

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

JOHN DOE AND JANE DOE, AS THE )	CASE NO.: 2:08 CV 575
NATURAL PARENTS AND NEXT )	
FRIENDS OF THEIR MINOR CHILD, )	JUDGE GREGORY FROST
JAMES DOE, )	
Plaintiffs, )	MAGISTRATE JUDGE KING
vs. )	<b><u>DEFENDANT JOHN FRESHWATER'S</u></b>
MOUNT VERNON CITY SCHOOL )	<b><u>RULE 56(f) MOTION FOR EXTENSION</u></b>
DISTRICT BOARD OF EDUCATION, ET )	<b><u>OF TIME TO FILE A MEMORANDUM</u></b>
AL., )	<b><u>IN OPPOSITION TO PLAINTIFFS'</u></b>
Defendants. )	<b><u>MOTION FOR PARTIAL SUMMARY</u></b>
	<b><u>JUDGMENT OR IN THE ALTERNATIVE</u></b>
	<b><u>TO SUPPLEMENT HIS MEMORANDUM</u></b>
	<b><u>IN OPPOSITION</u></b>

NOW COMES Defendant, John Freshwater, by and through his trial attorneys, Robert H. Stoffers and Jason R. Deschler of the law firm of Mazanec, Raskin, Ryder & Keller Co., L.P.A., and pursuant to Fed. R. Civ. P. 56(f), hereby requests this Court for an extension of time to file his Memorandum in Opposition to Plaintiffs' Motion for Partial Summary Judgment or in the alternative to supplement his Memorandum in Opposition upon the completion of his testimony within the pending related Administrative Termination Hearing under Ohio Revised Code §3319.16 and the transcription thereafter. In accordance with S.D. Ohio Civ. R. 7.2(d) and 7.3(a), the parties have conferred and Plaintiffs do not agree to this extension.

As this Court is aware, an Administrative Hearing, pursuant to O.R.C. 3319.16 regarding the termination of John Freshwater by the former Defendant, Mount Vernon School District Board of Education commenced October 1, 2008. The Administrative Hearing has been continuing on and off since October 1, 2008 with a hiatus from May 2009 until October 2009 due to a mandamus action before the Supreme Court of Ohio.

Fed. R. Civ. P. 56(f) states:

**(f) When Affidavits Are Unavailable.** If a party opposing the motion shows by affidavit that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

- (1) deny the motion;
- (2) order a continuance to enable affidavits to be obtained, depositions to be taken, or other discovery to be undertaken; or
- (3) issue any other just order.

In the within case, unique circumstances exist regarding the related Administrative Hearing. Attorney R. Kelly Hamilton, John Freshwater's Administrative Hearing counsel and counsel prosecuting John Freshwater's counter-claim herein, in presenting evidence in the Administrative Hearing, strategically chose to have John Freshwater testify in defense of his termination by the Mount Vernon School District Board of Education. *See Exhibit A, Affidavit of Jason R. Deschler.* John Freshwater's testimony in the Administrative Hearing began on December 8, 2009 and is scheduled to continue on December 10 and 11, 2009. *Id.* John Freshwater's Administrative Hearing testimony from December 8, 10 and 11 is critical to a full and complete defense of Plaintiffs' Motion for Partial Summary Judgment. *Id.*

Ultimately, Defendant Freshwater will be prejudiced by not being able to use his Administrative Hearing Testimony from December 8, 10 and 11 in defense of Plaintiffs' Motion for Partial Summary Judgment, as his testimony encompasses the entirety of the events not only leading up to his termination from the District but surrounding the Plaintiffs' claims against him. Defendant Freshwater will be further prejudiced by not being able to use his Administrative Hearing Testimony from December 8, 10 and 11 in defense of Plaintiffs' Motion for Partial Summary Judgment due to the fact that Plaintiffs may use or distinguish the December 8, 10 and 11 Administrative Hearing Testimony within their Reply Brief, without Defendant Freshwater

having an opportunity to demonstrate how his December 8, 10 and 11 Administrative Hearing Testimony affects the defense of Plaintiffs' Motion for Partial Summary Judgment.

In addition, Plaintiffs also cited and relied upon other previous testimony from the Administrative Hearing within their Motion for Partial Summary Judgment. It was thought that over 4000 pages of the Administrative Hearing transcript could be adequately reviewed in preparation for an Opposition Brief. However, with the amount of testimony to review and the intervening Thanksgiving Holiday, a full analysis of the transcript could not be completed. The portions of the transcript reviewed thus far have yielded testimony which is important in the defense of Plaintiffs' Motion. It is anticipated that the remaining portions of the Administrative Hearing transcript will be of assistance in preparing an Opposition Brief.

Based on the foregoing, Defendant Freshwater is not able to present facts essential to fully and completely oppose Plaintiffs' Motion for Partial Summary Judgment. Defendant Freshwater requests an extension of 21 days or until December 31, 2009 to file his Memorandum in Opposition to Plaintiffs' Motion for Partial Summary Judgment. The 21 day extension will also allow adequate time for the Administrative Hearing transcript to be completed. In the alternative, Defendant Freshwater requests to supplement his Memorandum in Opposition to Plaintiffs' Motion for Partial Summary Judgment with John Freshwater's testimony from the Administrative Hearing dates of December 8, 10 and 11 by December 31, 2009.

The within Motion is being filed in the interest of justice and not to delay the proceeding.

WHEREFORE, Defendant John Freshwater respectfully requests this Court issue an order granting him a 21 day extension until December 31, 2009 to respond to Plaintiffs' Motion for Partial Summary Judgment, or in the alternative, an order allowing Defendant Freshwater to supplement his Memorandum in Opposition to Plaintiffs' Motion for Partial Summary Judgment

with his testimony from the Administrative Hearing dates of December 8, 10 and 11 by December 31, 2009

Respectfully submitted,

MAZANEC, RASKIN, RYDER & KELLER CO., L.P.A.

*s/ Robert H. Stoffers*

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*Trial Attorneys for Defendant John Freshwater*

**CERTIFICATE OF SERVICE**

I hereby certify that on December 9, 2009, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all registered parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

*s/ Robert H. Stoffers*

ROBERT H. STOFFERS (0024419)

JASON R. DESCHLER (0080584)

*Trial Attorneys for Defendant John Freshwater*

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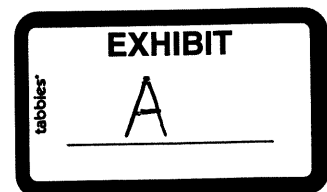
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DISTRICT BOARD OF EDUCATION, ET )	
AL., )	

Defendants.

State of Ohio, County of Franklin, ss:

Now comes Jason R. Deschler, who being first cautioned and sworn deposes and states as follows:

1. I am an attorney for Defendant John Freshwater, I am competent to testify as to facts set forth in this affidavit, and I have personal knowledge of the facts in the affidavit.
2. Attorney R. Kelly Hamilton, John Freshwater's Administrative Hearing counsel and counsel prosecuting John Freshwater's counter-claim herein, in presenting evidence in the Administrative Hearing, strategically chose to have John Freshwater testify in defense of his termination by the Mount Vernon School District Board of Education beginning on December 8, 2009.
3. John Freshwater's testimony in the Administrative Hearing is scheduled to continue on December 10 and 11, 2009.
4. John Freshwater's Administrative Hearing testimony from December 8, 10 and 11 is critical to a full and complete defense of Plaintiffs' Motion for Partial Summary Judgment.



FURTHER AFFIANT SAYETH NAUGHT.

*Jason R. Deschler*

Jason R. Deschler

Sworn to before me and subscribed in my presence this 9 day of December, 2009.

*Maube K. Mor*

Notary Public

My commission expires

7/18/13  
*mm*



**Maube K. Mor**  
**Notary Public, State of Ohio**  
**My Commission Expires 07-18-2013**