

IN THE SUPREME COURT OF OHIO

Julie Peterman : Case No. 06-1894
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 :
 Plaintiff, :
 :
 :
 vs : On Appeal from the
 : Delaware County Court
 : of Appeals, Fifth
 Dean Stewart : Appellate District
 And :
 Estate of :
 Josephine Shively, :
 :
 Defendants-Appellees. :

**MEMORANDUM IN OPPOSITION TO
MOTION OF APPELLEE ESTATE TO STRIKE
NOTICE TO COURT REGARDING AMICUS CURIAE**

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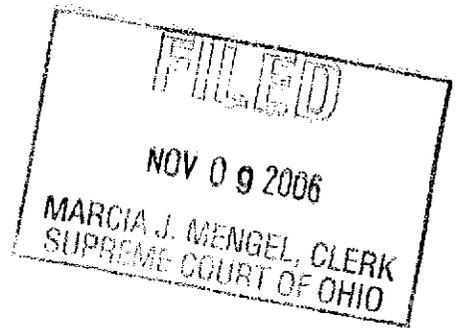
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MEMORANDUM IN OPPOSITION TO MOTION TO STRIKE AMICUS CURIAE

The Notice filed by Appellant is not precluded under the Supreme Court Rules and was merely filed to provide the court with information that organizations are interested in the substantial constitutional issues and the matters of public or great general interest presented in this case. Appellee Estate's Motion to Strike, on the other hand, seeks to distract the court from considering these matters.

On October 23, 2006, Appellant filed the *Notice to Court Regarding Amicus Curiaë*. This was done within the time period for filing the Jurisdictional Memorandum and for the filing of an Amicus encouraging this court to accept jurisdiction. If Appellant Proctor had sought to include this information in his Jurisdictional Memorandum, he could have done so pursuant to Supreme Court Rule VII, § 7 by filing an Amended Jurisdictional Memorandum since he was still within the forty-five days to do that. Further, if the Notice were a supplement to Appellant's Jurisdictional Memorandum, then the Clerk would have refused filing pursuant to Supreme Court Rule III, § 3(C).

The fact is there has been a great deal of interest expressed in this matter, especially in the important constitutional issues this case presents. Proposition of Law No. 1 addresses the constitutional rights against the seizure and making public of private papers. These rights are protected by Article I, § 14 of the Ohio Constitution, the Fourth to the U.S. Constitution, and the right to privacy derived from the Fifth and Fourteenth Amendments to the U.S. Constitution. Proposition of Law No. 2 addresses final appealable orders, which are derived from Article IV, § 3(B)(2) of the Ohio Constitution. Appellant asks this court to clarify its previous rulings regarding final orders where the trial court has ordered an attorney to be withdrawn.

The primary issue of interest for the attorney organizations appeared to be regarding Proposition of Law No. 2. This case presents an issue of tremendous concern for attorneys. Thus, if an attorney is ordered to be withdrawn from the case, the attorney does not want to be blind-sided by an accusation of “frivolous” conduct after he or she has been removed from the case and the withdrawal order can no longer be appealed. In this matter, Appellee Stewart threatened to use the private papers against Julie Peterman and do other abuse of process actions if she did not accept a settlement. Because her former attorney, Appellant Proctor, was witness to these threats, the trial court ordered that he was withdrawn from the case for purpose of being a witness on the case. There was no opposition to the withdrawal or mention of any ethical issues at the hearing regarding the attorney withdrawal. Thereafter, Attorney Proctor was blind-sided by an accusation that the invasion of privacy action was not warranted by law.

The implications of this has raised a great deal of concern for organizations that represent the interests of attorneys, especially since the invasion of privacy action in this matter was clearly warranted by law. The Ohio Supreme Court in *Kala v Aluminum Smelting & Refining Co*, (1998), 81 OS 3d 1 and *Russell v Mercy Hospital*, (1984), 15 OS 3d 37 has already found that an order to withdraw an attorney is a final order, and this final order sets the jurisdictional limit of the court. The attorney organizations appear to agree that the rulings in these cases should be clarified to apply in this context so that an attorney can zealously represent a client without fear of reprisal.

There also appears to be a great deal of concern regarding the constitutional privacy right issues presented in Proposition of Law No. 1. The biggest concern in this regard appeared to be the action of claiming to use “discovery” to file irrelevant personal papers onto a public record

without any permission requested or obtained from the judge. This opens the door for any opposing litigant to convert private papers into public documents, even though completely irrelevant to the matter, by simply filing them in court. In *Kallstrom v City of Columbus*, (1998), 136 F 3d 1055, the Sixth Circuit found that the disclosure of personal information via discovery was an invasion of privacy and was also grounds for a 1983 claim. There appeared to, at the least, be a desire to see *Kallstrom* applied to this context so that a party can proceed with litigation without fear that, by doing so, their most personal and private matters would be exposed to the public. There also appeared to be concern regarding persons who hold a fiduciary relationship to the other party, as was the case herein, who have access to the other party's home. It is a frightening implication to say that a fiduciary (like an executor of an estate) who obtains possession of private papers of the other party could have the right to use them against the beneficiary of the fiduciary relationship (which is what happened in this matter).

These are certainly not the limit of the concerns regarding the substantial constitutional issues and the matters of public or great general interest presented in this case. It should be noted however that while these organizations agree that the ruling against Appellant and his former client was clearly unjust, that is not the primary reason these organizations have expressed interest in doing an Amicus. Moreover, the primary reason that the organizations mentioned in the Notice have expressed interest in doing an Amicus was because there is a need for the Supreme Court to clarify the law on these matters to protect the ability of attorneys to represent clients and to protect the privacy interests of the citizens of Ohio.

Appellee Estate on the other hand does not want this court to review the important constitutional issues and is not concerned with the state of the law in Ohio. Rather, they seem to

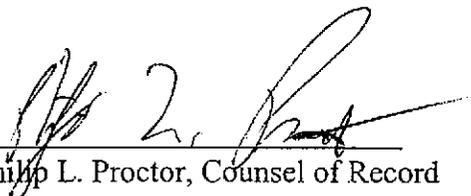
be motivated by the money they are seizing from Mr. Proctor's paycheck. If this were not the case, they would not be concerned by the Amicus briefs. Furthermore, if Appellee Estate were interested in the law in Ohio, they would not attempt to remove the Notice from this court's review in determining whether jurisdiction should be granted.

In conclusion, the *Notice to Court Regarding Amicus Curiae* filed October 23, 2006 was filed within the deadline to file an Amicus regarding granting jurisdiction, and it was filed merely for the purpose of providing this court with information that there are organizations that have expressed interest in this matter to submit an Amicus upon jurisdiction being granted. The reason no actual Amicus were filed encouraging the court granting jurisdiction appeared to be more a matter of not having enough time to do the topic justice. Furthermore, the organizations mentioned have asked Appellant Proctor to inform them if jurisdiction is granted so that they may file an Amicus brief at that point.

CONCLUSION AND REQUEST FOR RELIEF

For the reasons discussed above, Appellant Proctor requests that the Motion to Strike of Appellee Estate be denied. Appellant further requests that this court grant jurisdiction so that the important issues presented will be reviewed, and that this court grant Appellant's Motion for Stay as previously requested.

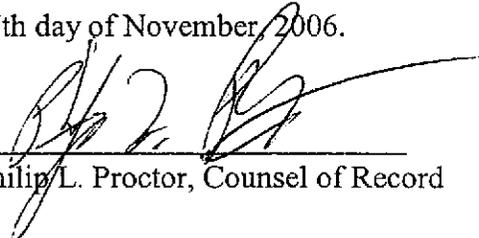
Respectfully Submitted,

By: 
Philip L. Proctor, Counsel of Record

COUNSEL OF RECORD
AND APPELLANT

PROOF OF SERVICE

I hereby certify that a copy of this Memorandum in Opposition to Motion of Appellee Estate to Strike Notice to Court Regarding Amicus Curiae was sent by regular U.S. mail to Fred J. Beery, Attorney for Appellee, Dean Stewart, at 125 N. High St., Hillsboro, Ohio 45133, to Dennis Morrison, Attorney for Appellee, Estate of Josephine Shively, at Means, Bichimer, Burkholder, and Baker, 2006 Kenny Rd., Columbus, OH 43221-3502, and to Julie Peterman, Plaintiff, at P. O. Box 510, Delaware, OH 43015 this 7th day of November, 2006.


Philip L. Proctor, Counsel of Record
COUNSEL OF RECORD
AND APPELLANT