ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE EX REL. ROBERT HARSH,	:	
Relator,	:	Case No. 2013-1561
v.	:	Original Action in Mandamus
ROBERT RINGLAND, ADMINISTRATIVE JUDGE	:	
Respondent.	:	

RESPONDENT'S MOTION TO STRIKE RELATOR'S MOTION FOR JUDGMENT ON THE PLEADINGS

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On November 25, 2013, Relator filed a motion for judgment on the pleadings in this original action. S.Ct.Prac.R. 12.04(B), governing responses to a complaint filed in an original action before this Court, only provides that a *respondent* may file a motion for judgment on the pleadings when filing an answer and that a "*relator* may not file a motion for judgment on the pleadings or a response to an answer." Sup.Ct.Prac.R. 12.04(B)(1) (emphasis added). No other provision under Rule 12.04 provides for the filing of a motion for judgment on the pleadings in an original action by a relator, nor has Relator identified any such provision. Further, Respondent in this case did not file an answer to the complaint; he filed a motion to dismiss, which is currently pending before this Court.

This Court has granted motions to strike pleadings that do not comply with its rules governing original actions. *See State ex rel. Johnson v. Richardson*, 131 Ohio St.3d 120,

2012-Ohio-57, 961 N.E.2d 187, ¶ 11 (granting a motion to strike a motion for judgment on the pleadings in an original action where respondent failed to file the motion with its answer as required under the previous analogous rule); *see also State ex rel. Van Landingham v. Lucas Cty. Bd. of Elections*, 94 Ohio St.3d 1509, 764 N.E.2d 1038 (2002); *State ex rel. Toledo v. Lucas Cty. Bd. of Elections*, 95 Ohio St.3d 73, 765 N.E.2d 854 (2002). Accordingly, Respondent respectfully requests that this Court strike Relator's motion for judgment on the pleadings.

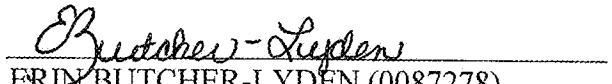
In the alternative, to the extent that this Court considers Relator's motion, this Court should deny Relator's motion for judgment on the pleadings for the same reasons set forth in Respondent's October 24, 2013 motion to dismiss. When presented with a motion for judgment on the pleadings, a court must construe all the material allegations in the complaint as true, and must draw all reasonable inferences in favor of the nonmoving party. *State ex rel. Midwest Pride IV, Inc. v. Pontious*, 75 Ohio St.3d 565, 570, 664 N.E.2d 931 (1996). A court grants a motion for judgment on the pleadings if it finds, beyond doubt, that the plaintiff can prove no set of facts in support of the claims that would entitle him or her to relief. *Id.* Here, Relator has not satisfied the requirements for a writ of mandamus to issue because he has no clear legal right to the relief he seeks, nor does Respondent have a clear legal duty to grant him that relief. *State ex rel. Van Gundy v. Indus. Comm.*, 111 Ohio St.3d 395, 2006-Ohio-5854, 856 N.E.2d 951, ¶ 13.

Specifically, Relator appears to seek to have Respondent either issue or re-issue a decision in an underlying mandamus action against a court of common pleas judge. Complaint, p. 3. Respondent issued a decision denying Relator's mandamus action on

October 1, 2013. Respondent's Motion to Dismiss, p. 2. Relator has no clear legal duty to compel Respondent to issue a decision he has already issued or to re-issue a decision, nor does Respondent have a clear legal duty to repeat this act. *State ex rel. Nat'l City Bank v. Maloney*, 103 Ohio St.3d 93, 2004-Ohio-4437, 814 N.E.2d 58, ¶ 10. Accordingly, Respondent respectfully requests that this Court to strike Relator's motion, or in the alternative, deny Relator's motion.

Respectfully submitted,

MICHAEL DEWINE (0009181)
Ohio Attorney General



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Administrative Judge Robert Ringland of the Twelfth District Court of Appeals

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing *Respondent's Motion to Strike Relator's Motion for Judgment on the Pleadings* was filed with the Court and served by regular U.S. mail, postage prepaid, on December 5, 2013, to the following:

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