

**IN THE SUPREME COURT OF OHIO**

STATE OF OHIO, ex rel., MUNICIPAL )  
 CONSTRUCTION EQUIPMENT )  
 OPERATORS' LABOR COUNCIL, et al. )  
 )  
 Relators )  
 )  
 vs. )  
 )  
 CITY OF CLEVELAND, et al. )  
 )  
 Respondents )

**CASE NO. 2006-2056**

**Original Action in Mandamus**

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**RELATORS' OPPOSITION TO RESPONDENTS' MOTION FOR  
 AN EXTENSION OF TIME TO FILE EVIDENCE**

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 SUPREME COURT OF OHIO

**RELATORS' OPPOSITION TO RESPONDENTS' MOTION FOR  
AN EXTENSION OF TIME TO FILE EVIDENCE**

Relators are filing this Opposition pursuant to S. Ct. Prac. R. XIV, § 4(A). Relators herein pray that this Honorable Court will either direct the Clerk to strike or will overrule and deny Respondents' February 13, 2007 request for additional time during which to file their evidence. Respondents' request should be denied because contrary to their assertion, Respondents' motion for extension of time to file their evidence does not conform to the requirements of S. Ct. Prac. R. XIV, § 3(B)(2)(b).

S. Ct. Prac. R. XIV, § 3(B)(2)(b) states in relevant part:

*If a stipulation to an agreed extension of time cannot be obtained, a party may file a request for extension of time to file ... evidence. (Emphasis added).*

The cited portion of this rule makes clear that a condition precedent to filing a request for extension of time to file evidence is that the party seeking the extension cannot obtain a stipulation for the requested extension. Respondents' motion for an extension of time to file their evidence claims that it complies with this Rule of Practice, but it neither does nor could it validly assert that this condition precedent has been satisfied.

By filing this Opposition, undersigned counsel for Relators represents to this Honorable Court that: (1) a stipulation for the extension now sought by Respondents could have been obtained had it been timely sought from one of Relators' attorneys; (2) neither he nor any other attorney that represents Relators received any verbal or written request from any attorney that represents Respondents to stipulate to any extension of time during which Respondents could timely file their evidence in accord with this Court's briefing schedule and order that was filed in

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this case on January 24, 2007. Respondents' failure and inability to satisfy this rule's condition precedent for filing a request for an extension of time demonstrates that their request for an extension of time during which to file their evidence should be overruled and denied.

That prayed for ruling on Respondents' request is supported by *Davis v. Immediate Med. Serv., Inc.* (1997), 80 Ohio St.3d 10. In that case, this Court overruled the trial court's allowance of a 2-day tardy response to an amended complaint, finding that defendant's agent had been previously served. That ruling was supported by the observation that: "Even though we recognize that it is preferable to hear a case upon its merits, the rules of procedure must be applied consistently, and AIC's noncompliance cannot be overlooked. As we stated in *Lint*, "[h]owever hurried a court may be in its efforts to reach the merits of a controversy, the integrity of the procedural rules is dependent upon consistent enforcement because the only fair and reasonable alternative thereto is completed abandonment."

That same logic and similar result should apply here because S. Ct. Prac. R. XIV, § 3(B)(2)(b) clearly states that requests for extension of time to file evidence may only be made if a stipulation for that extension cannot be obtained. Respondents never sought that stipulation, and cannot satisfy this rule's condition precedent for filing their request. That inability to satisfy this condition precedent demonstrates that Respondents cannot properly file and this Honorable Court should therefore either direct the Clerk to strike or deny Respondents' request for an extension of time during which to file their evidence.

This Court should also deny Respondents' request because of their apparent failure to satisfy the "good cause" requirement of S. Ct. Prac. R. XIV, § 3(B)(2)(b). That "good cause" is a condition precedent for granting a requested extension of time for submitting evidence.

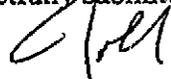
Respondents' sole apparent attempt to satisfy that condition precedent is their unsupported and unexplained claim that exhibits and evidence from an unidentified third-party have not been received, and that said "evidence is central to the City's arguments." Respondents' failure to identify that third-party, and failure to explain why that unidentified third-party has not previously provided Respondents with unidentified exhibits or evidence makes it difficult or impossible, without a leap of faith, to conclude that Respondents have provided a "good faith" reason for their requested extension. If notwithstanding Respondents' failure to comply with the cited condition precedents of S. Ct. Prac. R. XIV, § 3(B)(2)(b), this Honorable Court nonetheless decides to grant Respondents' extension request, Relators pray that any such entry would limit submitted evidence to those exhibits and that evidence which Respondents would be required to certify to this Court were not in their possession before or on February 13, 2007.

Relators also note that Respondents' decision not to seek a stipulation for an extension of time during which to file evidence, and to file their request for that extension on the same day that the evidence was required to be filed, could be construed as a tactic to obtain a strategic advantage in this case. That strategic advantage would be that if this Court were convinced to grant Respondents' request, Respondents could tailor their evidence to respond or to attempt to rebut Relators' timely filed evidence. If notwithstanding Respondents' failure to comply with the condition precedent of S. Ct. Prac. R. XIV, § 3(B)(2)(b), this Honorable Court nonetheless decides to grant Respondents' extension request, Relators pray that any such entry would include the grant to Relators of five days after their attorneys' receipt of Respondents' evidence during which Relators could submit supplemental evidence to partially address that described unfair advantage.

Since Respondents have failed and are unable to satisfy S. Ct. Prac. R. XIV, § 3(B)(2)(b)'s condition precedent of being unable to obtain a stipulation for an agreed extension of time for filing evidence, Relators pray that this Honorable Court will either overrule and deny or issue a judgment entry directing the Clerk to strike from the record Respondents' request. That result is made appropriate by Respondents' failure to satisfy this condition precedent and to preserve the sanctity of this Court's rules of practice.

If notwithstanding Respondents' failure to comply with the conditions precedent of S. Ct. Prac. R. XIV, § 3(B)(2)(b), this Honorable Court nonetheless decides to grant Respondents' extension request, Relators pray that any such entry would include the grant to Relators of five days after their attorneys' receipt of Respondents' evidence during which Relators may submit supplemental evidence. Relators also pray that any such entry would limit Respondents' to-be submitted evidence to that evidence which Respondents would be required to certify to this Court was not in their possession before or on February 13, 2007.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

A true copy of the foregoing Opposition has been sent to the following, via email and U.S.

mail on this 14th day of February, 2007:

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