

IN THE SUPREME COURT OF OHIO

STATE, ex rel. DOBORAH S. REESE

CASE NO. 07-1509

Relator

vs.

CUYAHGA COUNTY BOARD  
OF ELECTIONS, et al.

Respondents

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MOTION TO STRIKE ~~AND DISMISS~~ <sup>RTV</sup>

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WILLIAM D. MASON, Prosecutor  
Of Cuyahoga County, Ohio

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STATE, ex rel. DOBORAH S. REESE	:	CASE NO. 07-1509
	:	
Relator	:	
	:	
vs.	:	
	:	MOTION TO DISMISS
	:	AND STRIKE
CUYAHGA COUNTY BOARD	:	
OF ELECTIONS, et al.	:	
	:	
Respondents	:	

Now comes respondents, Cuyahoga County Board of Elections, et al., by and through undersigned counsel, and respectfully asserts that all documents attached to relator's merit brief be stricken from the files herein for the reasons stated in the brief in support below. Therefore, relator's complaint should be dismissed because it still does not comply with S. Ct. R. X, Section 4(B) because it is not supported by any facts as explained below. Respondents reincorporate all previous arguments related to this issue as if rewritten herein.

**BRIEF IN SUPPORT**

Respondent's merit brief did not dispute that the exhibits attach to relator's merit brief are true and accurate copies. However, respondents never waived the fact that the documents were procedurally defective, when they asserted that these exhibits cannot cure relator's defective unverified complaint. On August 28, 2007, after respondents had filed their merit brief, respondents learned that the document submitted by relator were not properly authenticated by affiant, Gary Barna. Prior to this time there was no reason for respondents not to accept the affidavit from a board employee. In any

event, the complaint remains defective.

Respondent never agreed that the copies were the complete file from the board offices, as affiant Barna attested to. Therefore, the exhibits submitted by relator should be stricken in their entirety.

Attached hereto is affiant, Gary Barna's, corrective affidavit, that accurately reflects the failed attempt to certify the documents in question. Essentially, affiant Barna's corrective affidavit states that: he certified documents that were brought to him, he did not give the person the documents, and he did not know where they came from (para. 2); he assumed the documents were from a different protest hearing, he did not look at or review the board files, he did not know whether the documents were accurate, complete, and true files from the board (para. 3); he did not have any knowledge regarding his second affidavit (para. 4); and, in both instances he was not aware, and did not question where the files copies were from (para. 5).

Respondents assert that if the copies were complete files of the board they would have included all the exhibits attached to respondents' merit brief, inter alia, which show the underlying factual history, and contain three different legal opinions referring to the nonpartisan aspect of judicial election, all of which show that respondents did not abuse their discretion, and their decision was not contrary to law. Respondents do not assert that complete files are always required. However, since that attestation was made herein, the copies were not properly authenticated, because they were not complete as alleged, and therefore, should be stricken.

Accordingly, there are no facts in support of relator's complaint. Dismissal is warranted because of Reese's failure to comply with S. Ct. Prac. R. X (4)(B), which

provides affidavits supporting original action other habeas corpus filed in this court must be made on personal knowledge, and this Court has routinely done so. State ex. rel. Evans v. Blackwell (2006) 111 Ohio St. 3d 437, 442-443.

Reese's counsel claims his affidavit is based on personal knowledge. However, his affidavit only states that he has personal knowledge that he reviewed the writ and that he has personal knowledge that to the best of his knowledge and good faith belief the allegations therein are true and each exhibit thereto is true and accurate copy of the original thereof. This verification however, does not comply with S. Ct. Prac. R. X. (4)(B) personal knowledge requirement. Id.; State ex. rel. Hackworth v. Hughes (2002), 97 Ohio St. 3d 110. Reese's complaint is nebulous without proper supporting verification.

Dismissal of this expedited election case is proper because relator did seek leave to file an amended complaint complying with the affidavit requirement of S. Prac. R. X. (4)(B). See Hughes, supra.

**WHEREFORE**, respondent moves this Honorable Court to dismiss the relator's Petition for Writ of Mandamus.

Respectfully submitted,

WILLIAM D. MASON, Prosecutor  
Of Cuyahoga County, Ohio



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Attorney for Defendant

CERTIFICATE OF SERVICE

A copy of the foregoing respondents' Motion to Strike and Motion to Dismiss was served by hand-delivery to Attorneys for relator, Daniel P. Carter and Jeffrey W. Ruple, Buckley King, LPA, 1400 Fifth Third Center, 600 Superior Avenue East, Cleveland, Ohio 44114, this 31<sup>st</sup> day of August, 2007 to:

DANIEL P. CARTER  
JEFFREY W. RUPLE  
Buckley King, LPA  
1400 Fifth Third Center  
600 Superior Avenue East  
Cleveland, Ohio 44114

  
RENO J. ORADINI, Jr. (0039848)  
Assistant Prosecuting Attorney

STATE OF OHIO

)

) ss:

**A F F I D A V I T**

COUNTY OF CUYAHOGA

)

Now comes Affiant, Gary Barna, being of sound mind, of the age of majority, and having first been duly sworn according to law and states as follows:

1. I am Executive Assistant to the Director and Deputy Director at the Cuyahoga County Board of Elections. I have personal knowledge of the facts as stated herein.

2. On August 22, 2007, a female named Alicia appeared at the board offices, and asked me to certify documents in her possession. I did not give her the documents, and did not question where they came from. I assumed that board staff gathered the documents for her. I could not find a certification stamp, and offered to time-stamp the documents, which I did. She asked if I was willing to certify the documents pursuant to affidavit, and I agreed. She came back with an attorney who notarized my affidavit after I compared my affidavit with the documents presented.

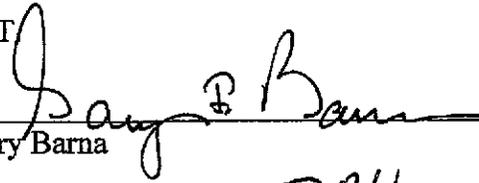
3. I thought the documents were from the August 20, 2007, protest hearing involving Rocky River Clerk election, which I was aware of. I did not look at or review the board's files regarding this matter. I assumed the documents were accurate, complete, and true files of the board, and did and do not know this for a fact.

4. On August 23, 2007, Alicia returned with a notary, and asked me to certify two documents that were not included in the original package. I signed a second certification affidavit. I made the same assumptions, as stated above, and did not have any new knowledge.

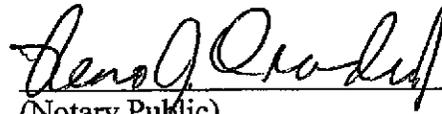
5. In both instances, I was not aware, nor did I question where the copies provided to

me came from.

FURTHER AFFIANT SAYETH NAUGHT

  
\_\_\_\_\_  
Gary Barna

Sworn to before me and subscribed in my presence on this 30th day of August,  
2007.

  
\_\_\_\_\_  
(Notary Public)

**RENO J. ORADINI, JR. ATTORNEY AT LAW  
NOTARY PUBLIC - STATE OF OHIO  
MY COMMISSION HAS NO EXPIRATION DATE.  
SECTION 147.03 R.C.**