

MEMORANDUM IN SUPPORT

A. Procedural Posture

On September 10, 2007, Amici Curiae Catholic League and Brunner Funeral Home filed a joint Brief in support of Respondents. (Respondents and another amicus, Monreal Funeral Home also filed briefs on September 10, 2007.)

The brief in question, that of Catholic League and Brunner Funeral Home, ended in the middle of page 20. Where one would ordinarily expect to see the signature of counsel submitting the brief, the page is blank. The next page, number 21, contains the proof of service. To be sure, the proof of service was properly signed. Neither the copy of the brief served on Petitioners nor the facsimile of the original posted on the Court's on-line docket contain a signature on page 20.

B. Argument

According to the rules of this Court, an amicus curiae is bound by the same requirements as parties. SCt R VI, section 6. Rule VIII pertaining to the form of documents filed with the Court provides the following with regard to signatures:

The original of every pleading, memorandum, **brief**, or other document filed in the Supreme Court shall be signed by an attorney representing the party on whose behalf the document is filed. [Emphasis supplied.]

Rule XIV, section 2(C)(1), provides further:

... The certificate of service shall state the date and manner of service, identify the names of the persons served, and be signed by the party or the *amicus curiae* who files the document. ...

The rules applicable to this matter contemplate two signatures, one at the conclusion of

the document to be filed and one on the certificate of service. In the case at bar, there is no signature on the Brief of Amici Curiae Catholic League and Brunner Funeral Homes.

This Court may use its broad discretion in determining a motion to strike. *State ex rel. Morgan v. New Lexington*, 112 Ohio St.3d 33, 2006 Ohio 6365, P26; see also, *State ex rel. Mora v. Wilkinson*, 105 Ohio St.3d 272, 2005 Ohio 1509, P 9-10. Indeed, where S.Ct.Prac.R. X(2) permits the Ohio Civil Rules supplement the Rules of this Court, one may look to Civ.R. 12(F) for authority to grant a motion to strike. Rule 12(F) of the Ohio Civil Rules is specific that a court may strike “any pleading or material determined to be insufficient, redundant, immaterial, impertinent or scandalous.” The absence of signatures required by the Rules of this Court causes the Brief in question to be insufficient and may, therefore, be stricken.

C. Conclusion

Where *amici* Catholic League and Brunner Funeral Homes have failed to comply with the Rules governing the preparation and filing documents with this Court, Petitioners respectfully request this Court to find their Brief to be insufficient and to strike the Brief of Amicus [sic] Curiae Catholic League and Brunner Funeral Homes filed in support of Respondents.

Respectfully submitted,

Office of the Clermont County Prosecutor
Donald W. White, Prosecutor

By: Elizabeth Mason (by Jennifer H. George 0080808,
per phone authorization)
Elizabeth Mason (0051967)

PROOF OF SERVICE

I hereby certify that a copy of the foregoing Brief has been served upon John H. Metz, Esq., counsel of record for Respondents, at his office, 441 Vine Street, 44th Floor, Cincinnati, Ohio 45202-3016, and upon Patrick J. Perotti, Esq., counsel for Plaintiffs-Respondents, at his office, Dworken & Bernstein, 60 South Park Place, Painesville, Ohio 44077, by ordinary U.S. mail, postage prepaid, this 28th day of September, 2007.

Elizabeth Mason (by Jennifer H. George 0080808,
for phone authorization)
Elizabeth Mason (0051967)
Assistant Prosecuting Attorney