

STATE OF MAINE
KNOX

SUPERIOR COURT
DOCKET NO. AP-09-001

RONALD C. HUBER
Petitioner

vs.

MAINE DEPARTMENT OF
TRANSPORTATION
Defendant

MOTION TO EXCLUDE UNTIMELY RESPONSES
BY DEFENDANT MAINE DEPARTMENT OF
TRANSPORTATION.

Now Comes the Plaintiff, Ronald Huber (hereinafter "Huber") and moves this Honorable Court to examine and exclude the Motion submitted by Defendant Maine Department of Transportation (hereinafter MDOT) to Stay Production of Record, and its Motion to Dismiss, due to MDOT's failure to meet required filing deadlines in its response to Huber's Petition for Review of Final Agency Action. Huber offers the following in support of his motion:

1. Huber, acting pro se, filed a Petition for Review of Final Agency action by the Maine Department of Transportation with the Knox County Superior Court on **February 19, 2009**, seeking review of MDOT's actions regarding Sears Island, Town of Searsport, County of Waldo, State of Maine.

2. Specifically, Huber challenges MDOT's conveyance of a conservation easement on approximately 601 acres of land located on Sears Island to the Maine Coast Heritage Trust on **January 22, 2009**.

3. On **March 24, 2009** Maine DOT's legal representatives responded to Huber's Petition by filing a Motion to Dismiss and a Motion to Stay Production of Record with Knox County Superior Court, more than thirty days after Huber's petition was filed.

4. In a letter dated **March 23, 2009**, MDOT's legal representatives also attempted to file a Motion to Consolidate with the Chief Justice of the Maine Superior Court; this application was returned to MDOT unreviewed as offered to the wrong venue.

5. In their motions to this Court, MDOT erroneously asserts that Huber filed his Petition for Review of Agency Action on February 20, 2009. MDOT further erroneously asserts that it filed its responses to Huber's Petition on March 23, 2004. A review of the date stamps on Huber's petition and on MDOT's response motions in the Knox County Superior Court's docket files reveals that Huber actually filed his petition on February 19, 2009, while MDOT actually filed its two response motions on March 24th, 2009.

6. Whether these errors are attributable to carelessness or to an attempt by the Defendant to appear to have filed its response in a timely manner is unknown. The fact remains that the Defendant has failed to respond in a timely fashion as required by 5 MRSA §11005 Responsive Pleading; filing of the record, which says in pertinent part: "The agency shall file in the reviewing court within 30 days after the petition for review is filed, or, within such shorter or longer time as the court may allow on motion, the original or a certified copy of the complete record of the proceedings under review." A review of the docket reveals that no such motion requesting a "longer time" was filed with the Knox County Superior Court within the 30 day period set by MRSA 5 § 11005.

7. In the absence of such a motion, defendant's failure to file its responses within 30 days of Huber's filing of his Petition for review of Agency Action constitutes adequate grounds for this Court to exclude MDOT's Motion to Stay Production of Record from the docket. Materials offered this Court after the expiration of that 30 day deadline are not admissible in the absence of a timely motion requesting an extension.

8. MDOT's failure to meet the Court deadline when it filed its Motion to Dismiss renders that motion inadmissible to the docket as well.

WHEREFORE, Huber moves this Honorable Court to find that MDOT failed to file both its Motion to Stay Production of Record and its Motion to Dismiss in a timely manner, and to exclude these motions from consideration in the Court's review of Huber's Petition for Review of Agency Action.

Huber respectfully requests and reserves the right to provide additional submissions to the Court responsive to MDOT's Motion to Dismiss and Motion to Stay Production of Record within the mandated response period, and to any Motion to Consolidate that may be filed by MDOT in the future.

Dated at Rockland, Maine, this 31st day of March 2009

Ronald Calvin Huber,
148 Broadway #5
Rockland ME 04841

Petitioner

NOTICE

ANY MATTERS TO BE SUBMITTED IN OPPOSITION TO THIS MOTION PURSUANT TO RULE 7(c) OF THE MAINE RULES OF CIVIL PROCEDURE MUST BE FILED NO LATER THAN TWENTY-ONE (21) DAYS AFTER THE FILING OF THIS MOTION UNLESS ANOTHER TIME IS PROVIDED BY SUCH RULES OR SET BY THE COURT. FAILURE TO FILE TIMELY OPPOSITION WILL BE DEEMED A WAIVER OF ALL OBJECTIONS TO THIS MOTION, WHICH MAY BE GRANTED WITHOUT FURTHER NOTICE OR HEARING.

Ronald C. Huber
148 Broadway #105
Rockland ME 04841

March 31, 2009

Clerk,
Knox County Superior Court
62 Union Street
Rockland, ME 04841

Re Huber vs Maine Department of Transportation
DOCKET # AP-09-001

To whom it may concern

Enclosed for filing in the above matter is:

Petitioner's Motion to Exclude Untimely Responses by Defendant Maine Department of Transportation.

Please contact me if you have any questions or need any additional information.

Sincerely

Ronald C. Huber