

IN THE SUPREME COURT OF OHIO

THE STATE OF OHIO, ex rel.	:	Case No. 2022-0409
FAITH ANDREWS, CLERK OF	:	
COURTS FOR LAKE COUNTY,	:	
OHIO,	:	
	:	Original Action in Prohibition,
Relator,	:	Mandamus and Quo Warranto
	:	
v.	:	
	:	
THE COURT OF COMMON PLEAS	:	
OF LAKE COUNTY, OHIO, et al.,	:	
	:	
Respondents.	:	

MEMORANDUM IN RESPONSE TO MOTION TO DISMISS FILED BY
AMICUS CURIAE OHIO CLERK OF COURTS ASSOCIATION

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AMICUS CURIAE STATEMENT OF INTEREST

The Ohio Clerk of Courts Association (“OCCA”) is a professional organization that was created in 1940 to advance the goal of assisting the independently-elected Clerks of Courts throughout the State of Ohio in the performance of their official duties and to exercise influence in legislation and other public matters that affect county clerks. The members of the OCCA are the 88 Clerks of Courts that have been elected (or in the case of Cuyahoga County, appointed by the County Executive) for four-year terms to carry out the statutory duties set forth in the Ohio Revised Code. The OCCA’s current President is Mary Swain, the Clerk of Courts for Butler County.

The OCCA submits this Memorandum because it has a strong and compelling interest in ensuring that any decisions issued by this Court do not unduly restrict or limit the ability of each Clerk of Courts in all 88 counties to perform their official duties in a manner that complies with the Ohio Constitution and the Ohio Revised Code.¹ The Office of the Clerk of Courts traces its origin from the ancient position of cleric who maintained the records, was responsible for correspondence, and had powers to issue writs ordered by the court. The cleric was one of the more educated and trusted persons in the community.

In creating Ohio’s judicial system, the 1802 version of the Ohio Constitution originally provided for the appointment of a Clerk of Courts by the judges of the Court of Common Pleas. Under the 1851 Constitution, however, the Office of the Clerk of

¹ This Memorandum is intended to address the important legal issues presented by this case. It does not take any position for or against any of the parties with respect to any of the disputed factual issues.

Courts became an independently-elected officer with a three-year term. *See* Ohio Constitution, Article IV, Section 16 (1851). Although Article IV, Section 16 of the Ohio Constitution was later repealed in 1933, the General Assembly expressly adopted and incorporated the Clerk of Courts position as an independently-elected office in the Ohio Revised Code and extended the Clerk's term to four years. Thus, the Ohio Revised Code currently provides that “[t]here shall be elected quadrennially in each county, a clerk of the court of common pleas, who shall assume office on the first Monday of January next after his election and who shall hold said office for a period of four years.” *See* R.C. 2303.01.

As an independently-elected officer, the Clerk of Courts plays a vital role in the operation of Ohio's judicial system by ensuring that all of the official records of judicial proceedings are properly filed, docketed, indexed, and preserved for all civil, felony criminal and domestic relations cases. Moreover, under R.C. 2303.03, the Clerk of Courts for each county also serves as the Clerk of Courts for the Court of Appeals, and has an independent obligation to ensure that the Court of Appeals receives a complete and accurate record of each case that is subject to appeal. Thus, by vesting this important responsibility in the Clerk of Courts, the General Assembly sought to protect the integrity of judicial proceedings by vesting an independent officer with the responsibility for ensuring that the official “record” of each case has been properly created and preserved for appellate review, and to ensure that all records are available for use by the parties, by judges, and the general public.

Indeed, under the Ohio Revised Code, the Clerk of Courts for each county has a number of specific statutory obligations that they must fulfill in order to carry out the official duties of their elected office. *See* Ohio Revised Code Chapter 2303. The “Clerk” in fact is mentioned in over one hundred sections of the Ohio Revised Code.² The statutory duties of the Clerk of Court, therefore, are significantly broader than protecting and preserving the records of judicial proceedings, but include the statutory obligation to account for all monies collected, to record certificates of election, to administer oaths, and to issue writs and other papers to carry out court orders, including summons, subpoenas, warrants to arrest, and the death warrant in capital cases. Moreover, each Clerk has the statutory duty to issue titles for all vehicles and watercraft, and to perform a variety of other statutory duties that are not related to the court of common pleas. *See, e.g.*, R.C. 1533.13, 1548.02; and 4505.02.

As independent officers who have an obligation to fulfill their statutory duties, the members of the OCCA believe that it is critically important for this Court to recognize, preserve, and protect the independence of the Office of the Clerk of Courts and to adopt a rule of law in this case that ensures that Clerks are not wrongfully prevented or obstructed from performing their important statutory functions. Accordingly, the OCCA respectfully submits this Memorandum in order to assist the Court in determining the proper relationship between the authority of the judges of the Common Pleas Court and the authority of the Clerk of Courts under Ohio law.

² A listing of the sections of the Ohio Revised Code that set forth the statutory duties of the Clerk of Courts, which was prepared by the OCCA in 2018 for training purposes, is attached hereto in the Appendix to this Brief.

ARGUMENT

I. THE JUDGES OF A COMMON PLEAS COURT LACK THE JURISDICTION AND AUTHORITY TO ISSUE ORDERS THAT PREVENT OR INTERFERE WITH THE CLERK’S ABILITY TO CARRY OUT THE OFFICIAL DUTIES THAT MUST BE PERFORMED BY THE CLERK OF COURTS UNDER THE OHIO REVISED CODE.

In filing a Motion to Dismiss this original action, Respondents have made a number of legal assertions that mischaracterize the nature of the legal relationship between the Clerk of Courts and the judges of the Common Pleas Court. Contrary to Respondent’s assertions, the judges of the common pleas courts in Ohio do not have unlimited authority over the Clerk of Court as if the Clerk were an appointed officer who serves at the pleasure of the judges. While Respondents repeatedly cite R.C. 2303.26 to argue that “in performing its official duties, the clerk shall be *under the direction of the court*,” this statutory language should not be read as authorizing the judges of the common pleas court to issue orders that prevent or obstruct the Clerk from carrying out their independent obligation to fulfill the statutory duties imposed by the Ohio Revised Code or as allowing the judges to take over the functions and duties of the Clerk of Court under the Ohio Revised Code.

Indeed, as this Court recently observed in *State ex rel. Ware v. Kurt*, 2022-Ohio-1627, --- N.E.3d ---- (May 18, 2022), it is clear and undisputed that “the office of the clerk of courts ‘is an office separate and distinct from that of judge of the common pleas court.’” *Id.* at ¶ 15, quoting *State v. Leibold*, 2d Dist. Montgomery No. 25124, 2013-Ohio-1371, 2013 WL 1385664, ¶ 45, and *State ex rel. Smith v. Culliver*, 186 Ohio App.3d 534, 2010-Ohio-339, 929 N.E.2d 465, ¶ 43 (5th Dist.). Therefore, as this Court

has recognized, “the operations, procedures, and policies of the clerk of courts’ office” are separate and distinct from the operations, procedures, and policies of the common pleas court. *Ware*, 2022-Ohio-1627, at ¶ 15.

While this Court’s recent opinion in *Ware* involved the enforcement of Ohio’s Public Records Act, it nevertheless is relevant to this case because it emphasizes the basic and fundamental point that the Clerk of Courts is a separate and independent officer who has been vested with certain statutory duties that must be performed and fulfilled by the Clerk of Courts, not the judges of the Common Pleas Court. Indeed, in performing the administrative and ministerial tasks assigned to the Clerk of Courts by the Ohio Revised Code, the Clerk is not merely acting on behalf of the common pleas court, but is acting on behalf of the State of Ohio and the general public who elected them to their independent office. Accordingly, the judges of the common pleas court clearly do not have the jurisdiction or authority to issue *ex parte* orders that prohibit or interfere with the ability of the Clerk of Court to carry out the important statutory duties of their office or otherwise causes the Clerk to violate the mandatory requirements of the Ohio Revised Code.

In this regard, Respondents’ Motion to Dismiss wrongfully seek to diminish the important and independent role served by the Clerk of Courts in the judicial system by repeatedly characterizing the Clerk’s statutory duties as involving only “ministerial” tasks. This argument wrongfully obscures the fact that the Clerk is an independent officer that, while not exercising judicial authority, nevertheless is delegated the responsibility to undertake certain important statutory duties that

must be performed by the Clerk, not the judges of the common pleas court. Indeed, the fact that the tasks assigned to the Clerk of Court in Ohio Revised Code Chapter 2303 are largely “ministerial” or “administrative” in nature does not mean that they are not important, or that the General Assembly did not specifically create the Office of the Clerk of Courts in order to ensure that these important statutory duties were performed by an independent officer. Thus, the fact the Clerk’s duties are “ministerial” or “administrative” does not change the fact that they are important statutory responsibilities that must be fulfilled by the Clerk of Courts.

A review of the relevant case law fully supports this legal position. In reviewing the scope of R.C. 2303.26, in fact, the Ohio courts have *never* construed the language of this statute as granting unlimited authority or authorizing a judge to issue an order that prevents the Clerk of Courts from performing the statutory duties and functions of this separate and distinct office in accordance with the Ohio Revised Code. In *Hackett v. Kilbee*, 4 Ohio App.2d 246, 211 N.E.2d 892 (9th Dist. 1965), for example, the Ninth District Court of Appeals held that the judges of the common pleas court did not have the jurisdiction and authority to restrict the hours of operation of the Office of the Clerk of Courts, explaining:

Notwithstanding Section 2303.26, Revised Code, a Common Pleas Court rule which sets the time when a court is in session does not thereby regulate the hours or time when the office of the Clerk of Courts shall be open. The Clerk of Courts is an elected public official whose duties are regulated by statute. (See Chapter 2303, Revised Code.). Under Section 2301.11, Revised Code, not less than two hundred forty days of open session of the Common Pleas Court must be held by each judge each year. The office of Clerk of Courts, however, is an office separate and distinct from that of Judge of the Common Pleas Court. See: *Eckart v. Kroeger, County Recorder*, 111 Ohio App. 32, 170 N.E.2d 435. We find

no statute setting forth the hours when the office of the Clerk of Courts shall be open to receive petitions. It is clear, however, that such papers must be filed with the clerk or his deputies. Section 2703.01, Revised Code.

(Emphasis added.) *Id.* at 247-248.

This Court's 1902 opinion in *State ex rel. Glass v. Chapman*, 67 Ohio St. 1, 65 N.E. 154 (1902), is not to the contrary. Although the syllabus of the Court's opinion states that "[t]he duties of the clerk of court of common pleas are ministerial and nonjudicial," the Court's holding does not in any way suggest that the judges of a common pleas court may issue orders that would prevent the Clerk of Courts from performing their independent statutory duties and functions under the Ohio Revised Code or cause the Clerk of Court to violate the Ohio Revised Code. To the contrary, the order at issue in *Glass* was simply a standard judicial order that was issued in a pending case, which directed the Clerk to allow "a change in venue in a cause pending in said court, and directing him to transmit the papers and pleadings" to a different county court of common pleas. *Id.*, syllabus ¶ 1. Thus, the order at issue in *Glass* related directly to the performance of a judicial function by the Court (deciding proper venue for a pending case), and did not prevent or interfere with the ability of Clerk of Court from fulfilling its independent, statutory responsibility for keeping and maintaining the official records of the judicial proceeding, and ensuring that the entire file was properly transferred to the Clerk of Courts for the county where venue was being transferred.

Similarly, although not binding, the Attorney General's 2003 opinion – Ohio Op. Atty. Gen. No. 2003-030 – does not support the Respondents' position. In this

2003 opinion, the issue presented was whether the judges of the Domestic Relations Division or the Clerk of Courts should determine whether the records of individual domestic relations cases should be made available to the public through the Internet. With respect to this issue, the Ohio Revised Code was silent, and thus the issue presented related to a policy decision that directly affected the judicial adjudication of domestic relations cases. While the Ohio Revised Code mandated that the Clerk of Courts has a statutory duty to make the records of cases “available to the public” for reproduction and copying (R.C. 2303.12), the Attorney General found that “the General Assembly had not prescribed a specific method” for the Clerk of Courts to execute this statutory duty, and thus found that the Clerk should act “under the direction of [her] court,” and should obey the court’s order “unless a court of competent jurisdiction reverses that order or prohibits enforcement.” *Id.* at *2.

Although this 2003 Attorney General opinion is advisory and not binding upon the Court, it is instructive in determining how the language, “under the direction of the Court,” in R.C. 2303.26 should be interpreted and construed. Given that the Ohio Revised Code sets forth specific statutory duties that must be fulfilled by the Clerk of Court, the language of R.C. 2303.25 should not be read as allowing the judges of the common pleas court to issue orders that override the other statutory provisions of the Ohio Revised Code by prohibiting or interfering with the Clerk’s ability to perform the statutory duties that are delegated to the Clerk of Courts in the Ohio Revised Code. All of the sections must be read together, and no provision should be construed as overriding or defeating any of the other provisions of the Ohio Revised Code. *See*

United Tel. Co. of Ohio v. Limbach, 71 Ohio St. 3d 369, 372, 643 N.E.2d 1129 (1994) (“all statutes which relate to the same general subject matter must be read in pari materia,” and “in reading such statutes in pari materia, and construing them together, this court must give such a reasonable construction as to give the proper force and effect to each and all such statutes”).

In his 2003 opinion, in fact, the Attorney General found that the Domestic Relations Division had the statutory authority under R.C. 2303.26 to decide whether the records of domestic relations cases should be posted on the Internet only because the General Assembly had not directly addressed this issue in the Ohio Revised Code, and thus the Court’s Order did not prevent the Clerk from performing a statutory duty or otherwise cause the Clerk to violate the Ohio Revised Code. If, for example, a judge issued an Order that prohibited the Clerk from making the records available to the public at all, or if the statute provided that the Clerk must make the records available on the Internet, then the judges clearly would have exceeded their statutory authority by preventing the Clerk from performing a statutory obligation and causing the Clerk to violate the Ohio Revised Code. In such a circumstance, the Clerk must have a remedy available to challenge the Court’s order and to show that the judge patently and unambiguously lacked the jurisdiction to issue the improper order.

The *Glass* case and the 2003 Attorney General opinion, therefore, are instructive in determining the proper legal standards that should be adopted by this Court. In *Glass*, the judges did not issue an order that prohibited the Clerk of Courts from fulfilling one of its statutory duties, and did not take over the operations of the

Clerk's office. Rather, in *Glass*, the judge's order was properly within the scope of its judicial authority, and did not interfere with the Clerk's ability to perform its independent statutory responsibilities.

Similarly, in the 2003 Attorney General Opinion, the order at issue did not prohibit the Clerk from carrying out its statutory duty under R.C. 2303.12 or result in the judges of the common pleas court taking over the daily operations of the Clerk's office. Rather, the order at issue involved a judicial policy decision relating to whether domestic relations cases should be posted on the Internet, which was an issue that was not directly controlled by the Ohio Revised Code and did not cause the Clerk of Courts to violate any of her statutory duties under the Ohio Revised Code. Thus, while not binding, there is nothing in the 2003 Attorney General Opinion that suggests that the judges have the jurisdiction and authority to issue orders that prevent or interfere with the Clerk's ability to carry out her statutory duties or allow the judges of a common pleas court to take over the operations of the Clerk's Office.

This line can best be understood by examining the example of whether a judge may take over the Clerk's statutory responsibility to keep and maintain the official record of a judicial proceeding. The Ohio Revised Code is clear and unambiguous in repeatedly mandating that it is the Clerk of Courts, as an independent officer, who has the exclusive statutory authority to keep and maintain the official record of all judicial proceedings in the General and Domestic Relation Divisions of the Court of Common Pleas. See R.C. 2303.08 through R.C. 2303.17. In particular, Chapter 2303

of the Ohio Revised Code imposes the following statutory duties and responsibilities exclusively upon the Clerk of Courts:

- “The clerk of the court of common pleas shall indorse on each pleading or paper in a cause filed in the clerk's office the time of filing, enter all orders, decrees, judgments, and proceedings of the courts of which such individual is the clerk, make a complete record when ordered on the journal to do so, and pay over to the proper parties all moneys coming into the clerk's hands as clerk.” (R.C. 2303.08)
- “The clerk of the court of common pleas shall file together and carefully preserve in his office all papers delivered to him for that purpose in every action or proceeding.” (R.C. 2303.09)
- “The clerk of the court of common pleas shall indorse upon every paper filed with him the date of the filing thereof, and upon every order for a provisional remedy and upon every undertaking given thereunder, the date of its return to his office.” (R.C. 2303.10)
- “All writs and orders for provisional remedies, and process of every kind, shall be issued by the clerk of the court of common pleas; but before they are issued a praecipe shall be filed with the clerk demanding the same.” (R.C. 2303.11)
- “The clerk of the court of common pleas shall keep at least four books. They shall be called the appearance docket, trial docket and printed duplicates of the trial docket for the use of the court and the officers thereof, journal, and execution docket. He shall also keep a record in book form or he may prepare a record by using any photostatic, photographic, miniature photographic, film, microfilm, or microphotographic process, electrostatic process, perforated tape, magnetic tape, or other electromagnetic means, electronic data processing, machine readable media, graphic or video display, or any combination thereof, which correctly and accurately copies or reproduces the original document, paper, or instrument in writing. He shall use materials that comply with the minimum standards of quality for permanent photographic records prescribed by the National Bureau of Standards. He shall keep an index to the trial docket and to the printed duplicates of the trial docket and of the journal direct, and to the appearance docket, record, and execution docket, direct and reverse. All clerks keeping records and information by the methods described in this section shall keep and make readily available to the public the

machine and equipment necessary to reproduce the records and information in a readable form.” (R.C. 2303.12)

- “The clerk of the court of common pleas shall enter upon the appearance docket at the time of the commencement of an action or proceeding, the names of the parties in full, with names of counsel, and forthwith index the case direct and reverse in the name of each plaintiff and defendant. In like manner and at the time it occurs, he shall also index the name of each person who becomes a party to such action or proceeding. At the time it occurs and under the case so docketed, he shall also enter the issue of the summons or other mesne process or order and the filing of each paper, and he shall record in full the return of such writ or order with the date of its return to the court, which entry shall be evidence of such service.” (R.C. 2303.13).
- “The clerk of the court of common pleas shall keep the journals, records, books, and papers appertaining to the court and record its proceedings.” (R.C. 2303.14).
- “Orders made out of court shall be forthwith entered by the clerk of the court of common pleas in the journal of the court in the same manner as orders made in term.” (R.C. 2303.15).
- “When ordered on the journal to do so, the clerk of the court of common pleas shall make a complete record within six months after final judgment or order of the proper court. On his failing to make such record within such time, the clerk may be removed by the court of common pleas.” (R.C. 2303.17)

See Ohio Revised Code Chapter 2303, copy included in Appendix to this Brief.

Given that the General Assembly vested the Clerk of Courts, an independent officer, with the statutory responsibility to docket, indorse, file, maintain, and preserve the official records of all judicial proceedings, it would clearly exceed the judicial authority of the common pleas court for a common pleas judge to take over this statutory function or otherwise prevent or interfere with the Clerk’s ability to fulfill this independent statutory duty in accordance with the requirements of the Ohio Revised Code. While judges must be able to access the official files of the Clerk

of Court, they cannot issue *sua sponte* orders that prevent the Clerk from keeping and maintaining the official records of judicial proceedings, in both the paper and electronic form. In accordance with the Ohio Revised Code, therefore, a judge would not have the authority to issue orders that would prohibit or interfere with the Clerk's ability to carry out this important statutory duty.

Indeed, by vesting this important function in an independent officer, the General Assembly clearly sought to protect the integrity of the judicial system by ensuring that there is an independent officer (not controlled by the judge) who can confirm and verify that the official record of a judicial proceeding is accurate and complete, and that all relevant orders, motions, pleadings, and other filings were properly filed, docketed, and endorsed on the dates and times recorded in the official record. This statutory duty is not only critically important and necessary for appellate review, but it also ensures that the Clerk can carry out their statutory obligation to make the official records of judicial proceedings available to the public under R.C. 2303.12 and to comply with the mandatory requirements of the Ohio Public Records Act. Accordingly, it would clearly violate the Ohio Revised Code and patently and unambiguously exceed the scope of a common pleas court's jurisdiction and authority for a common pleas judge to issue an order that would prevent or obstruct the ability of the Clerk of Courts to perform this important statutory duty, or otherwise take over the performance of this statutory duty.

In this regard, it is important to emphasize that the Clerk of Courts is not only the Clerk for the Common Pleas Court (general and domestic relations divisions); it

is also the Clerk for the Court of Appeals and, in certain tax foreclosure proceedings, for county boards of revision. *See* R.C. 323.66; R.C. 2303.03. Thus, while a common pleas judge may issue orders about what may be filed or not filed in a pending case, it does not have the jurisdiction and authority to obstruct or prevent the Clerk of Courts from keeping and maintaining the official record of that judicial proceeding, including a copy of what pleadings have been filed and stricken for purposes of appellate review. Accordingly, to the extent that the judicial orders at issue in this case prevented the Clerk of Courts from accessing the official files of pending cases or from carrying out any of her other statutory duties, then they should be vacated by this Court via a writ of prohibition because the common pleas court patently and unambiguously lacks the jurisdiction and authority to prevent the Clerk from performing her statutory duties or otherwise take over the functions that have been expressly delegated to the Clerk of Courts by the General Assembly.

II. THE JUDGES OF THE COMMON PLEAS COURT LACK THE JURISDICTION AND AUTHORITY TO PREVENT THE CLERK FROM CARRYING OUT HER STATUTORY DUTY TO CONTROL AND SUPERVISE THE OPERATIONS OF THE CLERK'S OFFICE.

Respondents also are wrong in suggesting that the judges of the common pleas court have the judicial authority to issue *sua sponte* orders that prevent the Clerk of Courts from carrying out her statutory duty to supervise the operations of the Clerk's Office, or otherwise prevent or interfere with the Clerk's statutory authority over the (i) appointment, termination, discipline, and supervision of the employees of the Clerk's Office; (ii) expenditure of funds that have been appropriated by the Board of County Commissioners for the operation of the Clerk of Courts office, or (iii) the

ability of the Clerk to access her office or her files in the county courthouse. We address each of these issues below.

A. The Judges Of The Common Pleas Court Lack The Jurisdiction and Authority To Divest The Clerk Of Her Exclusive Statutory Authority Over The Appointment, Termination, Discipline, And Supervision Of All Employees In The Clerk’s Office.

In performing the statutory duties and obligations of their independent office, the Clerk of Courts clearly must have the statutory authority to hire, fire, discipline, and supervise the employees of the Clerk’s Office. Indeed, R.C. 2303.05 clearly and unambiguously provides that “[t]he clerk of the court of common pleas may appoint one or more deputies,” and that “[s]uch appointment or appointments shall be in writing *signed by the clerk* and entered on the journal of the court.” *Id.* (emphasis added). The authority to hire an employee, by definition, includes the authority to supervise, discipline, and terminate the employee. Thus, it is well-established that “[a] deputy clerk of courts holds his appointment at the pleasure *of the clerk of courts* and his tenure may be terminated at any time and for any cause.” *Alf v. Hunsicker*, 82 Ohio App. 197, 80 N.E.2d 511, syllabus ¶ 1 (1st Dist. 1947) (emphasis added).

Indeed, in discussing the statutory authority of the Clerk of Court for the Municipal Court, this Court in *State ex rel. Durkin v. Youngstown City Council*, 9 Ohio St.3d 132, 459 N.E.2d 213 (1984), provided legal reasoning that is equally applicable to the Clerk of Court for the Common Pleas Court. In *Durkin*, this Court held that the statutory language in R.C. 1901.31 vested the Clerk of Court for the municipal court with sole discretion over the appointment and compensation of deputy clerks who are hired to work in the Clerk’s Office. *Id.* at 134.

The same reasoning applies equally here. Here, the judges of the Lake County Court of Common Pleas have wrongfully issued *sua sponte* orders that are not related to a pending case, but expressly prohibit the Clerk of Courts from hiring, firing or disciplining any of the employees of the Clerk's Office. Such an order not only violates the plain language of R.C. 2303.05; it wrongfully usurps the exclusive statutory authority of the Clerk of Courts to control and direct the separate and distinct operations of the Clerk's office and to supervise the employees who perform the administrative tasks and functions that are necessary for the Clerk to fulfill her statutory duties. In this regard, it does not matter whether the judges have "good cause" to believe that the Clerk of Courts has engaged in improper conduct in how she supervises her employees. While judges may have the judicial authority to grant injunctive relief or award damages if a claim had been filed against the Clerk of Courts in a pending case, it does not have the jurisdiction or authority to issue *ex parte* and *sua sponte* orders that broadly prohibit the Clerk from hiring, firing or disciplining employees and effectively take over the operations of the Clerk's Office.

Indeed, if an employee of the Clerk's Office believes that the Clerk of Courts has engaged in unlawful acts of employment discrimination or harassment, or believes that they have any other potential employment-related claims against the Clerk, then such employee can file a civil action with the Lake County Court of Common Pleas, and request, if warranted, that the duly-assigned common pleas judge award appropriate judicial relief, after a full hearing or trial, within the context of a properly-filed civil action. In this case, however, the judges of the Common Pleas

have not acted in the context of any individual case, but have *sua sponte* issued *ex parte* orders, without a hearing, trial, or other due process, that essentially usurps the exclusive statutory authority that has been granted to the independently-elected Clerk of Courts to hire, fire, discipline and supervise the employees of the Clerk's Office without *any* legal basis (constitutional, statutory, or common law) to do so. Accordingly, the Court should conclude that the judges of the Lake County Court of Common Pleas patently and unambiguously lack the jurisdiction and authority to issue orders that prevent the Clerk of Court from hiring, firing, disciplining or supervising the employees of the Clerk's Office.

This is a critically important issue that affects the operation of the Clerk's Offices in all 88 counties of the State of Ohio. The statutory authority to operate the Clerk's Office means nothing if the Clerk of Courts lacks the authority to control and supervise the day-to-day activities of the Clerk's employees. Indeed, as previously discussed, the General Assembly clearly envisioned that the Office of the Clerk of Courts would be a "separate and distinct" from the office of judge of the common pleas court. *See State ex rel. Smith v. Culliver*, 186 Ohio App.3d 534, 2010-Ohio-339, 929 N.E.2d 465, ¶ 42 (5th Dist.). Thus, in creating a separate and independent office, the General Assembly granted the independently-elected Clerk of Court (not the judges) with the sole and exclusive authority to appoint the deputy clerks who would work in the Clerk's Office. *See* R.C. 2303.05. By barring the Clerk of Court from hiring, firing, or disciplining her employees, therefore, the judges of the Lake County Court of Common Pleas have patently and unambiguously exceeded their judicial authority

and wrongfully usurped the statutory authority that has been granted exclusively to the Clerk of Courts by the General Assembly.

B. The Judges Of The Common Pleas Court Lack The Jurisdiction and Authority To Control The Expenditure Of Funds That Have Been Appropriated For The Operation Of The Clerk's Office.

Since the Clerk of Courts is an independently-elected officer that operates an office that is “separate and distinct” from the office of common pleas court judge, the judges of the Lake County Court of Common Pleas also do not have the jurisdiction or authority to control or direct the expenditure of the funds that have been appropriated for the operations of the Clerk’s independent office. While R.C. 2303.201(C) authorizes the Court to issue orders relating to the disbursement of filing fees collected and deposited in the Court’s computerization fund, this statutory authority does not extend to the funds that are separately appropriated by the Board of County Commissioners for the operation of the separate and distinct Office of the Clerk of Courts, even if such appropriate funds are used for the purpose of procuring and maintaining technology and computer systems for the Office of the Clerk of Courts. Otherwise, the Clerk of Courts would lose their independent autonomy and control over the operations of the Clerk’s Office, which is intended to be a separate and distinct office under the Ohio Revised Code.

This point is best articulated by the Fifth District Court of Appeals in *Culliver*, 186 Ohio App.3d 534, 2010-Ohio-339, 929 N.E.2d 465, which is a case addressing the funding of the Clerk of Court’s Office for the Mansfield Municipal Court. In that case, a municipal court clerk sought writ of mandamus to compel the Mayor and City

Council to appropriate funds for the operation of the Clerk's office. In response to this mandamus action, the City of Mansfield presented an Affidavit from the Honorable Jerry Ault, the Presiding Judge of the Mansfield Municipal Court, which opined that the salary increases and other additional funds requested by the Clerk of Court were not necessary for the proper administration of the Mansfield municipal justice system. *Id.* at ¶ 41. In so doing, Mansfield argued that the judge's affidavit was "dispositive" because "the clerk's office is a subordinate arm of the court," and that Judge Ault was therefore "the public official responsible for determining what is needed for the proper administration of justice in the Mansfield Municipal justice system." *Id.*

Upon review, however, the Fifth District rejected Mansfield's argument, holding Judge Ault does not have "any authority over the appointment or the salaries of the deputy clerks," and that the judge's opinion was, therefore, "not dispositive of the reasonableness of the [Clerk]'s budget request." *Id.* at ¶ 42. In so doing, the Fifth District followed the plain language of the Ohio Revised Code and this Court's precedent in *Durkin* in holding that "[t]he office of clerk of courts . . . is an office separate and distinct from that of judge of the common pleas court," and in finding that the General Assembly had granted exclusive authority over the appointment and salaries of deputy clerks to the Clerk of Court, not the judges. *Id.* at ¶ 41-49. "If the legislature intended to allow the municipal court judge to control the appointment and the compensation of deputy clerks," the court reasoned, then "it certainly would have spelled that out in the statute." *Id.* at ¶ 44.

The same conclusion should be reached here. In creating a separate and independent office for the Clerk of Court, the General Assembly granted the authority over the operations of the Clerk's Office to the Clerk of Court, not the judges of the Court of Common Pleas. Indeed, there is nothing in the Ohio Revised Code that grants the court of common pleas with authority to control the expenditure of the funds that have been appropriated for the operation of the Clerk's separate and distinct office. Accordingly, the Court should conclude that the judges of the common pleas court lack the jurisdiction and authority to issue orders that direct or control the expenditure of the funds that have been appropriated by the county commissioners for the operation of the Clerk's separate and independent office.

C. The Judges Of The Court of Common Pleas Lack The Jurisdiction and Authority To Bar The Clerk Of Courts From Physically Accessing Her Office In The County Courthouse.

Given that the Clerk of Courts is a separate and distinct office from the judges of the Common Pleas Court, the judges of the Common Pleas Court patently and unambiguously lack the jurisdiction and authority to issue orders that bar or prevent the Clerk of Court from accessing the Clerk's Office. While the judges may have the authority over the operations of their judicial chambers, jury rooms, and courtrooms in the county courthouse, they do not necessarily have unfettered authority and control over the entire Courthouse, which may often include the independent and separate offices of other county officials, including the County Prosecutor, the County Sheriff, and the Clerk of Courts. Indeed, the county courthouse is generally owned by the County itself, not the judges of the Common Pleas Court. Thus, the judges

lack the jurisdiction and authority to control access to the Clerk's separate and distinct office or, in this case, to bar the independently-elected Clerk of Courts from accessing the Clerk's Office in order to access her files and to supervise her employees.

Indeed, if permitted to stand, the Order issued by the judges of the Lake County Court of Common Pleas would create a dangerous precedent that would not only adversely impact the independence of the Clerk of Courts in all 88 counties, but would negatively impact the independence of other county offices. In most courthouses throughout Ohio, the County Prosecutor keeps and maintains separate and distinct offices in the county courthouse. Can a common pleas court judge restrict or control access to who may access the County Prosecutor's office, or who may enter the separate and distinct offices of the County Sheriff or the County Coroner? While the judges attempted to justify their extraordinary orders by suggesting that the Clerk can supervise the activities of her office from a remote location, this argument completely ignores the fact that the Clerk of Courts has the statutory authority to supervise the operation of her office, and that it is up to the Clerk of Courts to decide how and where she will supervise her employees. If the Supreme Court were to allow the judge's restrictions on access to stand, therefore, it would be wrongfully allowing the judges to take control of the Clerk's Office and prevent and interfere with the independent statutory authority of the Clerk to supervise the operation of this separate and distinct office. *See Hackett v. Kilbee*, 4 Ohio App.2d 246, 211 N.E.2d 892 (9th Dist. 1965) (holding that the judges lacked the authority to restrict the hours of operation of the Clerk's Office because it is a separate and distinct office).

III. A WRIT OF PROHIBITION ALSO IS THE PROPER REMEDY IF THE COURT DETERMINES THAT THE RESPONDENTS HAVE WRONGFULLY DIVESTED THE CLERK OF HER OFFICIAL DUTIES WITHOUT FOLLOWING THE CONSTITUTIONAL AND STATUTORY REQUIREMENTS GOVERNING REMOVAL FROM OFFICE.

As set forth in Relator's Complaint, Section 38, Article II of the Ohio Constitution, and Sections 3.07 and 3.08 of the Ohio Revised Code set forth specific constitutional and statutory requirements that must be followed in order to remove a person from elected office. In particular, R.C. 3.07 provides:

Any person holding office in this state, or in any municipal corporation, county, or subdivision thereof, coming within the official classification in Section 38 of Article II, Ohio Constitution, who 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 is guilty of misconduct in office. Upon complaint and hearing in the manner provided for in sections 3.07 to 3.10, inclusive, of the Revised Code, such person shall have judgment of forfeiture of said office with all its emoluments entered thereon against him, creating thereby in said office a vacancy to be filled as prescribed by law. The proceedings provided for in such sections are in addition to impeachment and other methods of removal authorized by law, and such sections do not divest the governor or any other authority of the jurisdiction given in removal proceedings.

In this regard, Section 3.08 of the Ohio Revised Code provides, in relevant part, that the "[p]roceedings for the removal of public officers on any of the grounds enumerated in section 3.07 of the Revised Code shall be commenced by the filing of a written or printed complaint specifically setting forth the charge and signed by qualified electors of the state or political subdivision whose officer it is sought to remove, not less in number than fifteen per cent of the total vote cast for governor at the most recent election for the office of governor in the state or political subdivision

whose officer it is sought to remove.” *Id.* “Such complaint shall be filed with the court of common pleas of the county where the officer against whom the complaint is filed resides.” *Id.* Thereafter, the official must be served with a copy of the complaint and has the statutory right to a hearing that must be held “within thirty days from the date of the filing of the complaint by said electors.” *Id.*

The fact that it may be hard or take time to obtain the signatures of 15% of the electorate to file a complaint to remove a Clerk of Courts from office does not mean that the judges of the common pleas court may circumvent this constitutional and statutory requirement. Indeed, the constitutional and statutory requirements of Section 38, Article II of the Ohio Constitution, and R.C. 3.07 through 3.10 of the Ohio Revised Code are mandatory, and thus this Court has held that a writ of prohibition should be issued if an elected officer is summarily removed from office without complying with the notice and hearing requirements of Section 38, Art. II of the Ohio Constitution and Sections 3.07 to 3.10 of the Ohio Revised Code. *See, e.g., State ex rel. Hughes v. Brown*, 31 Ohio St.2d 41, 285 N.E.2d 376 (1972). Accordingly, while the orders at issue do not actually remove the Relator from her elected office, a writ of prohibition still would be the proper remedy if the Court determines that the orders at issue have effectively divested the Clerk of her ability to carry out her statutory duties without following the mandatory removal procedures.

Indeed, it would set a dangerous precedent if the judges of the court of common pleas could effectively remove a person from elected office by issuing orders that bar or prevent the Clerk from carrying out her statutory duties. While the determination

of whether the orders issued by the Respondents have the practical effect of removing the Relator from office will ultimately depend upon the facts and evidence that will be presented in this case, it is clearly not the type of issue that should be decided via a Motion to Dismiss. Otherwise, the Court will be opening the door to similar efforts to circumvent the mandatory requirements of the Ohio Constitution and the Ohio Revised Code for removing an elected official from public office. Accordingly, for this additional reason, the Court should deny Respondents' Motion to Dismiss and decide this important legal issue after a full presentation of the evidence by the parties.

CONCLUSION

For these reasons, the Court should deny Respondents' Motion to Dismiss and proceed to issue an appropriate ruling on the merits of Relator's claims that does not unduly interfere with or prevent the Clerk of Courts in each of the 88 counties from supervising and controlling their separate and distinct offices and from otherwise carrying out and fulfilling their statutory duties in accordance with Ohio law.

Respectfully submitted,

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APPENDIX

STATUTORY DUTIES OF CLERK OF COURT OF COMMON PLEAS

PHILOSOPHICAL GUIDELINES TO THE APPLICATION OF LAWS

DUTY: obligatory tasks, conduct, service, or function that arise from one's position (in life or in a group)-Webster's New Collegiate Dictionary

"I like quotations because it is a joy to find thoughts one might have, beautifully expressed with such authority by someone recognized wiser than oneself" – Marlene Dietrick

THEREFORE:

**"The only stable state is the one in which all men are equal before the law"
-Aristotle**

"Law is order and good law is good order"-Aristotle

"It is in justice that the ordering of society is centered"-Aristotle

**"Laws control the lesser man...Right conduct controls the greater one"-
Mark Twain**

"The law must be stable, but it must not stand still"- Roscoe Pound

**"Nobody has a more sacred obligation to obey the law than those who
make the law" – Sophocles**

**"Real integrity is doing the right thing knowing that nobody's going to
know whether you did or not -Oprah Winfrey**

"Common sense makes good law"- William Orville Douglas

**"Common sense is the knack of seeing things as they are, and doing things
as they ought to be"- Josh Billings**

**"It is the spirit and not the form of the law that keeps justice alive"- Earl
Warren**

"All great change in America begins at the dinner table" – Ronald Reagan

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Chapter 2303 | Clerk Of The Court Of Common Pleas

Ohio Revised Code / Title 23 Courts-Common Pleas

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Section

Section 2303.01 | Clerk of the court of common pleas.

Effective: October 1, 1953 **Latest Legislation:** House Bill 1 - 100th General Assembly

There shall be elected quadrennially in each county, a clerk of the court of common pleas, who shall assume office on the first Monday of January next after his election and who shall hold said office for a period of four years.

Section 2303.02 | Bond of clerk.

Effective: March 20, 2019 **Latest Legislation:** House Bill 291 - 132nd General Assembly

Except as otherwise provided in section [3.061](#) of the Revised Code, before entering upon the discharge of official duties, the clerk of the court of common pleas shall give a bond signed by a bonding or surety company authorized to do business in this state, or, at the clerk's option, by two or more freeholders having real estate in the value of double the amount of the bond over and above all encumbrances to the state in a sum not less than ten thousand nor more than forty thousand dollars, to be fixed by the board of county commissioners, and the surety company to be approved by the board. The bond shall be conditioned that such clerk will enter and record all the orders, decrees, judgments, and proceedings of the courts of which such clerk is the clerk, pay over all moneys received by the clerk in an official capacity, and faithfully and impartially discharge the official duties of the clerk's office. The expense or premium for such bond shall be paid by the board and charged to the general fund of the county. Such bond, with the oath of office and the

approval of the board indorsed thereon, shall be deposited with the county treasurer and kept in the treasurer's office.

Section 2303.03 | Clerk of court of appeals.

Effective: October 17, 1996 **Latest Legislation:** House Bill 455 - 121st General Assembly

(A) The clerk of the court of common pleas in each county also shall be clerk of the court of appeals of the county and, subject to division (B) of this section and while acting as the clerk of the court of appeals of the county and assuming the duties of that office, shall collect the same fees that the clerk otherwise collects and perform the same general duties that the clerk otherwise performs. In addition to the annual compensation that the clerk receives pursuant to sections [325.08](#) and [325.18](#) of the Revised Code for the performance of the duties of the clerk of the court of common pleas, the clerk, for acting as the clerk of the court of appeals of the county and assuming the duties of that office, shall receive an additional amount equal to one-eighth of the annual compensation that the clerk receives pursuant to sections [325.08](#) and [325.18](#) of the Revised Code, as determined by the population of the county and the rates set forth in those sections. The additional amount shall be payable from the state treasury upon the certificate of the presiding or administrative judge of the district in which the clerk serves in the same manner that the compensation of other employees of the court of appeals is paid pursuant to section [2501.17](#) of the Revised Code.

(B) Under the circumstances described in sections [2969.21](#) to [2969.27](#) of the Revised Code, the clerk of the court of common pleas, while acting as the clerk of the court of appeals, shall charge the fees and perform the other duties specified in those sections.

Section 2303.05 | Clerk may appoint deputies.

Effective: September 30, 2021 **Latest Legislation:** House Bill 110 - 134th General Assembly

The clerk of the court of common pleas may appoint one or more deputies. Such appointment or appointments shall be endorsed by the clerk and entered on the journal of the court.

Last updated August 5, 2021 at 2:44 PM

Section 2303.06 | Books, stationery, and dockets.

Effective: October 1, 1953 **Latest Legislation:** House Bill 1 - 100th General Assembly

The board of county commissioners shall furnish the clerk of the court of common pleas all blankbooks, including the printed trial dockets, blanks, stationery, and all things necessary for the prompt discharge of his duty.

Section 2303.07 | Oaths and acknowledgments.

Effective: October 1, 1953 **Latest Legislation:** House Bill 1 - 100th General Assembly

The clerk of the court of common pleas may administer oaths and take and certify affidavits, depositions, and acknowledgments of deeds, mortgages, powers of attorney, and other instruments in writing.

Section 2303.08 | General duties.

Effective: March 18, 1997 **Latest Legislation:** House Bill 570 - 121st General Assembly

The clerk of the court of common pleas shall indorse on each pleading or paper in a cause filed in the clerk's office the time of filing, enter all orders, decrees, judgments, and proceedings of the courts of which such individual is the clerk, make a complete record when ordered on the journal to do so, and pay over to the proper parties all moneys coming into the clerk's hands as clerk. The clerk may refuse to accept for filing any pleading or paper submitted for filing by a person who has been found to be a vexatious

litigator under section [2323.52](#) of the Revised Code and who has failed to obtain leave to proceed under that section.

Section 2303.09 | Filing and preserving papers.

Effective: October 1, 1953 **Latest Legislation:** House Bill 1 - 100th General Assembly

The clerk of the court of common pleas shall file together and carefully preserve in his office all papers delivered to him for that purpose in every action or proceeding.

Section 2303.10 | Indorsement of papers.

Effective: October 1, 1953 **Latest Legislation:** House Bill 1 - 100th General Assembly

The clerk of the court of common pleas shall indorse upon every paper filed with him the date of the filing thereof, and upon every order for a provisional remedy and upon every undertaking given thereunder, the date of its return to his office.

Section 2303.11 | Writs to issue on praecipe.

Effective: September 11, 2008 **Latest Legislation:** House Bill 138 - 127th General Assembly

All writs and orders for provisional remedies, and process of every kind, shall be issued by the clerk of the court of common pleas, or directly by an order or local rule of a court, or by a county board of revision with jurisdiction pursuant to section [323.66](#) of the Revised Code; but before they are issued a praecipe shall be filed with the clerk demanding the same.

Section 2303.12 | Books to be kept by clerk.

Effective: April 29, 2022 **Latest Legislation:** House Bill 93 - 134th General Assembly

(A) The clerk of the court of common pleas shall keep at least four books. They shall be called the appearance docket, trial docket and printed duplicates of the trial docket for the use of the court and the officers thereof, journal, and execution docket. The clerk shall also keep a record in book form or the clerk may prepare a record by using any photostatic, photographic, miniature photographic, film, microfilm, or microphotographic process, electrostatic process, perforated tape, magnetic tape, or other electromagnetic means, electronic data processing, machine readable media, graphic or video display, or any combination thereof, which correctly and accurately copies or reproduces the original document, paper, or instrument in writing. The clerk shall use materials that comply with the minimum standards of quality for permanent photographic records prescribed by the National Bureau of Standards. The clerk shall keep an index to the trial docket and to the printed duplicates of the trial docket and of the journal direct, and to the appearance docket, record, and execution docket, direct and reverse. All clerks keeping records and information by the methods described in this section shall keep and make readily available to the public the machine and equipment necessary to reproduce the records and information in a readable form.

(B) The clerk of the court of common pleas shall keep confidential information that is subject to a real property confidentiality notice under section [111.431](#) of the Revised Code, in accordance with that section.

Last updated February 2, 2022 at 4:01 PM

Section 2303.13 | Entries on appearance docket and their effect.

Effective: October 1, 1953 **Latest Legislation:** House Bill 1 - 100th General Assembly

The clerk of the court of common pleas shall enter upon the appearance docket at the time of the commencement of an action or proceeding, the names of the parties in full, with names of counsel, and forthwith index the case direct and reverse in the name of each

plaintiff and defendant. In like manner and at the time it occurs, he shall also index the name of each person who becomes a party to such action or proceeding. At the time it occurs and under the case so docketed, he shall also enter the issue of the summons or other mesne process or order and the filing of each paper, and he shall record in full the return of such writ or order with the date of its return to the court, which entry shall be evidence of such service.

Section 2303.14 | Keeping of books and making of records.

Effective: October 1, 1953 Latest Legislation: House Bill 1 - 100th General Assembly

The clerk of the court of common pleas shall keep the journals, records, books, and papers appertaining to the court and record its proceedings.

Section 2303.15 | Record of orders out of court.

Effective: October 1, 1953 Latest Legislation: House Bill 1 - 100th General Assembly

Orders made out of court shall be forthwith entered by the clerk of the court of common pleas in the journal of the court in the same manner as orders made in term.

Section 2303.16 | Deposit of fees for foreign writ.

Effective: October 1, 1953 Latest Legislation: House Bill 1 - 100th General Assembly

The clerk of the court of common pleas shall not issue a writ in a civil action to another county until the party requiring the issuing thereof has deposited with him sufficient funds to pay the officer to whom it is directed for executing it, and the clerk shall indorse thereon the words, "Funds deposited to pay for the execution of this writ." On the return thereof, the clerk shall pay to such officer the fees for executing such writ, and no officer shall be required to serve such writ unless it is so indorsed.

Section 2303.17 | Clerk shall make complete record.

Effective: August 4, 1961 **Latest Legislation:** House Bill 214 - 104th General Assembly

When ordered on the journal to do so, the clerk of the court of common pleas shall make a complete record within six months after final judgment or order of the proper court. On his failing to make such record within such time, the clerk may be removed by the court of common pleas.

Section 2303.18 | Indexes of judgments not dormant.

Effective: October 1, 1953 **Latest Legislation:** House Bill 1 - 100th General Assembly

Each clerk of the court of common pleas shall make an alphabetical index of the names of all plaintiffs and defendants to pending suits and living judgments, showing therein in separate columns the names, court, and number of the suit or execution. When there is more than one suit or judgment for or against the same party, it shall be sufficient to index the name but once and make entries opposite thereto, of the court and the number of the suit or execution. No such index shall be made in counties where it has already been done.

Section 2303.19 | Index to be made.

Effective: October 1, 1953 **Latest Legislation:** House Bill 1 - 100th General Assembly

All suits shall be indexed at the time of the filing of the petition and all judgments shall be indexed at the time of the entry on the journal, revival, or the filing of a transcript thereof as required by section [2303.18](#) of the Revised Code. Whenever the court of common pleas of a county directs, the clerk of the court of common pleas shall make a re-index, in the manner provided in such section, of all pending suits and living judgments, then on the dockets of either the court of common pleas or the court of appeals, in which re-index all new suits and judgments shall be indexed at the time provided in this section.

Section 2303.20 | Fees.

Effective: September 20, 2019 **Latest Legislation:** Senate Bill 263 - 132nd General Assembly

Under the circumstances described in sections [2969.21](#) to [2969.27](#) of the Revised Code, the clerk of the court of common pleas shall charge the fees and perform the other duties specified in those sections. In all other cases, the clerk shall charge the following fees and no more:

(A) Twenty-five dollars for each cause of action which shall include the following:

- (1) Docketing in all dockets;
- (2) Filing necessary documents, noting the filing of the documents, except subpoena, on the dockets;
- (3) Issuing certificate of deposit in foreign writs;
- (4) Indexing pending suits and living judgments;
- (5) Noting on appearance docket all papers mailed;
- (6) Certificate for attorney's fee;
- (7) Certificate for stenographer's fee;
- (8) Preparing cost bill;
- (9) Entering on indictment any plea;
- (10) Entering costs on docket and cash book.

(B) Two dollars for taking each undertaking, bond, or recognizance;

- (C) Two dollars for issuing each writ, order, or notice, except subpoena;
- (D) Two dollars for each name for issuing subpoena, swearing witness, entering attendance, and certifying fees;
- (E) Twenty-five dollars for calling a jury in each cause;
- (F) Two dollars for each page, for entering on journal, indexing, and posting on any docket;
- (G) Three dollars for each execution or transcript of judgment, including indexing;
- (H) One dollar for each page, for making complete record, including indexing;
- (I) Five dollars for certifying a plat recorded in the county recorder's office;
- (J) Five dollars for issuing certificate to receiver or order of reference with oath;
- (K) Five dollars for entering satisfaction or partial satisfaction of each lien on record in the county recorder's office, and the clerk of courts' office;
- (L) One dollar for each certificate of fact under seal of the court, to be paid by the party demanding it;
- (M) One dollar for taking each affidavit, including certificate and seal;
- (N) Two dollars for acknowledging all instruments in writing;
- (O) Five dollars for making certificate of judgment;
- (P) Ten dollars for filing, docketing, and endorsing a certificate of judgment, including the indexing and noting the return of the certificate;

- (Q) Twenty-five dollars for each cause of action for each judgment by confession, including all docketing, indexing, and entries on the journal;
- (R) Five dollars for recording commission of mayor;
- (S) One dollar for issuing any license except the licenses issued pursuant to sections [1533.101](#), [1533.11](#), [1533.13](#), and [1533.32](#) of the Revised Code;
- (T) Fifteen dollars for docketing and indexing each aid in execution or petition to vacate, revive, or modify judgment, including the filing and noting of all necessary documents;
- (U) Twenty-five dollars for docketing and indexing each appeal, including the filing and noting of all necessary documents;
- (V) A commission of two per cent on the first ten thousand dollars and one per cent on all exceeding ten thousand dollars for receiving and disbursing money, other than costs and fees, paid to or deposited with the clerk of courts in pursuance of an order of court or on judgments, including moneys invested by order of the court and interest earned on them;
- (W) Five dollars for numbering, docketing, indexing, and filing each authenticated or certified copy of the record, or any portion of an authenticated or certified copy of the record, of an extra county action or proceeding;
- (X) Two dollars for each certificate of divorce, annulment, or dissolution of marriage to the bureau of vital statistics;
- (Y) Two dollars for each electronic transmission of a document, plus one dollar for each page of that document. These fees are to be paid by the party requesting the electronic transmission.
- (Z) One dollar for each page, for copies of pleadings, process, record, or files, including certificate and seal.

Section 2303.201 | Computerizing court or paying cost of computerized legal research.

Effective: October 17, 2019 **Latest Legislation:** House Bill 166 - 133rd General Assembly

(A)(1) The court of common pleas of any county may determine that for the efficient operation of the court additional funds are required to computerize the court, to make available computerized legal research services, or to do both. Upon making a determination that additional funds are required for either or both of those purposes, the court shall authorize and direct the clerk of the court of common pleas to charge one additional fee, not to exceed six dollars, on the filing of each cause of action or appeal under divisions (A), (Q), and (U) of section [2303.20](#) of the Revised Code.

(2) All fees collected under division (A)(1) of this section shall be paid to the county treasurer. The treasurer shall place the funds from the fees in a separate fund to be disbursed either upon an order of the court, subject to an appropriation by the board of county commissioners, or upon an order of the court, subject to the court making an annual report available to the public listing the use of all such funds, in an amount not greater than the actual cost to the court of procuring and maintaining computerization of the court, computerized legal research services, or both.

(3) If the court determines that the funds in the fund described in division (A)(2) of this section are more than sufficient to satisfy the purpose for which the additional fee described in division (A)(1) of this section was imposed, the court may declare a surplus in the fund and, subject to an appropriation by the board of county commissioners, expend those surplus funds, or upon an order of the court, subject to the court making an annual report available to the public listing the use of all such funds, expend those surplus funds, for other appropriate technological expenses of the court.

(B)(1) The court of common pleas of any county may determine that, for the efficient operation of the court, additional funds are required to make technological advances in or to computerize the office of the clerk of the court of common pleas and, upon that determination, authorize and direct the clerk of the court of common pleas to charge an additional fee, not to exceed twenty dollars, on the filing of each cause of action or appeal, on the filing, docketing, and endorsing of each certificate of judgment, or on the docketing and indexing of each writ in execution or petition to vacate, revive, or modify a judgment under divisions (A), (P), (Q), (T), and (U) of section [2303.20](#) of the Revised Code and not to exceed one dollar each for the services described in divisions (B), (C), (D), (F), (H), and (L) of section [2303.20](#) of the Revised Code. Subject to division (B)(2) of this section, all moneys collected under division (B)(1) of this section shall be paid to the county treasurer to be disbursed, upon an order of the court of common pleas and subject to appropriation by the board of county commissioners, in an amount no greater than the actual cost to the court of procuring and maintaining technology and computer systems for the office of the clerk of the court of common pleas.

(2) If the court of common pleas of a county makes the determination described in division (B)(1) of this section, the board of county commissioners of that county may issue one or more general obligation bonds for the purpose of procuring and maintaining the technology and computer systems for the office of the clerk of the court of common pleas. In addition to the purposes stated in division (B)(1) of this section for which the moneys collected under that division may be expended, the moneys additionally may be expended to pay debt charges on and financing costs related to any general obligation bonds issued pursuant to division (B)(2) of this section as they become due. General obligation bonds issued pursuant to division (B)(2) of this section are Chapter 133. securities.

(C) The court of common pleas shall collect the sum of twenty-six dollars as additional filing fees in each new civil action or proceeding for the charitable public purpose of providing financial assistance to legal aid societies that operate within the state and to

support the office of the state public defender. This division does not apply to a juvenile division of a court of common pleas, except that an additional filing fee of fifteen dollars shall apply to custody, visitation, and parentage actions; to a probate division of a court of common pleas, except that the additional filing fees shall apply to name change, guardianship, adoption, and decedents' estate proceedings; or to an execution on a judgment, proceeding in aid of execution, or other post-judgment proceeding arising out of a civil action. The filing fees required to be collected under this division shall be in addition to any other filing fees imposed in the action or proceeding and shall be collected at the time of the filing of the action or proceeding. The court shall not waive the payment of the additional filing fees in a new civil action or proceeding unless the court waives the advanced payment of all filing fees in the action or proceeding. All such moneys collected during a month except for an amount equal to up to one per cent of those moneys retained to cover administrative costs shall be transmitted on or before the twentieth day of the following month by the clerk of the court to the treasurer of state in a manner prescribed by the treasurer of state or by the Ohio access to justice foundation. The treasurer of state shall deposit four per cent of the funds collected under this division to the credit of the civil case filing fee fund established under section [120.07](#) of the Revised Code and ninety-six per cent of the funds collected under this division to the credit of the legal aid fund established under section [120.52](#) of the Revised Code.

The court may retain up to one per cent of the moneys it collects under this division to cover administrative costs, including the hiring of any additional personnel necessary to implement this division. If the court fails to transmit to the treasurer of state the moneys the court collects under this division in a manner prescribed by the treasurer of state or by the Ohio access to justice foundation, the court shall forfeit the moneys the court retains under this division to cover administrative costs, including the hiring of any additional personnel necessary to implement this division, and shall transmit to the treasurer of state all moneys collected under this division, including the forfeited amount retained for administrative costs, for deposit in the legal aid fund.

(D) On and after the thirtieth day after December 9, 1994, the court of common pleas shall collect the sum of thirty-two dollars as additional filing fees in each new action or proceeding for annulment, divorce, or dissolution of marriage for the purpose of funding shelters for victims of domestic violence pursuant to sections [3113.35](#) to [3113.39](#) of the Revised Code. The filing fees required to be collected under this division shall be in addition to any other filing fees imposed in the action or proceeding and shall be collected at the time of the filing of the action or proceeding. The court shall not waive the payment of the additional filing fees in a new action or proceeding for annulment, divorce, or dissolution of marriage unless the court waives the advanced payment of all filing fees in the action or proceeding. On or before the twentieth day of each month, all moneys collected during the immediately preceding month pursuant to this division shall be deposited by the clerk of the court into the county treasury in the special fund used for deposit of additional marriage license fees as described in section [3113.34](#) of the Revised Code. Upon their deposit into the fund, the moneys shall be retained in the fund and expended only as described in section [3113.34](#) of the Revised Code.

(E)(1) The court of common pleas may determine that, for the efficient operation of the court, additional funds are necessary to acquire and pay for special projects of the court, including, but not limited to, the acquisition of additional facilities or the rehabilitation of existing facilities, the acquisition of equipment, the hiring and training of staff, community service programs, mediation or dispute resolution services, the employment of magistrates, the training and education of judges, acting judges, and magistrates, and other related services. Upon that determination, the court by rule may charge a fee, in addition to all other court costs, on the filing of each criminal cause, civil action or proceeding, or judgment by confession.

If the court of common pleas offers or requires a special program or additional services in cases of a specific type, the court by rule may assess an additional charge in a case of that type, over and above court costs, to cover the special program or service. The court shall

adjust the special assessment periodically, but not retroactively, so that the amount assessed in those cases does not exceed the actual cost of providing the service or program.

All moneys collected under division (E) of this section shall be paid to the county treasurer for deposit into either a general special projects fund or a fund established for a specific special project. Moneys from a fund of that nature shall be disbursed upon an order of the court, subject to an appropriation by the board of county commissioners, in an amount no greater than the actual cost to the court of a project. If a specific fund is terminated because of the discontinuance of a program or service established under division (E) of this section, the court may order, subject to an appropriation by the board of county commissioners, that moneys remaining in the fund be transferred to an account established under this division for a similar purpose.

(2) As used in division (E) of this section:

(a) "Criminal cause" means a charge alleging the violation of a statute or ordinance, or subsection of a statute or ordinance, that requires a separate finding of fact or a separate plea before disposition and of which the defendant may be found guilty, whether filed as part of a multiple charge on a single summons, citation, or complaint or as a separate charge on a single summons, citation, or complaint. "Criminal cause" does not include separate violations of the same statute or ordinance, or subsection of the same statute or ordinance, unless each charge is filed on a separate summons, citation, or complaint.

(b) "Civil action or proceeding" means any civil litigation that must be determined by judgment entry.

Section 2303.21 | Expenses of transcript or exemplification shall be taxed in costs.

Effective: October 1, 1953 **Latest Legislation:** House Bill 1 - 100th General Assembly

When it is necessary in an appeal, or other civil action to procure a transcript of a judgment or proceeding, or exemplification of a record, as evidence in such action or for any other purpose, the expense of procuring such transcript or exemplification shall be taxed in the bill of costs and recovered as in other cases.

Section 2303.22 | Clerk shall receive and pay over all costs and fees taxed upon writs.

Effective: October 1, 1953 **Latest Legislation:** House Bill 1 - 100th General Assembly

The clerk of the court of common pleas shall receive from the sheriff, or other officer of the court, all costs taxed upon any writ or order issued from the court, such as appraisers' fees, printers' fees, or any other fees necessarily incurred in the execution of such writ or order, and on demand pay them to the persons entitled thereto. The sheriff, or other officer of the court, shall tax such costs and collect and pay them to the clerk of the court from which the writ or order issued, giving the name of each individual, and the amount which each is entitled to receive.

Section 2303.23 | Cancellation of uncollectible debts.

Effective: March 22, 2013 **Latest Legislation:** House Bill 247 - 129th General Assembly

If at any time the court finds that an amount owing to the court is due and uncollectible, in whole or in part, the court may direct the clerk of the court to cancel all or part of the claim. The clerk shall then effect the cancellation.

Section 2303.26 | Duties of clerk.

Effective: September 28, 2016 **Latest Legislation:** House Bill 390 - 131st General Assembly

The clerk of the court of common pleas shall exercise the powers conferred and perform the duties enjoined upon the clerk by statute and by the common law; and in the performance of official duties the clerk shall be under the direction of the court. The clerk shall not restrict, prohibit, or otherwise modify the rights of parties to seek service on party defendants allowed by the Rules of Civil Procedure, either singularly or concurrently.

Section 2303.27 | Services without compensation.

Effective: October 1, 1953 **Latest Legislation:** House Bill 1 - 100th General Assembly

The clerk of the court of common pleas shall make no charge for certificates made for pensioners of the United States government, or any oath administered in pension and bounty cases, or on pension vouchers, applications, or affidavits.

Section 2303.28 | Clerk shall file itemized bill of costs.

Effective: October 1, 1953 **Latest Legislation:** House Bill 1 - 100th General Assembly

In every case immediately on the rendition of judgment, the clerk of the court of common pleas shall make out and file with the papers in the cause, an itemized bill of his costs therein, including the judgment. He shall not issue an execution in any cause for the costs of himself or of any other officer, or receive any costs for himself or any other officer, unless an itemized statement has been rendered.

Section 2303.29 | Appropriations for issuing motor vehicle titles.

Effective: August 1, 1981 **Latest Legislation:** House Bill 275 - 114th General Assembly

(A) A clerk of the court of common pleas may, or upon the request of the board of county commissioners by the first day of June shall, submit a request for an appropriation to the board of county commissioners detailing the costs required to administer his

responsibilities under Chapter 4505. of the Revised Code. If such a request is submitted, the request shall include an itemized schedule of personnel and supply costs. In addition, the request shall include a summary of the cost of administering Chapter 4505. of the Revised Code during the most recent appropriation period; a detailed estimate of new costs that will result from new responsibilities pursuant to Substitute House Bill 275 of the 114th general assembly or from any subsequent legislation changing fees or poundage established under Chapter 4505. of the Revised Code. If such a request is submitted, it shall be filed with the clerk of the board of county commissioners not later than the first day of November. The board of county commissioners shall consider the request of the clerk and the intent of the legislature prior to adopting the appropriation resolution pursuant to section [5705.28](#) of the Revised Code.

(B) The board of county commissioners shall budget and appropriate funds for the operation of the office of the clerk of the court of common pleas in an amount sufficient for the prompt discharge of the clerk's duties under Chapter 4505. of the Revised Code.

Section 2303.31 | Clerks of other courts.

Effective: October 1, 1953 **Latest Legislation:** House Bill 1 - 100th General Assembly

The duties prescribed by law for the clerk of the court of common pleas shall, so far as they are applicable, apply to the clerks of other courts of record.
