IN THE COURT OF APPEALS FOR MUSKINGUM COUNTY, OHIO FIFTH APPELLATE DISTRICT

JOHN DALE ALLEN, : JUDGES:

: Hon. John W. Wise, P.J. Petitioner, : Hon. Sheila G. Farmer, J.

Hon. Patricia A. Delaney, J.

V.

: CASE NO. CT11-0035

MARK C. FLEEGLE, : OPINION

Respondent. :

CHARACTER OF PROCEEDING: Petition for Writ of Quo Warranto

JUDGMENT: WRIT DISMISSED

DATE OF JUDGMENT ENTRY: October 18, 2011

APPEARANCES:

For Petitioner – Pro se: For Respondent:

JOHN DALE ALLEN The Honorable Mark C. Fleegle

c/o 28 N. 4th St, - SB4 401 Main Street

Zanesville, OH 43701 Zanesville, OH 43701

Muskingum County, Case No. CT11-0035 Delaney, J.,

- {¶ 1} Petitioner, John Dale Allen, has filed a Petition for Writ of Quo Warranto against Respondent Judge Mark Fleegle requesting a writ be granted ousting Respondent from his position as a judge in the Muskingum County Court of Common Pleas. Petitioner claims Respondent violated his oath of office by setting an excessive bail.
- **{¶ 2}** For a writ of quo warranto to issue, "a relator must establish (1) that the office is being unlawfully held and exercised by respondent, and (2) that relator is entitled to the office." *State ex rel. Paluf v. Feneli* (1994), 69 Ohio St.3d 138, 141, 630 N.E.2d 708.
- **{¶ 3}** The Ohio Supreme Court has held, "[A]n action in quo warranto may be brought by an individual as a private citizen only when he personally is claiming title to a public office." " *State ex rel. Coyne v. Todia* (1989), 45 Ohio St.3d 232, 238, 543 N.E.2d 1271, quoting *State ex rel. Annable v. Stokes* (1970), 24 Ohio St.2d 32, 32-33, 53 O.O.2d 18, 262 N.E.2d 863.
- {¶ 4} "Sua sponte dismissal of a complaint for failure to state a claim upon which relief can be granted is appropriate if the complaint is frivolous or the claimant obviously cannot prevail on the facts alleged in the complaint. State ex rel. Bruggeman v. Ingraham (1999), 87 Ohio St.3d 230, 231, 718 N.E.2d 1285, 1287." State ex rel. Kreps v. Christiansen (2000), 88 Ohio St.3d 313, 316, 725 N.E.2d 663, 667.

Muskingum County, Case No. CT11-0035

Delaney, J.,

{¶ 5} Petitioner does not aver in his Petition that he is entitled to the

office held by Respondent, therefore, he, as a private citizen, cannot maintain an

action in quo warranto. For this reason, we find the Petition lacks merit on its

face and dismiss the Petition for failure to state a claim upon which relief may be

granted.

{¶ 6} For this reason, Petitioner's request for Writ of Quo Warranto is

denied.

{¶ 7} PETITION FOR WRIT DISMISSED.

{¶8} COSTS TO PETITIONER.

By: Delaney, .J.

Farmer, .J. and Wise, P.J. concur.

HON. PATRICIA A. DELANEY

HON. SHEILA G. FARMER

HON. JOHN W. WISE

IN THE COURT OF APPEALS FOR MUSKINGUM COUNTY, OHIO FIFTH APPELLATE DISTRICT

JOHN DALE ALLEN, : CASE NO. CT11-0035

	Petitioner,	: :
v .		: JUDGMENT ENTRY
MARK	C. FLEEGLE,	:
	Respondent.	:
	For the reasons stated in the N	lemorandum-Opinion on file, Petitioner's
Writ o	f Quo Warranto is hereby dismisse	ed. Costs taxed to Petitioner.
		HON. PATRICIA A. DELANEY
		HON. SHEILA G. FARMER
		TION. OTTELEN O. I MINIMEN
		HON. JOHN W. WISE