IN THE SUPREME COURT OF OHIO

STATE OF OHIO, EX REL DONALD L. HUFFMAN RELATOR v. HON. DENISE L. MOODY, JUDGE RESPONDENT	:	CASE NO. 07-2419 ORIGINAL ACTION IN MANDAMUS

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RESPONDENT'S MOTION
TO DISMISS

Donald L. Huffman
529 Argonne Ave.
Springfield, Ohio 45503
Respondent, Pro Se

FILED
JAN 17 2008
CLERK OF COURT
SUPREME COURT OF OHIO

The respondent, Denise L. Moody, Judge of the Clark County Municipal Court, respectfully requests that this case be dismissed for the reasons that follow.

I. ***RES JUDICATA* REQUIRES DISMISSAL**

Relator Donald Huffman has filed this complaint in mandamus as an original action in the Supreme Court. In the complaint, he incorporates the allegations he made in Case No. 07-CA-0087 in the Clark County Court of Appeals.

The Court of Appeals case was an original action in mandamus filed by the same relator against the same respondent. A copy of the Court of Appeals complaint is attached to relator's Supreme Court complaint. The relator states that the Court of Appeals complaint "echoes my every complaint(s) all averments(s) attachments(s) and etc." Complaint at pp 28-29.

The Clark County Court of Appeals dismissed the original action that Mr. Huffman filed in that court on December 4, 2007. A copy of the "Decision and Final Judgment Entry" is attached to the complaint filed in this case.

> A point of law or a fact which was actually and directly in issue in the former action, and was there passed upon and determined by a court of competent jurisdiction, may not be draw in question in a subsequent action between the same parties or their privies. The prior judgment estops a party, or a person in privity with him, from subsequently relitigating the identical issue raised in the prior action. (Whitehead v.

Genl. Tel. Co., 20 Ohio St.2d 108, paragraph two of the syllabus approved and followed.) Trautwein v. Sorgenfrei (1979) 58 Ohio St. 2d 493.

Here, the relator has stated that his complaint in this case "echoes" his prior complaint. One cannot imagine a clearer case for the application of *res. judicata*.

II. RELATOR'S COMPLAINT FAILS TO STATE A CLAIM ENTITLING HIM TO A WRIT OF MANDAMUS.

Laying aside the relator's several failures to comply with Rule X(4)(B) of the Rules of Practice of the Supreme Court, relator has not stated a basis for the issuance of a writ of mandamus.

It is well established that to be entitled to a writ of mandamus, the petitioner must demonstrate: (1) that he has a clear legal right to the relief requested; (2) that the respondent is under a clear legal duty to perform the requested act; and (3) that the petitioner has no plain and adequate remedy in the ordinary course of law. State ex rel. Luna v. Huffman (1996), 74 Ohio St.3d 486, 487.

The Clark County Court of Appeals, in dismissing Huffman's mandamus claim filed in that court, held that Huffman's complaint failed to show the third element, the absence of another remedy. Specifically, the appellate court found that Huffman could have, and in fact did appeal his conviction in the Municipal Court.

"The concept is also well established that mandamus will not lie where a party has a plain and adequate remedy by way of appeal." State ex rel. Jergens v. Court of Common Pleas, Juvenile Div. (Aug. 15, 1997), Montgomery App. No. 16506, citing State ex rel. Nichols v. Cuyahoga Cty. Bd. Of Mental Retardation Dev. Disabilities (1995), 72 Ohio St.3d 205, 209, 648 N.E. 2d 823.

Ironically, the relator now has a remedy available to him that was not available when he was before the Court of Appeals – appealing the decision of the Court of Appeals.

The Court of Appeals did not address the first two necessary elements of a mandamus claim – a clear legal right and a clear legal duty. These elements are also absent.

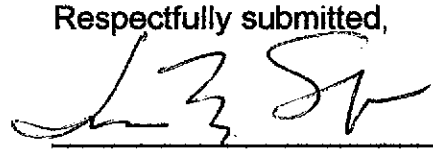
The gravamen of Huffman's complaint is that Judge Moody did not order one of three attorneys chosen by Huffman to represent him in his municipal court criminal case.

The right of an accused to select his own counsel is inherent only in those cases wherein such accused is employing the counsel himself. The right to have counsel assigned by the court does not impose a duty on the court to allow the accused to choose his own counsel; the selection is within the discretion of the court. Thurston v. Maxwell, (1965) 3 Ohio St.2d 92.

Therefore, Huffman had no legal right to the appointment of counsel selected by him and Judge Moody has no legal duty to make such an appointment.

Accordingly, Denise L. Moody, Judge, respectfully requests that the relator's complaint for a writ of mandamus be dismissed at relator's costs.

Respectfully submitted,



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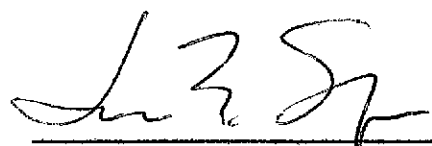
CERTIFICATE OF SERVICE

A true copy of the foregoing MOTION TO DISMISS was sent U.S. Mail, postage prepaid, to Donald L. Huffman, Relator, 529 Argonne Avenue, Springfield, Ohio 45503, this 15th day of January, 2008.



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