

IN THE SUPREME COURT OF OHIO

State ex rel. DONALD CASTER	:	
	:	CASE NO. 2014-1621
Relator,	:	
	:	
vs.	:	
	:	ORIGINAL ACTION IN
CITY OF COLUMBUS, OHIO, et al.	:	MANDAMUS (Public Records)
	:	
Respondents	:	

APPLICATION FOR DISMISSAL WITHOUT PREJUDICE

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Pursuant to Supreme Court Practice Rule 4.05, Relator Donald Caster respectfully requests that the Court dismiss this action without prejudice.

When this Court granted an alternative writ in this matter, it set a briefing schedule that made Relator's reply brief due seven days after the Respondent's brief. Through the neglect of Relator's counsel, Relator's reply brief, intended to rebut new arguments in the Respondent's brief, was not submitted until ten days after the Respondent's brief, and was accordingly rejected. Counsel's neglect was compounded by a failure to request oral argument pursuant to Rule 17.02(A). Although the Court has the discretion to order oral argument *sua sponte*, it has not done so as of this filing, so it appears that no oral argument will be held in this matter.

Relator's counsel had previously advised continuing to pursue this action based on the possibility that the harm to Relator's claim from the lack of a reply brief could be mitigated through argument. At that time, counsel erroneously believed oral argument would be scheduled by the Court in this case. As of this week, Relator has been advised for the first time that the neglect as to the reply brief will not be mitigated by argument.

The Relator believes that due to the harm to his claim from the lack of an opportunity to respond to the new issues raised in the Respondent's brief through either a reply brief or oral argument, and in light of the great importance of the legal question at issue in this case to his professional work, it would be best not to continue with this action. Relator brought this action in the public interest as well as the interest of his work on behalf of the Ohio Innocence Project, and it presents a matter of critical importance to many Ohioans affected by the rule of law at issue. The Relator believes both the work of the Ohio Innocence Project and the public interest would be best served by a decision of this Court following complete briefing on the merits and, in the Court's discretion, oral argument.

At this stage, this appears possible only through the refiling of this action following dismissal (or, if dismissal without prejudice is not granted, through the presentation of the same legal issue in a subsequent action), potentially with different legal counsel.

Accordingly, Relator asks that the Court dismiss this original action without prejudice.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of December 2015, a copy of the foregoing

Application for Dismissal without Prejudice was served by regular U.S. Mail upon:

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