

# The Supreme Court of Ohio

65 SOUTH FRONT STREET, COLUMBUS, OH 43215-3431

ORIGINAL

CHIEF JUSTICE  
THOMAS J. MOYER

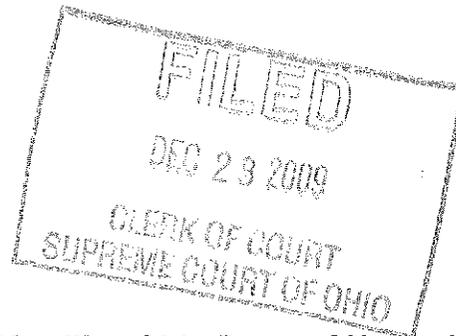
THOMAS J. MOYER  
CHIEF JUSTICE

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December 23, 2009

Fritz E. Berckmueller, Esq.  
Calfee, Halter & Griswold, LLP  
1400 KeyBank Center  
800 Superior Avenue  
Cleveland, Ohio 44114



**Re: Case No. 09-1806, *State ex rel. Merrill v. Ohio Dept. of Natural Resources***

Dear Mr. Berckmueller:

The purpose of this letter is to advise you of personal circumstances relating to the above-styled case in order that counsel have an opportunity to request that I recuse myself from participating further in the case. The circumstances are as follows:

For a number of years, my wife has owned a condominium in a community on the west side of Catawba Island.

The condominium unit faces Lake Erie and is immediately adjoined by natural rocky cliffs that extend to the water's edge. There is no beach at that part of the property.

Approximately 200 yards from our condominium unit and on a lower plane there is a small beach approximately 100 feet long. The beach is bounded on one end by an artificial rock jetty that extends approximately 50 feet into the water beyond the beach. The other end of the beach is bounded by the rocky cliffs that form the natural topography of the area. The beach is not accessible to the public by land. Neither my wife nor I use the beach.

To the best of my knowledge, neither the Board of Directors nor the members of the Condominium Association has adopted a formal position with respect to the above-styled case.

Although neither my wife nor I would be directly or indirectly affected by a decision in the case, I wanted all counsel and parties to be aware of these circumstances.

I believe I can fairly and impartially consider the facts, the law, and the opinions of the trial court and the court of appeals without respect to the circumstances I have described. However, I am providing this opportunity to all counsel to advise me whether it is in the interest of your client to request that I recuse myself from participation in the case.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Moyer", is written over a solid horizontal line. The signature is cursive and somewhat stylized.

Thomas J. Moyer

TJM:mu