**[Cite as *State ex rel.Coleman v. Keough*, 2009-Ohio-4723.]**

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

---

JOURNAL ENTRY AND OPINION
**No. 93621**

---

## STATE OF OHIO, EX REL., KATHY W. COLEMAN

RELATOR

vs.

## JUDGE KATHLEEN ANN KEOUGH

RESPONDENT

---

## JUDGMENT: COMPLAINT DISMISSED

---

WRIT OF PROHIBITION
MOTION NOS. 424217 and 424758
ORDER NO. 425722

**RELEASE DATE:** September 9, 2009

**ATTORNEY FOR RELATOR**

Wayne L. Kerek
18066 Broxton Drive

Strongsville, Ohio 44149

**ATTORNEYS FOR RESPONDENT**

Robert J. Triozzi
Director of Law
Michael F. Cosgrove
Assistant Director of Law
City of Cleveland
601 Lakeside Ave., Room 106
Cleveland, Ohio 44114-1077

LARRY A. JONES, J.:

**{¶ 1}** On July 15, 2009, the petitioner, Kathy Coleman, commenced this prohibition action against the respondent, Cleveland Municipal Court Judge Kathleen Ann Keough. Coleman seeks to prohibit Judge Keough from sentencing her or taking other actions, including prohibiting certain prior orders in the underlying case, *City of Cleveland v. Kathy W. Coleman*, Cleveland Municipal Court Case No. 2008 CRB 034109. The gravamen of this prohibition action is that Coleman, pursuant to R.C. 2701.031, filed an affidavit of disqualification against Judge Keough on June 16, 2009; thus, Judge Keough had no power to sentence her or even to schedule sentencing. Coleman also moved for an alternative writ. On July 30, 2009, the respondent judge moved to dismiss on the grounds of mootness. On August 10 and 11, 2009, Coleman filed briefs in opposition. For the following reasons, this court denies the motion for an

alternative writ, grants the motion to dismiss and dismisses the application for a writ of prohibition.

**{¶ 2}** In the underlying case, in early May 2009, a jury found Coleman guilty of resisting arrest, and Judge Keough scheduled sentencing for June 23, 2009. On June 16, 2009, Coleman filed an affidavit of disqualification pursuant to R.C. 2701.031. The next day, Judge Keough ordered a presentence investigation report and rescheduled the sentencing for July 24, 2009. However, on June 29, 2009, Judge Keough rescheduled the sentencing hearing to July 17, 2009, at 10:30 a.m. Coleman also avers that on June 30, 2009, the judge ordered law enforcement officers to serve Coleman personally with the summons for the July 17, 2009 hearing. On July 2, 2009, Coleman amended her affidavit of disqualification to include the aforementioned acts that she asserts violated R.C. 2701.031(D)(1). When Judge Keough still seemed determined to proceed with the sentencing hearing on July 17, Coleman filed this prohibition action. In an entry filed-stamped July 17, 2009, at 10:16 a.m., the presiding judge of the Cuyahoga County Common Pleas Court, pursuant to R.C. 2701.031(E), denied the affidavit of disqualification. Judge Keough also canceled the July 17, 2009 hearing.

**{¶ 3}** R.C. 2701.031(D)(1) provides in pertinent part as follows: "the affidavit deprives the judge of a municipal * * * court against whom the affidavit was filed of any authority to preside in the proceedings until the [presiding judge

of the court of common pleas of the county] rules on the affidavit pursuant to division (E) of this section." However, subsection (D)(3) provides that a municipal court judge against whom an affidavit of disqualification has been filed "may determine a matter that does not affect a substantive right of any of the parties."

**{¶ 4}** The principles governing prohibition are well established. Its requisites are (1) the respondent against whom it is sought is about to exercise judicial power, (2) the exercise of such power is unauthorized by law, and (3) there is no adequate remedy at law. *State ex rel. Largent v. Fisher* (1989), 43 Ohio St.3d 160, 540 N.E.2d 239. However, it should be used with great caution and not issue in a doubtful case. *State ex rel. Merion v. Tuscarawas Cty. Court of Common Pleas* (1940), 137 Ohio St. 273, 28 N.E.2d 273, and *Reiss v. Columbus Mun. Court* (App. 1956), 76 Ohio Law Abs. 141, 145 N.E.2d 447. Moreover, the court has discretion in issuing the writ of prohibition. *State ex rel. Gilligan v. Hoddinott* (1973), 36 Ohio St.2d 127, 304 N.E.2d 382.

**{¶ 5}** Coleman argues that the affidavit of disqualification stripped Judge Keough of all authority to proceed in the underlying case, including scheduling and rescheduling a sentencing hearing and ordering law enforcement officers to serve her with a summons. Coleman maintains that Judge Keough exceeded her authority when she issued those orders, and that prohibition should now issue to show the impropriety of those orders, to deter other judges from ignoring

an affidavit of disqualification, and to assure that Coleman will have a fair adjudication of the underlying case.

**{¶ 6}** However, this matter is moot. "[T]he duty of this court, as of every judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions of abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it. It necessarily follows that when * * * an event occurs which renders it impossible for this court, if it should decide the case in favor of the plaintiff, to grant him any effectual relief whatever, the court will not proceed to a formal judgment, but will dismiss the [case]." *State ex rel. Eliza Jennings, Inc., v. Noble* (1990), 49 Ohio St.3d 71, 74, 551 N.E.2d 128, quoting *Miner v. Witt* (1910), 82 Ohio St. 237, 238-239, 92 N.E. 21, quoting *Mills v. Green* (1895), 159 U.S. 651, 653, 16 S.Ct. 132, 40 L.Ed. 293.

**{¶ 7}** Prescinding the issues of whether scheduling a sentencing hearing and serving summons affect a substantive right or when the presiding judge's order became effective,[1] the sentencing hearing scheduled for July 17, 2009, did not happen. Issuing a writ of prohibition now would have no consequence. Judge Keough now has the authority to proceed, and prohibiting orders relating

[1] Although the presiding judge's order was file-stamped before the sentencing hearing was scheduled to start, Coleman asserts it was not effective until June 20, 2009, when it was entered onto the journal.

to a hearing that never happened would grant no effectual relief whatever. This court would merely be opining on abstract questions.[2]

**{¶ 8}** Accordingly, this court grants the respondent's motion to dismiss and dismisses the application for a writ of prohibition. Petitioner's motion for an alternative writ is denied. Petitioner to pay costs. This court further orders the Clerk of the Eighth District Court of Appeals to serve notice of this judgment upon all parties as mandated by Civ.R. 58(B).

LARRY A. JONES, JUDGE

COLLEEN CONWAY COONEY, A.J., and
MARY EILEEN KILBANE, J., CONCUR

[2] *Disciplinary Counsel v. Squire*, 116 Ohio St.3d 110, 2007-Ohio-5588, 876 N.E.2d 933, is distinguishable and unpersuasive. *Squire* is not a prohibition action, but a disciplinary hearing involving a judge who not only scheduled hearings but conducted hearings and ex parte investigations during the pendency of an affidavit of disqualification.