



{¶2} The matter was referred to a magistrate of this court pursuant to Civ.R. 53(C) and Loc.R. 12(M) of the Tenth District Court of Appeals. On March 14, 2011, the magistrate issued a decision which is appended to this decision, recommending that this court grant the APA's motion to dismiss on the grounds that relator had failed to comply with the requirements of R.C. 2969.25(A) and (C). Specifically, the magistrate determined that relator had failed to file an affidavit listing each civil action or appeal of a civil action he had filed in the previous five years in any state or federal court, as required by R.C. 2969.25(A). Further, the magistrate observed that relator had failed to submit the statement required by R.C. 2969.25(C) setting forth the balance in his inmate account for the preceding six months as certified by the institutional cashier, as well as a statement of all other cash and things of value owned by the inmate.

{¶3} On March 28, 2011, relator filed objections to the report and recommendation of the magistrate. In his objections, relator argues that he attempted to correct his non-compliance subsequent to the filing of his complaint, and that this court should reject the magistrate's recommendation to grant dismissal. On August 3, 2011, the APA filed a memorandum contra relator's objections to the magistrate's report.

{¶4} R.C. 2969.25(A) provides in part: "*At the time that an inmate commences a civil action or appeal against a government entity \* \* \** the inmate shall file with the court an affidavit that contains a description of each civil action or appeal of a civil action that the inmate has filed in the previous five years in any state or federal court." (Emphasis added.)

{¶5} R.C. 2969.25 states:

(C) If an inmate who files a civil action or appeal against a government entity or employee seeks a waiver of the prepayment of the full filing fees assessed by the court in which the action or appeal is filed, the inmate shall file with the complaint or notice of appeal an affidavit that the inmate is seeking a waiver of the prepayment of the court's full filing fees and an affidavit of indigency. The affidavit of waiver and the affidavit of indigency shall contain all of the following:

(1) A statement that sets forth the balance in the inmate account of the inmate for each of the preceding six months, as certified by the institutional cashier;

(2) A statement that sets forth all other cash and things of value owned by the inmate at that time.

{¶6} In his objections, relator does not challenge the magistrate's determination that he failed to submit the required affidavits under the statute. Rather, relator argues that he is not a trained attorney, and that he attempted to correct non-compliance after the APA filed its motion to dismiss. Relator contends that the magistrate's recommendation is an attempt to merely dispose of the case on a procedural "technicality." We disagree.

{¶7} This court has previously noted: "It is well-settled that compliance with the requirements of R.C. 2969.25 is mandatory, and that the failure to comply with R.C. 2969.25 requires dismissal of the action." *State ex rel. Evans v. Ohio Adult Parole Auth.*, 10th Dist. No. 10AP-730, 2011-Ohio-2871, ¶4, citing *State ex rel. Washington v. Ohio Adult Parole Auth.*, 87 Ohio St.3d 258, 1997-Ohio-53. Further, "the affidavit required by R.C. 2969.25(A) must be filed at the time an inmate commences the civil action or appeal [and] [t]he belated attempt to file the required affidavit does not excuse noncompliance." *Evans* at ¶4, citing *Fuqua v. Williams*, 100 Ohio St.3d 211, 2003-Ohio-5533, ¶9; *Hawkins*

*v. S. Ohio Correctional Facility*, 102 Ohio St.3d 299, 2004-Ohio-2893, ¶5 (appellant's "belated attempts to file the required affidavit do not excuse his noncompliance"). See also *Hall v. Collins*, 10th Dist. No. 10AP-73, 2010-Ohio-3845, ¶10 (documents required under R.C. 2969.25 "must be filed at the time the complaint is filed," and plaintiff's failure to comply with the statutory requirements "when he filed his complaint subjects his complaint to dismissal"). In the instant action, because relator "failed to file the required affidavits at the commencement of his action," his objections are without merit and are overruled. *Evans* at ¶4.

{¶8} Based upon this court's independent review of the matter, we find that the magistrate has properly determined the facts and applied the pertinent law to them. Accordingly, we adopt the magistrate's decision as our own, including the findings of fact and conclusions of law contained therein. In accordance with the magistrate's recommendation, we grant the APA's motion and hereby dismiss this action.

*Objections overruled; motion to dismiss granted;  
action dismissed.*

FRENCH and DORRIAN, JJ., concur.

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{¶10} 1. Relator is an inmate currently incarcerated at Belmont Correctional Institution.

{¶11} 2. On February 1, 2011, relator filed this mandamus action arguing that the APA had failed to comply with its duty to provide him with a meaningful parole board hearing and seeking a writ of mandamus ordering the APA to conduct a new hearing to determine his suitability for parole.

{¶12} 3. On March 3, 2011, the assistant attorney general, on behalf of the APA, filed a motion to dismiss relator's complaint for his failure to comply with the requirements of R.C. 2969.25.

{¶13} 4. Upon review of the complaint, the magistrate finds that relator has failed to comply with the requirements of R.C. 2969.25(A) and (C). Specifically, relator has failed to file an affidavit listing each civil action or appeal of a civil action that he has filed in the past five years and he has failed to submit a statement of the amount in his inmate account for the preceding six months as certified by the institutional cashier as well as a statement of all other cash and things of value owned by the inmate.

{¶14} 5. Because relator's failure to comply with the provisions of R.C. 2969.25(A) and (C) cannot be cured, the APA's motion to dismiss is before the magistrate for consideration.

Conclusions of Law:

{¶15} R.C. 2969.25(A) requires an inmate to file, at the time he commences a civil action against a governmental entity or employee, an affidavit listing each civil action or appeal of a civil action that he filed in the past five years, providing specific information

regarding each civil action or appeal. In the present action, relator has not filed the required affidavit.

{¶16} In regard to filing fees, R.C. 2969.25(C) and 2969.22 distinguish between paying the full amount of filing fees upon filing (referred to as "prepayment" of fees) and paying the fees pursuant to periodic deductions from the inmate's account maintained by the prison.<sup>1</sup> Under R.C. 2969.25(C), an inmate who seeks waiver of prepayment on the grounds of indigency must file an affidavit that includes: (1) a statement of the amount in his inmate account for the preceding six months as certified by the institutional cashier; and (2) a statement of all other cash and things of value owned by the inmate.

{¶17} Compliance with the provisions of R.C. 2969.25 is mandatory and the failure to satisfy the statutory requirements is grounds for dismissal of the action. *State ex rel. Washington v. Ohio Adult Parole Auth.* (1999), 87 Ohio St.3d 258; *State ex rel. Zanders v. Ohio Parole Bd.* (1998), 82 Ohio St.3d 421; *State ex rel. Alford v. Winters* (1997), 80 Ohio St.3d 285.

{¶18} In *State ex rel. Manns v. Henson*, 119 Ohio St.3d 348, 2008-Ohio-4478, the Supreme Court of Ohio reiterated that the requirements of R.C. 2969.25 are mandatory and that the failure to comply with those requirements subjects an inmate's action to dismissal. Further, the court stated that the requirements of R.C. 2969.25 must be strictly complied with and that an inmate's initial non-compliance cannot be cured by a belated attempt to file one of the required affidavits.

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<sup>1</sup>Under the statute, when the inmate has submitted the requisite affidavit of indigency, the clerk charges the inmate's account for funds in excess of ten dollars. Following that payment, all income in the inmate's account (excluding the ten dollars) is forwarded to the clerk each month until the fees are paid.

{¶19} Because relator has failed to comply with the mandatory requirements of R.C. 2969.25 and because the statute does not provide for the late filing of same, the APA's motion to dismiss should be granted.

/S/ Stephanie Bisca Brooks  
STEPHANIE BISCA BROOKS  
MAGISTRATE

### **NOTICE TO THE PARTIES**

Civ.R. 53(D)(3)(a)(iii) provides that a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).