

IN THE SUPREME COURT OF OHIO

**STATE OF OHIO EX REL.
RALEIGH M. STRIKER**

Relator-Appellant

vs.

**CLERK OF COURT,
DANIEL F. SMITH**

Respondent-Appellee

CASE NO. 2010-0433

**[On Appeal from Richland
County Court of Appeals
Fifth Appellate District
Case No. 2008 CA 0336]**

**RESPONDENT-APPELLEE'S MEMORANDUM IN OPPOSITION
TO RELATOR-APPELLANT'S MOTION FOR RECONSIDERATION**

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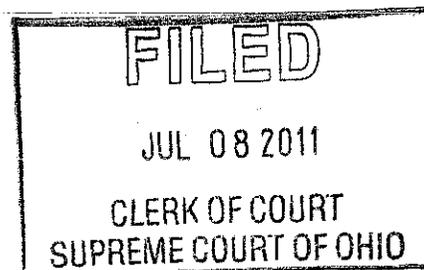


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A motion for reconsideration is governed by S.Ct.Prac.R. 11. This Court has invoked the reconsideration procedures set forth in S.Ct.Prac. R. 11 to correct decisions, which, upon reflection, are deemed to have been made in error. *State ex rel. Heubner v. W. Jefferson Village Council* (1996), 75 Ohio St.3d 381; *Buckeye Community Hope Found. v. Cuyahoga Falls* (1998), 82 Ohio St.3d 539. Or, as stated in *State ex rel. Gross v. Indus. Comm.* (2007), 115 Ohio St.3d 249, while the standard for reconsideration is yet nebulous, this Court has granted such motions when persuaded, “upon reflection,” to deem its prior decision as having been made in error due to a new fact or legal argument not considered when judgment was rendered. For the reasons set forth below, a reflection by this Court of its decision will reveal that there are no new facts or arguments presented that would give it cause to change or alter in any way the decision dated June 21, 2011.

Issue No. 1: Reasonableness of the time period within which the Respondent replied to Relator’s public records request.

In *State v. Poindexter* (1988), 36 Ohio St.3d 1, this Court held that it is not required to address and discuss in opinion form, each and every proposition of law raised by the parties. Nevertheless, for the following reasons, it is posited that this Court did in fact consider and address this issue.

In *State ex rel. Morgan v. Strickland* (2009), 121 Ohio St.3d 600, 602 this honorable court citing *State ex rel. Consumer News Servs., Inc v. Worthington City Bd. of Edn.* (2002), 97 Ohio St.3d 58, stated that the determination of whether a request for

records has been timely responded to “depends upon all of the pertinent facts and circum-

stances.” While this Court has not directly answered the question of how many days constitutes reasonableness relative to a public records response, several court of appeals throughout the state have. The general consensus is that nine to thirteen business days to respond is reasonable. See: *State ex rel. Bardwell v. Cuyahoga Cty. Bd. of Commrs.* (July 2, 2009) Cuyahoga Ct. App. Case No. 93058, 2009 Ohio 3273; *State ex rel. Striker v. Cline* (June 21, 2010) Richland Ct. App. No. 2009-CA-107, 2010 Ohio 2861; *State ex rel. Striker v. Smith* (February 8, 2010) Richland Ct. App. No. 2008-CA-336, 2010 Ohio 457 [the case being appealed herein].

Even though the Court did not specifically address the issue of what is “reasonable” - on a days to respond basis – it did apply the pertinent facts and circumstances test as articulated in *Consumer News Servs., Inc, supra* and *Morgan, supra*, when in citing *State ex rel. Toledo Blade Co. v. Toledo-Lucas Cty. Port Auth* (2010), 121 Ohio St.3d 537, it stated, at page five of its opinion: “providing the requested records to the relator in a public-records mandamus case renders the mandamus claim moot.”

Issue No. 2: Whether the decision on the merits of the case incorrectly found that the documents requested were not in the clerk’s possession.

A motion for reconsideration is to be confined to the grounds urged for reconsideration and the motion “shall not constitute a re-argument of the case.” *Buckeye Community Hope Found., supra* [Douglas dissenting]. Relator’s motion relative to this issue is premised upon essentially one of the same arguments that was initially presented to and considered by this Court.

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Issue No. 3: Whether the decision on the merits of the case addressed whether the Respondent’s response of “waiting on judge” constituted a legal exception.

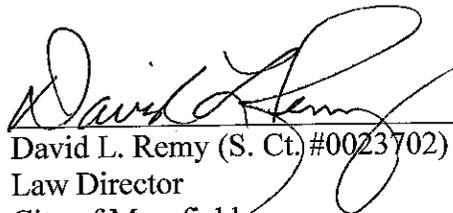
As stated above under the response to Issue No. 1, this Court is not required to address and discuss in opinion form, each and every proposition of law raised by the parties. However, it is posited that the Court did consider this fact and concluded that Respondent's reply was a legal exception when it stated at page 6 of the opinion: "At both times that Striker requested the public records, however, the clerk did not have possession of them. Instead, the judge had possession of the requested records. The clerk did not have any duty to provide Striker with copies of records that he did not possess."

Issue No 4: Whether the decision on the merits of the case incorrectly found the "12/20/06 Entry of Remand" was already in the Relator's possession when he filed his mandamus action.

Again as stated in the response to Issue No. 2, a motion for reconsideration is to be confined to the grounds urged for reconsideration and the motion shall not constitute a re-argument of the case. Relator's argument relative to this issue was argued and considered by the Court as indicated on page five of its opinion: "Striker claims that the clerk's assertion that the requested record does not exist is false because, *after this appeal was filed*, he discovered a copy of Judge Payton's journal entry date-stamped "January 1, 2007," which refers to a December 20, 2006 date, remanding the case to the court magistrate. But this journal entry was attached to Striker's mandamus complaint, which he filed in the court of appeals, so he already had obtained a copy of it, thus rendering his claim moot."

For all of the reasons set forth above, the Relator's Motion for Reconsideration should be denied.

Respectfully, submitted,

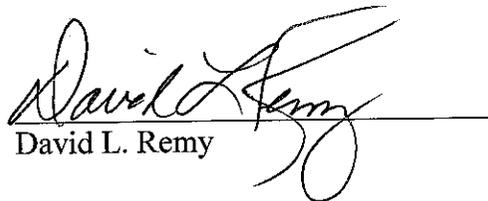


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PROOF OF SERVICE

A true copy of the foregoing Brief of Respondent-Appellee Daniel F. Smith was served on Lori A. McGinnis, Esq., Counsel for Relator-Appellant, 1209 East Main St., Ashland, OH 44805 by means of regular U.S. Mail on July 8, 2011.



David L. Remy