

ORIGINAL

No. 2014-1091  
IN THE SUPREME COURT OF OHIO

STATE OF OHIO, ex rel. TIMOTHY J. McGINTY,

Relator,

vs.

THE COURT OF APPEALS FOR THE EIGHTH APPELLATE  
DISTRICT,

Respondent,

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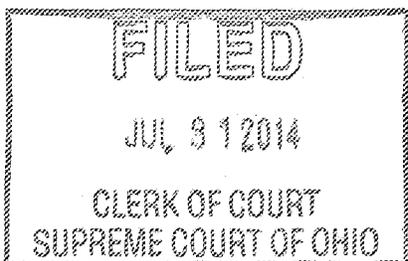
**MOTION TO SUPPLEMENT THE RECORD WITH DOCUMENT FILED UNDERSEAL**

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No. 2014-1091

**IN THE SUPREME COURT OF OHIO**

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THE COURT OF APPEALS FOR THE EIGHTH APPELLATE  
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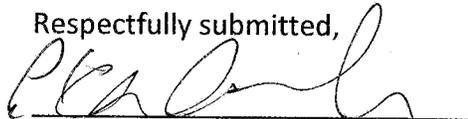
**MOTION TO SUPPLEMENT THE RECORD WITH DOCUMENT FILED UNDER SEAL**

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Michael Madison, Intervenor-Respondent, through undersigned counsel, moves this Court to Supplement the record with the defense mitigation report that prompted this litigation and to file that report under seal.

Reasons for this motion are detailed in the memorandum that follows.

Respectfully submitted,



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COUNSEL FOR INTERVENOR-RESPONDENT

MEMORANDUM

This matter is before this Court on relator Cuyahoga County Prosecutor's Complaint seeking a peremptory writ ordering respondent Eighth District Court of Appeals to dismiss Michael Madison's appeal in C.A. 101478, challenging the trial court's order which directed him to submit to a psychiatric examination for the state's use in the capital case against him. Mr. Madison has asked leave to intervene as of right pursuant to Civ.R. 24(A)(2), as the real party in interest, or by permission under Civ.R. 24(B)(2). Along with his application to intervene, Mr. Madison has filed a Motion to Dismiss/Motion for Judgment on the Pleadings.

Although Relator submitted a detailed appendix of exhibits in support of his Complaint before this Court, Relator did not submit the actual mitigation report prepared by the defense and submitted to the prosecution prior to trial as part of its discovery obligation and prompted most of this litigation. In the trial court, the prosecution argued that the contents of that report justified their request for a court order compelling Mr. Madison to submit to a psychiatric evaluation by a prosecution expert for purposes of rebutting the mitigating evidence contained therein. As the Relator's appendix demonstrates, the report was filed under seal in the Eighth District, its contents obviously figure into the merits of this litigation, and all parties have referred to it in their respective pleadings.

Under the circumstances, Intervenor-Respondent asks to supplement the record with this report. Because of its sensitive nature, and in order to protect Mr. Madison's right to a fair trial, he asks for leave to file it under seal.

Respectfully submitted,

  
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**CERTIFICATION**

This is to certify that copies of the foregoing were served by regular U.S. Mail, postage prepaid, to Katherine Mullin, Assistant Prosecuting Attorney, The Justice Center, 1200 Ontario Street, Cleveland, Ohio 44113, Counsel of Record for Relator and to Darlene Fawkes Pettit, Assistant Attorney General, 30 East Broad Street, 16<sup>th</sup> Floor, Columbus, Ohio 43215, this 31<sup>st</sup> day of July, 2014.



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Erika Cunliffe

**ATTACHMENT NOT SCANNED**