

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

CIVIL CASE INFORMATION STATEMENT
(Civil Cases Other than Domestic Relations)

FILED
2018 JUN 21 4 10
CATHY S. GATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT

I. CASE STYLE:

Case No. 18-P-217

Plaintiff(s)

Judge: King

G. Isaac Sponaugle, III

PO Box 578

Franklin, West Virginia 26807

vs.

Days to Answer

Type of Service

Defendant(s)

20

Personal

James Conley Justice, II

Name

1900 Kanawha Blvd. E, Room 1

Street Address

Charleston WV 25305

City, State, Zip Code

II. TYPE OF CASE:

- | | |
|--|---|
| <input type="checkbox"/> General Civil | <input type="checkbox"/> Adoption |
| <input type="checkbox"/> Mass Litigation [As defined in T.C.R. 26.04(a)] | <input type="checkbox"/> Administrative Agency Appeal |
| <input type="checkbox"/> Asbestos | <input type="checkbox"/> Civil Appeal from Magistrate Court |
| <input type="checkbox"/> FELA Asbestos | <input type="checkbox"/> Miscellaneous Civil Petition |
| <input type="checkbox"/> Other: _____ | <input type="checkbox"/> Mental Hygiene |
| <input checked="" type="checkbox"/> Habeas Corpus/Other Extraordinary Writ | <input type="checkbox"/> Guardianship |
| <input type="checkbox"/> Other: _____ | <input type="checkbox"/> Medical Malpractice |

III. JURY DEMAND: Yes No CASE WILL BE READY FOR TRIAL BY (Month/Year): 9 / 2018

IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS?

IF YES, PLEASE SPECIFY:

Yes No

- Wheelchair accessible hearing room and other facilities
 Reader or other auxiliary aid for the visually impaired
 Interpreter or other auxiliary aid for the deaf and hard of hearing
 Spokesperson or other auxiliary aid for the speech impaired
 Foreign language interpreter-specify language: _____
 Other: _____

Attorney Name: G. Isaac Sponaugle, III

Representing:

Firm: Sponaugle & Sponaugle

Plaintiff Defendant

Address: PO Box 578, Franklin, West Virginia 26807

Cross-Defendant Cross-Complainant

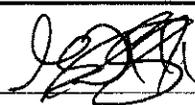
Telephone: (304) 358-2337

3rd-Party Plaintiff 3rd-Party Defendant

Proceeding Without an Attorney

Original and 4 copies of complaint enclosed/attached.

Dated: 6 / 19 / 2018

Signature: 

PYMT Type K \$250
 Rept # 562619 \$200 \$135
 Iss. Sum. + cc No Sum. Iss
 Ret. to Atty. \$20cm X
 Mailed CM/RM \$5 clk X
 Mailed to sos w/clk#
 Sent to SHE w/clk# _____ \$15 mdf X

SCA-C-100: Civil Case Information Statement (Other than Domestic Relations)

Plaintiff: G. Isaac Sponaugle, III, et al Case Number: _____

vs.

Defendant: James Conley Justice, II, et al

**CIVIL CASE INFORMATION STATEMENT
DEFENDANT(S) CONTINUATION PAGE**

WV Attorney General

Defendant's Name _____

1900 Kanawha Blvd. E, Room E-26 _____

Street Address _____

Charleston, WV 25305 _____

City, State, Zip Code _____

Days to Answer: N/A

Type of Service: Personal

Defendant's Name _____

Days to Answer: _____

Street Address _____

Type of Service: _____

City, State, Zip Code _____

Defendant's Name _____

Days to Answer: _____

Street Address _____

Type of Service: _____

City, State, Zip Code _____

Defendant's Name _____

Days to Answer: _____

Street Address _____

Type of Service: _____

City, State, Zip Code _____

Defendant's Name _____

Days to Answer: _____

Street Address _____

Type of Service: _____

City, State, Zip Code _____

Defendant's Name _____

Days to Answer: _____

Street Address _____

Type of Service: _____

City, State, Zip Code _____

Defendant's Name _____

Days to Answer: _____

Street Address _____

Type of Service: _____

City, State, Zip Code _____

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA, ex rel.,

G. ISAAC SPONAUGLE, III,
West Virginia citizen and taxpayer,
Petitioner,

v.

JAMES CONLEY JUSTICE, II,
Governor of the State of West Virginia,
Respondent.

FILED
2018 JUN 21 A 7:40
CATHY S. GATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT

Civil Action Number 18-P-217

Judge King

PETITION FOR WRIT OF MANDAMUS

COMES NOW Petitioner, G. Isaac Sponaugle, III, and for his Verified Petition for Writ of Mandamus, alleges and states the following:

- 1) Petitioner is an adult citizen and taxpayer of Pendleton County, West Virginia.
- 2) Respondent, James Conley Justice, II, is the 36th and current Governor of the State of West Virginia. He was elected on November 8, 2016. He took an oath or affirmation of office on January 16, 2017, at the West Virginia State Capitol, located in Kanawha County, West Virginia. He swore to support the constitution of the United States of America, the constitution of the State of West Virginia, and to faithfully discharge the duties of the office of Governor of the State of West Virginia to the best of his skill and judgment.
- 3) That the seat of West Virginia state government is in Kanawha County, West Virginia.
- 4) That jurisdiction and venue are proper in the Circuit Court of Kanawha County for a Writ of Mandamus pursuant to West Virginia Code § 53-1-2.
- 5) Section 1 of Article VII of the West Virginia Constitution sets forth the following: "7-1 Executive department. The executive department shall consist of a governor, secretary of state, auditor, treasurer, commissioner of agriculture and attorney general, who shall be ex officio reporter of the court of appeals. Their terms of office shall be four years, and shall

commence on the first Monday after the second Wednesday of January next after their election. They shall reside at the seat of government during their terms of office, keep there the public records, books and papers pertaining to their respective offices, and shall perform such duties as may be prescribed by law.”

- 6) That Section 1 of Article VII of the West Virginia Constitution contains a mandatory nondiscretionary constitutional duty for the named members of the executive department.
- 7) That Respondent has not resided at the seat of government for more than 10 days from January 16, 2017 until the filing this Petition for Writ of Mandamus. This is despite housing afforded to him at the West Virginia Governor’s Mansion located at 1716 Kanawha Blvd E, Charleston, West Virginia. Respondent by his own public admissions has not and continues to reside in Greenbrier County, West Virginia.
- 8) That Respondent works in Greenbrier County and keeps many of the public records, books and papers pertaining to his respective office there.
- 9) That certain scandals, mismanagement of public monies, lack of communication among agencies and a decrease in general productivity of state government has occurred under Respondent’s tenure as Governor.
- 10) That certain members of the West Virginia Legislature have publicly raised concerns about the habitual work absenteeism by Respondent causing certain scandals, mismanagement of public monies, lack of communication among agencies and a decrease in general productivity of state government.
- 11) That Respondent held multiple press conferences in response to certain members of the West Virginia Legislature and publicly declared that he would not make the seat of government his residency, would not show up to work every day at the seat of government,

will continue to reside and work in Greenbrier County and only show up at the seat of government when it is convenient to him.

- 12) That Petitioner, as a citizen and taxpayer of the State of West Virginia, has a clear legal right in relief sought hereinbelow.
- 13) That Respondent is in violation of Section 1 of Article VII of the West Virginia Constitution and is not performing his mandatory nondiscretionary constitutional duty.
- 14) That Petitioner is in absence of another adequate remedy other than a Writ of Mandamus being issued by this Court against Respondent.
- 15) That Petitioner has filed herewith a Memorandum in Support of Petition for Writ of Mandamus and hereby incorporates by reference every paragraph of it to this Petition, which is attached hereto and incorporated by reference.
- 16) That Petitioner requests that a writ of mandamus be issued henceforth that Respondent meet his nondiscretionary mandatory constitutional duty pursuant to Section 1 of Article VII of the West Virginia Constitution and that he be ordered to reside at the seat of government during his term of office, and keep there the public records, books and papers pertaining to his respective office.

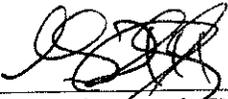
PRAYER FOR RELIEF

WHEREFORE, Petitioner requests that a writ of mandamus be issued henceforth that Respondent meet his nondiscretionary mandatory constitutional duty, pursuant to Section 1 of Article VII of the West Virginia Constitution, and be ordered to reside at the seat of government during his term of office, and keep there the public records, books and papers pertaining to his respective office; award costs and grant such other relief as the Court deems equitable.

Dated this 19th day of June 2018.

G. Isaac Sponaugle, III
Petitioner

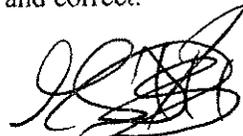
SPONAUGLE & SPONAUGLE
ATTORNEYS AT LAW
P. O. BOX 578
FRANKLIN, WEST VIRGINIA 26807
(304) 358-2337
isaac@sponauglelaw.com



G. Isaac Sponaugle III
State Bar #9720
Petitioner

STATE OF WEST VIRGINIA
COUNTY OF PENDLETON, to-wit:

G. Isaac Sponaugle, III, Petitioner named in the foregoing Petition for Writ of Mandamus, being first duly sworn, say that the facts and allegations set forth therein are true and correct, except insofar as they are therein stated to be upon information and belief, and insofar as therein stated to be upon information and belief, they believe them to be true and correct.



G. Isaac Sponaugle, III

Taken, sworn to and subscribed before me, a Notary Public in and for the county and state aforesaid, this the 19th day of June 2018.

My commission expires September 8, 2021.





NOTARY PUBLIC

IN THE CIRCUIT COURT OF KANAWHA COUNTY WEST VIRGINIA

STATE OF WEST VIRGINIA, ex rel.,

G. ISAAC SPONAUGLE, III,
West Virginia citizen and taxpayer,
Petitioner,

v.

JAMES CONLEY JUSTICE, II,
Governor of the State of West Virginia,
Respondent.

Civil Action Number

18-P-217

FILED
2018 JUN 21 A 7:40
KATHY S. GATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT

MEMORANDUM IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS

SPONAUGLE & SPONAUGLE
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G. Isaac Sponaugle III
State Bar #9720
Petitioner

TABLE OF CONTENTS

TABLE OF AUTHORITIES

QUESTION PRESENTED 1

STATEMENT OF CASE 1 - 4

SUMMARY OF ARGUMENT 5

STATEMENT REGARDING ORAL ARGUMENT 5 - 6

ARGUMENT 6 - 11

CONCLUSION 11

VERIFICATION

CERTIFICATE OF SERVICE

TABLE OF AUTHORITIES

West Virginia Constitution:

Article VII, Section 1

West Virginia Code:

§ 53-1-2

Cases:

Delardas v. County Court, 155 W.Va. 776, 186 S.E.2d 847 (1972)
Frantz v. County Court, 69 W.Va. 734, 73 S.E. 328 (1911)
Hickman v. Epstein, 192 W.Va. 42, 450 S.E.2d 406 (1994)
Simms v. Sawyers, 85 W. Va. 245, 101 S.E. 467 (1919)
Slack v. Jacob, 8 W.Va.612, 657 (1875)
State ex rel. Blankenship v. Richardson, 196 W.Va. 726, 474 S.E.2d 906 (1996)
State ex rel. Bronaugh v. Parkersburg, 148 W. Va. 568, 573, 136 S.E. 2d 783, 786 (1964)
State ex rel. Brotherton v. Blankenship, W.Va., 214 S.E.2d 467 (1975)
State ex rel. Brotherton v. Moore, 159 W.Va. 934, 230 S.E.2d 638 (1976)
State ex rel. Casey v. Pauley, 158 W. Va. 298, 210 S.E.2d 649 (1975).
State ex rel. Greenbrier County Airport Authority v. Hanna, 151 W.Va 479, 153 S.E.2d 284 (1967)
State ex rel. Kucera v. City of Wheeling, 153 W.Va. 538, 170 S.E.2d 367 (1969)
State ex rel. McGraw v. West Virginia Ethics Comm'n, 200 W.Va. 723, 490 S.E.2d 812 (1997)
State ex rel. West Virginia Housing Development Fund v. Copenhaver, 153 W.Va. 636, 171 S.E.2d 545 (1969)
State ex rel. Wheeling Downs Racing Ass 'n v. Perry, 148 W. Va. 68, 73, 132 S.E. 2d 922 (1963)
State ex rel. Williams v. Department of Mil. Aff., 212 W.Va. 407, 573 S.E.2d 1 (2002)
State ex rel. Smith v. Gore, 150 W. Va. 71, 143 S.E.2d 791 (1965)
State ex rel. Trent v. Sims, 138 W. Va. 244, 77 S.E.2d 122 (1953)
Winkler v. State School Building Authority, 189 W.Va. 748, 434 S.E.2d 420 (1993)

Other Authorities:

Bastress, Robert M. Jr., The West Virginia State Constitution (Oxford Commentaries on the State Constitutions of the United States) (pp. 219 of 381). Oxford University Press. Kindle Edition.

QUESTION PRESENTED

This petition presents the question whether Section 1 of Article VII of the West Virginia Constitution is a mandatory nondiscretionary requirement that the officeholder of Governor shall reside at the seat of government during the terms of office, and keep there the public records, books and papers pertaining to that office.

STATEMENT OF CASE

HISTORY OF SECTION 1 OF ARTICLE VII OF THE WEST VIRGINIA CONSTITUTION

West Virginia has had two constitutions. The first ratified in 1863 and a second in 1872. The West Virginia Constitution of 1872 was ratified by the voters on August 22, 1972, which is the same constitution that governs the State of West Virginia today subject to certain amendments to it. Section 1 of Article VII of the West Virginia Constitution of 1872 provided the following:

The Executive department shall consist of a Governor, Secretary of State, State Superintendent of Free Schools, Auditor, Treasurer and Attorney General, who shall be *ex officio* reporter of the Court of Appeals. They shall, except the attorney General, reside at the seat of government during their terms of office, and keep there the public records, books and papers, pertaining to their respective offices, and shall perform such duties as may be prescribed by the fifth section of same article declares that "the chief executive power shall be vested in the Governor, who shall take care that the laws be faithfully executed.

"A 1934 amendment added the commissioner of agriculture to the list, and a 1958 amendment deleted the state superintendent of schools. The first of those amendments also changed the inauguration date from March to January, in order to shorten an outgoing administration's lame-duck period, and dropped an exception for the attorney general from the residency requirement." Bastress, Robert M. Jr., The West Virginia State Constitution (Oxford Commentaries on the State Constitutions of the United States) (pp. 219 of 381). Oxford University Press. Kindle Edition.

In 1876, three years after the voters of the State of West Virginia ratified the West Virginia Constitution, the Supreme Court of Appeals of West Virginia distinguished between non-discretionary duties and discretionary duties in a case that centered around a legal fight over legislation that moved the seat of government from the city of Charleston to the city of Wheeling. The Supreme Court set forth that the state constitution unequivocally requires that the Governor shall reside at the seat of government during his term of office and keep there the public records of his office, it is non-discretionary duty. 'It was his duty to do so, in fidelity to his oath of office to support the constitution of the State; and the constitution of the State unequivocally requires that he shall reside at the seat of government during his term of office, and keep there the public records of his office, and commands him, as the chief executive officer, in whom is vested the chief executive power, to "take care that the laws be faithfully executed.'" *Slack v. Jacob*, 8 W.Va.612, 657 (1875).

The 1875 language of Section 1 of Article VII of the West Virginia Constitution only granted discretion to the Attorney General regarding the place of residence of the officeholder. All other members of the executive department were constitutionally bound by the nondiscretionary (mandatory) requirement that they shall reside at the seat of government. The discretion granted the Attorney General as to his place of residence was amended by the voters in 1934 and it is now a non-discretionary (mandatory) constitutional requirement that the Attorney General also reside at the seat of government.

RESPONDENT WAS ELECTED GOVERNOR & SWORE AN OATH TO OFFICE

On November 8, 2016, Respondent was elected Governor by the citizens of the State of West Virginia. On January 16, 2017, his Inauguration took place at 1:00 p.m. at the West Virginia State Capitol, the seat of state government. Chief Justice Allen H. Loughry, II,

administered the oath or affirmation of Office for Governor to the Respondent, wherein he swore the following:

"I, James Conley Justice, II, do solemnly swear that I will support the constitution of the United States of America, and the constitution of the State of West Virginia, and that I will faithfully discharge the duties of the office of Governor of the State of West Virginia to the best of my skill and judgment, so help me God."

Respondent has not resided at the seat of government, Kanawha County, during his term of office from January 16, 2017 until the filing of this Petition for Writ of Mandamus. Respondent, based on his own public admissions, has not spent more than a handful of nights, if any, at the West Virginia Governor's Mansion located at 1716 Kanawha Blvd E, Charleston, West Virginia, since January 16, 2017. In fact, Respondent continues to reside in Greenbrier County, West Virginia. When he decides to go to work, which is not a regular daily occurrence, to the West Virginia State Capitol, he drives himself to and from Greenbrier County.

Certain scandals, mismanagement of public monies, no communication with cabinet secretaries and a decrease in productivity of state government has occurred under the Respondent's tenure as Governor. Attached hereto are certain news articles that have reported on the scandal and marked as Exhibits "A", "B", "C", "D", "E", "F" & "G".

On June 14, 2018, certain members of the West Virginia Legislature publicly raised concerns about the chronic absenteeism of Respondent and its effect on the productivity of state government that was a major cause of the various scandals by way of a press release. Attached hereto is the press release and marked as Exhibit "H".

Respondent held a press conference the following day on June 15, 2018, and publicly declared that he would not move into the Governor's Mansion nor would he be reporting to work daily at the seat of government. Respondent further advised the public that he works from his residence in Greenbrier County, West Virginia. It was implied by the Respondent that most of his

records, books and papers pertaining to the office of West Virginia Governor are scattered between Greenbrier County and Kanawha County. Specifically, Respondent stated in regards where he works, "It doesn't matter whether I do it in the back of a Suburban or from the top of the dome." Respondent further advised the public at a press conference on June 18, 2018, that he doesn't reside in Charleston, West Virginia, and "I'll only stay at the Mansion when it's convenient to me." Attached hereto are certain news articles that set forth what Respondent said at press conferences and marked as Exhibits "I" and "K".

Respondent has and continues at the time of the filing of this Petition, to violate his oath of office and the non-discretionary (mandatory) requirement that he shall reside and keep his records, books and papers pertaining to the office of West Virginia Governor at the seat of government pursuant to Section 1 of Article VII of the West Virginia Constitution. Respondent's refusal to perform his non-discretionary (mandatory) duties violates his oath of office that he will support the constitution of the State of West Virginia and will faithfully discharge the duties of the office of Governor of the State of West Virginia.

As a result, Petitioner, as a West Virginia citizen and taxpayer, has been and continues to be injured by Respondent's poor job performance due to habitual absenteeism. Lacking any other means of compelling Respondent to comply with his duties under the West Virginia Constitution, Petitioner now files this petition for a writ of mandamus to compel Respondent to perform his constitutional nondiscretionary duty that he reside West Virginia Governor's Mansion located at 1716 Kanawha Blvd E, Charleston, West Virginia and keep all his records, books and papers pertaining to the office of West Virginia Governor at the West Virginia Capitol 1900 Kanawha Blvd E, Charleston, West Virginia, rather than Greenbrier County.

SUMMARY OF ARGUMENT

Petitioner is a citizen and taxpayer of the State of West Virginia, more particularly Pendleton County. "A citizen and taxpayer of this State has a right to maintain a mandamus proceeding in order to compel a public official to perform a nondiscretionary constitutional duty." Syl. Pt. 1, *State ex rel. Brotherton v. Moore*, 159 W.Va. 934, 230 S.E.2d 638 (1976).

Section 1 of Article VII of the West Virginia Constitution imposes a non-discretionary duty on Respondent to reside at the seat of government during his term of office, keep there the public records, books and papers pertaining to his respective office, and shall perform such duties as may be prescribed by law. Respondent began his four-year term of office on January 16, 2017 and has not complied with this constitutional non-discretionary mandatory duty.

For these reasons, this Court should grant the writ and order Respondent to reside at Governor's Mansion located at 1716 Kanawha Blvd E, Charleston, West Virginia, during his term of office, AND keep there the public records, books and papers pertaining to his respective office at the West Virginia Capitol located at 1900 Kanawha Blvd E, Charleston, West Virginia, during his term of office.

STATEMENT REGARDING HEARING, ORAL ARGUMENT AND DECISION

Jurisdiction and venue are proper in the Circuit Court of Kanawha County for a Writ of Mandamus pursuant to West Virginia Code § 53-1-2.

Petitioner respectfully requests that this Court forthwith enter an expedited hearing schedule so that a decision regarding this petition can be reached as soon as possible.

Petitioner states that an evidentiary hearing and discovery under the West Rules of Civil Procedure are necessary in this matter. The factual issues raised by this petition will require

discovery from Respondent to determine his current residency and where the public records, books and papers pertaining to his respective office have been kept since he took the oath of office as Governor of West Virginia and are currently being kept.

ARGUMENT

THE REQUIRED ELEMENTS FOR A WRIT OF MANDAMUS ARE SATISFIED

"Mandamus lies to require the discharge by a public officer of a nondiscretionary duty." Syl. Pt. 3, *State ex rel. Greenbrier County Airport Authority v. Hanna*, 151 W.Va. 479, 153 S.E.2d 284 (1967); Syl. Pt. 1, *State ex rel. West Virginia Housing Development Fund v. Copenhaver*, 153 W.Va. 636, 171 S.E.2d 545 (1969). Syl. Pt. 1, *State ex rel. Williams v. Department of Mil. Aff.*, 212 W.Va. 407, 573 S.E.2d 1 (2002). It is well-established that a writ of mandamus requires three elements:

(1) a clear legal right in the petitioner to the relief sought; (2) a legal duty on the part of respondent to do the thing which the petitioner seeks to compel; and (3) the absence of another adequate remedy.

Syl. Pt. 2, *State ex rel. Kucera v. City of Wheeling*, 153 W.Va. 538, 170 S.E.2d 367 (1969); accord Syl. Pt. 2, *State ex rel. Blankenship v. Richardson*, 196 W.Va. 726, 474 S.E.2d 906 (1996); Syl. Pt. 1, *Hickman v. Epstein*, 192 W.Va. 42, 450 S.E.2d 406 (1994); Syl. Pt. 1, *State ex rel. McGraw v. West Virginia Ethics Comm'n*, 200 W.Va. 723, 490 S.E.2d 812 (1997).

A. Petitioner possesses a clear legal right to the relief sought

Petitioner is a citizen and taxpayer of the State of West Virginia, more particularly Pendleton County. "A citizen and taxpayer of this State has a right to maintain a mandamus proceeding in order to compel a public official to perform a nondiscretionary constitutional duty." Syl. Pt. 1, *State ex rel. Brotherton v. Moore*, 159 W.Va. 934, 230 S.E.2d 638 (1976); *State ex rel. Brotherton v. Blankenship*, W.Va., 214 S.E.2d 467 (1975); *Delardas v. County Court*, 155 W.Va. 776, 186 S.E.2d 847 (1972). No special or pecuniary interest must be shown by individuals who sue in this capacity. *Frantz v. County Court*, 69 W.Va. 734, 73 S.E. 328 (1911).

The Governor during his term of office is to reside and keep there the public records of his office at the seat of government is a nondiscretionary constitutional duty pursuant to Section 1 of Article VII of the West Virginia Constitution. 'It was his duty to do so, in fidelity to his oath of office to support the constitution of the State; and the constitution of the State unequivocally requires that he shall reside at the seat of government during his term of office, and keep there the public records of his office, and commands him, as the chief executive officer, in whom is vested the chief executive power, to "take care that the laws be faithfully executed.'" *Slack v. Jacob*, 8 W.Va.612, 657 (1875).

All the conditions have been satisfied and Petitioner has a clear legal right to the relief sought in this petition.

B. Respondent, during his term of office, has a nondiscretionary constitutional duty to reside and keep the public records, books and papers pertaining to his public office at the seat of government.

Section 1 of Article VII of the West Virginia Constitution provides as follows:

"7-1 Executive department.

The executive department shall consist of a governor, secretary of state, auditor, treasurer, commissioner of agriculture and attorney general, who shall be ex officio reporter of the court of appeals. Their terms of office shall be four years, and shall commence on the first Monday after the second Wednesday of January next after their election. They shall reside at the seat of government during their terms of office, keep there the public records, books and papers pertaining to their respective offices, and shall perform such duties as may be prescribed by law."

The constitution is explicit, in plain ordinary clear English, in setting forth unequivocally that residing at the seat of government during the term of office, and keeping there the public records, books and papers pertaining to that office is a nondiscretionary duty of holding the office of Governor. "Where a provision of a constitution is clear in its terms and of plain interpretation to any ordinary and reasonable mind, it should be applied and not construed." Syl. Pt. 3, *State ex rel. Smith v. Gore*, 150 W. Va. 71, 143 S.E.2d 791 (1965). "Words used in a state constitution, as

distinguished from any other written law, should be taken in their general and ordinary sense." Syl. Pt. 6, *State ex rel. Trent v. Sims*, 138 W. Va. 244, 77 S.E.2d 122 (1953). "Questions of constitutional construction are in the main governed by the same general rules applied in statutory construction." Syl. pt. 1, *Winkler v. State School Building Authority*, 189 W.Va. 748, 434 S.E.2d 420 (1993). "The provisions of the Constitution, the organic and fundamental law of the land, stand upon a higher plane than statutes, and they will as a rule be held mandatory in prescribing the exact and exclusive methods of performing the acts permitted or required." Syl. Pt. 2, *Simms v. Sawyers*, 85 W. Va. 245, 101 S.E. 467 (1919).

Section 1 of Article VII of the West Virginia Constitution uses the word "shall" reside at the seat of government during their terms of office, keep there the public records, books and papers pertaining to their respective offices. The word shall when used in constitutional provisions has been determined to be used in the mandatory sense and not discretionary sense. "As used in constitutional provisions, the word 'shall' is generally used in the imperative or mandatory sense." Syl. Pt. 3, *State ex rel. Trent v. Sims*, 138 W. Va. 244, 77 S.E.2d 122 (1953). "Courts are not concerned with the wisdom or expediencies of constitutional provisions, and the duty of the judiciary is merely to carry out the provisions of the plain language stated in the constitution." Syl. Pt. 3, *State ex rel. Casey v. Pauley*, 158 W. Va. 298, 210 S.E.2d 649 (1975).

The Supreme Court of Appeals of West Virginia has interpreted Section 1 of Article VII of the West Virginia Constitution to be nondiscretionary constitutional duty of the executive department. This has been the rule of land for over 140 years in this state. "It was his duty to do so, in fidelity to his oath of office to support the constitution of the State; and the constitution of the State unequivocally requires that he shall reside at the seat of government during his term of office, and keep there the public records of his office, and commands him, as the chief executive

officer, in whom is vested the chief executive power, to "take care that the laws be faithfully executed." *Slack v. Jacob*, 8 W.Va.612, 657 (1875).

All the conditions have been satisfied and Respondent is violating a nondiscretionary duty of holding the office of Governor.

C. Petitioner possesses no other adequate remedy

Petitioner lacks any adequate alternative remedy, and the writ should issue. The existence of *any* remedy will not suffice. "Mandamus will lie, notwithstanding the existence of another remedy, if such other remedy is inadequate or is not equally beneficial, convenient and effective." *State ex rel. Wheeling Downs Racing Ass 'n v. Perry*, 148 W. Va. 68, 73, 132 S.E. 2d 922 (1963). "A remedy cannot be said to be fully adequate to meet the justice and necessities of a case, unless it reaches the end intended, and actually compels a performance of the duty in question." *State ex rel. Bronaugh v. Parkersburg*, 148 W. Va. 568, 573, 136 S.E. 2d 783, 786 (1964).

Petitioner is concerned about Respondent's habitual absenteeism and its effect on the poor productivity of state government and declining morale among many state workers due to it. Petitioner strongly believes that the recent scandals that appear in the daily newspapers on a regular occurrence are due to Respondent neglect of his constitutional duties and the office of Governor is not in proper order.

Petitioner is further concerned about the inability of citizens and taxpayers of West Virginia having access to the Governor of the State of West Virginia due to his habitual absenteeism. Citizens have the right to meet with and speak with elected government officials while they are performing their elected government functions. To deny this accessibility hurts citizens and taxpayers' confidence in state government. An example would be the teacher and

school service personal 9-day work stoppage earlier this year. Thousands of citizens came to the Capitol to express their feelings and thoughts about their livelihoods. They wanted to address Respondent who had made several unpopular policy decisions with PEIA and pay increases that triggered the work stoppage. These citizens were disappointed daily due to Respondent not appearing at the seat of government on a regular basis during the work stoppage. No citizen, or legislator for that matter, knew the whereabouts of Respondent during that time. Petitioner believes that Respondent's regular attendance at the seat of government would provide a greater confidence in state government to the public and show empathy rather than the appearance of indifference or "no one cares" image presented by Respondent.

Petitioner is further concerned about who is providing Respondent with his daily reports of state government since he is not present to witness it first hand and may be only getting reports from one or two individuals that may have a desire to not keep him properly inform for other reasons. One of the individuals is a controversial adviser with ties to the Oil and Gas Industry, among other industries, that Respondent relies on significantly, and possibly exclusively, to provide him with an update on state government. Attached hereto is a news article on the advisor and marked as Exhibit "J". There has been a gag order placed on state government, so all information must go through one or two individuals before it reaches Respondent according to news reports.

Habitual absenteeism and keeping one's public records, books and papers pertaining to the respective office scattered across several counties in a disorganized manner is fret with problems that should be avoid. The West Virginia Constitution has safeguards built into it to avoid these basic problems in the form of mandatory attendance of officeholders of the executive department when they hold that office. To put it in contemporary terms, Woody Allen once

said, "Eighty percent of life is showing up". Respondent has not and refuses to address his habitual absenteeism and chaotic book keeping of his records.

For the aforesaid reasons, Petitioner lacks any other adequate remedy. The writ of mandamus should be issued.

CONCLUSION

As the foregoing makes clear, Petitioner has unquestionably demonstrated that the conditions for a writ of mandamus have been met. Petitioner requests that a writ of mandamus be issued henceforth that Respondent meet his nondiscretionary mandatory constitutional duty pursuant to Section 1 of Article VII of the West Virginia Constitution that he resides at the seat of government during his terms of office, and keep there the public records, books and papers pertaining to his respective office; award court costs and grant such other relief as the Court deems equitable.

Given under my hand this 19th day of June 2018.

G. Isaac Sponaugle, III
Petitioner

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G. Isaac Sponaugle III
State Bar #9720
Petitioner

STATE OF WEST VIRGINIA

COUNTY OF PENDLETON, to-wit:

FILED

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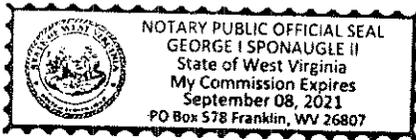
WILLIAM S. GATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT

G. Isaac Sponaugle, III, Petitioner named in the foregoing Memorandum in Support of Petition for Writ of Mandamus, being first duly sworn, say that the facts and allegations set forth therein are true and correct, except insofar as they are therein stated to be upon information and belief, and insofar as therein stated to be upon information and belief, they believe them to be true and correct.

G. Isaac Sponaugle, III

Taken, sworn to and subscribed before me, a Notary Public in and for the county and state aforesaid, this the 19th day of June 2018.

My commission expires September 8, 2021



NOTARY PUBLIC

CERTIFICATE OF SERVICE

I, G. Isaac Sponaugle III, Petitioner, do certify that a true copy of the foregoing *Memorandum in Support of Petition for Writ of Mandamus* was served upon Respondent and the West Virginia Attorney General by attaching a true copy thereof to the Summons and Petition for Writ of Mandamus on this the 19th day of June 2018.

Petitioner

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA, ex rel.,

G. ISAAC SPONAUGLE, III,
West Virginia citizen and taxpayer,
Petitioner,

v.

JAMES CONLEY JUSTICE, II,
Governor of the State of West Virginia,
Respondent.

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KTC
CATHY S. GATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT
Civil Action Number 18-P-217

PETITIONER'S FIRST COMBINED DISCOVERY DIRECTED TO RESPONDENT

Pursuant to Rules 33, 34 and 36 of the West Virginia Rules of Civil Procedure, Petitioner, requests that Respondent, namely, James Conley Justice, II, answer and respond to the following discovery requests within 45 days after the service of the summons and petition upon it:

REQUESTS FOR ADMISSION

ADMISSION REQUEST NO. 1: Please admit that you have not reside at the West Virginia Governor's Mansion located at 1716 Kanawha Blvd E, Charleston, West Virginia, since January 16, 2017.

ADMISSION REQUEST NO. 2: Please admit that you do not plan on residing at the West Virginia Governor's Mansion located at 1716 Kanawha Blvd E, Charleston, West Virginia, since January 16, 2017.

ADMISSION REQUEST NO. 3: Please admit that you have not kept all your records, books and papers, written or electronic, pertaining to the office of West Virginia Governor exclusively at the West Virginia Capitol 1900 Kanawha Blvd E, Charleston, West Virginia.

ADMISSION REQUEST NO. 4: Please admit that you do not plan on keeping all your records, books and papers, written or electronic, pertaining to the office of West Virginia Governor exclusively at the West Virginia Capitol 1900 Kanawha Blvd E, Charleston, West Virginia.

INTERROGATORIES

INTERROGATORIES REQUEST NO. 1: Identify your full name, address, and date of birth.

INTERROGATORIES REQUEST NO. 2: Identify by name each person who prepared and/or contributed to answering these discovery requests.

INTERROGATORIES REQUEST NO. 3: Identify by name each person who you plan to call as a witness in defense of this action including their respective addresses, telephone number and the subject matter on which the witness is expected to testify.

INTERROGATORIES REQUEST NO. 4: Please identify the name, address and telephone number of each witness known to you to have information relevant and material to the claims presented in this action or to any defense asserted thereto.

INTERROGATORIES REQUEST NO. 5: Please identify each person whom you expect to call as an expert witness at the trial, produce a current curriculum vitae and disclose pursuant to West Virginia Rule of Civil Procedure 26(b)(4) the following:

- (a) The subject matter on which the expert witness is expected to testify;
- (b) The substance of the facts and opinions to which the expert is expected to testify; and,
- (c) A summary of the grounds for each opinion.

INTERROGATORIES REQUEST NO. 6: Identify your occupation or employment and your place of residency for the past 5 years. Please include name and address of occupation or employment and the addresses of your residency for the past 5 years in your answer.

INTERROGATORIES REQUEST NO. 7: Please provide in detail how many nights you spent overnight at the West Virginia Governor's Mansion located at 1716 Kanawha Blvd E,

Charleston, West Virginia, since January 16, 2017. Include the dates of the overnights that you spend there in your response.

INTERROGATORIES REQUEST NO. 8: Please provide in detail how many nights you have allowed guests to spend overnight at the West Virginia Governor's Mansion located at 1716 Kanawha Blvd E, Charleston, West Virginia, since January 16, 2017. Include the dates of the overnights that you allowed guests to spend overnight, their respective addresses, telephone numbers and what was the occasion for their overnight stay at the Governor's Mansion.

INTERROGATORIES REQUEST NO. 9: Please provide in detail a list that shows an accounting of any personal property items that you have located at the West Virginia Governor's Mansion located at 1716 Kanawha Blvd E, Charleston, West Virginia and on what date you moved those items into the Mansion. For purposes of this question, personal property would include, but limited to, beds, couches, furniture, appliances, televisions, clothes, etc.

INTERROGATORIES REQUEST NO. 10: Describe in detail why you contend that you can reside in Greenbrier County, West Virginia, and don't have to reside in Kanawha County, West Virginia, regarding the official duties of your office as Governor.

INTERROGATORIES REQUEST NO. 11: Please provide in detail how many days you have physically spent at your office at the West Virginia Capitol located at 1900 Kanawha Blvd E, Charleston, West Virginia. Include the dates of the days spend at your office in your response.

INTERROGATORIES REQUEST NO. 12: Describe in detail the way you contend why you can work away from the West Virginia Capitol located at 1900 Kanawha Blvd E, Charleston, West Virginia, on a regular basis rather than being at your office located at the West Virginia Capitol regarding the official duties of your office.

INTERROGATORIES REQUEST NO. 13: Describe in detail the public records, books and papers, electronic or otherwise, that are located outside of the West Virginia Capitol located at 1900 Kanawha Blvd E, Charleston, West Virginia. Provide a detail list of the documents, what they concern and copies of the same within your answer.

INTERROGATORIES REQUEST NO. 14: Describe in detail how you can keep up with the daily functions of the Office of Governor when you are not present at the West Virginia Capitol located at 1900 Kanawha Blvd E, Charleston, West Virginia.

INTERROGATORIES REQUEST NO. 15: Please produce a copy of all exhibits which you intend to introduce at the trial of this case, either in Defendant's case in chief or in rebuttal.

**REQUESTS FOR PRODUCTION OF DOCUMENTS
PLEASE PRODUCE:**

PRODUCTION REQUEST NO. 1: Please produce a photocopy of your 2017 federal and state tax returns.

PRODUCTION REQUEST NO. 2: Please produce a photocopy of all security logs and any records that show dates and times by the West Virginia State Police or the West Virginia Capitol Police when you were present and when you spent an overnight(s) at West Virginia Governor's Mansion located at 1716 Kanawha Blvd E, Charleston, West Virginia, since January 16, 2017.

PRODUCTION REQUEST NO. 3: Please produce a photocopy of all security logs and any records that show dates and times by the West Virginia State Police or the West Virginia Capitol Police when guests were present and spent an overnight(s) at West Virginia Governor's Mansion located at 1716 Kanawha Blvd E, Charleston, West Virginia, since January 16, 2017.

PRODUCTION REQUEST NO. 4: Please produce a photocopy of all security logs and any records of the security details provided to you by the West Virginia State Police and the West

Virginia Capitol Police that show the dates and times when you were present at your office at the West Virginia Capitol located at 1900 Kanawha Blvd E, Charleston, West Virginia, since January 16, 2017.

PRODUCTION REQUEST NO. 5: Please produce a photocopy of all security logs and any records of the security details provided to you by the West Virginia State Police that show the dates and times when you were under their protection while in Greenbrier County, West Virginia, since January 16, 2017.

PRODUCTION REQUEST NO. 6: Please produce a photocopy of all security logs and any records of the security details provided to you by the West Virginia State Police that show the dates and times when you were under their protection while you were outside of the State of West Virginia since January 16, 2017.

PRODUCTION REQUEST NO. 7: Please produce a photocopy of an expense report of the security details provided to you by the West Virginia State Police that show the dates and times when you were under their protection since January 16, 2017 in its totality and a breakdown of the expenses of the security that is provided to you at the Mansion, Capital, Greenbrier County, traveling throughout the State of West Virginia and traveling out of the State of West Virginia.

PRODUCTION REQUEST NO. 8: Please produce a photocopy of an expense report of the budget, expenses paid, security detail, Mansion staff salaries, maintenance and meals for West Virginia Governor's Mansion located at 1716 Kanawha Blvd E, Charleston, West Virginia, since January 16, 2017.

PRODUCTION REQUEST NO. 9: Please produce a photocopy of all public records, books and papers, electronic or otherwise, that are not located at your office at the West Virginia Capitol located at 1900 Kanawha Blvd E, Charleston, West Virginia.

PRODUCTION REQUEST NO. 10: Please produce a photocopy of all call logs, emails and text messages that you have made doing your official state work as Governor away from your office at the West Virginia Capitol located at 1900 Kanawha Blvd E, Charleston, West Virginia.

PRODUCTION REQUEST NO. 11: Please produce a photocopy of the oath of affirmation of office for Governor of the State of West Virginia.

G. Isaac Sponaugle, III
Petitioner

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ATTORNEYS AT LAW
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FRANKLIN, WEST VIRGINIA 26807
(304) 358-2337



G. Isaac Sponaugle, III
State Bar #9720
Petitioner

CERTIFICATE OF SERVICE

I, G. Isaac Sponaugle III, Petitioner, do certify that a true copy of the foregoing *Petitioner's First Combined Discovery Directed to Respondent* was served upon Respondent and the West Virginia Attorney General by attaching a true copy thereof to the Summons and Petition for Writ of Mandamus on this the 19th day of June 2018.



Petitioner

FILED
JUN 21 7:40
CATHERINE GATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT