

ORIGINAL

In the  
Supreme Court of Ohio

ANA M. HAMBUECHEN,	:	Case No. 2013-1603
	:	
Respondent-Appellant,	:	On Appeal from the
	:	Stark County
v.	:	Court of Appeals,
	:	Fifth Appellate District
221 MARKET NORTH, INC. DBA	:	
NAPOLI'S ITALIAN EATERY,	:	Court of Appeals
	:	Case No. 2013CA00044
Petitioner-Appellee.	:	
	:	

REPLY BRIEF OF RESPONDENT-APPELLANT  
OHIO CIVIL RIGHTS COMMISSION

STANLEY R. RUBIN (0011671)  
437 Market Avenue North  
Canton, Ohio 44702  
330-455-5206

Counsel for Petitioner-Appellee  
221 Market North, Inc., dba  
Napoli's Italian Eatery

TODD W. EVANS (0061160)  
4505 Stephen Circle, Suite 101  
Canton, Ohio 44718  
330-430-9300

Counsel for Respondent  
Ana M. Hambuechen

MICHAEL DEWINE (0009181)  
Ohio Attorney General

ERIC E. MURPHY\* (0083284)  
State Solicitor

*\*Counsel of Record*

STEPHEN P. CARNEY (0063460)

JEFFREY JAROSCH (0091250)

Deputy Solicitors

WAYNE D. WILLIAMS (0040383)

Assistant Attorney General

30 E. Broad Street, 17th Floor

Columbus, Ohio 43215

614-466-8980

614-466-5087 fax

eric.murphy@ohioattorneygeneral.gov

Counsel for Respondent-Appellant  
Ohio Civil Rights Commission

FILED
JUN 09 2014
CLERK OF COURT SUPREME COURT OF OHIO

## TABLE OF CONTENTS

	Page
TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES .....	ii
INTRODUCTION .....	1
A. <i>Ramsdell's</i> reasoning, which used R.C. 4112.06(H)'s 30-day period for enforcement to provide a filing deadline under R.C. 4112.06(B), applies equally to service, and Napoli's failure to address R.C. 4112.06(H) is fatal.....	2
B. The Civil Rules cannot trump an incompatible statutory requirement regarding an administrative appeal, so Rule 3(A)'s one-year period for service cannot trump R.C. 4112.06's 30-day deadline.....	5
C. Napoli's remaining points do not change the outcome.....	10
CONCLUSION.....	12
CERTIFICATE OF SERVICE	

## TABLE OF AUTHORITIES

CASES	PAGE(S)
<i>Buoscio v. Bagley</i> , 91 Ohio St. 3d 134 (2001).....	7
<i>City of Cleveland v. Ohio Civil Rights Comm'n</i> , 43 Ohio App. 3d 153 (8th Dist. 1988).....	6
<i>Gaskins v. Shiplevy</i> , 74 Ohio St. 3d 149 (1995).....	7
<i>Pegan v. Crawmer</i> , 73 Ohio St. 3d 607 (1995).....	7
<i>Price v. Westinghouse</i> , 70 Ohio St. 2d 131 (1982).....	8
<i>Proctor v. Giles</i> , 61 Ohio St. 2d 211 (1980).....	9
<i>Ramsdell v. Ohio Civil Rights Commission</i> , 56 Ohio St. 3d 24 (1990).....	<i>passim</i>
<i>Tower City Props. v. Cuyahoga Cnty. Bd. of Revision</i> , 49 Ohio St. 3d 67 (1990).....	8
<b>STATUTES, RULES, AND CONSTITUTIONAL PROVISIONS</b>	
Civ. R. 1(C).....	5, 6
Civ. R. 3.....	5
Civ. R. 3(A).....	<i>passim</i>
Civ. R. 4.....	5, 6, 8
Civ. R. 4(A).....	9, 10
Civ. R. 4.1.....	7
Civ. R. 5(D).....	7
Civ. R. 6(E).....	1, 7
Civ. R. 15.....	7
Civ. R. 15(A).....	7

Civ. R. 82 .....1, 9, 11  
R.C. 4112.06 ..... *passim*  
R.C. 4112.06(B)..... *passim*  
R.C. 4112.06(H)..... *passim*  
R.C. 4112.06(I) .....11  
R.C. Chapter 2725.....7

## INTRODUCTION

Nothing in Napoli's Merit Brief overcomes the Ohio Civil Rights Commission's initial showing that R.C. 4112.06's 30-day deadline for *filing* an appeal applies equally to *initiating service* of the appeal. The Commission explained that R.C. 4112.06 admittedly does not expressly set any deadline, for filing or service. But as this Court explained, the *combination* of R.C. 4112.06(B), which requires filing and service, and R.C. 4112.06(H), which allows enforcement of Commission orders if no appeal is filed within 30 days, logically means that the filing deadline is 30 days. *Ramsdell v. Ohio Civil Rights Commission*, 56 Ohio St. 3d 24 (1990). *Ramsdell's* logic extends to service along with filing, as both equally trigger the concern that it would be absurd to have enforcement start after 30 days if an appeal could still be perfected in the future. The Commission also explained that the Civil Rules do not apply to administrative appeals when "clearly inapplicable" under a statute, so R.C. 4112.06's logical implication of a 30-day deadline for service renders inapplicable Rule 3(A)'s allowance for a year to serve.

To all this, Napoli's offers superficial responses that fail to grapple meaningfully with *Ramsdell*, R.C. 4112.06(H), and more. First, Napoli's tries to distinguish *Ramsdell* by stressing the unremarkable point that *Ramsdell's* precise holding involved filing, not service. But Napoli's does not address *at all* the Court's reasoning in *Ramsdell*, and it does not address the interaction of R.C. 4112.06(H) with (B). Second, in trying to invoke Civil Rule 3(A), Napoli's suggests that the Rules apply as an all-or-nothing package, despite this Court's settled practice of reviewing such issues case-by-case. And Napoli's own view seeks selective application of the Civil Rules, because this Court's rejection of Rule 6(E) in *Ramsdell* means that the Court will not apply *all* Civil Rules to R.C. 4112.06. Finally, Napoli's other points, such as stressing that it was "only" a few weeks late, do not change things, and Napoli's also fails to respond to other key points, such as Rule 82's effect. The Court should reverse the decision below.

- A. ***Ramsdell's* reasoning, which used R.C. 4112.06(H)'s 30-day period for enforcement to provide a filing deadline under R.C. 4112.06(B), applies equally to service, and Napoli's failure to address R.C. 4112.06(H) is fatal.**

This Court's *Ramsdell* decision shows why petitioners seeking review of a final order of the Civil Rights Commission under R.C. 4112.06 must initiate both *filing* and *service* within 30 days. To be sure, the precise issue in *Ramsdell* involved filing, not service. But everything about the Court's reasoning applies equally to filing and service. Napoli's sole response is to note that *Ramsdell* specifically involved filing. Napoli's Brief ("Br.") at 10-11. That is true, but it does nothing to distinguish the force of *Ramsdell's* logic. Napoli's failure to address that logic, or even to address the import of R.C. 4112.06(H)'s enforcement timing, is fatal to Napoli's contrary interpretation.

As the Commission's opening brief detailed fully, Commission Br. at 8-11, the *Ramsdell* Court read R.C. 4112.06(B) and (H) *together* to come up with a 30-day filing deadline, as neither section on its own provides any deadline. Division (B) requires both filing and service to initiate a case, but it says nothing about timing. It says that judicial review "shall be initiated by the filing of a petition in court . . . and the service of a copy of the said petition upon the commission and upon all parties who appeared before the commission." R.C. 4112.06(B). The court acquires jurisdiction only after judicial review has been "initiated" by filing and service and after the commission has filed a transcript of the administrative record. *Id.* Separately, division (H) sets a 30-day timeframe for when the order may be enforced, but that division says nothing directly about "filing" or "service." It says that if judicial review is not instituted "within thirty days from the service of order of the commission pursuant to this section, the commission may obtain a decree of the court for the enforcement of such order . . . ." R.C. 4112.06(H).

The Court in *Ramsdell* explained that although neither R.C. 4112.06(B) nor (H) expressly provided that filing must be in 30 days, the two parts together left no other alternative, as a logical matter. R.C. 4112.06 (B) and (H) create two mutually exclusive time periods. In the first 30 days after a final Commission order, an aggrieved complainant or respondent may initiate judicial review. In the second period, after 30 days have passed, the Commission may seek judicial enforcement of its order. This Court explained that those time periods *must* be mutually exclusive. That conclusion “necessarily follows from the practical operation of the statute,” because a Commission order may be enforced after 30 days *unless* a petition is filed. That presupposes that the petition must be filed within those first 30 days.

In particular, if that were not the case—so that the enforcement period begins after 30 days while the appeal-filing period is still open—an absurdity results. The absurdity, without the 30-day deadline for filing, would be that the Commission could obtain enforcement on day 31, thus trumping any later-filed appeal. *Ramsdell*, 56 Ohio St. 3d at 25. That is, “if either party filed a petition for review more than 30 days after service of the order, the commission could simply nullify it by requesting a decree enforcing its order.” *Id.* That of course makes no sense. The only sensible reading is that a party has a window to appeal before enforcement, and after that window has *closed*, the order may be enforced. No room exists for post-enforcement perfection of an appeal.

To be sure, as Napoli’s points out, *Ramsdell* applied this logic only to filing, as the party there filed after 30 days—but the logic applies equally to service. *First*, as a textual matter, R.C. 4112.06(H) does not refer to enforcement after 30 days if no appeal is “filed” by then; rather, division (H) allows for enforcement unless judicial review is “instituted” within 30 days. That, said *Ramsdell*, linked division (H)’s 30-day period to division (B)’s requirements for initiating

judicial review. And division (B) says that review is “initiated” by both *filing* and *service*; filing and service are twin parts of initiation. So *Ramsdell*’s linkage of (B) and (H) necessarily links the 30-day period to the totality of initiation, not just to the filing half of initiation. Indeed, R.C. 4112.06(B) expressly provides that the common pleas court does not acquire jurisdiction until *service*—jurisdiction does not arise after *filing* alone—and *Ramsdell*’s logic means that the 30-day period, allowing appeals to be perfected only before the enforcement period opens, necessarily covers both filing and service.

*Second*, that textual reading is confirmed by practical operation, as the absurdity identified in *Ramsdell* would be revived if Napoli’s were correct—that is, if a year were allowed for service. *Ramsdell* explained that it would make no sense for enforcement to begin when the possibility of an appeal still loomed. That problem still arises if service could wait for a year, even if a petitioner filed within 30 days. That is so because, again, R.C. 4112.06(B) requires *both* filing and service before a court acquires jurisdiction, so an “imperfect” appeal, with filing but not service, does not yet invoke the reviewing court’s jurisdiction. Thus, the Commission could, on day 31, seek judicial enforcement of the order—and that is more likely if, absent service, the Commission was unaware of the filing. That would create *precisely* the result that *Ramsdell* sought to avoid, namely, concurrent jurisdiction and the potential for either conflicting judgments or, if the enforcement action trumps a later appeal, a futile appeal.

Napoli’s has no response to any of this. Again, Napoli’s notes that *Ramsdell* involved filing and not service, but it ends its attempt at distinction there. Napoli’s says nothing about the interaction of divisions (B) and (H). In fact, it does not address division (H) at all. It merely includes (H) in a block quote of the statute, Napoli’s Br. at 6, and it includes (H) within a quote from the Commission’s opening brief, *id.* at 9. But nowhere does it discuss (H)’s meaning, let

alone this Court's reading of (H) in *Ramsdell*. Napoli's also does not discuss the practical problem of having an enforcement action start while the period for perfecting an appeal, under its view, would still be open. These non-responses are fatal to any attempt to distinguish *Ramsdell*, and the result is inevitable: *Ramsdell*'s logic means that service must be in 30 days.

**B. The Civil Rules cannot trump an incompatible statutory requirement regarding an administrative appeal, so Rule 3(A)'s one-year period for service cannot trump R.C. 4112.06's 30-day deadline.**

Napoli's cannot overcome the statutory result above by pointing to Civil Rule 3(A), which allows one year for service of complaints in ordinary civil cases. Napoli's seeks to apply that rule here, arguing that it is not "clearly inapplicable." Napoli's argument breaks down to two components. First, despite acknowledging in some places that application of the civil rules to administrative appeals is decided on a "case-by-case basis," Napoli's Br. at 5, Napoli's also seems to question that settled rule and insist that the Rules must apply as an all-or-nothing package. It complains that the Commission's position is "internally inconsistent" by applying Rule 4 (for clerk service) but not Rule 3 (for timing), and condemns it as a "cafeteria-style application" of the Rules. *Id.* at 13. Second, Napoli's says that *this* particular Rule, Rule 3(A), is compatible with this statute, R.C. 4112.06. Napoli's is wrong on both points.

*First*, the Court has long held that application of the rules to special proceedings applies on a "case-by-case basis," *Ramsdell*, 56 Ohio St. 3d at 27, and Napoli's contrary appeal for all-or-nothing application is mistaken. Indeed, Rule 1(C)'s plain text directs courts to apply the rules in special proceedings except "to the extent that they would by their nature be clearly inapplicable," meaning that the rules might apply to some "extent" but not in full. Thus, the *Ramsdell* Court followed Rule 1(C)'s direction when it explained that application of the Civil Rules to statutory proceedings is not all-or-nothing; "it must be decided on a case-by-case basis,

depending on the statute involved.” 56 Ohio St. 3d at 27. The “rules are not categorically inapplicable to appeals from administrative orders.” *Id.* Nor do they categorically apply, either. The Civil Rules apply “to special statutory proceedings adversary in nature unless there is a good and sufficient reason not to apply the rules.” *Id.* (quoting *City of Cleveland v. Ohio Civil Rights Comm’n*, 43 Ohio App. 3d 153, 155 (8th Dist. 1988), in turn quoting the Staff Notes to the July 1, 1971 amendment to Civ. R. 1(C)).

At some points in its brief, Napoli’s seems to accept this well-settled principle. After citing cases that find the Civil Rules applicable, Napoli’s Br. at 5, Napoli’s “acknowledges that is not necessarily the end of the analysis,” and properly cites *Ramsdell*’s teaching that the question is “decided on a ‘case-by-case basis, depending on the statute involved.” Napoli’s Br. at 5 (quoting *Ramsdell*, 56 Ohio St. 3d at 27). That acceptance of the rule is correct.

Yet, at other points in its brief, Napoli’s surprisingly resists the principle of applying the Rules case-by-case. Napoli’s argues that the Commission is “internally inconsistent” by rejecting the application of Rule 3(A) regarding a year for service, while accepting the lower courts’ established rule (which Napoli’s accepts also) that Rule 4 applies to require service to be through the clerk of courts. Napoli’s Br. at 13. Napoli’s criticizes the Commission’s approach—which is the Court’s approach as well—as “cafeteria-style application of the Civil Rules.” *Id.*

Most important, Napoli’s Proposition of Law treats the Rules as a package, asserting that “[b]ecause the Rules of Civil Procedure are not ‘clearly inapplicable’ to a petition for judicial review . . . under R.C. 4112.06, a petitioner has one year to perfect service . . .” *Id.* at 4. That framing of the issue is wrong, before even reaching the result, as the question is not whether “the Rules” apply to cases under R.C. 4112.06, but instead whether *the Rule at issue*, Rule 3(A), with its allowance of a year for service, is compatible with R.C. 4112.06.

Notably, the Court’s practice in applying the case-by-case principle shows that the issue is whether a *particular* Civil Rule applies, not merely whether the Rules apply as a package to one statute but not another. For example, in *Ramsdell*, the Court did not merely ask if the Civil Rules applied all-or-nothing to R.C. 4112.06 appeals. Instead, the Court first assessed whether Rule 4.1’s method-of-service requirements applied, 56 Ohio St. 3d at 26, and it then separately assessed whether Rule 6(E)’s three-day-mail rule applied, *id.* at 27.

Likewise, in the special-proceeding context of habeas corpus, the Court has found that some Rules apply, while others do not. The Court has held that Rule 15 does apply in habeas. *Gaskins v. Shiplevy*, 74 Ohio St. 3d 149, 150 (1995). It explained, “[w]e do not find Civ. R. 15(A) clearly inapplicable to habeas cases. Therefore, we hold that the court of appeals should have allowed the motion to amend . . . .” But the Court has explained that Rule 5(D) regarding service is clearly inapplicable in habeas, even if other rules apply: “[W]hatever the applicability of a particular Civil Rule, it is evident that R.C. Chapter 2725 prescribes a basic, summary procedure for bringing a habeas action.” *Buoscio v. Bagley*, 91 Ohio St. 3d 134, 135 (2001) (quoting *Pegan v. Crawmer*, 73 Ohio St. 3d 607, 608-09 (1995)). The habeas statute’s statutory procedure precluded application of *that* particular rule. Therefore, Napoli’s cannot somehow reconcile its categorical proposition of law with this Court’s precedent by arguing that the case-by-case approach refers only to assessing each special proceeding scheme for application of the Rules as a whole.

Moreover, in criticizing the Commission as improperly seeking “cafeteria-style application” of the Rules, and in claiming a consistent approach, Napoli’s forgets that the Court’s *rejection* of some Rules in *Ramsdell* necessarily means that Napoli’s, too, seeks selective application of the Rules. *See* Napoli’s Br. at 13. That is, Napoli’s claims consistency because it

seeks, within this case, to apply both Rule 4, requiring service through the clerk, and also Rule 3(A), giving one year to do so. And it says the Commission is “inconsistent” for accepting Rule 4 but not Rule 3(A). But even granting Napoli’s consistency *within* this case, it cannot truly seek categorical application of all Rules to R.C. 4112.06 appeals, because the Court has already rejected use of some Rules. In other words, if the Court viewed its rule as statute-specific rather than rule-specific, and had to pick all-or-nothing as to R.C. 4112.06, *Ramsdell* would mean that no Civil Rules apply, so Napoli’s could not achieve application of Rule 3(A).

All this means that Napoli’s is mistaken in suggesting that *all* Civil Rules should apply to R.C. 4112.06 appeals; it can win only if it shows that Rule 3(A) *in particular* applies.

*Second*, Napoli’s cannot show that Rule 3(A) is compatible with R.C. 4112.06, as allowing a year for service is not consistent with R.C. 4112.06. The Court declines to apply a Civil Rule to a special statutory proceeding when “a good and sufficient reason” exists for not applying the rule. *Ramsdell*, 56 Ohio St. 3d at 27 (citing *Price v. Westinghouse*, 70 Ohio St. 2d 131 (1982)). The Court has also explained that the “civil rules should be held to be clearly inapplicable only when their use will alter the basic statutory purpose for which the specific procedure was originally provided in the special statutory action.” *Tower City Props. v. Cuyahoga Cnty. Bd. of Revision*, 49 Ohio St. 3d 67, 69 (1990).

Here, application of the rule essentially repeats the statutory analysis of R.C. 4112.06 in Part A above: If the Commission is right—and it is—in urging that R.C. 4112.06 provides a 30-day deadline for initiating an appeal, including filing and service, then of course it is inconsistent to extend that statutory 30-day period to 365 days by having a Rule trump the statute. A Rule can never trump a statute—but can only complement it—under the principle that Rules do not apply when “clearly inapplicable,” because any conflict renders a Rule inapplicable. Napoli’s

can win only if it shows that the Rule supplements, but does not conflict with, the statute, and that in turn requires showing that the statute does not set a 30-day service deadline in the first place. Because Napoli's cannot do so on R.C. 4112.06's own terms, as shown in Part A, it cannot then turn to Rule 3(A) to supply a deadline different from the statutory one.

In addition, the Rule cannot alter the statutory standard here because this is a jurisdictional issue, and application of the Civil Rules is particularly limited in the context of a jurisdictional statute. Rule 82 provides: "These rules shall not be construed to extend or limit the jurisdiction of the courts of this state." The Court has explained that Rule 82's limit on extending jurisdiction means specifically that the Civil Rules may not grant additional time *for service* beyond the time established by a jurisdictional statute. *Proctor v. Giles*, 61 Ohio St. 2d 211, 212 (1980). Here, applying Civil Rule 3(A) to extend the time for service would not only violate R.C. 4112.06, but would also violate Rule 82's command not to use the Rules that way.

Finally, Napoli's particular insistence on "consistency" here between application of Rule 4(A), to require clerk service, and Rule 3(A), to allow a year for service, is irrelevant and mistaken. It is irrelevant because, as shown above, each Rule is assessed on its own. Just as the Rules are not assessed as an all-or-nothing package, these two rules are not somehow a "mini-package" that must stand or fall together. And Napoli's comparison of the two is mistaken, because the two Rules are in dramatically different positions relative to R.C. 4112.06. Rule 4(A), as to clerk service, is easily not "clearly inapplicable" to R.C. 4112.06 in providing a method of service. The statute is silent on method of service, so Rule 4(A) is complementary, not conflicting. Rule 3(A), by contrast, conflicts with R.C. 4112.06 as to the timing of service, as a one-year period conflicts with the 30-day period.

Nevertheless, if the Court is inclined toward the view that the clerk-service issue and the one-year-for-service issue should perhaps be yoked together, the Court should still hold for the Commission and reject the one-year-for-service Rule, and it should allow for the clerk-service issue to be re-opened. That is, if the two Rules stand or fall together, it would be better for *neither* Rule to apply to R.C. 4112.06 appeals. Ordinary mail service, completed in 30 days, is better than clerk service in a year, both as a matter of textual reading and practical results. That is not to say that the Court should reach that result here, either substantively or procedurally. Substantively, as noted above, Rule 4(A)'s clerk-service method is compatible with the statute. More important, procedurally, the clerk-service issue is not before the Court, as Napoli's agrees that service must be through the clerk. Napoli's Br. at 6; App. Op. at ¶ 6 (quoting Napoli's assignment of error as asserting that an appeal under R.C. 4112.06 must "be served through the clerk of courts within one year, not thirty days."). Thus, at most, the Court could indicate in dicta that the issue is an open one, for lower courts to assess in the future. The important thing is that Napoli's request for a year to perfect its appeal must be rejected.

**C. Napoli's remaining points do not change the outcome.**

While the statute and case law above resolve the issue, the Commission briefly notes that Napoli's raises other points that are irrelevant to the issue presented. Napoli's repeatedly stresses, in an apparent appeal to equity, that it did send the Commission its appeal papers by ordinary mail within the 30-day period, and that its belated service through the clerk was only a few weeks later. *See, e.g.*, Napoli's Br. at 1 (noting mailing), 2 ("Napoli's requested service through the clerk about 35 days after it filed its petition," or 46 days after the Commission order), 14 (same). But neither fact matters, because the legal rule it seeks undeniably would allow a party to serve the Commission *only* through the clerk, without the earlier mailing, and to

do so after eleven months, not six weeks. And of course, the Court has long held that jurisdictional requirements are strictly enforced, so there is no exception for being just a little late. Napoli's also complains about the time the Commission spent resolving its case administratively, but that, too, is irrelevant. *Id.* at 14-15. The issue is the statutory time for appeal, not for agency resolution, and moreover, R.C. 4112.06(I) specifically calls for the appeal process in common pleas court to be "expeditious." And Napoli's attacks the Commission for "lying in wait" before moving to dismiss the defective appeal, but all the Commission did was move to dismiss once a defect occurred. And since the defect was jurisdictional, the Commission could not waive it even if it had wanted to do so.

Napoli's also says, wrongly, that the Commission will not be in limbo for a year as to whether an appeal will proceed, as it will know within 30 days, due to the filing. Napoli's Br. at 15. That is wrong for two reasons. First, if a party files within 30 days, but does not notify the Commission at all at that time—as Napoli's view would allow—the Commission could properly petition for enforcement under R.C. 4112.06(H) while unaware of the filing. Second, even if the Commission learns of the filing, it still will not know if the party will ever serve properly, and thus whether jurisdiction will be perfected. After all, R.C. 4112.06(B) requires service before jurisdiction is proper, and it is not the Commission's choice to enforce that jurisdictional limit, as it is a limit the General Assembly places on the courts.

In contrast to addressing these many irrelevant issues, Napoli's fails to address issues that are relevant. As explained above, Napoli's does not address *Ramsdell's* reasoning, and it does not address R.C. 4112.06(H). In addition, Napoli's does not address Civil Rule 82's express reference to jurisdictional rules. *See* above at 9; *see* Commission Br. at 19-20.

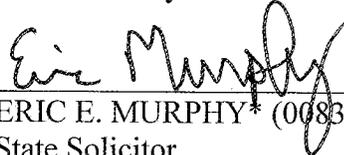
In sum, Napoli's offers no sound reason to grant a year to perfect its appeal under R.C. 4112.06, and it fails to overcome the Commission's showing that the statute requires a 30-day deadline for initiating proper service. The statute should be enforced, and Napoli's appeal should be dismissed.

### CONCLUSION

For these reasons and those in the Commission's opening brief, the Court should conclude that the 30-day time limit in R.C. 4112.06(H) applies to the service requirement of R.C. 4112.06(B), and it should accordingly reverse the Fifth District Court of Appeals and reinstate the common pleas court's dismissal of Napoli's petition.

Respectfully submitted,

MICHAEL DEWINE (0009181)  
Ohio Attorney General

  
ERIC E. MURPHY\* (0083284)

State Solicitor

*\*Counsel of Record*

STEPHEN P. CARNEY (0063460)

JEFFREY JAROSCH (0091250)

Deputy Solicitors

WAYNE D. WILLIAMS (0040383)

Assistant Attorney General

30 E. Broad Street, 17th Floor

Columbus, Ohio 43215

614-466-8980

614-466-5087 fax

eric.murphy@ohioattorneygeneral.gov

Counsel for Respondent-Appellant  
Ohio Civil Rights Commission

## CERTIFICATE OF SERVICE

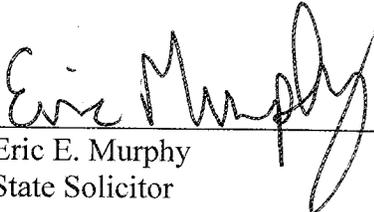
I certify that a copy of the foregoing Reply Brief of Respondent-Appellant Ohio Civil Rights Commission was served by regular U.S. mail this 9th day of June, 2014 upon the following:

Stanley R. Rubin  
437 Market Avenue North  
Canton, Ohio 44702

Counsel for Petitioner-Appellee  
221 Market North, Inc., dba  
Napoli's Italian Eatery

Todd W. Evans  
4505 Stephen Circle, Suite 101  
Canton, Ohio 44718

Counsel for Respondent  
Ana M. Hambuechen

  
Eric E. Murphy  
State Solicitor