





## MEMORANDUM OF LAW

### **I. Introduction.**

Relator Yvette Barbara Baldwin (“Baldwin”) filed and amended an original action labeled a “Complaint for a Writ of Mandamus” and accompanying “affidavits” and exhibits (collectively, the “Action”) with this Court on April 29, 2011. In her Action, Baldwin requests this Court do several things to help her secure funds to pay her outstanding debts, including enjoining her storage shed facility from auctioning her property and assisting her in obtaining a personal loan with a local bank.

On her “Complaint” cover page, Baldwin lists a number of respondents, including WCPO TV Channel 9, Bob Morford in his capacity as News Director for WCPO TV Channel 9, and Steve Thaxton in his capacity as General Manager for WCPO TV Channel 9 (collectively “WCPO”), The E.W. Scripps Company, and CBS Corporation. Baldwin’s Action cobbles together a loose sketch about her alleged interview with Walter Cronkite, for which she purports to have won an Academy Award, also known as an “Oscar,” or an Emmy Award in the early 1960s. Baldwin asserts that “[t]his case arises from attempts that I have made to obtain legal documentation, information, awards, and collectibles, left on file at WCPO TV 9” and requests this Court to subpoena documents and property from Respondent WCPO and award \$25,000 of damages against WCPO for “pain and suffering.” The Action does no more to identify the documents left on file, who left them, or under what circumstances.

### **II. The Court should dismiss the Action because it fails to state a claim upon which relief may be granted.**

A motion to dismiss tests the sufficiency of the pleading. Civ. R. 12(B)(6); *State ex rel. Boggs v. Springfield Local School Dist. Bd. of Edn.* (1995), 72 Ohio St.3d 94, 95, 647 N.E.2d 788. A court should dismiss a complaint where the relator can show no facts entitling her to the

recovery requested. *O'Brien v. University Community Tenants Union, Inc.* (1975), 42 Ohio St.2d 242, 327 N.E.2d 753, syllabus.

Baldwin's Action fails to state a claim. The Action is not an appropriate mandamus suit because Baldwin has failed to meet all of the essential elements required to request mandamus relief. Additionally, Baldwin's Action is procedurally deficient as an original action before this Court because it fails to comply with Supreme Court Rule of Practice 10.4(B) and Ohio Revised Code § 2731.04. Because the Action fails to state a colorable mandamus claim, this Court has valid grounds to dismiss the Action.

**A. As a matter of law, Baldwin fails to state a claim because she cannot establish the required elements of a mandamus action.**

For this Court to issue a writ of mandamus, Baldwin must establish the following three elements:

- (1) She possesses a clear legal right to the relief prayed;
- (2) Respondents possess a clear legal duty to perform the requested act; and
- (3) She possesses no plain and adequate remedy in the ordinary course of the law.

*State ex rel. American Legion Post v. Ohio Civil Rights Commission*, 117 Ohio St.3d 441, 884 N.E.2d 589, 2008-Ohio-1261, ¶11. Baldwin has failed to meet each element.

First, Baldwin has not established that she has a clear legal right to the relief she requests—namely, a subpoena for unidentified documents and other assets and \$25,000 “as compensation from WCPO TV 9 . . . based on pain and suffering.” Baldwin has not identified a single right to such relief set forth in the Ohio Constitution, the Ohio Revised Code, or any other provision of law. Even assuming *arguendo* that Baldwin has identified a private cause of action, a mandamus action is not the proper medium for enforcing her asserted rights against WCPO. Mandamus will not lie to enforce a private right against private parties, such as WCPO. *See State ex rel. Longacre v. Penton Publishing Co.*, 77 Ohio St.3d 266, 267-68, 673 N.E.2d 1297,

1997-Ohio-276. Each respondent in this action is a private party, and Baldwin has failed to show any facts otherwise. As a matter of law, therefore, a mandamus action will not lie.

Second, Baldwin has failed to identify a clear legal duty that any defendant must perform. Rather, Baldwin demands this Court to subpoena documents and summons this Court to award damages. Further, issuing subpoenas and damage awards are not duties that any of the named defendants is able to perform because private parties do not have the powers of a court of law. Indeed, private parties do not generally maintain legal duties subject to mandamus actions.

Third, Baldwin has failed to demonstrate that she possesses no plain and adequate remedy in the ordinary course of the law. Baldwin's Action is confusing, and it is difficult to decipher any colorable cause of action out of the document. The closest she comes to any colorable claim is her allegation that "WCPO TV 9 originally made a contractual agreement with the relator's mother (Mrs. Maxine Jackson)." Baldwin has no standing to assert a claim that purportedly would belong to her mother. Accordingly, her mandamus action is not appropriate.

**B. As a matter of law, Baldwin fails to state a claim because her "affidavits" do not comply with Supreme Court Rule of Practice 10.4(B).**

Supreme Court Rule of Practice 10.4(B), which governs original jurisdiction actions,

states:

All complaints shall contain a specific statement of facts upon which the claim for relief is based, shall be supported by an affidavit specifying the details of the claim, and may be accompanied by a memorandum in support of the writ. *The affidavit required by this division shall be made on personal knowledge*, setting forth facts admissible in evidence, and showing affirmatively that the affiant is competent to testify to all matters stated in the affidavit. All relief sought, including the issuance of an alternative writ, shall be set forth in the complaint.

(emphasis added). The affidavit is mandatory and must "expressly [state] that the facts in the complaint were based on the affiant's personal knowledge." *State ex rel. Hackworth v. Hughes*, 97 Ohio St.3d 110, 776 N.E.2 2d 1050, 2002-Ohio-5334, ¶24. No such statement is found in

Baldwin's Action. Rather, Baldwin merely signs the document along with a public notary; there is no attestation or confirmation in the document. This deficiency is cause for dismissal as a matter of law. *See State ex rel. Comm. for Charter Amendment for an Elected Law Director v. Bay Village*, 115 Ohio St.3d 400, 875 N.E.2d 574, 2007-Ohio-5380, ¶14 (stating "our longstanding legal construction of S.Ct.Prac.R. X(4)(B) demands dismissal . . .").

**C. As a matter of law, Baldwin fails to state a claim because she did not file a complaint with the Court.**

Baldwin has failed to file a complaint in this action. Attached to the caption of "Complaint for a Writ of Mandamus" are a number of "affidavits." Supreme Court Rule of Practice 10.4(B) requires that original action complaints before this Court "contain a specific statement of facts upon which the claim for relief is based." Baldwin's "Complaint" contains no such statement and must be dismissed. *See id.*

**D. As a matter of law, Baldwin fails to state a claim because the Action does not comply with Ohio Revised Code § 2731.04.**

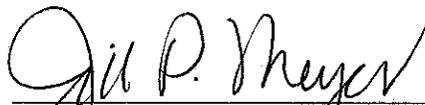
Ohio Revised Code § 2731.04 states, in part, that an "[a]pplication for the writ of mandamus must be by petition, in the name of the state on the relation of the person applying, and verified by affidavit." Baldwin's Action before this Court is in her name—not in the name of the state on the relation of Baldwin. Therefore, Baldwin has failed to state a claim upon which relief may be granted. *See Maloney v. Court of Common Pleas of Allen Cty.* (1962), 173 Ohio St. 226, 227, 181 N.E.2d 270 (requiring a writ of mandamus to comply with § 2731.04).

**III. Conclusion.**

For the foregoing reasons, Baldwin has failed to state a claim upon which the relief requested may be granted. Respondents WCPO TV Channel 9, including News Director Bob Morford and General Manager Steve Thaxton, The E.W. Scripps Company, and CBS

Corporation, respectfully move this Court to dismiss Relator Yvette Barbara Baldwin's Action in Mandamus with prejudice, assess all costs to Baldwin, and order any other relief deemed necessary and just by this Court.

Respectfully submitted,



Jill P. Meyer (0066326)  
(COUNSEL OF RECORD)

Monica L. Dias (0073617)

Frost Brown Todd LLC

2200 PNC Center, 201 E. Fifth St.

Cincinnati, Ohio 45202

P: (513) 651-6800

F: (513) 651-6981

[jmeyer@fbtlaw.com](mailto:jmeyer@fbtlaw.com)

[mdias@fbtlaw.com](mailto:mdias@fbtlaw.com)

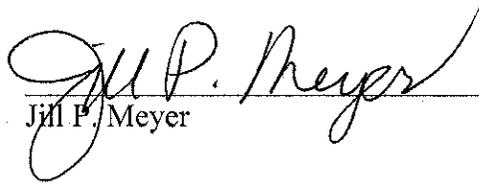
*Counsel for Respondents WCPO TV Channel 9,  
The E.W. Scripps Company, and CBS Corporation*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Respondents' Motion to Dismiss was served by ordinary U.S. mail, postage prepaid, on May 18, 2011 on the parties listed below:

YVETTE BARBARA BALDWIN  
8112 Constitution Drive  
Cincinnati, Ohio 45215

MICHAEL E. BROWN, MANAGER  
Uncle Bob's Self Storage #102  
11378 Springfield Pike  
Springdale, Ohio 45246

  
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Jill P. Meyer