ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE, *ex rel.* THE CINCINNATI ENQUIRER Petitioner, **v.** **HONORABLE ROBERT H. LYONS** Respondent,	**Case No.** 12-1924 **SUGGESTION OF MOOTNESS; AFFIDAVIT ATTACHED**

FILED
JAN 10 2013
CLERK OF COURT
SUPREME COURT OF OHIO

Comes now the Respondent in the above captioned case and suggests that Petitioner's Complaint In Mandamus is now moot. Events occurring subsequent to filing of the Petitioner's Complaint, have rendered the matter moot. A memorandum in support follows.

MEMORANDUM IN SUPPORT OF SUGGESTION OF MOOTNESS

In the present Complaint for Mandamus, the Petitioner alleged that the Defendant, Honorable Judge Robert H. Lyons, improperly relied upon ORC § 2953.52 and 2953.53 in sealing the record of conviction for a minor misdemeanor defendant. *Paragraphs 7 and 10, Petitioner's Complaint for Writ of Mandamus.* In the Answer of Respondent, Honorable Robert H. Lyons, the allegation of paragraph 7 was admitted and in Respondent's answer to paragraph 10, respondent admitted that he erroneously relied on ORC § 2953.52 to seal the record of conviction.

Subsequent to the filing of Petitioner's Complaint for Writ of Mandamus and on or about December 13, 2012, Respondent Judge Lyons conducted a hearing at which the John Doe defendant moved the court to withdraw his plea. The motion was granted. The subsequent decision was made not to further prosecute the case. After nolle of the charge,

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the John Doe defendant moved Respondent Lyons to seal the official records in the case, pursuant to ORC § 2953.52. After hearing, the motion was granted and John Doe's file has been correctly sealed following dismissal of the complaint. *Affidavit of Respondent, Honorable Judge, Robert H. Lyons, attached.*

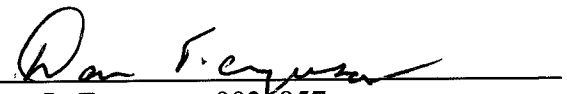
LAW

The events that have transpired since filing of the Petitioner's Complaint, have rendered the matter moot. Mootness is an issue that may be raised at any time. "No actual controversy exists where a case has been rendered moot by an outside event." *Tschantz v. Ferguson (1991), 57 Ohio St.3d 131, 133, 566 N.E.2d 655.* See also *State ex rel. Cincinnati Enquirer v. Ronan, 124 Ohio St. 3d 17, 2009 Ohio 5947, 918 N.E.2d 515, 2009 Ohio LEXIS 3200 (Ohio 2009).* Having now been properly sealed, pursuant to Ohio law, the Petitioner has nothing left for which it can seek a writ of mandamus.

While the Ronan case was remanded for an award of attorney fees, *id at 20*, the Ohio Rules of Superintendence do not authorize awards of attorney fees in cases involving mandamus against judges. *State ex rel. Vindicator Printing Co. v. Wolff, 132 Ohio St. 3d 481, 2012 Ohio 3328, 974 N.E.2d 89, 2012 Ohio LEXIS 1822, 40 Media L. Rep. 2641, 2012 WL 3031255 (Ohio 2012)*

Wherefore, Respondent herby suggests that the referenced matter is moot and shold be dismissed and that attorney fees are not awardable in such cases.

Michael T. Gmoser
Prosecuting Attorney of Butler County, Ohio



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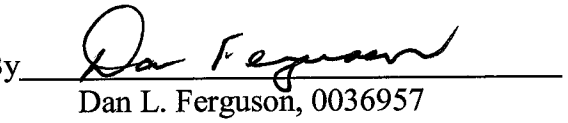
Attorney for Respondent,
Honorable Robert H. Lyons

CERTIFICATE OF SERVICE

This is to certify that on the 7th day of January, 2013, a copy of the foregoing Suggestion of Mootness and Affidavit was served by Regular U.S. Mail upon the following:

John C. Greiner, Attorney at Law, Graydon, Head & Ritchey LLP, 1900 Fifth Third Center, 511 Walnut St., Cincinnati, OH 45202-3157

Michael T. Gmoser
Prosecuting Attorney of Butler County, Ohio

By 

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IN THE SUPREME COURT OF OHIO

STATE, *ex rel.* THE CINCINNATI ENQUIRER Petitioner, **v.** **HONORABLE ROBERT H. LYONS** Respondent,	**Case No.** 12-1924 **AFFIDAVIT OF DEFENDANT**

State of Ohio, County of Butler, SS:

Honorable Robert H. Lyons ("Respondent"), being first duly sworn according to law, deposes and says on the basis of personal knowledge:

On or about December 13, 2012, I, Respondent Judge Robert H. Lyons, conducted a hearing at which the John Doe defendant in the case made subject of this action, moved the court to withdraw his plea. The motion was granted. The case was not further prosecuted and the charge was dismissed. After nolle of the charge, the John Doe defendant moved my court to seal the official records in his case, pursuant to ORC § 2953.52. After hearing, the motion was granted and John Doe's file has been correctly sealed following dismissal of the complaint.

Further Affiant says not.

Robert H. Lyons, Judge

Sworn to before me and subscribed in my presence this 2 day of January, 2013.

Tammy S. Walton
Notary Public

NOTARIAL SEAL
STATE OF OHIO

Tammy S. Walton
Notary Public
State of Ohio
My Commission Expires
7/22/2013