



case, then Respondent requests that this Court clarify its Entry to clear up any confusion or misconceptions resulting from the use of the term "record" instead of "file". (These problems have arisen because the Board failed to provide any explanation, through affidavit or otherwise, in its Motion to Supplement Record.)

## **I. Procedural History**

The trial of this matter before the panel members was held July 26-30, 2010. The Findings of Fact, Conclusions of Law and Recommendation issued by the Board of Commissioners on Grievances and Discipline were filed with this Court on March 14, 2011. Relator and Respondent each filed objections to the Board's Recommendation on May 2, 2011.

On May 4, 2011, the Board filed a Motion to Supplement Record, seeking to file the May 6, 2010 deposition of Randy T. McGough. On May 9, 2011, Respondent filed an Opposition to the Motion to Supplement Record, articulating therein that Randy T. McGough "testified at the hearing" before the Panel. (See, Exhibit A.)

Relator did not respond in any fashion to the Board's May 4, 2011 Motion or the responsive pleading filed by the Respondent. On June 3, 2011, this Court issued an Order providing "this matter is remanded to the board so that the investigator may appear before the panel and be subjected to examination and cross-examination." (See, Exhibit B.) On June 7, 2011, Relator filed a Motion Seeking Clarification of This Court's June 3, 2011 Entry. Respondent filed an opposition on June 10, 2011.

## **II. Argument**

On June 28, 2011, this Court issued an Entry vacating the remand order. Additionally, this Court granted the Board's motion to supplement:

This cause is pending before the court upon the filing of a report by the Board of Commissioners on Grievances and Discipline. On May 4, 2011, the board filed a motion to supplement the record. On May 9, 2011, respondent, Joseph G. Stafford, filed a memo opposing the motion to supplement. On June 3, 2011, this matter was remanded to the board. On June 7, 2011, relator, Disciplinary Counsel, filed a motion for clarification of the June 3, 2011 order.

On consideration thereof, it is ordered by this court that the June 3, 2011 order to remand is hereby vacated. It is further ordered that the motion to supplement the record is granted, and the board may file the May 6, 2010 deposition of Randy T. McGough.

(See, Exhibit C.)

It is still unclear as to whether the Court's June 28, 2011 entry allows the Board to file the McGough deposition in the Board's "file" or if the deposition is to be made a part of the hearing "record".

The Hearing was closed on July 30, 2010. Randy T. McGough testified as a live witness before the panel. The deposition testimony provided by Mr. McGough is substantially different from that elicited from Mr. McGough during the actual hearing. If the deposition transcript of Mr. McGough is permitted to be part of the "record", and there is no remand to the Panel, then Respondent is deprived of his due process right to cross-examine Randy T. McGough on this new testimony. Under such a circumstance, the prejudice to Respondent must be remedied to prevent an unfair result.

It has long been the established law of the United States as expressed in *In re Oliver* (1948), 333 U.S. 257, 275, that:

[C]onstitutional procedural due process requires that one charged with [certain allegations] be advised of the [allegations] against him, **have a reasonable opportunity to meet them by way of defense or explanation**, have the right to be represented by counsel, **and have a chance to testify and call other witnesses in his behalf, either by way of defense or explanation.**

*Courtney v. Courtney* (1984), 16 Ohio App.3d 329, 332, quoting *In re Oliver*, supra; (Emphasis added.) See also, *Simpson v. Simpson* (1969), 19 Ohio App.2d 167.

An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. *Mullane v. Cent. Hanover Bank & Trust Co.* (1950), 339 U.S. 306.

Both the Fourteenth Amendment to the United States Constitution and Section 16, Article I of the Ohio Constitution guarantee due process of law, and thus guarantee 'a reasonable opportunity to be heard after a reasonable notice of such hearing.

*Ohio Valley Radiology Associates, Inc. v. Ohio Valley Hosp. Ass'n.* (1986), 28 Ohio St.3d 118, 125, quoting *State ex rel. Allstate Ins. Co. v. Bowen* (1936), 130 Ohio St. 347, paragraph five of the syllabus.

Pursuant to the Sixth Amendment to the United States Constitution, Respondent is entitled to cross-examine adverse witnesses. The deposition transcript and/or the testimony of Mr. McGough during his deposition was not utilized during the hearing or proffered by the parties. If the deposition transcript of Mr. McGough is now permitted to become part of the hearing record to be reviewed by the Supreme Court, then Respondent must be permitted the opportunity to cross-examine Mr. McGough on any new issues contained in the deposition and not stated in his live testimony.

Further, the Respondent is also entitled to make objections to any testimony that is improper or in violation of the Ohio Rules of Evidence; and entitled to evidentiary rulings on such objections. Should this Court allow the supplementation of the hearing "record" the only way to ensure that the fundamental fairness standard is met is by way of a remand. Any other result is extremely prejudicial to Respondent and in clear violation of his right to due process.

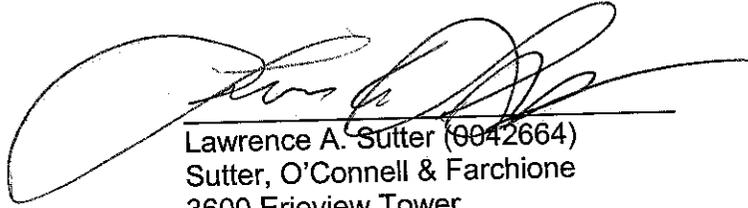
Respondent respectfully submits that there was no need for clarification, or to vacate this Court's June 3, 2011 Order, as pursuant to the plain and unambiguous language of the Order, this Court ordered the following:

Upon consideration thereof, it is ordered by the court that this matter is remanded to the board so that the investigator may appear before the panel and be subjected to examination and cross-examination.

Wherefore, the Respondent respectfully requests that this Court either clarify it's June 28, 2011 order and indicate that the Randy McGough deposition may be merely filed in the

Board's original file and not be considered as part of the Hearing "record" or remand this matter to the Hearing Panel in accordance with its original remand order.

Respectfully submitted,



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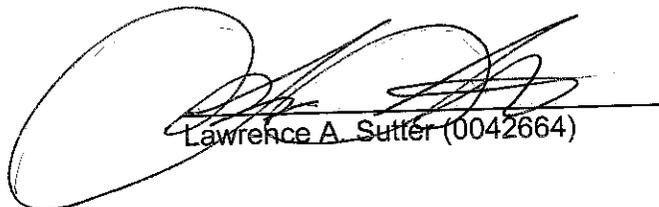
*Attorneys for Respondent*

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing Respondent's Request for Clarification and/or Reconsideration of This Court's June 28, 2011 Entry was mailed via regular, U.S. Mail to the following on this 1<sup>st</sup> day of July, 2011.

Jonathan W. Marshall  
The Supreme Court of Ohio  
Board of Commissioners on Grievances and Discipline  
65 South Front Street, 5<sup>th</sup> Floor  
Columbus, Ohio 43215-3431

Lori J. Brown  
Jonathan E. Coughlan  
First Assistant Disciplinary Counsel  
250 Civic Center Drive, Suite 325  
Columbus, Ohio 43215-7411



Lawrence A. Sutter (0042664)

# The Supreme Court of Ohio & The Ohio Judicial System

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Kristina D. Frost  
Clerk of Court

**Search Results: Case Number 2011-0408**

## The Supreme Court of Ohio

### CASE INFORMATION

#### GENERAL INFORMATION

**Case:** 2011-0408 Disciplinary Case/On Report of Board  
**Filed:** 03/14/11  
**Status:** Case Is Open

**Disciplinary Counsel v. Joseph G. Stafford**

#### PARTIES and ATTORNEYS

Board of Commissioners on Grievances and Discipline (Board of Commissioners on Grievances and Discipline)
Disciplinary Counsel (Relator) Represented by: Brown, Lori (40142) , Counsel of Record Coughlan, Jonathan (26424) Osmond, Karen (82202)
Stafford, Joseph Gregory (Respondent) Represented by: Sutter, Lawrence (42664) , Counsel of Record Adams, Stephanie (81822)

**EXHIBIT**  
A

#### PRIOR JURISDICTION

Jurisdiction Information	Prior Decision Date	Case Number(s)
Board of Commissioners on Grievances & Discipline	02/11/2011	09028

## DOCKET ITEMS

- Most documents that were filed in Supreme Court cases after December 1, 2006, are scanned. They are available for viewing via the online dockets, generally within one business day from their date of filing.
- Supreme Court orders that were issued after January 1, 2007, are also available via the online docket as PDFs. Orders scanned prior to April 6, 2009, may not bear the signature of the Chief Justice. These online orders are identical to the original orders in all other respects.
- A  symbol in an online docket denotes a scanned filing or an electronic version of a Supreme Court order. Clicking the icon opens an image of the filing or order.

Date Filed	Description
03/14/11  <b>View</b>	<b>Report recommending respondent be suspended for twelve months with entire suspension stayed on conditions</b> <i>Filed by:</i> Board of Commissioners on Grievances and Discipline
03/14/11  <b>View</b>	<b>Statement of board costs in the amount of \$11,571.44</b> <i>Filed by:</i> Board of Commissioners on Grievances and Discipline
03/14/11	<b>Original board papers</b> <i>Filed by:</i> Board of Commissioners on Grievances and Discipline
03/23/11  <b>View</b>	<b>DECISION: Order to show cause; objections and brief in support due 20 days from the date of this order; answer brief due 15 days</b>
03/23/11  <b>View</b>	<b>Notice of county for publication under Gov.Bar R. V(8)(D)(2) (Attorney Discipline)</b> <i>Filed by:</i> Board of Commissioners on Grievances and Discipline
04/07/11  <b>View</b>	<b>Joint stipulation of time to 5/2/11 to file objections and brief in support</b> <i>Filed by:</i> Disciplinary Counsel <i>Filed by:</i> Stafford, Joseph
04/14/11	<b>Return receipt; received by Lawrence A Sutter III Esq.</b>
04/14/11	<b>Return receipt; received by Joseph Gregory Stafford (B)</b>
04/14/11	<b>Return receipt; received by Lori J Brown</b>
04/21/11	<b>Certified mail returned - unclaimed - Joseph Gregory Stafford (R)</b>
05/02/11  <b>View</b>	<b>Objections and brief in support</b> <i>Filed by:</i> Disciplinary Counsel
05/02/11  <b>View</b>	<b>Objections and brief in support</b> <i>Filed by:</i> Stafford, Joseph
05/04/11  <b>View</b>	<b>Motion to supplement record</b> <i>Filed by:</i> Board of Commissioners on Grievances and Discipline
 <b>View</b>	<b>06/28/11: Granted</b>
05/09/11  <b>View</b>	<b>Memo opposing motion to supplement record</b> <i>Filed by:</i> Stafford, Joseph

05/17/11  <b>View</b>	<b>Relator's answer brief</b> <i>Filed by:</i> Disciplinary Counsel
05/17/11  <b>View</b>	<b>Respondent's answer brief</b> <i>Filed by:</i> Stafford, Joseph
06/03/11  <b>View</b>	<b>DECISION: Remanded to the Board so that the investigator may appear before the panel.</b>
06/07/11  <b>View</b>	<b>Motion for clarification of June 3, 2011 entry</b> <i>Filed by:</i> Disciplinary Counsel
06/10/11  <b>View</b>	<b>Response opposing motion for clarification of June 3, 2011 entry</b> <i>Filed by:</i> Stafford, Joseph
06/20/11	<b>Return receipt; received by Lawrence A Sutter Esq.</b>
06/20/11	<b>Return receipt; received by Stephanie D Adams Esq.</b>
06/28/11	<b>DECISION: Order to remand of June 3, 2011, is vacated.</b>
06/28/11	<b>Additional board papers filed in response to Court's 6/28/11 entry</b> <i>Filed by:</i> Board of Commissioners on Grievances and Discipline
06/28/11	<b>Certified mail returned - unclaimed - Joseph G. Stafford (R)</b>

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# The Supreme Court of Ohio

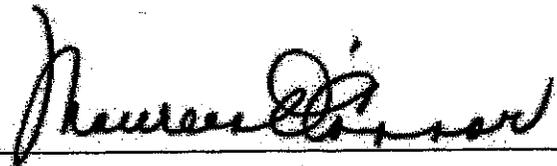
Disciplinary Counsel,  
Relator,  
v.  
Joseph G. Stafford,  
Respondent.

Case No. 2011-0408

## ORDER

This cause is pending before the court upon the filing by the Board of Commissioners on Grievances and Discipline of a Report recommending that respondent be suspended for a period of twelve months with the entire suspension stayed on conditions. On May 4, 2011, the board filed a Motion to Supplement the Record. Respondent filed a memo opposing the motion on May 9, 2011.

Upon consideration thereof, it is ordered by the court that this matter is remanded to the board so that the investigator may appear before the panel and be subjected to examination and cross-examination.



Maureen O'Connor  
Chief Justice

EXHIBIT

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FILED

The Supreme Court of Ohio

JUN 28 2011

CLERK OF COURT  
SUPREME COURT OF OHIO

Disciplinary Counsel,  
Relator,  
v.  
Joseph G. Stafford,  
Respondent.

Case No. 2011-0408

ORDER

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On consideration thereof, it is ordered by this court that the June 3, 2011 order to remand is hereby vacated. It is further ordered that the motion to supplement the record is granted and the board may file the May 6, 2010 deposition of Randy T. McGough.



Maureen O'Connor  
Chief Justice

EXHIBIT

C.

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