

June 21, 2006

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**VIA FACSIMILE, U.S. MAIL AND E-MAIL**

Russell J. Thomas, Jr.  
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**RE: *New Filing Date for Opening Appellate Brief***

Dear Mr. Thomas:

Both Fey and my calendars reflected your appellate brief was due Monday, June 19th. We anticipated receiving it by e-mail by the close of business, not unlike the exchange of briefs by both sides with respect to the SLAPP action. When we didn't receive anything yesterday, June 20<sup>th</sup>, we thought it best to contact your office and inquire as to when we could expect either an electronic or hard copy of the brief. Before doing so, we checked the Court's website to confirm our calendar date of June 19<sup>th</sup> was correct.

While our review of the website confirmed that June 19<sup>th</sup> was correct, both of us were extraordinarily surprised to discover that on June 7<sup>th</sup>, you unilaterally contacted the Court, and orally requested a fourteen day extension. The Court's website now reflects an amended filing date for your opening brief of July 3, 2006.

We reviewed the Court's Local Rules with respect to this procedure. You are certainly within your rights to orally request a fourteen day extension. However, the rules which permit you to make the oral request for that extension clearly require you to (1) notify opposing counsel (us) that a request for oral extension will be sought, and (2) notify all other counsel (us again) immediately by letter to confirm the telephone extension of time and advise counsel (us) of the details of the extension. You neither afforded us the courtesy of contacting us with respect to the extension, nor complied with the rules of the Court.

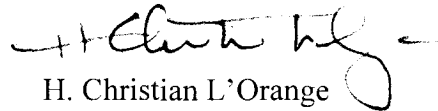
You will recall that you approached us in mid May asking for major modifications in the briefing dates for the various pleadings. We refused, stating that our client wanted to resolve the SLAPP matter as quickly as possible and move on with the case in chief. It appears shortly thereafter, you contacted the Court seeking the telephone extension. The fact you unilaterally obtained the extension suggests you represented that you had contacted opposing counsel, and there was no opposition to your request. Neither of these premises is true.

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At the outset of the litigation, you and/or Mr. LaMarca quickly pointed out our failure to comply with the Court's local rule by filing an opposition one font size too small. Such rigorous and zealous enforcement of the Local Rules, we think you would agree, should be applied with equal verve to both parties in the litigation. Hence, this letter. If you wish to avail yourself of procedures outlined in the local rules in the future, we would appreciate compliance with all aspects of the rules, not just some or most. It would appear to be too late to lodge an objection or raise this issue with the Court, however by copy of this letter, we are asking the clerk to make it part of the appellate file.

Very truly yours,



H. Christian L'Orange

HCL/ed