



**NAILAH K. BYRD**  
**CUYAHOGA COUNTY CLERK OF COURTS**  
1200 Ontario Street  
Cleveland, Ohio 44113

**Court of Appeals**

**MOTION TO...**  
**April 3, 2017 12:06**

By: MATTHEW J. MARKLING 0068095

Confirmation Nbr. 1030170

STATE OF OHIO, EX. REL., BRIAN J. ESSI

CA 16 104659

vs.

CITY OF LAKEWOOD, OHIO

**Judge:**

**Pages Filed: 5**



With respect to the **Memorandum in Opposition to the Motion to Compel Discovery**, Essi first brings to this Honorable Court's attention the fact that he has a typographical error in the last sentence in footnote 8 of the Motion to Compel, which should read, "While the March 9, 2017 Judgment Entry of this Honorable Court mandates an in camera review of all alleged non-public records, it does **[not]** alleviate Lakewood of its duty to respond to the outstanding request for production of non-privileged documents and electronically stored information." Having addressed this typographical error, Essi respectfully submits that an immediate status conference is necessary to discuss whether he may be granted additional time to reply to the Memorandum in Opposition to the Motion to Compel Discovery.

With respect to the **Motion to Stay Discovery Responses**, Essi respectfully submits that an immediate status conference is necessary to discuss the following issues: (1) whether the filing of the motion to stay discovery violates the March 9, 2017 Judgment Entry, which orders that: "All parties shall cooperate to ensure that the [case management] schedule is maintained;" (2) whether the motion to stay discovery is an improper attempt to circumvent the motion for protective order requirements of Civ.R. 26(C); (3) whether the case management schedule needs to be amended; and (4) whether Essi may be granted additional time to respond to the Motion to Stay Discovery Responses.

With respect to the **Motion for Judgment of the Pleadings**, Essi respectfully submits that an immediate status conference is necessary to discuss the following issues: (1) whether the filing of a motion for judgment on the pleadings violates the case management schedule as set forth in the March 9, 2017 Judgment Entry; (2) whether Essi is entitled to discovery to demonstrate that Lakewood Records Custodian Kevin M. Butler actually understood and now understands the public records requests at issue (a) as they were served upon Lakewood Records

Custodian Butler by Essi, (b) as explained to Lakewood Records Custodian Butler by Essi during court mandated mediation sessions, (c) as explained to Lakewood Records Custodian Butler by Essi in two face-to-face meetings as an outcome of court mandated mediation, (d) as explained to Lakewood Records Custodian Butler by Essi in multiple communications, and (e) as understood by someone in Kevin M. Butler's unique position since he, at all relevant times herein, was performing the following governmental functions: public records custodian, city law director, advisor to the mayor, advisor to city council members, communications strategist, lead negotiator, policy maker, top coordinator of due diligence on the hospital transaction and outside consultants, liaison between and among all parties to the hospital transaction, and the person having possession and/or knowledge of every public record at issue in this lawsuit; (3) whether the case management schedule needs to be amended; and (4) whether Essi may be granted additional time to respond to the Motion for Judgment on the Pleadings.

With respect to the **Motion to Extend Briefing Deadline for Motion for Summary Judgment**, Essi respectfully submits that an immediate status conference is necessary to discuss the following issues: (1) whether Lakewood has cooperated, in good faith, to ensure that the case management schedule is maintained in light of the fact that Lakewood has engaged in absolutely no discovery from the filing of this action on June 24, 2016, to today – i.e., April 3, 2017; (2) whether the written discovery contemplated by Lakewood is ever permissible with respect to the party making public records requests; (3) whether Lakewood can schedule the deposition of Essi prior to the May 1, 2017 deadline in light of the fact that Essi has no objection to his deposition being scheduled prior to May 1, 2017; (4) whether the case management schedule needs to be amended; (5) whether Essi may be granted additional time to respond to the Motion to Extend Briefing Deadline for Motion for Summary Judgment; and (6) whether the admission by

Lakewood that it has already identified “tens (and possibly hundreds) of thousands of documents”<sup>2</sup> that it has not produced to Essi, but could possibly be responsive to his public records requests, demonstrates – among other things – that Lakewood is capable of meeting this Honorable Court’s order that: “By May 1, 2017, Lakewood shall comply with Essi’s requests by preparing and releasing an ‘Index of Records Supplied, Supplied with Redactions, or Withheld’ along with the appropriate records to Essi and filing a copy of the Index with the court. The Index shall specify by record request each and all records released, released with redactions, or withheld.” March 9, 2017 Judgment Entry.

Based on the foregoing, Essi respectfully requests either an immediate in-person or telephonic status conference with Lakewood and this Honorable Court to address the issues set forth above.

Respectfully submitted,

/s/ Matthew John Markling

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*Attorneys for Relator Brian J. Essi*

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<sup>2</sup> Motion to Extend Briefing Deadline for Motion for Summary Judgment at 2.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing will be sent via email and the court's electronic filing system on April 3, 2017, to the following:

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