

**ORIGINAL ACTION
IN THE SUPREME COURT OF OHIO**

Daries D. Pemberton	:	Case No. 12-0547
	:	
Relator,	:	
	:	
v.	:	
	:	
Tammy J. Carter, et al.,	:	
	:	
Respondents.	:	

DEFENDANT C. JEFFREY ADKINS' MOTION TO DISMISS

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Tammy J. Carter
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Respondent

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 SUPREME COURT OF OHIO

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Now comes Respondent C. Jeffrey Adkins, Gallia County Prosecuting Attorney, pursuant to Ohio Rule of Civil Procedure Rules 12(B)(1) and (6), and hereby requests that the above-captioned case be dismissed for lack of jurisdiction and failure to state a claim. This court does not have original jurisdiction over the action. Furthermore, Respondent Adkins is entitled to absolute prosecutorial immunity. This Motion to Dismiss is filed pursuant to S.Ct. Prac. R. 10.5(A). A Memorandum in Support of this Motion is attached.

Respectfully submitted,

[Signature]
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MEMORANDUM IN SUPPORT

This action is a civil case seeking original jurisdiction in the Ohio Supreme Court. Relator alleges “defamation (*sic*) of character, falsifying evidence, falsifying testimony, obstruction of justice, unauthorized possession and control of another’s property and committing fraud upon the courts.” (Complaint at p. 1). Relator seeks six million dollars in damages. (Complaint at p. 6). The Complaint must be dismissed on a number of grounds.

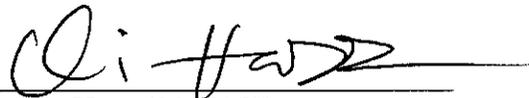
Ohio Rules of Civil Procedure Rule 12 (B) (1) authorizes a defending party to plead the affirmative defense of lack of jurisdiction. The Ohio Supreme Court’s jurisdiction is set forth under Section 2(B)(1), Article IV of the Ohio Constitution. The Court has original jurisdiction in quo warranto, mandamus, habeas corpus, prohibition, procedendo, any cause on review as may be necessary to its complete determination, and all matters relating to the practice of law. The present action is a tort action for money damages and does not fall within this Court’s original jurisdiction. As such, this Court lacks jurisdiction, and the case must be dismissed.

Additionally, Ohio Rules of Civil Procedure Rule 12(B)(6) authorizes a defending party to plead the affirmative defense of failure to state a claim upon which relief can be granted. This case fails to state a claim upon which relief can be granted based on absolute immunity. Respondent Adkins is a county prosecuting attorney and is entitled to absolute immunity for tort actions arising from his prosecutorial duties. Respondents are considered to be “quasi-judicial officers.” *Willitzer v. McCloud*, 6 Ohio St.3d 447, 449,

453 N.E.2d 695 (1983). Therefore, when executing duties 'intimately associated' with the judicial phase of a proceeding, for example, initiating a prosecution, a prosecutor is entitled to absolute immunity from civil liability. *Id.* at 449, quoting *Imbler v. Pachtman*, 424 U.S. 409, 410, 96 S.Ct. 984, 47 L.Ed.2d 128 (1976). Affording a prosecutor complete immunity in such situations is premised upon the public's compelling interest in "preserving the integrity of the judicial process." *Id.* at 449. *See also Imbler v. Pachtman*, 424 U.S. 409, 96 S.Ct. 984, 47 L.Ed.2d 128 (1976). Therefore, although a wronged defendant may be without a civil remedy, "it has been thought in the end better to leave unredressed the wrongs done by dishonest officers than to subject those who try to do their duty to the constant dread of retaliation." *Imbler* at 427.

Therefore, for all of the foregoing reasons, Respondent Adkins respectfully requests that the Complaint be dismissed as the Court lacks jurisdiction over the Complaint and/or that he be dismissed as a Respondent on the basis of prosecutorial immunity.

Respectfully submitted,



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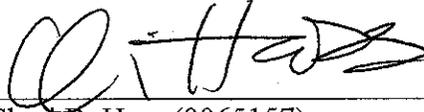
Attorney for Respondent C. Jeffrey Adkins

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **Respondent Adkins' Motion to Dismiss** has been served upon the following via U.S. mail on this 23rd day of April, 2012:

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CorsaLitigation/Gallia/Pemberton/Filings/4-12MTD