

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF BAY

CYNTHIA A. LUCZAK, BAY COUNTY
CLERK in HER capacity as an elected official,

Case No. 15-3583-AW (KS)

Plaintiff,

HON. PAUL H. CHAMBERLAIN
(P31682)

-vs-

THOMAS L. HICKNER, Bay County
Executive, in his capacity as an elected
official; BAY COUNTY BOARD OF
COMMISSIONERS, the governing body
for the County of Bay; 18th JUDICIAL
CIRCUIT COURT; and KIM MEAD,
Bay County Circuit Court Administrator,

Defendants.

CLARK HILL, PLC
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BOMMARITO LAW OFFICES, PLLC
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PROOF OF SERVICE

THE UNDERSIGNED CERTIFIES THAT THE FOREGOING
INSTRUMENT WAS SERVED UPON ALL PARTIES TO THE
ABOVE CAUSE TO EACH OF THE ATTORNEYS OF RECORD
HEREIN AT THEIR RESPECTIVE ADDRESSES DISCLOSED ON
THE PLEADINGS ON 11-23-15

BY:
 U.S. MAIL FAX
 HAND DELIVERED OVERNIGHT COURIER
 FEDERAL EXPRESS OTHER

SIGNATURE: Lee Schmitt

**DEFENDANTS' CONSOLIDATED MOTION FOR SUMMARY DISPOSITION IN LIEU
OF THEIR ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT**

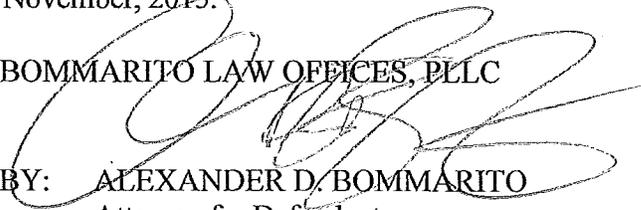
NOW COME the above-entitled Defendants, by and through their attorney,
ALEXANDER D. BOMMARITO of BOMMARITO LAW OFFICES, PLLC, pursuant to MCR
2.116(C)(4), (8) and (10), and hereby move this Court for its Order of Summary Disposition,
further stating as follows:

1. That on or about November 2, 2015, Plaintiff filed her First Amended Complaint alleging that the Defendants had not properly funded her office; interfered with her ability to operate her office; interfered with her ability to operate as the Circuit Court Clerk; while also seeking the appointment of outside legal counsel on her behalf to be funded by Bay County.
2. That Plaintiff's claims regarding funding are not within the subject matter jurisdiction of this Court, as the jurisdiction for these claims is solely vested within the Michigan Court of Appeals pursuant to MCL 141.436 and MCL 141.438.
3. That despite amending her Complaint to name the 18th Circuit Court as a party, Plaintiff continues to improperly name the Circuit Court Administrator, KIM MEAD, as a party to this action, as his actions taken with respect to the allegations in Plaintiff's Complaint were within his scope of employment with the 18th Circuit Court, his actions were taken at the direction of the 18th Circuit Court and thus, he should be dismissed pursuant to MCR 2.116(C)(8).
4. That Plaintiff's claims regarding the interference by Defendants in her ability to comingle employees from the Circuit Court Clerk's Office to the County Clerk's Office as she deems necessary are not arbitrary and capricious as alleged, but reasoned and rationally based as these employees are employed through separate contracts, separate unions and are part of the Circuit Court budget, and because the authority to dictate the non-custodial ministerial functions of the Deputy Circuit Court Clerks rests solely with the 18th Judicial Circuit Court.
5. That Plaintiff's claims for attorney fees are not supported by Michigan law or the Bay County guidelines for the retention of outside legal counsel at the County's expense, and the same should be dismissed as a matter of law.
6. That Defendants seek sanctions be assessed against Plaintiff's counsel for filing the claims related to the funding of her office with the Circuit Court, as they were aware that these were solely within the jurisdiction of the Michigan Court of Appeals, but yet filed this action in Circuit Court.

WHEREFORE, Defendants respectfully request this Honorable Court grant their Motion for Summary Disposition and enter its Order thereon, with costs and attorney fees to be assessed.

Dated this 25th day of November, 2015.

BOMMARITO LAW OFFICES, PLLC

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