

IN THE TWELFTH DISTRICT COURT OF APPEALS  
BROWN COUNTY, OHIO

STATE OF OHIO, ex rel DENNIS J. VARNAU, )  
FILED )  
COURT OF APPEALS ) CASE NO. CA2009-02-10

Relator/Petitioner, )  
AUG 06 2009 )

-vs-

DWAYNE WENNINGER, )  
TINA M. MERANDA )  
BROWN COUNTY CLERK OF COURTS )

Respondent/Defendant. )

RELATOR'S MOTION  
FOR STAY OF BRIEFING  
SCHEDULE (SECOND)

Now comes the Relator, by and through Counsel, and moves this Court to issue a stay of the merit briefing and filing of dispositive Motions in this case, pursuant to the Court's previously issued orders, pending the resolution of certain procedural and discovery related issues now pending between the parties and/or the Courts.

As grounds for this Motion, Counsel refers the Court to the previous order of the Court for briefing and filing of dispositive Motions, which was set for July 10, 2009. On the undersigned's Motion filed July 1, 2009, this was extended to August 10, 2009.

This case relates to allegations that the Respondent was never qualified either to run for or to hold the public office he now purports to hold: Brown County Sheriff. Evidence of that resulted in a criminal indictment against him for "knowingly" falsifying his credentials to do so, which were and are believed to include a lack of educational qualification, a lack of mandatory training, a lack of State certification, and other grounds. Much of that is reflected in State vs. Wenninger, 125 Ohio Misc.2d 55, 2003-Ohio-5521. It is understood, on the report of others present during the trial, that the presiding judge in fact commented that he "was not" legally qualified to run for or be the sheriff -- whether he "knowingly" falsified his credentials or not.

Since the initiation of this case extensive discovery has been engaged, and other efforts to obtain the evidence necessary to present in this case, and it is believed that in fact Relator will be entitled to summary judgment. These efforts though have been stymied, and are still unfinished. These efforts though include, and their status is:

1. Relator filed in the underlying criminal case, on May 15, 2009, a motion to unseal the record of that prosecution, for the public good as well as the use by this Court. On May 20, a judge in Brown County, unbeknownst to the undersigned who filed said Motion on Relator's behalf, overruled that Motion, but refused to notify anyone of the decision and would not release a copy of it. Entries to that effect were previously filed with this Court. The undersigned, on Relator's behalf, filed multiple proceedings to just find out what happened to his Motion, including additional Motions, an affidavit of bias and prejudice, subpoenas, and eventually on July 10 a Petition for a writ of mandamus to get a copy.<sup>1</sup> A copy was not obtained until July 17.

2. A "new" decision was thereafter made on the same Motion, July 2, 2009, overruling it again, but that also wasn't known to the undersigned or Relator for several days.<sup>2</sup> A notice of appeal to this Court was almost immediately filed, to unseal that record for the public benefit, and not just to this Respondent's benefit only. That appeal is pending before this Court as Case No. CA 2009-07-26, and is also the subject of a pending Motion both for a delayed appeal, due to not knowing there was anything to appeal, and also to accelerate the disposition of it, for the purposes of *this* case.

3. The undersigned caused to be issued and served 18 separate Rule 45 subpoenas, starting on May 14, 2009, and up to July 9, 2009, to multiple State and local agencies or offices in possession of documents and information relevant to this case, and

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<sup>1</sup> That action is pending before this Court as Case No. CA 2009-07-27.

<sup>2</sup> Also, since a decision was already made, the Supreme Court decided the affidavit of bias and prejudice was moot, and dismissed it.

have had responses to many. One such response though was by the Brown County Prosecuting Attorney's Office, who first filed with this Court a motion to quash the subpoena, and after filed opposition by the undersigned, formally and in writing *withdrew that motion*, but instead filed what was purported to be the subpoenaed documents with the clerk of Courts, which the Clerk of Courts refused to release because they were allegedly "under seal." That person then filed with this Court an "emergency motion" to reverse what they have done, which the undersigned also filed opposition to (filed on July 24, 2009).

4. The undersigned served upon the Brown County Sheriff's Department, a subpoena for the employment related records of this Respondent. Although the Respondent's Counsel responded to the undersigned by letter objecting to that subpoena in its entirety, the Sheriff's Department did not respond at all. That subpoena is therefore the subject of a pending Motion to Compel Discovery before this Court, filed on July 31, 2009. That motion is still pending.

5. The undersigned caused to be served upon the Brown County Clerk of Courts a Rule 45 subpoena, for documents relating to the official swearing-in of the Respondent as Brown County Sheriff. No response was ever made to it. After a reminder, and no response, a Motion to Compel Discovery for that was filed with this Court, on or about the same date.

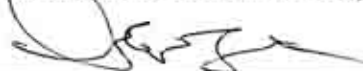
6. The undersigned caused to be served, on May 15, 2009, initial discovery requests, being interrogatories, request for admission, and a request for production of documents on Respondent. Many of the requested documents were not provided, by objection from the Respondent. As a result of an impasse on that, a motion to compel discovery is also pending before this Court, filed on or about this same date.

7. The undersigned caused to be served, on or about June 8, 2009, a Second Set of Interrogatories on Respondent. No response was ever received. As a result a motion to compel discovery for that is also pending before this Court, filed on or about this same date.

All of these issues currently remain unresolved, but are required in order to fully present to this Court an appropriate response to an otherwise unsupported motion to dismiss, converted by this Court into a motion for summary judgment; and are also required in order for this party to file his own motion for summary judgment. Although a partial, incomplete, and not fully supported pleading and evidence can be filed with this Court, it would not present to this Court the full range of evidence available to oppose the motion to dismiss, and to support summary judgment in favor of this Relator. Further, resolution of each of the above issues is beyond this Relator's control, and is dependent upon responsive pleadings by other parties, third parties, and decisions from this Court.

This is not the usual case, and is dependent upon substantial historical evidence and documents in the possession of persons who are not controlled by this Relator. It was for this reason that Counsel requested that the briefing schedule be stayed for a reasonable period of time until after the resolution of all of these pending issues. Counsel renews that request, essentially requesting a stay of the briefing schedule in this case until a formal and final resolution is made of all of the above issues, and then an additional 30 days be granted thereafter to present to this Court the Relator's own motion for summary judgment and opposition to that filed by the Respondent.

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



**Thomas G. Eagle** (#0034492)  
Counsel for Relator  
3386 North State Route 123  
Lebanon, Ohio 45036  
Phone: (937) 743-2545  
Fax: (937) 704-9826  
E-mail: [eaglelawoffice@cs.com](mailto:eaglelawoffice@cs.com)

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing was served upon Gary A. Rosenhoffer, 302 E. Main St., Batavia, OH 45103, and Patrick L. Gregory, 717 W. Plane, Bethel, OH 45106, Attorneys for Respondent, by ordinary U.S. mail this 6<sup>th</sup> day of August 2009.



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**Thomas G. Eagle (#0034492)**