

IN THE SUPREME COURT OF OHIO

State of Ohio/City of Oregon,	)	Case Number: 09-0886
	)	
APPELLEE	)	On Appeal from
	)	The Lucas County Court of Appeals
	)	Sixth Appellate District
vs.	)	
	)	Court of Appeals Case No: L-08-1029
James R. Downour	)	
	)	
APPELLANT	)	

MOTION TO STRIKE

Tim A. Dugan (0082115) (COUNSEL OF RECORD)  
 2460 Navarre Ave. Ste 6  
 Oregon, OH 43616  
 PH: (567) 249-6427  
 FAX: 419-691-3004  
**Counsel for the Appellee**

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Dan Nathan (0078532) (COUNSEL OF RECORD)  
 Jeff Goldstein (0005465)  
 520 Madison Avenue, Suite 830  
 Toledo, OH 43604  
 Phone: 419-241-6168  
 FAX: 419-241-4215  
**Counsel for Appellant**

FILED  
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 SUPREME COURT OF OHIO

Now comes Appellee, The State of Ohio, by and through counsel, Tim A. Dugan, and respectfully files this motion to strike Appellant's Memorandum in Support of Jurisdiction, filed with this Court on May 15, 2009, for a violation of Supreme Court Rule 14 §(D)(2), failure to provide service.

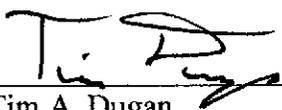
**MEMORANDUM IN SUPPORT**

Supreme Court Rule of Practice 14 §(A)(1) requires a party filing a document with the Clerk of Court to serve that document on opposing counsel. Counsel did not receive a copy of Appellant's Memorandum for Jurisdiction. Counsel, through his own search on the Clerk of Court's website, became aware of Appellant's Memorandum for Jurisdiction on June, 17, 2009, past the thirty (30) day deadline to respond to said memorandum. Appellee has been adversely affected by its failure to receive a copy of Appellant's Memorandum.

Under Rule 14 §(D)(2), this Court has two remedies; strike the document from the record, or order that the document be served and impose a new deadline for filing a responsive document. Appellee believes that Appellant's failure to provide it a copy of Appellant's Memorandum of Jurisdiction was in no means malicious and was either, 1) purely accidental, or 2) caused by the postal service losing the document in the mail.

WHEREFORE, Appellee is requesting a new deadline in which to respond to Appellant's Memorandum in Support of Jurisdiction.

Respectfully Submitted,

  
\_\_\_\_\_  
Tim A. Dugan  
Counsel for Appellee

**SERVICE**

This is to certify that a copy of the foregoing was sent via ordinary U.S. Mail this 17<sup>th</sup> day of June, 2009, to Dan Nathan, 520 Madison Ave. Suite 830, Toledo, OH 43604, Counsel for Appellant.

  
\_\_\_\_\_  
Tim A. Dugan  
Counsel for Appellee