ORIGINAL

**IN THE SUPREME COURT OF OHIO**

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| State *ex rel.*, THE HONORABLE ANGELA R. STOKES, | : | |
| Relator, | : | Case No. 2014-0467 |
| v. | : | |
| THE HONORABLE RONALD B. ADRINE, | : | Original Action in Prohibition |
| Respondent. | : | |

**RESPONDENT'S MEMORANDUM IN OPPOSITION TO RELATOR'S MOTION FOR RECONSIDERATION**

FILED
DEC 11 2014
CLERK OF COURT
SUPREME COURT OF OHIO

## I. INTRODUCTION & BACKGROUND

Relator, The Honorable Angela R. Stokes ("Relator" or "Judge Stokes"), filed a Complaint with this Court on March 26, 2014, seeking, among other things, a writ of prohibition to reverse and suspend the operation of a series of administrative orders (the "Administrative Orders") issued by Respondent, The Honorable Judge Ronald B. Adrine ("Respondent" or "Judge Adrine"), as administrative judge in March 2014. The Administrative Orders generally transferred all of the criminal cases then-assigned to Judge Stokes and removed her from the court's random draw of criminal cases after years of persistent complaints received by Judge Adrine about the way Judge Stokes operated her criminal docket and her repeated refusal to modify or correct such conduct.

Judge Adrine moved to dismiss Relator's Complaint on several grounds, including that she had failed to exhaust the available remedies under Sup.R. 4.02, which provides that the actions of an administrative judge may be modified or vacated by a majority vote of the court's

judges. This Court initially denied Respondent's Motion to Dismiss as to Relator's prohibition claim, granted an alternative writ of prohibition, and set a briefing schedule for the presentation of evidence and filing of briefs.

On September 22, 2014, Respondent filed a Motion for Clarification of his obligations pursuant to the Court's alternative writ, in particular, whether this Court's issuance of an alternative writ mandated that he stay (and effectively reverse) the Administrative Orders and restore Relator to the criminal docket pending final resolution of this matter. In so doing, Judge Adrine explained that he sought clarification given the unique procedural context presented in this case and in order to minimize the potential for future procedural and administrative confusion. *See* Memorandum in Support of Motion to Clarify at 2. As Judge Adrine explained, the issuance of an alternative writ in the traditional context has the effect of preserving the status quo pending final resolution by this Court. Here, however, to the extent the alternative writ required reversal of the Administrative Orders, it would *upend* the status quo. *Id.* at 2-3.

Upon consideration of Respondent's Motion for Clarification, this Court issued an Entry (the "Dismissal Entry") on November 19, 2014. Pursuant to the Dismissal Entry, this Court ordered: (1) that Respondent's Motion for Clarification was treated as a motion for reconsideration; (2) that the motion for reconsideration was granted, and (3) that the Complaint was dismissed because Relator "failed to exhaust available remedies under Sup.R. 4.02."

Respondent has now filed a Motion for Reconsideration, making two arguments. First, Relator contends that the Dismissal Entry violated well-established precedent that the exhaustion requirement is excused when a court patently and unambiguously lacks jurisdiction to proceed. Second, Relator contends that the Dismissal Entry violated her due process rights by treating

Respondent's Motion for Clarification as a motion for reconsideration without notice. Relator is wrong on both counts.

Under S.Ct.Prac.R. 18.02, this Court will reconsider its decision to "correct decisions which, upon reflection, are deemed to have been made in error." *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 139 Ohio St.3d 212, 2014-Ohio-1940, 11 N.E.3d 222, ¶9. This Court will not, however, grant reconsideration when a movant seeks merely to reargue the case at hand. S.Ct.Prac.R. 18.02(B). Rather, the movant must demonstrate that this Court made an obvious error or present an issue that this court failed to consider. *Dublin City Schools Bd. of Edn., supra*, at ¶10.

Here, the Dismissal Entry contained no obvious error, because the exception to the exhaustion requirement relied on by Relator does not apply to Sup.R. 4.02 and the facts of this case. Moreover, there was no due process violation here because the exhaustion requirement was raised and fully addressed by the parties as part of the briefing on Respondent's Motion to Dismiss. As such, Relator's Motion for Reconsideration of this Court's November 19, 2014 Dismissal Entry should be denied.[1]

## II. ARGUMENT

### A. This Court's Dismissal Order does not contain any obvious error because it is well-established that prohibition will not lie where there is an alternative available remedy like Sup.R. 4.02.

The standards for issuing a writ of prohibition are well established. A relator must demonstrate that: (1) the respondent is about to exercise judicial or quasi-judicial authority, (2)

[1] In her Motion for Reconsideration, Relator again repeats the false suggestion that Respondent has interfered with her ability to defend herself in the on-going disciplinary case by restricting her access to court files. *See* Motion for Reconsideration at 4-5. As set forth in detail in Respondent's Merit Brief filed on October 23, 2014, Respondent has not interfered with Judge Stokes' access to court files necessary for her defense. *See generally*, Merit Brief of Respondent, at 18-20.

the exercise of the judicial or quasi-judicial authority is not authorized by law, and (3) the denial of the writ will cause injury to the relator for which no other adequate remedy exists in the ordinary course of the law. *State ex rel. Wright v. Ohio Bur. of Motor Vehicles*, 87 Ohio St.3d 184, 185, 718 N.E.2d 908 (1999). Accordingly, "[p]rohibition will not issue if the party seeking extraordinary relief has an adequate remedy in the ordinary course of law." *State ex rel. Hemsley v. Unruh*, 128 Ohio St.3d 307, 309, 2001-Ohio-226, 943 N.E.2d 1014, ¶9.

Here, Relator challenges the validity of various Administrative Orders entered by Judge Adrine, acting as the Administrative Judge of the Cleveland Municipal Court. The Rules of Superintendence for the Courts of Ohio provides a specific remedy to have those Administrative Orders modified or vacated. Sup.R. 4.02 provides that "[t]he judges of a court or a division of a court, by majority vote, may modify or vacate the actions of the administrative judge of the court or division." Relator does not dispute that she did not exhaust her available remedies under Sup. R. 4.02. In fact, it is undisputed that Relator has not sought any vote by the judges of the Cleveland Municipal Court to modify or vacate the Administrative Orders.

Instead, Relator argues that she is not required to exhaust her available remedies under Sup. R. 4.02, citing numerous cases for the general proposition that the exhaustion requirement is excused if a court's lack of jurisdiction is patent and unambiguous. *See generally* Motion for Reconsideration at 7-11. Relator's reliance on the exception to the exhaustion requirement is unfounded.

None of the cases cited by Relator involve application of a specific administrative remedy like Sup.R. 4.02, a rule adopted by this Court under its general supervisory authority over the courts to specifically address challenges, like here, to an Administrative Judge's actions. Moreover, the procedural posture of this case is not remotely akin to the cases where the

exhaustion exception applies, and as such, the underlying policy reasons for the exception – the interests of judicial economy – do not apply.

Generally, "a court having general subject-matter jurisdiction can determine its own jurisdiction and a party challenging that jurisdiction has an adequate remedy by appeal." *State ex rel. Goldberg v. Mahoning Cty. Probate Court*, 93, Ohio St.3d 160, 162, 753 N.E.2d 192 (2001). However, as the cases cited by Relator reflect, prohibition will lie where the "interest of judicial economy" is served by avoiding the necessity of waiting for the underlying litigation to run its course only to be nullified on appeal. *Department of Administrative Services, Office of Collective Bargaining v. State Employment Relations Bd.*, 54 Ohio St.3d, 48, 52, 562 N.E.2d 125 (1990). Thus, where a relator can establish that the respondent unambiguously and patently lacks jurisdiction to proceed, prohibition will lie to prevent the court from continuing to assert jurisdiction over the proceeding. *Id.*, *see also State ex rel. State of Ohio v. Lewis*, 99 Ohio St.3d 97, 2003-Ohio-2476, 789 N.E.2d 195, ¶18 (noting that availability of alternate remedies *like appeal* are immaterial in cases of a patent and unambiguous lack of jurisdiction to proceed).

Unlike the cases Relator cites, this cases does not involve a challenge to a court's assertion of jurisdiction over on-going legal proceedings over which the court unambiguously lacks jurisdiction. Rather, Relator seeks the reversal of certain administrative orders and that she be allowed to proceed *over future litigation* through the restoration of her criminal docket. The available remedy that Relator seeks to avoid here is not some distant appeal that would render the cost of on-going legal proceedings (in both time and judicial resources) a nullity. The available remedy here is a vote of Relator's fellow judges on the Cleveland Municipal Court.

Accordingly, the interests of judicial economy are *not* served by allowing Relator to proceed with her prohibition action without first exhausting her available remedies under Sup.R.

4.02. In fact, the opposite is true -- requiring Relator (and others like her) to exhaust their Sup.R. 4.02 remedies will serve the interest of judicial economy.

In short, this Court did not commit an obvious error when it dismissed Relator's action because she failed to exhaust her available remedies under Sup.R. 4.02.

**B. Treating Respondent's Motion for Clarification as a motion for reconsideration did not violate Relator's due process rights because the "exhaustion requirement" had been fully briefed.**

The fundamental elements of procedural due process are notice and an opportunity to be heard. *State v. Mateo*, 57 Ohio St.3d 50, 52, 565 N.E.2d 590 (1991). Relator contends that by treating Respondent's Motion for Clarification as a motion for reconsideration, the Court did not provide her with a fair opportunity to address the merits of the exhaustion requirement. *See* Motion for Reconsideration at 11-13. Relator however ignores the fact that the exhaustion requirement was fully briefed by the parties as part of Respondent's May 2, 2014 Motion to Dismiss.

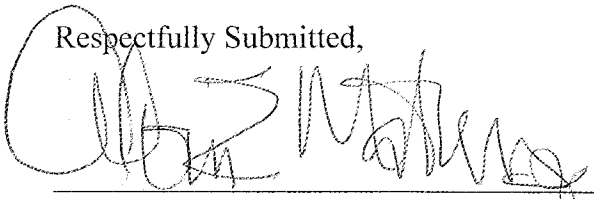
Respondent's Motion to Dismiss expressly argued that Relator's prohibition claim should be dismissed because Relator had failed to exhaust her remedies under Sup.R. 4.02. *See* May 2, 2014 Motion to Dismiss at 7 & 12. In her Memorandum in Opposition to the Motion to Dismiss, Relator fully briefed the exhaustion issue. *See* Memo Opp. Motion to Dismiss at 4-5, 10. Likewise, Relator also briefed the exhaustion issue in her Merit Brief filed on October 3, 2014. *See* Oct. 3, 2014 Merit Brief of Relator at 24-27.

Thus, Relator had both notice and an opportunity to be heard on the exhaustion requirement. Accordingly, treating Respondent's Motion for Clarification as a motion for reconsideration was not unfair or a violation of Relator's due process rights.

## III. CONCLUSION

For the foregoing reasons, Relator's Motion for Reconsideration should be denied.

Respectfully Submitted,



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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing *Respondent's Memorandum In Opposition To Relator's Motion For Reconsideration* was served via electronic mail and regular U.S. Mail, postage prepaid, this 11th day of December, 2014, upon the following:

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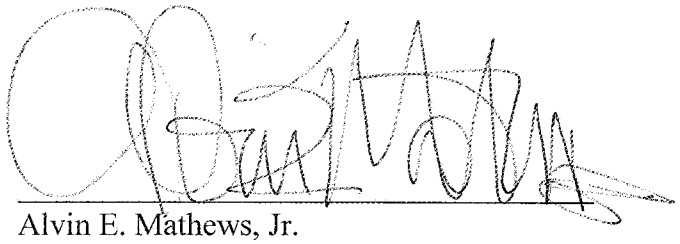

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