

IN THE SUPREME COURT OHIO

IN THE MATTER OF:) **CASE NO. 2008-1562**
MEREDITH POLING,) **On Appeal from the Hardin**
ALLEGED DELINQUENT CHILD.) **County Court of Appeals,**
Third Appellate District
Court of Appeals
Case No. 6-08-09

**MEMORANDUM OPPOSING MOTION TO STRIKE
OF APPELLANT STATE OF OHIO**

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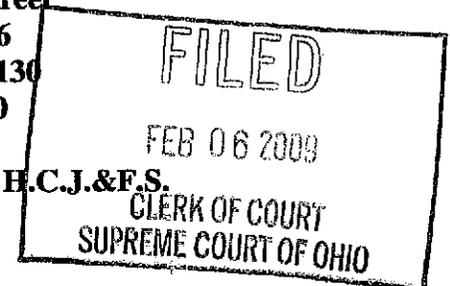
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MEMORANDUM IN OPPOSITION

The Appellant-State of Ohio, respectfully submits the following response in opposition to the Motion To Strike Appellant's Notice of Appeal, filed by the Ohio Public Defender's Office on behalf of the alleged delinquent child, Meredith Poling, on January 30, 2009. As the State of Ohio acknowledges that it did not serve the Ohio Public Defender's Office a copy of its Notice of Appeal as required by Ohio S.Ct. Prac. Rule XIV §2(A)(3), it is unnecessary for this Court to determine whether the State served the Ohio Public Defender's Office with a copy of the Notice of Appeal pursuant to Ohio S.Ct. Prac. Rule XIV §2(D)(2). However, the State of Ohio's failure to serve the Ohio Public Defender's Office with the State's Notice of Appeal certainly was not intended to deprive the child of counsel, nor did it.

In fact, the State not only served William F. Kluge, counsel for the Appellee, Meredith Poling, with copies of the: Notice of Appeal of Appellant State of Ohio and Memorandum In Support of Jurisdiction of Appellant State of Ohio, each filed in this Court on August 8, 2008, along with the State's Notice of Filing Notice of Appeal in Ohio Supreme Court, which the State likewise filed on August 8, 2008 in the Juvenile Division of the Hardin County Common Pleas Court, but the State also served the same upon the child's Guardian ad litem, Attorney Bridgett Hawkins, and Teresa Glover, Attorney for Hardin County Jobs & Family Services, who has temporary custody of the child. Also, upon receipt of the Public Defender's Motion to Strike on February 2, 2009, learning of its service omission contrary to Ohio S.Ct. Prac. Rule XIV §2(A)(3), on the same day, the State of Ohio immediately served the movant with copies of the aforementioned: Notice of Appeal of Appellant State of Ohio, Memorandum In Support of Jurisdiction of Appellant State of Ohio and the State's Notice of Filing Notice of Appeal in Ohio

Supreme Court filed in the Juvenile Division of the Hardin County Common Pleas Court, by certified mail, return receipt requested. (Tracking #: 70040750000224840652).

It is important to note that Attorney William F. Kluge, continues to represent Meredith Poling in the juvenile court, also represented the child as appellate counsel in the Third District Court of Appeals. Specifically, on May 16, 2008, Attorney Kluge filed a Memorandum In Opposition To State's Motion For Leave To Appeal in the Third District Court of Appeals. (Record [hereinafter "R."] at 7).

Additionally, Elizabeth Miller, Assistant Public Defender, filed a Notice of Substitution of Counsel in this Court on January 15, 2009. In this Notice of Substitution of Counsel, Attorney Miller states that she "enters her appearance as **substitute counsel for Meredith Poling in Ohio Supreme Court Case No. 2008-1562.**" *Id.* (Emphasis added). Further, said pleading states, "Attorney Miller is **replacing Attorney William Kluge.**" *Id.* (Emphasis added). Accordingly, the State respectfully submits that the movant, the Ohio Public Defender's Office, on behalf of Meredith Poling, was not adversely affected; and further, the interests of justice do not require the extreme remedy of striking the notice of appeal and dismissing this murder case.

Pursuant to Ohio S.Ct. Prac. Rule XIV §2(D)(2), this Court can order the document to be served, which has now been done, and if the interests of justice warrant such action, it can impose a new deadline for filing a responsive pleading. Moreover, if this Court determines that service was not timely made but that the movant was not adversely affected, it may deny the motion. *Id.* The State contends that Meredith Poling was not adversely affected by the State's failure to initially serve the Public Defender with a copy of its Notice of Appeal. Hence, the movant's motion should be denied.

The movant asserts that Meredith Poling was adversely affected because she did not have counsel because trial counsel was not representing her before this Court. However, the State contends that Meredith Poling was represented by Attorney William Kluge, who was timely served with the State's Notice of Appeal and Memorandum In Support of Jurisdiction. Attorney Kluge continued to represent the child in this Court until January 15, 2009, when he was replaced by Attorney Miller upon the filing of her Notice of Substitution of Counsel in this Court. While it is true that Attorney Kluge, an extremely experienced and competent attorney with over thirty-two (32) years of experience, including a familiarity with the services offered by the Ohio Public Defender's Office, chose not to file a Memorandum In Opposition to Jurisdiction herein, the fact remains that his decision, whether tactical or otherwise, was made while he was representing Meredith Poling in this Court. Therefore, the absence of a Memorandum In Opposition of Jurisdiction was not the result of a lack of representation.

The Staff and Committee Notes to Ohio S.Ct. Prac. Rule XIV §2(A) reveals the purpose of the rule for requiring the County Prosecutor to serve the Public Defender with a copy of the State's Notice of Appeal in a felony case is so "[t]he Public Defender may then investigate whether the appellee will be represented by other counsel, and if not, whether the Public Defender's Office should provide representation." *Id.* Even if initially served with the notice of appeal in this matter, the Public Defender's investigation would have revealed that the child was represented by Attorney William Kluge who remained on the case until January 15, 2009. Therefore, the Public Defender would not have filed a memorandum in opposition to jurisdiction as counsel for Meredith Poling. Hence, the purpose behind Ohio S.Ct. Prac. Rule XIV §2 is inapplicable to the instant case because the child was always represented by competent counsel. Further, the interests of justice require that this case be heard on its merits.

WHEREFORE, the State of Ohio respectfully requests this honorable Court to overrule the motion to strike in all respects or to grant such further relief this Court deems appropriate.

Respectfully submitted,

BRADFORD W. BAILEY (#0017814)
HARDIN COUNTY PROSECUTOR

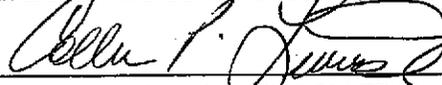


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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing, Memorandum Opposing Motion To Strike, was served upon Elizabeth R. Miller, Assistant Public Defender, Counsel of Record for the Alleged Delinquent Child, at Office of the Ohio Public Defender, 8 East Long Street, 11th Floor, Columbus, Ohio 43215; Bridget Hawkins, *Guardian Ad Litem* for the Child, P.O. Box 549, Bellefontaine, Ohio 43311, and Teresa Glover, Attorney for H.C.J.&F.S., at 175 W. Franklin Street, Kenton, Ohio 43326, on this 6th day of February, 2009, by regular U.S. Mail.

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Assistant Hardin County Prosecutor
Counsel of Record