

SUPREME COURT OF OHIO

State ex rel. Fenstermaker v. VanEerten

2025-Ohio-5298 · No. 2025-0381 · Decided December 2, 2025

SUMMARY

The Supreme Court of Ohio denied Tony Fenstermaker's petition for a writ of mandamus seeking a cashbook or journal from the Ottawa County Prosecuting Attorney's Office. The court held that Fenstermaker failed to present clear and convincing evidence rebutting the prosecutor's affidavit that no such record existed and therefore also denied statutory damages.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Per Curiam; Kennedy, C.J.; Fischer, J.; DeWine, J.; Brunner, J.; Deters, J.; Hawkins, J.; Shanahan, J.
JURISDICTION	Supreme Court of Ohio
DECIDED	December 2, 2025
DOCKET	2025-0381
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Original mandamus action in the Supreme Court of Ohio seeking production of a requested cashbook or journal and \$1,000 in statutory damages under Ohio's public-records law.
STANDARD OF REVIEW	A relator seeking mandamus relief must prove by clear and convincing evidence a clear legal right to the requested records and a corresponding clear legal duty to provide them. Uncontroverted evidence that the requested records do not exist defeats mandamus relief.
PRECEDENTIAL VALUE	published
PARTIES	Tony Fenstermaker, relator v. James VanEerten, Ottawa County Prosecuting Attorney, respondent

TOPICS

- civil procedure
- remedies
- administrative law
- statutory interpretation

PRACTICE AREAS

civil procedure

public records

mandamus

administrative law

remedies

QUESTIONS PRESENTED

1. Whether Fenstermaker was entitled to a writ of mandamus compelling production of a cashbook or journal that the prosecutor's office stated did not exist.
2. Whether Fenstermaker was entitled to statutory damages under R.C. 149.43(C)(2) based on the office's failure to produce the requested cashbook.

HOLDINGS

1. A relator will not receive mandamus relief that was not requested in the complaint; because Fenstermaker's complaint sought only production of the cashbook, his mandamus claim was limited to that record.
2. Mandamus relief is unavailable when uncontroverted evidence shows that the requested public record does not exist, and a public office has no duty to produce a record it does not possess.
3. A public-records requester is not entitled to statutory damages under R.C. 149.43(C)(2) when the public office complied with R.C. 149.43(B) by informing the requester that the requested record does not exist.

KEY QUOTATIONS

“A public office or public-records custodian has no duty to produce records that do not exist.” (§ 12)

“Because uncontroverted evidence shows that the requested cashbook does not exist, we deny the writ.” (§ 13)

FACTUAL BACKGROUND

Fenstermaker requested certified annual statements, a records-retention schedule, and a cashbook or journal from the Ottawa County Prosecuting Attorney's Office. The office produced the annual reports for 2018 through 2022 and the county retention schedule, but stated that it did not keep a cashbook or journal. The prosecutor's affidavit stated that the office had not kept a cashbook since January 2017 and did not accept fines, costs, penalties, or other monetary payments. Fenstermaker offered the retention schedule as evidence that a cashbook existed but presented no other evidence rebutting the affidavit.

PROCEDURAL HISTORY

Fenstermaker submitted a certified-mail public-records request to the Ottawa County Prosecuting Attorney's Office. The office produced annual reports and a records-retention schedule but stated that it did not keep the requested cashbook or journal. Fenstermaker filed an original mandamus action; the Supreme Court denied the respondent's motion to dismiss, granted an alternative writ, received the parties' evidence and briefs, and denied the writ and statutory damages.

DISPOSITION

writ_denied

CASES CITED

- State ex rel. Scott v. Toledo Corr. Inst., 2024-Ohio-2694, ¶¶ 12-14
- State ex rel. Wells v. Lakota Local Schools Bd. of Edn., 2024-Ohio-3316, ¶ 11
- State ex rel. Ware v. Beggs, 2024-Ohio-611, ¶ 11
- State ex rel. Hedenberg v. N. Cent. Corr. Complex, 2020-Ohio-3815, ¶ 7
- State ex rel. Culgan v. Jefferson Cty. Prosecutor, 2024-Ohio-4715, ¶ 13
- State ex rel. Mobley v. Witt, 2025-Ohio-868, ¶¶ 11-13, 22
- State ex rel. Mobley v. Bates, 2024-Ohio-2827, ¶ 9
- 2025-Ohio-1876