

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE, EX REL.)	CASE NUMBER 2009-0866
ELIZABETH A. KOBLY, ET AL.)	
)	ORIGINAL ACTION IN
RELATORS)	MANDAMUS
)	
vs.)	
)	
YOUNGSTOWN CITY COUNCIL, ET AL.)	
)	
RESPONDENTS)	

RESPONDENTS' MERIT BRIEF

JOHN B. JUHASZ (23777)
7081 WEST BOULEVARD, SUITE 4
YOUNGSTOWN, OHIO 44512
(330) 758-7700
FAX: (330) 758-7757
jbjjurisdoc@yahoo.com

ATTORNEY FOR RELATORS

IRIS TORRES GUGLUCELLO
LAW DIRECTOR (19416)
ANTHONY J. FARRIS
COUNSEL OF RECORD
DEPUTY LAW DIRECTOR (55695)
CITY OF YOUNGSTOWN
26 South Phelps Street
Youngstown, Ohio 44503
(330) 742-8874
Fax: (330) 742-8867
irisg@cityofyoungstownoh.com
ajf@cityofyoungstownoh.com

ATTORNEYS FOR RESPONDENTS

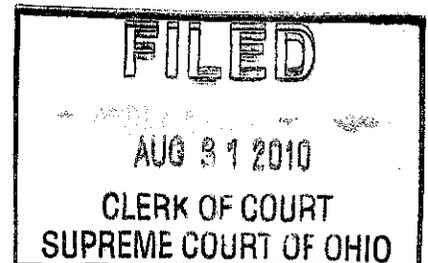
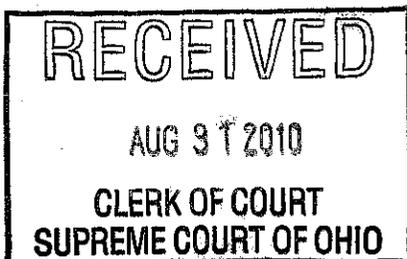


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STATEMENT OF FACTS

The City of Youngstown is a shrinking city whose population, employment base and tax revenues are fractions of what they once were. (Respondents' Submission of Evidence, Exhibit C.) Those funds of the City which are supported by income tax revenues have year-ending balances that reflect that they are in deficit. (Respondents' Submission of Evidence Volume One, Exhibit G.) Youngstown has been in a near-constant state of economic distress for over thirty years. (Respondents' Submission of Evidence Volume One, Exhibit C.) As a result, the City of Youngstown has had to increase its municipal income tax rate to 2.75% while reducing the number of employees in its executive and legislative branches by approximately Fifty Percent (50%) in order to survive. (Id.)

Over that same period, the number of employees of the Youngstown Municipal Court and Youngstown Municipal Court Clerk of Courts have remained the same or increased. (Id.) The City of Youngstown routinely budgets approximately Four Million Dollars (\$4,000,000.00) a year for those agencies while receiving revenues of about Seven Hundred Fifty Thousand Dollars (\$750,000.00) per year from fines and costs collected by them which results in a yearly cost in excess of Three Million Dollars (\$3,000,000.00) to the City for the operation of the municipal court and clerk of courts. (Id.) These circumstances exist despite the facts that the City of Youngstown's population has greatly declined and

continues to decline, the Youngstown Municipal Court's docket has greatly declined and continues to decline, and other municipal courts with comparable dockets operate with fewer employees, fewer judges and at a much lower cost. (Id.)

The Youngstown Municipal Court is located on the second floor of Youngstown City Hall. (Deposition of Jay Williams, page 10, line 21.) For a number of years, the amount of space provided to the municipal court and the condition of the court facility have been an issue. In 2003, a consultant was contracted with to analyze potential sites and study the issues. (Respondents' Submission of Evidence Volume Two, Agreement for Consultant Services attached as an exhibit to Exhibit H.) When Mayor Jay Williams took office in 2006, it was his intent to facilitate the achievement of improved court facilities. (Respondents' Submission of Evidence Volume One, Exhibit A.) He, therefore, commenced discussions with Judge Robert Douglas who acted as spokesperson for the municipal court judges on this issue. (Id.)

Judge Douglas advanced a number of potential sites before ultimately deciding to focus on a new construction at a site referred to as the Masters' Block. (Respondents' Submission of Evidence Volume One, Exhibit B.) Mayor Williams was provided with a cost estimate prepared by an architect, Ray Jaminet, with whom the municipal judges had been working which reflected a cost estimate for the completion of that facility of \$7,849,274.00. (Respondents' Submission of Evidence Volume One, Exhibit A.) The Mayor's Chief of Staff, Jason Whitehead, requested the

Youngstown/Warren Regional Chamber of Commerce examine the site plans and cost estimates prepared by Ray Jaminet at the behest of the Youngstown Municipal Court judges. (Respondents' Submission of Evidence Volume One, Exhibit B.) The representative of the Youngstown/Warren Regional Chamber of Commerce, Reid Dulberger, reported to Chief of Staff Whitehead that they had determined that the plan prepared by Ray Jaminet would actually require a project development budget of \$10,280,000.00 to complete. (Id.)

Mayor Williams expressed to Judge Douglas that he could not support that particular plan because the cost was far beyond the capacity of the City of Youngstown to expend. (Id. and Respondents' Submission of Evidence Volume One, Exhibit A.) Negotiations then broke down because the Youngstown Municipal Court judges were not willing to consider any alterations or modifications to reduce costs. (Id.) The City of Youngstown continued to make proposals for the provision of facilities that would comply with all standards and guidelines set forth by the Ohio Supreme Court. (Respondents' Submission of Evidence Volume One, Exhibit B.) It requested Architect Gregg Strollo of Strollo Architects to analyze the suitability of the Youngstown City Hall Annex, which had once been a federal court building, to house the Youngstown Municipal Court. (Respondents' Submission of Evidence Volume One, Exhibit A.) Strollo Architects is experienced in courthouse design. (Respondents' Submission of Evidence Volume One, Exhibits D and E.) It recently designed the Wayne County Municipal Court and prepared the schematic design for the Seventh

District Court of Appeals. (Id.)

On October 23, 2008, Strollo Architects produced a preliminary report which reflects that the facilities which had been proposed for the Masters' Block project could easily be accommodated with slight modifications in the Youngstown City Hall Annex in compliance with all Ohio Supreme Court standards and at a cost of approximately Six Million Dollars (\$6,000,000.00). (Respondents' Submission of Evidence Volume One, Exhibits A, D and E.) Said preliminary report along with a schematic plan were promptly made available to the Youngstown Municipal Court judges prior to meetings with the Ohio Supreme Court Administrative Director which were scheduled for October 29, 2008. (Respondents' Submission of Evidence Volume One, Exhibits A, D and E.) The "Strollo Plan" complies with all standards and guidelines of the Ohio Supreme Court and constitutes suitable accommodations. (Id.)

At the parties' respective meetings with the Administrative Director, the municipal judges indicated they were willing to consider the Youngstown City Hall Annex as the site of a renovated courthouse and said information was relayed to the representatives of the City of Youngstown. (Respondents' Submission of Evidence One, Exhibit A.)

On January 20, 2009, Administrative Director Steven C. Hollon wrote to the Youngstown Municipal Court judges and recommended that they engage in direct negotiations with the City of Youngstown to develop facility plans as well as financial plans so that when the economy improves everything will be all set to go.

(Answer of Respondents, Exhibit A.) On January 26, 2009, the Youngstown Municipal Court judges issued an Order to the Mayor and City Council to provide them "now" with suitable facilities which comply with all facility standards of the Ohio Supreme Court and certain other enumerated requirements. (Complaint for Writ of Mandamus, attached Order.) Despite the fact that Respondents had already proposed a plan that fully complied with all aspects of the Order, Relators were unwilling to discuss the Strollo plan or provide any constructive feedback regarding it. (Respondents' Submission of Evidence Volume One, Exhibits A, D and E.)

On February 6, 2009, Chief Justice Moyer and Administrative Director Hollon requested David C. Sweet, then-President of Youngstown State University, to explore the extent to which there was common agreement between the parties. (Answer of Respondents, Exhibit B.) It was recognized by Dr. Sweet as he engaged in this process that the Youngstown Municipal Court judges also had a facility design plan for the renovation of the City Hall Annex prepared by Ray Jaminet. (Id.) Dr. Sweet arranged to have the two architects meet on April 3, 2009, to discuss their respective plans. (Id.) They both agreed that there were many similarities about their plans along with a few sensitive differences, that none of the differences was so dramatic that common ground could not be achieved, and that the next logical step would be to build consensus through work sessions. (Id.) Dr. Sweet's recommendation was that the parties engage in direct negotiations to resolve the differences between the facility plans favored by

the respective parties, that final architectural plans then be ordered using the funds available in the Youngstown Municipal Court's Special Project Fund, and that federal or state funding for the project be sought during the time period while those actions were completed. (Id.) In response, Relator Elizabeth Kobly and Relators' counsel had one meeting with Respondent Mayor Jay Williams and the Youngstown Law Director at which they refused to discuss the Strollo Plan other than to make derisive comments such as referring to it as "garbage." (Respondents' Submission of Evidence Volume One, Exhibit A.) Shortly thereafter, Relators' counsel informed Respondents by letter that Relators were unwilling to negotiate to resolve the differences between the two facility plans and would only meet to discuss how Respondents were going to finance Relators' preferred plan.

Relators' preferred plan has features and amenities far beyond those required to satisfy Ohio Supreme Court standards. (Respondents' Submission of Evidence Volume One, Exhibit A.) For example, it calls for: a number of elevators that far exceeds the amount required to satisfy the Supreme Court security standards, an indoor parking facility to be added as an extension protruding from the side of the historic building in which the facilities are to be housed, and an amount of space to be utilized that far exceeds the amount recommended for such a facility. (Respondents' Submission of Evidence Volume One, Exhibits A, D and E.) An appropriate opinion of probable cost would exceed Eight Million Dollars (\$8,000,000.00) to renovate the building in that fashion

assuming interior and exterior finishes/furnishings are of like kind as in the Strollo Plan. (Respondents' Submission of Evidence Volume One, Exhibit D.) Given the fact that the Jaminet Plan deals with approximately ten thousand square feet more than the Strollo schematic, and has the differences noted above, even Eight Million Dollars (\$8,000,000.00) would likely not be sufficient to carry it out. (Id.)

Relators are so enamored of the \$8,000,000.00 plan they prefer that they will not even consider the City's proposed \$6,000,000.00 renovation plan which would satisfy all standards of the Ohio Supreme Court, the additional requirements set forth in the Order, and would constitute suitable accommodations. (Respondents' Submission of Evidence Volume One, Exhibits A, D and E.) The Youngstown Municipal Court judges prevented the City of Youngstown from providing suitable accommodations which comply with all Ohio Supreme Court standards at a less burdensome cost pursuant to the Strollo Plan in that carrying out said plan would not have dissuaded the municipal judges from this litigation nor secured the release of the money the Youngstown Municipal Court has accumulated in its Special Project Fund and Capital Improvement Fund for use on this project. (Respondents' Submission of Evidence Volume One, Exhibit A.)

Relators routinely brush aside the burden such an additional expense would place on the people of Youngstown by claiming that sufficient funds can be found in the City's Capital Improvement Fund. (Respondents' Submission of Evidence Volume One, Exhibit

C.) Such a course of action would, however, entail the virtual dissolution of multiple departments of city government and a denial of basic services to the population. (Id. and Deposition of David Bozanich, page 52, line 14 to page 53, line 22.) The City of Youngstown has to transfer money out of its Capital Improvement Fund to pay current expenses needed to maintain its capital assets. (Respondents' Submission of Evidence Volume One, Exhibit C.) One of the reasons for this is the disproportionately high cost of the operation of the Youngstown Municipal Court and Youngstown Municipal Court Clerk of Courts Office which has the effect of draining \$3,000,000.00 a year from the general fund where it could have been used to fund other city departments. (Id.)

While this use of capital improvement funds is permissible based on the definition of capital improvement used in the Ordinances of the City of Youngstown, it is not a desirable practice and has the unfortunate effect of making the Capital Improvement Fund ineffective in attempting to fund more traditional capital improvement projects such as building a new court facility or renovating an existing building for use as a court facility. (Id.) These are the difficult circumstances faced by poor cities burdened by costs over which they have no control. The burdens on the people of Youngstown should not, however, be heightened even further because the Youngstown Municipal Court judges are unwilling to accept a \$6,000,000.00 facility renovation that satisfies all guidelines and standards of

this Court and would constitute suitable accommodations, but instead prefer a much more expensive plan that is more desirable but not necessary for the proper and efficient operation of the court.

RESPONSE TO RELATORS' FIRST PROPOSITION OF LAW

- I. RELATORS HAVE FAILED TO ESTABLISH THAT THEY ARE ENTITLED TO A MANDAMUS ORDERING RESPONDENTS TO PROVIDE SUITABLE ACCOMMODATIONS FOR THE YOUNGSTOWN MUNICIPAL COURT.

For a writ of mandamus to issue, the relator must demonstrate (1) that he has a clear legal right to the relief prayed for, (2) that respondents are under a clear legal duty to perform the acts, and (3) that relator has no plain and adequate remedy in the ordinary course of law. State ex rel. Am. Legion Post 25 v. Ohio Civ. Rights Comm., 117 Ohio St. 3d 441, 444, 2008-Ohio-1261, 884 N.E. 2d 589. The burden is on the relator to show by plain, clear and convincing evidence that the writ should issue. State ex rel. Henslee v. Newman (1972), 30 Ohio St. 2d 324, 325, 285 N.E. 2d 54, 59 O.O. 2d 386.

- A. Relators have failed to satisfy their burden to establish the existence of a clear legal right to relief based on any inherent right of the Youngstown Municipal Court.

Relators have failed to identify any constitutional or inherent right of the Youngstown Municipal Court which is implicated in the analysis of whether they are entitled to a mandamus based on the argument in Relators' First Proposition of Law. While they make general references to purported inherent rights in their Second and Third Propositions of Law, those will be responded to in Respondents' Response to those later Propositions of Law. The only right relating to suitable accommodations which is at issue in determining whether Relators' have satisfied their burden to establish all the criteria for the

issuance of a mandamus by plain, clear and convincing evidence has to be found in Ohio Revised Code, Section 1901.36.

B. Relators have failed to establish that Respondents have refused to comply with a clear legal duty to provide suitable accommodations for the Youngstown Municipal Court.

Ohio Revised Code, Section 1901.36 states, in pertinent part, that: "The legislative authority of a municipal court shall provide suitable accommodations for the municipal court and its officers." The plain language of the statute demonstrates that it creates a duty only on the part of the legislative authority of the City of Youngstown. The legislative authority of the City of Youngstown is the Youngstown City Council. Therefore, there is no duty on the part of the Mayor of Youngstown, Jay Williams, or the individual members of Youngstown City Council. The unambiguous language of Ohio Revised Code, Section 1901.36 demonstrates that there is no clear legal duty on the part of Mayor Williams or the individual councilmembers and thereby precludes the issuance of a mandamus against them.

In order to be entitled to a mandamus against even Youngstown City Council, Relators must establish, among other things, that they have not been provided suitable accommodations. The only evidence relating to the current condition of the Youngstown Municipal Court facilities is the testimony of the Youngstown Municipal Court judges, portions of the depositions of certain individual councilmembers and a number of photographs of the facility. Attached to Relators' Memorandum in Support of Complaint for Writ of Mandamus are virtually identical affidavits

from each of the Youngstown Municipal Court judges which list alleged deficiencies of the Youngstown Municipal Court facilities. Included in Relators' Evidence is another affidavit from one of the Youngstown Municipal judges in which he identifies a series of photographs of the court facilities. Said photographs depict fairly typical municipal court facilities with the exception of those photographs which are close-ups of minor flaws in the building; an exposed set of wires or an area with water damage. Relators also reference portions of the depositions of individual councilpersons in which they testify as to their personal knowledge or lack of knowledge that certain designated areas, offices or amenities presently exist. The evidence presented is insufficient to constitute plain, clear and convincing evidence that the current Youngstown Municipal Court facilities are not suitable accommodations. While there may have been problems with the maintenance of said facilities in the past, the Building and Grounds Division of the Public Works Department of the City of Youngstown has worked diligently to improve the level of maintenance of the court facility. (Respondents' Submission of Evidence Volume One, Exhibit F.) Respondents are entitled, just as any other litigant would be, to demand that no mandamus be issued against them unless Relators establish all the required elements by plain, clear and convincing evidence. As Relators have failed to do so, they are not entitled to the issuance of a writ of mandamus.

Even to the extent that Relators have demonstrated some

deficiencies in the current Youngstown Municipal Court facility, Relators cannot demonstrate that Respondents have refused to correct them. In October of 2008, Respondents presented an analysis of the suitability of the Youngstown City Hall Annex as the site for a renovated Youngstown Municipal Court facility and a schematic plan for said facility. (Respondents' Submission of Evidence Volume One, Exhibits A, D and E.) The analysis and plan was prepared by Strollo Architects. (Id.) Said architectural firm is experienced in courthouse design. (Respondents' Submission of Evidence Volume One, Exhibits D and E.) It recently designed the Wayne County Municipal Court and previously prepared the schematic plan for the Seventh District Court of Appeals. (Id.) The Strollo Plan complies with all Ohio Supreme Court standards. (Id.) Rather than providing Respondents or Strollo Architects with any constructive feedback on their proposal, Relators merely derided or ignored the Strollo plan. (Respondents' Submission of Evidence Volume One, Exhibits A, D and E.) Respondents have made every effort to provide renovated facilities for the Youngstown Municipal Court which constitute suitable accommodations, but their efforts have been rejected.

C. Relators have failed to establish that they have no plain and adequate remedy in the ordinary course of law.

Relators possess multiple available plain and adequate remedies in the ordinary course of law which they have failed to exercise.

1. Relators have failed to establish that they have exercised good faith in attempting to negotiate

with the City of Youngstown to bring about renovated facilities through a cooperative effort.

As previously described, Respondents have had a proposal to provide renovated court facilities which comply with all standards of the Ohio Supreme Court since October of 2008. (Respondents' Submission of Evidence Volume One, Exhibits A, D and E.) Relator's references to the events of a decade ago do not change that fact. Relators could have exercised the plain and adequate remedy in the ordinary course of law of following the recommendation of the Office of the Administrative Director of the Ohio Supreme Court to engage in direct negotiations with Respondents. After meeting with some of the parties at the end of October 2008, Ohio Supreme Court Administrative Director Steven C. Hollon communicated with the Youngstown Municipal Court judges by a letter dated January 20, 2009, in which he stated:

"At this stage it is our strongest recommendation that you and the city enter into direct negotiations to determine how a suitable facility might be secured and put into operation. If you believe that the use of an expert in design or renovation and restoration will be helpful, we will work to locate and secure such an expert. Likewise, if you believe a professional mediator will be helpful to initiate these conversations, then we will help secure such a professional.

Finally, we are well aware of the difficulties nearly all cities and courts in Ohio face in trying to maintain adequate funding for projects such as this in challenging economic times,

and the delay in this project has certainly hurt you in this regard. But it is also important for you and the city to work now to develop not only facility plans but also financial plans so that when the state's economy does improve, you and the city will be ready to act to open the facility that you, the city, and the citizens of Youngstown deserve." (Answer of Respondents, Exhibit A.) This Court's supervision and willingness to make experts in design or renovation and restoration available would have ensured that this option provided a complete, beneficial and speedy remedy. Less than one week after the offer was made, Relators issued an Order requiring Respondents to provide them "now" with new or renovated facilities. (Respondents' Submission of Evidence Volume Two, Order attached as an exhibit to Exhibit H.)

When Dr. David Sweet, then-President of Youngstown State University, provided a Memorandum recommending the proper course of action as requested by the Ohio Supreme Court, Relators again failed to take advantage of this option. Dr. Sweet recommended that the parties engage in direct negotiations to resolve the differences between the facility plans favored by the respective parties, that final architectural plans then be ordered using the funds available in the Youngstown Municipal Court's Special Project Fund, and that federal or state funding for the project be sought during the time period while those actions were completed. (Answer of Respondents, Exhibit B.) In response, Relator Elizabeth Kobly and Relators' counsel had one meeting

with Respondent Mayor Jay Williams before Relators' counsel informed Respondents by letter that Relators were unwilling to negotiate to resolve the differences between the two facility plans and would only meet to discuss how Respondents were going to finance Relators' preferred plan. Relators' plan is far more expensive than Respondents' and includes many features that are not required by the court facility and security standards set forth by the Ohio Supreme Court. (Respondents' Submission of Evidence Volume One, Exhibits A and D.) Mandamus exists to protect the rights of those who are suffering because others have failed to exercise a duty owed to them and possess no other means of redress. It is not appropriate when an entity with enforcement powers demands accommodations beyond those that the law requires be provided and refuses to participate in a process that would result in the satisfaction of the duty in question. Relators have failed to establish that they had no plain and adequate remedy in the ordinary course of law.

2. Relators failed to establish that their contempt powers did not provide them with a plain and adequate remedy in the ordinary course of law.

On January 26, 2009, Relators Ordered Respondents Mayor Jay Williams and Youngstown City Council to provide suitable facilities for the Youngstown Municipal Court that meet all Court Facility Standards of the Ohio Supreme Court and certain other enumerated requirements. (Respondents' Submission of Evidence Volume Two, Order attached as an exhibit to Exhibit H.) Relators had already prepared a plan which would satisfy all of said

requirements and expressed their willingness to carry it out. (Respondents' Submission of Evidence Volume One, Exhibits A, D and E.)

Relators' Order is still in effect. (Respondents' Submission of Evidence Volume Two, Exhibit H, Milich deposition, page 8, line 24 to page 9, line 1.) It is obvious, therefore, that if Respondents complied with said Order by expressing their willingness to provide suitable accommodations meeting all standards of the Ohio Supreme Court and the Youngstown Municipal Court judges' enumerated requirements, they are not in violation of the Order. Judge Milich acknowledged this during his deposition:

"Q If I could just go back for one second to what - just in terms of fairness, Your Honor, if Your Honor - if the court issues an order and the party to whom the order is issued expresses a willingness to comply with it, they are not in violation of your order, are they?

MR. JUHASZ: Objection, You can answer.

A No. If the party complies with the order, they're not in violation. That doesn't mean this is the only order that will ever be issued or has been issued.

Q Well, is there another order that sets forth needs of the court over and above or different than the Supreme Court standards?

A. I'm not aware of any, no."

(Respondents' Submission of Evidence Volume Two, Exhibit H.

Milich deposition page 14, line 23 to page 15, line 13.)

Conversely, if Respondents have not complied with the Order, they would be in violation of it and would be subject to the contempt powers of the Youngstown Municipal Court judges. Relators possess the power to issue findings of contempt if valid orders they enter are ignored. Relators reference this obviously available plain and adequate remedy in their Complaint, but then argue that it is not adequate because the subject of the Order may choose to ignore it. Contempt powers, however, carry with them the power to enforce orders. "In any action or proceeding of which a municipal court has jurisdiction, the court or any judge of the court has power to . . . punish contempts . . . and to exercise any other powers that are necessary to give effect to the jurisdiction of the court and to enforce its judgments, orders, or decrees." Ohio Revised Code, Section 1901.13(A)(1)(2010), See State ex rel. Wellington v. Kobly, 112 Ohio St. 3d 195, 198, 2006-Ohio-6571, 85 N.E. 2d 798, at ¶16. The exercise of their contempt powers is obviously a plain and adequate remedy in the ordinary course of law that is available to Relators.

RESPONSE TO RELATORS' SECOND PROPOSITION OF LAW

II. RELATORS HAVE NOT ESTABLISHED THAT THEY ARE ENTITLED TO A FINDING THAT THEY POSSESS THE SOLE AUTHORITY TO DETERMINE WHAT CONSTITUTES SUITABLE ACCOMMODATIONS.

Relators filed an action seeking a writ of mandamus to compel Respondents to provide them with suitable accommodations.

In their Second Proposition of Law, they instead seem to be arguing for a declaratory judgment that they possess the sole power to determine what constitutes suitable accommodations and a prohibitory injunction preventing Respondents from providing suitable accommodations in any form other than as dictated by Relators. Said finding would not be part of the remedy available to Relators in a writ of mandamus. Even if it were, the laws of the State of Ohio do not support such an interpretation.

A. A decision declaring that only the Youngstown Municipal Court judges can determine what constitutes suitable accommodations is not an available remedy in a mandamus action.

If the real objects sought in an action for mandamus are a declaratory judgment and prohibitory injunction, then the complaint does not state a cause of action and must be dismissed. State ex rel. Obojski v. Perciak, 113 Ohio St. 3d 486, 488-489, 2007-Ohio-2453, 866 N.E. 2d 1070. In the present matter, Relators are using the vehicle of a complaint for writ of mandamus to seek a declaratory judgment determining that only they can determine what constitutes suitable accommodations and thus prevent Respondents from providing suitable accommodations in keeping with the decisions and published standards of this

Court.

Further, no mandamus has yet been issued compelling Respondents to provide suitable accommodations. The determination of what will constitute suitable accommodations is prospective in nature. The "function of a mandamus is to compel the performance of a present existing duty as to which there is a default. It is not granted to take effect prospectively, and it contemplates the performance of an act which is incumbent on the respondent when the application for a writ is made." State ex rel. Willis v. Sheboy (1983), 6 Ohio St. 3d 167, 451 N.E. 2d 1200, 6 OBR 225, paragraph two of the syllabus. It would be contrary to the function of a writ of mandamus to use such a writ to decide a separate, future potential issue rather than merely ordering the performance of the duty owed.

B. Relators' requested finding is without any legal authority or basis under the laws of the State of Ohio.

Relators argue that only they have the right to make the determination as to what constitutes suitable accommodations. There is, however, not a single case that supports this proposition. Relators only refer to three cases in their Second Proposition of Law and none of them favor their argument.

Relators reference one case from the Fourth District Court of Appeals which involves a writ of mandamus; State ex rel. Badgett v. Mullen, 177 Ohio App. 3d 27, 2008 Ohio 2373, 893 N.E. 2d 870. In Badgett, the court in which the original action was presented determined that suitable accommodations had not been

provided pursuant to Ohio Revised Code, Section 1901.36 and ordered the parties to cooperate to accomplish the task of providing facilities which satisfy the statute. Id. at 48. Badgett does not suggest or imply that municipal courts have an inherent constitutional power to determine the sole method by which they may be provided suitable accommodations and compel the host city to carry out exactly the plan specified by the municipal court. The portion of Badgett quoted by Relators is merely a statement that the host city cannot entirely avoid its statutory duty to provide suitable accommodations based on financial constraints. Id. at 44.

Badgett follows the precedent set by this Court in State ex rel. Taylor v. City of Delaware (1982), 2 Ohio St. 3d 17, 442 N.E. 2d 452, 2 OBR 504. In Taylor, the Ohio Supreme Court granted a writ of mandamus to provide suitable accommodations based on the respondents' failure to comply with Ohio Revised Code, Section 1901.36. It did not, however, suggest or imply in any way that the municipal courts, which are creations of the legislature, possess an inherent constitutional right to determine for themselves the sole means by which the legislature may provide them with suitable accommodations. Such a result conflicts with the principles reflected in this Court's decisions. For example, in Taylor, this Court again ordered the parties to cooperate to formulate a facility plan acceptable to both of them. It stated:

"In holding that the writ of mandamus should be allowed in this cause, this court is not unmindful of the present financial problems being experienced by political subdivisions in the state. Of necessity, those problems must be taken *19 into account by both relator and respondents in satisfying the mandatory obligations imposed by R.C. 1901.36." Id. at 18-19.

This Court has made it clear that the parties are to work together to bring about the provision of suitable accommodations. The superiority of this method is obvious when one examines the byproduct of Relators' misinterpretation of the law. Because Relators believe they have an inherent constitutional right to dictate the facility plan they select and compel the host City to comply with it, Relators have consistently refused to negotiate in good faith with Respondents to work out the differences between their respective facility plans. (Respondents' Submission of Evidence Volume One, Exhibit A.) Relators' Second Proposition of Law is antithetical to the principles this Court has expounded. There is no circumstance in which the municipal court may, by fiat, select a facility plan which it determines will provide it with suitable accommodations and compel the municipality to execute that specific facility plan.

The Ohio Supreme Court has already determined the standard by which the court hearing a mandamus action is to determine whether or not a facility plan would provide suitable accommodations; the guidelines promulgated by the Ohio Supreme Court in the Appendices to the Rules of Superintendence for the Courts of Ohio. It stated: "Although not all of the provisions of the rule are mandatory in character, the standards set forth

in the rule [of superintendence which established the guidelines for court facilities] should be taken into consideration in measuring the adequacy of existing court facilities and in the planning of new facilities." Taylor, 2 Ohio St. 3d at 18. Said decision makes it plain that, if agreement of the parties cannot be reached, the court which hears the mandamus action, rather than the municipal court seeking to occupy the facilities, will determine whether the proposed facility would constitute suitable accommodations based on the standards set forth by the Ohio Supreme Court.

Relators also misapply and misinterpret the only two other cases they offer in support of their Second Proposition of Law; State ex rel. Foster v. Bd. of Cty. Comm'rs of Lucas Cty. (1968), 16 Ohio St. 2d 89, 242 N.E. 2d 884, 45 O.O. 2d 442 and Zangerle v. Court of Common Pleas of Cuyahoga Cty. (1943), 141 Ohio St. 70, 46 N.E. 2d 865, 25 O.O. 199. Foster and Zangerle deal with the power of courts of general jurisdiction to prevent other branches of government from impeding the administration of justice. Foster at Syllabus two and Zangerle at Syllabus two and three. Municipal courts are not, however, courts of general jurisdiction. State ex rel. Foreman v. Bellefontaine Municipal Court (1967), 12 Ohio St. 2d 26, 27, 231 N.E. 2d 70, State ex rel. Slaby v. Summit Cty. Court (1983), 7 Ohio App. 3d 199, 208, 454 N.E. 2d 1379, 7 OBR 258.

". . . [T]he Municipal Court is not a court of general civil jurisdiction. The Municipal Court is a court of limited and specific jurisdiction. This jurisdiction is set forth in Section 1901.18, Revised Code. Under

this section Municipal Courts are given specific jurisdiction in designated areas of the law." Foreman, 12 Ohio St. 2d at 27.

Ohio Revised Code, Section 1901.18 does not grant municipal courts jurisdiction to determine what constitutes suitable accommodations. See Ohio Revised Code, §1901.18 (2010). Municipal Courts are creatures of statute and have limited jurisdiction. State v. Cowan, 101 Ohio St. 3d 372, 374, 2004-Ohio-1583, 805 N.E. 2d 1085, State ex rel. Talaba v. Moreland (1936), 132 Ohio St. 71, 5 N.E. 2d 159, 7 O.O. 195, State v. McCoy (1953), 94 Ohio App. 165, 114 N.E. 2d 624 51 O.O. 334. Courts created by statute have only limited jurisdiction, and may exercise only such powers as are directly conferred by legislative action. State ex rel. Johnson v. Cty. Court of Perry Cty. (1986), 25 Ohio St. 3d 53, 54, 495 N.E. 2d 16, 24 OBR 77, Oakwood v. Wuliger (1982), 69 Ohio St. 2d 453, 454, 432 N.E. 2d 809, Foreman, 12 Ohio St. 2d at 27-28. As the Youngstown Municipal Court is a court of limited and specific jurisdiction, Relators' reliance on cases dealing with courts of general jurisdiction is misplaced.

Even if Syllabus two of Foster and Zangerle does apply to municipal courts, it would not justify the Youngstown Municipal Court judges in determining that a specific design plan favored by them is the only possible means by which they can be provided with suitable accommodations and demanding that their host city appropriate whatever amount of money is required to execute the plan regardless of its financial circumstances. The claimed

inherent power exists only to prevent the administration of justice from being impeded, not to demand a particular facility that the court finds more desirable than another. State ex rel. Finley v. Pfeiffer (1955), 163 Ohio St. 149, 154, 126 N.E. 2d 57, 56 O.O. 190. In order to justify the use of the inherent powers described in the second paragraph of the syllabus in Zangerle to authorize a court to make specific directives or demand the implementation of a particular facility plan, the facility plan that the Relators sought to impose would have to be the only possible means to secure the proper and efficient operation of the court. Finley, 163 Ohio St. at 155. It would be farcical to conclude that the Youngstown Municipal Court judges' Eight Million Dollar renovation plan, as opposed to Respondents' Six Million Dollar renovation plan, is the only way to acquire space and facilities essential for the Court's proper and efficient operation. Such would constitute one of the ridiculous results this Court warned of in Finley. "The Marion County case points out that, although the second paragraph of the syllabus in the Zangerle case is very broad in its language, it must be confined to the facts in that case, and that the court there had no power to order the county commissioners to make permanent or capital improvements in a courthouse." Id. at 154.

The Marion County case referenced in Finley is Comm. for Marion Cty. Bar Ass'n v. Marion Cty. (1954), 162 Ohio St. 345, 123 N.E. 2d 521. In Marion County, this Court considered Zangerle and found that it did not apply to circumstances in

which a court seeks to compel a government entity to engage in specific renovations. Marion County, 162 Ohio St. at 360-361. Zangerle “. . . did not involve any right of the court to compel the remodeling or even the repair of any part of the courthouse.” Id. at 352. “. . . [W]e . . . have been able to find no precedent which recognizes any inherent power of a court to provide a substantial addition to its courthouse building, especially where applicable statutes provide that other officers are to have discretionary powers with respect to providing such courthouse and determining its style, dimensions and expense. Our conclusion is that the Common Pleas Court has no such inherent power.” Id. at 360-361. Even if one were to assume that Zangerle applies to municipal courts despite the fact that they are not courts of general jurisdiction, the subsequent decisions of this Court make it clear that Zangerle did not create any inherent power for courts to demand specific renovations be carried out by their host government entity. Id. and Finley, 163 Ohio St. at 154-155.

This Court also actively sought to discourage relators from misinterpreting Foster in a manner similar to the way Relators have in their Second Proposition of Law. In State ex rel. Cleveland Mun. Court v. Cleveland City Council (1973), 34 Ohio St. 2d 120, 296 N.E. 2d 544, 63 O.O. 2d 199, relators argued, much as the current Relators do, that they could just demand whatever funds they require to engage in specific renovations they believe appropriate and the host city would be required to

allocate it so long as the request was reasonable and did not constitute an abuse of discretion. The relators in that case relied on Foster as support for said proposition just as the current Relators do. This Court found that in Foster,

“***[w]e did not hold that legislative authorities have an inherent duty to allocate all funds requested by a Municipal Court, without regard to the limited funds available for disbursement to all departments and division of city government and the ability of the court to properly exercise its judicial function.

Contrary to relators' reading of State ex rel. Foster v. Bd. of County Commrs., supra, such a right does not inherently exist even where the request is reasonable and does not constitute an abuse of discretion.” Id. at 125.

Relators' misinterpretation of Foster is as blatant as their misinterpretation of Zangerle. Relators' Second Proposition of Law is without any support in the laws of the State of Ohio.

C. Relators cannot sustain any argument based on the inherent power of a court to prevent the administration of justice from being impeded since they did not allege in their Complaint that the administration of justice was being impeded.

Relators argue that they possess an exclusive right to determine what constitutes suitable accommodations based on the existence of an inherent right to prevent the administration of justice from being impeded. Prevailing in that argument is dependent on establishing that the administration of justice is being impeded. Relators, however, failed to allege that the administration of justice was being impeded in their Complaint for Writ of Mandamus. Respondents set forth in their Answer that Relators had failed to state a claim upon which relief can be granted and set forth in their Motion for Judgment on the

Pleadings that Relators had done so by failing to make this allegation. Relators never sought to amend their complaint. Their allegations cannot now support a finding for recovery as sought in their Second Proposition of Law. Respondents are entitled to have Relators' Second Proposition of Law dismissed because the allegations in the Complaint, even if proven, could not sustain a finding in Relators' favor on their Second Proposition of Law. State ex rel. Seikbert v. Wilkinson (1994), 69 Ohio St. 3d 489, 490, 633 N.E. 2d 1128, O'Brien v. Univ. Cmty. Tenants Union, Inc. (1975), 42 Ohio St. 2d 242, 245, 327 N.E. 2d 753.

RESPONSE TO RELATORS' THIRD PROPOSITION OF LAW

III. RELATORS HAVE NOT ESTABLISHED THAT THEY POSSESS AN INHERENT POWER TO COMPEL RESPONDENTS TO IMPLEMENT RELATORS' PREFERRED FACILITY DESIGN PLAN.

In Relators' Third Proposition of Law, Relators argue that they can compel Respondents to carry out the exact court facility design Relators favor based on an inherent right to pass upon the suitability and sufficiency of quarters and facilities. Said requested finding was not prayed for in Relators' Complaint, conflicts with the purpose of a writ of mandamus, and is contrary to the laws of the State of Ohio.

- A. Relators' requested finding is entirely prospective and conflicts with the purpose of a writ of mandamus.

The case before the Court is an original action in which Relators seek a writ of mandamus ordering Respondents to provide them with suitable accommodations. In Relators' Third Proposition of Law, Relators instead argue that they are entitled to order Respondents to carry out the specific design plan Relators favor. Such a finding would be contrary to the function of a writ of mandamus. Willis, 6 Ohio St. 3d at paragraph two of the syllabus. No such order has been made by Relators. The only Order issued by Relators for the provision of suitable accommodations was their January 26, 2009 Judgment Entry. (Respondents' Submission of Evidence Volume Two, Order attached as an exhibit to Exhibit H.) Respondents are in compliance with said Order and have expressed their willingness to carry it out. (Respondents' Submission of Evidence Volume One, Exhibits A, D

and E and Volume Two, Exhibit H, Milich deposition, page 14, line 1 to page 15, line 13.) No further order has been issued. (Id.) Relators' requested finding that Respondents would be obligated to comply with a different order that Relators may someday issue is entirely prospective and is not in accord with the permissible purpose for which a writ of mandamus may be used. Willis, 6 Ohio St. 3d at paragraph two of the syllabus.

Relators' Third Proposition of Law does, however, reflect the misconstruction of the law that has led Relators to be so unreasonable and unwilling to negotiate in this matter. Since October of 2008, Respondents have had an offer on the table to provide Relators with a renovated court facility that complies with all standards of the Ohio Supreme Court. (Respondents' Submission of Evidence Volume One, Exhibits A, D and E.) There has been no failure of duty on the part of Respondents. Relators refused to accept Respondents' plan, refused to negotiate modifications, refused to provide any constructive feedback on it, and have prevented its implementation. (Id.) They have done so based on ridiculous misinterpretations of this Court's prior rulings. In some cases, they are the exact misinterpretations the Court previously warned against. Relators' Third Proposition of Law is an example of such.

- B. Municipal Courts do not possess an inherent right to specify the exact design of new or renovated facilities they desire and compel the host city to carry them out.

Relators argue that Zangerle establishes the existence of an inherent right they possess to design a court facility of their

choosing and demand Respondents execute it so long as the order does not constitute an abuse of discretion. Zangerle did not, however, involve any right of a court to compel the remodeling or even the repair of any part of the courthouse. Marion County, 162 Ohio St. at 353. Zangerle dealt with the power of a court to order additional space within the existing courthouse. As this Court has previously recognized in Foster, 16 Ohio St. 2d at 154-155, the control given to courts of general jurisdiction to ensure the presence of rooms and facilities essential for proper and efficient operation is limited by the language "in the courthouse." Zangerle, 141 Ohio St. at paragraph three of the syllabus. The words "in the courthouse" are italicized. Finley, 163 Ohio St. at 154. Zangerle does not create any power on the part of any court to compel specific major renovations or demand a new court facility. Marion County, 162 Ohio St. at 360-361.

Ironically, Relators cite to Finley even though said decision recognizes both that Zangerle does not grant the authority to compel specific major renovations or demand a new court facility and makes it explicitly clear that only courts of general jurisdiction are entitled to rely on Zangerle. Finley, 163 Ohio St. at 154-155 and 153-154. Relators presumably referenced Finley in the hope that, since this Court recognized a probate court as a court of general jurisdiction in that case, it might now do the same with a municipal court. This Court has already decided, however, that municipal courts are not courts of general jurisdiction, but are rather of specific and limited

jurisdiction. Foreman, 12 Ohio St. 2d at 27, Cowan, 101 Ohio St. 3d at 374, and Talaba, 132 Ohio St. at paragraph three of the syllabus. Relators' reliance on Zangerle is misplaced.

In support of their attempt to craft a legal standard that imposes a duty on Respondents to implement Relators' order for a specific courthouse design plan so long as said order is not an abuse of discretion, Relators cite to State ex rel. Judges of the Toledo Mun. Court v. Mayor of City of Toledo, 197 Ohio App. 3d 270, 2008-Ohio-5914, 901 N.E. 2d 321. This case dealt with funding for security in the existing courthouse and did not involve renovation or construction. The abuse of discretion standard comes from funding cases. It should be noted that no such order to carry out a specific design plan has been issued nor has any order to fund it. Further, Relators have never established the existence of a duty on the part of Respondents to comply with any order to carry out a courthouse design plan specified by Relators, therefore, Respondents cannot be compelled to fund it. A duty on the part of a legislative authority to provide all funds requested by a municipal court without regard for the limited funds available for disbursement to all departments and divisions of city government and the ability of the court to properly exercise its judicial function does not exist even where the request is reasonable and does not constitute an abuse of discretion. Cleveland Municipal Court, 34 Ohio St. 2d at 124-125.

CONCLUSION

The only thing that Relators have successfully established in this case is that they operate without regard for the limited funds Respondents have available for all departments and divisions of city government. The City of Youngstown is a beleaguered city which has been in a near-constant state of economic distress for over thirty years. (Respondents' Submission of Evidence Volume One, Exhibit C.) During that period of time, the City of Youngstown's executive and legislative branches have reduced their employees by approximately Fifty Percent (50%) while the number of employees of the Youngstown Municipal Court and Youngstown Municipal Court Clerk of Courts have remained the same or increased. (Id.) The above circumstances continue despite the fact that the City's population has greatly declined, the Youngstown Municipal Court's docket has greatly declined and continues to decline, and other municipal courts with comparable dockets operate with fewer employees, fewer judges and at a much lower cost. (Id.)

Despite its dire economic condition, Respondents contracted with architects experienced in courthouse design to prepare a plan to provide the Youngstown Municipal Court with suitable accommodations in a renovated facility that would meet all standards of the Ohio Supreme Court at a cost of approximately Six Million Dollars (\$6,000,000.00). Respondents' Submission of Evidence Volume One, Exhibits A, D and E.) Relators refused to provide Respondents with any constructive feedback regarding the

proposal, request any changes to it, or negotiate with Respondents regarding it. (Id.) Relators have done this despite the fact that Respondents have expressed their willingness to comply with Relators' Order to provide suitable accommodations. (Respondent's Submission of Evidence Volume Two, Order attached as an exhibit to Exhibit H.) Relators have done so because they prefer an Eight Million Dollar (\$8,000,000.00) renovation plan prepared by an architect who reports to them and upon whom they rely to inform them of the merits of Respondents' proposals. (Respondents' Submission of Evidence Volume Two, Exhibit J, page 10, line to page 11, line 2.)

Respondents have not failed in the exercise of any duty. They have engaged in herculean efforts despite yearly deficits in funds supported by income tax revenues and a municipal court and clerk of courts office which have a yearly operating deficit in excess of Three Million Dollars (\$3,000,000.00). (Respondents' Submission of Evidence Volume One, Exhibits C and G.) As a result, Respondents are forced to fund current expenses required to provide necessary services to their population out of capital improvement funds that could have otherwise been used to fund a court facility. (Respondents' Submission of Evidence Volume One, Exhibit C.)

Despite these circumstances, Relators have refused to cooperate with Respondents in achieving a newly renovated court facility. (Respondents' Submission of Evidence Volume One, Exhibit A.) They have done so based on their belief that this

Court will reward their intransigence. They have, however, failed to establish the required elements for issuance of a writ of mandamus by plain, clear and convincing evidence. Respondents, therefore, respectfully request that Relators' Complaint be dismissed.

Respectfully submitted,


ANTHONY J. FARRIS
DEPUTY LAW DIRECTOR
CITY OF YOUNGSTOWN


IRIS TORRES GUGLUCELLLO
LAW DIRECTOR
CITY OF YOUNGSTOWN

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was mailed by regular mail on this 30th day of August, 2010, to JOHN B. JUHASZ (0023777), 7081 WEST BOULEVARD, SUITE 4, YOUNGSTOWN, OHIO, 44512-4362, ATTORNEY FOR RELATORS.


ANTHONY J. FARRIS
DEPUTY LAW DIRECTOR
CITY OF YOUNGSTOWN


IRIS TORRES GUGLUCELLLO
LAW DIRECTOR
CITY OF YOUNGSTOWN