

MEMORANDUM IN SUPPORT

I. NATURE OF THE ACTION AND SUMMARY OF ARGUMENT

The Plaintiff (*sic*) Penny L. Sisson (hereinafter "Sisson") appearing *pro se*, has filed a convoluted pleading titled, "Addendum and Notice of Objection and Motion to Vacate the Clerk's Letters dated March 18, 2008 and April 8, 2008 and May 9, 2008 and Appeals Same Pursuant to App. R. 15 Motion for Leave, Instantor for Order/Request for Writ of Mandamus and Stay etc." The responding parties are officers of the Rocky River Municipal Court. This action, ostensibly in the nature of a mandamus request, fails to conform with both the substantive and procedural rules which are required to be met for the filing of such an original action in the Supreme Court for the following reasons:

- The action fails to conform with O.R.C. §2731.04 which requires an application for a writ of mandamus to be made by petition in the name of the state as relator;
- The action is not in the form of a application, petition, or complaint as required under Supreme Court Practice Rule X(4)(A);
- The action is submitted without the requisite affidavit which contains a specific statement of facts upon which claim for relief is based, as required under Supreme Court Practice Rule X(4)(B);
- The action is directed against officers of the Rocky River Municipal Court, while the text of the pleading appears to be a grievance against the Supreme Court; and
- The action fails to state a claim upon which relief can be granted and should be dismissed pursuant to Civil Rule 12(B)(6).

Sisson's pleading contains text indicating that she is filing:

this Addendum to the original complaint and "include" the affidavits already on the "record" and attaches same, hereto,

and issues a Notice of Objection to the unsigned Clerk's letter dated March 18, 2008 and the letter sent by Case Management Counsel Justin Kudela, dated April 8, 2008 and May 9, 2008 and states that demand of additional affidavits denies this Plaintiff Equal Protection of the Law and is in dire error: ...

The Court of Appeals Poverty Affidavit, notarized and supplied with both the faxed filing and certified mailing are part of the trial court records and is sufficient for the purposes of the Writ. There is no basis in law to request another affidavit with a valid one present. ...

This Plaintiff appeals the denial of filing to the Honorable Chief Justice of the Ohio Supreme Court as this forced Pro se Plaintiff requests the broadest of leeway citing the documented misconduct of the Court's own officers...Plaintiff moves to vacate the Clerk's unsigned letter dated March 18, 2008 and the letter provided April 8, 2008 by Justin Kudela...and moves to place/file the Motion for Leave Instanter for Order/Request for Writ of Mandamus and Stay Before Chief Justice Thomas Moyer...for initiating a Decision/Order on the merits of the misconduct of the officers' of its own Court in the absence of a formal complaint, citing Equal Protection of the Law...

No affidavit is attached to this "Addendum" filing. Sisson has attached numerous exhibits without reference to whether they were court-filed, including: (1) in the Rocky River Municipal Court in Case No. 07 CVF-2250 (Motion to Amend the Docket Sheet with Affidavit Verification; Motion to Stay Enforcement of Judgment with Affidavit Verification; Judgment Entries of April 16, 2008; Motion for Judgment Notwithstanding the Verdict with Affidavit Verification; a Verified Poverty Affidavit, ostensibly submitted to this Court, together with miscellaneous letters and other Judgment Entries from that Court; (2) to or from the Supreme Court (letters dated May 9, 2008, April 8, 2008, and May 18, 2008; a Notice of Objection and Motion to Vacate which was apparently attempted to be filed in the Ohio Supreme Court; a Notice of Poverty

Affidavit filed in the Supreme Court on March 17, 2008; a Motion for Leave Instantor for Order/Request for Writ of Mandamus filed in the Supreme Court on March 17, 2008); and (3) to or from the Eighth District Court of Appeals (an unfiled Notice of Appeal and Notice of Poverty Affidavit and Docketing Statement, together with a letter from the Senior Staff Attorney dated March 12, 2008).

None of these attached documents appear to constitute a recognized complaint or petition which provides a factual or legal basis for the issuance of a writ of mandamus against these Respondents, and for these reasons, this action must be dismissed.

II. LEGAL STANDARD FOR REVIEWING THE SUFFICIENCY OF AN APPLICATION FOR WRIT OF MANDAMUS.

It has long been held that in order to grant a writ of mandamus, a court must find that the relator has a clear legal right to the relief prayed for, that the respondent is under a clear legal duty to perform the requested act, and that the relator has not plain and adequate remedy at law. *State ex rel. Westchester Estates, Inc. v. Bacon* (1980), 61 Ohio St. 2d 42, syllabus, citing *State ex rel. Harris v. Rhodes* (1978), 54 Ohio St. 2d 41.

However, the court which is addressing the merits for such an extraordinary writ must first determine the procedural sufficiency of the application for the writ. O.R.C. §2731.04 provides that an application for writ of mandamus must be by petition, "in the name of the state on the relation of the person applying, and verified by affidavit." The verification by affidavit is also a requirement of Supreme Court Practice Rule X(4)(B), which specifically states:

All complaints shall contain a specific statement of facts upon which the claim for relief is based, shall be supported by an affidavit of the relator or counsel specifying the

details of the claim, and may be accompanied by a memorandum in support of the writ. ...

A writ of mandamus will be dismissed pursuant to Civil Rule 12(B)(6) for failure to state a claim upon which relief can be granted, if, after all material factual allegations of the complaint are presumed true and all reasonable inferences are made in the petitioner's favor, it appears beyond doubt that no set of facts can be proven to warrant the requested extraordinary relief. *State ex rel. Metro Health Medical Center v. Sutula*, 2006 Ohio 4249, 11 Ohio St. 3d 201. Moreover, conclusory allegations which do not contain specific statements of fact supported by an affidavit based upon personal knowledge, will subject a mandamus complaint to dismissal under Supreme Court Practice Rule X(4)(B). *State ex rel. Boccuzzi v. Cuyahoga County Bd. Of Comm.*, 2007 Ohio 323, 112 Ohio St. 3d 438 and *State ex rel. Taxpayers Coalition v. Lakewood* (1999) 86 Ohio St. 3d 385.

III. SISSON'S ACTION FOR MANDAMUS IS DEFICIENT ON ITS FACE AND MUST BE DISMISSED.

Sisson's action fails to adhere to the procedural directive of O.R.C. §2731.04 in its failure to be either an application by petition, or pursuant to Supreme Court Practice Rule X(4)(A) by failing to be denominated as a complaint, and hence, must be dismissed. *Myles v. Wyatt* (1991), 62 Ohio St. 3d 191. Furthermore, Sisson brings this action in her own name, rather than in the name of the State, as required under §2731.04. This action for "Addendum and Notice of Objection etc." causes this pleading to be defective on its face, as an original action before the Supreme Court, and accordingly, must be dismissed.

Additionally, Sisson's failure to attach an affidavit which addresses her personal knowledge of the specific statement of facts upon which relief through mandamus may be granted is further fatal to her claim. Plaintiff mistakenly argues that her Poverty Affidavits are "sufficient for the purposes of the Writ". Sisson fails to recognize that compliance with Supreme Court Practice Rule X(4)(B) concerning the requirement of a fact specific affidavit is mandatory for a merit review of her claim. *State ex rel. Committee for the Charter Amendment for An Elected Law Director v. City of Bay Village*, 2007 Ohio 5380, 115 Ohio St. 3d 400. Finally, Plaintiff has misnamed the Respondents in this action; while the text of her action appears to be directed to the officers of the Ohio Supreme Court, she mistakenly has named the court officials for Rocky River Municipal Court in her caption. She appears to be complaining that the Supreme Court's Clerk's Office committed "documented misconduct" for failure to accept for filing her initial "Motion for Leave Instantor for Order/Request for Writ of Mandamus".

Critically lacking from Sisson's pleading is any sufficient statement that a clear legal duty was violated, as well as any indication of what relief is requested. *State ex rel. Westchester Estates, Inc., supra*. Accordingly, because Sisson's pleading fails to contain specific statements of fact supported by an affidavit, there are no reasonable inferences that can be made which prove any set of facts warranting any conceivable relief. For these reasons a dismissal of this action pursuant to Supreme Court Practice Rule X(4)(B), O.R.C. §2731.04, and Civil Rule 12(B)(6), must be granted.

IV. CONCLUSION.

Because Sisson's pleading, ostensibly for the purpose of pursuing the extraordinary action of writ of mandamus, is deficient on its face, it must be dismissed for failure to state a claim upon which relief can be granted. *State ex rel. Boccuzzi, supra; Myles, supra; State ex rel. Westchester Estates, Inc., supra; State ex rel. Committee for the Charter Amendment for an Elected Law Director, supra.*

Respectfully submitted,



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*Attorney for Respondents Brian F.
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Court Administrative Judge and
Deborah Comery, Rocky River
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SERVICE

I hereby certify that a copy of the foregoing was sent to Penny Sisson at P.O. Box 266 (7685 Spencer Road) Spencer, Ohio 44275 and Stanley E. Stein, Stanley E. Stein & Associates Co., L.P.A., 75 Public Square, Suite 714, Cleveland, Ohio 44113-2078 by U.S. Mail this 26 day of June, 2008.



Andrew D. Bemmer