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**ORIGINAL**

IN THE OHIO COURT OF CLAIMS  
STATE OF OHIO

DAVID A. BENTKOWSKI

Plaintiff,

vs.

OHIO LOTTERY COMMISSION

Defendant.

) CASE NO. 2014-00651  
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) JUDGE PATRICK M. McGRATH  
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**MOTION FOR ENLARGEMENT OF TIME TO FILE BRIEF AND EVIDENCE IN  
OPPOSITION TO THE OHIO LOTTERY COMMISSION'S  
MOTION FOR SUMMARY JUDGMENT**

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David A. Bentkowski, through his undersigned counsel, respectfully moves this Court for a 21-day enlargement of time to file his brief and evidence in opposition to the Ohio Lottery Commission's Motion for Summary Judgment for the reasons set forth in the attached memorandum and affidavits.

Respectfully submitted,

  
BRENT L. ENGLISH  
Law Offices of Brent L. English  
820 West Superior Avenue, 9<sup>th</sup> Floor  
Cleveland, Ohio 44113-141  
(216) 781-9917  
(216) 781-8113 (fax)  
[benglish@englishlaw.com](mailto:benglish@englishlaw.com)  
Sup. Ct. Reg. 0022678  
*Attorney for Plaintiff, David A. Bentkowski*

## MEMORANDUM

The Ohio Lottery Commission filed a motion for summary judgment on June 1, 2015. Plaintiff has been given until June 24, 2015 to file his brief in opposition and a non-oral hearing is scheduled for June 26, 2015. Plaintiff needs additional time to complete three depositions which are essential to his ability to oppose the Lottery Commission's motion for summary judgment.

Plaintiff's deposition was scheduled for June 10, 2015. However, Plaintiff's wife unexpectedly went into labor at about 5:00 a.m. on June 10, 2015, necessitating rescheduling of the deposition. Three depositions of Ohio Lottery Commission employees were scheduled for June 17, 2015 but were continued at the Commission's request. Counsel are working on new dates.

To facilitate the three depositions that Plaintiff needs, he filed an unopposed motion to extend the discovery cutoff on May 21, 2013 and requested an enlargement of the discovery period to June 30, 2015. That motion was granted on June 14, 2014.

Plaintiff is prepared to complete the three depositions by June 30, 2015 (the new discovery deadline), provided the Lottery Commission's counsel is available. Plaintiff will need transcripts of those depositions, which will take ten (10) days to provide. Thus, he respectfully requests that he be granted until July 15, 2015 to file his brief and evidence in opposition to the pending motion for summary judgment.

Ohio R. Civ. Proc. 56(F) pertinently provides as follows:

**(F) When affidavits unavailable**

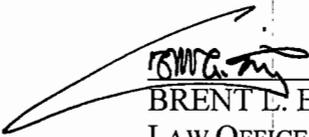
Should it appear from the affidavits of a party opposing the motion for summary judgment that the party cannot for sufficient reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or discovery to be had or may make such other order as is just.

The Lottery Commission's motion for summary judgment claims that Plaintiff does not have a valid public policy claim for unlawful discharge, because its public policy was not sufficiently "manifested" and it was not motivated by conduct related to the policy in wrongfully discharging the Plaintiff. Further, it claims that Plaintiff cannot show instances of bias against him sufficient to give rise to a retaliation claim.

Plaintiff needs to depose the three individuals he has identified to establish the facts sufficient to overcome the motion for summary judgment. The facts are, in the main, exclusively within the province of these witnesses. Moreover, the Lottery Commission has not yet responded to Plaintiff's Request for Production of Documents propounded in April 2015 and due on May 27, 2015.

These facts are verified in the attached affidavits of the Plaintiff and of his counsel and justify an extension of time to file the opposition to the motion for summary judgment.

Respectfully submitted,



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BRENT L. ENGLISH

LAW OFFICES OF BRENT L. ENGLISH

*Attorney for Plaintiff, David A. Bentkowski*

**CERTIFICATE OF SERVICE**

I certify that a true and complete copy of Plaintiff's Motion for Enlargement of Time to File Brief and Evidence in Opposition to Summary Judgment was served by first class U.S. Mail, postage prepaid and by e-mail upon Randall Knutti, Esq., Assistant Attorneys General, 150 East Gay Street, 25<sup>th</sup> Floor, Columbus, Ohio 43215, [randall.knutti@OhioAttorneyGeneral.gov](mailto:randall.knutti@OhioAttorneyGeneral.gov) on this 24<sup>th</sup> day of June 2015.

  
BRENT L. ENGLISH  
*Attorney for Plaintiff, David A. Bentkowski*

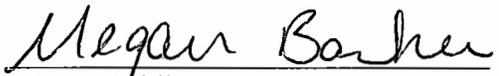


7. I thus request an additional 21 days within which to file my client's opposition to the Lottery Commission's Motion for Summary Judgment.

Affiant further sayeth naught.

  
BRENT L. ENGLISH

SWORN TO AND SUBSCRIBED before me, a Notary Public, by Brent L. English on the 24 day of June 2015.

  
Notary Public  
Print name: Megan Barker  
Commission expires: 12-10-19



MEGAN BARKER  
NOTARY PUBLIC - OHIO  
MY COMMISSION EXPIRES 12-10-19



8. I thus request an additional 21 days within which to file my opposition to the Lottery Commission's Motion for Summary Judgment.

Affiant further sayeth naught.

*David A. Benth*  
\_\_\_\_\_  
DAVID A. BENTKOWSKI

SWORN TO AND SUBSCRIBED before me, a Notary Public, by David A. Benthowski on this 24 day of June 2015.



*Maria Yvette Bella*  
\_\_\_\_\_  
Notary Public  
Print name: Maria Yvette Bella  
Commission expires: June 3, 2017