

In the  
**Supreme Court of Ohio**

STATE OF OHIO EX REL. : Case No. 2006-2263  
AMERICAN LEGION POST 25, :  
 :  
Relator-Appellee, : On Appeal from the  
 : Fayette County  
v. : Court of Appeals,  
 : Twelfth Appellate District  
OHIO CIVIL RIGHTS :  
COMMISSION and OHIO ATTORNEY : Court of Appeals Case  
GENERAL MARC DANN, : No. 2006-01-006  
 :  
Respondents-Appellants.

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**MEMORANDUM IN OPPOSITION OF RESPONDENTS-APPELLANTS, THE OHIO  
CIVIL RIGHTS COMMISSION AND OHIO ATTORNEY GENERAL MARC DANN,  
TO MOTION TO DISMISS APPEAL**

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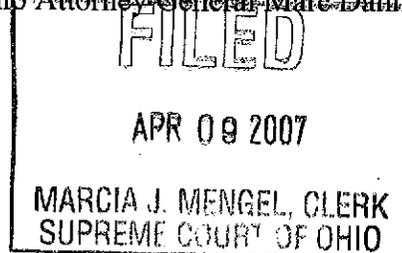
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## INTRODUCTION

American Legion's Motion to Dismiss is based on both erroneous law and erroneous facts—it should be denied. Despite American Legion's assertions, a viable civil rights case, *In the Matter of Carol Van Slyke v. American Legion Post #25, et al.*, OCRC Complaint No. 9971, is currently pending before Honorable Denise M. Johnson, Chief Administrative Law Judge at the Ohio Civil Rights Commission. As explained below, the initial complaint was timely issued within a year from the date the charge was filed, and therefore, the Commission complied with R.C. 4112.05(B)(7), and did not violate any statute of limitations.

Moreover, no court has yet dismissed the Commission's Complaint. Indeed, the purpose of the Commission's motion for a stay is to ensure no court acts on the judgment and order of the Twelfth District Court of Appeals, which ordered the court below to dismiss. Therefore, the Commission need not "re-file" its case as American Legion suggests. American Legion's Motion to Dismiss should be denied.

## RELEVANT FACTS

As explained in the Commission's memorandum in support of jurisdiction, Carol Van Slyke exercised her rights under R.C. 4112.05(B)(1) by filing a charge of discrimination with the Ohio Civil Rights Commission on August 18, 2005. She alleged that Dale Butler, Executive Director of Relator-Appellee ("American Legion") violated Ohio's Anti-Discrimination Laws, R.C. Chapter 4112 by sexually harassing her, then terminating her in retaliation after she complained to an American Legion Commissioner.

The Commission investigated the charge. On October 27, 2005, the Commission found it was probable that American Legion and Director Butler discriminated against Ms. Van Slyke in violation of R.C. 4112.02(A) and (I). Stmt. of Evid. p. 3. The Commission complied with its

statutory mandate to attempt to conciliate the matter. R.C. 4112.05(B)(4). Attempts at conciliation failed, so the Commission issued administrative Complaint and Hearing No 9971 on December 15, 2005. Stmt. of Evid. p. 4, Att. H.

Shortly before the Commission issued the complaint, American Legion initiated a mandamus action in the Fayette County Court of Common Pleas (“trial court”). On January 4, 2006, the trial court issued an Order, dismissing the mandamus. American Legion appealed to the Twelfth District Court of Appeals (“appellate court”). On October 23, 2006, the appellate court reversed the decision of the lower court and remanded the case to the lower court ordering it to dismiss the Commission’s administrative Complaint.

The Commission filed a Notice of Appeal with this Court on December 7, 2006. The Commission shortly thereafter also filed a Motion to Stay with the trial court, to prevent it from dismissing the complaint pending appeal. After an oral hearing, the trial court issued an Order dated January 24, 2007, stating it had no jurisdiction over the case. The Commission then sought a stay from the appellate court. In a March 2, 2007 Order, the court denied the Commission’s motion without reason. Finally, the Commission filed a motion with this Court, moving to stay the judgment of the appellate court. This Court accepted jurisdiction over the case as a discretionary appeal, but has not yet ruled on the motion for a stay.

American Legion then filed its /Motion to Dismiss Appeal.

## LAW AND ARGUMENT

**A. The Commission's administrative complaint was timely issued, so there is no basis to dismiss the appeal.**

The Commission's administrative complaint in this case was issued only four months after Ms. Van Slyke filed her charge of discrimination with the Commission—well within the one-year limitation in R.C. 4112.05(B)(7). *Ohio Civ. Rights Comm. v. Countrywide Home Loans, Inc.*, 99 Ohio St.3d 522, 2003 Ohio 4358. It has never been dismissed, but is pending before Honorable Denise M. Johnson, Administrative Law Judge, pending the outcome of this appeal of American Legion's complaint in mandamus. See attached order. Thus, contrary to American Legion's assertion, the Commission has not violated the statute of limitations.

American Legion raises the statute of limitations defense here *for the first time*. American Legion has never before raised the issue with any court, and therefore, has waived the argument. *State ex rel., Zollner v. Industrial Comm. of Ohio* (1993), 66 Ohio St.3d 276.

No court has taken any action to dismiss the Commission's administrative case. Complaint and Notice of Hearing No. 9971 has not been dismissed or withdrawn. Therefore, the Commission had and has no reason to "re-file" its administrative complaint. There is no statute of limitations issue before this Court.

**B. American Legion's arguments regarding conciliation and subpoenas are the subject of the merits in this case, and therefore should be disregarded at this time.**

American Legion's reliance on *Countrywide* to support a conciliation argument is misplaced for at least two reasons. First, its argument that the Commission should have attempted to conciliate between December 15, 2006, (one year after the Commission issued its complaint) and the present, is the subject of Proposition of Law No. 2 accepted by this Court on

March 14, 2007. Thus, American Legion's conciliation argument is either an attempt to re-argue jurisdiction or an attempt to prematurely argue the merits, and should be disregarded.

Second, there is no requirement that a case must be fully adjudicated within the one-year period as American Legion implies. There is also no mandate that the Commission attempt to conciliate *after* a complaint is issued. The only statutory requirement imposed on the Commission is that it attempt to eradicate unlawful discriminatory practices through informal methods of persuasion, conference, and conciliation, *before* issuing an administrative complaint. R.C. 4112.05(B)(5).

Finally, American Legion correctly notes that the appellate court did hold the Commission had no jurisdiction to issue a complaint because it did not issue an investigative subpoena to American Legion. However, that argument concerns the first Proposition of Law accepted by this Court, and therefore is also a thinly-veiled attempt either to re-argue jurisdiction or prematurely argue the merits. The appellate court's analysis is severely flawed for many reasons, which will be addressed in the appeal to this Court, but for now these arguments should be disregarded.

## CONCLUSION

The Commission therefore respectfully requests this Court deny American Legion's Motion to Dismiss Appeal.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing Memorandum in Opposition to Appellee's Motion Motion to Dismiss was served by U.S. mail this 9<sup>th</sup> day of April, 2007, upon the following counsel:

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# Ohio Civil Rights Commission

Governor  
Ted Strickland

G. Michael Payne, Executive Director

Board of Commissioners  
Jeanne P. Donaldson, Chair  
Leonard J. Albert  
Margaret Rattus  
Pastor Aaron Wheeler, Sr.  
Rashmi N. Yajnik

## IN THE MATTER OF:

**Carol Van Slyke v. Paul H. Hughley Post No. 25 American Legion  
Complaint No. 9971**

## ORDER

A telephone pre-hearing conference was held on December 12, 2006. Counsel for the Commission participated; Counsel for Respondent did not appear and did not participate in the noticed telephone pre-hearing call.<sup>1</sup>

The matters before the ALJ included:

- November 16, 2006 – Counsel for the Commission filed a Motion to Stay the Proceedings [Case No. CA2006-01-006, being appealed to the Supreme Court of Ohio];
- November 22, 2006 – Counsel for Respondent filed a Motion to Dismiss;<sup>2</sup>
- November 28, 2006 [filed via fax] – Counsel for the Commission filed its Reply/Memorandum Contra to Respondent's Motion to Dismiss;<sup>3</sup> and
- December 11, 2006 – Counsel for the Commission filed a second Motion to Stay [Case No. 06-2263, Notice of Appeal to the Supreme Court of Ohio].

<sup>1</sup> The Notice of Telephone Pre-hearing Conference was mailed to both counsel on November 29, 2006. (See Appendix A.)

<sup>2</sup> Incorporated within Respondent's Motion to Dismiss is its request to deny the Commission's Motion to Stay Proceedings in this cause.

<sup>3</sup> Incorporated within the Commission's Reply to Respondent's Motion to Dismiss is its request for the ALJ to grant its Motion to Stay Proceedings, filed November 22, 2006.

IN THE MATTER OF:

*Carol Van Slyke v. Paul H. Hughley Post No. 25 American Legion*  
**Complaint No. 9971**

**ORDER**

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For good cause shown, the Commission's Motions to Stay are **granted**, pending ruling upon the outcome of the Commission's appeal to the Supreme Court of Ohio.

**So Ordered.**

A handwritten signature in black ink, appearing to read "Denise M. Johnson", is written over a horizontal line.

Denise M. Johnson  
Chief Administrative Law Judge  
Ohio Civil Rights Commission  
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Lori A. Anthony, Esq.  
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Carol Van Slyke

April 9, 2007

Enclosure: Appendix A [Notice of Telephone Pre-hearing Conference]

**DENISE M. JOHNSON, CHIEF ADMINISTRATIVE LAW JUDGE**  
**DECEMBER 12, 2006 TELEPHONE PRE-HEARING CONFERENCES**  
**HEARINGS SCHEDULED FOR JANUARY 2007**

<b>TIME</b>	<b>COMP #</b>	<b>COMPLAINANT &amp; RESPONDENT</b>	<b>COUNSEL FOR THE COMMISSION</b>	<b>COUNSEL FOR RESPONDENT</b>
11:30 a.m.	9971	Carol Van Slyke v. Paul H. Hughley Post No. 25 American Legion	Lori A. Anthony, Esq. 513 - 852 - 3497	James A. Kiger, Esq. 740 - 335 - 5271
2:00 p.m.	10024	Clayton Lammon v. Kidz Real Estate Group	Susan K. Sharkey, Esq. 419 - 245 - 2550	Cheryl F. Wolff, Esq. 419 - 241 - 2201
2:30 p.m.	10026	Vicki Snyder v. City of Fremont	Susan K. Sharkey, Esq. 419 - 245 - 2550	Eugene P. Nevada, Esq. 614 - 923 - 7700
3:00 p.m.	9976	Judith Bills v. St. Vincent Mercy Medical Center	Susan K. Sharkey, Esq. 419 - 245 - 2550	Barbara Gessel, Esq. 419 - 251 - 3232

MAILED: 11-29-06

Appendix A