

OHIO COURT OF CLAIMS

Diebert v. North Baltimore Police Department

2026-Ohio-2332 · No. 2025-00765PQ · Decided May 22, 2026

SUMMARY

The Ohio Court of Claims overruled the requesters’ objections to a special master’s recommendation in a public-records action against the North Baltimore Police Department. The court granted the department’s motion to dismiss for failure to comply with filing and pleading requirements under R.C. 2743.75, dismissed the action without prejudice, and ordered the parties to split court costs.

CASE DETAILS

COURT	Ohio Court of Claims
WRITING FOR THE COURT	Lisa L. Sadler
JURISDICTION	Ohio Court of Claims
DECIDED	May 22, 2026
DOCKET	2025-00765PQ
DISPOSITION	dismissed
PROCEDURAL POSTURE	Requesters objected to a special master's report and recommendation recommending dismissal of their Ohio Public Records Act claim for failure to comply with an order requiring a second amended complaint and for deficient filings. The Ohio Court of Claims overruled the objections, adopted the report and recommendation, granted the respondent's motion to dismiss, dismissed the claim without prejudice, and split court costs between the parties.
STANDARD OF REVIEW	The court reviewed the objections to the special master's report and recommendation as a reviewing court under R.C. 2743.75(F)(2), considering whether the special master erred and whether the record supported the findings.
PRECEDENTIAL VALUE	Published Ohio Court of Claims judgment entry; precedential status is identified as published.
PARTIES	Cheryl D. Diebert, et al. v. North Baltimore Police Department

TOPICS

motions to dismiss

pleadings

mediation

costs

civil procedure

PRACTICE AREAS

civil procedure

administrative law

municipal law

public records

QUESTIONS PRESENTED

1. Whether the special master erred in finding that the Dieberts' second-amended-complaint filings were untimely.
2. Whether the court could consider a USPS tracking attachment submitted with the objections but not part of the record before the special master.
3. Whether alleged deficiencies in the mediation affected the recommendation for dismissal.
4. Whether the Dieberts were entitled to another opportunity to amend their complaint through a Civ.R. 60 motion or otherwise.
5. Whether the special master properly relied on *Schaffer v. Sheets* for the requirement that a public-records complaint be filed on the form prescribed by the clerk.
6. Whether dismissal should be without prejudice and whether court costs should be split between the parties.

HOLDINGS

1. The court could not consider the attachment because a reviewing court may not add new matter to the record and decide the case on that basis.
2. Dismissal under R.C. 2743.75(D)(2) was proper because the Dieberts failed to comply with the deadline and order for a second amended complaint and submitted filings that did not satisfy the required form, service, and basic pleading requirements.
3. The Dieberts were not entitled to another opportunity to amend because Civ.R. 60 did not apply to the circumstances, and allowing another amendment would conflict with the expeditious and economical purpose of the statutory public-records process.
4. The dismissal had to be without prejudice because it was not based on the merits.
5. The court costs were properly split between the parties as an exercise of the trial court's sound judicial discretion.

KEY QUOTATIONS

“a reviewing court cannot add matter to the record before it that was not a part of the trial court’s proceedings, and then decide the appeal on the basis of the new matter.” (§ 9)

“Allowing the Dieberts another opportunity to amend their complaint at this time would alter this purpose.” (§ 12)

“a dismissal of a case that is not on the merits must be without prejudice” (§ 14)

“Therefore, NBPD’s motion to dismiss is GRANTED and this claim is DISMISSED without prejudice pursuant to R.C. 2743.75(D)(2). Court costs shall be split between the parties.” (¶ 16)

FACTUAL BACKGROUND

The Dieberts filed a public-records action and were ordered to amend their complaint to identify the alleged violations, request dates, and records allegedly not provided. After mediation resolved some claims, the special master ordered a second amended complaint detailing the claims that remained outstanding. The Dieberts filed two documents one day late, without certificates of service, and without using the required form or identifying the requests, records, and aggrieved requester associated with each claim.

PROCEDURAL HISTORY

The Dieberts filed a public-records action against the North Baltimore Police Department in August 2025. After an amended complaint, mediation, and a status conference, the special master ordered a second amended complaint identifying each remaining claim in detail. The Dieberts filed two documents one day late, without certificates of service, and without satisfying the pleading and form requirements. The special master recommended dismissal under R.C. 2743.75(D)(2); the court overruled the Dieberts' objections and adopted that recommendation, while determining that dismissal had to be without prejudice because it was not on the merits.

DISPOSITION

dismissed

CASES CITED

- Gannett GP Media, Inc. v. Ohio Dept. of Pub. Safety, 2017-Ohio-4248, ¶ 8 (Ct. of Cl.)
- State v. Ishmail, 54 Ohio St.3d 402 (1978)
- Price v. Westinghouse Elec. Corp., 70 Ohio St.2d 131, 133, 435 N.E.2d 1114 (1982)
- State ex rel. Millington v. Weir, 60 Ohio App.2d 348, 349, 397 N.E.2d 770 (10th Dist. 1978)
- Ohio Patrolman's Benevolent Assn. v. City of Cleveland, 2024-Ohio-2651, ¶ 17
- Schaffer v. Sheets, 2024-Ohio-2185, ¶¶ 59-61, adopted, 2024-Ohio-2625 (Ct. Cl.)
- State ex rel. Mason v. Supervisor of Edn., Warren Corr. Inst., 2025-Ohio-4803, ¶ 11
- Thomas v. Freeman, 79 Ohio St.3d 221, 225 (1997), fn. 2
- Tower City Properties v. Cuyahoga Cty. Bd. of Revision, 49 Ohio St.3d 67, 69, 551 N.E.2d 122, 124 (1990)
- Strattman v. Studt, 20 Ohio St.2d 95 (1969), paragraph six of the syllabus
- Vales v. Ins. Affiliates Agency, Inc., 1990 Ohio App. LEXIS 5041, at *4-5 (8th Dist. Nov. 21, 1990)
- State ex rel. Fant v. Regional Transit Auth., 48 Ohio St.3d 39 (1990)
- Pfeifer v. Chief Drilling Inc., 1977 Ohio App. LEXIS 8865, at *28 (10th Dist. May 24, 1977)

OPINION

Diebert v. N. Baltimore Police Dept.

2026 Ohio 2332

PER CURIAM.

[Cite as Diebert v. N. Baltimore Police Dept., 2026-Ohio-2332.]

IN THE COURT OF CLAIMS OF OHIO

CHERYL D. DIEBERT, et al. Case No. 2025-00765PQ Requesters Judge Lisa L. Sadler

v. JUDGMENT ENTRY

NORTH BALTIMORE POLICE

DEPARTMENT

Respondent {¶1} This matter is before the court on requesters' (the Dieberts) objections to the special master's May 7, 2026, report and recommendation (R&R).¹ In her R&R the special master recommended that the court (1) grant respondent North Baltimore Police Department's (NBPD) motion to dismiss; (2) dismiss this case pursuant to R.C. 2743.75(D)(2); and (3) order the parties to split the costs of this case. For the reasons that follow, the court OVERRULES Diebert's objections and ADOPTS the R&R as its own. Background {¶2} On August 22, 2025, the Dieberts, filed this case against NBPD and another similar case, 2025-00766PQ, against the North Baltimore Administration. The original special master assigned to this case ordered the Dieberts to file an amended complaint to provide a description of the alleged violations of the Public Records Act, to provide the dates of each request, and to be specific as to what records have not been provided. After an amended complaint was filed on September 12, 2025, the cases were sent to mediation where they remained until mediation was terminated on March 5, 2026. ¹ Because the Dieberts filed identical objections in a related case, 2025-00766PQ, the decision and entry for both cases are nearly identical. Case No. 2025-00765PQ -2- JUDGMENT ENTRY {¶3} After mediation was terminated, the current special master held a status conference with the parties to determine what issues remained before the court. The parties indicated that some of the requests were resolved in mediation. Therefore, with the parties' agreement, the special master ordered the Dieberts to file a second amended complaint which was to contain a detailed statement of each public records claim that was still outstanding. Following that order, the Dieberts filed two documents, neither contained a certificate of service and both of which were filed a day late. {¶4} NBPD filed a motion to dismiss arguing that because the second amended complaint did not comply with the special master's order, or pleading standards, the court should dismiss the case pursuant to R.C. 2743.75(D)(2). The special master recommended dismissal pursuant to R.C. 2743.75(D)(2) because the Dieberts failed to comply with her order and the filings were deficient. First, the special master found that the filings failed to meet the deadline set forth in her order. Second, the special master found that the filings were not on the required complaint form pursuant to R.C. 2743.75(D)(1). Third, the special master determined that the filings were not styled as an amended complaint. Fourth, the special master found that the filings did not contain a certificate of service and, therefore, appear to be unserved. Finally, the special master determined that the filings

did not meet basic pleading requirements because they did not provide the content of the original request, the records that the Dieberts claim should be produced, or which of the Dieberts is aggrieved in relation to each request. {¶5} The special master determined that if the Dieberts were permitted a third opportunity to amend their complaint, that would exceed the scope of the court's expeditious and economical public-records process pursuant to R.C. 2743.75(A). Objections {¶6} The Dieberts' objections appear to contain five specific parts labeled "A", "B", "C", "D", and "F." The court will address these numerically. First, the Dieberts contend that their filings were timely filed. Second, the Dieberts assert that mediation was not in good faith and did not resolve any claims. Third, the Dieberts propose that they be allowed "to submit a Civil Rule 60 motion allowing 30 days to rectify [their] errors and Case No. 2025-00765PQ -3- JUDGMENT ENTRY submit the proper paperwork and 'cleaned up version' of requests still outstanding." Fourth, the Dieberts object to the special master's citation to *Schaffer v. Sheets*, 2024- Ohio-2185, because their case is distinguished from *Schaffer* by having fewer overall requests and their requests not being "commercial." Finally, the Dieberts request that the case be dismissed without prejudice and that the court reconsider splitting the court costs between the parties. {¶7} NBPd filed a response in opposition to all of the Dieberts' objections. First Objection: Timeliness {¶8} First, the Dieberts object to the special master's finding that their filings were untimely filed pursuant to her order for them to file a second amended complaint. They state that the court received the filings on April 2, 2026. The Dieberts base this conclusion on an attached USPS tracking update which shows that an item was picked up at the post office in Columbus, Ohio on April 2, 2026. {¶9} When the Court is reviewing objections to a special master's report and recommendation, "R.C. 2743.75(F)(2) requires this court to function as a reviewing court for the purposes of determining the objections before it." *Gannett GP Media, Inc. v. Ohio Dept. of Pub. Safety*, 2017-Ohio-4248, ¶ 8 (Ct. of Cl.). " '[A] reviewing court cannot add matter to the record before it that was not a part of the trial court's proceedings, and then decide the appeal on the basis of the new matter.' " *Id.*, quoting *State v. Ishmail*, 54 Ohio St.3d 402 (1978). Therefore, the court cannot consider this attachment to the Dieberts' objections. Further, a check of the docket reveals that the filings were not received and file stamped by the court until April 3, 2026, at 11:55 a.m. Therefore, the court finds that the special master did not err in finding that the filings were late. The Dieberts' first objection is **OVERRULED**. Second Objection: Mediation {¶10} Next, the Dieberts state that mediation did not resolve issues and "contend that the mediation was not done in good faith." In her R&R the special master stated that she held a status conference with both parties and that both parties represented that Case No. 2025-00765PQ -4- JUDGMENT ENTRY "some of the original claims were resolved in mediation." The Dieberts' objection appears to allege an error in this finding. However, there is nothing in the record to support their claim. The court finds that the special master's finding that some claims were resolved in mediation is supported by the actions of the parties, namely their participation in the status conference and the Dieberts' desire to file an amended complaint. Further, whether or not any claims were resolved in mediation is immaterial

to the special master's reasoning behind her recommendation for dismissal. The special master correctly determined that the Dieberts failed to comply with her order for a second amended complaint and recommended dismissal on those grounds. The court finds that even if the special master misunderstood the parties' representation at the status conference this would have no bearing on her recommendation. Therefore, the Dieberts' second objection is overruled. Third Objection: Request to Allow Civ.R. 60 Motion {¶11} The Dieberts proposed that they be allowed an opportunity to fully comply with the special master's order and properly file an amended complaint. They suggested that the court allow them to file a Civ.R. 60 motion to do so. Civ.R. 60 is titled "'Relief From Judgment or Order'" and allows the court to correct clerical mistakes in its judgments or orders and other mistakes in a final judgment of the court. Neither situation is present here. Even if the court construes this as a request to file an amended complaint, as the special master pointed out in her R&R, any additional opportunities for the Dieberts to amend their complaint would exceed the scope of the court's special statutory process. This case has been pending for approximately nine months. R.C. 2743.03(D) provides that the Ohio Rules of Civil Procedure "shall govern practice and procedure in all actions in the court of claims, except insofar as inconsistent with [R.C. Chapter 2743]." The Supreme Court of Ohio has discussed when a civil rule is inapplicable to a special statutory proceeding, stating: A civil rule is clearly inapplicable to a special statutory proceeding when its "'use will alter the basic statutory purpose for which the specific procedure was originally provided in the special statutory action.'" Price v. Case No. 2025-00765PQ -5- JUDGMENT ENTRY Westinghouse Elec. Corp., 70 Ohio St.2d 131, 133, 435 N.E.2d 1114

(1982), quoting State ex rel. Millington v. Weir, 60 Ohio App.2d 348, 349, 397 N.E.2d 770 (10th Dist. 1978). Ohio Patrolman's Benevolent Assn. v. City of Cleveland, 2024-Ohio-2651 at ¶ 17. {¶12} Pursuant to R.C. 2743.75(A), the public-records process in this court should be "expeditious and economical". Allowing the Dieberts another opportunity to amend their complaint at this time would alter this purpose. Therefore, the court finds that the special master did not err in recommending dismissal because any further amendments would exceed the scope of this process. The court OVERRULES the Dieberts' third objection. Fourth Objection: Citation to Schaffer v. Sheets {¶13} The Dieberts object to the special master's citation of Schaffer v. Sheets, 2024-Ohio-2185 ¶ 59-61, adopted 2024-Ohio-2625 (Ct. of Cl.). They assert that their cases are differentiated from Schaffer because they are not using the records requested for a commercial use, and they requested far fewer records than the requester in Schaffer. However, in her R&R the special master did not use Schaffer to say that the Dieberts requested too many records or were abusing this statutory process. The special master cited Schaffer in support of the assertion that filing a public records complaint in the court of claims requires requesters to use the form prescribed by the clerk of the court of claims. R.C. 2743.75(D)(1) states that "[a]n allegedly aggrieved person who proceeds under this section shall file a complaint, on a form prescribed by the clerk of the court of claims." The portion of Schaffer cited by the special master states that

Schaffer's failure to comply with R.C. 2743.75(D)(1) was not excused by his pro se status. Schaffer, ¶ 59-61. Therefore, the court finds that the special master did not err when she cited Schaffer for this limited purpose. The court **OVERRULES** the Dieberts' fourth objection. Fifth Objection: Dismissal without Prejudice and Costs {¶14} The Dieberts' fifth objection states: "Consider all the objection and motions from us [requesters] and if the dismissal is still granted please do so without prejudice Case No. 2025-00765PQ -6- JUDGMENT ENTRY and reconsider split cost." NBPD asserted in its response that "the Dieberts have established a pattern of taking actions which disregard legal rule and the fair, efficient administration or justice. Dismissal with prejudice is warranted in such cases." However, the court finds that this dismissal is not based on the merits and therefore, must be without prejudice. See *State ex rel. Mason v. Supervisor of Edn.*, Warren Corr. Inst., 2025-Ohio- 4803, ¶ 11 ("[a] dismissal of a case that is not on the merits must be without prejudice"); *Thomas v. Freeman*, 79 Ohio St.3d 221, 225 (1997), fn. 2 ("[a] dismissal with prejudice is treated as an adjudication on the merits. *Tower City Properties v. Cuyahoga Cty. Bd. of Revision* (1990), 49 Ohio St. 3d 67, 69, 551 N.E.2d 122, 124"). Therefore, the court finds that the special master must have recommended that this case be dismissed without prejudice. {¶15} As to court costs, "the Ohio Supreme Court has held that '[t]he duty to pay court costs is a civil obligation arising from an implied contract.'" *Strattman v. Studt*, 20 Ohio St.2d 95 (1969), paragraph six of the syllabus. The Ohio Supreme Court explained that "[b]y being involved in court proceedings, any litigant, by implied contract, becomes liable for the payment of court costs if taxed as a part of the court's judgment." *Id.* at 103. Additionally, under Ohio law, the "ultimate determination as to how court costs will be assessed is a matter of sound judicial discretion." *Vales v. Ins. Affiliates Agency, Inc.*, 1990 Ohio App. LEXIS 5041, at *4-5 (8th Dist. Nov. 21, 1990), citing *State ex rel. Fant v. Regional Transit Auth.*, 48 Ohio St.3d 39 (1990); see also *Accord Pfeifer v. Chief Drilling Inc.*, 1977 Ohio App. LEXIS 8865, at *28 (10th Dist. May 24, 1977) ("[a]warding of court costs lies within the discretion of the trial court"). The court finds that the special master did not err in recommending that court costs be split by the parties. Therefore, the Dieberts' fifth objection is **OVERRULED** as to assessment of costs. Conclusion {¶16} For the above stated reasons, the court **OVERRULES** the Dieberts' objections and **ADOPTS** the special master's R&R as its own. Therefore, NBPD's motion to dismiss is **GRANTED** and this claim is **DISMISSED** without prejudice pursuant to R.C. Case No. 2025-00765PQ -7- JUDGMENT ENTRY 2743.75(D)(2). Court costs shall be split between the parties. The Clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

LISA L. SADLER

Judge Filed May 22, 2026 Sent to S.C. Reporter 6/18/26