

**MOTION TO STRIKE REPLY BRIEF OF AMICI CURIAE
IN SUPPORT OF APPELLANT /RELATOR DAIMLERCHRYSLER LLC**

Now comes Appellee Kathleen E. Moran, by and through counsel, and moves this Court to strike the *Amici Curiae* Reply Brief in support of Appellant/Relator DaimlerChrysler LLC. The brief does not comply with the briefing requirements in the Supreme Court Rules of Practice and, therefore, should be stricken from the record.

Rule VI of the Rules of Practice of the Supreme Court covers the filing of briefs. Section 6 of Rule VI permits the filing of an *amicus curiae* brief and further states that leave is not required before filing such a brief. The rule further states “the brief shall conform to requirements of this rule, except that an *amicus* filing a brief in support of an appellant need not include the appendix required by Section 2(B)(5) of this rule.”

The rule is specific that the *amicus* brief must conform to the requirements of the rule concerning the appellant’s brief. Under Section 2 of that rule, the appellant’s brief must be filed within forty days from the date the clerk files the record. In this case, appellant’s Merit Brief was due and was filed on February 22, 2008. No *amicus* brief was filed in support of appellant’s position on or before that date.

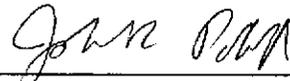
Subsection (B) of Section 6 of the Supreme Court Briefing Rules states in part “if the *amicus* brief is in support of an appellant, the brief shall be filed within the time for filing allowed to the appellant to file a merit brief, and the *amicus curiae* may file a reply brief from the time allowed to the appellant to file the reply brief.”(emphasis added) The rule does not state that an *amicus* may file only a reply brief but does require the *amicus* to comply with the filing requirements for the appellant.

In this case, the *amicus curiae* brief in support of appellant/relator DaimlerChrysler did not comply with the requirements because it was not filed within the time set forth in Section 2 of Rule VI.

Under Section 7 of Rule VI, the Court could dismiss the appeal if an appellant failed to file his brief within the timeframe of the rule. In a case such as this where the *amicus* failed to comply with the timeframe of the rule, an appropriate sanction would be to strike that brief.

Because the *amicus curiae* brief in support of appellant/relator DaimlerChrysler's position did not comply with the requirements of the Rules of Practice before the Supreme Court, it is respectfully requested that that brief be stricken from the record and be removed from the file in this case.

Respectfully submitted,

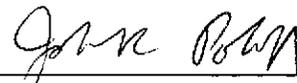


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CERTIFICATE OF SERVICE

This is to certify that a copy of this Merit Brief of Appellee Kathleen Moran was sent by ordinary US Mail on this 2nd day of May 2008 to Thomas J. Gibney / A. Brooke Phelps, attorney for Appellant DaimlerChrysler LLC, of Eastman & Smith, PO Box 10032, Toledo Ohio 43699-0032; to Assistant Attorney General Andrew Alatis, attorney for Industrial Commission of Ohio, 150 East Gay Street, 22nd Floor, Columbus Ohio 43215; Preston Garvin / Michael Hickey, attorney for *Amicus Curiae*, 181 East Livingston Avenue, Columbus Ohio 43215; Robert Minor, attorney for *Amicus Curiae*, 52 East Gay Street PO Box 1008, Columbus Ohio 43216-1008; Thomas Sant, attorney for *Amicus Curiae*, 100 South Third Street, Columbus Ohio 43215-4291.



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