

**IN THE  
SUPREME COURT OF OHIO**

**PAULETTA HIGGINS,** : **CASE NO. 2015-0076**  
**Relator** : This is an Original Action  
**vs.** : **MOTION FOR LEAVE TO FILE**  
 : **RESPONSE TO MOTION FOR**  
**HAMILTON COUNTY DEPT., CPS,** : **DEFAULT JUDGMENT**  
**et al.** :  
**Respondents** :

**MOTION**

Now comes Marjorie Davis, through undersigned counsel, and respectfully requests Leave of Court to file a Response to Relator's Motion for Default Judgment for the reasons more fully set forth in the Memorandum below, incorporated herein by reference.

Respectfully submitted,

JOSEPH T. DETERS,  
HAMILTON COUNTY PROSECUTOR

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ATTORNEYS FOR RESPONDENTS

## MEMORANDUM

### I. PROCEDURAL HISTORY

Relator filed this Petition, captioned Emergency Extraordinary Writ, Motion to Compel, on January 15, 2015. On February 4, 2015, Respondents, Hamilton County Juvenile Court and Hamilton County Juvenile Court Magistrate Anthony filed a Motion to Dismiss Relator's Petition. Relator's Petition also named Marjorie Davis as a Respondent. Ms. Davis is an attorney Guardian Ad Litem in the Hamilton County Public Defender's Office. Ms. Davis was served with Relator's Petition on January 20, 2015.

### II. ARGUMENT

Ms. Davis' failure to timely respond to Relator's Petition was the result of mistake, inadvertence, and/or excusable neglect. When determining if neglect is excusable, Courts must take into account the surrounding facts and circumstances and, "be mindful of the admonition that cases should be decided on their merits, where possible, rather than procedural grounds." *State ex. rel Lindenschmidt v. Butler Cty. Bd. Of Commrs.*, (1995) 72 Ohio St. 3d. 464, 466, 640 N.E. 2d 1343, 1345, citing, *Marion Production Credit Assn. v. Cochran* (1988), 40 Ohio St.3d 265, 271, 533 N.E.2d 325, 331

At the time Respondents Hamilton County Juvenile Court and Magistrate Brenda Anthony filed their Motion to Dismiss, Respondent Marjorie Davis had not yet sought representation from the Hamilton County Prosecutor's Office. Ms. Davis desires to be represented by counsel in this matter, but simply had not communicated that desire to the Hamilton County Prosecutor's Office prior to the filing of the Motion to Dismiss on behalf of the other Respondents. Given these circumstances, Ms. Davis' failure to respond was the result of result of mistake, inadvertence, and/or excusable neglect. Further, none of the parties to this action will be prejudiced by this Court granting Ms. Davis leave to respond.

### III. CONCLUSION

For the foregoing reasons, Respondent Marjorie Davis respectfully requests this Court grant her Leave of Court to file a Response to Relator's Motion for Default Judgment.

Respectfully submitted,

JOSEPH T. DETERS,  
HAMILTON COUNTY PROSECUTOR

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing has been sent to Paulette Higgins at P.O. Box 3063, Orlando, Florida 32801 and 5245 Cinderlane Parkway, Apt. 383, Orlando, FL 32801 by regular U.S. Mail this 23<sup>rd</sup> day of February, 2015.

/s/ Pamela J. Sears  
Pamela J. Sears, 0012552  
Assistant Prosecuting Attorney