

[Cite as *State ex rel. Persky, Shapiro & Arnoff, Co., L.P.A. v. Boyle*, 2006-Ohio-1186.]
COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 87238

STATE OF OHIO, EX REL.,	:	ORIGINAL ACTION
PERSKY, SHAPIRO & ARNOFF,	:	
CO., L.P.A.	:	
	:	
Relator	:	JOURNAL ENTRY
	:	and
vs.	:	OPINION
	:	
JUDGE MARY JANE BOYLE,	:	
	:	
Respondent	:	

DATE OF JOURNALIZATION: MARCH 6, 2006

CHARACTER OF PROCEEDING: WRIT OF PROCEDENDO

JUDGMENT: Writ Denied.
Motions No. 378429 and
380630
Order No. 381440

APPEARANCES:

For Relator: STEWART D. ROLL
PERSKEY, SHAPIRO & ARNOFF CO.,
LPA
25101 CHAGRIN BLVD., SUITE 350
CLEVELAND, OH 44122

For Respondent: WILLIAM D. MASON
Cuyahoga County Prosecutor
BY: JAMES C. COCHRAN
Assistant County Prosecutor
Justice Center - 9th Floor
1200 Ontario Street
Cleveland, Ohio 44113

JUDGE ANTHONY O. CALABRESE, JR.

{¶ 1} On November 3, 2005, the petitioner, the law firm of Persky, Shapiro & Arnoff, Co., L.P.A., commenced this procedendo action against the respondent, Judge Mary Jane Boyle, to compel her to rule on a Motion for Frivolous Conduct filed on March 1, 2004, in the underlying case, *Slaughter v. Ohio Operating Engineers, et al*; Cuyahoga County Common Pleas Court Case No. CV-495803. On November 21, 2005, Judge Boyle, through the Cuyahoga County Prosecutor, moved to dismiss (hereinafter "First Motion"). The First Motion sought dismissal, inter alia, on the grounds of pleading deficiencies, including the failure to support the petition with an affidavit specifying the facts of the claim. On December 30, 2005, this court deferred ruling on the First Motion; it directed the petitioners to cure the lack of a supporting affidavit and invited the respondent judge to resolve the outstanding motion.

{¶ 2} On January 6, 2006, the petitioner law firm filed an affidavit supporting its petition. On January 31, 2006, the respondent judge filed another motion to dismiss (hereinafter the "Second Motion"). Attached to this motion was a certified copy of a journal entry, signed by the judge and file-stamped January 26, 2006, in which the judge granted the law firm's motion to determine frivolous conduct and awarded \$18,789. The petitioner law firm did not file a response to the Second Motion. This journal entry establishes that the respondent judge has proceeded to judgment and

has resolved the outstanding motion. Thus, this matter is moot.

{¶ 3} Accordingly, this court grants the Second Motion to dismiss, and denies the First Motion as moot. This application for a writ of procedendo is denied. Respondent to pay costs. The clerk is directed to serve upon the parties notice of this judgment and its date of entry upon the journal. Civ.R. 58(B).

ANTHONY O. CALABRESE, JR.
JUDGE

COLLEEN CONWAY COONEY, P.J., CONCURS

SEAN C. GALLAGHER, J., CONCURS