk a copy of ORC 2701.031 to ensure that all requirements were met so that same could be accepted accordingly. Upon extensive review, the clerk accepted and filed the Affidavit, but apparently did not comply with ORC 2701.031 (C)(1)(a) in that they did not provide notice to the presiding judge of the Lucas County Common Pleas Court.

On July 3, 2007, Counsel for Realtor received a phone call from the Maumee Municipal Court informing him that the hearing on the Affidavit will be held on the same day as the scheduled pre-trial. On July 16, 2007, at a pre-trial, Judge Gary Byers denied the Affidavit of Disqualification on the basis that "he did not recall any such ex-parte conversation" and set the matter for trial. Counsel for Realtor raised objections to the extent that ORC 2701.031 deprives the judge of a municipal court against whom the affidavit was filed of any authority to preside in the proceedings until the judge who was notified rules on the Affidavit and requested that the Judge follow ORC 2701.031 and allow a Judge from Lucas County Common Pleas Court to rule on the Affidavit. Judge Gary Byers refused.

Relief Sought

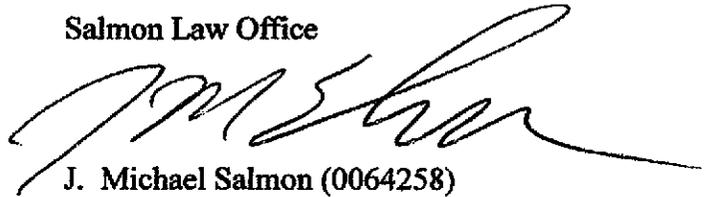
Realtor prays that this Court grant a Writ of Prohibition against Judge Gary Byers and forbid him from proceeding further in that matter until a Judge from the Lucas County Common Pleas

Court can rule on the Affidavit. Further, Realtor prays that this court order the clerk of the Maumee Municipal Court to comply with the requirements of ORC 2701.031 (C)(1)(a) and provide notice of the filing of the Affidavit to the presiding judge of the Lucas County Common Pleas Court.

I, J. Michael Salmon, counsel for Realtor, Richard Ruffier III, state that I have personal knowledge of the above facts and that each is true to the best of my knowledge.

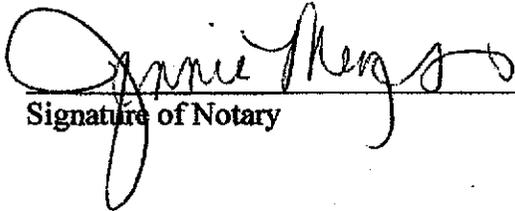
Sincerely

Salmon Law Office



J. Michael Salmon (0064258)

Subscribed and duly sworn before me according to law, by the above named, this 7th day of August, 2007, at Maumee, Lucas County, State of Ohio.



Signature of Notary

8/7/07
Date/stamp/seal



JENNIE M. MEYERS
Notary Public, State of Ohio
My Commission Expires 3/25/2012

FILED

2007 JUL -2 P 3: 53

MAUMEE MUNICIPAL COURT
MAUMEE, OHIO

**IN THE MAUMEE MUNICIPAL COURT
TRAFFIC DIVISION
LUCAS COUNTY, OHIO**

COPY

State of Ohio

Case No.: 2007-TRD-02148

Plaintiff,

Judge: Hon. Gary Byers

v.

AFFIDAVIT OF DISQUALIFICATION

Richard Ruffier III

J. Michael Salmon, Esq.
SALMON LAW OFFICE
P.O. Box 461
Neapolis, Ohio 43547-0461
Tel.: 419-260-0263
e-mail: mksalmon@adelphia.net

Defendant.

Now comes J. Michael Salmon, Esq., of Salmon Law Office, on behalf of his client, Richard Ruffier III, and respectfully request that Judge Gary Byers be disqualified from these proceedings under ORC section 2701.031 and that another Judge be assigned to this matter. The facts which gave rise to this matter are as follows:

1. On April 30, 2007 a pre-trial was held. I had discussed the case and a possible settlement with the Prosecutor, Gary Smith. I then went to talk with my client concerning the discussions. When I returned, I could not find Mr. Smith so I went into the Courtroom. A little while later, Mr. Smith

entered the Courtroom and told me that the Judge told him that my client was looking at “a substantial suspension.”

2. On June 8, 2007 another pre-trial was held and the Prosecutor and I went to talk to the Judge about the case. Judge Byers told me that my client faces a “substantial suspension” if convicted in this matter.

3. After this discussion, I spoke with my client who was really concerned that Judge Byers and the prosecutor were deciding his sentence outside my presence and before the matter went to trial.

4. On June 25, 2007 I voiced my client’s concerns with Mr. Smith about the ex-parte conversation held on April 30, 2007. Mr. Smith said that he did not recall it, but he said that he would not deny it happened. We then went into the Judge’s chambers to discuss the matter. I informed Judge Byers that my client had concerns with the ex-parte conversation of April 30, 2007. At no time did Judge Byers deny that he participated in said ex-parte conversation nor did he deny that he said that my client would face a “substantial suspension.” Another pre-trial was scheduled for July 16, 2007.

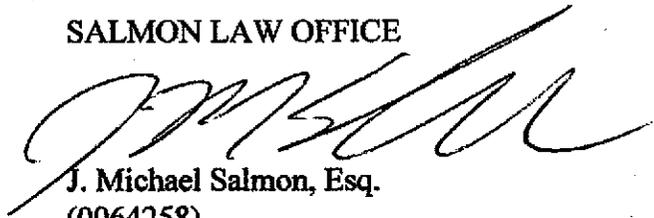
ORC section 2701.031 provides for the basis for disqualification of Municipal Court Judges. The Ohio Supreme Court has held that a party seeking to disqualify a judge based upon ex parte communication, must show that “the communication must have been initiated by the judge or address substantive matters in the case.” **IN RE DISQUALIFICATION OF FLOYD. IN RE D.Z.**, 101 Ohio St.3d 1215, 1216, 2003-Ohio-7354. That Court also held that actual bias need not be proved, but rather merely the “appearance of bias, prejudice, or impropriety.” **Id.** at 1216-1217.

In the case at bar, both the prosecutor, Gary Smith, and the Judge, Gary Byers, did not deny the fact that an ex parte communication took place on April 30, 2007 and that the communication concerned the sentence the judge would impose in the matter.

Thus, the existence of the ex parte communication and the fact that it addressed a substantive matter, the sentence, demonstrates the appearance of bias, prejudice, and impropriety as required by the Ohio Supreme Court. For the above reasons, Judge Gary Byers should be disqualified in this matter and a new judge assigned.

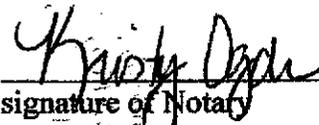
Sincerely,

SALMON LAW OFFICE



J. Michael Salmon, Esq.
(0064258)

Subscribed and duly sworn before me according to law, by the above named, this 2nd day of July, 2007, at Toledo, Lucas County, State of Ohio.



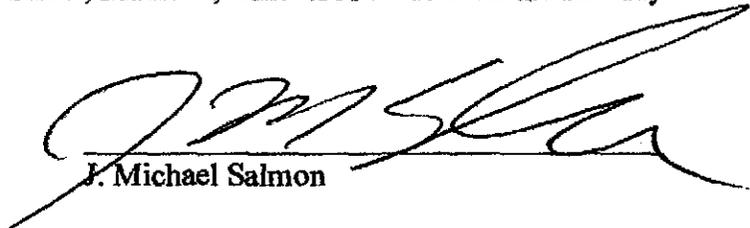
signature of Notary



KRISTY OGDEN
Notary Public, State of Ohio
My Commission Expires 8-23-10

CERTIFICATION

This is to certify that a copy of the above Affidavit of Disqualification was sent to the Swanton Prosecutor, Gary Smith, at 138 N. Main St., Swanton, Ohio 43558 and to Judge Gary Byers, Maumee Municipal Court, 400 Conant Street, Maumee, Ohio 43537-7136 on the 2nd day of July, 2007.



J. Michael Salmon

STATE OF OHIO VILLAGE OF SWANTON
 City Village Township

CASE NO: 07TRD02148 TICKET NO. S 012346

NAME: Richard P Ruffier III

STREET: 6401 Jeffers Rd.

CITY, STATE: Swanton, OH ZIP: 43338

LICENSE ISSUED MO. 10 YR. 95 EXPIRES BIRTHDATE 20 59 STATE OH

RACE W SEX M HEIGHT 511 WEIGHT 175 HAIR BRO EYES BRO FINANCIAL RESPONSIBILITY PROOF SHOWN Yes No

LICENSE NO. SA 079908

Lic. Class 9 DOT # Does Not Apply

TO DEFENDANT: COMPLAINT

ON 3-30, 20 06 AT 2325 A.M. YOU OPERATED/PARKED/WALKED/ A

Pass Comm. Cycle Over 26001 Bus Haz. Mat.

VEHICLE: YR. 95 MAKE PONT BODY TYPE 45

COLOR Maroon LIC. Dusk 1004 STATE OH

UPON A PUBLIC HIGHWAY, NAMELY ST. RT. 64

AT/BETWEEN Airport / Manulaya (M.P.)

IN THE VILLAGE OF SWANTON IN Lucas COUNTY (NO. 47), STATE OF OHIO AND COMMITTED THE FOLLOWING OFFENSE(S).

<input checked="" type="checkbox"/> SPEED: <u>105</u> MPH In <u>SS</u> MPH zone <u>92-20 45/11-21</u>	<input type="checkbox"/> ORC <input type="checkbox"/> ORD <input type="checkbox"/> T.P.
<input type="checkbox"/> Over limits <input type="checkbox"/> Unsafe for cond. <input type="checkbox"/> ACDA	
<input checked="" type="checkbox"/> Radar <input type="checkbox"/> Air <input type="checkbox"/> VASCAR <input type="checkbox"/> Pace <input type="checkbox"/> Laser <input type="checkbox"/> Stationary <input type="checkbox"/> Moving	
<input type="checkbox"/> OMVI: <input type="checkbox"/> Under the influence of alcohol/drug of abuse <input type="checkbox"/> ORC <input type="checkbox"/> ORD <input type="checkbox"/> T.P.	
<input type="checkbox"/> Prohibited blood alcohol concentration <u> </u> BAC	
<input type="checkbox"/> Blood <input type="checkbox"/> Breath <input type="checkbox"/> Urine <input type="checkbox"/> Refused	
<input type="checkbox"/> DRIVER LICENSE: <input type="checkbox"/> None <input type="checkbox"/> Revoked <input type="checkbox"/> Suspended <input type="checkbox"/> ORC <input type="checkbox"/> ORD <input type="checkbox"/> T.P.	
<input type="checkbox"/> Not on person Expired: <input type="checkbox"/> 6 mos. or less <input type="checkbox"/> Over 6 mos. Suspension Type <u> </u>	
<input type="checkbox"/> SAFETY BELT — Failure to wear <input type="checkbox"/> ORC <input type="checkbox"/> ORD <input type="checkbox"/> T.P.	
<input type="checkbox"/> Driver <input type="checkbox"/> Passenger <input type="checkbox"/> Child Restraint	
<input type="checkbox"/> OTHER OFFENSE <u> </u> <input type="checkbox"/> ORC <input type="checkbox"/> ORD <input type="checkbox"/> T.P.	
<input type="checkbox"/> OTHER OFFENSE <u> </u> <input type="checkbox"/> ORC <input type="checkbox"/> ORD <input type="checkbox"/> T.P.	

<input type="checkbox"/> DRIVER LICENSE HELD <input type="checkbox"/> VEHICLE SEIZED	ARREST CODE <u> </u>
<input checked="" type="checkbox"/> PAVEMENT: <input checked="" type="checkbox"/> Dry <input type="checkbox"/> Wet <input type="checkbox"/> Snow <input type="checkbox"/> Ice # of Lanes <u>2</u> <input type="checkbox"/> Const. Zone	
<input checked="" type="checkbox"/> VISIBILITY: <input type="checkbox"/> Clear <input type="checkbox"/> Cloudy <input type="checkbox"/> Dusk <input checked="" type="checkbox"/> Night	
<input checked="" type="checkbox"/> WEATHER: <input type="checkbox"/> Rain <input type="checkbox"/> Snow <input type="checkbox"/> Fog <input checked="" type="checkbox"/> No Adverse	
<input checked="" type="checkbox"/> TRAFFIC: <input type="checkbox"/> Heavy <input type="checkbox"/> Moderate <input checked="" type="checkbox"/> Light <input type="checkbox"/> None	
<input checked="" type="checkbox"/> AREA: <input type="checkbox"/> Business <input checked="" type="checkbox"/> Rural <input type="checkbox"/> Residential <input type="checkbox"/> Industry <input type="checkbox"/> School	
<input checked="" type="checkbox"/> CRASH: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Almost Caused <input type="checkbox"/> Injury <input type="checkbox"/> Non-Injury <input type="checkbox"/> Fatal	
<input type="checkbox"/> Crash Report Number: <u> </u>	

REMARKS: 3rd Speed in 1 year.

ACCOMPANYING CRIMINAL CHARGE Yes No TOTAL # OFFENSES 1

TO DEFENDANT: SUMMONS PERSONAL APPEARANCE REQUIRED

You are summoned and ordered to appear at Maumee Municipal Court

400 Coast St Maumee, OH 43537 at 9:00 A.M.

04-13, 20 07. If you fail to appear at this time and place you may be arrested or your license may be cancelled.

This summons served personally on the defendant on 3-30 20 07

The issuing-charging law enforcement officer states under the penalties of perjury and falsification that he/she has read the above complaint and that it is true.

Issuing-Charging Law Enforcement Officer

<u>4820</u>	<u>78</u>		
Court Code	Unit	Post	Dist.

NOTE: ISSUING OFFICER BE SURE TO VERIFY ADDRESS, IF DIFFERENT FROM LICENSE ADDRESS WRITE PRESENT ADDRESS IN SPACE PROVIDED

OSHP-HRZ COURT RECORD (B6305)

PRESENT ADDRESS SIGNATURE CO. RES. PHONE

6-25-07 AT THE REQUEST OF THE DEFENDANT, CASE CONTINUED FOR ADDITIONAL PRETRIAL CONFERENCE ON 7-16-07 AT 1:30

[Signature]
Judge

7-2-07 Defendant's Affidavit of Disqualification filed.

7-3-07 There shall be a hearing on Affidavit of Disqualification on 7-16-07 at 1:30 p.m. in addition to additional pretrial conference. Both counsel notified. per Judge Byers

7-16-07
Motion to Disqualify Denied, Request to waive off granted. Cont on from trial date

FILED & JOURNALIZED
 MAUMEE MUNICIPAL COURT JUL 16 2007

Jury Trial 10-3-07 at 8:45
 JTPC 9-7-07 at 9:30

4-13-07

CONT FOR CONSEC

4-20-07 @ 9:00 AM

717

IN THE MAUMEE MUNICIPAL COURT
ARRM

Case No. 07TR002148

- State of Ohio
- City of Maumee
- Village of Waterville
- Village of Swanton

VS.

Richard P. Ruffier III
3rd moving w/in 12 mths

30-07 Defendant present with Attorney
cheal Salmon, this date; case
ntinued for additional pretrial confer-
se for 6-4-07 at 11:00 a.m.
Per Judge Byers

6-4-07 At req of Atty by phone
this afternoon, p/c resch
to 6-8-07 at 9:45. Pros. Smith's
office notified.

Bond: \$ _____ 10% No 10%

Posted: Posted By: _____
\$ _____ R.# _____ Date: _____

Refunded: _____
\$ _____ C.# _____ Date: _____

Applied Bond: \$ _____ Date: _____

BOND: OR MOR SOR Date: _____

SURETY BOND: \$ _____ Date: _____
Name of Surety: _____

- OL Rev. _____ OL Rei. _____
- OL Seized _____ OL Reid. _____
- OL Surrendered _____ Date: _____
- OL Sent To BMV _____ Date: _____
- PR Proof _____ Rcvd: 4-13-07

6-8-07 AT THE REQUEST OF THE
DEFENDANT, CASE CONTINUED FOR
ADDITIONAL PRETRIAL CONFERENCE
ON 6-25-07 AT
11:00

[Signature]
Judge

I have indicated
1 yr. Susp - 60 Day
Hard Susp Kt. 64
- 105 mph

PAYMENTS

<u>DATE</u>	<u>AMOUNT</u>	<u>RECEIPT NO.</u>

8-307 I hereby certify this
to be a true and exact copy of the
original taken from the records of
the Maumee Municipal Court.
/s/ Sharon A. Thomasson, Clerk

[Signature]
Deputy Clerk