

IN THE OHIO SUPREME COURT

STATE OF OHIO,

Plaintiff/Appellee

vs.

DAVID WILLAN

Defendants/Appellant

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CASE NO.: 2012-0216

ON APPEAL FROM THE
SUMMIT COUNTY COURT OF
APPEALS, NINTH DISTRICT

COURT OF APPEALS
CASE NO.: CA-24894

JOINT MOTION TO STRIKE

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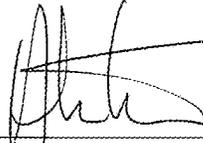
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RECEIVED
JUL 09 2013
CLERK OF COURT
SUPREME COURT OF OHIO

FILED
JUL 09 2013
CLERK OF COURT
SUPREME COURT OF OHIO

Pursuant to The Supreme Court of Ohio Rules of Practice, Rule 3.11(D)(2), the Parties hereby respectfully request that this Court determine that service of Cross-Appellee David Willan's Motion to Reconsider was not timely served as required by Rule 3.11, order that the document be served and impose a new deadline for Cross-Appellant State of Ohio to file its responsive document to the Motion to Reconsider. This relief is requested because counsel for Cross-Appellee Willan inadvertently failed to serve Cross-Appellant State of Ohio with a copy of the Motion to Reconsider. Counsel for Willan was reviewing the docket to determine if the State had filed an opposition to the Motion to Reconsider and found that it had not. This fact surprised counsel for Willan so counsel consulted the firm's mail log where mail sent out every day is cataloged. There was no indication in the log that the State was served with a copy of the motion. As soon as this omission was discovered, counsel for Willan contacted counsel for the State with a copy of the motion and an offer to draft a joint motion to the Court. Although the email was sent on July 3, 2013, counsel for the State was out of the State and was not aware of the filing until he returned to his office on July 8, 2013. It was initially contemplated that the joint motion would be for additional time to oppose the Motion to Reconsider. However, it was later determined that a Motion pursuant to Rule 3.11(D) is the appropriate motion when there has been an error of service. As the State was not made aware of the filing of the Motion to Reconsider until July 8, 2013, the Parties respectfully request that the Court grant this motion and impose a new deadline for Cross-Appellant State of Ohio to file its responsive document to the Motion to Reconsider.

Respectfully submitted,
WILLIAM T. WHITAKER CO., L.P.A.



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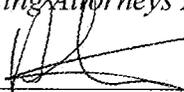
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CERTIFICATE OF SERVICE

A copy of the foregoing was served by First Class U.S. Mail this 8th day of July, 2013 upon:

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