

IN THE SUPREME COURT OF OHIO

STATE ex rel. JOSEPH McGRATH,

APPELLANT,

Case No. 2012-0737

-vs-

JUDGE ROBERT McCLELLAND, ET AL,

APPELLEES.

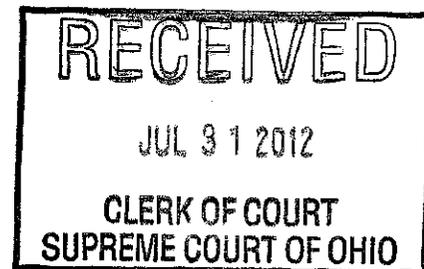
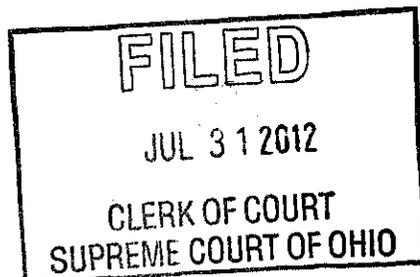
**MOTION OF APPELLEES JUDGE ROBERT McCLELLAND AND CLERK OF
COURTS GERALD FURST TO STRIKE APPELLANT'S MERIT BRIEF**

APPELLANT, PRO SE

JOSEPH McGRATH
Inmate # 570434
Grafton Correctional Institution
2500 South Avon Belden Road
Grafton, Ohio 44044

COUNSEL FOR APPELLES
JUDGE ROBERT McCLELLAND
AND CLERK OF COURTS
GERALD FURST

WILLIAM D. MASON
Cuyahoga County Prosecutor
BY: James E. Moss
(#0061958)
Assistant Prosecuting Attorney
The Justice Center, 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113
(216) 443-7800



BRIEF IN SUUPPORT

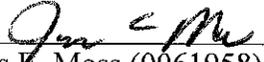
Respondents-Appellees, Judge Robert McClelland and Cuyahoga County Clerk of Courts Gerald Fuerst, respectfully move this Court to strike Relator-Appellant Joseph McGrath's merit brief for his failure to serve his merit brief on counsel for Appellees OR Appelles as mandated by S.Ct.Prac.R. XIV(2)(A)(1). When a party files any document with the Clerk, that party shall also serve a copy of the document on all parties. Service on a party represented by counsel shall be made on counsel of record. S.Ct.Prac.R. XIV(2)(A)(1).

The certificate of service attached to Appellant's merit brief indicates that a copy of his brief was sent on June 8, 2012 to "Cuyahoga County Prosecutor's Office at 1200 Ontario Street, Cleveland, Ohio 44113." Neither counsel for Appellees nor his clients, Judge Robert McClelland and Cuyahoga County Clerk of Courts Gerald Fuerst, received a copy of Appellant's merit brief. (See affidavit of counsel for Appellees, attached as Ex. A).

Based upon Appellant's failure to provide service of his merit brief upon counsel for Appellees or Appellees, as mandated by S.Ct.Prac.R. XIV(2)(A)(1), Appellees Judge Robert McClelland and Cuyahoga County Clerk of Courts Gerald Fuerst respectfully requests that this Court strike Appellant's merit brief pursuant to S.Ct.Prac.R. XIV(2)(D)(1). If this Court is not inclined to strike Appellant's brief, Appellees respectfully request that this Court grant Appellees an additional 30 days to file a response to Appellant's merit brief.

Respectfully submitted,

WILLIAM D. MASON
Cuyahoga County Prosecutor


James E. Moss (0061958)
Assistant Prosecuting Attorney
The Justice Center, 8th Floor
1200 Ontario Street
Cleveland, OH 44113
(216) 443-7800

CERTIFICATE OF SERVICE

A copy of the foregoing Motion To Strike was sent this 30th day of July, 2012,
by regular U.S. Mail to Joseph McGrath, Pro Se, Inmate # A570434, at Grafton
Correctional Institution, 2500 South Avon Belden Road, Grafton, Ohio 44044.


James E. Moss
Assistant Prosecuting Attorney

STATE OF OHIO)
) ss:
COUNTY OF CUYAHOGA)

I, James E. Moss, being duly sworn, state the following to be true and accurate:

1. I am an Assistant Prosecuting Attorney for the Cuyahoga County Prosecutor's Office, 1200 Ontario Street, Cleveland, Ohio 44113.
2. I have been employed by the Cuyahoga County Prosecutor's Office as an Assistant Prosecuting Attorney for over thirteen years.
3. I am the assigned Assistant Prosecuting Attorney that represented respondents Judge Robert McClelland and Cuyahoga County Clerk of Courts Gerald Fuerst in *State ex rel. Joseph McGrath v. Judge McClelland, et al.*, 8th Dist. No. 97209, 2012-Ohio-157.
4. On April 26, 2012 appellant Joseph McGrath filed a notice of appeal with this Court in *State ex rel. Joseph McGrath v. Judge McClelland, et al.*, Supreme Court of Ohio case number 2012-0737.
5. In his appeal to this Court in *State ex rel. Joseph McGrath v. Judge McClelland, et al.*, Supreme Court of Ohio case number 2012-0737, appellant McGrath has appealed the judgment of the Eighth District Court of Appeals in *State ex rel. Joseph McGrath v. Judge McClelland, et al.*, 8th Dist. No. 97209, 2012-Ohio-157.
6. I am the assigned Assistant Prosecuting Attorney that is representing appellees Judge Robert McClelland and Cuyahoga County Clerk of Courts Gerald Fuerst in *State ex rel. Joseph McGrath v. Judge McClelland, et al.*, Supreme Court of Ohio case number 2012-0737.



7. On July 30, 2012, I checked the online docket for the case of *State ex rel. Joseph McGrath v. Judge McClelland, et al.*, Supreme Court of Ohio case number 2012-0737, and became aware, for the first time, that appellant Joseph McGrath had filed a merit brief on June 11, 2012.
8. I never received a copy of the merit brief filed by appellant McGrath on June 11, 2012 in *State ex rel. Joseph McGrath v. Judge McClelland, et al.*, Supreme Court of Ohio case number 2012-0737, and did not become aware of the existence of such merit brief until July 30, 2012.
9. On July 30, 2012, I spoke with respondent Judge Robert McClelland who informed me that he never received a copy of the merit brief filed by appellant McGrath on June 11, 2012 in *State ex rel. Joseph McGrath v. Judge McClelland, et al.*, Supreme Court of Ohio case number 2012-0737.
10. On July 30, 2012, I spoke with Brent Bartell, Administrative Officer for the Criminal Division of the Clerk of Courts of the Cuyahoga County Court of Common Pleas, State of Ohio (“Clerk’s Office”), who reviewed the records in the possession of the Clerk’s Office and indicated that there is no record in the Clerk’s Office that it received a copy of the merit brief filed by appellant McGrath on June 11, 2012 in *State ex rel. Joseph McGrath v. Judge McClelland, et al.*, Supreme Court of Ohio case number 2012-0737.
11. On July 30, 2012, I spoke with Ms. Cookie Slusarczyk, administrative assistant in the Appellate Unit of the Cuyahoga County Prosecutor’s

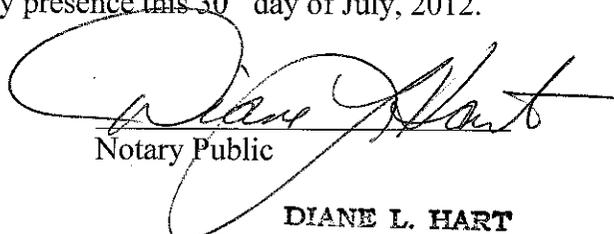
Office who informed me that all documents involving appeals that are received by the Cuyahoga County Prosecutor's Office are to be provided to her.

12. On July 30, 2012, Ms. Slusarczyk informed me that she reviewed the appellate database that reflects all documents received by the Appellate Unit and that there is no indication that the Cuyahoga County Prosecutor's Office received a copy of the merit brief filed by appellant McGrath on June 11, 2012 in *State ex rel. Joseph McGrath v. Judge McClelland, et al.*, Supreme Court of Ohio case number 2012-0737.
13. On July 30, 2012, Ms. Slusarczyk informed me that she does not recall having ever received a copy of the merit brief filed by appellant McGrath on June 11, 2012 in *State ex rel. Joseph McGrath v. Judge McClelland, et al.*, Supreme Court of Ohio case number 2012-0737.

Further affiant sayeth not.


James E. Moss

Sworn to and subscribed in my presence this 30th day of July, 2012.


Notary Public

DIANE L. HART
Notary Public, State of Ohio, Cuy. Cty.
My commission expires Nov. 13, 2015