

In the
Supreme Court of Ohio

MICHAEL DEAN SCOTT,	:	Case No. 2009-1369
	:	
Petitioner,	:	
	:	On Review of Certified Question from
v.	:	The United States District Court
	:	for the Northern District of Ohio
MARK HOUK, WARDEN	:	
	:	U.S. District Court Case
Respondent.	:	No. 4:07-cv-00753-JRA
	:	

**MOTION OF RESPONDENT MARK HOUK, WARDEN,
TO DISMISS FOR LACK OF PROSECUTION**

DAVID L. DOUGHTEN (0002847)
David L. Doughten Co., LPA
4403 St. Clair Avenue
Cleveland, Ohio 44103-1125
216-361-1112

JEFFREY J. HELMICK (0040197)
Helmick & Hoolahan
1119 Adams Street
Second Floor
Toledo, Ohio 43604-5508
419-243-3800

Counsel for Petitioner
Michael Dean Scott

RICHARD CORDRAY (0038034)
Attorney General of Ohio

BENJAMIN C. MIZER* (0083089)
Solicitor General
**Counsel of Record*

ELISABETH A. LONG (0084128)
Deputy Solicitor

MATTHEW A. KANAI (0072768)
Assistant Solicitor
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
614-466-8980

614-466-5087 fax
benjamin.mizer@ohioattorneygeneral.gov

Counsel for Respondent
Mark Houk, Warden

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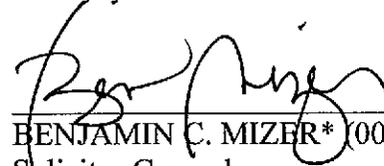
On July 29, 2009, the United States District Court for the Northern District of Ohio granted Petitioner Michael Dean Scott's motion to certify a question of state law to this Court. Certification Order in *Scott v. Houk* (N.D. Ohio, July 21, 2009), Case No. 4:07-CV-0753, at 6. Rule XVII, Section 6 of the Rules of Practice of the Supreme Court of Ohio provides that "[w]ithin 20 days after a certification order is filed with the Supreme Court, each party *shall* file a memorandum" addressing the certified question. S.Ct. R. XVII, § 6 (emphasis added). The twenty-day time limit expired on August 18, 2009. Respondent Mark Houk, Warden, timely filed his required memorandum, but Petitioner Michael Dean Scott did not file his required memorandum. Accordingly, respondent respectfully requests this Court to dismiss the case for want of prosecution.

Dismissal for want of prosecution is warranted here because this Court has taken that exact approach before. *Wrinn v. Johnson* (2009), 120 Ohio St. 3d 1483, 2009-Ohio-278. In *Wrinn*, the Sixth Circuit Court of Appeals certified a question of state law to this Court. *Wrinn v. Johnson* (6th Cir. Nov. 12, 2008), No. 07-4354, slip op. at 11. The petitioner, plaintiff-appellant at the Sixth Circuit, failed to file the preliminary memorandum required by Rule XVII. This Court dismissed the case because of petitioner's failure to prosecute. *Wrinn*, 2009-Ohio-278. Similarly in *Diamond Club v. Ins. Co. of N. Am.* (1992), 65 Ohio St. 3d 1405, the Sixth Circuit certified a question of state law to this Court, *Diamond Club v. Ins. Co. of N. Am.* (6th Cir. 1993), 984 F.2d 747. The petitioners, plaintiff-appellants at the Sixth Circuit, failed to file the preliminary memorandum required by Rule XVII, and this Court dismissed the case because of petitioners' failure to prosecute. *Diamond Club*, 65 Ohio St. 3d 1405. The situation here is identical to that in *Wrinn* and *Diamond Club*.

Because Rule XVII “unequivocally states that briefs shall be filed within twenty days of the filing of the certification order,” *Diamond Club*, 984 F.2d at 749 (Milburn, J., dissenting), the Court should dismiss this case.

Respectfully submitted,

RICHARD CORDRAY (0038034)
Attorney General of Ohio



BENJAMIN C. MIZER* (0083089)
Solicitor General

**Counsel of Record*

ELISABETH A. LONG (0084128)
Deputy Solicitor

MATTHEW A. KANAI (0072768)
Assistant Solicitor

30 East Broad Street, 17th Floor
Columbus, Ohio 43215

614-466-8980

614-466-5087 fax

benjamin.mizer@ohioattorneygeneral.gov

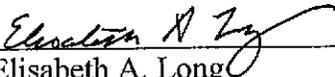
Counsel for Respondent
Mark Houk, Warden

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Motion of Respondent Mark Houk, Warden, to Dismiss for Lack of Prosecution was served by U.S. mail this 19th day of August, 2009, upon the following counsel:

David L. Doughten
David L. Doughten Co., LPA
4403 St. Clair Avenue
Cleveland, Ohio 44103-1125

Jeffrey J. Helmick
Helmick & Hoolahan
1119 Adams Street
Second Floor
Toledo, Ohio 43604-5508



Elisabeth A. Long
Deputy Solicitor