

**IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ATHENS COUNTY**

STATE OF OHIO, ex rel. Margarita
Nguyen, et al.,

Relators,

vs.

Opha Lawson, et al.,

Respondents.

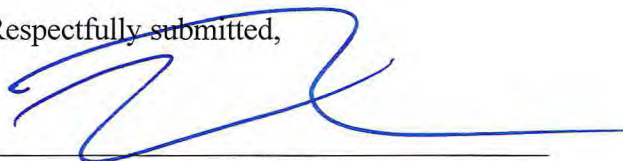
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CASE NO.: 24CA0011

MOTION TO STRIKE RELATORS' MERIT BRIEF

Now come Respondents, by and through counsel, to respectfully request that this Court strike Relators' Merit Brief which was filed on May 16, 2025. Relators never served this brief. Moreover, since filing the brief, Relators' have filed an Amended Complaint—*naming a new party*—which moots any previous filings, including that brief. The reasons for this motion are set forth in the accompanying Memorandum in Support.

Respectfully submitted,



Thomas N. Spyker (0098075)

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Counsel for Respondents Opha Lawson, Tony

Dunfee and Gregg Clement

MEMORANDUM IN SUPPORT

On May 16, 2025, it appears that Relators filed a Merit Brief in this case. However, Relators Counsel, Attorney Joshua Brown, *never served that Brief*. And this is not the first time Attorney Brown has failed to serve filed papers in this and other matters. As demonstrated below, Attorney Brown has routinely failed to serve critical documents throughout this case and related litigation. It appears that Attorney Brown is intentionally playing service games, or he is recklessly ignorant of his service obligations. Either way, this conduct needs to stop and the filings in this case need to be properly served, so that all parties can reach final resolution on this very serious and impactful case.

Further complicating the service issue, after filing the unserved Merit Brief, Relators Amended their petition, naming a new party. Of course, that amendment would supersede and moot the pre-amendment brief. And naturally, all Respondents, and especially the new party, are afforded time to review and answer, or otherwise plead in response to the amended filing.

At bottom, Attorney Brown's conduct has created a procedural boondoggle in a case that has already been remanded on procedural grounds. To correct the issues created, Respondents respectfully request an order that:

1. Strikes the Merit Brief filed on May 16, 2025.
2. Establish a new briefing schedule based on the filing of the Amended Petition that allows the parties to submit evidence relative to the newly added party.¹
3. Admonish Attorney Brown for the conduct and orders that future filings are properly served on all counsel of record via email.

Alternatively, and to the extent that the unserved May 16 Brief stands, Respondents request at least fourteen (14) days from the issuance of any order on this Motion to file their Brief.

¹ As discussed more below, there are service issues with the Amended Petition as well. Notwithstanding, the undersigned anticipates having responsive pleadings filed for all Respondents, including the new party, no later than June 18, 2025—28 days from the filing of the Amendment.

I. RELEVANT BACKGROUND

A. Relators file a frivolous case in Athens County Common Pleas and obtain a TRO by failing to follow the notice requirements outlined in Civil Rule 65(A).

Litigation over these issues was initiated on April 22, 2024, when Relators filed a Complaint and request for a temporary restraining order/preliminary injunction in the Athens County Court of Common Pleas. (See Docket for Athens County Case No. 24CI0118, attached hereto as **Exhibit A**). Two days later, the Trial Court issued an *ex parte* TRO. (See Entry, filed 4/24/2024). But this order was erroneous for numerous reasons, which Respondents' Counsel (Attorney Spyker) pointed out to Relators' Counsel (Attorney Brown). (See generally, Spyker Affidavit attached hereto as **Exhibit B**; see also, 5/3/2024 Email from Spyker to Brown, attached as **Exhibit B-1**).

Among those issues, and relevantly here, Attorney Brown made absolutely no effort to comply with Civil rule 65(A)'s notice provisions prior to seeking and obtaining the *ex parte* TRO. (See *id.*; see also Athens County Case No. 24CI0118, Motion for TRO, filed 4/22/2024).² Given the numerous deficiencies with their Athens County Case, Realtors voluntarily dismissed that matter on May 3, 2024. (See Athens County Case No. 24CI0118, Notice of Voluntary Dismissal).

B. Relators initiate the instant action without serving Respondents' Counsel and then file a Motion for a TRO without serving it (despite agreeing to serve documents via email).

April 26, 2024—while the Athens County Case was still pending—Relators initiated this action by filing their original petition. (See Petition for Quo Warranto). The original petition named the same respondents and contained the same allegations. (See *id.*; compare to Athens County Case

² The Rule requires “the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give notice and the reasons supporting his claim that notice should not be required.” Civ.R. 65(A). Relator's Counsel made no efforts at Notice and did not submit any affidavit. (See Athens County Case No. 24CI0118, Motion for TRO filed 4/22/2024).

No. 24CI0118, Complaint, filed 4/22/2024). Despite this, Attorney Brown never attempted to serve a courtesy copy of the Original Petition to Respondents' Counsel. (*See* Spyker Affidavit, Ex. B).

On May 6, 2024, Attorney Spyker entered his Notice of Appearance in this case. (*See* Spyker NOA). That same day, Attorney Spyker emailed Attorney Brown and attempted preemptively to address any future service or notice issues:



Joshua,

Attached is my NOA for the Fourth District Case. Please direct further service to my attention, in addition to Jonathan. Note, we do not plan on serving this via mail, in addition to this email. Repeatedly, please save the paper/postage and serve me via email.

If you need anything else in the meantime, please let me know.

-Tom

(Attached hereto as **Exhibit B-2**) (emphasis added). *Three minutes later*, Attorney Brown agreed to move forward in this case with email service:



Thank you. I am glad to go forward with email only communications.
-josh

Josh Brown, Esq.
Attorney at Law
3979 Main Street
Hilliard, OH 43026
Phone: (614) 284-4394
Fax: (614) 388-3947
<https://url.us.m.mimecastprotect.com/s/jLoUCxk7r4hROR8Nf8XXa8>
josh.brown@smallbusinesscounselors.com

(Attached hereto as **Exhibit B-3**). Attorney Brown's agreement should have been the end of service issues in this case. It was not.

Indeed, the next issue occurred *three days later* on May 9, 2024, when Relators filed a Motion for TRO/Preliminary Injunction with this Court. (See Motion for TRO). Attorney Brown never served that Motion to Attorney Spyker. (See Email attached hereto as **Exhibit B-4**). Instead, the Motion purports to serve the parties via mail the day before, on May 8, 2024. (See Motion for TRO at p. 24).

Attorney Spyker inquired about the lack of service:

Re: State ex rel Margarita Nguyen et al v. Opha Lawson, et al., Fourth District Case No. 2...



Thomas N. Spyker

To Joshua Brown; Jonathan Robe

Reply Reply All Forward

Thu 5/9/2024 6:10 PM

You replied to this message on 5/9/2024 6:47 PM.



Motion for TRO and Preliminary Injunction.pdf
3 MB

Josua,

Per our emails below, I thought we had agreed to serve each other electronically moving forward. Did I misunderstand something?

Thomas N. Spyker - 614-232-2420 (phone)
Reminger Co., L.P.A.

From: Joshua Brown <josh@joshbrownesq.com>

Sent: Monday, May 6, 2024 4:26:06 PM

To: Thomas N. Spyker <TSpyker@reminger.com>

Subject: Re: State ex rel Margarita Nguyen et al v. Opha Lawson, et al., Fourth District Case No. 24-CA-11



Thank you. I am glad to go forward with email only communications.

- josh

(Ex. B-4) (emphasis added). Attorney Brown never responded to this inquiry.

C. As this case is litigated the first time, Attorney Brown continually refuses to properly serve Relators' filings on counsel of record.

On May 13, 2024, Respondents filed a Motion to Dismiss the Petition, and a Motion to Strike the request for preliminary injunctive relief. (See Motion to Dismiss; See Motion to Strike). On May 21, 2024, Relators filed their responses to the pending motions. (See MIO to Motion to Dismiss; RIS TRO/Preliminary Injunction). Attorney Brown served these documents to attorney Spyker via email but apparently failed to serve Counsel for Nelsonville (Attorney Robe), apparently getting Attorney

Robe's email wrong.³ Attorney Spyker promptly informed Attorney Brown that the email for Attorney Robe was incorrect:

RE: Filed today: State ex rel. Nguyen et al v. Lawson et al. 24CA011



Thomas N. Spyker

To Joshua Brown; Jonathan Robe



You replied to this message on 5/28/2024 1:52 PM.

Reply

Reply All

Forward



Tue 5/21/2024 1:26 PM

Counsel,

Your email for Johnathan is incorrect, I have deleted and included his correct email on this reply.

I have forwarded him your papers.

Thomas N. Spyker - 614-232-2420 (phone)
Reminger Co., L.P.A.

From: Joshua Brown <josh@joshbrownesq.com>

Sent: Tuesday, May 21, 2024 1:14 PM

To: Thomas N. Spyker <TSpyker@reminger.com>; Jonatan.Robe@robelaoffice.com

Subject: Filed today: State ex rel. Nguyen et al v. Lawson et al. 24CA011

Dear All,

Attached, please find papers filed today in State ex rel. Nguyen et al v. Lawson et al. 24CA011.

-josh

(Attached hereto as **Exhibit B-5**). Attorney Brown never responded substantively to this inquiry.

On June 26, 2024, Relators requested a status conference. (See Motion for Status Conference, filed 6/26/2024). Again, Attorney Brown failed to serve this filing on Attorney Robe. And again, Attorney Spyker informed Attorney Brown of the issue:

RE: Filing tomorrow: Nyugen et al v. Lawson et al. 24CA011



Thomas N. Spyker

To Joshua Brown; Jonathan Robe



2024-06-25 - Mot Status conf.pdf
145 KB



Reply

Reply All

Forward



Tue 6/25/2024 4:19 PM

Thanks,

But for the "fake" hyperbole we'd have joined the request...

Also, your last several emails have had Mr. Robe's email incorrect. I have pointed this out before. Please make sure your contact sheet/COS gets updated to actually serve him moving forward.

Thomas N. Spyker - 614-232-2420 (phone)
Reminger Co., L.P.A.

³ Attorney Robe duly noticed his appearance as counsel of record for Proposed Intervenor City of Nelsonville on April 29, 2024. (See Robe NOA, filed 4/29/2024).

(See 6/25/2024 Email attached hereto as **Exhibit B-6**). Again, Attorney Brown never responded to this issue.

The requested status conference never occurred because on July 1, 2024, this Court issued a Decision finding in favor of Respondents. (See Decision and Judgment Entry). The matter was then appealed to the Ohio Supreme Court. (See Notice of Appeal, filed 7/3/2024). Attorney Brown did not serve Attorney Robe with that Notice, nor did he even attempt to. (See 7/2/2024 Email, attached hereto as **Exhibit B-7**).

D. New court, same issues: The proceedings on appeal to the Supreme Court of Ohio.

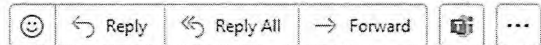
On July 11, 2024, Relators filed their merit brief in the Supreme Court of Ohio—and again Attorney Brown failed to serve Attorney Robe. (See 7/11/2024 Email, attached hereto as **Exhibit B-8**). Attorney Spyker again addressed this issue:

RE: Filed today: Nguyen et al. v. Lawson et al. 24-960



Thomas N. Spyker

To Joshua Brown
Cc Jonathan Robe; T'Lisa Dent



Thu 7/11/2024 8:06 PM

Joshua,

A couple of things:

1. This brief appears to be untimely, under S.Ct.Prac. 6.02(B) which provides for briefing *after* the underlying record is filed with the High Court. This procedural requirement matters some, as citations to the underlying record are impacted. That said, I do not see any real reason to move to strike it (although the Court may do that sua sponte). But I do need to clarify the timeline for my response. I intend to file it within 30 days of the record being filed, per S.Ct.Prac 16.03(A)(2). Let me know if you agree with my proposed timeline.
2. You continue to leave Mr. Robe off service emails or serve him at the incorrect email address. When the Fourth District dismissed the case, your motion to disqualify was implicitly denied. Regardless, as counsel who appeared on the case, Mr. Robe should be served, and served properly. This is not the first time I have pointed this out. My hope is that the continued issues are inadvertent and will be corrected.
3. It has come to my attention that Ms. Nguyen removed the original January 22, 2024, meeting minutes from the City building at some point, and has never returned them. Obviously the original and official meeting minutes are City property, and the City has a duty to maintain the original. Please have your client return these. If it is easier, they can be mailed/Fed Ex'd to my attention at 200 S. Civic Center Drive, Suite 800, Columbus, Ohio 43215.

Thank you for your attention to these matters.

Best,

Thomas N. Spyker - 614-232-2420 (phone)
Reminger Co., L.P.A.

(*Id.*) (emphasis added).⁴

Ultimately, the High Court reversed and remanded this matter, on procedural grounds, for further proceedings before this Court. (*See* Judgment Entry from Supreme Court of Ohio).

E. On remand, Attorney Brown decides he does not need to serve his Merit Brief—at all.

On March 12, 2025, Respondents Opha Lawson, Tony Dunfee, and Greg Clement answered Relators' Complaint. (*See* Respondents' Answer). On April 15, 2025, Relators moved for leave to amend their petition. (*See* Motion to Amend). The proposed Amendment added a new party to this proceeding. (*Id.*). On April 17, 2025, a Magistrate's Order was issued setting forth an evidence submission and briefing schedule. (*See* Magistrate's Order, issued 4/17/2025)

On May 15, 2025, this Court allowed the Amended Petition and ordered that it "be filed within 20 days of the journalization of this entry." (*See* Entry Granting Motion to Amend). The next day, on May 16, 2025, Petitioner filed their Merit Brief. (*See* Petitioners' Merit Brief). ***But Attorney Brown did not serve this filing to either Attorney Spyker or Attorney Robe.*** (*See* Spyker Affidavit, Ex. B; *see also* Robe Affidavit, attached hereto as Exhibit C). Attorneys Spyker and Robe only learned of the filing via review of the docket. (*Id.*).

Further confusing the issues here, on May 21, 2025, Relators filed their First Amended Complaint. (*See* Amended Complaint).

II. ARGUMENT

Relators' Merit Brief should be stricken for two reasons. First, it was filed before Relator's filed their Amended Petition—the pre amendment brief is moot and Respondents—***including an***

⁴ *Spoiler alert:* The issues continued. It is now clear that Attorney Brown's failure to serve filings is more than inadvertent omission.

entirely new party—have not answered. Second, the Brief was never served. And the service games must stop.

A. Relator’s Amended Petition adds a new party and necessitates a reset in the briefing schedule.

It is axiomatic that an “amended complaint supersedes and replaces the original complaint.” *Recovery Funding, LLC v. Spiers*, 10th Dist. Franklin No. 19AP000274, 2020-Ohio-364, ¶ 28, citing *Hidey v. Ohio State Hwy. Patrol*, 116 Ohio App.3d 744, 751, 689 N.E.2d 89, 93 (10th Dist.1996); *see also Weiler v. DLR Group*, 8th Dist. Cuyahoga No. 112091, 2023-Ohio-1221, ¶ 14. As such, “[t]he substitution of an amended petition for an earlier one ordinarily constitutes an abandonment of the earlier pleading and a reliance upon the amended one.” *Id.*, quoting *Wrinkle v. Trabert*, 174 Ohio St. 233, 188 N.E.2d 587 (1963).

Here, as outlined above, Relators filed their Merit Brief on May 16, 2025. The Amended Petition was filed May 21, 2025. Obviously this amended filing moots out the prior briefing. *See Spiers, supra*.

And the amendment here is not merely procedural—an entirely new party has been added to this action. And Attorney Brown has made no effort to even serve that new party. (*See* Amended Petition). This being an original action, all Respondents, and certainly the new party, are entitled to time to answer the Amended Petition and assert affirmative defenses to the same after receiving proper service. *City of E. Cleveland v. Dailey*, 8th Dist. Cuyahoga No. 108873, 2019-Ohio-4267, ¶ 3, fn. 1 (“Original actions in a court of appeals are civil in nature, and the Ohio Rules of Civil Procedure apply, unless inapplicable.”). Further, evidence was submitted for this case before the addition of the new party, obviously a schedule must be established to submit evidence related to that new party.

Further, this Court's own local rules dictate that original actions are governed by the Civil Rules. See Loc.R. 16(A). Accordingly, Respondents have at least 28-days from service to file an answer or other responsive pleading, as provided under Civil Rule 12. *See Dailey, supra*; see also Loc.R. 16(A).

As such, Respondents respectfully request an Order striking the Merit Brief and the establishment of a new briefing schedule in line with the Amended Petition.⁵ Alternatively, and to the extent this Court determines the Merit Brief is properly filed notwithstanding the above argument, Respondents request fourteen (14) days from the issuance of any decision on this Motion to file their response Brief. Notably, there were conversations held prior to the filing of the Amended Petition between the lead Relator and the new party listed in the Amended Petition. These conversations may have evidentiary value, but the new party first needs time to answer and then provide such evidence to the Court.

B. Even absent the amendment issue, Attorney Brown never served the Merit Brief, and thus it should be stricken.

Attorney Brown is either playing games on service, designed to disrupt the fair adjudication of this game, or he is woefully ignorant of his service obligations. Either way, this has gone on long enough. The Merit Brief should be stricken for lack of service. Further Attorney Brown should be admonished for his conduct—whether intentional or not—and order to serve all copies of filings via email, as he previously agreed to. (*See Ex. B-3*).

Of course, service of filings is not optional, the Rules require it: “[c]opies of all documents filed by any party and not required by these rules to be served by the clerk shall, at or before the time

⁵ As mentioned, Attorney Brown has made no effort to serve the new party, Ms. Saul. (*See Amended Petition*). Nevertheless, without waiving those issues, Respondents do intend to file their responsive pleadings to the Amended Petition on or before June 18, 2025—28 days from the *filing* of that document.

of filing, be served by a party or person acting for the party on all other parties to the appeal.” App.R. 13(B). And when a filing is not properly served, the correct remedy is striking that filing. *See Rick's Foreign Exchange Co. v. Greenlee*, 2d Dist. Montgomery No. 26096, 2014-Ohio-4505, ¶ 13.

Here, Attorney Brown *never* served the Merit Brief, via email or regular mail. (*See* Spyker Affidavit, Ex. B; see also Robe Affidavit, Ex. C). Respondents only received it by checking the docket. And this comes after a long history of Attorney Brown not serving, or not adequately serving documents. (*See* Ex. B1-B8).

This has to stop. Had the Merit Brief been the first service issue, it could have been easily excused as a mistake. But Attorney Brown has made the failure to serve a habit in this case, and it has gone too far. The Rules of this Court (and every court in Ohio) require that filed papers be served on the other side. See App.R 13(B). The Merit Brief was never served and thus, it should be stricken. *See Rick's Foreign Exchange Co. v. Greenlee*, 2d Dist. Montgomery No. 26096, 2014-Ohio-4505, ¶ 13. And finally, Attorney Brown needs a reminder to comply with the Rules moving forward. Accordingly, Respondents ask for the same.

III. CONCLUSION

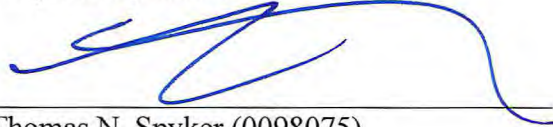
For the reasons outlined above, Respondents respectfully request an order that:

1. Strikes the Merit Brief filed on May 16, 2025.
2. Establish a new briefing schedule based on the filing of the Amended Petition that allows the parties to submit evidence relative to the newly added party.
3. Admonish Attorney Brown for the discovery conduct and orders that future filings are properly served on all counsel of record via email.

Alternatively, and to the extent that the unserved May 16, 2025, Brief stands, Respondents request at least fourteen (14) days from the issuance of any order on this Motion to file their Brief.

[signature on following page]

Respectfully submitted,



Thomas N. Spyker (0098075)

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*Counsel for Respondents Opha Lawson, Tony
Dunfee and Gregg Clement*

CERTIFICATE OF SERVICE

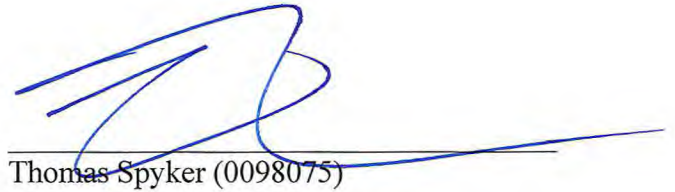
The undersigned hereby certifies that I electronically filed the foregoing on the 3rd day of June, 2025 with the Clerk of the Courts and copies were served on all counsel of record:

Joshua J. Brown, Esq.

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Counsel for City of Nelsonville



Thomas Spyker (0098075)