

11-0353

IN THE CIRCUIT COURT OF NICHOLAS COUNTY, WEST VIRGINIA

JOHN B. EPLING,

Petitioner,

vs.

Case No.: 10-AA-6

JOE E. MILLER,

Commissioner of the West Virginia  
Division of Motor Vehicles,

Respondent.

CIRCUIT CLERK  
NICHOLAS COUNTY, WV  
2011 JAN 27 PM 3:15

**ORDER REMANDING MATTER TO  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR A FULL EVIDENTIARY HEARING**

On the 24<sup>th</sup> day of January, 2011, came the Petitioner, John B. Epling, in person and by counsel, Gregory W. Sproles, and came the Respondent, Joe E. Miller, Commissioner of the West Virginia Division of Motor Vehicles by Scott Johnson, Assistant Attorney General, for a Final Hearing upon the Petitioner's Petition for Judicial Review.

Thereupon, the Court considered all matters of record and the argument of counsel and at the conclusion of which the Court is of the opinion and it is hereby ORDERED that this matter be remanded to the Office of Administrative Hearings for a full-evidentiary hearing.

It is further ORDERED that the revocation of the Petitioner's driver's license be stayed pending the Final Order from the Office of Administrative Hearings.

The Office of Administrative Hearings is directed to issue a new Order regarding the revocation of the Petitioner's driver's license and make a proper analysis under Muscatell v. Cline, 196 W.Va. 588, 474 S.E. 2d 518 (1996) and Choma v. WV Division of Motor Vehicles, 210 W.Va. 256, 557 S.E.2d 310 (2001) in regard to any issues raised before the Office of Administrative Hearings.

RECEIVED

FEB 02 2011

DMV - Legal Services

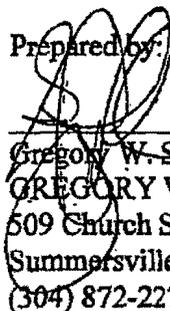
The objection of the Respondent is specifically noted to the remand of this matter.

To all adverse rulings, the parties object and except.

Entered this the 27<sup>th</sup> day of January, 2011.

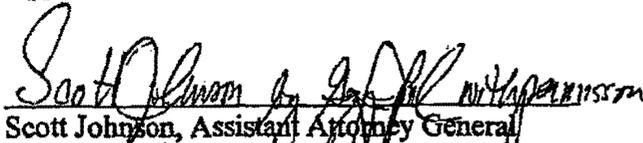
  
JUDGE/GARY I. JOHNSON

Prepared by:

  
Gregory W. Sproles (WV State Bar ID #3540)  
GREGORY W. SPROLES, PLLC  
509 Church Street  
Summersville, WV 26651  
(304) 872-2271

A true copy, certified this  
27<sup>th</sup> day of Jan, 2011  
  
DEBBIE FACEIRE CIRCUIT CLERK  
Nicholas County Circuit Court  
Summersville, WV 26651  
By \_\_\_\_\_ Deputy

Approved by:

  
Scott Johnson, Assistant Attorney General  
DMV-Office of Attorney General  
PO Box 17200  
Charleston WV 25317