

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 SECOND AMENDED COMPLAINT**

---

ANNA MOORE CARULAS (0037161)  
STEPHEN W. FUNK \* (0058506)  
\* *Counsel of Record*  
Roetzel & Andress, LPA  
1375 East 9<sup>th</sup> Street, 9<sup>th</sup> Floor  
Cleveland, Ohio 44114  
Tel: (216) 623-0150/Fax: (216) 623-0134  
[acarulas@ralaw.com](mailto:acarulas@ralaw.com)  
[sfunk@ralaw.com](mailto:sfunk@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, 8<sup>th</sup> Floor  
1200 Ontario Street  
Cleveland, Ohio 44113  
Tel: (216) 443-7758/Fax: (216) 443-7602  
[channan@prosecutor.cuyahogacounty.us](mailto:channan@prosecutor.cuyahogacounty.us)

*Counsel for Respondents*

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.	)	<b><u>RESPONDENTS' MEMORANDUM IN</u></b>
CORRIGAN, ET AL.,	)	<b><u>OPPOSITION TO RELATORS'</u></b>
	)	<b><u>MOTION FOR LEAVE TO FILE</u></b>
	)	<b><u>SECOND AMENDED COMPLAINT</u></b>
Respondents.	)	

Respondents the Honorable Brian J. Corrigan and the Honorable John J. Russo (“respondents”) respectfully oppose the April 17, 2015 motion of relators Ayman Dahman, MD and Mary Jo Alverson, CNM (“relators”) requesting leave of court to file a second amended complaint in this case. Without having been granted leave to file their first amended complaint, the relators’ second amended complaint (a) adds a new claim for relief by seeking an extraordinary writ of mandamus and (b) adds a new respondent by naming Visiting Judge the Honorable Lillian J. Greene. While the respondents again 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’ latest motion for leave to amend, and the tendered second amended complaint itself, do not demonstrate that justice requires the amended pleading in this case.

In particular, relators say they seek to amend their Complaint in order to “update the original Complaint by alleging additional facts that have occurred since the filing of the original complaint on February 2, 2015, and the Amended Complaint on March 9, 2015 \*\*\*.” See Motion for Leave at unnumbered p. 1. But since the relators’ claim is that the respondent Judges

Corrigan and Russo lacked subject matter jurisdiction to reassign the underlying *Hastings* case from Judge Corrigan to Assigned Judge Greene without the litigants' consent, which occurred before the relators' filed this original action on February 2, 2015, none of the events that occurred *after* the original Complaint was filed would make that alleged jurisdictional error any more actionable.

Relators' motion for leave does not provide any explanation for their failure to assert a claim in mandamus in either their original complaint or in their tendered first amended complaint. There are no facts presented to suggest that such a claim was not available to the relators when their prior pleadings were filed. Inasmuch as the supposed mandamus claim is predicated fundamentally on the alleged erroneous reassignment of the case from Judge Corrigan to Judge Greene, any such claim could readily have been asserted in the relators' initial complaint. The relators' failure to assert all of their claims when they could does not justify its tardy assertion here.

Moreover, if their request for leave to amend is granted so that they may belatedly assert a mandamus claim now, that would necessitate a new round of dispositive motion practice that will likely serve to further delay the underlying *Hastings* case proceedings – a case that was scheduled for trial beginning on February 2, 2015. Rebuffing the relators' attempts to stop the trial from proceeding on that day, the Supreme Court of Ohio denied the relators' motions for an emergency stay and for an expedited alternative writ of prohibition on February 2, 2015 and Chief Justice O'Connor denied counsel's affidavit of disqualification on February 5, 2015. Because of the actions taken by relators at that time, however, the case could not proceed to trial as scheduled, perversely securing for them the very delays that had been denied by orders of

court. Granting leave to amend their complaint here would only complicate further the ability of the underlying case to proceed towards resolution.

The relators' motion for leave likewise does not provide any explanation for their failure to name The Honorable Lillian J. Greene as a respondent. Her identity was plainly known to the relators when they filed this case on February 2, 2014 and when their counsel filed her affidavit of disqualification that same day. The relators do not provide any explanation for their failure to name her as a respondent before now.

The relators say that “[w]hen the original Complaint was first filed on February 2, 2015, Administrative Judge John Russo had issued a Journal entry on January 30, 2015, that *temporarily* ‘transferred’ the case to Visiting Judge Lillian Greene for trial ‘due to the unavailability of original Judge Brian J. Corrigan.’” See Motion for Leave at pp. 1-2 (emphasis added). Contrary to the relators’ assertion, however, Judge Russo’s reassignment order did *not* indicate that the case was being “temporarily” reassigned. Indeed, as was noted in the respondents’ March 19, 2015 opposition to relators’ prior motion for leave to file an amended complaint, Section 5.2(B) of the Guidelines for Assignment of Judges issued by the Chief Justice provide that a judge to whom a case has been reassigned is thereafter responsible generally for concluding the assigned matters prior to the expiration of the judge’s assigned service.<sup>1</sup> At any rate, the fact that the *Hastings* case was not reassigned from Judge Greene back to Judge Corrigan once the commencement of trial was delayed and that Judge Greene has attempted to set a new trial date in the *Hastings* case does not make the relators’ jurisdictional challenge here any more actionable so as to justify another request for leave to amend their pleading.

---

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

As was the case in connection with the relators' prior request for leave to amend their complaint, their proffered reasons for seeking leave to amend their Complaint and the tendered second 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' second amended complaint does not attempt to cure any deficiencies in their original complaint or in their first amended complaint. Instead, it attempts to add unnecessary facts that do not make either their original claim in prohibition or their newly-asserted claim in mandamus any more actionable or viable. Further delays are not warranted.

Respondents respectfully submit that the relators' motion for leave to file a second amended 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 their second 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, 8<sup>th</sup> Floor  
1200 Ontario Street  
Cleveland, Ohio 44113  
Tel: (216) 443-7758/Fax: (216) 443-7602  
[channan@prosecutor.cuyahogacounty.us](mailto: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 Second Amended Complaint was served this 27<sup>th</sup> day of April 2015 by e-mail upon:

Anna Moore Carulas  
Stephen W. Funk  
Roetzel & Andress, LPA  
1375 East 9<sup>th</sup> Street, 9<sup>th</sup> Floor  
Cleveland, Ohio 44114

[acarulas@ralaw.com](mailto:acarulas@ralaw.com)  
[sfunk@ralaw.com](mailto:sfunk@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](mailto:mbecker@beckerlawpa.com)  
[ppantages@becklawpa.com](mailto:ppantages@becklawpa.com)

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

[pwf@pwfco.com](mailto:pwf@pwfco.com)

*Counsel for Prospective Intervenors*

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