

ORIGINAL

IN THE SUPREME COURT OHIO

Carlean Dates,	:	Case No. 2015-0238
	:	
Petitioner,	:	
	:	
vs.	:	Sworn Motion to Strike David A. Wallace Motion to Dismiss Writ of Mandamus Complaint
OHIO FIRST APPELLATE COURT OF APPEALS	:	
et al	:	
	:	
and	:	
	:	
CARPENTER, LIPPS & LELAND LLP	:	
David A. Wallace	:	
	:	
Respondents	:	
	:	

**CARLEAN DATES MOTION TO STRIKE RESPONDENT'S DAVID A WALLACE
MOTION TO DISMISS WRIT OF MANDAMUS COMPLAINT FOR LACK OF PROCESS
AND LACK OF DUE PROCESS**

Now Comes, Carlean Dates, Sui Juris In Propria Persona respectfully summing a motion to strike Respondent David A Wallace Motion to dismiss Writ of Mandamus Complaint for insufficiency of process and lack of due process. The reasons are more fully stated in accompanying Memorandum In Support.

Carlean Dates
 Carlean Dates , Sui Juris In Propria Persona
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 Sui Juris, In Propria Persona

FILED
 MAR 19 2015
 CLERK OF COURT
 SUPREME COURT OF OHIO

MEMORANDUM IN SUPPORT OF MOTION TO STRIKE

I. INTRODUCTION

This action is brought in the name of Carlean Dates who is petitioning this Court for a writ of mandamus directing Respondents Ohio First Appellate Court of Appeals and David A Wallace to comply with their legal obligations, pursuant to the Ohio Public Records Act, to timely provide to the Relators requested public records.

The Petitioner is filing this Motion to Strike David A Wallace Motion to Dismiss because the Petitioner received Respondent's Motion to Dismiss on or about March 16, 2015(see affidavit Exhibit A) which was the date the answer had to be filed with the Clerk of Court of the Supreme Court. I, the Petitioner then sent an answer to Court via FedEx on March 17, 2015 on day after receipt of motion to dismiss but it was late because of insufficiency of process. I could not have sent the response any faster.

The right of Petitioner "to know what their government is up to" is the primary rationale behind the Ohio Public Records Act and the law of the land. The Appellate Court Judges and it Attorney(s) superior knowledge of the law, and witnessing a constitutional wrong or committing a constitutional wrong would possibility equate a fraudulent violation of rights, privileges and immunities, and could constitute a perjury of oath, an a injury to the rights of said Petitioner which could constitutes an actionable offense with no immunity, by failing to act upon a ministerial duty.

The failure to be properly processed with motion to dismiss and the Court dismissing Petitioners Complaint would be a violation of Petitioner due process, a "Bill of Attainder" and would deny Petitioner the right to redress. If the failure of the Respondent attorney(s) to properly process the petitioner was a mistake the court should strike respondents motion to dismiss for lack of due process and lack of proper process.

II. LACK OF DUE PROCESS

Due Process is defined as the exercise of government power under the rule of law with due regard for the essential and fundamental fairness of individuals. There are two types of due process challenges, procedural and substantive, which are based on the Due Process Clauses of the 5th and 14th Amendments to the U.S. Constitution. Generally, due process requires that an individual be given notice and an opportunity for a hearing before the state may permanently deprive someone of life, liberty, or property. Moreover, it has been held that an agency may not impose even a temporary suspension without providing the core requirements of due process: adequate notice and a hearing. In *Anderson National Bank v. Lueck* (1944) 321 U.S. 233, 246, the court held: "It is error to dismiss a claim on the merits without notice, a hearing, and an opportunity to respond. *Fuentes v. Shevin*, 407 U.S. 67, 81 (1972). At times, the Court has also stressed the dignitary importance of procedural rights, the worth of being able to defend one's interests even if one cannot change the result. *Carey v. Piphus*, 435 U.S. 247, 266-67 (1978); *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980); *Nelson v. Adams*, 120 S. Ct. 1579 (2000)

The United States Supreme Court has held that impingements of constitutional rights are, without variation, subject to the strictures of "due process" or notice and opportunity to be heard prior to their enactments. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950); *Anti-Fascist Committee v. McGrath*, 341 U.S. 123 (1951); *Goldberg v. Kelly*, 397 U.S. 254 (1970), *Fuentes v. Shevin*, 407 U.S. 67 (1972); *Owen v. City Of Independence*, 445 U.S. 622 (1980); *Carey v. Piphus*, 435 U.S. 247, 259 (1978); *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). "The principle stated in this terse language lies at the foundation of all well-ordered systems of jurisprudence. Wherever one is assailed in his person or his property, there he may

defend, for the liability and the right are inseparable. This is a principle of natural justice, recognized as such by the common intelligence and conscience of all nations.

Notice. "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. This may include an obligation, upon learning that an attempt at notice has failed, to take "reasonable follow up measures" that may be available. The notice must be sufficient to enable the recipient to determine what is being proposed and what he must do to prevent the deprivation of his interest. Ordinarily, service of the notice must be reasonably structured to assure that the person to whom it is directed receives it. Such notice, however, need not describe the legal procedures necessary to protect one's interest if such procedures are otherwise set out in published, generally available public sources.

The intent of procedural due process is to ensure that the government acts in a way that is fair and reasonable when making decisions that affect private individuals and that its actions are not arbitrary. This protection is guaranteed by the 5th Amendment to the United States Constitution made applicable to the states by the 14th Amendment

Hearing. "Some form of hearing is required before an individual is finally deprived of a property [or liberty] interest. "This right is a "basic aspect of the duty of government to follow a fair process of decision making when it acts to deprive a person of his possessions. The purpose of this requirement is not only to ensure abstract fair play to the individual. Its purpose, more particularly, is to protect his use and possession of property from arbitrary encroachment. Thus, the notice of hearing and the opportunity to be heard "must be granted at a meaningful time and in a meaningful manner.

The doctrine of substantive due process holds that the Due Process Clause not only requires basic procedural rights, but that it also protects substantive rights. These are general privileges that reserve the individuals the power to possess or to do certain things, which includes freedom of speech, religion, association, movement, and privacy. Substantive due process is intended to protect the public from arbitrary governmental action, regardless of the procedures used to implement it. Substantive due process is related to the concept of fairness beyond the constitution and is decided mostly through a Fundamental Rights/Compelling Need Test.

In this Case the Petitioner was never served the Motion For Dismissal by Ohio First Appellate Court of Appeals as of March 18, 2015.

III. THE DISMISSAL WOULD BE A BILL OF ATTINDER

ONLY sworn testimony & evidence can be presented in court. Anything else is "Bill of Attainder," NOT permitted under the U.S. Constitution (Article 1, Sections 9 & 10). That is why all judges & public servants are SWORN TO SUPPORT the U.S. Constitution, NOT interpret it.

In order to make any ruling, order or determination the court must prove jurisdiction first and then prove they have examine the relevant documentary evidence produced before the trial court. Ultra vires act under 28 U.S.C. 1652 THIS COURT HAS THE DUTY TO APPLY OHIO LAW in accordance with the controlling decision of the highest state court *Canada v. Trentham Corp.*, 665 F. 2d 515, 516 (5th 1981)

The judges of the Ohio and a fiduciary are bound to make full disclosure of material facts known to him and not known to the other party (*Connelly v. Balkwill* (N.D. Ohio 1959), 83 Ohio Law Abs. 513 [11 O.O.2d 289]). If the Supreme Court dismisses this complaint without the Petitioner receiving service, notice or hearing it would be a "Bill of Attainder,"

CONCLUSION

Where the Petitioner has never received the Respondent Motion for Dismissal it should be stricken because if the Court grants the Respondent motion it would be a violation of her due process and a "bill of attainder" by not allowing the Petitioner notice, hearing, redress or access to the court.

Carlean Dates
Carlean Dates, living woman

State of Ohio)
County of Hamilton) ss Jurat

On this day 19th of March, in the year 2015, the foregoing document was sworn and signed in my presence by Carlean Dates, and gave evidence to fact that this is the person appearing before the Notary Public Judy K. Miles.

Judy K. Miles
Notary Public

May 7, 2018
My commission expires



CERTIFICATE OF SERVICE

On 19 day of, March, 2015, the undersigned, served a copy of

the foregoing by U.S. MAIL to the following parties:

**CARPENTER LIPPS & LELAND LLP
280 PLAZA SUITE 1300
280 NORTH HIGH STREET
COLUMBUS, OHIO 43215
Phone: (614) 365-4100
Attorney(s) for Respondent
David A Wallace**

**Assistant Attorneys General
Constitutional Offices Section
30 East Board Street, 16th Floor
Columbus, OH. 43215
Phone: (614) 466-2872
Attorney(s) for Respondents
First Appellate Court**

By: Carlean Dates
Carlean Dates, living woman
c/o 12062 Hazelhurst Drive
Cincinnati, Ohio near [45240]
non-domestic

IN THE SUPREME COURT OHIO

Carlean Dates,	:	Case No. 2015-0238
	:	
Petitioner,	:	
vs.	:	Carlean Dates Affidavit In Support Of Motion To Strike Respondent's
OHIO FIRST APPELLATE COURT OF APPEALS	:	David A. Wallace Motion To
et al	:	Dismiss For Insufficient Process
	:	
and	:	
	:	
CARPENTER, LIPPS & LELAND LLP	:	
David A. Wallace	:	
	:	
Respondents	:	
	:	

Introductory Certification

The Undersigned, Carlean Dates, hereinafter "Affiant" does herewith solemnly swear, declare, and state that:

1. Affiant state that I am competent and being of the age of majority affirm that my "yes" be "yes" and my "no" be "no" and Affiant is competent to testify and state the matters set forth herein and is willing to testify with first hand knowledge, all contents herein are true, correct, and complete in accordance with Affiant's knowledge, understanding, and intent., and,
2. Affiant is over the age of 21 and competent to testify to things set forth in this document if called upon, and
3. Affiant has personal knowledge of the facts stated herein.

Plain Statement of Facts

4. Affiant received respondent's motion to dismiss on or about March 16, 2015 the date the response to respondent's motion was due.
5. It is impossible to receive the a motion the day it is due and file a response in a city a hour and half away
6. The law requires notice and adequate time to respond

7. If Affiant Complaint is dismiss without a chance to respond it will do her irreparable harm by not being able to have due process and redress of violation against her constitutional rights

Carlean Dates
Carlean Dates

State of Ohio)
County of Hamilton) ss Jurat

On this day 19th of March, in the year 2015 A.D., the foregoing Affidavit was sworn and signed in my presence by Carlean Dates, and gave evidence to fact that this is the person appearing before the Notary Public Judy K. Miles

My commission expires May 7, 2018.

Judy K. Miles _____ 3-19-2015
Notary Public Date

Seal

