

In The Supreme Court of Ohio

State <i>ex rel.</i>	:	
Kimani E. Ware,	:	Case No. 2023-0090
	:	
Relator,	:	
	:	
v.	:	
	:	Original Action in Mandamus
Ohio Department of Rehabilitation	:	
and Correction, <i>et al.</i> ,	:	
	:	
Respondents.	:	

RESPONDENTS' MOTION TO DECLARE RELATOR A VEXATIOUS LITIGATOR

NOW COME Respondents Ohio Department of Rehabilitation and Correction (“ODRC”); Michael Hickle, Medical Supervisor, Trumbull Correctional Institution; Margaret Armstrong, Religious Services Manager; Glenn Booth, Assistant Warden; Charmain Bracy, Warden; and Frank Cimmento Jr., Commissary Manager by and through counsel, and hereby request that the Court declare Relator Kimani Ware to be a vexatious litigator pursuant to S.Ct.Prac.R 4.03(B).

Respectfully submitted,

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Ohio Attorney General

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MEMORANDUM IN SUPPORT

In the past four years, Relator Kimani Ware has filed at least 28 prior mandamus or civil actions. At least 17 of those lawsuits have been dismissed. Many of these suits qualify as repetitive, frivolous, or an abuse of the legal process. Please see the chart below.

Case No.	Caption	Case Type	Decision Date	Outcome
2023-0268	State, ex rel. Kimani Ware v. Sandra Kurt, Summit Co. Clerk of Courts	Appeal from remand Summit Co., 9th Dist, Case No. CA29622		PENDING
2022-1066	State, ex rel. Kimani Ware v. ODRS and Christopher Emerick	Mandamus Public Records	11/30/2022 12/09/2022	MTD granted, case dismissed Reconsideration denied
2022-0543	State, ex rel. Kimani E. Ware v. Aftab Pureva (Hamilton Co. Clerk of Courts)	Appeal from remand Hamilton Co., 1st Dist., Case No. C-190563		PENDING
2022-0266	State, ex rel. Kimani E. Ware v. Jill Fankhauser, Portage Co. Clerk of Courts	State's Appeal from Portage Co., 11th Dist., Case No. 2021-P-0058	05/26/22	State's MTD granted, case dismissed
2022-0191	State, ex rel. Kimani E. Ware v. Aftab Pureva (Hamilton Co. Clerk of Courts)	Mandamus Public Records	03/15/2023	Writ granted in part; relator granted \$1000 in statutory damages. 2023-Ohio-759
2021-1482	State, ex rel. Kimani Ware v. Waylon Wine, Unit Mgr., Tracy Ventrua, Rec Mgr and Anthony, DWO (TCI)	Mandamus Public Records	12/15/2022	Writ granted in part; Relator awarded \$3000 in statutory damages. 2022-Ohio-4472
2021-0823	State, ex rel. Kimani Ware v. Sandra Kurt, Summit Co. Clerk of Courts	Appeal from Summit Co., 9th Dist., Case No. CA29622	05/18/2022	Affirmed in part/ reversed in part, and remanded to the court of appeals 2022-Ohio-1627
2020-1498	State, ex rel. Kimani Ware v. Donna Crawford, Institutional Inspector	Mandamus Public Records	02/08/2022	Writ granted in part, relator granted \$1000 in statutory damages. 2022-Ohio-295

2020-0168	State, ex rel. Kimani Ware v. Mike DeWine, Governor	Appeal from Franklin Co., 10 th Dist., Case No. 19AP161	11/05/2020	Judgment affirmed 2020-Ohio-5148
2020-0162	State, ex rel. Kimani E. Ware v. Aftab Pureva (Hamilton Co. Clerk of Courts)	Appeal from Hamilton Co., 1st Dist., Case No. C-190563	08/12/2020	Affirmed in part/ reversed in part, and remanded to the court of appeals 2020-Ohio-4024
2020-0043	State, ex rel. Kimani E. Ware v. Louis P. Giavasis, Stark Co. Clerk of Courts Office, et al.	Mandamus Public Records	12/01/2020	Writ denied; 2020- Ohio-5453
2019-0824	State, ex rel. Kimani E. Ware v. Louis P. Giavasis, Stark Co. Clerk of Courts	Appeal from Stark Co., 5 th Dist., Case No. 2019CA00003	07/16/2020 09/15/2020	Judgment Affirmed 2020-Ohio-3700 Reconsideration denied
2019-0772	State, ex rel. Kimani E. Ware v. Sherri Bevan Walsh, et al.	Appeal from Summit Co., 9 th Dist., Case No. CA 29344	03/05/2020	Judgment affirmed 2020-Ohio-769
2018-1013	State, ex rel. Kimani E. Ware v. Gary C. Mohr, Director ODRC	Mandamus Public Records	10/18/2018	MTD granted, case dismissed
2018-1012	State, ex rel. Kimani E. Ware v. Montgomery Co. Clerk of Courts	Mandamus	10/10/2018	MTD granted; case dismissed
2021CA00042	State, ex rel. Kimani E. Ware v. John D. Ferrero, et al.	Mandamus Public Records Stark Co., 5 th Dist.	04/04/2022	MSJ granted; case dismissed
2021-P-0058	State, ex rel. Kimani E. Ware v. Jill Fankhauser, Portage Co. Clerk of Courts	Mandamus Public Records Portage Co., 11 th District	01/24/2022	Relator's MSJ granted; awarded \$1000 statutory damages; writ denied as moot
21AP419	State, ex rel. Kimani E. Ware v. Bureau of Sentence Computation	Mandamus Public Records Franklin Co., 10 th Dist.	10/06/2022	Partial writ granted; Relator awarded \$1,000 in statutory damages
2020-L-043	State, ex rel. Kimani E. Ware v. Faith Andrews, Lake Co. Clerk of Courts	Mandamus Public Records Lake Co., 11 th Dist.	12/05/2021	Mandamus denied as moot; statutory damages awarded
19AP841	State, ex rel. Kimani E. Ware v. Bureau of Sentence Computation	Mandamus Public Records Franklin Co., 10 th Dist.	01/28/2020 04/28/2020	Sua sponte dismissal R.C. 2969.25(A)(1) Objections overruled

19AP511	State, ex rel. Kimani E. Ware v. ODRC	Mandamus Public Records Franklin Co., 10 th Dist.	02/20/2020	MTD granted; case dismissed
19AP161	State, ex rel. Kimani E. Ware v. Mike DeWine, Governor	Mandamus Public Records Franklin Co., 10 th Dist.	12/20/2019	Respondent's MSJ granted, Writ denied; Appeal denied. See 2020-0168
C-190563	State, ex rel. Kimani E. Ware v. Aftab Pureva (Hamilton Co. Clerk of Courts)	Mandamus Public Records Hamilton Co., 1st Dist.	01/07/2020 03/29/2022	MTD granted; case dismissed Appealed 2020-0162 Writ denied on remand; Appealed 2022-0543 PENDING
CA29622 (2019)	State, ex rel. Kimani Ware v. Sandra Kurt, Summit Co. Clerk of Courts	Mandamus Public Records Summit County, 9th District	06/16/2021 01/25/2023	MSJ granted. Appealed 2021-0823 Upon remand, State's MSJ granted; Appealed 2023-0268
CA29344 (2019)	State, ex rel. Kimani E. Ware v. Sherri Bevan Walsh, et al.	Mandamus Public Records Summit Co., 9 th Dist.	05/28/2019	Case dismissed R.C. 2969.25(A)(1)
2019CA00079	State, ex rel. Kimani E. Ware v. John D. Ferrero, et al	Mandamus Public Records Stark Co., 5 th Dist.,	09/23/2019	MTD granted; case dismissed
2019CA00003	State, ex rel. Kimani E. Ware v. Louis P. Giavasis, Stark Co. Clerk of Courts	Mandamus Public Records Stark Co., 5 th Dist.,	05/28/2019	MSJ granted Appealed 2019-0824
2018-01386 PQ	Kimani Ware v. Mansfield Correctional Institution	Court of Claims Public Records	01/18/2019	Respondent failed to timely respond to PR request; but request is moot.

It is proper for this Court to take **judicial notice** of the cases contained in the chart above.

The Court may take judicial notice of the pleadings and orders in related cases when they are not subject to reasonable dispute, at least insofar as they affect the present original action. *State ex rel. Nyamusevya v. Hawkins*, 10th Dist. No. 19AP-199, 2020-Ohio-2690, ¶33, citing *Evid.R*

201(B); *State ex rel. Ohio Republican Party v. Fitzgerald*, 145 Ohio St.3d 92, 2015-Ohio-5056, ¶18, 47 N.E.3d 124; and *State ex rel. Womack v. Marsh*, 128 Ohio St.3d 303, 2011-Ohio-229, ¶8, 943 N.E.2d 1010. Furthermore, a court may take judicial notice of pleadings that are readily accessible on the internet. See *Draughon v. Jenkins*, 4th Dist. No. 16CA3528, 2016-Ohio-5364, ¶26, citing *State ex rel. Everhart v. McIntosh*, 115 Ohio St.3d 195, 2007-Ohio-4798, ¶8, 10, 874 N.E.2d 516. See also *State ex rel. Findlay Publishing Co. v. Schroeder*, 1996-Ohio-361, 76 Ohio St.3d 580-81, 669 N.E.2d 835 (1996); *Draughon* at ¶26.

The Court’s assessment of a litigant’s vexatiousness is based on a combination of the number of cases he has filed and also on the repetitiveness of the arguments raised. *State ex rel. Johnson v. Bureau of Sentence Computation*, 159 Ohio St.3d 552, 2020-Ohio-999, 152 N.E.3d 251, 2020 Ohio LEXIS 713, at ¶ 21. See also, *State ex rel. Hill v. Navarre*, 161 Ohio St.3d 188, 2020-Ohio-4274, 161 N.E.3d 627, 2020 Ohio LEXIS 2007, at ¶ ¶ 14, 15, 16. Further, “R.C. 2323.52 allows a party that has repeatedly encountered vexatious conduct to have the offending person declared a ‘vexatious litigator.’” *Blassingame v. Pureval*, 2022 Ohio App. LEXIS 2821, quoting *City of Madeira v. Oppenheimer*, 1st Dist. Hamilton No. C-200458, 2021-Ohio-2958, ¶ 5. In determining vexatiousness, the trial court may consider the party’s conduct in other, older cases as well as the **person’s conduct in the instant case** in which the vexatious litigator claim is brought. *Blassingame*, at ¶ 4, relying on *Davie v. Nationwide Ins. Co. of Am.*, 8th Dist. Cuyahoga No. 105261, 2017-Ohio-7721, ¶ 41. Here, prison inmate Kimani Ware has misrepresented to the Court that he properly delivered his many “public records” requests to the appropriate institutional public information officer. The truth is that Relator never made a formal public records request by using the words “this is a public records request,” or that the requests were delivered to the proper person – the Warden’s administrative assistant, who is the public information officer. (See

discussion below.) Ohio courts have also recognized that a **pattern** of failing to prosecute claims and filing procedurally defective complaints over a short period of time may constitute vexatious conduct. *Blassingame*, at ¶ 5. See also, *Herron v. Bramel*, 7th Dist. Columbiana No. 17 CO 0008, 2018-Ohio-1029, ¶ 19-21, 25; *Ealy v. McLin*, 2d Dist. Montgomery No. 21934, 2007-Ohio-4080, ¶ 25-26. The trial court can infer that plaintiff's or relator's repeated failure to prosecute his claims establishes that his suits were merely intended to harass or cause delay. *Blassingame*, at ¶¶ 5-6. Also, civil actions filed in federal court may have evidentiary relevance for determining vexatious conduct (i.e., harassment) or identifying a vexatious litigator. *Ferrero v. Staats*, 2018-Ohio-3235, 2018 Ohio App. LEXIS 3488, at ¶ 7.

Rule 4.03(B) of the Rules of Practice of the Supreme Court of Ohio is similar to Ohio's statute concerning vexatious litigators. Both try to curb frivolous and abusive lawsuits, as well as safeguard taxpayer resources. "There is a cost, internal to Ohio's court system but also external to the state as a whole, when the legal process is abused" by prison inmates serving lengthy or life sentences by the inmate's repeated filings. *State ex rel. Johnson v. Bureau of Sentence Computation*, at ¶ 22. Relator Kimani Ware (#A470-743) was convicted in 2004 for attempted murder, kidnapping, rape, attempted rape, and was sentenced to 45 years to life in prison. This Court has stated, "We must take into account the number of hours spent within the court system by the justices, law clerks, filing clerks, and other court personnel, as well as county prosecutors and their employees, who must handle and respond to all these lawsuits and motions." *Id.* This logic applies equally to other government agencies, such as the Ohio Department of Rehabilitation and Correction (ODRC) and the Ohio Attorney General's Office.

S.Ct.Prac.R 4.03(B) defines a vexatious litigator as a party who "**habitually, persistently, and without reasonable cause** engages in frivolous conduct under division (A) of this rule." *Id.*

Furthermore, S.Ct.Prac.R 4.03(A) defines frivolous conduct as an appeal or other action (i.e., extraordinary writ) that is prosecuted for **delay, harassment**, or any other improper purpose. In determining whether a party's conduct is vexatious, frivolous, or an abuse of the legal process, court's also look at whether the filings appear to be calculated towards abusing the judicial process, or having the effect of encroaching on the judicial machinery needed by other litigants. "Moreover, vexatious litigation takes time away from prompt handling of meritorious cases, which is not fair to other litigants in Ohio's court system." *State ex rel. Johnson v. Bureau of Sentence Computation*, at ¶ 23. The Supreme Court of Ohio has further stated that, "We owe a duty to the citizens of Ohio to supervise properly and fairly the courts of the state for the benefit of *all* its citizens, not just the most prolific filers" such as Kimani Ware. *Id.* See also, *Ohio Constitution, Article IV, Section 5*. Today, that duty compels us to put an end to prison inmate Kimani Ware's repeated frivolous and abusive litigation by declaring him a vexatious litigator in accordance with S.Ct.Prac.R. 4.03.

Similarly, Ohio Revised Code § 2323.52(A) defines vexatious conduct of a party as conduct that serves merely to **harass or maliciously injure, not warranted** under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law, or imposed solely for delay. *Id.* And like Rule 4.03, R.C. § 2323.52(A)(3) defines a vexatious litigator as any person who has **habitually, persistently, and without reasonable grounds** engaged in vexatious conduct in a civil action or actions. *Id.* The prior actions chart of Kimani Ware's lawsuits contained above demonstrates that Relator Ware meets this criteria in terms of persistently and without reasonable cause engages in vexatious, frivolous, and abusive litigation.

Like Rule 4.03, Ohio Revised Code § 2323.52 is designed to prevent vexatious litigators from gaining direct and unfettered access to Ohio trial courts. Otherwise, its enactment would have no meaning. R.C. § 2323.52(D)(1) provides that the court that declared a person to be a vexatious litigator may enter an order that essentially enjoins that person from engaging the process of any Ohio court without first obtaining leave to proceed. In addition, R.C. § 2323.52(H), (I) provide for statewide refusal or dismissal of any pleading or action submitted by the vexatious litigator in the absence of leave to proceed. *Mayer v. Bristow*, 91 Ohio St.3d 3, at 4 (2000). R.C. § 2323.52(D)(3) states:

A person who is subject to an order entered pursuant to division (D)(1) of this section [labeling them a vexatious litigator] may not institute legal proceedings in a court of appeals, continue any legal proceedings that the vexatious litigator had instituted in a court of appeals prior to entry of the order, or make any application, other than the **application for leave to proceed** allowed by division (F)(2) of this section, in any legal proceedings instituted by the vexatious litigator or another person in a court of appeals without first obtaining leave of the court of appeals to proceed pursuant to division (F)(2) of this section. *Id.*

R.C. § 2323.52(F)(2) further provides, in part, that “[t]he court of appeals shall not grant a person found to be a vexatious litigator leave for the institution or continuance of, or the making of an application in, legal proceedings in the court of appeals unless the court of appeals is satisfied that the proceedings or application are not an **abuse of process** of the court and that there are reasonable grounds for the proceedings or application.” *Id.*

Relator Kimani Ware’s current filings constitute an abuse of process pursuant to S.Ct.Prac.R 4.03(B) and R.C. 2323.52(F)(2). While the ability to curb frivolous litigation practices is an essential part of the inherent power of courts to control and protect the integrity of their own processes, the public also has a definable interest in curtailing the activities of vexatious litigators that transcends the boundaries of judicial concerns. *Mayer v. Bristow*, 91 Ohio St.3d 3, at 4 (2000). Relator Kimani Ware’s conduct constitutes an abuse of process, which is the very essence of Rule

4.03(B) and the vexatious litigator statute. As demonstrated by the prior actions chart above, Kimani Ware has habitually, persistently, and without reasonable cause engaged in frivolous conduct. Therefore, this Court should dismiss Relator's frivolous and abusive complaint, and declare Kimani Ware to be a vexatious litigator.

Here, Relator has failed to plead any specific or credible facts that he delivered a proper public records request to the proper public records custodian. Glenn Booth, as the warden's administrative assistant and institutional Public Information Officer at Trumbull Correctional Institution (TCI), is/was the only appropriate public records custodian whom Relator Kimani Ware should have delivered his many requests to. (See Affidavit of Glenn Booth, filed on 2/15/2023, and Second Affidavit of Glenn Booth, filed on 5/8/2023.) In his affidavit filed on March 23, 2023, Relator Kimani Ware **falsely claims**, "I submitted all my public records requests to the proper departments and persons at Trumbull Correctional Institution..." (See Relator's Affidavit, filed 3/23/2023, at ¶ 5.) By filing Relator's March 23, 2023 affidavit, Kimani Ware went out of his way to advance this false narrative and mislead the Court. The truth is that for the past 18 years while in prison, Kimani Ware has had actual knowledge of how to make a proper public records request.

As is demonstrated by the affidavits of: Glenn Booth, Frank Cimmento, Jr., Michael Hickie, and chaplain Margaret Armstrong, filed on May 8, 2023, **Relator Kimani Ware did not deliver his purported public records requests to the proper persons** at Trumbull Correctional Institution. In regard to Relator's request to Frank Cimmento, Jr. for the price increase list of commissary items, Mr. Cimmento states, "I do not normally get requests like inmate Ware's and did not know what to do. I referred this matter to Glenn Booth who responded on June 29, 2022." (See Cimmento Affidavit, filed 5/8/23, at ¶ 5.) Inmate Ware was advised to contact Walt Woodruff in the Operations Support Center for his information request, but never contacted Walt Woodruff.

Further, “Inmate Ware never stated that his request for information was a public records request.” (Cimmento affidavit, at ¶ 5.) Cimmento also avers that he is not the public information officer and, therefore, he is not the proper person for Ware to make his public records request to. (Cimmento affidavit, at ¶ 5.) Frank Cimmento, Jr. also states that Relator Kimani Ware was already provided this information through his individual Jpay account. (Cimmento affidavit, at ¶ 5.)

In regard to Relator’s request to medical supervisor Michael Hickle for the Dr. Eddy inmate visitation policy requiring either proof of vaccination (card) or submission to a Covid rapid test prior to visiting an inmate, Michael Hickle advised Relator Ware to send his request to the department that deals with visitation. (See Hickle Affidavit, filed 5/8/23, at ¶ 5.) Further, “Inmate Ware never stated that his request was a public records request.” (Hickle affidavit, at ¶ 5.) Hickle also avers that he is not the public information officer and, therefore, he is not the proper person for Ware to make his public records request to. (Hickle affidavit, at ¶ 5.)

In regard to Relator’s request to chaplain Margaret Armstrong for the ODRC informational handbook on religions, Margaret Armstrong is not a State of Ohio or ODRC employee. (See Armstrong unsigned Affidavit, filed 5/8/23, and signed Affidavit, filed 5/10/23, at ¶ 3.) Furthermore, inmate Ware never responded back to chaplain Armstrong indicating he could not find the book and never stated that his request was a public records request. (Armstrong affidavit, at ¶ 5.) Armstrong likewise avers that she is not the public information officer and, therefore, she is not the proper person for Ware to make his public records request to. (Armstrong affidavit, at ¶ 5.)

In all instances regarding Relator Kimani Ware’s purported public records requests, Glenn Booth as the warden’s administrative assistant and designated public information officer for

Trumbull Correctional Institution, was the proper person to be served with a public records request. (See Second Affidavit of Glenn Booth, filed on 5/8/23, at ¶¶ 7, 8, 9, 10, and 13.) Moreover, Relator **Ware never identified his prison kites as a formal public records request.** Consequently, inmate Ware never made a public records request. Instead, he made an informal request for information. This is also true in regard to Kimani Ware's request for his inmate master file records. (See Booth second affidavit, at ¶¶ 10, 13.) It should also be noted that incarcerated persons have access to their own complaints and grievances through their own JPay accounts. The record of the kites sent and responses to those kites, and grievance procedure filings and responses to those filings are maintained within the incarcerated person's JPay account. In other words, Relator already had access to the records he was requesting. Mandamus will not lie to compel a respondent to give the relator something he already has. *State ex rel. Zidonis v. Columbus State Cmty. College*, 133 Ohio St.3d 122, 2012-Ohio-4228, 976 N.E.2d 861, ¶ 38; citing *State ex rel. Vaughn v. Money*, 104 Ohio St.3d 322, 2004 Ohio 6561, 819 N.E.2d 681, ¶ 11.

Lastly, Glenn Booth states in his Second Affidavit that during Kimani Ware's 18 years at Trumbull Correctional Institution, that Relator Ware has made numerous public records requests, that Kimani Ware is aware of the procedure to send his public records requests to the designated public records officer of the institution. (Booth second affidavit, at ¶ 14.)

Kimani Ware did not make a valid public records request because he did not identify his prison kite(s) as a public records request and because he did not deliver his request to the proper Public Information Officer (Glenn Booth). This is Kimani Ware's *modus operandi*. Thus, without establishing that Relator actually made a valid public records request in which Respondents could respond, Relator's mandamus action is ill-founded. Kimani Ware did this on purpose and is

committing an abuse of the legal process by the instant mandamus action. This is all done according to Ware's nefarious scheme to wrongfully obtain statutory damages at taxpayer expense.

WHEREFORE, Respondents respectfully request this honorable Court to declare Kimani Ware to be a vexatious litigator pursuant to S.Ct.Prac.R 4.03(B), and to impose the filing fee and security deposit that all other persons must pay.

Respectfully submitted,

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Counsel for Respondents

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the *Respondents' Motion to Declare Relator a Vexatious Litigator* was filed with this Court, electronically, on the 23rd day of June, 2023, and that, on the same date, a true copy of said document was directed, via regular U.S. Mail, to:

Kimani Ware (#A470-743)
Richland Correctional Institution
P.O. Box 8107
Mansfield, OH 44905

/s/ John H. Bates
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