

**In the Supreme Court of Ohio**

<b>STATE EX REL. CHARLES TINGLER,</b>	:	
	:	<b>CASE NO. 2023-0240</b>
<b>Relator,</b>	:	
	:	<b>ORIGINAL ACTION IN</b>
<b>v.</b>	:	<b>MANDAMUS</b>
	:	
<b>OHIO ETHICS COMMISSION et al.,</b>	:	
	:	
<b>Respondents.</b>	:	

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**RESPONDENT OHIO ETHICS COMMISSION'S MOTION TO DISMISS**

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## RESPONDENT OHIO ETHICS COMMISSION'S MOTION TO DISMISS

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Respondent Ohio Ethics Commission respectfully moves, pursuant to S.Ct.Prac.R. 12.04(A)(1) and Civ.R. 12(B)(6), this Court to dismiss Relator's Petition for Mandamus. The Petition fails to state a claim for which this Court may grant relief as the Ohio Ethics Commission has discretion, enforcement and oversight of Ohio's Ethics Law. Accordingly, a writ of mandamus is not appropriate. A memorandum in support is attached.

Respectfully submitted,

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## **MEMORANDUM**

### **I. BACKGROUND**

On February 13, 2023, the Ohio Ethics Commission (“Ethics Commission”), received allegations from Relator Charles Tingler (Tingler). Petition, ¶1. Tingler attempted to file allegations against Paul Sigsworth, Erie County Sheriff’s Office and Gerhard Gross, Erie County Prosecutor’s Office, alleging that they had obstructed justice in violation of Ohio Revised Code 2921.32(A)(5) and had an unlawful interest in a public contract in violation of Ohio Revised Code 2921.42(A)(1). On February 17, 2023, Tingler filed the present Petition for Writ of Mandamus. In his Petition, Tingler requests an order from this Court directing the Ethics Commission to investigate and criminally charge Chief Jeffrey Musser, Sheriff Paul Sigsworth, and Assistant Prosecutor Gerhard Gross for “obstructing justice and having an unlawful interest in a public contract.” Petition, Conclusion.

### **II. FAILURE TO STATE A CLAIM FOR RELIEF**

#### **A. Standard of Review**

In considering a motion to dismiss for failure to state a claim under Civ.R. 12(B)(6), the Court must construe all material allegations in the complaint and all inferences that may be reasonably drawn in favor of the nonmoving party. *Fahnburreh v. Strahan*, 73 Ohio St.3d 666, 667, 652 N.E.2d 1186 (1995). In order for a court to dismiss a complaint for failure to state a claim upon which relief can be granted, “it must appear beyond doubt from the complaint that plaintiff can prove no set of facts warranting relief.” *State ex rel. Jennings v. Nurre*, 72 Ohio St.3d 596, 597, 651 N.E.2d 1006 (1995).

It is well established that mandamus is an extraordinary remedy. *State ex. rel. Gerspacher v. Coffinberry*, 157 Ohio St. 32, 36, 104 N.E.2d 1 (1952). In order for this Court to issue a writ of

mandamus, a relator must ordinarily show (1) a clear legal right to the relief sought, (2) a clear legal duty on the part of the respondent to provide such relief, and (3) the lack of an adequate remedy in the ordinary course of the law. *State ex rel. Pressley v. Indus. Comm'n*, 11 Ohio St. 2d 141, 228 N.E.2d 631 (1967). “Absent an abuse of discretion, mandamus cannot compel a public body or official to act in a certain way on a discretionary matter.” *Id.*; *State ex rel. Veterans Serv. Office v. Pickaway Cty. Bd. of Commrs.*, 61 Ohio St. 3d 461, 463, 575 N.E.2d 206, 207 (1991). Abuse of discretion implies an attitude that is unreasonable, arbitrary or unconscionable. *State ex rel. Bitter v. Missig*, 72 Ohio St. 3d 249, 253, 648 N.E.2d 1355, 1358 (1995).

**B. Tingler does not have a clear legal right to the relief sought and the Ethics Commission does not have a legal duty to provide the requested relief.**

Ohio Revised Code Chapter 102 prescribes the duties and powers of the Ethics Commission. R.C. 102.06 provides two ways that a person may bring an allegation of wrongdoing before the Ethics Commission: by filing a complaint or by filing a charge. Ohio Administrative Code 102-7-05(C) sets forth the requirements for a person to file a complaint with the Commission which include, *inter alia*, that the complaint must be “sworn before a notary public or other person authorized to take oaths” and must include “[a] statement of the essential facts constituting the offense charged and include each element of the offense of which the complainant must have personal knowledge.” The documents submitted to the Ethics Commission by Tingler fail to meet these standards and therefore do not constitute a “complaint” for purposes of R.C. 102.06.

Rather, what Tingler filed is a “charge” for purposes of R.C. 102.06. Section 102-1-01(C) of the Ohio Administrative Code defines “charge” to mean “any allegation or other information, from any source, which alleges or indicates that a violation of Chapter 102. or section 2921.42 or 2921.43 of the Revised Code may have occurred. R.C. 102.06(B) states, “(t)he appropriate ethics

commission shall investigate complaints, *may* investigate charges presented to it....” (Emphasis added). By its very terms, (B) vests in the Ethics Commission discretion to initiate and investigate charges. It is well-settled that mandamus cannot be used to control the exercise of administrative or legislative discretion. *State ex rel. Crabtree v. Franklin Cty. Bd. of Health*, 77 Ohio St.3d 247, 248-249, 673 N.E.2d 1281 (1997). As such, mandamus cannot be used to force the Ethics Commission to investigate a charge when that authority is discretionary.

Tingler seeks an order directing the Ethics Commission to investigate and criminally charge Chief Jeffrey Musser, Sheriff Paul Sigsworth, and Assistant Prosecutor Gerhard Gross for “obstructing justice and having an unlawful interest in a public contract.” Petition, Conclusion. Under R.C. Chapter 102, Tingler does not have a legal right to the relief requested, namely directing the Ethics Commission to investigate and criminally charge Chief Jeffrey Musser, Sheriff Paul Sigsworth, and Assistant Prosecutor Gerhard Gross for “obstructing justice and having an unlawful interest in a public contract.” Similarly, the Ethics Commission does not have a legal duty to conduct such an investigation. Instead, the language in R.C. Chapter 102 gives the Ethics Commission discretion to investigate allegations received. Accordingly, the Ethics Commission does not have a duty to provide the relief Tingler requests and Tingler has no right to that relief.

In addition, pursuant to Civ.R. 8(A), a complaint must contain (1) a short and plain statement of the claim showing that the party is entitled to relief, and (2) a demand for judgment for the relief to which the party claims to be entitled. Tingler failed to allege any specific acts on the part of the Ethics Commission that would give rise to the relief requested. At most, Tingler argues that the Ethics Commission did not investigate Tingler’s allegations, a decision that is discretionary, not mandatory under R.C. Chapter 102. Thus, dismissal of this action is appropriate.

**C. An adequate remedy at law exists under R.C. 2935.09.**

Ohio Revised Code Section 2935.09 in pertinent part states:

A private citizen having knowledge of the facts who seeks to cause an arrest or prosecution under this section may file an affidavit charging the offense committed with a reviewing official for the purpose of review to determine if a complaint should be filed by the prosecuting attorney or attorney charged by law with the prosecution of offenses in the court or before the magistrate.

Under R.C. 2935.09, a reviewing official is defined as “a judge of a court of record, the prosecuting attorney or attorney charged by law with the prosecution of offenses in a court or before a magistrate, or a magistrate.” Tingler may, under R.C. 2935.09, file an affidavit including such allegations with a reviewing official. Since R.C. 2935.09 provides Tingler an adequate remedy at law, dismissal of this action is appropriate.

**D. The Ethics Commission did not abuse its discretion.**

Abuse of discretion implies an attitude that is unreasonable, arbitrary or unconscionable.

*State ex rel. Bitter v. Missig*, 72 Ohio St. 3d 249, 253, 648 N.E.2d 1355, 1358 (1995). Pursuant to R.C. Chapter 102, the Ethics Commission has discretion in enforcing the Ohio Ethics law. Tingler does not provide statements to support an abuse of discretion finding. Tingler’s mere claim that the Ethics Commission abused its discretion when it failed to investigate because “the allegations involve government officials” is insufficient. Petition, ¶1. It is not an abuse of discretion when the Ethics Commission acted within its authority and decided not to investigate the allegations contained in Tingler’s complaint.

### **III. CONCLUSION**

For the reasons set forth above, the Ethics Commission moves the Court to dismiss Tingler's claims.

Respectfully submitted,

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*/s/ Elizabeth S. Fligner*

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*Counsel for Respondent Ohio Ethics Commission*

### **CERTIFICATE OF SERVICE**

I hereby certify that on March 13, 2023, a copy of the foregoing was served via regular U.S. Mail upon the following:

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