

[Cite as *Pomales v. Fuerst*, 2013-Ohio-4605.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 100279

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**ARCHIE T. POMALES**

RELATOR

vs.

**HONORABLE NANCY FUERST**

RESPONDENT

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**JUDGMENT:**  
**WRIT DENIED**

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Writ of Mandamus  
Order No. 468718  
Motion No. 468307

**RELEASE DATE:** October 15, 2013

**FOR RELATOR**

Archie T. Pomales, pro se  
Inmate No. 24334  
Huttonsville Correctional Center  
P.O. Box 1  
Huttonsville, WV 26273

**ATTORNEYS FOR RESPONDENT**

Timothy J. McGinty  
Cuyahoga County Prosecutor  
By: James E. Moss  
Assistant County Prosecutor  
9th Floor Justice Center  
1200 Ontario Street  
Cleveland, OH 44113

TIM McCORMACK, J.:

{¶1} Archie T. Pomales, relator, has petitioned this court to issue a writ of mandamus to compel the trial court to rule on his motion to dismiss filed on May 9, 2013, in *State v. Pomales*, Cuyahoga C.P. Nos. CR-95-329576 and CR-95-331107. Respondent has filed a motion for summary judgment. For the reasons that follow, we grant respondent's motion for summary judgment and deny relator's complaint for a writ of mandamus because it is procedurally defective and moot.

{¶2} Relator did not properly designate the original action by using the name of the state on the relation of the person applying, and he did not include the address of the parties as required by Civ.R. 10(A) and 2731.04. The failure to caption an original action properly constitutes sufficient grounds for dismissing the complaint. *Rust v. Lucas Cty. Bd. of Elections*, 108 Ohio St.3d 139, 2005-Ohio-5795, 841 N.E.2d 766; *Barry v. Galvin*, 8th Dist. Cuyahoga No. 85990, 2005-Ohio-2324, ¶ 2, citing *Allen v. Court of Common Pleas of Allen Cty.*, 173 Ohio St. 226, 181 N.E.2d 270 (1962).

{¶3} Relator has further failed to comply with R.C. 2969.25 by failing to file an affidavit detailing his prior civil filings. The Supreme Court has held, "The requirements of R.C. 2969.25 are mandatory, and failure to comply with them subjects an inmate's action to dismissal." *State ex rel. White v. Bechtel*, 99 Ohio St.3d 11, 2003-Ohio-2262, 788 N.E.2d 634, ¶ 5. Noncompliance with R.C. 2969.25 warrants dismissal. *State ex rel. Graham v. Niemeyer*, 106 Ohio St.3d 466, 467, 2005-Ohio-5522, 835 N.E.2d 1250.

{¶4} The complaint is also moot. Respondent’s motion for summary judgment includes an attached copy of the trial court’s entry that was journalized on August 12, 2013, which demonstrates that a ruling has been rendered with regard to relator’s motion to dismiss filed in each case on May 9, 2013. “[R]elief is unwarranted because mandamus and procedendo will not compel the performance of a duty that has already been performed.” *State ex rel. Hopson v. Cuyahoga Cty. Court of Common Pleas*, 135 Ohio St.3d 456, 2013-Ohio-1911, 989 N.E.2d 49, ¶ 4.

{¶5} Accordingly, we grant respondent’s motion for summary judgment and deny relator’s complaint for writ of mandamus. Costs are assessed against relator but waived. The court directs the clerk of court to serve all parties with notice of this judgment and its date of entry upon the journal as required by Civ.R. 58(B).

{¶6} Writ denied.

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TIM McCORMACK, JUDGE

MARY J. BOYLE, P.J., and  
KENNETH A. ROCCO, J., CONCUR