

ORIGINAL

IN THE SUPREME COURT OF OHIO

IRVIN W. HUTH, et al.,)	Case No. 14-1214
)	
Relators,)	
)	(Original Action in Prohibition and
vs.)	Mandamus)
)	
NEW PHILADELPHIA MUNICIPAL)	
COURT, <i>et al.</i> ,)	
)	
Respondents)	

**JOINT ANSWER OF INTERVENING RESPONDENTS FITZPATRICK
ZIMMERMAN & ROSE CO., LPA AND STEVEN A. ANDERSON, ESQ.,
TO RELATORS' "COMPLAINT FOR WRITS OF PROHIBITION,
MANDAMUS, OTHER WRIT AND ALTERNATIVE WRITS"**

Now come Fitzpatrick Zimmerman & Rose Co., LPA and Steven A. Anderson, Esq. (collectively referred to as "Intervening Respondents") for their joint Answer to Relators' "Complaint for Writs of Prohibition, Mandamus, Other Writ and Alternative Writs" and state as follows:

1. Intervening Respondents deny the allegations in paragraph 1 of the Complaint with respect to Relators' intent in filing an original action for a writ of prohibition and mandamus and deny that Respondents are entitled to such relief.
2. Intervening Respondents deny the allegations in paragraph 2 of the Complaint.
3. Intervening Respondents deny the allegations in paragraph 3 of the Complaint.
4. Intervening Respondents deny the Relators' asserted position that the Village of

Bolivar must comply with the law and appoint a person who can legally operate as prosecutor

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and deny all remaining allegations in paragraph 4 of the Complaint for lack of knowledge sufficient to form a belief as to their truth and as to what the intent of the Relators' is.

5. Intervening Respondents deny the allegations in paragraph 5 of the Complaint.

6. Intervening Respondents admit this Court has jurisdiction over original actions in prohibition and mandamus pursuant to the Ohio Constitution, Article IV, Section 2(B)(1) and that its provision vests this Court with original jurisdiction to grant writs of mandamus prohibition and other writs but deny all remaining allegations in paragraph 6 of the Complaint.

7. Intervening Respondents admit the allegations in paragraph 7 of the Complaint except that the statute cited therein does not read writs of "supersede" but rather writs of "supersedeas."

8. Intervening Respondents admit that Relators have been criminally charged and are currently being prosecuted in the New Philadelphia Municipal Court, New Philadelphia, Ohio, and that on or about May 29, 2014, relator Irvin Huth was served with three summonses for alleged violations of Ohio Rev. Code §§ 2917.11(A)(1) (disorderly conduct), 2903.22(A) (menacing) and 2917.12(A)(1) (disturbing a lawful meeting) and Relator Michela Huth, also was served with a summons for an alleged violation of O.R.C. § 2917.12(A)(1) (disturbing a lawful meeting), but deny all of the remaining allegations in paragraph 8 of the Complaint.

9. Intervening Respondents admit the allegations in paragraph 9 of the Complaint.

10. Intervening Respondents deny the allegations in paragraph 10 of the Complaint.

11. Intervening Respondents admit the allegations in paragraph 11 of the Complaint.

12. Intervening Respondents admit the allegations in paragraph 12 of the Complaint.

13. Intervening Respondents admit the charges against both Relators stem from a May 19, 2014 Village of Bolivar (Ohio) special meeting of the Village Council, but deny all remaining allegations in paragraph 13 of the Complaint.

14. Intervening Respondents deny the allegations in paragraph 14 of the Complaint.

15. Intervening Respondents deny the allegations in paragraph 15 of the Complaint.

16. Intervening Respondents admit the allegations in paragraph 16 of the Complaint.

17. Intervening Respondents admit the allegations in paragraph 17 of the Complaint.

18. Intervening Respondents deny the allegations in paragraph 18 of the Complaint.

19. Intervening Respondents deny the allegations in paragraph 19 of the Complaint.

20. Intervening Respondents deny the allegations in paragraph 20 of the Complaint and state that Mr. Anderson is the prosecuting attorney for the Villages of Bolivar, Midvale and Strasburg.

21. Intervening Respondents incorporate their admissions and denials in paragraphs 1 through 20 herein as their answer to the allegations incorporated by reference into paragraph 21 of the Complaint.

22. Intervening Respondents state that O.R.C. § 1901.34 contains the language quoted in Paragraph 22 of the Complaint, further state that the provisions of O.R.C. § 1901.34 speak for themselves, and deny any remaining allegations in paragraph 22 of the Complaint that are not specifically admitted herein.

23. Intervening Respondents admit the allegations in paragraph 23 of the Complaint.

24. Intervening Respondents admit that Steven A. Anderson is the Prosecutor for the Village of Bolivar, but deny all allegations in paragraph 24 of the Complaint that are inconsistent with the foregoing admission.

25. Intervening Respondents deny the allegations in paragraph 25 of the Complaint.

26. Intervening Respondents deny the allegations in paragraph 26 of the Complaint.

27. Intervening Respondents deny the allegations in paragraph 27 of the Complaint.

28. Intervening Respondents admit that Mr. Anderson is a private attorney and is duly authorized to prosecute before the New Philadelphia Municipal Court cases in which the alleged criminal offense occurred within the Village of Bolivar.

29. Intervening Respondents deny the allegations in paragraph 29 of the Complaint.

30. Intervening Respondents deny the allegations in paragraph 30 of the Complaint.

31. Intervening Respondents incorporate their admissions and denials in paragraphs 1 through 30 herein as their answer to the allegations incorporated by reference into paragraph 31 of the Complaint.

32. Intervening Respondents admit the allegations in paragraph 32 of the Complaint.

33. Intervening Respondents admit the allegations in paragraph 33 of the Complaint.

34. Intervening Respondents admit the allegations in paragraph 34 of the Complaint.

35. Intervening Respondents admit that Ordinance # O-88-2014 designated Fitzpatrick, Zimmerman & Rose Co., L.P.A. as Legal Counsel for the Village and retained said law firm to represent the Village, inclusive of rendering legal opinions to the Village but deny all other allegations in paragraph 35 of the Complaint that are inconsistent with the foregoing admissions.

36. Intervening Respondents admit the allegations in paragraph 36 of the Complaint.

37. Intervening Respondents deny the allegations in paragraph 37 of the Complaint.

38. Intervening Respondents deny the allegations in paragraph 38 of the Complaint.

39. Intervening Respondents admit the allegations in paragraph 39 of the Complaint.

40. Intervening Respondents deny the allegations in paragraph 40 of the Complaint.

41. Intervening Respondents incorporate their admissions and denials in paragraphs 1 through 40 herein as their answer to the allegations incorporated by reference into paragraph 41 of the Complaint.

42. Intervening Respondents admit the allegations in paragraph 42 of the Complaint.

43. Intervening Respondents deny the allegations in paragraph 43 of the Complaint.

44. Intervening Respondents state that Ohio Attorney General Opinion No. 99-027, March 22, 1999, speaks for itself and deny the allegations in paragraph 44 of the Complaint that are inconsistent with the foregoing statement.

45. Intervening Respondents deny the allegations in paragraph 45 of the Complaint.

46. Intervening Respondents deny the allegations in paragraph 46 of the Complaint.

47. Intervening Respondents deny the allegations in paragraph 47 of the Complaint.

48. Intervening Respondents deny the allegations in paragraph 48 of the Complaint.

49. Intervening Respondents deny the allegations in paragraph 49 of the Complaint.

50. Intervening Respondents deny the allegations in paragraph 50 of the Complaint.

51. Intervening Respondents incorporate their admissions and denials in paragraphs 1 through 50 herein as their answer to the allegations incorporated by reference into paragraph 51 of the Complaint.

52. Intervening Respondents deny the allegations in paragraph 52 of the Complaint.

53. Intervening Respondents deny the allegations in paragraph 53 of the Complaint.

54. Intervening Respondents state that the allegations in paragraph 54 of the Complaint call for a legal conclusions for which an answer is not necessary but otherwise the allegations in paragraph 54 are denied.

55. Intervening Respondents deny the allegations in paragraph 55 of the Complaint.

56. Intervening Respondents deny the allegations in paragraph 56 of the Complaint.

57. Intervening Respondents deny the allegations in paragraph 57 of the Complaint.

58. Intervening Respondents deny the allegations in paragraph 58 of the Complaint.

59. Intervening Respondents deny the allegations in paragraph 59 of the Complaint.

60. Intervening Respondents incorporate their admissions and denials in paragraphs 1 through 59 herein as their answer to the allegations incorporated by reference into paragraph 60 of the Complaint.

61. Intervening Respondents admit that O.R.C. § 705.28 states, in part, the quoted language that is set forth in paragraph 61 of the Complaint, but said section contains additional provisions beyond what is set forth in paragraph 61 and Intervening Respondents deny all other remaining allegations in paragraph 61.

62. Intervening Respondents admit that O.R.C. § 3.22 states, in part, the quoted language set forth in paragraph 62 of the Complaint.

63. Intervening Respondents deny the allegations in paragraph 63 of the Complaint.

64. Intervening Respondents deny the allegations in paragraph 64 of the Complaint.

65. Intervening Respondents deny the allegations in paragraph 65 of the Complaint.

66. Intervening Respondents deny the allegations in paragraph 66 of the Complaint.

67. Intervening Respondents deny the allegations in paragraph 67 of the Complaint.

68. Intervening Respondents deny the allegations in paragraph 68 of the Complaint.

69. Intervening Respondents incorporate their admissions and denials in paragraphs 1 through 68 herein as their answer to the allegations incorporated by reference into paragraph 69 of the Complaint.

70. Intervening Respondents deny the allegations in paragraph 70 of the Complaint.

71. Intervening Respondents admit the allegations in paragraph 71 of the Complaint.

72. Intervening Respondents admit the allegations in paragraph 72 of the Complaint.

73. Intervening Respondents admit that Rebecca Hubble is the Mayor of the Village of Bolivar and also that Rebecca Hubble is the complaining witness in the Relators' criminal cases. However, Intervening Respondents state that Rebecca Hubble was acting in her individual capacity as a private citizen in being the complaining witness, and Intervening Respondents deny that she was acting in her official capacity as Mayor of the Village of Bolivar.

74. Intervening Respondents admit Fitzpatrick Zimmerman & Rose Co., LPA represents Mayor Hubble in her official capacity and the Village of Bolivar, and that Steven A. Anderson is an employee of the Law Firm, but deny all remaining allegations in paragraph 74 of the Complaint and all allegations inconsistent with the foregoing admissions.

75. Intervening Respondents deny the allegations in paragraph 75 of the Complaint.

76. Intervening Respondents incorporate their admissions and denials in paragraphs 1 through 75 herein as their answer to the allegations incorporated by reference into paragraph 76 of the Complaint.

77. Intervening Respondents deny the allegations in paragraph 77 of the Complaint.

78. Intervening Respondents deny the allegations in paragraph 78 of the Complaint.

79. Intervening Respondents deny the allegations in paragraph 79 of the Complaint.

80. Intervening Respondents deny the allegations in paragraph 80 of the Complaint.

81. Intervening Respondents incorporate their admissions and denials in paragraphs 1 through 80 herein as their answer to the allegations incorporated by reference into paragraph 81 of the Complaint.

82. Intervening Respondents deny the allegations in paragraph 82 of the Complaint.

83. Intervening Respondents deny the allegations in paragraph 83 of the Complaint.

84. Intervening Respondents deny the allegations in paragraph 84 of the Complaint.

85. Intervening Respondents deny the allegations in paragraph 85 of the Complaint.

86. Intervening Respondents deny the allegations in paragraph 86 of the Complaint.

87. Intervening Respondents deny the allegations in paragraph 87 of the Complaint.

88. Intervening Respondents incorporate their admissions and denials in paragraphs 1 through 87 herein as their answer to the allegations incorporated by reference into paragraph 88 of the Complaint.

89. Intervening Respondents deny the allegations in paragraph 89 of the Complaint.

90. Intervening Respondents incorporate their admissions and denials in paragraphs 1 through 89 herein as their answer to the allegations incorporated by reference into paragraph 90 of the Complaint.

91. Intervening Respondents deny the allegations in paragraph 91 of the Complaint.

92. Intervening Respondents deny the allegations in paragraph 92 of the Complaint.

93. Intervening Respondents deny the allegations in paragraph 93 of the Complaint.

94. Intervening Respondents deny the allegations in paragraph 94 of the Complaint.

95. Intervening Respondents admit that the New Philadelphia Municipal Court is exercising judicial authority to hear the criminal cases of Relators which were being prosecuted by Steven A. Anderson for crimes committed in the Village of Bolivar, but deny all remaining allegations in paragraph 95 of the Complaint that are not specifically admitted herein.

96. Intervening Respondents admit that the New Philadelphia Municipal Court has exercised judicial authority to hear criminal cases that were being prosecuted by Steven A.

Anderson for crimes committed in the Village of Bolivar, but deny all remaining allegations in paragraph 96 of the Complaint that are not specifically admitted herein.

97. Intervening Respondents deny the allegations in paragraph 97 of the Complaint.

98. Intervening Respondents deny the allegations in paragraph 98 of the Complaint.

AFFIRMATIVE DEFENSES

1. Relators' Complaint fails to state a claim upon which relief can be granted.

2. Relators lack standing to bring the claims for relief in the Complaint.

3. Relators' claims are moot.

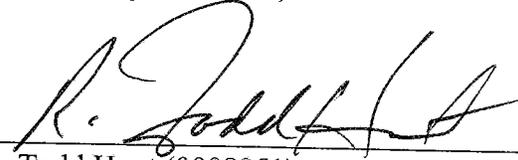
4. Relators have an adequate remedy at law to assert their claims through the Municipal Court and an appeal, if necessary, even though these Intervening Respondents state that Relators' claims and legal arguments have no merit.

5. Relators' claims related to the criminal prosecution of the others are barred by the doctrine of *res judicata* and/or collateral estoppel.

6. Relators have failed to join a necessary party under Civil Rule 19, that party being the Village of Bolivar.

WHEREFORE, having answered Relators' Complaint, Intervening Respondents, Fitzpatrick Zimmerman & Rose Co., LPA and Steven A. Anderson, Esq., pray that the Complaint be dismissed, with prejudice, at Relators' costs and expenses and that these Intervening Respondents be awarded their reasonable costs, expenses and attorneys' fees and such other relief which the Court may deem just and proper.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. Todd Hunt", written over a horizontal line.

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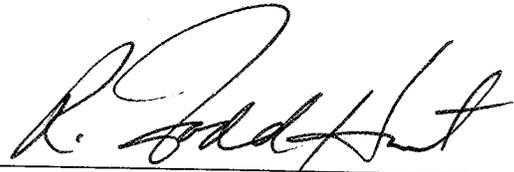
*Attorneys for Intervening Respondents
Fitzpatrick Zimmerman & Rose Co., LPA and
Steven A. Anderson, Esq.*

CERTIFICATE OF SERVICE

A copy of the foregoing *Joint Answer Of Intervening Respondents Fitzpatrick Zimmerman & Rose Co., LPA And Steven A. Anderson, Esq. To Relators' "Complaint For Writs Of Prohibition, Mandamus, Other Writ And Alternative Writs"* has been sent via Regular U.S. Mail to the following this 11th day of August, 2014:

Michela Huth
Attorney At Law
P.O. Box 673
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Bolivar, Ohio 44612
Attorney for Relator Irvin W. Huth, and Pro Se

Marvin T. Fete
Attorney At Law
138 Second Street NW
New Philadelphia, Ohio 44663
Attorney for Respondents

A handwritten signature in black ink, appearing to read "R. Fete", written over a horizontal line.

*One of the Attorneys for Intervening
Respondents Fitzpatrick Zimmerman & Rose
Co., LPA and Steven A. Anderson, Esq.*