

ORIGINAL

IN THE SUPREME COURT OF OHIO

IRVIN W. HUTH  
PO Box 17  
Bolivar, OH 44612

CASE NO. 14-1214

and

MICHELA HUTH  
PO Box 673  
Bolivar, OH 44612

Relators,

v.

NEW PHILADELPHIA  
MUNICIPAL COURT  
166 East High Avenue  
New Philadelphia, Ohio 44663

AND

THE HON. RICHARD D. REINBOLD  
A Visiting Judge of the New Philadelphia  
Municipal Court  
166 East High Avenue  
New Philadelphia, Ohio 44663

Respondents

FILED  
AUG 08 2014  
CLERK OF COURT  
SUPREME COURT OF OHIO

ANSWER TO COMPLAINT FOR WRITS OF PROHIBITION, MANDAMUS, OTHER  
WRIT AND ALTERNATIVE WRITS, AND MOTION TO DISMISS



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COMES NOW the respondents, the NEW PHILADELPHIA MUNICIPAL COURT and THE HONORABLE RICHARD D. REINBOLD, A Visiting Judge of the NEW PHILADELPHIA MUNICIPAL COURT (hereinafter "COURT") and by and through its undersigned counsel, hereby responds to the Petition for Writs filed by IRVIN W. HUTH AND MICHELA HUTH (hereinafter "Relators") and hereby file their Answer, Affirmative Defenses, and Motion to Dismiss in the instant case.

## **ANSWER TO COMPLAINT**

### **QUESTIONS PRESENTED**

1. Relators allege that Steven A. Anderson (Attorney Registration No. 0066445) (hereinafter "Atty. Anderson") does not have legal authority to hold himself out as a prosecutor in criminal cases brought in the COURT,
  - a. In cases where criminal offenses allegedly occurred within the Village of Bolivar (hereinafter VILLAGE), and,
  - b. Atty. Anderson is specifically barred by statute from prosecuting the specific cases State v. Irvin W. Huth, Case No. CRB 1400643, and State v. Michela Huth, Case No. CRB 1400642
2. Relators allege that Atty. Anderson was never appointed as one of the enumerated officers in O.R.C. 1901.34(A), was never designated as an assistant prosecutor by anyone with the authority to do so, and has been falsely and fraudulently filing and prosecuting cases before the COURT for alleged criminal offenses occurring within the VILLAGE.
3. Relators allege that the VILLAGE must appoint a person who can legally operate as prosecutor.

4. Relators allege that the VILLAGE is prohibited from delegating prosecutorial duties to a corporation, instead of a particular person.

### STATEMENT OF FACTS

1. Relators Irvin W. Huth and Michela Huth are currently being prosecuted in the COURT.
2. Mr. Huth was served with three summons for alleged violations of O.R.C. Sections 2917.11 (disorderly conduct), 2903.22(A) (menacing), and 2917.12(A)(1) (disturbing a lawful meeting).
3. The charges against Mr. Huth were brought by the citing officer, Officer Mark Myers of the Bolivar Police Department.
4. Ms. Huth was served with a summons for an alleged violation of O.R.C. 2917.12(A)(1) (disturbing a lawful meeting).
5. The charges against Ms. Huth were brought by the citing officer, Officer Mark Myers of the Bolivar Police Department.
6. The charges against the Relators occurred at a May 19, 2014 VILLAGE special meeting.
7. Atty. Anderson was the original prosecutor in the criminal cases against the Relators.
8. Atty. Anderson prosecutes criminal cases against other Defendants for criminal offenses occurring within the VILLAGE.
9. Atty. Anderson has filed, prosecuted, and is currently prosecuting criminal cases for alleged crimes committed within the VILLAGE.
10. Atty. Anderson works for Fitzpatrick, Zimmerman & Rose Co. (hereinafter FIRM).
11. Atty. Anderson performs prosecutorial duties for the Villages of Bolivar, Midvale, Sugarcreek, Strasburg, and other villages.

12. A Special Prosecutor is now prosecuting the cases against the Relators, due to a conflict of interest.

13. Village of Bolivar Ordinance # 0-88-2014 (hereinafter ORDINANCE) sets up the contractual relationship between the FIRM and the VILLAGE.

## ARGUMENT

### RESPONSE TO COUNT I:

#### **ATTY. ANDERSON HAS LEGAL AUTHORITY TO PROSECUTE CASES FOR THE VILLAGE**

“Villages in Ohio operate under the so-called “general statutory plan of government...[u]nder the general plan, the legislative power is vested in a village council...”<sup>1</sup> In a village that operates under the general plan, “there is no statutory provision for creation of the position of “village solicitor” or legal counsel as an “officer” of government.”<sup>2</sup> “A general plan village obtains its legal counsel by contract only (R.C. 733.48) rather by the appointment process.”<sup>3</sup> The VILLAGE operates under the general statutory plan of government as evidenced by their contractual delegation as opposed to any appointment process.<sup>4</sup> Ohio Revised Code Section 733.48 provides:

When it deems necessary, the legislative authority of a village [its council, R.C. 731.09] may provide legal counsel for the village, or for any department or official thereof, for a period not to exceed two years, and provide compensation for such counsel.<sup>5</sup>

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<sup>1</sup> *Rose et al. v. Village of Wellsville et al.*, 63 Ohio Misc.2d 9, 14, 613 N.E.2d 262, 265 (1993).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Village of Bolivar Ordinance # 0-88-2014.

<sup>5</sup> O.R.C. 733.48 (1953).

The legislative authority of the VILLAGE enacted legislation to provide legal counsel for the village, and also to prosecute criminal offenses that occur within the VILLAGE.<sup>6</sup> The VILLAGE chose to contract for the services with the FIRM.<sup>7</sup> Atty. Anderson is an employee of the FIRM that the VILLAGE chose to contract with for legal services. Section 2 of the ORDINANCE reads, “[s]aid Village Legal Counsel shall be the legal advisor for the Village and officers thereof in their official capacity and as such, attorneys to prosecute and defend all actions by or against the said Village...”<sup>8</sup> “In the absence of some express or implied restriction or prohibition, a “statutory plan” village has the authority to employ legal counsel, pursuant to R.C. 733.48, whenever and wherever it is necessary to be represented for the preservation and protection of its interests.”<sup>9</sup> Relators argue that Atty. Anderson is unlawfully prosecuting cases based on O.R.C. Section 1901.34(A),<sup>10</sup> however, in this situation, the prosecutorial duties are provided for through a contractual relationship with the FIRM.<sup>11</sup> The ordinance specifically states that attorneys (of the FIRM) will prosecute all actions by the VILLAGE.<sup>12</sup> The VILLAGE is free to contract however it deems in its best interests to provide legal services for the VILLAGE. The VILLAGE has chosen a law firm to provide those services. Atty. Anderson is an employee of the contracted firm, and therefore has legal authority to prosecute cases based on the ordinance, under the authority of O.R.C. 733.48.

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<sup>6</sup> Village of Bolivar Ordinance # 0-88-2014.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Rose*, 613 N.E.2d at 266.

<sup>10</sup> O.R.C. Section 1901.34(A) states, “[e]xcept as provided in divisions (B) and (D) of this section, the village solicitor, city director of law, or similar chief legal officer for each municipal corporation within the territory of a municipal court shall prosecute all cases brought before the municipal court for criminal offenses occurring within the municipal corporation for which that person is the solicitor, director of law, or similar chief legal officer...” O.R.C. 1901.34(A) (2011).

<sup>11</sup> Village of Bolivar Ordinance # 0-88-2014.

<sup>12</sup> *Id.*

**RESPONSE TO COUNT II:**

**VILLAGE CONTRACTUALLY DELEGATED THE POWER TO PROSECUTE CASES TO THE ATTORNEYS OF THE FIRM**

Relators argue the Village of Bolivar Ordinance #0-88-2014 “did not designate Fitzpatrick, Zimmerman & Rose Co. to perform any other duties” (except to represent the VILLAGE and render legal opinions). However, Section 2 of the ORDINANCE clearly states, “...attorneys to prosecute and defend all actions by or against the said Village...”<sup>13</sup> O.R.C. 733.48 specifically provides that a village can only provide for legal counsel by contract.<sup>14</sup> Prosecuting criminal offenses that happen within the VILLAGE is clearly a legal matter. Therefore, the VILLAGE can contract to have those legal interests represented. The VILLAGE delegated the prosecutorial duties to the FIRM. Atty. Anderson, as an attorney employee of the FIRM, has the authority to prosecute criminal cases for the VILLAGE.

**RESPONSE TO COUNT III:**

**CORPORATIONS ARE NOT SPECIFICALLY BARRED FROM PERFORMING THE DUTIES OF A CHIEF LEGAL OFFICER**

Relators argue that the attorneys employed at the FIRM cannot prosecute cases for the VILLAGE because a corporation (FIRM) cannot be a public official. Relators base this argument on O.R.C. Section 102.01(B), which states that “[p]ublic official or employee” means any person who is elected or appointed to an office or is an employee of any public agency.”<sup>15</sup> As stated previously, the position of prosecutor for the VILLAGE is not an elected or appointed position, the VILLAGE chose to contract with a firm to have the prosecutorial duties performed

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<sup>13</sup> *Id.*

<sup>14</sup> *Rose*, 613 N.E.2d at 265.

<sup>15</sup> O.R.C. Section 102.01(B) (2012).

by attorneys at the firm.<sup>16</sup> Relators state that “[a] prosecutor must be a person” based on O.R.C. Section 102.01(B), however Section (B) does not offer any guidance on what a prosecutor can or cannot be. The Section simply gives a definition of a public official or employee. The FIRM is not elected or appointed to any public official position. The relationship between the VILLAGE and the FIRM is contractual in nature, not an appointment and not employer and employee. “The nature of the village solicitor’s position is that of a contractual employee and not of a public office.”<sup>17</sup> “The use of the term “village solicitor” in R.C. 705.11 impliedly recognizes that the *legal counsel* under R.C. 733.48 is called “village solicitor.””<sup>18</sup> As stated previously, a general plan village can only obtain legal counsel through contract and not by appointment.<sup>19</sup> Even arguing that the FIRM does hold the position of “village solicitor,” a village solicitor is not a contractual employee and not a public official. “In the absence of some express or implied restriction or prohibition, a “statutory plan” village has the authority to employ legal counsel, pursuant to R.C. 733.48, whenever and wherever it is necessary to be represented for the preservation and protection of its interests.”<sup>20</sup> The VILLAGE deemed it in their best interest to contract with the FIRM to prosecute criminal cases for the VILLAGE. Relators have not shown any specific restriction or prohibition against the VILLAGE contracting with a corporation. In fact, the VILLAGE has the authority to employ legal counsel to do “whatever is necessary” to protect its interests.<sup>21</sup>

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<sup>16</sup> Village of Bolivar Ordinance # 0-88-2014.

<sup>17</sup> *Pullin v. Village of Hiram*, 2003 WL 1904040 (Ohio App. 11 Dist.) at FN 13.

<sup>18</sup> *Id.* at FN 12.

<sup>19</sup> *Rose*, 613 N.E.2d at 265.

<sup>20</sup> *Id.* at 266, *citing* 1967 Ohio Atty.Gen.Ops. No. 115 at 2-179.

<sup>21</sup> *Id.*

**RESPONSE TO COUNT IV:**

**THE VILLAGE DID NOT UNLAWFULLY DELEGATE LEGISLATIVE POWER**

Relators argue that the VILLAGE unlawfully delegated legislative power because the ordinance allows the FIRM to choose public officials. However, as argued previously, the attorneys employed by the FIRM that are prosecuting cases on behalf of the VILLAGE are not public officials. The attorneys prosecuting cases for the VILLAGE are acting under a contractual relationship per O.R.C. 733.48 between the VILLAGE and FIRM. According to the contract, attorneys of the FIRM are permitted to prosecute cases for the VILLAGE. Even arguing that the attorneys performing the prosecutorial duties for the VILLAGE under the contract are public officials, Relators' argument still fails. The VILLAGE contracted with the FIRM knowing that an infinite number of attorneys would be employed there at any time. The VILLAGE obviously trusted the attorneys at the FIRM and chose the attorneys of that particular firm to represent their interests as legal counsel, in addition to, prosecute the criminal offenses that occur within the VILLAGE. The ordinance allows only attorneys from the FIRM to prosecute cases occurring in the VILLAGE.<sup>22</sup> The FIRM is not employing any outside attorneys to prosecute cases for the VILLAGE, only employee attorneys prosecute cases for the VILLAGE.

**RESPONSE TO COUNT IV [sic]:**

**PROSECUTER OATH**

Relators argue, based on O.R.C. Section 705.28, that every officer and salary employee must take an oath prior to performing any oath. As stated previously, the FIRM is not a public official or officer, and is not an employee of the VILLAGE. The relationship between the VILLAGE and the FIRM is contractual in nature. Additionally, the attorney employees of the

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<sup>22</sup>Village of Bolivar Ordinance # 0-88-2014.

FIRM are not public officials or employees of the VILLAGE. The Village chose to contract with a firm, as opposed to a single person who may have been required to take an oath under the Ohio Revised Code.

**RESPONSE TO COUNT VII [sic]:**

**ATTY. ANDERSON HAS AUTHORITY TO PROSECUTE RELATORS' CRIMINAL CASES**

Relators' argue that O.R.C. Section 2938.13 prohibits private attorneys, retained by a complaining witness, to prosecute criminal cases. Relators' argue that Bolivar's Mayor is the complaining witness, and that Atty. Anderson represents the mayor in this action. This argument is flawed in that Atty. Anderson did not file the criminal cases against the Relators. Officer Mark Myers from the Village of Bolivar Police Department originally brought the charges against the Relators'. There is no evidence to support the argument that the mayor of the Village of Bolivar retained Atty. Anderson to prosecute the case for her. The cases were filed by the citing officer, and Atty. Anderson attended the first court hearing regarding the matter as usual practice. Atty. Anderson acted under the contractual relationship between the FIRM and VILLAGE, not as a personal attorney to the mayor of the Village of Bolivar.

**RESPONSE TO COUNT VIII [sic]:**

**COURT HAS JURISDICTION TO HEAR CRIMINAL CASES FILED AND PROSECUTED BY ATTY. ANDERSON**

Relators' argue that the COURT has no jurisdiction to hear cases filed or prosecuted by Atty. Anderson because Atty. Anderson is not a designated legal officer or assistant prosecutor and thus has no legal authority to prosecute any cases. Relators lack standing to argue that cases

filed against other defendants are unlawful as a matter of law. Even arguing Relators can argue for cases in which they have no personal interest, the foregoing arguments show that Atty. Anderson has authority to prosecute cases against people who have allegedly committed crimes in the VILLAGE. As the previous arguments have stated, the VILLAGE acted under the authority of O.R.C. 733.48 to enact the ORDINANCE which creates a contractual relationship with the FIRM to provide prosecutorial services for the VILLAGE.

“Standing is a preliminary inquiry that must be made before a court may consider the merits of a legal claim.”<sup>23</sup> The “irreducible constitutional minimum of standing” contains three requirements.<sup>24</sup> First, an “injury in fact, “which is an “invasion of a legally protected interest” that is “concrete and particularized” and “actual or imminent,” not merely hypothetical.<sup>25</sup> The second requirement is “causation,” more precisely, that her injury is fairly traceable to the challenged action of the defendant.<sup>26</sup> Finally, it must be likely, and not just speculative, that the injury will be “redressed by a favorable decision.”<sup>27</sup> The United States Supreme Court has held that a party must show more than “generalized interest of all citizens in constitutional governance.”<sup>28</sup> In the instant case, Relators cannot show any injury in fact. Relators were charged with offenses in which there are minimum and maximum sentencing guidelines. No matter who prosecutes the cases, the Relators cannot receive a different punishment than those allowable under statute. Sentencing is ultimately at a judge’s discretion, despite any recommendation made by a prosecutor. It is merely hypothetical that Atty. Anderson would have somehow gotten a different outcome of the Relators’ criminal cases. It is also hypothetical that

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<sup>23</sup> *Kincaid v. Erie Ins. Co.*, 128 Ohio St.3d 322, 323, 944 N.E.2d 207, 209 (2010).

<sup>24</sup> *Lujan v. Defender’s of Wildlife*, 504 U.S. 555, 560, 112 S.Ct. 2130, 2136 (1992).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Arizona Christian School Tuition Organization v. Winn*, 131 S.Ct. 1436, 1441-42 (2011).

Atty. Anderson could have gotten a guilty verdict and another attorney could not have in the case. Therefore, as Relators can show no injury in fact, they do not have standing to bring this action. Secondly, any imagined injury the Relators may suffer is not traceable to the challenged action of the COURT. The COURT does not file cases against defendants. The COURT does not appoint prosecutors. The COURT has no participation in deciding who prosecutes the criminal cases before the court. The COURT hears evidence, makes findings, and decides sentences on that evidence presented. Therefore, the COURT has done no action to cause the Relators' hypothetical injury. Finally, any hypothetical injury the Relators may suffer would not be cured by a favorable decision. A favorable decision to the Relators does not cure any hypothetical injury, the sentence if there would have been one, would not likely have been different. As the Relators have no standing to challenge Atty. Anderson prosecuting cases on behalf of the VILLAGE, they cannot argue that Atty. Anderson should be barred from prosecuting any past, present, and future criminal cases on behalf of the VILLAGE.

**RESPONSE TO COUNT IX [sic]:**

**COURT HAS JURISDICTION TO HEAR THE CRIMINAL CASES AGAINST THE RELATORS**

Relators argue that the COURT has no jurisdiction to hear the past, present, and future cases against the Relators and other defendants because Atty. Anderson has no authority to prosecute cases for the VILLAGE. As the foregoing arguments have shown, Atty. Anderson has the authority to prosecute criminal cases for the VILLAGE based on the ORDINANCE setting up the contractual relationship between the FIRM and the VILLAGE.<sup>29</sup> Relators go so far as to accuse Atty. Anderson of being fraudulent and unethical. Atty. Anderson was acting under the contractual relationship set up by the ORDINANCE between the VILLAGE and the FIRM,

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<sup>29</sup> See Village of Bolivar Ordinance # 0-88-2014.

never in an individual capacity. The contractual relationship between the FIRM and the VILLAGE is specifically allowable by law, O.R.C. 733.48. To accuse an attorney of being “improper, fraudulent, illegal, and unethical” is extreme, and the Relators offer no evidence or argument to support that claim that Atty. Anderson is any of those.

However, even assuming Atty. Anderson lacks authority to prosecute cases for the VILLAGE, the issue is now moot. Atty. Anderson is no longer prosecuting the cases against the Relators’ due to a possible conflict of interest. Courts will usually not resolve issues that are moot.<sup>30</sup> The defending party is entitled to a dismissal as a matter of right when a case is moot.<sup>31</sup> Cases are moot when they involve no actual live controversy.<sup>32</sup>

A moot case is one which seeks to get a judgment on a pretended controversy, when in reality there is none, or a decision in advance about a right before it has been actually asserted and contested, or a judgment upon some matter which, when rendered, for any reason cannot have any practical legal effect upon a then-existing controversy.<sup>33</sup>

There is an exception to the mootness doctrine, but applies only when two factors exist “...(1) the challenged action is too short in duration to be fully litigated before its cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again.”<sup>34</sup> In the cases at hand, the two factors do not exist. A criminal prosecution is long enough that a defendant could challenge this issue, and the issue could also be raised on appeal. Although there is the possibility that the Relators could be subject to

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<sup>30</sup> *In re L.W.*, 168 Ohio App.3d 613, 618, 861 N.E.2d 546, 550 (2006), citing *In re Brown*, 10th Dist. No. 03AP-1205, 2005-Ohio-2425, ¶ 15.

<sup>31</sup> *U.S. v. W.T. Grant Co.*, 345 U.S. 629, 632, 73 S.Ct. 894, 897 (1953).

<sup>32</sup> *In re L.W.* 168 Ohio App.3d at 618, quoting *Grove City v. Clark*, 10th Dist. No. 01AP-1369, 2002-Ohio-4549, ¶ 11.

<sup>33</sup> *Id.*

<sup>34</sup> *State ex rel. Calvary v. Upper Arlington*, 89 Ohio St.3d 229, 231, 729 N.E.2d 1182, 1185 (2000).

prosecution by Atty. Anderson if they were alleged to have committed a crime in the VILLAGE, it is not a reasonable expectation that one will be charged with a criminal offense. As both factors do not exist for the mootness exception, the Relators claims are moot, and the COURT is entitled to a dismissal.

### **RESPONSE TO COUNT X [sic]:**

#### **OTHER WRIT**

No other writs or relief is appropriate in this case as there is no threat to the administration of justice based on these facts.

#### **REMEDY AT LAW**

Relators argue that there is no adequate remedy at law. However, Relators criminal cases have not been resolved and there has yet to be a trial. Relators still have the remedy of a criminal trial, and appealing any conviction and sentence they may receive out of the court proceedings.

#### **AFFIRMATIVE DEFENSES**

##### **1. FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED**

Relators' Complaint fails to state a claim upon which relief can be granted by this Court. "In order to dismiss a complaint for a writ under Civ.R. 12(B)(6), failure to state a claim upon which relief can be granted, it must appear beyond doubt from complaint, after presuming veracity of all material factual allegations and all reasonable inferences are made in Relators' favor, that Relator can prove no set of facts warranting extraordinary relief."<sup>35</sup> The Relators can

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<sup>35</sup> *State ex rel. Hunter v. Patterson*, 75 Ohio St.3d 512, 514-15, 664 N.E.2d 524, 526 (1996).

prove no set of facts entitling them to the extraordinary relief which mandamus or prohibition affords. To allow Relators to use mandamus and/or prohibition as a substitute for an interlocutory order is not justified.<sup>36</sup> Even assuming all the facts alleged are true, the VILLAGE's contractual relationship with the FIRM is allowable under O.R.C. 733.48, and therefore the entire basis of Relators' arguments fails. Atty. Anderson has the authority under Ohio law to prosecute criminal cases on behalf of the VILLAGE. Therefore, the Relators are not entitled to any legal remedy.

## 2. FAILURE TO JOIN NECESSARY PARTIES

Relators failed to include all necessary parties in their Complaint, pursuant to Ohio Rules of Civil Procedure 19, which states,

“A person who is subject to service of process shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (a) as a practical matter impair or impede his ability to protect that interest or (b) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest, or (3) he has an interest relating to the subject of the action as an assignor, assignee, subrogor, or subrogee...”<sup>37</sup>

“Whether a nonparty is a necessary party in an action for declaratory relief depends on whether that nonparty ‘has a legally protectable interest in rights that are the subject matter of the action.’”<sup>38</sup> Relators are arguing that Atty. Anderson, an employee of the FIRM, should be prohibited from filing and prosecuting criminal cases on behalf of the VILLAGE in the COURT. The VILLAGE, the FIRM, and Atty. Anderson all have interests in the outcome of this action,

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<sup>36</sup> *Id.* at 515.

<sup>37</sup> Ohio Rules of Civil Procedure 19(A).

<sup>38</sup> *Rumpke Sanitary Landfill, Inc. v. Ohio*, 128 Ohio St.3d 41, 44, 941 N.E.2d 1161, 1165 (2010).

and disposition of this action may impair the ability to protect those interests. The VILLAGE has an interest in having their criminal offenses prosecuted by an attorney with legal authority to do so. The FIRM has an interest in this action as it has a contractual agreement with the VILLAGE to perform the prosecutorial duties. Atty. Anderson has an interest in this action, as the Relators have made some serious accusations against him, including calling his actions "improper, fraudulent, illegal, and unethical."

### 3. RELATORS LACK STANDING

"Standing is a preliminary inquiry that must be made before a court may consider the merits of a legal claim."<sup>39</sup> The "irreducible constitutional minimum of standing" contains three requirements.<sup>40</sup> First, an "injury in fact, "which is an "invasion of a legally protected interest" that is "concrete and particularized" and "actual or imminent," not merely hypothetical.<sup>41</sup> The second requirement is "causation," more precisely, that her injury is fairly traceable to the challenged action of the defendant.<sup>42</sup> Finally, it must be likely, and not just speculative, that the injury will be "redressed by a favorable decision."<sup>43</sup> The United States Supreme Court has held that a party must show more than "'generalized interest of all citizens in constitutional governance."<sup>44</sup> In the instant case, Relators cannot show any injury in fact. Relators were charged with offenses in which there are minimum and maximum sentencing guidelines. No matter who prosecutes the cases, the Relators would not have received a different punishment than those allowable under statute. Sentencing is ultimately at a judge's discretion, despite any recommendation made by a prosecutor. It is merely hypothetical that Atty. Anderson would have

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<sup>39</sup> *Kincaid*, 128 Ohio St.3d at 323.

<sup>40</sup> *Lujan*, 504 U.S. at 560.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Arizona Christian*, 131 S.Ct. at 1441-42.

somehow gotten a different outcome of the Relators' criminal cases. It is also hypothetical that Atty. Anderson could have gotten a guilty verdict and another attorney could not have in the case. Secondly, any imagined injury the Relators may suffer is not traceable to the challenged action of the COURT. The COURT does not file cases against defendants. The COURT does not appoint prosecutors. The COURT has no participation in deciding who prosecutes the criminal cases before the court. The COURT hears evidence, makes findings, and decides sentences on that evidence presented. Therefore, the COURT has done no action to cause the Relators' hypothetical injury. Lastly, any hypothetical injury the Relators may suffer would not be cured by a favorable decision. A favorable decision to the Relators does not cure any hypothetical injury, the sentence if there would have been one, would not likely have been different. As the Relators have no standing to challenge Atty. Anderson prosecuting cases on behalf of the VILLAGE, they cannot argue that Atty. Anderson should be barred from prosecuting criminal cases on behalf of the VILLAGE.

#### 4. MOOT

Courts will usually not resolve issues that are moot.<sup>45</sup> The defending party is entitled to a dismissal as a matter of right when a case is moot.<sup>46</sup> Cases are moot when they involve no actual live controversy.<sup>47</sup>

A moot case is one which seeks to get a judgment on a pretended controversy, when in reality there is none, or a decision in advance about a right before it has been actually asserted and contested, or a judgment upon some matter which, when rendered, for any reason cannot have any practical legal effect upon a then-existing controversy.<sup>48</sup>

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<sup>45</sup> *In re L.W.*, 168 Ohio App.3d at 618.

<sup>46</sup> *W.T. Grant Co.*, 345 U.S. at 632.

<sup>47</sup> *In re L.W.* 168 Ohio App.3d at 618.

<sup>48</sup> *Id.*, quoting *Culver v. Warren*, 84 Ohio App. at 393.

There is an exception to the mootness doctrine, but applies only when two factors exist “...(1) the challenged action is too short in duration to be fully litigated before its cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again.”<sup>49</sup> Atty. Anderson is no longer the prosecutor in the cases against the Relators; a special prosecutor is prosecuting the cases. Therefore, there is no actual controversy over whether Atty. Anderson has the authority to prosecute cases for the VILLAGE. In the cases at hand, the two factors for an exception to the mootness doctrine do not exist. A criminal prosecution is long enough that a defendant could challenge this issue, and the issue could also be raised on appeal. Although there is the possibility that the Relators could be subject to prosecution by Atty. Anderson if they were alleged to have committed a crime in the VILLAGE, it is not a reasonable expectation that one will be charged with a criminal offense. As both factors do not exist for the mootness exception, the Relators claims are moot, and the COURT is entitled to a dismissal.

### **CONCLUSION**

Wherefore, the Court respectfully requests that the Petition for Writs of Prohibition, Mandamus, Other Writ, and Alternative Writs be denied.

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### **MOTION TO DISMISS**

#### **RESPONDENTS’ MOTION TO DISMISS**

Now comes the Respondents, the New Philadelphia Municipal Court and the Honorable Richard D. Reinbold, and state for their Motion to Dismiss as follows:

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<sup>49</sup> *Upper Arlington*, 89 Ohio St.3d at 231.

**FOR CAUSE**, the Relators' Complaint should be DISMISSED for the following reasons:

**A. RELATORS HAVE FAILED TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED**

Relators' Complaint fails to state a claim upon which relief can be granted by this Court. "In order to dismiss complaint for writ of prohibition or mandamus for failure to state a claim upon which relief can be granted, it must appear beyond doubt from complaint, after presuming veracity of all material factual allegations and all reasonable inferences are made in Relators' favor, that Relator can prove no set of facts warranting extraordinary relief."<sup>50</sup> The Relators can prove no set of facts entitling them to the extraordinary relief which mandamus or prohibition affords. To allow Relators to use mandamus and/or prohibition as a substitute for an interlocutory order is not justified.<sup>51</sup> Even assuming all the facts alleged are true, the VILLAGE's contractual relationship with the FIRM is allowable under O.R.C. 733.48, and therefore the entire basis of Relators' arguments fails. Atty. Anderson has the authority under Ohio law to prosecute criminal cases on behalf of the VILLAGE. Therefore, the Relators are not entitled to any legal remedy.

**B. RELATORS FAILED TO INCLUDE ALL NECESSARY PARTIES IN THEIR COMPLAINT**

Relators failed to include all necessary parties in their Complaint, pursuant to Ohio Rules of Civil Procedure 19, which states,

"A person who is subject to service of process shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (a) as a practical matter impair or impede his ability to protect that interest or (b) leave any of the persons already parties subject to a substantial risk of

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<sup>50</sup> *State ex rel. Hunter v. Patterson*, 75 Ohio St.3d at 514-15.

<sup>51</sup> *Id.* at 515.

incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest, or (3) he has an interest relating to the subject of the action as an assignor, assignee, subrogor, or subrogee...”<sup>52</sup>

“Whether a nonparty is a necessary party in an action for declaratory relief depends on whether that nonparty ‘has a legally protectable interest in rights that are the subject matter of the action.’”<sup>53</sup> Relators are arguing that Atty. Anderson, an employee of the FIRM, should be prohibited from filing and prosecuting criminal cases on behalf of the VILLAGE in the COURT. The VILLAGE, the FIRM, and Atty. Anderson all have interests in the outcome of this action, and disposition of this action may impair the ability to protect those interests. The VILLAGE has an interest in having their criminal offenses prosecuted by an attorney with legal authority to do so. The FIRM has an interest in this action as it has a contractual agreement with the VILLAGE to perform the prosecutorial duties. Atty. Anderson has an interest in this action, as the Relators have made some serious accusations against him, including him committing a “fraud upon the court.” All necessary parties have not been included in this action, and this action must be dismissed or the necessary parties must be joined in order to protect the interests of all necessary parties.

**C. A WRIT OF MANDAMUS IS NOT AN AVAILABLE ALTERNATIVE TO A TRIAL (RELATORS HAVE AN ADEQUATE REMEDY AT LAW)**

A Writ of Mandamus is not an available alternative to the right of trial or appeal. “The presence of an adequate remedy in the ordinary course of law generally precludes extraordinary relief in prohibition or mandamus.”<sup>54</sup> Relators have not yet gone through the available remedies at law, the trial and appeal process, in their respective cases. The requisites for mandamus are

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<sup>52</sup> Ohio Rules of Civil Procedure 19(A).

<sup>53</sup> *Rumpke*, 128 Ohio St.3d at 44.

<sup>54</sup> *State ex rel. Hunter v. Certain Judges of the Akron Mun. Court*, 71 Ohio St.3d 45, 46, 641 N.E.2d 722, 723 (1994).

well-established through case law in the State of Ohio: "(1) the appellant [relator] must have a clear legal right to the requested relief, (2) the appellee [respondent] must have a clear legal duty to perform the requested relief and (3) there must be no adequate remedy at law."<sup>55</sup> "Mandamus is not a substitute for appeal," thus, Relators are not justified in requesting mandamus from this Court before the Relators have had the opportunity to have trial and to appeal any decision.<sup>56</sup> Because Relators have an adequate remedy at law before Relators have a "clear legal right" to request mandamus from this Court, this action should be dismissed.

#### **D. RELATORS HAVE NO STANDING TO CHALLENGE OTHER CASES IN WHICH STEVE ANDERSON WAS THE PROSECUTOR**

"Standing is a preliminary inquiry that must be made before a court may consider the merits of a legal claim."<sup>57</sup> The "irreducible constitutional minimum of standing" contains three requirements.<sup>58</sup> First, an "injury in fact, "which is an "invasion of a legally protected interest" that is "concrete and particularized" and "actual or imminent," not merely hypothetical.<sup>59</sup> The second requirement is "causation," more precisely, that her injury is fairly traceable to the challenged action of the defendant.<sup>60</sup> Finally, it must be likely, and not just speculative, that the injury will be "redressed by a favorable decision."<sup>61</sup> The United States Supreme Court has held that a party must show more than "'generalized interest of all citizens in constitutional governance."<sup>62</sup> In the instant case, Relators cannot show any injury in fact. Relators were charged with offenses in which there are minimum and maximum sentencing guidelines. No

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<sup>55</sup> *State ex rel. Ney v. Niehaus*, 33 Ohio St.3d 118, 118-19, 515 N.E.2d 914, 916 (1987).

<sup>56</sup> *See State ex rel. Keenan v. Calabrese*, 69 Ohio St.3d 176, 631 N.E.2d 119 (1994).

<sup>57</sup> *Kincaid*, 128 Ohio St.3d at

<sup>58</sup> *Lujan*, 504 U.S. at 560.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Arizona Christian School*, 131 S.Ct. at 1441-42.

matter who prosecutes the cases, the Relators would not have received a different punishment than those allowable under statute. Sentencing is ultimately at a judge's discretion, despite any recommendation made by a prosecutor. It is merely hypothetical that Atty. Anderson would have somehow gotten a different outcome of the Relators' criminal cases. It is also hypothetical that Atty. Anderson could have gotten a guilty verdict and another attorney could not have in the case. Secondly, any imagined injury the Relators may suffer is not traceable to the challenged action of the COURT. The COURT does not file cases against defendants. The COURT does not appoint prosecutors. The COURT has no participation in deciding who prosecutes the criminal cases before the court. The COURT hears evidence, makes findings, and decides sentences on that evidence presented. Therefore, the COURT has done no action to cause the Relators' hypothetical injury. Lastly, any hypothetical injury the Relators may suffer would not be cured by a favorable decision. A favorable decision to the Relators does not cure any hypothetical injury, the sentence if there would have been one, would not likely have been different. As the Relators have no standing to challenge Atty. Anderson prosecuting cases on behalf of the VILLAGE, and they are not currently being prosecuted by Atty. Anderson or any attorney employed by the FIRM, they cannot argue that Atty. Anderson should be barred from prosecuting criminal cases on behalf of the VILLAGE. This motion should be dismissed because the Relators lack standing to sustain this motion.

#### **E. RELATORS' INTEREST IS NOW MOOT**

Courts will usually not resolve issues that are moot.<sup>63</sup> The defending party is entitled to a dismissal as a matter of right when a case is moot.<sup>64</sup> Cases are moot when they involve no actual live controversy.<sup>65</sup>

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<sup>63</sup> *In re L.W.*, 168 Ohio App.3d at 618.

A moot case is one which seeks to get a judgment on a pretended controversy, when in reality there is none, or a decision in advance about a right before it has been actually asserted and contested, or a judgment upon some matter which, when rendered, for any reason cannot have any practical legal effect upon a then-existing controversy.<sup>66</sup>

There is an exception to the mootness doctrine, but applies only when two factors exist “...(1) the challenged action is too short in duration to be fully litigated before its cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again.”<sup>67</sup> Atty. Anderson is no longer the prosecutor in the cases against the Relators; a special prosecutor is prosecuting the cases. Therefore, there is no actual controversy over whether Atty. Anderson has the authority to prosecute cases for the VILLAGE. In the cases at hand, the two factors for an exception to the mootness doctrine do not exist. A criminal prosecution is long enough that a defendant could challenge this issue, and the issue could also be raised on appeal. Although there is the possibility that the Relators could be subject to prosecution by Atty. Anderson if they were alleged to have committed a crime in the VILLAGE, it is not a reasonable expectation that one will be charged with a criminal offense. As both factors do not exist for the mootness exception, the Relators claims are moot, and the COURT is entitled to a dismissal.

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<sup>64</sup> *W.T. Grant Co.*, 345 U.S. at 632.

<sup>65</sup> *In re L.W.*, 168 Ohio App.3d at 618.

<sup>66</sup> *Id.*, quoting *Culver v. Warren*, 84 Ohio App. at 393.

<sup>67</sup> *Upper Arlington*, 89 Ohio St.3d at 231.

**F. RELATORS HAVE WAIVED THEIR CLAIM ON PERSONAL JURISDICTION BY ENTERING A “NOT GUILTY” PLEA AT THEIR RESPECTIVE ARRAIGNMENTS**

Absent a showing that the New Philadelphia Municipal Court “patently and unambiguously lacked jurisdiction,” a defendant’s writ of prohibition lacks merit.<sup>68</sup> The New Philadelphia Municipal Court and Judge Richard Reinbold did not unjustly exercise subject matter jurisdiction over the Relators in this case. The New Philadelphia Municipal Court was created by statute and has jurisdiction over all misdemeanor crimes and traffic offenses which are committed within its territorial jurisdiction. *O.R.C. 1901.02 states*, “[t]he New Philadelphia municipal court has jurisdiction within the municipal corporation of Dover, and within... Lawrence...townships in Tuscarawas County.” Because the complaints against Relators were valid, the New Philadelphia Municipal Court had subject matter jurisdiction over Relators.

Assuming, arguendo, that the COURT did not have personal jurisdiction over Relators, the COURT acquired jurisdiction when the Relators entered their respective “not guilty” pleas.<sup>69</sup>

“A motion to dismiss based on grounds not waived by failure to present them in an earlier pleading or motion can be considered as a motion for judgment on the pleadings under Civ R 12(C) or as a motion to dismiss under Civ R 12(B)(6), either of which may be made without leave of court.”<sup>70</sup>

If the Relators planned to argue that the New Philadelphia Municipal Court did not have personal jurisdiction over them, the Relators should have raised this argument before the

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<sup>68</sup> *Krooss v. Murray*, 123 Ohio St. 3d 85, 85, 914 N.E.2d 366, 366 (2009) (affirming the judgment of the court of appeals).

<sup>69</sup> *State v. Blair*, 2010 Ohio 6310 (2010) (“[t]rial court acquired personal jurisdiction over defendant when he entered not guilty pleas.”); *State v. Kendrick*, 2011 Ohio 212 (2011) (trial court acquired personal jurisdiction over defendant “when she initially entered her not guilty plea and did not raise alleged defects in the complaint, such that any objections were deemed waived under Ohio R. Crim. P. 12(C)(1).”).

<sup>70</sup> *Lawreszuk v. Nationwide Ins. Co.*, 59 Ohio App.2d 111, 111, 392 N.E.2d 1094, 1095 (1977).

COURT in place of their “not guilty” pleas.<sup>71</sup> Ohio R. Crim. P. 12(C) requires that objections to personal jurisdiction be raised before the trial court.<sup>72</sup> By not raising these objections prior to entering a not guilty plea, Relators waived their right to challenge personal jurisdiction in their respective cases.

### CONCLUSION

**WHEREFORE**, the Respondents, the New Philadelphia Municipal Court and the Honorable Richard D. Reinbold, respectfully request this Court DISMISS Relators’ Complaint for Writs of Prohibition, Mandamus, Other Writ and Alternative Writs.

Respectfully Submitted,



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Marvin T. Fete, Reg. No. 0074449  
Attorney for Respondents  
138 Second St. NW  
New Philadelphia, Ohio 44663  
(330) 364-9599; Fax: (330) 308-8303  
Email: mfete@newphilaoh.com

### PROOF OF SERVICE

Copies of the foregoing Answer and Motion to Dismiss were sent to Attorney Michela Huth Attorney for Relators, via ordinary U.S. mail on this 7<sup>th</sup> day of August, 2014 to the following address:

Ms. Michela Huth  
Attorney at Law  
P.O. Box 673  
Bolivar, OH 44612



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Marvin T. Fete, Reg. No. 0074449  
Attorney for Respondents

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<sup>71</sup> *Id.*; O.R.C. 2935.09.

<sup>72</sup> *Id.*

SUMMONS IN LIEU OF ARREST WITHOUT WARRANT, AND COMPLAINT UPON SUCH SUMMO.

(Rule 4(A)(3))

NEW Philadelphia Municipal Court
New Philadelphia TUSCARAWAS County, Ohio

THE STATE OF OHIO
Village of Bolivar
William Huth
1580 ST RT 212 NW
Bolivar OHIO 44612
D.O.B. 12/24/1942 SEX M
Soc. Sec. No. 7486

CRB1400643 A
SUMMONS NO.
CASE NO.
DOC PAGE
Summons In Lieu of Arrest Without Warrant, and Complaint Upon Such Summons (Rule 4(A)(3))

TO DEFENDANT:

SUMMONS

In lieu of immediate arrest upon a misdemeanor you are summoned and ordered to appear at 1 o'clock P.M. on 5th June 2014

New Philadelphia Municipal Court
This summons served personally on the defendant on May 29 2014

COMPLAINT

On May 19th 2014 at 117 N Canal ST Bolivar Village Council Room

you knowingly made cause for Mayor Hubble to believe you would cause her physical harm
2903.22 (A)

Signature of Issuing/Charging Law Enforcement Officer
Officer Mark Myers
Issuing/Charging Law Enforcement Officer

Sworn to and subscribed before me by on 6-3-14



/Judge/Clerk/Deputy Clerk/ Notary Public, State of Ohio
My Commission Expires June 2, 2015
Recorded in Tuscarawas County
Notary Public
My Commission Expires 6-2-15

NOTICE TO DEFENDANT: The officer is not required to swear to the complaint upon your copy of the summons and complaint. He swears to the complaint on the copy he files with the court.

NOTICE TO DEFENDANT UNDER EIGHTEEN YEARS OF AGE: You must appear before the County Juvenile Court,

at the time and place determined by that Court. The Juvenile Court will notify you when and where to appear. This Summons and Complaint will be filed with the Juvenile Court. The Complaint may be used as a juvenile complaint.

fill in telephone number(s)

LS

SUMMONS IN LIEU OF ARREST WITHOUT WARRANT, AND COMPLAINT UPON SUCH SUMMOI

(Rule 4(A)(3))

NEW Philadelphia Municipal Court
New Philadelphia TUSCARAWAS County, Ohio

THE STATE OF OHIO
Village of Bolivar
William Huth
1580 ST RT 212 NW
Bolivar OHIO 44612
D.O.B. 12/24/1942 SEX M
Soc. Sec. No. 7486

CRB1400643 B
SUMMONS NO.
CASE NO.
DOC PAGE
Summons In Lieu of Arrest Without Warrant, and Complaint Upon Such Summons (Rule 4(A)(3))

TO DEFENDANT:

SUMMONS

In lieu of immediate arrest upon a misdemeanor you are summoned and ordered to appear at 1 o'clock P.M. on 5th June 2014

New Philadelphia Municipal Court
This summons served personally on the defendant on May 29 2014

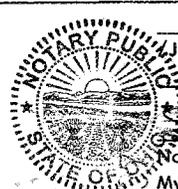
COMPLAINT

On May 19th 2014 at 117 N Canal ST Bolivar Village Council Room

you knowingly Disturbed/Disrupted a lawful Meeting by outbursting during a special Meeting of Council
2917.12 (A) (1)

Signature of Issuing/Charging Law Enforcement Officer
Officer Mark Myers
Issuing/Charging Law Enforcement Officer

Sworn to and subscribed before me by on 6-3-2014



/Judge/Clerk/Deputy Clerk/ LOIS L. GIRARD
Notary Public, State of Ohio
My Commission Expires June 2, 2015
Recorded in Tuscarawas County
Notary Public
My Commission Expires 6-3-14

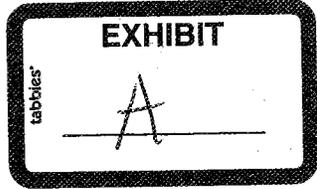
NOTICE TO DEFENDANT: The officer is not required to swear to the complaint upon your copy of the summons and complaint. He swears to the complaint on the copy he files with the court.

NOTICE TO DEFENDANT UNDER EIGHTEEN YEARS OF AGE: You must appear before the County Juvenile Court,

at the time and place determined by that Court. The Juvenile Court will notify you when and where to appear. This Summons and Complaint will be filed with the Juvenile Court. The Complaint may be used as a juvenile complaint.

fill in telephone number(s)

LS



SUMMONS IN LIEU OF ARREST WITHOUT WARRANT, AND COMPLAINT UPON SUCH SUMMOI

(Rule 4(A)(3))

New Philadelphia Municipal Court
New Philadelphia Tuscarawas County, Ohio
(City) (Name of County)

THE STATE OF OHIO

Village of Belmar

CRB 1400643 C
SUMMONS NO.

William Huth
name of defendant

CASE NO.

1500 ST RT 212 NW
address

DOC. PAGE

Bellmar Ohio 44612

Summons In Lieu of Arrest Without Warrant, and Complaint Upon Such Summons (Rule 4(A)(3))

D.O.B. 12/24/1942 SEX M
Soc. Sec. No. 7486

TO DEFENDANT:

SUMMONS

In lieu of immediate arrest upon a misdemeanor you are summoned and ordered to appear at 1 o'clock p.m. on 5th June 2014 day - month - year

New Philadelphia Municipal Court

If you fail to appear at this time and place you may be arrested.

This summons served personally on the defendant on May 29, 2014

COMPLAINT

On May 19th 2014 at 117 N. Canal St Belmar Village Council Room place

you were disorderly in reckless by threatening to describe the offense charged and state the numerical harm Mayor Hubbs by saying "I will hurt you" designation of the applicable statute or ordinance 2917.11 (A) (1)

Sgt CRB KY
Signature of Issuing Charging Law Enforcement Officer

Being duly sworn the issuing-charging law enforcement officer states that he has read the above complaint and that it is true.

Officer Mark Myers
Issuing Charging Law Enforcement Officer

Sworn to and subscribed before me by on 6-3 2014

/Judge/Clerk/Deputy Clerk/

Court



or LOIS L. GIRARD

Notary Public, State of Ohio

My Commission Expires June 2, 2015

Recorded in Tuscarawas County

NOTICE TO DEFENDANT: The officer is not required to swear to the complaint upon your copy of the summons and complaint. He swears to the complaint on the copy he files with the court. You may obtain a copy of the sworn complaint before hearing time. You will be given a copy of the sworn complaint before or at the hearing. For information regarding your duty to appear call

fill in telephone number(s)

NOTICE TO DEFENDANT UNDER EIGHTEEN YEARS OF AGE: You must appear before the County Juvenile Court,

at the time and place determined by that Court. The Juvenile Court will notify you when and where to appear. This Summons and Complaint will be filed with the Juvenile Court. The Complaint may be used as a juvenile complaint. You may obtain a copy of the sworn complaint from the Juvenile Court before the Juvenile Court hearing. You will be given a copy of the sworn complaint before or at the Juvenile Court hearing. For information regarding your duty to appear at Juvenile Court call

fill in telephone number(s)

LS

SUMMONS IN LIEU OF ARREST WITHOUT WARRANT, AND COMPLAINT UPON SUCH SUMMO.

(Rule 4(A)(3))

New Philadelphia Municipal Court  
New Philadelphia Tuscarawas County, Ohio

THE STATE OF OHIO

Village of Bolivar  
Michela J Huth  
name of defendant  
1580 SR 212 NW  
address  
Bolivar Ohio 44612  
D.O.B. 7-24-1968 SEX F  
Soc. Sec. No. 8690

SUMMONS NO. CRB1400642  
CASE NO.  
DOC. PAGE  
Summons In Lieu of Arrest Without Warrant, and Complaint Upon Such Summons (Rule 4(A)(3))

TO DEFENDANT:

SUMMONS

In lieu of immediate arrest upon a misdemeanor you are summoned and ordered to appear at 1 o'clock P.M. on 5th June 2014

New Philadelphia Municipal Court.  
If you fail to appear at this time and place you may be arrested.  
This summons served personally on the defendant on May 30th, 2014

COMPLAINT

On May 19th 2014 at 117 N. Canal ST Bolivar  
village Council Room place

you knowingly DISTURBED/DISRUPTED a lawful Meeting  
describe the offense charged and state the numerical  
by authorizing during a special meeting of Council  
designation of the applicable statute or ordinance  
2917.12 (A) (1)

Signature of Issuing-Charging Law Enforcement Officer

Being duly sworn the issuing-charging law enforcement officer states that he has read the above complaint and that it is true.

Officer Mark Myers  
Issuing-Charging Law Enforcement Officer

Sworn to and subscribed before me by on 6-3 2014



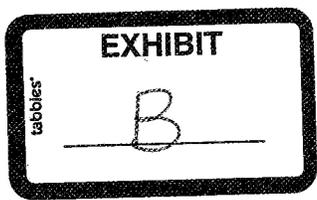
/Judge/ Clerk/ Notary Public/ Court  
Lois Girard  
Notary Public, State of Ohio  
My Commission Expires June 2, 2015  
Recorded in Tuscarawas County  
Notary Public  
My Commission Expires 6-3-14  
County/State of Ohio/

NOTICE TO DEFENDANT: The officer is not required to swear to the complaint upon your copy of the summons and complaint. He swears to the complaint on the copy he files with the court. You may obtain a copy of the sworn complaint before hearing time. You will be given a copy of the sworn complaint before or at the hearing. For information regarding your duty to appear call

fill in telephone number(s)  
NOTICE TO DEFENDANT UNDER EIGHTEEN YEARS OF AGE: You must appear before the County Juvenile Court,

at the time and place determined by that Court. The Juvenile Court will notify you when and where to appear. This Summons and Complaint will be filed with the Juvenile Court. The Complaint may be used as a juvenile complaint. You may obtain a copy of the sworn complaint from the Juvenile Court before the Juvenile Court hearing. You will be given a copy of the sworn complaint before or at the Juvenile Court hearing. For information regarding your duty to appear at Juvenile Court call

fill in telephone number(s)



NEW PHILADELPHIA  
MUNICIPAL COURT

2014 JUL -9 A 8:31

CLERK  
JULIE A. STAMETS

IN THE NEW PHILADELPHIA MUNICIPAL COURT  
NEW PHILADELPHIA, OHIO

STATE OF OHIO )  
Village of Bolivar )

Plaintiff, )

v. )

WILLIAM HUTH and )  
MICHELA HUTH )

Defendants. )

CASE NO: CRB 1400643 A-C  
CRB 1400642

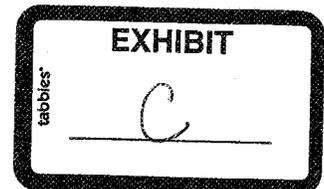
JUDGE REINBOLD

**JUDGMENT ENTRY**

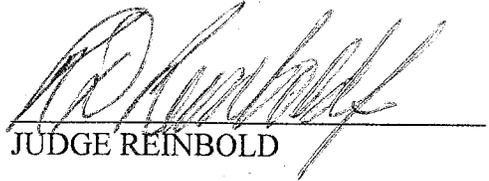
This matter is before the Court upon the Motion to Disqualify Prosecutor and Appoint Special Prosecutor as filed by the Defendant, William Huth on June 5, 2014 and the joint Motion of Defendants, William Huth and Michela Huth to Disqualify Fitzpatrick, Zimmerman & Rose Co., L.P.A., as Prosecutor as filed with the Court on June 20, 2014. This matter proceeded to hearing on July 2, 2014. Present at the hearing was Attorney Steven A. Anderson, prosecutor for the Village of Bolivar. Also present at the hearing were William Huth, represented by his Attorney, Michela Huth, and the Defendant, Michela Huth in her individual capacity.

It is hereby ORDERED, ADJUDGED, and DECREED, that the Defendants' Motions to Disqualify are hereby granted. Attorney Anderson is disqualified as prosecutor due to a conflict of interest with his law firm.

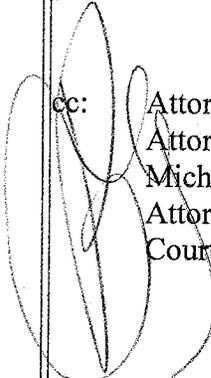
It is further ORDERED, ADJUDGED, and DECREED, that this Court hereby appoints Attorney Branden Dickerson as the special prosecuting attorney to represent the State of Ohio.



It is finally ORDERED, ADJUDGED, and DECREED, that this matter shall be reset for a status hearing on July 9, 2014 at 8:30 A.M.



JUDGE REINBOLD



cc: Attorney Steven A. Anderson  
Attorney Michela Huth, Attorney for William Huth  
Michela Huth, individually  
Attorney Branden Dickerson, c/o Canton Prosecutor's Office  
Court Administrator

**ORDINANCE # O-88-2014**

**AN ORDINANCE PROVIDING FOR THE CONTRACTUAL SERVICES OF LEGAL COUNSEL FOR THE VILLAGE OF BOLIVAR AND DECLARING IT AS AN EMERGENCY**

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the Village of Bolivar Ohio as follows:

**SECTION 1.** That legal counsel shall be provided for this Village and the legal professional corporation of Fitzpatrick, Zimmerman & Rose Co., L.P.A., of New Philadelphia, Ohio, is hereby contracted as such counsel and shall be known as "Legal Counsel of the Village of Bolivar". Said Legal Counsel is hereby contracted for a term beginning January 1, 2014 and ending December 31, 2014.

**SECTION 2.** Said Village Legal Counsel shall be the legal advisor for the Village and the officers thereof in their official capacity and as such, attorneys to prosecute and defend all actions by or against the said Village or any department or officer thereof, during the term of its contract; to render legal opinions to the said Council or any department or officer of the Village during the term of its contract upon the request in writing.

**SECTION 3.** Said Legal Counsel shall be compensated at the rate of \$60.00 per hour for all work and services performed on behalf of said Village. Said Legal Counsel shall have, Jillian A. Daisher, or another licensed attorney, attend council meetings of the Village as it shall be requested to do so and shall prepare legislation therefore; said fee shall be payable at the end of each month when the services were rendered and statements submitted therefore to the said Village Clerk. The said Legal Counsel may in its judgment select another employee of it to attend the council meetings of the Village or to perform work for the Village.

**SECTION 4.** All prior ordinances inconsistent herewith are hereby repealed.

**SECTION 5.** This ordinance is hereby declared to be an emergency measure necessary to the health, safety and welfare of the citizens of the Village of Bolivar, Ohio, for the reason that legal counsel must be retained by the said Village, and therefore this ordinance shall take effect and be in force immediately upon its passage and approval.

**SECTION 6.** This ordinance shall take effect retroactively to January 1, 2014 through December 31, 2014.

**PASSED:** this \_\_\_\_ day of \_\_\_\_\_, 2014

\_\_\_\_\_  
Rebecca S. Hubble, Mayor

**ATTEST:**

\_\_\_\_\_  
Maria A. App, Clerk-Treasurer

