

**COURT OF APPEALS OF OHIO**

**EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA**

STATE EX REL. MUNICIPAL  
CONSTRUCTION, ET AL.,

:

Relators,

:

No. 109263

v.

:

JUDGE DEENA R. CALABRESE,

:

Respondent.

:

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**JOURNAL ENTRY AND OPINION**

**JUDGMENT:** WRIT DENIED

**DATED:** February 18, 2020

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Writ of Procedendo  
Motion No. 534534  
Order No. 535700

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***Appearances:***

Climaco, Wilcox, Peca, Tarantino & Garofoli Co., L.P.A.,  
and Stewart D. Roll, *for relator*.

Michael C. O'Malley, Cuyahoga County Prosecuting  
Attorney, and Matthew D. Greenwell, Assistant  
Prosecuting Attorney, *for respondent*.

MARY EILEEN KILBANE, P.J.:

{¶ 1} The relators, which consist of the Municipal Construction Equipment  
Operators' Labor Union, John Boehnlein, and Dave Mangano, have filed a joint

complaint for a writ of procedendo. The relators seek an order from this court that compels Judge Deena R. Calabrese to render a ruling with regard to a motion to dismiss filed in *Mun. Construction Equipment Operators' Labor Council v. Cleveland*, Cuyahoga C.P. No. CV-18-905689. Judge Calabrese has filed a motion for summary judgment that is granted.

{¶ 2} Attached to the motion for summary judgment is a copy of a judgment entry, journalized December 18, 2019, which demonstrates that Judge Calabrese has issued a ruling with regard to the pending motion to dismiss. Relief is unwarranted because the request for a writ of procedendo is moot. Procedendo will not compel the performance of a duty that has already been performed. *State ex rel. Williams v. Croce*, 153 Ohio St.3d 348, 2018-Ohio-2703, 106 N.E.3d 55; *State ex rel. Hopson v. Cuyahoga Cty. Court of Common Pleas*, 135 Ohio St.3d 456, 2013-Ohio-1911, 989 N.E.2d 49; *State ex rel. Fontanella v. Kontos*, 117 Ohio St.3d 514, 2008-Ohio-1431, 885 N.E.2d 220.

{¶ 3} Accordingly, we grant Judge Calabrese's motion for summary judgment. Costs to Judge Calabrese; costs waived. The court directs the clerk of courts to serve all parties with notice of this judgment and the date of entry upon the journal as required by Civ.R. 58(B).

{¶ 4} Writ denied.

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MARY EILEEN KILBANE, PRESIDING JUDGE

EILEEN T. GALLAGHER, A.J., and  
MICHELLE J. SHEEHAN, J., CONCUR