

RESOLUTION ENTERING UPON THE JOURNAL AN ORDER OF THE COURT OF COMMON PLEAS AUTHORIZING THE ASHTABULA COUNTY BOARD OF COMMISSIONERS TO RETAIN THE SERVICES OF MONTGOMERY JONSON LLP, IN ORDER TO REPRESENT ASHTABULA COUNTY COMMON PLEAS JUDGE THOMAS E. HARRIS IN THE COMPLAINT FILED BY THE ASHTABULA COUNTY PROSECUTING ATTORNEY, COLLEEN M. O'TOOLE

WHEREAS, on July 30, 2024 by Resolution No. 2024-367, the Ashtabula County Board of Commissioners authorized a joint application by the Board and the Ashtabula County Prosecuting Attorney, in order to represent Ashtabula County Common Pleas Judge Thomas Harris in an action filed on July 17, 2024, Case No. 2024-1032; and

WHEREAS, a Journal Entry has now been received under Case No. 24 MD 117 stating that Ashtabula County Prosecutor Colleen O'Toole has a conflict of interest because she is the Relator in the complaint filed by her against Judge Thomas E. Harris, and cannot ethically serve as legal counsel for Judge Thomas E. Harris and simultaneously be the Relator requesting Writs of Mandamus, Prohibition and Alternative Writs be issued by the Supreme Court of Ohio against Judge Thomas E. Harris; and

WHEREAS, Montgomery Jonson LLP, 600 Vine St., Ste. 2650, Cincinnati, OH 45202, is hereby authorized to be employed as outside legal counsel to represent Judge Thomas E. Harris in all matters involving the lawsuit filed in the Supreme Court of Ohio, Case Number 2024-1032, by Colleen M. O'Toole; now

THEREFORE, BE IT RESOLVED, by the Board of Commissioners of Ashtabula County, the Order of the Court of Common Pleas authorizing the Ashtabula County Board of Commissioners to employ Montgomery Jonson LLP is hereby entered upon the journal. The cost of same shall be borne by the Ashtabula County Board of Commissioners and not to exceed \$5,000.00.

**ASHTABULA COUNTY COMMISSIONERS
CERTIFICATION PAGE**

Resolution No. 2024-373

August 07, 2024

RESOLUTION ENTERING UPON THE JOURNAL AN ORDER OF THE COURT OF COMMON PLEAS AUTHORIZING THE ASHTABULA COUNTY BOARD OF COMMISSIONERS TO RETAIN THE SERVICES OF MONTGOMERY JONSON LLP, IN ORDER TO REPRESENT ASHTABULA COUNTY COMMON PLEAS JUDGE THOMAS E. HARRIS IN THE COMPLAINT FILED BY THE ASHTABULA COUNTY PROSECUTING ATTORNEY, COLLEEN M. O'TOOLE

Upon the motion of J.P. Ducro IV, seconded by Casey R. Kozlowski.

VOTE:

**Kathryn L. Whittington
J.P. Ducro IV
Casey R. Kozlowski**

**Aye
Aye
Aye**

CERTIFICATE OF CLERK

IT IS HEREBY CERTIFIED that the foregoing is a true and correct transcript of a resolution acted upon and duly passed by the Board of County Commissioners of Ashtabula County, Ohio, on the date noted above.



Lisa Hawkins, Clerk of the Board
Board of County Commissioners
Ashtabula County, Ohio

FILED

2024 AUG -5 AM 9:38

IN THE COURT OF COMMON PLEAS
OF ASHTABULA COUNTY OHIO

IN RE: APRIL DANIELS
CLERK OF COURTS
COMMON PLEAS COURT
ASHTABULA CO OH

CASE NO. 2024 MD 117

APPLICATION OF THE)
ASHTABULA COUNTY PROSECUTING)
ATTORNEY AND THE ASHTABULA)
COUNTY BOARD OF COMMISSIONERS))
PURSUANT TO R.C. 305.14(A), TO)
EMPLOY LEGAL COUNSEL)

APPLICATION OF THE ASHTABULA
COUNTY PROSECUTING ATTORNEY
AND THE ASHTABULA COUNTY
BOARD OF COMMISSIONERS,
PURSUANT TO R.C. 305.14(A)
TO EMPLOY LEGAL COUNSEL

Now come the Ashtabula County Prosecuting Attorney Colleen M. O'Toole ("Prosecuting Attorney") and the Ashtabula County Board of Commissioners ("Board"), pursuant to R.C. 305.14(A), and hereby file their application to employ the law firm of Montgomery Jonson LLP to advise and represent the Honorable Thomas Harris in regard to the matter of *The State of Ohio, ex rel. Colleen M. O'Toole, Prosecutor for Ashtabula County Ohio*, Case Number ~~2023-1023~~ ²⁰²⁴⁻¹⁰³² of the Ohio Supreme Court.

The Prosecuting Attorney is statutory legal counsel to the Ashtabula County Court of Common Pleas pursuant to R.C. 309.09(A). The Prosecuting Attorney is a party to this case and, therefore, has a conflict of interest with the Ashtabula County Court of Common Pleas. Pursuant to *State ex rel. Corrigan v. Seminatore*, 66 Ohio St. 2d 459, 465 (1981), and its progeny, outside counsel should be appointed to ensure that the county receives proper representation on both sides of the issues involved.

The judges of the Ashtabula County Court of Common Pleas have specifically requested the appointment of the law firm of Montgomery Jonson LLP to advise and represent them in this matter and the Board and the Prosecuting Attorney concur that the law firm of Montgomery Jonson LLP should advise and represent them this matter. Montgomery Jonson LLP has the

necessary staffing, experience, and expertise to advise and represent the Honorable Thomas Harris in this matter.

Respectfully submitted,



COLLEEN M. O'TOOLE (0053652)
PROSECUTING ATTORNEY
25 West Jefferson Street
Jefferson, OH 44047
Tel: (440) 576-3662

ASHTABULA COUNTY BOARD OF COMMISSIONERS
as authorized by Resolution 2024-367
25 West Jefferson Street
Jefferson, OH 44047
Tel: (440) 576-9090

IN THE COURT OF COMMON PLEAS
OF ASHTABULA COUNTY OHIO

IN RE:)	CASE NO.
)	
APPLICATION OF THE)	<u>APPLICATION OF THE ASHTABULA</u>
ASHTABULA COUNTY PROSECUTING)	<u>COUNTY PROSECUTING ATTORNEY</u>
ATTORNEY AND THE ASHTABULA)	<u>AND THE ASHTABULA COUNTY</u>
COUNTY BOARD OF COMMISSIONERS))	<u>BOARD OF COMMISSIONERS,</u>
PURSUANT TO R.C. 305.14(A), TO)	<u>PURSUANT TO R.C. 305.14(A)</u>
EMPLOY LEGAL COUNSEL)	<u>TO EMPLOY LEGAL COUNSEL</u>

Now come the Ashtabula County Prosecuting Attorney Colleen M. O'Toole ("Prosecuting Attorney") and the Ashtabula County Board of Commissioners ("Board"), pursuant to R.C. 305.14(A), and hereby file their application to employ the law firm of Montgomery Jonson LLP to advise and represent the Honorable Thomas Harris in regard to the matter of *The State of Ohio, ex rel. Colleen M. O'Toole, Prosecutor for Ashtabula County Ohio*, Case Number 2024-1032 of the Ohio Supreme Court.

The Prosecuting Attorney is statutory legal counsel to the Ashtabula County Court of Common Pleas pursuant to R.C. 309.09(A). The Prosecuting Attorney is a party to this case and, therefore, has a conflict of interest with the Ashtabula County Court of Common Pleas. Pursuant to *State ex rel. Corrigan v. Seminatore*, 66 Ohio St. 2d 459, 465 (1981), and its progeny, outside counsel should be appointed to ensure that the county receives proper representation on both sides of the issues involved.

The judges of the Ashtabula County Court of Common Pleas have specifically requested the appointment of the law firm of Montgomery Jonson LLP to advise and represent them in this matter and the Board and the Prosecuting Attorney concur that the law firm of Montgomery Jonson LLP should advise and represent them this matter. Montgomery Jonson LLP has the

necessary staffing, experience, and expertise to advise and represent the Honorable Thomas Harris in this matter.

Respectfully submitted,



COLLEEN M. O'TOOLE (0053652)
PROSECUTING ATTORNEY
25 West Jefferson Street
Jefferson, OH 44047
Tel: (440) 576-3662

ASHTABULA COUNTY BOARD OF COMMISSIONERS
as authorized by Resolution 2024-367
25 West Jefferson Street
Jefferson, OH 44047
Tel: (440) 576-9090



HONORABLE THOMAS E. HARRIS

COURT OF COMMON PLEAS
ASHTABULA COUNTY COURTHOUSE
25 WEST JEFFERSON STREET
JEFFERSON, OHIO 44047-1092
TEHarris@ashtabulacounty.us
(440) 576-3677
Fax: (440) 576-1468



Casey Kozlowski, Commissioner
Kathryn Whittington, Commissioner
J.P. Ducro, Commissioner
25 West Jefferson Street
Jefferson, Ohio 44047

July 19, 2024

RE: Request for legal counsel ORC Section 305.14

Dear Commissioners:

Enclosed please find a copy of the complaint filed with the Ohio Supreme Court on July 17, 2024 naming me as the Respondent in a lawsuit filed by Colleen M. O'Toole in her capacity as Prosecuting Attorney of Ashtabula County.

I need separate legal counsel to represent me in responding to the complaint filed by Colleen M. O'Toole. Colleen M. O'Toole cannot ethically represent me when she is the same person who is filed the lawsuit against me.

Pursuant to Ohio Revised Code Section 305.14, I am requesting the Prosecuting Attorney and the Board of Commissioners petition the Court of Common Pleas to employ the Law Firm Montgomery Jonson LLP to represent me to handle all related legal matters.

Time is of the essence in responding to this request.

Respectfully submitted,

Judge Thomas E. Harris

IN THE SUPREME COURT OF OHIO

**THE STATE OF OHIO, ex rel.
COLLEEN M. O'TOOLE, PROSECUTOR
FOR ASHTABULA COUNTY, OHIO**

Address:
Ashtabula County Prosecutor's Office
25 West Jefferson St
Jefferson, OH 44047
Relator,

v.

THE HONORABLE THOMAS HARRIS

Address:
Ashtabula County Courthouse
25 W. Jefferson St.,
Jefferson, OH 44047
Respondent.

CASE NO: _____

ORIGINAL ACTION

**COMPLAINT FOR WRIT OF
MANDAMUS, PROHIBITION,
ALTERNATIVE WRIT, AND
SUPPORTING AFFIDAVIT**

**EXPEDITED ISSUANCE OF
PEREMPTORY WRITS OR
ALTERNATIVE WRIT
REQUESTED**

Colleen M. O'Toole (No. 0053652)
(COUNSEL OF RECORD)
Mark Majer (No.0058504)
Ashtabula County Prosecutor's Office
25 W. Jefferson St.,
(440) 576 - 3662
cmotoole@ashtabulacounty.us
mrmajer@ashtabulacounty.us
Counsel for Relator

COMPLAINT FOR WRITS OF MANDAMUS, AND PROHIBITION
EXPEDITED ISSUANCE OF PEREMPTORY OR ALTERNATIVE WRITS
REQUESTED

This action is brought in the name of the State of Ohio on relation of Relator Colleen M. O'Toole, Prosecutor for Ashtabula County, Ohio, who avers as follows:

INTRODUCTION

NOW COMES Relator Colleen M. O'Toole, Prosecutor for Ashtabula County, Ohio ("Prosecutor O'Toole"), and through her Assistant, hereby seeks issuance of peremptory or alternative writs of prohibition and mandamus against Respondent, the Honorable Thomas Harris, Judge of the Ashtabula County Court of Common Pleas.

This original action arises from the Respondent's unauthorized exercise of judicial authority with regards to the ordering of the Ashtabula County Prosecutor's Office to create new evidence, in the form of a transcript of body camera footage, and then ordering the Ashtabula County Prosecutor's Office to bear the cost of creating the new evidence. With no adequate remedy at law, Relator respectfully requests (1) a writ of mandamus to compel Respondent Judge Thomas Harris to revoke his order of June 3, 2024, in which he orders the Prosecuting Attorney to pay the cost of transcription; (2) a writ of mandamus to compel Respondent Judge Thomas Harris, in accordance with applicable Ohio law, to order the costs of transcription in that case shall be borne by the Ashtabula County Treasurer and paid by the Ashtabula County Auditor; (3) a peremptory writ of prohibition to prohibit Respondent Judge Thomas Harris from ordering transcription of similarly situated matters in the future as his standing order creates an injury subject to repetition; (4) a peremptory writ of prohibition to prohibit Respondent Judge Thomas Harris from ordering such costs be borne by the State in similarly situated matters in the future as

his standing order creates an injury subject to repetition; (5) and in the alternative to the foregoing relief, pursuant to Rule 12.10 of the Supreme Court's Rules of Practice, Relator prays that this Court issue an alternative writ and schedule for the presentation of evidence before a master commissioner.

JURISDICTION

5. This is an original action in mandamus and prohibition. This Court has original jurisdiction over this action pursuant to Article IV, Section 2 of the Ohio Constitution.

PARTIES

6. Prosecutor O'Toole is the duly elected County Prosecutor of Ashtabula County.

7. Respondent, the Honorable Thomas Harris, Judge of the Ashtabula County Court of Common Pleas, in his judicial capacity.

BACKGROUND

8. Relator County Prosecutor O'Toole is the duly elected Prosecutor for Ashtabula County and began serving as such in January 2021.

9. Relator County Prosecutor asserts the matter herein is not a discovery dispute, nor is it a dispute over court costs. Rather, the judicial orders created by the Respondent from which this writ were taken go well beyond his judicial authority, greatly damage the Relator, and the Relator has no adequate remedy at law.

10. The judicial overreach complained of subjects the Relator to an ongoing ethical, fiscal, and manpower burden, in the form of for creating new evidence, allocating Assistant's time in having these transcripts created, and paying for the newly created unwanted and unnecessary evidence.

11. In the case captioned State v. Moser, Case No. 23 CR 434, a dispute arose between the court and prosecution over whom should pay for the transcription of a drug buy video the State intended to use at trial only. On January 22, 2024, a Motion to Compel hearing was held in Respondent's courtroom. During that hearing, defense counsel argued that the State had not complied with the court's standing trial management order. Defense counsel specifically cited order number "8" of the standing trial management order which requires both parties to submit and disclose a written transcript of any audio or video before used at trial.

12. On September 19, 2023, Respondent Judge issued a case management order compelling the Relator to transcribe any audio or video recordings they intend to use at trial¹. The present case involves the Court ordering the transcription of an officer's body camera. This case management order is a "boilerplate" order that the Respondent issues in all his criminal cases.

The order indicates:

"Should either the State of Ohio or the Defendant wish to use an audio/video recording at trial, the party shall file with the Court, and provide a courtesy copy to the Judge and opposing counsel, a complete transcript of the audio/video recording. Any Motion in Limine and/or any Motion to Suppress any audio/video recording shall have a copy of the transcript of the recording attached to the Motion."

13. After the hearing, the Respondent ordered the state to produce a transcript of roughly three hours of semi-audible undercover drug buy videos the state intended to use at trial. The prosecution did not want or need the transcript. Further, the transcription lacked probative value because most of the audio was neither relevant, intelligible, or admissible. Despite these well-founded concerns, the State complied to the court's order by requesting from the court a judgement entry for appointment and payment of a court reported at state expense. The State

¹ A copy of Respondent Judges Case management order issued on September 19, 2023, by the Respondent Judge in the case captioned State v. Kacee Moser, Case No. 2023-CR-434, is attached as Relator's Exhibit 1.

further provided the court reporter with the video evidence and submitted a copy of the transcripts to the Respondent's court and defense counsel.

14. After the case was resolved by a plea, the state filed a motion for an order for payment of cost to the court reporter; citing R.C. 2301.25, which indicates that transcripts shall be "taxed as costs in the case," [...] "paid by the clerk of the court of common pleas quarterly into the county treasury, and credited to the general fund."²

15. On June 3, 2024, the court held a hearing on the Relator's Motion For An Order For Payment Of Cost To The Court Reporter, and the Respondent found that R.C. 2301.25 cited by the state, only applies to "courtroom proceedings," such as transcripts of trials and suppression hearings, but "does not to apply to transcripts of events which occur outside of courtroom proceedings and which are investigatory in nature."³

16. Thus, the court found that the cost of transcripts could not be taxed at court costs. Off the record the Respondent Judge stated to Relator's Assistant Prosecutor, namely Assistant Prosecutor Michael Bodyke, that the prosecution needs to pay for the transcripts as the State is the party benefiting from the transcripts, and the Prosecutor's Office has historically done so.⁴

17. Respondent, in his order of June 3rd, 2024, has effectually, forced the prosecution to create new evidence that the prosecution did not want or need, did not introduce into evidence, and would not have created but for the Respondent's order. Adding insult to injury, Respondent

² A copy of State's Motion for Order for Payment of Cost to the Court Reporter is attached as Relator's Exhibit 2

³ A copy of Relator's Judgement Entry dated June 3, 2024, is attached as Relator's Exhibit 3.

⁴ See Affidavit of Assistant County Prosecutor Michael Bodyke, attached as Relator's Exhibit 4.

then ordered the Relator to bear the cost of paying for the creation of this unwanted, and unnecessary newly created evidence.

18. On June 3, 2024, the Respondent issued a judgment entry, in contravention of R.C. 2301.25 and R.C. 2301.24, denying the Relator's Motion⁵.

19. The Relator County Prosecutor did not want this transcription, nor did it need this transcription. The Relator did not use the transcription in trial and cannot be ordered to pay the cost of transcription in this case, and any other similarly situated case going forward.

20. The Relator County Prosecutor cannot be ordered in this case, or in any subsequent case, to create new evidence by the trial court.

21. The Relator County Prosecutor cannot be ordered in this case, or in any subsequent case, to bear the cost of creating new evidence in the form of a transcript when such expense is statutorily to be borne by the Ashtabula County Treasurer.

22. This order, consistent with the Respondent's current practice, will be continually utilized in every criminal case the Respondent Judge presides over going forward. This judicial overreach subjects the Relator to ongoing repetitive burdens and harms that are well beyond the jurisdiction of the Respondent Judge's ability to order.

23. Further, the application of this order is used by the Respondent in every case and will continue to subject the Relator to an ongoing ethical, and manpower burden, in the form of for creating new evidence, allocating Assistant's time in having these transcripts created.

24. Going forward, the application of this order is used by the Respondent in every case and will continue to subject the Relator to an ongoing financial harm in the form of paying for these unwanted and unneeded transcripts.

⁵ *Id.*, at 3.

25. This situation reached a dangerous impasse when the court reporter who transcribed the audio indicated that she will no longer provide any further transcripts in any cases involving the Relator County Prosecutor until she is paid for the transcript in question.⁶

26. In an attempt to defuse this issue, Relator County Prosecutor appealed to Ms. Iarocci directly to explain that her actions would likely prevent Relator's Office from filing appeals and prosecuting criminal cases at the trial court level.

27. Relator County Prosecutor emphasized to Ms. Iarocci that her actions greatly jeopardize public safety. Following the conversation Ms. Iarocci relented and agreed to provide the needed transcripts. However, the Relator does not know how long Ms. Iarocci will honor her verbal agreement, and that uncertainty serves to demonstrate the importance of expeditiously vindicating the Relator's rights.

28. In this matter, the Relator has no adequate remedy at law to redress the application of this ongoing order requiring the Relator to create new evidence in all the criminal trials before the Respondent.

29. The Relator has no adequate remedy at law to redress the application of this ongoing boilerplate order requiring the Relator to pay for new evidence in all the criminal trials before the Respondent.

30. The Relator County Prosecutor cannot be ordered in this case, or in any subsequent case, to create new evidence in the form of a transcript when such evidence cannot be compelled to be created by the Respondent.

⁶ Email of Ms. Carrie Iarocci to the Relator's Appellate Secretary withholding transcripts, is attached as Relator's Exhibit 5. Ms. Iarocci is a court reporter by profession. As such, she is an employee of the Ashtabula County Court of Common Pleas and is subject to the authority of the Administrative Judge of the Ashtabula County Court of Common Pleas.

31. Nor can the Respondent Judge order the Relator to pay for such transcripts as the statutory obligation contained in the Revised Code clearly mandates the cost of transcripts lies with the County Treasurer, not the Relator County Prosecutor.

32. The Relator County Prosecutor is not responsible for paying the court reporter from the Prosecutor's funds. The court reporter is a court employee who has threatened to deny any transcription requests from the Relator County Prosecutor unless payment is made in this case.

33. The injury the Relator suffers in this case is great, ongoing, capable of repetition, and is not subject to any other remedy under law.

**PROSECUTOR O'TOOLE IS ENTITLED TO A WRIT OF MANDAMUS TO COMPEL
RESPONDENT TO REVOKE HIS ORDERS OF SEPTEMBER 9, 2023 AND JUNE 3,
2024.**

34. The allegations above are incorporated herein as if fully rewritten.

35. It is at the sole discretion of the Relator County Prosecutor, not the Respondent Judge to bring forth evidence to support a criminal prosecution. R.C. 309.08(A) indicates:

The prosecuting attorney may inquire into the commission of crimes within the county. **The prosecuting attorney shall prosecute, on behalf of the state, all complaints, suits, and controversies in which the state is a party, except for those required to be prosecuted by a special prosecutor pursuant to section 177.03 of the Revised Code or by the attorney general pursuant to section 109.83 of the Revised Code, and other suits, matters, and controversies that the prosecuting attorney is required to prosecute within or outside the county, in the probate court, court of common pleas, and court of appeals.**(Emphasis added).

36. Additionally, the Relator County Prosecutor has a statutory duty to ensure court costs are properly allocated and collected. R.C. 309.08(A) further indicates:

In every case of conviction, the prosecuting attorney forthwith shall cause execution to be issued for the fine and costs, or costs only, as the case may be, and faithfully shall urge the collection until it is effected or found to be impracticable to collect. The prosecuting attorney forthwith shall pay to the county treasurer all moneys belonging to the state or county which come into the prosecuting attorney's possession.

37. Furthermore, A county prosecuting attorney has a duty, pursuant to R.C. 2949.14, to examine each item charged in a bill of costs to a nonindigent individual convicted of a felony and to certify to it if correct and legal, and a duty, under R.C. 309.08(A), in every case of conviction to cause execution to be issued for the costs, to faithfully urge collection of such costs, and to pay all collected costs in his possession to the county treasurer. 1990 Ohio Op. Att'y Gen. No. 109.

38. For a writ of prohibition to be justified, the Relator must show: (1) that the court against whom the writ is sought is exercising or about to exercise judicial power; (2) that the exercise of power is unauthorized by law; and (3) that denying the writ will result in injury for which no other adequate remedy exists in the ordinary course of law. *State ex rel. Koren v. Grogan*, 68 Ohio St.3d 590, 592, 629 N.E.2d 446, 448 (1994); *State ex rel. Enyart v. O'Neill*, 71 Ohio St.3d 655, 656, 646 N.E.2d 1110, 1112 (1995). A writ of prohibition in favor of a court clerk will lie to vacate an unreasonable or arbitrary judge's order to the clerk. *State ex rel. Krakowski v. Stokes*, 16 Ohio App.3d 62, 474 N.E.2d 695 (8th Dist. 1984). For a writ of mandamus to be granted, there must be no adequate remedy at law to correct the behavior of which the Relator complains. While writs of mandamus are "extraordinary remedies," they are generally available to compel lower courts to rule on specific motions when they are filed if the court fails to take action with reasonable speed. "[A] writ of mandamus may be issued when a relator establishes by clear and convincing evidence that relator has a right to the requested relief, a respondent has a clear legal duty to provide the requested relief, and the relator has no other adequate remedy in the ordinary course of the law." *In re Writ of Mandamus (Turner)*, 8th Dist. Cuyahoga No. 112758, 2023-Ohio-2158, ¶ 8. Furthermore,

“(w)here a lower court patently and unambiguously lacks jurisdiction over the cause, prohibition and mandamus will issue to prevent any future unauthorized exercise of jurisdiction and to correct the results of prior jurisdictionally unauthorized actions.”

State ex rel. Andrews v. Lake Cnty. Court of Common Pleas, 170 Ohio St. 3d 354, 2022-Ohio-4189, 212 N.E. 2d 914, ¶38 (quoting *State ex rel. Danaher v. Crawford*, 78 Ohio St. 3d 391, 393, 1997-Ohio-72, 678 N.E. 2d 549).

39. Respondent Judge has exercised his judicial power in his orders of September 9, 2023, and of June 3, 2024.

40. Relator has a clear legal right to relief and Respondent has a clear legal duty to provide it.

41. Respondent Judge’s exercise of his judicial power in his orders of September 9, 2023, and June 3, 2024, clearly exceeds his judicial authority. Further, Respondent’s actions infringe upon the Relator’s executive branch powers, and unlawfully interferes with the functions, independence, and discretion of the Relator’s Office.

42. Relator’s relief is in the immediate revocation of the Respondent’s orders of September 9, 2023, and June 3, 2024. The orders mandating the Prosecutor’s Office create new evidence in the form of a transcript exceeds Respondent’s judicial authority.

**PROSECUTOR O’TOOLE IS ENTITLED TO A WRIT OF MANDAMUS TO COMPEL
RESPONDENT TO ORDER THE ASHTABULA COUNTY TREASURER, NOT THE
RELATOR COUNTY PROSECUTOR, TO PAY FROM THE TREASURER, OR OTHER
NON-PROSECUTOR COUNTY FUNDS, THE COSTS ASSOCIATED WITH HIS
ORDER OF JUNE 3, 2024.**

43. The allegations above are incorporated herein as if fully rewritten.

44. Respondent Judge has exercised his judicial power in his order of June 3, 2024. This order, mandating the Prosecutor’s Office to pay the cost associated with creating new evidence in the form of a transcript exceeds his judicial authority.

45. Further, his order compelling the Relator to pay for such transcripts infringes upon the Relator's executive branch powers, and unlawfully interferes with the functions and discretion of the Relator's Office. The proper statutory source of funding for such transcription is the Ashtabula County Treasurer.

46. Relator has a clear legal right to relief and Respondent has a clear legal duty to provide it. Relator's relief is in the immediate revocation of the Respondent's order of June 3, 2024. Pursuant to R.C. section 2301.25, the costs of transcripts shall be taxed as costs in the case, collected as other costs, whether the transcripts have been prepaid or not, as provided by section 2301.24 of the Revised Code, paid by the clerk of the court of common pleas quarterly into the county treasury, and credited to the general fund.

47. R.C. section 2301.24 provides, the compensation for transcripts requested by the prosecuting attorney or an indigent defendant in criminal cases or by the trial judge in either civil or criminal cases, and for copies of decisions and charges furnished by direction of the court shall be paid from the county treasury and taxed and collected as costs.

48. Relator argues that the plain meaning of the applicable statutes clearly places the expense of transcription at the door of the County Treasury. Accordingly, Prosecutor O'Toole is entitled to a peremptory writ of prohibition to compel Respondent Judge to order the County Treasurer to pay for this unnecessary and unwanted, and transcript. This Honorable Court should issue a writ of mandamus to compel respondent Judge Thomas Harris, to order the costs of transcription in the trial court case shall be borne by the Ashtabula County Treasurer and paid by the Ashtabula County Auditor.

PROSECUTOR O'TOOLE IS ENTITLED TO A PEREMPTORY WRIT OF PROHIBITION TO COMPEL RESPONDENT JUDGE THOMAS HARRIS TO DISCONTINUE FORCING THE STATE TO CREATE NEW EVIDENCE.

49. The allegations above are incorporated herein as if fully rewritten.

50. For a writ of prohibition to be justified, the Relator must show: (1) that the court against whom the writ is sought is exercising or about to exercise judicial power; (2) that the exercise of power is unauthorized by law; and (3) that denying the writ will result in injury for which no other adequate remedy exists in the ordinary course of law. *State ex rel. Koren v. Grogan*, 68 Ohio St.3d 590, 592, 629 N.E.2d 446, 448 (1994); *State ex rel. Enyart v. O'Neill*, 71 Ohio St.3d 655, 656, 646 N.E.2d 1110, 1112 (1995). A writ of prohibition in favor of a court clerk will lie to vacate an unreasonable or arbitrary judge's order to the clerk. *State ex rel. Krakowski v. Stokes*, 16 Ohio App.3d 62, 474 N.E.2d 695 (8th Dist. 1984).

51. Furthermore, "(w)here a lower court patently and unambiguously lacks jurisdiction over the cause, prohibition and mandamus will issue to prevent any future unauthorized exercise of jurisdiction and to correct the results of prior jurisdictionally unauthorized actions."

State ex rel. Andrews v. Lake Cnty. Court of Common Pleas, 170 Ohio St. 3d 354, 2022-Ohio-4189, 212 N.E. 2d 914, ¶38 (quoting *State ex rel. Danaher v. Crawford*, 78 Ohio St. 3d 391, 393, 1997-Ohio-72, 678 N.E. 2d 549).

52. Respondent Judge has exercised his judicial power by creating his order of September 19, 2023. Respondent Judge has the authority to order his own transcripts, payable by the Court. However, the Respondent Judge does not have the authority to order the Relator County Prosecutor to create new evidence at the Relator County Prosecutor's expense.

53. The order of September 19, 2023, consistent with the Respondent's current practice, will be continually utilized in every criminal case the Respondent Judge presides over going forward.

Thus, subjecting the Relator to ongoing repetitive harms and burdens that are well beyond the jurisdiction of the Respondent Judge's ability to order.

54. Further, the application of this order is used by the Respondent in every case and will continue to subject the Relator to an ongoing ethical, financial, and manpower burden, in the form of for creating new evidence, allocating Assistant's time in having these transcripts created, and ultimately paying for these transcripts.

55. If allowed to continue, the ongoing order mandating the transcription of all video and audio files will continually and regularly exceed Respondent's judicial authority by ordering the Relator to perpetually create new evidence on a daily basis, across every criminal trial.

56. The Relator, other than by writ, has no adequate remedy at law to redress the application of this ongoing boilerplate order requiring the Relator to create new evidence in all the criminal trials before the Respondent.

57. The Relator County Prosecutor cannot be ordered in this case, or in any subsequent case, to create new evidence in the form of a transcript when such evidence cannot be compelled to be created by the Respondent.

58. Relator has a clear legal right to relief and Respondent has a clear legal duty to provide it.

59. Relator's relief is in the immediate revocation of the Respondent's order of September 19, 2023.

60. Further, Relator's relief is in prohibition, that being an order of prohibition barring the Respondent from maintaining his ongoing case management order which causes the Relator County Prosecutor to create evidence in every criminal case before the trial court.

61. The injury the Relator suffers in this case is great, ongoing, capable of repetition, and is not subject to any other remedy under law.

PROSECUTOR O'TOOLE IS ENTITLED TO AN ALTERNATIVE PEREMPTORY WRIT OF PROHIBITION TO COMPEL RESPONDENT JUDGE THOMAS HARRIS TO DISCONTINUE FORCING THE STATE TO PAY FOR THE CREATION OF NEW EVIDENCE

62. The allegations above are incorporated herein as if fully rewritten.

63. If this Honorable Court is inclined to allow the trial court to continue forcing the Prosecutor to create new evidence in the form of unnecessary and unwanted transcripts, the Prosecutor would alternatively request a writ ordering that the Relator Judge to bill the County Treasurer for the costs associated with the creation of the transcripts.

64. Respondent Judge in his order of September 19, 2024, has exercised his judicial power. This order, mandating the Prosecutor's Office pay for the transcription costs in the case exceeds his judicial authority as the proper statutorily mandated source of funding for such transcription is the Ashtabula County Treasurer. The order of September 19, 2024 is a standing order in every criminal case before the Respondent. Therefore, if this practice is allowed to continue, the Relator will be subject to continued and repeated financial injury.

65. In this matter, Relator has a clear legal right to relief and Respondent has a clear legal duty to provide it. Relator's relief is in the immediate cessation of the standing order utilized on September 19, 2024, which requires the Relator to pay for the creation of unwanted and unnecessary evidence.

66. Pursuant to R.C. section 2301.25, the costs of transcripts shall be taxed as costs in the case, collected as other costs, whether the transcripts have been prepaid or not, as provided by section 2301.24 of the Revised Code, paid by the clerk of the court of common pleas quarterly into the county treasury, and credited to the general fund.

67. R.C. section 2301.24 provides, the compensation for transcripts requested by the prosecuting attorney or an indigent defendant in criminal cases or by the trial judge in either civil

or criminal cases, and for copies of decisions and charges furnished by direction of the court shall be paid from the county treasury and taxed and collected as costs.

68. Relator argues that the plain meaning of the applicable statutes clearly places the expense of transcription at the door of the county treasury.

69. The injury the Relator suffers in this case is great, ongoing, capable of repetition, and is not subject to any other remedy under law.

70. Relator has a clear legal right to relief and Respondent has a clear legal duty to provide it.

71. Relator's relief is in the immediate revocation of the Respondent's order of September 19, 2023.

72. Further, Relator's relief is in prohibition, that being an order of prohibition compelling respondent Judge Thomas Harris, to discontinue forcing the state to pay for the creation of new unwanted and unnecessary evidence.

RELIEF REQUESTED

WHEREFORE, Relator Colleen M. O'Toole requests this Honorable Court to issue a writ of mandamus to compel Respondent Judge Thomas Harris to revoke his orders of June 3, 2024, and September 9, 2023, in which he orders the Prosecuting Attorney to create/transcribe evidence and pay the cost of transcription.

WHEREFORE, Relator Colleen M. O'Toole requests this Honorable Court to issue a writ of mandamus to compel Respondent Judge Thomas Harris, in accordance with applicable Ohio law, to order the costs of transcription in the case captioned State v. Kacee Moser, Case No. 2023-CR-434, be borne by the Ashtabula County Treasurer and paid by the Ashtabula County Auditor, not from Relator County Prosecutor funds.

WHEREFORE, Relator Colleen M. O'Toole requests this Honorable Court to issue a peremptory writ of prohibition to prohibit Respondent Judge Thomas Harris from ordering transcription of similarly situated matters in the future as his standing order creates an injury subject to repetition.

WHEREFORE, Relator Colleen M. O'Toole requests this Honorable Court to issue an alternative peremptory writ of prohibition to prohibit Respondent Judge Thomas Harris from ordering such costs be borne by the State in similarly situated matters in the future should this Honorable Court allow the Respondent's current practice to continue.

WHEREFORE, Relator Colleen M. O'Toole requests this Honorable Court in the alternative to the foregoing relief, pursuant to Rule 12.10 of the Supreme Court's Rules of Practice, Relator prays that this Court issue an alternative writ and schedule for the presentation of evidence before a master commissioner.

Respectfully submitted,

/s Mark Majer

Colleen M. O'Toole (No. 0053652)
(COUNSEL OF RECORD)
Mark Majer (No.0058504)
Ashtabula County Prosecutor's Office
25 W. Jefferson St.,
(440) 576 – 3662

10. On June 3, 2024, the Respondent issued a judgment entry, in contradiction of R.C. 2301.25 and R.C. 2301.24, denying the Relator's Motion, and ordering the Relator's Office to pay for any transcription the Respondent orders.
11. The issues of ordering the Relator to create and pay for new evidence in the underlying trial court case captioned State v. Kacee Moser, Case No. 2023-CR-434, and any other case going forward, is an overly expansive and inappropriate exercise of judicial power which wrongfully interferes with my authority as the duly elected County Prosecutor.
12. In an attempt to defuse this issue going forward, I instructed my Assistant to file a motion with the Respondent Judge advising who the proper payee is under applicable Ohio law. Sadly, this action was unsuccessful.
13. In further attempts to defuse this issue I approached Ms. Iarocci who is the court reporter/court employee who created the transcript in question. I explained to Ms. Iarocci that her actions of withholding transcripts pending payment would likely prevent Relator's Office from filing appeals and prosecuting criminal cases at the trial court level. I emphasized to Ms. Iarocci that her actions greatly jeopardize public safety as it interferes with my Office's ability to investigate and prosecute crimes. Following the conversation Ms. Iarocci relented and agreed to provide the needed transcripts. However, I do not know how long Ms. Iarocci will honor her verbal agreement, and that uncertainty serves to demonstrate the importance of expeditiously resolving this matter.
14. It was, and still is my professional opinion that the orders of September 19, 2023, and June 3, 2024, are well beyond the Respondent's jurisdiction to order, and by its format and practice, indicates that it is an ongoing order in every criminal case going to trial before the Respondent. As such, it dramatically interferes with my Office's ability to prosecute criminal cases.
15. This order, consistent with the Respondent's current practice, will continually be utilized in every criminal case the Respondent Judge presides over going forward. As such, it will repeatedly harm the Relator in perpetuity.
16. Further, the application of this order is used by the Respondent in every case and will continue to subject the Relator to unlawful and ongoing ethical, financial, and manpower burdens, in the form of for creating new evidence, allocating Assistant's time in having these transcripts created.
17. Additionally, should the Relator be subject to this ongoing order, the Relator will suffer a significant financial burden by being ordered to pay for that unwanted, unnecessary, and unused new evidence.
18. The repetitive order subjects the Relator to ongoing repetitive burdens and harms that are well beyond the jurisdiction of the Respondent Judge's ability to order, and thus are appropriately styled as a request for the extraordinary remedies available in prohibition.

COPY

IN THE COURT OF COMMON PLEAS
ASHTABULA COUNTY, OHIO

STATE OF OHIO,

Plaintiff,

vs

CHRISTOPHER W. FOSTER,

Defendant.

CASE NO. 2023 CR 00435

JUDGE THOMAS E. HARRIS

JUDGMENT ENTRY

FILED
2023 SEP 19 PM 2:53
CLERK OF COURT

To insure readiness of this matter for trial, to explore potential plea negotiations and facilitate disposition of pretrial issues:

IT IS ORDERED BY THE COURT as follows:

1. Requests for discovery shall be made forthwith. Plaintiff shall answer discovery requests within 7 days of receipt. Defendant shall answer discovery requests within 14 days of receipt.
2. Pretrial motions shall be filed with due regard for the Criminal Rules and no later than October 24, 2023.
3. Requests for continuance shall be in writing, state the reason therefore, and whether the opposing party objects. Requests for continuance made by the Defendant must include a waiver of all time limits for trial and be signed by the Defendant when available.
4. Negotiated Plea Hearings shall be requested by the parties and scheduled at the convenience of the Court prior to the date of trial.
5. This case is assigned for a Pretrial Conference on October 10, 2023, at 1:00 P.M. The Defendant and trial counsel shall be present. At the Pretrial Conference, counsel for the respective parties shall advise the Court regarding:



(a) the status of any offer of a plea negotiation or whether there will be a change of plea;

(b) the names of all expected witnesses, a complete list of all exhibits and the anticipated time for trial;

(c) anticipated issues involving matters of evidence or novel or unusual legal matters, including citation of appropriate authority;

(d) any other matter that will promote a fair and expeditious trial.

6. Counsel shall negotiate any plea agreements and if an agreement is reached, must provide written copies of the plea agreement to the Court prior to the time of the scheduled Plea Deadline Hearing or Status Conference. To promote improved efficiency and time-saving for counsel and the Court, such written agreements shall be provided to the court one week, but no later than three (3) days prior to any hearing. Counsel shall be cognizant of scheduling meetings with clients, victims and witnesses, prior to scheduled deadlines, in an effort to meet the requirements of the Court.

(a) Counsel shall discuss jail credit, if any, and, if an agreement cannot be reached on the amount, counsel are **Ordered** to bring any discrepancy to the Court's attention prior to the time the plea is to be placed on the record and at the time of the plea.

(b) For any disagreement among counsel regarding the amount of jail credit, counsel are **Ordered** to specifically brief such issue no later than seven (7) days prior to sentencing date, with legal citations to case and statutory law applying such to the specific facts of the present case.

7. All negotiated pleas shall be placed on the record at a hearing to be held on October 30, 2023, at 2:00 P.M. Defense counsel is to advise the Court whether or not the Defendant intends to plead on this Plea Hearing date.

8. Should either the State of Ohio or the Defendant wish to use an audio/video recording at trial, the party shall file with the Court, and provide a courtesy copy to the Judge and opposing counsel, a complete transcript of the audio/video recording. Any Motion in Limine and/or any Motion to Suppress any audio/video recording shall have a copy of the transcript of the recording attached to the Motion.

After the designated plea date, the Court will only accept a guilty plea to all charges pending.

9. This case will be scheduled for Jury Trial on November 28, 2023, at 8:15 A.M., and is scheduled for a Back-Up Jury Trial on November 30, 2023, at 8:15 A.M., if a plea has not been entered by the Defendant on the Plea Hearing date.

Pursuant to Civil Rule 58(B), the Clerk of this Court is directed to serve notice of this judgment and its date of entry in the journal upon the following: Attorney MALCOLM S. DOUGLAS; PROSECUTING ATTORNEY.


THOMAS E. HARRIS, JUDGE

TEH/ali

COPY

ASHTABULA COUNTY COMMON PLEAS COURT
ASHTABULA COUNTY, OHIO

Case 2023-00434

STATE OF OHIO

2024 MAY -7 AM 10:57

CASE NO. 2023 CR 00434

PLAINTIFF

VS.

JUDGE THOMAS F. HARRIS

KACEE R. MOSER

DEFENDANT

MOTION FOR ORDER
FOR PAYMENT OF COSTS TO
COURT REPORTER
PURSUANT TO R.C. 2301.25

Now comes the State of Ohio, by and through its counsel, Michael Bodyke, Assistant Prosecutor for COLLEEN M O'TOOLE, the duly elected, qualified, appointed and acting Prosecuting Attorney for Ashtabula County, Ohio and moves this Honorable Court for an Order for Payment of Costs to Court Reporter for the transcript that was ordered by the court, the prosecuting attorney or the defendant

The Court ordered mandatory transcripts to be made of any videos to be used in Trial and or Motion to Suppress in the Trial Management order filed on 9/19/23 and in the Court's Judgement Entry on 1/29/24.

Pursuant to R.C. 2301.25, the costs of the transcripts shall be taxed as costs in the case, and collected as other costs. Therefore, the State moves the Court to order the Ashtabula County Auditor to pay the amount on behalf of the county and add such costs as court costs to the case.

Respectfully submitted,

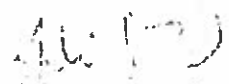
COLLEEN M O'TOOLE, 0053652
PROSECUTING ATTORNEY

M Bodyke
MICHAEL BODYKE, 0100941
ASSISTANT PROSECUTOR
25 WEST JEFFERSON STREET
JEFFERSON, OHIO 44047
E-MAIL: mbodyke@ashtabulacounty.us
PHONE: 440-576-3662



CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing MOTION was sent by regular U.S. Mail; hand delivered; via Fax; via e-mail, on April 15, 2024 to: Robert N. Farnacci, 65 N. Lake Rd. Madison, OH 44057, rnf@ohiolawyerz.com.



MICHAEL BODYKE 0100941
ASSISTANT PROSECTUR

IN THE COURT OF COMMON PLEAS
ASHTABULA COUNTY, OHIO

COPY

FILED

2024 JUN -3 AM 11:12

STATE OF OHIO,

Plaintiff,

-vs-

KACEE R. MOSER,

Defendant.

) CASE NO. 2023-CR-434

)

)

)

)

)

)

)

JUDGE THOMAS E. HARRIS

APRIL DANIEL C
CLERK OF COURTS
COMMON PLEAS COURT

JUDGMENT ENTRY

This case came before the Court upon the Motion of the State of Ohio for the Payment of Transcript Costs of undercover drug buys.

R.C. § 2301.25 reads:

When ordered by the prosecuting attorney or the defendant in a criminal case or when ordered by a judge of the court of common pleas in either civil or criminal cases, the costs of transcripts shall be taxed as costs in the case, collected as other costs, whether the transcripts have been prepaid or not, as provided by section 2301.24 of the Revised Code, paid by the clerk of the court of common pleas quarterly into the county treasury, and credited to the general fund. If, upon final judgment, the costs or any part of the costs are adjudged against a defendant in a criminal case, the defendant shall be allowed credit on the cost bill of the amount paid for the transcript the defendant ordered and, if the costs are finally adjudged against the state, the defendant shall have the defendant's deposit refunded. All transcripts shall be taken and received as prima-facie evidence of their correctness. If the testimony of witnesses is taken before the grand jury by reporters, they shall receive for the transcripts the same compensation and be paid in the same manner as provided in this section and section 2301.24 of the Revised Code.

The Court finds that, when the statute refers to "civil or criminal cases," it means courtroom proceedings. For criminal cases, this would include, but is not limited to, transcripts of trials, suppression hearings, plea hearings, and other similar proceedings.

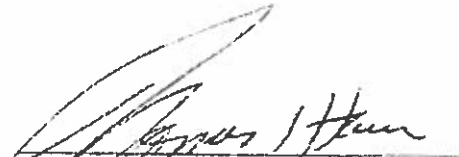
The Court finds that the statute does not apply to transcripts of events which occur outside of courtroom proceedings and which are investigatory in nature. Examples of these types of transcripts include, but are not limited to, transcripts of recorded confessions made to law enforcement or transcripts of audio recordings of a confidential drug buy. These events occur outside of court control, and therefore, cannot be reasonably or fairly taxed as court costs.



Based upon the foregoing, the Motion for Payment of Transcript Costs is **OVERRULED.**

IT IS SO ORDERED.

Pursuant to Civ.R. 58(B), the Clerk of this Court is directed to serve notice of this Order and its date of entry in the journal upon: **all parties, or if represented by counsel, all counsel of record.**


THOMAS E. HARRIS, JUDGE

Mark R. Majer

From: Diane M. Goss
Sent: Tuesday, July 9, 2024 12:18 PM
To: Mark R. Majer
Cc: Colleen M. O'Toole; Matthew J. Hebebrand
Subject: FW: Thomas Volpi & Marvin White appeal transcripts

Mark, Let me know how to proceed? Thanks.
Diane

From: Carrie M. Iarocci <CMIarocci@ashtabulacounty.us>
Sent: Monday, July 8, 2024 8:38 PM
To: Diane M. Goss <DMGoss@ashtabulacounty.us>
Subject: Re: Thomas Volpi & Marvin White appeal transcripts

Oops. Really though?? So funny. I send everything to everyone.. can't imagine I forgot the prosecutor. When I am paid in full for past gifts I will send them..again. 😊

Sent via the Samsung Galaxy A52 5G, an AT&T 5G smartphone
Get [Outlook for Android](#)

From: CMIarocci@ashtabulacounty.us <cmiarocci@ashtabulacounty.us>
Sent: Monday, July 8, 2024 8:33:53 PM
To: Diane M. Goss <DMGoss@ashtabulacounty.us>
Subject: Re: Thomas Volpi & Marvin White appeal transcripts

Hey beautiful Diane..

Sent via the Samsung Galaxy A52 5G, an AT&T 5G smartphone
Get [Outlook for Android](#)

From: Diane M. Goss <DMGoss@ashtabulacounty.us>
Sent: Monday, July 8, 2024 5:18:14 PM
To: Carrie M. Iarocci <CMIarocci@ashtabulacounty.us>
Subject: Thomas Volpi & Marvin White appeal transcripts

Hi Carrie:

First of all, I hope you had a relaxing holiday.

Now for business- I noticed there were 11 transcripts filed in regard to Thomas Volpi's appeal case 2024 CA 00046 and that 6 transcripts were filed in Marvin White's appeal case no. 2024 CA 00045. I didn't received the Volpi nor White's transcripts.

Do you have those transcripts or was these transcripts completed by the other court reporter? Let me know.
Thanks.

Diane Goss, paralegal



FILED

2024 AUG -5 AM 9:38

IN THE COURT OF COMMON PLEAS

ASHTABULA COUNTY, OHIO

APRIL DANIELS
CLERK OF COURTS
COMMON PLEAS COURT
ASHTABULA CO OH

IN RE:

) CASE NO. 2024 MD 117

)
)
) APPLICATION OF THE ASHTABULA
) COUNTY PROSECUTING ATTORNEY
) AND THE ASHTABULA COUNTY BOARD
) OF COMMISSIONERS PURSUANT TO R.C.
) 305.14(A), TO EMPLOY LEGAL COUNSEL
)
)
)

) **ORDER**

The Court finds that the Board of Commissioners of Ashtabula County have passed a resolution, pursuant to Ohio Revised Code Section 305.14, to appoint the law firm of Montgomery Jonson LLP to advise and represent the Ashtabula County Common Pleas Judge Thomas E. Harris in all matters involving the Complaint for Writ of Mandamus, Prohibition and Alternative Writ filed by the Relator Colleen M. O'Toole, who currently holds the office of Ashtabula County Prosecutor.

The Court finds that, on its face, Colleen M. O'Toole has a conflict of interest because she is the Relator in the complaint filed by her against Judge Thomas E. Harris, who is the Respondent. Colleen M. O'Toole cannot ethically serve as legal counsel for Judge Thomas E. Harris and simultaneously be the Relator requesting Writs of Mandamus, Prohibition and Alternative Writs be issued by the Supreme Court of Ohio against Judge Thomas E. Harris.

The Board of Commissioners of Ashtabula County has a clear legal duty, pursuant to Ohio Revised Code Section 305.14 to provide Judge Thomas E. Harris of the Ashtabula County Court of Common Pleas with separate legal counsel. Ashtabula County Court of Common Pleas Judge Thomas E. Harris has a duty to file a response to the petition within twenty-one (21) days of the

date he was served with the summons in the lawsuit, which was July 22, 2024, so time is of the essence.

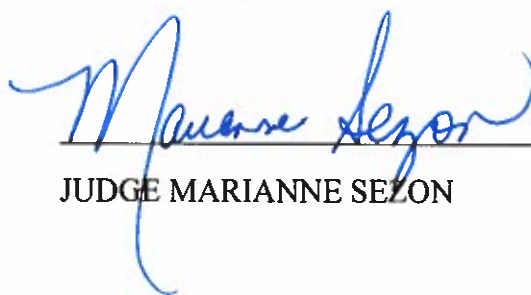
The application filed by the Board of Commissioners of Ashtabula County to appoint the Law Firm of Montgomery Jonson LLP to represent and advise Ashtabula County Court of Common Pleas Judge Thomas E. Harris in all matters involving the lawsuit filed in the Supreme Court of Ohio, Case Number 2024-1032, by Colleen M. O'Toole is **GRANTED**.

IT IS SO ORDERED.

Pursuant to Civil Rule 58(B), the Clerk of this Court is directed to serve notice of this judgment and its date of entry in the journal upon the following: Prosecuting Attorney Colleen M. O'Toole; Commissioner Casey R. Kozlowski; Commissioner Kathryn L. Whittington; Commissioner J.P. Ducro, IV; and, Montgomery Jonson LLP.



JUDGE DAVID A. SCHROEDER



JUDGE MARIANNE SEZON



RESOLUTION AUTHORIZING AN APPLICATION TO THE COURT OF COMMON PLEAS FOR CONSIDERATION AND AUTHORIZATION TO RETAIN THE SERVICES OF SPECIAL COUNSEL, MONTGOMERY JONSON LLP TO REPRESENT THE ASHTABULA COUNTY COMMON PLEAS JUDGE THOMAS HARRIS DUE TO A COMPLAINT FILED BY THE ASHTABULA COUNTY PROSECUTING ATTORNEY, COLLEEN O'TOOLE

WHEREAS, on July 22, 2024, the Board of County Commissioners of Ashtabula County (the Board) received a request from Ashtabula County Common Pleas Judge Thomas Harris requesting outside counsel of Montgomery Jonson LP be named to represent him in an action filed on July 17, 2024, Case No. 2024-1032 by Ashtabula County Prosecuting Attorney, Colleen O'Toole; and

WHEREAS, Ohio Revised Code Section 305.14(A) authorizes the Court, upon joint application of the Board and the Prosecutor, to employ legal counsel to assist the Prosecutor, the Board, or any other county officer in matters; and

WHEREAS, a joint application is necessary to the Ashtabula Court of Common Pleas (Court) with the Ashtabula County Prosecuting Attorney (Prosecutor) to authorize the Board to employ outside legal counsel to represent Honorable Judge Thomas Harris in the matter of the complaint for Writ of Mandamus, Prohibitions, Alternative Writ and Supporting Affidavit in relation to Case No. 2024-1032 is caused to be made, (a copy of the request is attached hereto and incorporated herein by reference as Attachment 1); and

WHEREAS, a request is hereby made to the Ashtabula County Prosecutor to approve a joint application with the Board of Commissioners and send such joint application to the Ashtabula County Common Pleas Judges; and

WHEREAS, if no response is received from Ashtabula County Prosecuting Attorney, Colleen O'Toole by Friday, August 2, 2024, deadline of 2:00 p.m. as to whether or not she consents to the joint application, this Board would move forward on its own, to request the Court to consider the Board's application and authorize the Board to employ outside legal counsel for Judge Thomas Harris to represent him in the Matter; and

WHEREAS, the Board desires to retain the services of Montgomery Jonson LLP to represent Judge Harris in this Matter at a cost **not to exceed \$5,000.00**.

NOW THEREFORE, BE IT RESOLVED, By the Board of Commissioners of Ashtabula County, Ohio, that an application be made to the Ashtabula County Court of Common Pleas for authorization to contract with outside legal counsel to provide legal services for Ashtabula County Common Pleas Judge Thomas Harris in the Matter, as further outlined above. The cost of same shall be borne by Ashtabula County.

**ASHTABULA COUNTY COMMISSIONERS
CERTIFICATION PAGE**

Resolution No. 2024-367

July 30, 2024

RESOLUTION AUTHORIZING AN APPLICATION TO THE COURT OF COMMON PLEAS FOR CONSIDERATION AND AUTHORIZATION TO RETAIN THE SERVICES OF SPECIAL COUNSEL, MONTGOMERY JONSON LLP TO REPRESENT THE ASHTABULA COUNTY COMMON PLEAS JUDGE THOMAS HARRIS DUE TO A COMPLAINT FILED BY THE ASHTABULA COUNTY PROSECUTING ATTORNEY, COLLEEN O'TOOLE

Upon the motion of Casey R. Kozlowski, seconded by J.P. Ducro IV.

VOTE:

**Kathryn L. Whittington
J.P. Ducro IV
Casey R. Kozlowski**

**Aye
Aye
Aye**

CERTIFICATE OF CLERK

IT IS HEREBY CERTIFIED that the foregoing is a true and correct transcript of a resolution acted upon and duly passed by the Board of County Commissioners of Ashtabula County, Ohio, on the date noted above.



Crystal Sturgill, Clerk of the Board, *Acting*
Board of County Commissioners
Ashtabula County, Ohio