

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, ex rel  
DR. JUDITH VARNAU,

Relator,

vs.

TWELFTH DISTRICT COURT OF  
APPEALS,

and

ROBERT A. HENDRICKSON,

Respondents.

SUPREME CT. CASE NO.  
2014-1605

In an Original Action for Writs  
of Prohibition and Mandamus

SUBMISSION OF EVIDENCE BY  
RELATOR DR. JUDITH VARNAU, BROWN COUNTY CORONER

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**FILED**  
FEB 09 2015  
CLERK OF COURT  
SUPREME COURT OF OHIO

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Twelfth District Court of Appeals and  
Judge Robert Hendrickson

**RECEIVED**  
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CLERK OF COURT  
SUPREME COURT OF OHIO

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IN THE SUPREME COURT OF OHIO

<b>STATE OF OHIO ex rel</b>	)	<b>Supreme Court Case No.:</b>
<b>DR. JUDITH VARNAU,</b>	)	<b>2014-1605</b>
<b>BROWN COUNTY, OHIO, CORONER,</b>	)	
	)	<b>SUBMISSION OF</b>
Relator,	)	<b>EVIDENCE BY RELATOR</b>
	)	<b>DR. JUDITH VARNAU</b>
v.	)	
	)	
<b>TWELFTH DISTRICT COURT OF</b>	)	
<b>APPEALS,</b>	)	
	)	
and	)	
	)	
<b>ROBERT A. HENDRICKSON</b>	)	
	)	
Respondents.	)	

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Relator, Dr. Judith Varnau, Brown County Coroner, by and counsel, pursuant to this court's entries, orders, and decisions of January 28, 2015, hereby submits the following evidence for the court's consideration:

1. Complaint for Removal of Public Officer, Adamson et al. v. Dr. Judith Varnau, Brown County Coroner, Brown County Common Pleas Court, Case No. 2014-0267, April 16, 2014.
2. Findings and Decision on Complaint for Removal of Public Officer (Brown County Coroner), Adamson et al. v. Dr. Judith Varnau, Brown County Coroner, Brown County Common Pleas Court, Case No. 2014-0267, June 23, 2014.
3. Court of Appeals Docket Entry Listing, Adamson v. Varnau, 12<sup>th</sup> District Court of Appeals for Brown County, Ohio, Case No. CA2014-0716, September 9, 2014.
4. Entry Granting Leave to Appeal and Denying Motions to Strike Notice of Appeal and Dismiss Appeal, 12<sup>th</sup> District Court of Appeals for Brown County, Ohio, Case No. CA2014-

0716, Sept. 8, 2014.

5. Scheduling Order for Accelerated Calendar, 12<sup>th</sup> District Court of Appeals for Brown County, Ohio, Case No. CA2014-0716, Sept. 10, 2014.

6. Affidavit of Dr. Judith Varnau, Brown County Coroner, Sept. 13, 2014.

  
THOMAS G. EAGLE CO., L.P.A.

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Counsel for Relator, Dr. Judith Varnau,  
Brown County Coroner

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing was served upon the Attorneys for Respondents, Assistant Attorneys General, Sarah E. Pierce & Tiffany L. Carwile, 30 East Broad St. 16<sup>th</sup> Floor, Columbus, OH 43215, by ordinary U.S. mail this 4<sup>th</sup> day of February 2015.

  
Thomas G. Eagle (#0034492)

FILED

14 APR 16 PM 1:12

COURT OF COMMON PLEAS  
CIVIL DIVISION  
BROWN COUNTY, OHIO

**CERTIFIED COPY**

COURT COMMON PLEAS  
BROWN COUNTY, OHIO  
CLERK: L. CLARK GRAY  
DEPUTY: *Brittany Small*

20140267

Steve Adamson  
5071 Tri-County Highway  
Mt. Orab, Ohio 45154

CLERK OF COURTS

and

Rebecca Adamson  
5071 Tri-County Highway  
Mt. Orab, Ohio 45154

Plaintiffs,

vs.

Dr. Judith Varnau  
*in her capacity as Brown County Coroner*  
7661 White Swan Road  
Georgetown, Ohio 45121

Defendant.

: Case No. \_\_\_\_\_

: Judge Scott T. Gusweiler

: **COMPLAINT FOR REMOVAL**  
: **OF PUBLIC OFFICER**

Now come Steve Adamson and Rebecca Adamson (the "Adamsons"), individually and on behalf of the more than 2,300 electors who signed the petition affixed to this Complaint as required by law (collectively, the "Petitioners"), by and through the undersigned counsel, and seek the prompt removal of Dr. Judith Varnau ("Defendant") from the elected office of Brown County Coroner, pursuant to §2.38 of the Ohio Constitution and pursuant to Rev. Code §3.07 et seq. For their Complaint, the Adamsons state as follows:

**BACKGROUND**

1. Steve Adamson and Rebecca Adamson are residents of Brown County, Ohio and are the parents of the late Zachary D. Adamson ("Zachary"), who died on January 9, 2014 in Brown County, Ohio.



2. The more than 2,300 signatures on the petition attached to this Complaint, the same being incorporated by this reference as if fully restated herein, were obtained from residents of Brown County, Ohio and represent not less than fifteen percent (15%) of the total votes cast in Brown County, Ohio in the most recent gubernatorial election as required by Rev. Code §3.08.

3. Defendant is a resident of Brown County, Ohio who currently holds, and has held at all times relevant to this Complaint, the office of Brown County Coroner.

4. In her official capacity as the Brown County Coroner, Defendant has specific duties as proscribed by statute, as well as a duty to act reasonably and in the best interests of the citizens of Brown County, Ohio.

5. Petitioners contend that the Defendant breached the duties proscribed to her, by statute, in her official capacity as the Brown County Coroner.

6. Petitioners contend that the Defendant committed misfeasance, malfeasance and/or nonfeasance in her official capacity as the Brown County Coroner.

7. Petitioners contend that the Defendant willfully neglected to perform the statutory duties imposed upon her in her official capacity as the Brown County Coroner.

8. Petitioners contend that the Defendant breached her duty to act reasonably and in the best interests of the citizens of Brown County, Ohio in her official capacity as the Brown County Coroner.

9. Public officers may be removed for a series or pattern of misconduct.

10. The removal of a public officer is a judicial proceeding and the trial court has discretion over the manner in which the trial is conducted.

11. A trial court's decision to remove the Defendant from office must be supported by clear and convincing evidence.

12. Zachary Adamson died in his Brown County residence from a gunshot wound on January 9, 2014.

13. Defendant was present at the residence and pronounced Zachary's death.

14. Zachary was transported to the Brown County Regional Medical Center in Georgetown, Ohio.

15. Defendant met with the Adamsons at the hospital in Georgetown where the parties discussed Zachary's death.'

16. The Adamsons sought permission from the Defendant to return to and enter Zachary's residence in order to retrieve certain of his personal items.

17. The Adamsons were advised by the Defendant that Zachary's residence was not restricted because it was not a crime scene.

18. The Adamsons drove from the hospital to Zachary's residence, whereupon they discovered that the premises was left unlocked.

19. The Adamsons discovered that while much of his personal property remained in the residence, other personal items had been removed by others.

#### **COUNT ONE**

#### **Breach of Duty to Secure Decedent's Valuables**

20. Plaintiff incorporates the foregoing paragraphs as if fully restated herein

21. Pursuant to Rev. Code §313.14, the Defendant has a duty to secure the personal valuables of Zachary Adamson.

22. Defendant failed to secure, take custody of, store, inventory, or otherwise take adequate steps to preserve Zachary's valuable personal effects.

23. Because Defendant failed to safeguard Zachary's personal effects, certain items were removed from Zachary's residence by others, none of whom were law enforcement or Zachary's family.

24. Defendant's failure to safeguard Zachary's personal effects allowed others to improperly obtain and, upon information and belief, modify certain items of Zachary's personal effects and valuables.

25. Defendant's failure to safeguard Zachary's personal effects and valuables caused additional emotional distress to the Adamsons, who had to take additional measures to acquire Zachary's personal effects and valuables.

26. Upon information and belief, Defendant has failed to secure the personal effects and valuables of other decedents in Brown County.

27. Upon information and belief, Defendant has allowed the residences of other decedents to remain unlocked and unsecured upon conclusion of her evaluation of death scenes.

28. Defendant willfully failed and refused to fulfill her statutory duties as coroner.

**COUNT TWO**  
**Breach of Duty to Deliver Firearms**

29. Plaintiff incorporates the foregoing paragraphs as if fully restated herein.

30. Pursuant to Rev. Code §313.141, the Defendant is required to deliver a decedent's firearms "to the chief of police of the municipal corporation within which the body is found, or to the sheriff of the county if the body is not found within a municipal corporation."

31. The opinions of the Ohio Attorney General provide that, in the alternative, a coroner may deliver a decedent's firearms to his/her the next of kin.

32. Defendant did not take custody of Zachary's firearms, including the firearm presumably used in his death.

33. Upon information and belief, Defendant failed and refused to take possession of, handle or otherwise secure Zachary's firearms.

34. Upon information and belief, Defendant instructed and/or permitted Zachary's roommate to handle the same firearm presumably used in Zachary's death, and to take custody of same.

35. Defendant willfully failed and/or refused to deliver the late Zachary Adamson's firearms to law enforcement.

36. Defendant willfully failed and/or refused to deliver the late Zachary Adamson's firearms to his next of kin.

37. Defendant willfully failed and/or refused to take reasonable steps to secure and safeguard the other firearms owned and kept by Zachary at his residence.

38. Upon information and belief, Defendant has also failed and/or refused to take reasonable steps to secure and safeguard other firearms owned by other decedents at other death scenes in Brown County, Ohio.

39. Upon information and belief, Defendant has also failed and/or refused to deliver other decedents' firearms to law enforcement from other death scenes in Brown County.

40. Upon information and belief, Defendant has also failed and/or refused to deliver other decedents' firearms to their next of kin.

**COUNT THREE**  
**Breach of Duty to Notify**

41. Plaintiff incorporates the foregoing paragraphs as if fully restated herein.

42. Pursuant to Rev. Code §313.14, the Defendant has a duty to notify the decedent's next of kin.

43. On the night of Zachary's death, the Adamsons received a call that Zachary had been shot with a repeated statement that, "he's not going to make it."

44. The Adamsons then spoke to another individual at Zachary's residence who confirmed that Zachary had been shot and was unresponsive.

45. As the Adamsons were driving to Zachary's residence, they received another call instructing them to redirect their travel and to meet the coroner at the hospital in Georgetown.

46. The Adamsons spoke to the coroner after a series of devastating phone calls received from others.

47. The delay in communications between the Defendant and the Adamsons, together with the content of the prior telephone calls regarding Zachary's death, caused immeasurable distress upon the Adamsons.

48. Defendant willfully failed and refused to fulfill her statutory duties as coroner in a reasonable and diligent manner.

**COUNT FOUR**  
**Breach of Duty to the Public at Large**

49. Plaintiffs incorporate the foregoing paragraphs as if fully restated herein.

50. Defendant, as a public official, has a duty to act reasonably and in the best interests of the citizens of Brown County, Ohio when acting in her official capacity as the Brown County Coroner.

51. Defendant's failure to secure firearms at death scenes, including Zachary Adamson's firearms, endangers the public's health, safety and welfare because such items are inherently dangerous.

52. Defendant's failure to treat all death scenes, including Zachary Adamson's death scene, as possible homicides endangers the public's health, safety and welfare because valuable

evidentiary information and materials ordinarily useful in criminal convictions are compromised or lost if not timely and properly collected from death scenes.

53. Defendant's decision and instruction to cause a deceased's body to remain in a vehicle while said vehicle was towed several miles is offensive and does not reflect the degree of dignity and respect owed to the citizens of Brown County, whether alive or deceased.

54. Defendant's decision and instruction to cause a deceased's body to be transported in the back of her personal pick-up truck in lieu of, for example, a hearse, an ambulance or other similar vehicle, is offensive and does not reflect the degree of dignity and respect owed to the citizens of Brown County, whether alive or deceased.

55. Defendant's decisions and/or carelessness that resulted in body parts of decedents to be left behind at death scenes is offensive and does not reflect the degree of dignity and respect owed to the citizens of Brown County, whether alive or deceased.

**COUNT FIVE**  
**Gross Neglect of Duty**

56. Plaintiffs incorporate the foregoing paragraphs as if fully restated herein.

57. Defendant violated Rev. Code §3.07 by engaging in gross neglect of duty.

58. Gross neglect of duty is more than mere neglect and occurs when such neglect of duty, either from the gravity of the case or the frequency of the instances, becomes so serious as to endanger or threaten the public welfare.

59. Defendant placed personal interests above the interests of the citizens of Brown County, Ohio.

**COUNT SIX**  
**Misfeasance, Malfeasance, Nonfeasance**

60. Plaintiffs incorporate the foregoing paragraphs as if fully restated herein.

61. Defendant's conduct in her official capacity as the Brown County Coroner, at death scenes and elsewhere, consists of conduct that is improper, acts which should not be done, and omissions of acts that she should have done on behalf of the citizens of Brown County, Ohio.

62. Defendant committed numerous violations of her statutory duties as coroner.

63. Defendant has, on multiple occasions, exercised poor judgment while acting in her capacity as coroner.

64. Defendant violated Rev. Code §3.07 by engaging in misfeasance, which is the improper doing of an act that a person might lawfully do.

65. Defendant violated Rev. Code §3.07 by engaging in malfeasance, which is the doing of an act that a person ought not to do at all.

66. Defendant violated Rev. Code §3.07 by engaging in nonfeasance, which is omission of an act that a person ought to do.

67. The law provides no clear guidance as to when misfeasance, malfeasance, or nonfeasance rises to the level of misconduct in office warranting removal; however, one act of malfeasance alone can be grounds for removal and willful action is not specifically required.

68. Defendant's acts and omissions are more than just minor or isolated infractions.

69. Defendant's acts and omissions, individually and collectively, shock the conscience and are a substantial departure from the reasonable expectations of a coroner, and therefore warrant the severe sanction of removal from public office.

**WHEREFORE**, Plaintiffs respectfully request that this Court:

A. Cause a copy of this Complaint to be served upon Judith Varnau at the address set forth in the caption of this Complaint;

B. Order the Coroner suspended from office pending a formal hearing on the allegations set forth herein;

C. Promptly conduct a hearing within thirty (30) days from the date of filing of this Complaint on the allegations set forth herein;

D. Find that Defendant has breached her statutory duties as the Brown County Coroner;

E. Find that the Defendant is guilty of gross neglect of duty;

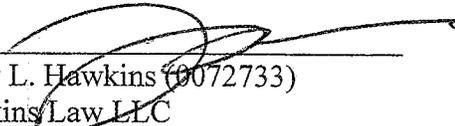
F. Find that the Defendant is guilty of misfeasance, malfeasance, and/or nonfeasance;

G. Find that Defendant is guilty of misconduct in office; and

H. Issue an Order permanently removing Defendant from the office of the Brown County Coroner; and

I. For costs of suit and reasonable attorneys' fees; and

J. For all other relief which the Court deems reasonable and proper.

  
Tracy L. Hawkins (0072733)  
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Cincinnati, Ohio 45255  
513-843-4110 Phone  
513-843-5470 Fax  
[Tracy@HawkinsLawAndTitle.com](mailto:Tracy@HawkinsLawAndTitle.com)

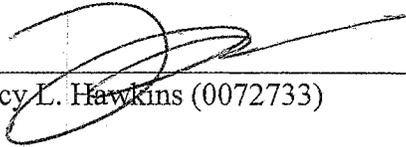
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PRAECIPE

To the Clerk of Courts:

Please cause summons and complaint to be served upon Defendant by personal service of the Sheriff of Brown County, Ohio at 7661 White Swan Road, George, Ohio 45121 or at such other address or location as may be reasonably determined by and known to the Sheriff.

  
Tracy L. Hawkins (0072733)

**CERTIFIED COPY**

COURT COMMON PLEAS  
BROWN COUNTY, OHIO  
CLERK: L. CLARK GRAY  
DEPUTY: *Brittany Smith*

FILED

14 JUN 23 AM 7:55

IN THE COMMON PLEAS COURT OF BROWN COUNTY, OHIO

CLERK OF COURTS  
L. CLARK GRAY

Steven Adamson, et al.,	:	Case No. CVH 2014-0267
Plaintiffs,	:	Judge John W. Kessler (Ret.) (Assignment #14JA0924)
vs		
Dr. Judith Varnau, as Brown County Coroner, Defendant.	:	Findings and Decision on Complaint for Removal of Public Officer (Brown County Coroner)

The issue presented in this case is whether Dr. Judith Varnau, the elected Coroner of Brown County, Ohio, should be removed from that position for violation of R.C. 3.07 Misconduct in Office. Based on the evidence presented, the Court concludes that Plaintiffs have failed to meet their burden of proof to establish sufficient grounds for removal of Dr. Varnau from the office of Brown County Coroner.

I. Factual Background

Defendant was elected Brown County Coroner by write-in ballots in the 2012 Ohio general election. She is a licensed medical doctor practicing obstetrics and gynecology. The Brown County Coroner has no independent office location. The listed staff are a Deputy Coroner, (Dr. Barbara Patridge, another physician associated with Defendant's private medical practice), and a Coroner's Investigator, Don Newman.

Defendant's official relationship with the elected Sheriff of Brown County, Dwayne Wenninger, has been poor, stemming from an unsuccessful election bid by



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Defendant's husband, Dennis Varnau, against Sheriff Wenninger in 2008, and subsequent lawsuits between them. Almost immediately upon Defendant's election, a "debate" over the interplay of statutory duties of the coroner and sheriff (perhaps otherwise known as a 'turf war') commenced. The Defendant and the Sheriff's office were at odds over the scope and responsibilities of each in dealing with investigations of deaths in Brown County. Implicated in the "debate" were principally R.C. 313.11 (Unlawfully disturbing a body), R.C. 313.14 (Notice to relatives – disposition of property), and R.C. 313.141 (Disposition of firearms in personal effects of deceased person).

On December 30, 2012 Dr. Varnau wrote Ohio Attorney General Michael Dewine a six page letter detailing her belief that Wenninger was holding office illegally for lack of various statutory credentials. The letter (Ex #1) is captioned "Request for Formal Opinion – Delivering Crime Scene Evidence to Uncertified Peace Officers". On January 15, 2013 Attorney General Dewine's office responded (Ex #2) citing Defendant to the Ohio Supreme Court's decision in *State ex rel. Varnau v. Wenninger*, 2012-Ohio-224, decided January 26, 2012, and advised Defendant that Wenninger's right to hold the office of Sheriff had been settled in favor of Wenninger, and that, as Coroner, she may deliver firearms to Sheriff Wenninger without fear of legal liability. Defendant then sought a confirmation of that opinion from the Brown County Prosecuting Attorney (as was advised by the Ohio Attorney General's letter). Defendant was advised by the Brown County Prosecuting Attorney on January 18, 2013 (Ex #4) that Sheriff Wenninger legally holds his office, and that his deputies are lawfully sworn, and that firearms may be legally delivered to such personnel.

These assurances did not however end the issues between Defendant and the Sheriff's office. In fact, the "debate" has continued with various degrees of understandings, misunderstandings and failed agreements (also, perhaps otherwise known as 'gridlock') until the filing of this Complaint. Perhaps coincidentally, the court received in evidence a six page Memorandum of Understanding (Ex #E) dated April 18, 2014 (four days after this Complaint was filed), which allegedly finally ends the fifteen month long "debate" for all the signatories – Sheriff, Coroner and Prosecuting Attorney. While hopefully putting an end to the 'gridlock' in the future, Exhibit #E does not end the court's examination of the evidence in this case of alleged prior misconduct in office by Defendant.

## II. Procedural Background

Plaintiff's Complaint is brought on behalf of Steve and Rebecca Adamson, with an affixed Petition approving the Complaint and signed by more than 2,300 electors (a total greater than 15% of the total votes cast for Governor at the 2010 gubernatorial election). Steve and Rebecca Adamson are the parents of Zachary Adamson, who died on January 9, 2014 from a gunshot wound to his head.

Plaintiff's Complaint was filed pursuant to R.C. 3.08 to remove Dr. Judith Varnau as Coroner of Brown County, Ohio for Misconduct in Office. The Complaint asks the Court to find Defendant guilty of any or all of the six enumerated counts in the Complaint, and to order her removed from office as Brown County Coroner.<sup>1</sup>

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<sup>1</sup> Count 1 – Failure to secure Decedent Zachary Adamson's personal valuables in violation of R.C. 313;  
Count 2 – Breach of Duty to Deliver Firearms in violation of R.C. 313.141;  
Count 3 – Breach of Duty to Notify (decedent's next of kin) pursuant to R.C. 313.14;  
Count 4 – Breach of Duty to Public at Large;  
Count 5 – Gross Neglect of Duty;  
Count 6 – Misfeasance, Malfeasance, Nonfeasance;

The Court held evidentiary hearings on April 22, 2014, May 14 and May 15, 2014. The testimony of 25 witnesses was heard and 18 exhibits were admitted into evidence (including the testimony and exhibits from the April 22, 2014 hearing on Plaintiff's Motion to Suspend Pending Final Hearing). Following the May 14-15 hearings, the court ordered the preparation of a transcript of all proceedings, which was filed on June 13, 2014.

### III. Evidence Presented

Evidence presented at the hearings on April 22, 2014 and May 14 and 15, 2014 centered principally on four deaths occurring in 2013 and 2014. These are the deaths of Zachary Adamson, Hanson Jones, Ronda Cheesman and Roy Johnston.

#### a. Zachary Adamson – 1/9/14

Brown County Sheriff's Deputy Jerry Crawford was the first responder to the scene of Zachary Adamson's death. He was "flagged" into the house by Zachary's housemate, Jeremy Ring. Ring had called for emergency response reporting that Zachary had shot himself. Ring further advised that Zachary had been in treatment for military service related PTSD, and might have been "on" something. Ring was a renter/roommate of the residence along with Adamson. Crawford observed Zachary's body and concluded that he was deceased with a gunshot head wound. Crawford observed that Zachary was laying on the floor face down on top of a .38 caliber revolver held in his right hand. Crawford removed the revolver from Zachary's hand and "made it safe". He found one spent cartridge in the weapon. He then placed the weapon a short distance away from Zachary's body on a fireplace mantle. Crawford

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then admitted the rescue squad to attend to Zachary's body, called for the Defendant (the Coroner), and left the scene. Some time later Defendant arrived, investigated and apparently concluded that the manner, mode and cause of death was suicide by self inflicted gunshot. The Defendant did not seize the firearm from the mantle, or take charge of the deceased's personal property. The Defendant testified that she determined that the firearm in question was not "near the body" of Zachary Adamson, and so did not take charge of the firearm. Neither did the coroner take charge and possession of all Zachary's moneys, clothing, and other valuable personal effects (save a prescription drug bottle). There was no note found in connection with the body. No forensic tests were ordered or performed. Adamson's remains were taken by the rescue squad to the hospital morgue, where Defendant wiped off some blood from Zachary's face and then spoke to his parents (the Plaintiffs) about the circumstances of Zachary's death. The case has since been referred by Defendant to the Ohio Bureau of Criminal Investigation for further investigation.

b. Hanson Jones - 8/7/13

Hanson Jones died of a shotgun wound to his head. Deputy Huff and Dunning responded to the scene after a call to the Sheriff's office by the deceased's son asking the Sheriff's office to check on Mr. Jones' welfare. Deputy Huff knocked vigorously on the door to Jones' residence, which eventually came open. Jones was found deceased, sitting in a chair cradling a shotgun with a massive head wound that had taken off much of the top of his head and produced massive bleeding. There were no lights on and most of the investigation by the Deputies and coroner took place with flashlights. Deputy Huff and Dunning taped off deceased's trailer to secure the scene.

Deputy Huff called for the coroner and additional law enforcement assistance. Sheriff's Detective Haney arrived first and observed the scene. The Defendant then arrived and both entered the trailer with Deputy Huff. Haney reported that he observed an empty shell casing in a basket near the door, a live round lying on the floor and nearby a wallet also on the floor. Defendant examined the wallet and confirmed that it contained money. There was conflicting evidence regarding whether Defendant stepped in a bloody area near the body. Detective Haney was asked to check the firearm held by the deceased for safety. A spent shell was found in the firing chamber, and the gun was replaced in its original position. After approximately 20 minutes of further observation Defendant advised the Sheriff's office personnel that she felt the death was a suicide. Deputy Huff testified that he concurred with that conclusion, but felt more investigation was warranted. Nevertheless, pursuant to the Sheriff's directive then in effect, Haney and Huff immediately ceased further investigation and left the scene without the shotgun. When the rescue squad arrived, the deceased was placed in a body bag along with some other body parts from Hanson Jones's head wound that were collected. The remains were then taken to the hospital morgue. The shotgun was left in the trailer. It was later recovered by Hanson Jones' sister, Donna Elfers, and ultimately given over to Sheriff's office personnel. Apparently an additional part of Jones's skull was also recovered from the scene after Jones was cremated.

c. Rhonda Cheesman - 1/30/13

Ronda Cheesman had been reported missing for approximately two months when a report was made to the Brown County Sheriff about a car in the woods about a

third of a mile from the nearest road containing a body in the back seat. Detective Sergeant Moore responded to the scene with other Sheriff's personnel, and at some point the Defendant was called and responded. Defendant was taken on foot back to the car's location by Moore. The cause of death was undetermined. The car was locked and Defendant asked for the Sheriff's help to open the car. Moore advised Defendant she would have to call a tow truck. The weather conditions were inclement. Sheriff's personnel had apparently concluded Cheesman's death was not a homicide, so they left the scene. Some time later that day Defendant attempted to get the Sheriff's personnel to return to the scene to assist her, but was refused. Defendant called the Ohio Bureau of Criminal Investigation for assistance. While Defendant remained on the scene, BCI dispatched Special Agent Bryan White who eventually arrived and decided to have the car towed out of the woods and taken to an impound lot with the body remaining inside for further investigation. Defendant concurred, and the car with the body was removed from the field and towed.

d. Roy Johnston – 5/27/2013

Roy Johnson's death scene was investigated by Deputy Coroner, Dr. Barbara Patridge. The cause of death was undetermined. Dr. Patridge took money she found in the deceased's wallet and brought it to Dr. Varnau's office because no next of kin could be identified. Allegedly, Patridge gave over possession of other property of the deceased not associated with the body to a close friend and neighbor, as well as the security of the deceased's premises. The money was subsequently released by Defendant to the beneficiary of Johnson's estate after the beneficiary produced a will establishing his claim to it. No direct evidence was adduced on any of the facts

alleged about this case.

#### IV. Analysis

R.C. 3.07 describes the actions of a public office holder which may be considered Misconduct in Office, to wit; "willfully and flagrantly exercises authority or power not authorized by law, refuses or willfully neglects to enforce the law or to perform any official duty imposed upon him by law, or is guilty of gross neglect of duty, gross immorality, drunkenness, misfeasance, malfeasance, or nonfeasance."

Procedurally this court is guided by *In re Removal of Kuehnle*, 830 N.E.2d 1173, 161 Ohio App.3d 399, 2005-Ohio-2373 (Ohio App. 12 Dist. 2005), where the court held that:

"Proceedings to remove a public officer are quasi-penal in nature and should be strictly construed. 2,867 *Signers v. Mack* (1979), 66 Ohio App.2d 79, 20 O.O.3d 142, 419 N.E.2d 1108. The law does not favor the removal of a duly elected official. *Id.* at 82, 20 O.O.3d 142, 419 N.E.2d 1108, citing *State ex rel. Corrigan v. Hensel* (1965), 2 Ohio St.2d 96, 31 O.O.2d 144, 206 N.E.2d 563. The burden of proof that must be met before a public official can be removed is clear and convincing evidence. *McMillen v. Diehl* (1934), 128 Ohio St. 212, 190 N.E. 567. Clear and convincing evidence means that measure or degree of proof that is more than a mere preponderance of the evidence but not to the extent of such certainty as is required beyond a reasonable doubt in criminal cases, and that will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established. *In re Election of November 6, 1990 for the Office of Atty. Gen. of Ohio* (1991), 58 Ohio St.3d 103, 569 N.E.2d 447.

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"Gross neglect of duty" is more than mere neglect and occurs when such neglect of duty, either from the gravity of the case or the frequency of the instances, become so serious as to endanger or threaten the public welfare. *Vajner v. Orange* (1963), 119 Ohio App. 227, 27 O.O.2d 98, 191 N.E.2d 843. "Nonfeasance" is the omission of an act that a person ought to do; "misfeasance" is the improper doing of an act that a person might lawfully do; and "malfeasance" is the doing of an act that a person ought not to do at all. *State ex rel. Neal v. State Civ. Serv. Comm.* (1947), 147 Ohio St. 430, 34 O.O. 356, 72 N.E.2d 69.

The law provides no clear guidance as to when misfeasance, malfeasance, or nonfeasance rises to the level of misconduct in office warranting removal. It is clear that one act of malfeasance alone can be grounds for removal and that willful action is not specifically required. *In re Removal of Ron Steed* (July 27, 1989), Lawrence App. No.1909, 1989 WL 411471. With respect to misfeasance, malfeasance, and nonfeasance, we agree with the trial court that all three require a substantial departure from what is required of a public official before they will result in removal. Removal is not to be ordered lightly for minor or isolated infractions. When determining whether removal is proper, all relevant circumstances surrounding the conduct in question should be examined, including the degree of wrongdoing and the number of incidents involved.”

*Id.* at 419-420.

#### V. Conclusion

The Complaint contains six counts alleging violations of R.C. 3.07 Misconduct in Office. The court finds the evidence presented to the court falls under two main categories of behavior described in R.C. 3.07, to wit: 1) gross neglect of duty (failing to secure deceaseds' valuables R.C. 313.14, failing to deliver firearms R.C. 313.141, and failing to notify next of kin R.C. 313.140; and 2) misfeasance, malfeasance and nonfeasance (failing to secure and preserve evidence, disrespect of deceaseds' bodies, failure to cooperate with law enforcement.) The question presented is whether any of the actions or inactions of Dr. Varnau establish by clear and convincing evidence that she committed gross neglect of her statutory duties requiring removal. Secondly, whether any of Dr. Varnau's actions or inactions rise to the required level of misfeasance, malfeasances or nonfeasance warranting removal from office in light of all the surrounding circumstances.

The Coroner is required to be notified of deaths described in R.C. 313.12(A), and determine the cause thereof. The deaths that are pertinent here are the deaths by violent means, suicide or in any suspicious or unusual manner. No one without an

order from the coroner may remove or disturb the body of a person dying by such means R.C. 313.11. The coroner shall then make notification to a known next of kin, and take charge and possession of money, clothing and other valuable personal effects of the deceased, including firearms. R.C. 313.14, R.C. 313.141.

No standing permissive R.C. 313.11 order was in effect by Coroner Varnau for the Brown County Sheriff's office to remove or disturb a body or articles found on or near a body in the aforementioned deaths. Hence, the Sheriff's policy was that unless the death scene clearly appeared to be a homicide, the Sheriff's personnel were to leave the scene to the Coroner, and not seize firearms found in connection with the body, other than to make the scene safe for emergency personnel, and further, to require the Coroner to physically deliver any firearm taken by the Coroner to the Sheriff's office pursuant to R.C. 313.141. Defendant Varnau had made a policy determination that "near the body", as used in R.C. 313.11(A) meant on or within arms length of the body, and that her "jurisdiction" with respect to R.C. 313.14 and 313.141 did not extend beyond that scope. This determination meant that firearms, money, clothing, or other valuable personal effects laying outside the arms length scope were not taken charge of, inventoried, or stored by the Coroner.

1988 Ohio Op. Atty Ops. Gen. No.35 addressed the question of control over the scene of an unexplained death. The opinion states that R.C. 313.11 gives the coroner control over the area "near the body" at the scene of an unexplained death. The determination of the extent of the area "near the body" is within the discretion of the coroner. Further, the opinion states that everyone including law enforcement personnel, must receive a permissive order from the coroner before removing or

disturbing the body or articles found on or near the body, including but not limited to suicide notes, firearms, and other physical items found at the scene. *Id.* at paragraph two of the syllabus. Accordingly, Defendant's determination of "near the body" was within her discretion as Coroner.

The result of these policy decisions, however, left the Adamson weapon, money, or other valuable personal effects unrecovered, and at least temporarily given over to the control of Jeremy Ring. The firearm in the Jones case remained at the death scene until ultimately taken to the Sheriff by the deceased's sister, and the disposition of Jones' wallet is unclear, but was not taken by the coroner. Notification to known next of kin appears to have been made in each case, albeit often delayed. While these failures amount to neglect, the court finds that the failures do not sufficiently make out clear and convincing evidence of gross neglect as defined – of a gravity and frequency amounting to an endangerment or threat to the public welfare.

As a result of the Sheriff's and the Defendant's policy decisions, Defendant Varnau found herself left with the body of Ms. Chessman locked in a car in a field some distance from the nearest road. Upon the advice of BCI Special Agent White, the car was towed with the body locked inside. Although perhaps not the most respectful manner to convey a body, given the circumstances and the concurrence of BCI, this hardly constitutes gross neglect, misfeasance, malfeasance or nonfeasance.

Conflicting evidence was adduced regarding the Johnston body and effects but no direct evidence was submitted. There was an implication that Defendant Varnau should have better supervised her Deputy Coroner in preserving and securing valuables but again, these actions do not establish by clear and convincing evidence,

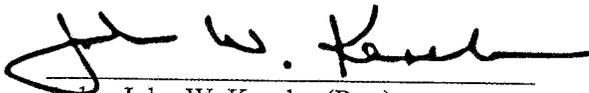
grounds to remove Defendant Varnau from her position.

The court finds the narrow view of jurisdictional policy between Coroner and Sheriff cumbersome, inefficient, ineffectual and unnecessary, but within the statutory discretion of the respective officeholders. It is clearly not well suited to best practices. Best practices, however, are not what this case is about. This case is also not about whether Brown County's citizens are being well served or poorly served by the Coroner, or the Sheriff. That is a question for the ballot box, not for the court.

The question is whether Defendant is guilty of misconduct in office, and the court finds that Plaintiffs have failed to prove by clear and convincing evidence that Coroner Varnau has committed violations sufficient to warrant removal pursuant to RC 3.07. The court is not convinced that the mistakes Defendant has made in the performance of her official duties rise to the level of gross neglect of duty, misfeasance, malfeasance or nonfeasance required by law for her removal.

The Court returns a verdict in favor of Defendant, and orders the Complaint dismissed.

Approved:



Judge John W. Kessler (Ret.)  
By Assignment

To the Clerk:

Copies to all Counsel

Serve upon all parties/attorneys of record notice of the within judgment, and the date of entry, pursuant to Civil Rule 58(B). Note the same upon the docket:

5130121

Case Number : CA 20140716  
Plaintant(s): Adamson, Steve  
Defendant(s): Varnau, Judith

**CERTIFIED COPY**

COURT COMMON PLEAS  
BROWN COUNTY, OHIO  
CLERK: I CLARK GRAY

DEPUTY: *Brittney Smith*

07/22/2014

CASE FILED

07/22/2014

DEPOSIT - RECEIPT NO. 81547 IN THE AMOUNT OF \$ 225.00

07/22/2014

NOTICE OF APPEAL FILED WITH JUDGMENT ENTRY ATTACHED  
FILED 06/23/2014

07/22/2014

CIVIL DOCKET STATEMENT FILED

07/22/2014

PRAECIPE FILED

07/22/2014

COURT APPEAL FILING FEES \$

07/22/2014

MOTION FOR LEAVE TO APPEAL TO COURT OF APPEALS WITH  
MEMORANDUM ATTACHED FILED WITH CERTIFICATION

07/22/2014

ISSUED COPIES OF THE NOTICE OF APPEAL, DOCKET STMT,  
PRAECIPE AND MOTION TO JANA ORR BY HAND, JUDGE KESSLER,  
THOMAS EAGLE AND 12TH DISTRICT PER ORDINARY MAIL WITH  
CERTIFICATE OF MAILING

07/22/2014

POSTAGE CHARGED \$2.24 X 3 TOM EAGLE, JUDGE KESSLER, JUDY

07/22/2014

POSTAGE CHARGED \$.47 X 3  
CERTIFICATES OF MAILING

07/22/2014

EMAILED RECEIPT FOR FILING FEE TO TRACY HAWKINS' LAW FIRM

07/30/2014

RESPONDENT/APPELLEE'S MOTION TO STRIKE NOTICE OF APPEAL; AND  
MOTION TO DISMISS APPEAL; AND MEMORANDUM OPPOSING PETITIONER/  
APPELLANT'S MOTION FOR LEAVE TO APPEAL FILED WITH  
CERTIFICATION

07/30/2014

PROVIDED COPIES SERVED TO 12TH DISTRICT PER ORDINARY MAIL  
WITH CERTIFICATE OF MAILING, TO THOMAS EAGLE PER SASE

07/30/2014

ISSUED RULE 11B NOTIFICATION AND CERTIFIED COPIES OF DOCKET  
AND JOURNAL ENTRIES TO THE 12TH DISTRICT COURT OF APPEALS,  
TRACY HAWKINS AND THOMAS EAGLE PER ORDINARY MAIL WITH  
CERTIFICATE OF MAILING

07/30/2014

RECORD COMPLETE

09/08/2014

JR#10 PG#466 JUDGMENT ENTRY GRANTING LEAVE TO APPEAL AND  
DENYING MOTIONS TO STRIKE NOTICE OF APPEAL AND DISMISS  
APPEAL FILED. COPIES TO: TRACY HAWKINS AND THOMAS EAGLE  
VIA ORDINARY MAIL WITH CERTIFICATE OF MAILING

09/08/2014

ISSUED COPIES

09/08/2014

POSTAGE CHARGED: ORDINARY MAIL WITH CERTIFICATE OF MAILING.

09/08/2014

COPY OF ENTRY EMAILED TO JUDGE JOHN KESSLER.



09/10/2014

JR#10 PG#469 SCHEDULING ORDER FOR ACCELERATED CALENDAR FILED. COPIES ISSUED TO TRACY L. HAWKINS AND THOMAS G. EAGLE VIA ORDINARY MAIL WITH CERTIFICATE OF MAILING; VIA EMAIL TO JUDGE KESSLER, AND COPY TO COURT REPORTER IN TRAY.

09/10/2014

JR.10 PG.470 ACCELERATED CALENDAR NOTIFICATION FILED. ISSUED COPIES ALONG WITH SCHEDULING ORDER.

09/10/2014

POSTAGE CHARGED, CERTIFICATE OF MAILING.

09/10/2014

ISSUED COPIES TO TRACY L. HAWKINS, THOMAS G. EAGLE AND COURT REPORTER JANA ORR. EMAILED TO JUDGE KESSLER.

09/10/2014

CERTIFICATE OF MAILING FROM POST OFFICE.

**CERTIFIED COPY**

COURT COMMON PLEAS  
BROWN COUNTY, OHIO  
CLERK: L. CLARK GRAY  
DEPUTY: *Brittany Smith*

IN THE COURT OF APPEALS OF BROWN COUNTY, OHIO

STEVE ADAMSON, et al.,

Appellants,

vs.

DR. JUDITH VARNAU, CORONER, :

Appellee.

CASE NO. CA2014-07-016  
ACCELERATED CALENDAR

FILED  
COURT OF APPEALS

SEP 08 2014

ENTRY GRANTING LEAVE TO  
APPEAL AND DENYING MOTIONS  
TO STRIKE NOTICE OF APPEAL  
AND DISMISS APPEAL

BROWN COUNTY CLERK OF COURTS

The above cause is before the court pursuant to a motion for leave to appeal filed by counsel for appellants, Steve Adamson and Rebecca Adamson, on July 22, 2014, and a motion to strike notice of appeal, dismiss appeal, and memorandum opposing leave to appeal filed by counsel for appellant, Dr. Judith Varnau, on July 30, 2014.

Upon consideration of the foregoing, the motions to strike notice of appeal and to dismiss appeal are DENIED. Appellants have properly sought leave to appeal pursuant to the rules of appellate procedure. Rules promulgated by the Supreme Court of Ohio pursuant to its constitutional authority control over statutes, such as R.C. 3.09, which govern procedural matters. *In re: Removal of Osuna*, 116 Ohio App.3d 339 (12th Dist. 1996). Further, the *Osuna* case is distinguishable from the present appeal because in *Osuna*, the appellant did not seek leave to appeal within thirty days as required by the rules of appellate procedure. In this case, appellants have sought leave to appeal.

Leave to appeal should be granted for good cause shown. The Supreme Court of Ohio has interpreted "good cause shown" as "substantial reason, one

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that affords legal excuse." *State v. Brown*, 38 Ohio St.3d 305 (1988), at 308, quoting Black's Law Dictionary, 5 Ed. (1979). The determination of what constitutes good cause is made on a case-by-case basis. *Id.*

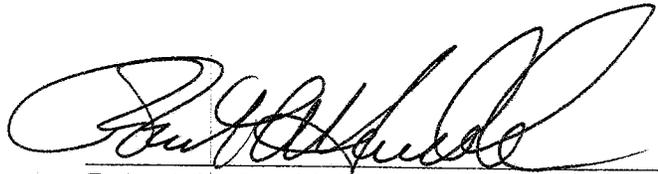
The entry appealed from, which dismisses a removal petition filed against appellee which alleged misconduct in office, concludes as follows:

The court finds the narrow view of jurisdictional policy between Coroner and Sheriff cumbersome, inefficient, and unnecessary, but within the statutory discretion of the respective officeholders. It is clearly not well suited to best practices. Best practices, however, are not what this case is about. This case is also not about whether Brown County's citizens are being well served or poorly served by the Coroner, or the Sheriff. \* \* \* The question is whether Defendant is guilty of misconduct in office, and the court \* \* \* is not convinced that the mistakes Defendant has made in the performance of her official duties rise to the level of gross neglect of duty, misfeasance, malfeasance or nonfeasance required by law for her removal.

There are issues in this case which are of great importance to the people of Brown County and the officeholder involved. Appellants argued in the trial court, and continue to argue in their motion for leave to appeal, that as Brown County Coroner, appellee "has willfully and flagrantly neglected to enforce the law," and that her removal is "not only permitted, but warranted and required."

The court finds that good cause has been shown for appeal, and the motion for leave to appeal is therefore GRANTED. The court will issue a scheduling order forthwith directing when the record and the briefs of the parties are to be filed.

IT IS SO ORDERED.

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

Robert A. Hendrickson  
Administrative Judge

IN THE COURT OF APPEALS OF BROWN COUNTY, OHIO

STEVE ADAMSON, et al., \*  
Appellants, \*  
vs. \*  
DR. JUDITH VARNAU, CORONER, \*  
Appellee. \*

CASE NO. CA2014-07-016  
SCHEDULING ORDER FOR  
ACCELERATED CALENDAR

FILED  
COURT OF APPEALS

SEP 10 2014

\* \* \* \* \*

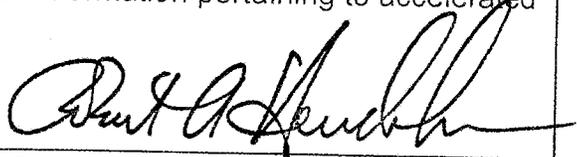
Upon consideration, the court has determined that this case shall be, and hereby is, placed on the court's accelerated calendar pursuant to App.R. 11.1 and Loc.R. 6.

The record for appeal including, if necessary, the transcript of proceedings, if any, or **notice of Loc.R. 5**, shall be filed on or before N/A. The appellants' brief shall be filed on or before September 26, 2014; appellee's brief shall be filed within 15 days of the appellants' brief. Briefs shall be no longer than fifteen (15) pages, excluding table of contents and appendices, if any. A reply brief may be filed within 5 days of the filing of appellee's brief and shall not exceed five (5) pages in length.

Total extensions granted to either party shall not exceed seven (7) days.

Please consult Loc. App.R. 6 for further information pertaining to accelerated appeals.

IT IS SO ORDERED.

  
Robert A. Hendrickson,  
Administrative Judge

ORDER TO THE CLERK:

Copies of this scheduling order shall be sent to the following individuals:

**cc: Court Reporter (Kessler)**

Tracy L. Hawkins, Esq.  
Hawkins Law and Title  
4030 Mt. Carmel-Tobasco Road #209  
Cincinnati, OH 45255

Thomas G. Eagle, Esq.  
3386 N. St. Rt. 123  
Lebanon, OH 45036

1000469





7. The July 23, 2014, Notice of Appeal, was filed before and without leave to appeal had been granted to do so. As of this filing date no hearing has been set or held or noticed for the Motion for Leave to Appeal. A true and accurate copy of the court's docket is attached hereto.

8. On September 8, 2014, the Twelfth District, by Judge Hendrickson, and without any hearing, denied my Motion to Dismiss the Appeal and granted the Motion for Leave to Appeal, and on September 10, issued an accelerated scheduling order denying and dismissing the Removal Action, and denied my Motion to Dismiss said Appeal. A true and accurate copy of the September 8, 2014, Decision of the Twelfth District Court of Appeals, and their September 10, 2014, accelerated scheduling order, are attached hereto.

9. I have read the foregoing Complaint for Writ of Prohibition and for Mandamus and the details of the claim and they and the allegations therein are true and accurate to the best of my knowledge and belief.

Further, affiant sayeth naught.

  
\_\_\_\_\_  
Dr. Judith Varnau

Sworn to and subscribed before me by said Dr. Judith Varnau this 13<sup>TH</sup> day of SEPT., 2014

  
\_\_\_\_\_  
Notary Public PAT BISSANTI  
MY COMMISSION EXPIRES  
3-1-2015