

*IN THE*  
**SUPREME COURT OF OHIO**

STATE OF OHIO EX REL	:	
AMERICAN LEGION POST 25,	:	
	:	Case No. 2006-2263
Relator-Appellee,	:	
	:	On Appeal from the Fayette County
v.	:	Court of Appeals, Twelfth Appellate
	:	District
THE OHIO CIVIL RIGHTS	:	
COMMISSION, et al.,	:	Court of Appeals Case No. 2006-01-005
	:	
Respondents-Appellants.	:	

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**RELATOR-APPELLEE'S MOTION TO DENY STAY  
AND  
MOTION TO DISMISS THE APPEAL OF  
THE OHIO CIVIL RIGHTS COMMISSION**

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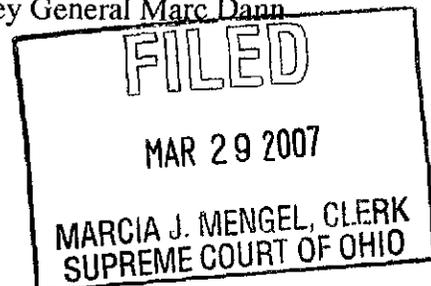
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**BRANCH I**  
**MOTION TO DENY STAY**

Appellee respectfully moves the Court for an order denying appellants' most recent Motion for Stay in this cause pending appeal in that the stay should not be granted as the Statute of Limitations in this case has run.

**BRANCH II**  
**MOTION TO DISMISS APPEAL**

Appellee moves the Court to dismiss appellants' appeal as the Statute of Limitations in appellee's opinion has run, and during the course of this cause the appellants have done nothing to toll the running of the statute.

For the foregoing reasons as set forth in the accompanying memorandum, appellee's Motions should be sustained.

Respectfully submitted,

KIGER & KIGER

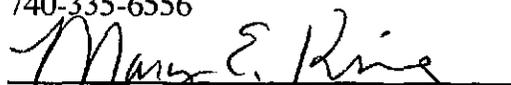


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## MEMORANDUM OF LAW

The Ohio Civil Rights Commission in their latest Motion now asks once again for this Court to grant them a stay of the decision and judgment of the Twelfth Appellate District, after having secured an order from this Court permitting withdrawal of their original Motion for Stay dated March 12, 2007.

Appellee, Post 25, submits that the second Motion for a Stay should not be granted despite the mandatory language in Civil Rule 62 and *State ex rel Fire Marshal v. Curl* (2000), 87 Ohio St.3d 568, 2000 Ohio 248, as the Statute of Limitations has run in this cause. In *Fire Marshal, Supra*, the Statute of Limitations had not run. Pursuant to R.C. 4112.05(B)(7), the appellant must issue its complaint within one year of the filing of the charge of discrimination.

Appellants improperly filed their complaint. On October 23, 2006, the Twelfth District Court of Appeals ruled the Civil Rights Commission had not properly complied with the statutory requirements in filing its complaint against Post 25, relying on this Court's decision in *State ex rel Republic Steel Corp. v. Ohio Civil Rights Comm.* (1975) 44 Ohio St.2d 178, which appellee believes to be controlling.

During the appeal, appellants did nothing to toll the running of the statute. They could have re-filed their complaint before August 17, 2006, but missed the opportunity to rectify their situation. Accordingly, a stay should not be granted after the statute has run.

**Addressing the more crucial issue raised in Branch II of appellee's Motion to Dismiss**, the record before the Court indicates that one Carol Van Slyke on August 18, 2005 filed a charge with appellants alleging appellee's manager had sexually harassed her during the course of her employment. Thereafter, appellants began an investigation. During the course of the investigatory and conciliatory process, appellee asked appellants to issue one subpoena on their behalf pursuant to O.R.C. 4112.04(B)(3)(b), which Commission refused to do. In December 2005, appellants then brought an administrative complaint against the appellee.

Appellee then commenced a mandamus action in the common pleas court seeking a writ compelling the issuing of the subpoena pursuant to the statute. The trial court denied appellee's writ. On appeal, the Twelfth District reversed the trial court's decision, holding that the failure of the appellants to issue the requested subpoena was jurisdictional in that the conciliatory process

ch was jurisdictional to the filing of an administrative complaint  
R.C. 4112.05(b), citing and relying on *State ex rel Republic Steel*,  
controlling authority in this case.

06 and prior to this date, the appellants did nothing to engage in a  
nate what they alleged discrimination before it issued the complaint.  
e Twelfth District until it was stayed or set aside is the law of this  
h no stay in place to toll the same.

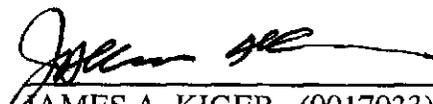
. *Rights Comm. v. Countrywide Home Loans, Inc., et al.*, 99 Ohio  
the Statute of Limitations as set forth in O.R.C. 4112.05(B)(7) is  
ghts Commission and must be followed, and that a charge of  
thin one year and is mandatory. In other words, no amount of  
lutes this requirement.

meet the jurisdictional prerequisite of completing the conciliatory  
of Limitations of one year and the statute has run with no stay in

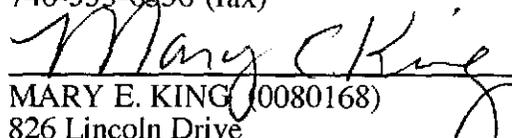
pellants is clearly distinguishable from this case before the Court.  
an Legion Post 25, Motions should be granted. The appellants  
nied and the appeal should be dismissed.

Respectfully submitted,

KIGER & KIGER

  
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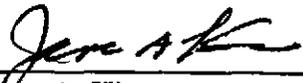
Counsel for Relator-Appellee  
American Legion Post 25

## CERTIFICATE OF SERVICE

I certify that I served a copy of the foregoing Relator-Appellee's Motion to Deny Stay and Motion to Dismiss Appeal was served upon the following counsel by ordinary U. S. Mail this 27<sup>th</sup> day of March 2007:

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