

IN THE SUPREME COURT OF OHIO

STATE OF OHIO EX REL.)	CASE NO. 2015-0173
AYMAN DAHMAN, MD, ET AL.,)	
)	Original Action in Prohibition Arising
Relators,)	From Cuyahoga County Common Pleas
)	Court Case No. CV-12-785788
vs.)	
)	
THE HONORABLE BRIAN J.)	
CORRIGAN, ET AL.,)	
)	
Respondents.)	

**RESPONDENTS' MEMORANDUM IN OPPOSITION TO RELATORS' MOTION FOR
LEAVE TO FILE AMENDED COMPLAINT FOR WRIT OF PROHIBITION**

ANNA MOORE CARULAS (0037161)
DOUGLAS G. LEAK * (0045554)
* *Counsel of Record*
Roetzel & Andress, LPA
1375 East 9th Street, 9th Floor
Cleveland, Ohio 44114
Tel: (216) 623-0150/Fax: (216) 623-0134
acarulas@ralaw.com
dleak@ralaw.com

Counsel for Relators

TIMOTHY J. MCGINTY, Prosecuting
Attorney of Cuyahoga County, Ohio
CHARLES E. HANNAN * (0037153)
Assistant Prosecuting Attorney
* *Counsel of Record*
The Justice Center, Courts Tower, 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113
Tel: (216) 443-7758/Fax: (216) 443-7602
channan@prosecutor.cuyahogacounty.us

Counsel for Respondents

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CORRIGAN, ET AL.,)	<u>OPPOSITION TO RELATORS'</u>
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)	<u>AMENDED COMPLAINT IN</u>
Respondents.)	<u>PROHIBITION</u>

Respondents the Honorable Brian J. Corrigan and the Honorable John J. Russo (“respondents”) respectfully oppose the March 9, 2015 motion of relators Ayman Dahman, MD and Mary Jo Alverson, CNM (“relators”) that requests leave of court to file an amended complaint in prohibition in this case. Although respondents acknowledge that Ohio Civil Rule 15(A) provides generally that leave to amend should be freely given when justice so requires, the grounds tendered in support of the relators’ motion, and the tendered amended complaint itself, do not demonstrate that justice requires an amended pleading in this case.

In particular, relators seek to amend their Complaint “in order to plead events that have occurred *after* the original Complaint was filed” on February 2, 2015. See Relator’s Motion at p. 2 (emphasis added). But since the relators’ claim is that the respondents lacked subject matter jurisdiction to reassign the underlying *Hastings* case from Judge Corrigan to Assigned Judge Greene without the litigants’ consent, which obviously occurred before the relators’ filed their prohibition Complaint on February 2, 2015, none of the events recited that occurred *after* the prohibition Complaint was filed would make that alleged jurisdictional error any more actionable.

According to the relators, their February 2, 2015 affidavit of disqualification against Judge Greene prevented the trial from going forward as scheduled on that day pursuant to R.C. 2701.03(D)(1) and, upon Chief Justice O'Connor's prompt denial of that affidavit on February 5, 2015, the scheduling conflict that initially rendered Judge Corrigan unavailable to preside over the trial became moot. See Relators' Motion at p. 7. The relators maintain that no rule of court authorized the case to remain with Judge Greene following the reassignment. Contrary to relators' contentions, however, the Guidelines for Assignment of Judges issued by the Chief Justice recognize that for reasons that include "an overburdened docket" or "an extended trial that will disrupt [a court's] docket," the Chief Justice may temporarily assign a judge to serve a court for a specific period of time, see Guidelines Sections 2.1(A) and 2.2(A), and that a judge who has been so assigned to a court is thereafter responsible generally for concluding the assigned matters prior to the expiration of the judge's assigned service, see Guidelines Section 5.2(B).¹ In any case, the fact that the *Hastings* case was not reassigned from Judge Greene back to Judge Corrigan once the commencement of trial was delayed does not present any new or better claim for relief in prohibition that could warrant an amended complaint in this case.

Relators maintain that in denying their affidavit of disqualification against Judge Greene on February 5, 2015, "Chief Justice O'Connor merely stated that '[t]he case *may* proceed before Judge Greene." See Relators' Motion at p. 7 (emphasis sic). The implication of the relators' contention is that even though the Supreme Court of Ohio denied the relators' application for an alternative writ of prohibition on February 2, 2015, the fact that Chief Justice O'Connor's February 5, 2015 entry did not expressly say that "the case *shall* proceed before Judge Greene"

¹ The Guidelines for Assignment of Judges issued by the Chief Justice are viewable at <http://www.supremecourt.ohio.gov/JCS/judicialAssignment/judgeAssignGuide.pdf>.

enables the relators to deny if not defy Judge Greene's authority to preside over the *Hastings* trial. By that reasoning, the Chief Justice's consideration of their affidavit of disqualification apparently was wasted effort, since the short time it took the Chief Justice to reject their contentions must have provided sufficient time to clear any scheduling conflict for Judge Corrigan and just have the *Hastings* case taken away from Judge Greene. Despite the Chief Justice's rejection of their claims of alleged bias against Judge Greene, she still could not preside over the *Hastings* case. So from the relators' perspective: Mission Accomplished. Respondents respectfully submit that the relators' questionable reading of Chief Justice O'Connor's February 5, 2015 entry should be rejected categorically.

Indeed, while the relators say that they want to amend their pleading to reflect events that occurred after their Complaint was filed, the only post-Complaint events set forth in their amended complaint reflect Judge Greene's tentative attempts to reschedule the *Hastings* trial for April 6, 2015 – although even that has not been journalized – and the defendants' objections to that new trial date generally and the relators' objection to any proceedings before Judge Greene particularly. At any rate, any post-Complaint "events" that reflect attempts to set a new trial date in the *Hastings* case do not make the relators' supposed jurisdictional challenge here any more actionable.

In short, the relators' proffered grounds to amend their Complaint and the tendered amended complaint itself do not demonstrate that justice requires leave in this instance. The respondents have already moved for dismissal of the relators' initial Complaint on the grounds that it failed to plead any facts that would state a claim for extraordinary relief in prohibition. The relators' amended complaint does not attempt to cure any deficiencies in the prior pleading

but merely attempts to add unnecessary facts that do not make their claim any more actionable or viable.

In truth, the only effect of allowing the relators to file their amended complaint would be to necessitate another round of dispositive –and likely duplicative – legal briefing that would likely extend resolution of this case into or beyond April 2015 – and thus interfere with an April 6, 2015 trial date in the *Hastings* case. Ohio’s rules of court were adopted to eliminate delays and all other impediments to the expeditious administration of justice. See Ohio Civil Rule 2(B). Unnecessary delays thwart the administration of justice.

Respondents respectfully submit that the relators’ motion for leave to amend their Complaint does not provide any good grounds to further delay these or any other judicial proceedings. Respondents accordingly urge this Court to deny the relators’ motion for leave to file an amended complaint in this case.

Respectfully submitted,

TIMOTHY J. MCGINTY, Prosecuting Attorney
of Cuyahoga County, Ohio

By: /s Charles E. Hannan
CHARLES E. HANNAN * (0037153)
Assistant Prosecuting Attorney
* *Counsel of Record*
The Justice Center, Courts Tower, 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113
Tel: (216) 443-7758/Fax: (216) 443-7602
channan@prosecutor.cuyahogacounty.us

Counsel for Respondents

PROOF OF SERVICE

Pursuant to S.Ct.Prac.R. 3.11, a true copy of the foregoing Respondents' Memorandum in Opposition to Relators' Motion for Leave to File Amended Complaint for Writ of Prohibition was served this 19th day of March 2015 by e-mail upon:

Anna Moore Carulas
Douglas G. Leak
Roetzel & Andress, LPA
1375 East 9th Street, 9th Floor
Cleveland, Ohio 44114

acarulas@ralaw.com
dleak@ralaw.com

Counsel for Relators

Michael F. Becker
Pamela Pantages
The Becker Law Firm, L.P.A.
134 Middle Avenue
Elyria, Ohio 44030

mbecker@beckerlawpa.com

Paul W. Flowers
Paul W. Flowers Co., L.P.A.
Terminal Tower, 35th Floor
50 Public Square
Cleveland, Ohio 44113

pwf@pwfco.com

Counsel for Prospective Intervenors

/s Charles E. Hannan
CHARLES E. HANNAN *
Assistant Prosecuting Attorney
* *Counsel of Record*