



**Attorney General
Betty D. Montgomery**

April 30, 2001

VIA FAX AND REGULAR MAIL

Nicholas Pittner, Esq.
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215-4291

Re: Dale R. DeRolph, et al. v. State of Ohio, et al.

Dear Nick:

I regret that you felt compelled to write the letter I received from you today. As you know, late last summer on August 11, in response to your request for interrogatories we shared with you our position that discovery was not appropriate in an appellate proceeding and that nothing in the Court's order required or suggested discovery. We think that position has been supported in the Court's order of January 25 responding to Plaintiffs' motion of December 8, 2000 seeking progress reports and the appointment of a special master. Perhaps more importantly, you have been on notice since August of our position with respect to discovery and have taken no action whatsoever. Your silence for over eight months coupled with the Court's order certainly entitled us to the presumption that you concurred in our view. To raise these issues at the eleventh hour is unfair to all concerned.

Let me reiterate our concerns regarding formal discovery. First, we see no indication in the Court's order or otherwise that the Civil Rules of discovery apply. This is a matter on appeal to the Ohio Supreme Court, not a matter set for trial. Second, the Court's order does not contemplate discovery. After DeRolph I, the Court remanded the case to the trial court where we engaged in extensive discovery. Here the Court has not. Third, by its very nature of setting a simultaneous deadline and filing date of June 15th, the Court's order appears to contemplate a concise filing, not prolonged discovery.

Moreover, as you are abundantly aware from your monitoring of the activities of the legislature, our clients are at present working extremely hard to meet the Court's June 15th deadline. The Court's deadline has already caused the General Assembly to shorten the normal budget process by two weeks. I hope you would agree that to disrupt this process further, whether by burdensome document requests or depositions,

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is not in the public's best interest. Given the current budget climate coupled with the demands of the *DeRolph* decision this is obviously an extraordinarily difficult time.

You have asked us to reconsider these concerns, however, I think you would agree you have no right, nor we any obligation, to base our decision on your artificial deadline. Your document requests were received on April 19.¹ Even presuming there was an obligation to respond, such response would not be due before May 17. Similarly, I received your "public records" requests (most of which are an exact replica of your document requests) last Thursday. Even assuming they are appropriate, responses are due in a "reasonable" amount of time. You yourself said it would take "several weeks" to gather the documents responsive to the document requests. As always, the State will respond to appropriate public records requests.

Finally, if it is your intention to take this question to the Court, as you have repeatedly threatened, then so be it. We will be prepared to respond to any motion filed. We hope, however, that you reconsider your actions and adopt a position more in line with what we believe the Court expects of the parties.

Very truly yours,

Betty D. Montgomery
Attorney General



Mary Lynn Readey
Assistant Attorney General
Education Section, Chief
30 East Broad Street, 16th Floor
Columbus, Ohio 43215

MLR:tcs

¹Citing the Federal Rules of Civil Procedure for some inexplicable reason.