

ORIGINAL

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**IN THE  
SUPREME COURT OF OHIO**

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PROGRESSOHIO.ORG, INC., ET AL.,

*Plaintiffs/Appellants,*

v.

JOBSONHIO, ET AL.,

*Defendants/Appellees.*

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**PLAINTIFF/APPELLANT PROGRESSOHIO.ORG, INC.'S  
MEMORANDUM IN RESPONSE TO VICTORIA E. ULLMANN'S  
"MOTION TO WITHDRAW AS COUNSEL IN ORDER TO BE MADE A  
PARTY/APPELLANT IN THIS ACTION"  
AND  
MOTION TO STRIKE**

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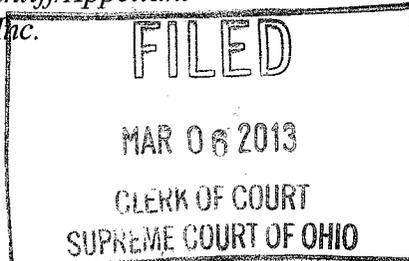
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*Counsel for Defendant/Appellee  
Ohio Governor John R. Kasich*

## MEMORANDUM

Plaintiff/Appellant, ProgressOhio.org, Inc. ("ProgressOhio") hereby responds to the "Motion To Withdraw As Counsel In Order To Be Made A Party/Appellant In This Action" filed by Victoria E. Ullmann on February 28, 2013. On February 4, 2013, ProgressOhio discharged Ms. Ullmann as its counsel. (See attached letter.) On March 1, 2013, a Notice of Substitution of Counsel was filed by Donald J. McTigue, Mark A. McGinnis and J. Corey Colombo of the law firm McTigue & McGinnis, LLC, substituting themselves as counsel for ProgressOhio in place of Ms. Ullmann and as co-counsel for ProgressOhio with Maurice A. Thompson. Attorneys McTigue and McGinnis have served as corporate counsel to ProgressOhio since its founding in 2006.

Ms. Ullmann's motion to withdraw as counsel should have been filed simply as a notice of withdrawal in accordance with S. Ct. Prac. R. 2.01(B)[". . . Any attorney who withdraws representation of a party shall file a notice of withdrawal."] and Prof. Cond. R. 1.16(a)(3) ["Subject to divisions (c), (d), and (e) of this rule, a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if any of the following applies: . . . (3) the lawyer is discharged."]. Regardless, the motion is now moot given the Notice of Substitution of Counsel filed on March 1<sup>st</sup>. Further, to the extent that Ms. Ullmann's motion is conditioning her withdrawal as counsel on the Court granting her request for intervention as a party, such conditional withdrawal is inappropriate.

The portion of Ms. Ullmann's motion seeking intervention as a party *pro se* is also not an appropriate motion. Intervention under the civil rules does not apply at the appellate level. Further, while she cites to the general provision for orders or relief under S. Ct. Prac. R. 4.01(A), the Court should consider that the requested relief is in reality intervention under Civ. Pro. R. 24,

which she also cites in her motion.

Finally, the motion should be stricken for several reasons. First, it is clear from the motion that Ms. Ullmann has a disagreement with her former client. This pending appeal is not the forum for her to take up the matter. The motion contains numerous statements concerning ProgressOhio, its interest in the pending litigation, and its agreement with Ms. Ullmann, which are inaccurate, prejudicial and highly inappropriate under the Rules of Professional Conduct. See, Prof. Cond. R. 1.6(a) ["A lawyer shall not reveal information relating to the representation of a client, including information protected by the attorney-client privilege under applicable law, unless the client gives informed consent, the disclosure is impliedly unauthorized in order to carry out the representation, or the disclosure is permitted by division (b) or required by division (c) of this rule."], R. 1.16(d) ["As part of the termination of representation, a lawyer shall take steps, to the extent reasonably practicable, to protect a client's interest. . . ."]; *See also* R. 1.16, Comment 4 ["A client has a right to discharge a lawyer at any time, with or without cause, subject to liability for payment for the lawyer's services. . . ."], R. 1.9(a) ["Unless the former client gives informed consent, confirmed in writing, a lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client."] and R. 1.9(c)(1) and (2) ["A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter do either of the following: (1) use information relating to the representation to the disadvantage of the former client except as these rules would permit or require with respect to a client or when the information has become generally known; (2) reveal information relating to the representation except as these rules would permit or requires with respect to a client."].

ProgressOhio has not given consent under Rule 1.9.

Courts may strike any pleading or material determined to be immaterial or impertinent. *See Morgan v. City of New Lexington*, 112 Ohio St.3d 1504, 2006 Ohio 6365 (2006)(citing Civ. Rule 12(F) and Supreme Court Practice Rules); *see also Hiddens v. Leibold*, 2010 Ohio 4532 (2<sup>nd</sup> Dist. 2010). Ms. Ullmann's Motion, which she used to broadcast her personal displeasure about being removed from a case by a client, is immaterial and impertinent to the Court's determinations in this matter. Further, Ms. Ullmann's Motion only serves to offer her own perceptions of unfounded allegations against a former client, which could be highly prejudicial to the case and potentially unethical as an officer of the court.

Notwithstanding, Ms. Ullmann's repeated contention that this is her case, the facts are that she was never an actual party in the litigation and ProgressOhio, her former client, despite the disagreement, remains fully committed to arguing the important issues of standing before this Court. The case is not about Ms. Ullmann.

For the reasons set forth herein, ProgressOhio respectfully moves that Ms. Ullmann's Motion to stricken.

Respectfully submitted,

  
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**CERTIFICATE OF SERVICE**

I certify that a true and accurate copy of the foregoing was served via regular U.S. mail

upon the following on the 6th day of March 2013:

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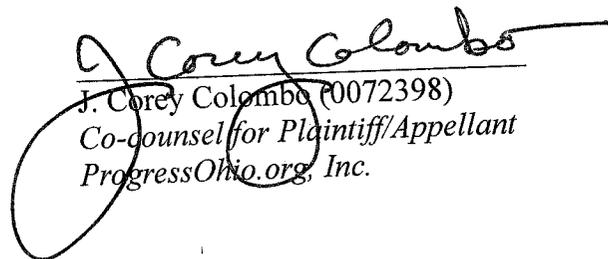
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Co-counsel for Plaintiff/Appellant  
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February 4, 2013

Victoria Ullman  
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Dear Victoria:

As you know I have been trying to meet with you to discuss the case of ProgressOhio v. Kasich regarding the JobsOhio privatization standing issue before the Ohio Supreme Court.

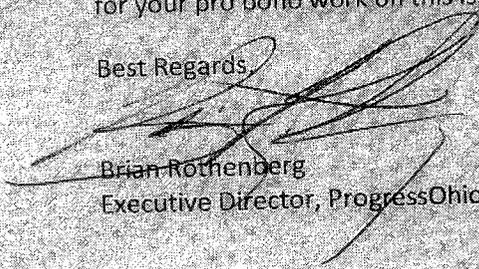
To date, although I have not been afforded the opportunity to meet and discuss the issue, it appears that you have tactical differences with your client ProgressOhio regarding the pending issue before the Ohio Supreme Court and have through email correspondence registered your concerns.

Obviously, given the correspondence I have received, it appears you do not want to represent ProgressOhio in this case going forward.

Therefore, it is mutually beneficial that we terminate our relationship.

We at ProgressOhio really do appreciate your hard work and diligence in this case and wish to thank you for your pro bono work on this issue.

Best Regards,



Brian Rothenberg  
Executive Director, ProgressOhio

PROGRESSOHIO

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