Order of the United States District Court for the Northern District of Ohio

IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF OHIO

EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BART H. RIPPL,

Defendant.

CASE NO. 1:16-CV-1139

JUDGE DONALD C. NUGENT

JUDGMENT ENTRY

For the reasons set forth in the Memorandum Opinion filed contemporaneously herewith, the Motion for Summary Judgment filed by the United States of America (ECF #25) is GRANTED. Judgment is entered in favor of

Memorandum Opinion of the United States District Court for the Northern District of Ohio

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MEMORANDUM OPINION

This matter is before the Court upon a Motion for Summary judgment filed by the Plaintiff, United States of America (hereafter "United States") on April 28, 2017. (ECF #25). Defen-

was incorporated in Ohio in 1968. (ECF #25-1, ¶ 1). In late 1999, Mr. Rippl sold all of his NCS stock to Robert Ross ("Mr. Ross") for $5,750,000.00. (Id. at ¶ 4). The stock purchase agreement, dated December 21, 1999, shows that after distributing the proceeds among family members, Mr. Rippl received a total of $1,149,874.66. This exact amount was wired to his Charter One Bank account on the same day. (Id. at ¶¶ 5 and 6). On December 22, 1999, Mr. Rippl made an outgoing wire transfer from the Charter One Bank account, in the exact amount of $1,149,874.66, to an offshore trust

Mr. Rippl responded to the IRS' collection summons with a letter falsely indicating that the taxes were paid in full. (See ECF #25-34). Mr. Rippl filed motions to quash summonses that were issued to his girlfriend and his employer, both of which were dismissed. (See ECF #36 and 37).

On May 13, 2016, the United States filed the within Complaint against Mr. Rippl, pursuant to 26 U.S.C. §§ 7401 and 7402(a), with the authorization of the Secretary of the Treasury and at the direction of the Attorney General of the United States, to obtain a judgment that Mr. Rippl is liable for federal income taxes, penalties, and interest for the years 1999 and 2012 in the total amount of $1,622,621.22 as of May 1, 2016. (ECF #1). The penalties were

(See ECF #25, ¶ 36).

Mr. Rippl responded in his opposition brief that there is a factual issue regarding whether the RIS made procedurally proper tax assessments, and that he had a legal basis for failing to cooperate with the IRS as it relates to its investigation. (ECF #27). In its Reply Brief, the United States argues that it has proven that the tax assessments were procedurally proper, and that Mr. Rippl's failure to cooperate with the IRS and "wild accusations" against the IRS sport the fraudulent failure to file penalty under 26 U.S.C. § 6651(f). (ECF #28, p. 12).

II. Law and Argument

A. Standard of Review

The summary judgment standard is well-set-

Liberty Lobby, Inc., 477 U.S. 242, 249, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

The moving party bears the initial burden of demonstrating that no genuine issue of material fact exists. Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). To refute such a showing, the non-moving party must present some significant, probative evidence indicating the necessity of a trial for resolving a material factual dispute. (Id. at 322). A mere scintilla of evidence is not enough. Anderson, 477 U.S. at 252; McClain v. Ontario, Ltd., 244 F.3d 797, 800 (6th Cir. 2000). This Court's role is limited to determining whether the case contains sufficient evidence from which a jury could reasonably find for the non-moving party. Anderson, 477 U.S.

sufficient to establish a genuine issue of material fact necessitating the trial of that issue. (Id.) Merely alleging that a factual dispute exists cannot defeat a properly supported motion for summary judgment. (Id.) A genuine issue for trial is not established by evidence that is "merely colorable," or by factual disputes that are irrelevant or unnecessary (Id. at 248-52).

B. Legal Analysis

1. The Failure to File Penalty is Presumed to be Correct

The United States has assessed Mr. Rippl over $1.6m for his failure to file income tax returns for the years 1999 and 2012. Attached to the United States' motion for summary judgment is a declaration from David W. Ross (hereafter "Agent Ross"), a Revenue Officer employed in the Small Business/Self-Employed Division of the IRS. (ECF #25-38). Agent Ross sets forth

sessed liabilities in full." (ECF #25-38, ¶ 3).[11] The United States is awarded an initial presumption of correctness for these assessments, placing the burden of disproving such assessment on Mr. Rippl. United States v. Hammon, 277 F.App'x 560, 563 (6th Cir. 2008). This is because certificates of IRS tax assessments are considered presumptively correct. See U.S. v. Payne, No. 4:13CV2589, 2015 WL 261721 (N.D. Ohio Jan. 21, 2015) (citing Hammon, 277 Fed. App'x at 563). In order to overcome this presumption, taxpayers must show that the assessment is incorrect. Kosincki v. Comm'r, 541 F.3d 671, 678 (6th Cir. 2008). This burden

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[11] Agent Ross indicates that the original failure to file penalty was adjusted to 50% of the tax due, from $254,090.03 to $180,035.00, because the aggregate amount of penalties imposed exceeded the statutory maximum amount. (ECF #25-38, ¶ 5).

mum aggregate penalty of 75% of the tax amount. 26. U.S.C. § 6651(f).

Fraud is established by proven that a taxpayer intended to evade tax believed to be owing buy conduct intended to conceal, mislead, or otherwise prevent collection of tax. Green v. Comm'r, T.C. Memo. 2016-67, 2016 WL 1559621, at *11 (Apr. 14, 2016) (citation omitted). No single factor is necessarily conclusive, rather, the combination of a number of these "badges of fraud" constitutes "persuasive evidence of fraud." Kalo v. C.I.R., 149 F.3d 1183, 1998 WL 382741 (6th Cir. June 9, 1998), at *6 (citation omitted).

These factors include:

(1) failing to file income tax returns;
(2) filing false documents, including false income tax returns;
(3) understating income;

from the stock sale. (See ECF #25-4, p. 3). Mr. Ross issued an Affidavit stating "I am certain that I did not write the letter" at issue, and that it "is inaccurate" to say that Mr. Rippl did not receive income from the stock sale. (See Id. at p. 2). Another letter sent by Mr. Rippl to the IRS in 2015 falsely states that "payment-in-full of this alleged debt" from 2012 was previously remitted. (See ECF #25-34). Filing these false documents with the IRS constitutes an "affirmative act" of misrepresentation sufficient to justify the fraud penalty. Zell v. Commissioner, 763 F.2d 1139, 1146 (10th Cir. 1985).

As for the fourth element of fraud, there is evidence that Mr. Rippl concealed his income from the 1999 stock sale when he transferred

that Mr. Rippl participated in an illegal mortgage elimination scheme. In January of 2004, Mr. Rippl purchase a home in Bay Village, Ohio. (ECF #25-15). Mr. Rippl then named D. Scott Heineman and Kurt F. Johnson as trustees of the Rippl Family Trust, and in November of 2004, quitclaimed the property to the trust. (ECF #25-1, ¶ 17 and #25-15). These two trustees were later convicted of fraud for engaging in identical, illegal mortgage elimination schemes in 2004 and 2005 in another state. See Green, 2016 WL 1559621, at *7. Mr. Rippl's involvement with this mortgage elimination scheme, and resulting foreclosure on the Bay Village property, is more evidence of Mr. Rippl's intent to defraud the IRS. (See ECF #25-22).

The evidence shows that when Mr. Rippl did reply to the IRS, his correspondences to revenue agents were replete with frivolous arguments and objections to the tax laws of the United States. (ECF #25-1, ¶¶ 32 and 34). Mr Rippl has also propounded these anti-tax arguments and objections in lawsuits he has filed in other Courts[14]. Mr Rippl also makes similarly dubious claims regarding the discharge of unsecured debts on his website[15]. Frivolous, irrelevant, and meritless arguments, coupled with affirmative acts designed to evade Federal income tax, support a finding of fraud. Green, 2016 WL 1559621, at *14 (ci-

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[14] See ECF #25-28 (lawsuit designated 1:06CV165, filed in 2006 in the U.S. District of Columbia seeking damages resulting from the IRS' efforts to collect Mr. Rippl's 1999 tax liability; dismissed July 14, 2006).

[15] See https://debtsuspension.com

failed to provide the appropriate forms during the investigation and failed to adequately respond to discovery requests in this litigation are not persuasive. Mr. Rippl has received proper notice of the assessments for the 1999 and 2012 income tax years, and they are presumed to be correct. (See ECF #25-37; United States v. Shuster, No. 1:15CV252. 2015 WL 4496856, at 3-4 (N.D. Ohio June 23, 2015). As a last ditch effort, Mr. Rippl attacks the veracity of the statements set forth in Agent Ross' Affidavit by incorporating unsupported allegations Mr. Rippl levied against Agent Ross in a previous lawsuit[16]. There is no evidence to suggest that Agent Ross is "not competent to testify" or issued "complete fabrications" in the

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[16] See case designated 1:16MC18, which was dismissed by Judge John R. Adams on June 28, 2016.

States' Motion for Summary Judgment (ECF #25) is GRANTED; Defendant, Mr. Rippl, is liable for federal income taxes, penalties, and interest for the years 1999 and 2012 in the amount of $1,696,755.60 as of April 28, 2017, plus interest and statutory additions from that date until paid in full.

IT IS SO ORDERED

DONALD C. NUGENT
United States District Judge

DATED: July 5, 2017

unpaid income taxes and for fraudulently failing to file income taxes. This case has ben referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. See Fed. R. App. P. 34(a).

The government made assessments against Rippl for federal income taxes that he failed to pay for 1999 and 2012. See 26 U.S.C. §§ 7401, 7402(a). It also assessed a fine against him for his "fraudulent failure to file" income taxes for 1999. Id. § 6651(f). Rippl was notified of these assessments, but he did not pay them. In 2016, the government filed a complaint seeking to reduce to judgment the assessed liabilities, penalties, and interest, which at that time totaled $1,622,621.22. Rippl filed an unsuccessful motion to dismiss and for sanctions. The government thereafter filed a motion for summary judgment, indicating that its total assessments had increased to $1,696,755.60. After Rippl filed a response, the district court granted the government's motion and entered judgment against Rippl in the amount of

U.S.C. §§ 6012(a), 7203. Likewise, "the Code does not indicate that failure to provide notice of assessment and demand for payment precludes the government from maintaining a civil action." United States v. Berman, 825 F.2d 1053, 1060 (6th Cir. 1987). Nor was the government required to sign its documents under penalty of perjury. See Davis v. Comm'r, 115 T.C. 35, 42 (2000). Finally, Rippl's claim that the government's assessments were not made "in the office of the Secretary" is unsupported by any meaningful argument and is therefore deemed forfeited. See United States v. Stewart, 628 F.3d 246, 256 (6th Cir. 2010).

Accordingly, we AFFIRM the district court's judgment.

tle or otherwise reviewed on the record of an agency hearing provided by statute; or

(F)unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error. (Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 393.)

26 U.S.C. § 6001. Notice or regulations requiring records, statements, and special returns

Every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. Whenever in the judgment of the Secretary it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such

its, or other matters required to be shown by such person in any return of such tax or information.

(b) Farmers and wage-earners. Individuals deriving gross income from the business of farming, and individuals whose gross income includes salaries, wages, or similar compensation for personal services rendered, are required with respect to such income to keep such records as will enable the district director to determine the correct amount of income subject to the tax. It is not necessary, however, that with respect to such income individuals keep the books of account or records required by paragraph (a) of this section. For rules with respect to the records to be kept in substantiation of traveling and other business expenses of employees, see §1.162-17.

(c) Exempt organizations. In addition to such permanent books and records as are required by paragraph (a) of this section with respect to the tax imposed by section 511 on unrelated business income of certain exempt organiza-

26 U.S.C. § 6020

(a) Preparation of return by Secretary

If any person shall fail to make a return required by this title or by regulations prescribed thereunder, but shall consent to disclose all information necessary for the preparation thereof, then, and in that case, the Secretary may prepare such return, which, being signed by such person, may be received by the Secretary as the return of such person.

(b) Execution of return by Secretary

(1) Authority of Secretary to execute return

If any person fails to make any return required by any internal revenue law or regulation made thereunder at the time prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return, the Secretary shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise.

(2) Status of returns

Any return so made and subscribed by the Secretary shall be prima facie good and suffi-

pared by him.

(b) Execution of returns -

(1)In general. If any person required by the Internal Revenue Code or by the regulations to make a return (other than a declaration of estimated tax required under section 6654 or 6655) fails to make such return at the time prescribed therefore, or makes, willfully or otherwise, a false, fraudulent or frivolous return, the Commissioner or other authorized Internal Revenue Officer or employee shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise. The Commissioner or other authorized Internal Revenue Officer or employee may make the return by gathering information and making computations through electronic, automated or other means to make a determination of the taxpayer's tax liability.

(2) Form of the return. A document (or set of documents) signed by the Commissioner or other authorized Internal Revenue Officer or

(3)Status of returns. Any return made in accordance with paragraph (b)(1) of this section and signed by the Commissioner or other authorized Internal Revenue Officer or employee shall be good and sufficient for all legal purposes except insofar as any Federal statute expressly provides otherwise. Furthermore, the return shall be treated as the return filed by the taxpayer for purposes of determining the amount of the addition to tax under sections 6651(a)(2) and (3).

(4)Deficiency procedures. For deficiency procedures in the case of income, estate, and gift taxes, see sections 6211 through 6216, inclusive, and §§ 301.6211-1 through 301.6215-1, inclusive. (emphasis added)

(5)Employment status procedures. For pre-assessment procedures in employment taxes cases involving worker classification, see section 7436 (proceedings for determination of employment status).

(6)Examples. The application of this paragraph (b) is illustrated by the following exam-

will determine the amount of the additions to tax under section 6651(a)(2) by treating the section 6020(b) return as the return filed by the taxpayer. Likewise, the Service will determine the amount of any addition to tax under section 6651(a)(3), which arises only after notice and demand for payment, by treating the section 6020(b) return as the return filed by the taxpayer.

Example 2.

Same facts as in Example 1, except that, after performing the examination, X does not compile any examination documents together as a related set of documents. X also does not sign and complete the Form 13496 nor associate the forms explaining examination changes with any other document. Because X did not sign any document stating that it constitutes a return under section 6020(b) and the documents otherwise do not purport to be a section 6020(b) return, the documents do not constitute a return under section 6020(b). Therefore, the Service cannot determine the section

the signature is stored electronically, it can appear as a printed name when the Service requests a paper copy of the certification. The electronically created information, signature, and certification is a return under section 6020(b). The Service will treat that return as the return filed by the taxpayer in determining the amount of the section 6651(a)(2) addition to tax with respect to C's 2003 taxable year. Likewise, the Service will determine the amount of any addition to tax under section 6651(a)(3), which arises only after notice and demand for payment, by treating the section 6020(b) return as the return filed by the taxpayer.

Example 4.

Corporation M, a quarterly taxpayer, fails to file a Form 941, "Employer's Quarterly Federal Tax Return," for the second quarter of 2004. Q, a Service employee authorized to sign returns under section 6020(b), prepares a Form 941 by hand, stating Corporation M's name, address, and TIN. Q completes the Form 941

301.6652-1, respectively.

(4) For additions to the tax for failure to pay tax, see section 6651 and § 301.6651-1.

(5) For criminal penalties for willful failure to make returns, see sections 7201, 7202 and 7203.

(6) For criminal penalties for willfully making false or fraudulent returns, see sections 7206 and 7207.

(7) For civil penalties for filing frivolous income tax returns, see section 6702.

(8) For authority to examine books and witnesses, see section 7602 and § 301.7602-1.

(d)Effective/Applicability date. This section is applicable on February 20, 2008.

[T.D. 9380, 73 FR 9189, Feb. 20, 2008]

26 U.S.C. § 6065. Verification of returns

Except as otherwise provided by the Secretary, any return, declaration, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall contain or be verified by a written

26 C.F.R. § 301.6203-1 Method of assessment.
The district director and the director of the regional service center shall appoint one or more assessment officers. The district director shall also appoint assessment officers in a Service Center servicing his district. The assessment shall be made by an assessment officer signing the summary record of assessment. The summary record, through supporting records, shall provide identification of the taxpayer, the character of the liability assessed, the taxable period, if applicable, and the amount of the assessment. The amount of the assessment shall, in the case of tax shown on a return by the taxpayer, be the amount so shown, and in all other cases the amount of the assessment shall be the amount shown on the supporting list or record. The date of the assessment is the date the summary record is signed by an assessment officer. If the taxpayer requests a copy of the record of assessment, he shall be furnished a copy of the pertinent parts of the

until after such date.

26 C.F.R. § 301.6303-1 Notice and demand for tax.

(a) General rule. Where it is not otherwise provided by the Code, the district director or the director of the regional service center shall, after the making of an assessment of a tax pursuant to section 6203, give notice to each person liable for the unpaid tax, stating the amount and demanding payment thereof. Such notice shall be given as soon as possible and within 60 days. However, the failure to give notice within 60 days does not invalidate the notice. Such notice shall be left at the dwelling or usual place of business of such person, or shall be sent by mail to such person's last known address. For further guidance regarding the definition of last known address, see § 301.6212–2.

(b) Assessment prior to last date for payment. If any tax is assessed prior to the last date prescribed for payment of such tax, demand

cial operation, or venture and divide the profits therefrom. For example, a separate entity exists for federal tax purposes if co-owners of an apartment building lease space and in addition provide services to the occupants either directly or through an agent. Nevertheless, a joint undertaking merely to share expenses does not create a separate entity for federal tax purposes. For example, if two or more persons jointly construct a ditch merely to drain surface water from their properties, they have not created a separate entity for federal tax purposes. Similarly, mere co-ownership of property that is maintained, kept in repair, and rented or leased does not constitute a separate entity for federal tax purposes. For example, if an individual owner, or tenants in common, of farm property lease it to a farmer for a cash rental or a share of the crops, they do not necessarily create a separate entity for federal tax purposes.

(3)Certain local law entities not

proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency and designed to furnish the information necessary to protect the legal and financial rights of the Government and of persons directly affected by the agency's activities.

(Pub. L. 90–620, Oct. 22, 1968, 82 Stat. 1297.)

HISTORICAL AND REVISION NOTES

Based on 44 U.S. Code, 1964 ed., § 396(a) (June 30, 1949, ch. 288, title V, § 506(a), as added Sept. 5, 1950, ch. 849, § 6(d), 64 Stat. 583).

MANAGING GOVERNMENT RECORDS

Memorandum of President of the United States, Nov. 28, 2011, 76 F.R. 75423, provided:

Memorandum for the Heads of Executive Departments and Agencies

SECTION 1. Purpose. This memorandum begins an executive branch-wide effort to reform records management policies and practices. Improving records management will improve performance and promote openness and ac-

on electronic communication and systems has radically increased the volume and diversity of information that agencies must manage. With proper planning, technology can make these records less burdensome to manage and easier to use and share. But if records management policies and practices are not updated for a digital age, the surge in information could overwhelm agency systems, leading to higher costs and lost records.

We must address these challenges while using the opportunity to develop a 21st-century framework for the management of Government records. This framework will provide a foundation for open Government, leverage information to improve agency performance, and reduce unnecessary costs and burdens.

SEC. 2. Agency Commitments to Records Management Reform.

(a) The head of each agency shall:

(i) ensure that the successful implementation of records management requirements in law, regulation, and this memorandum is a priority

(ii) identifies any provisions, or omissions, in relevant statutes, regulations, or official NARA guidance that currently pose an obstacle to the agency's adoption of sound, cost-effective records management policies and practices; and

(iii) identifies policies or programs that, if included in the Records Management Directive required by section 3 of this memorandum or adopted or implemented by NARA, would assist the agency's efforts to improve records management. The reports submitted pursuant to this subsection should supplement, and therefore need not duplicate, information provided by agencies to NARA pursuant to other reporting obligations.

SEC. 3. Records Management Directive. (a) Within 120 days of the deadline for reports submitted pursuant to section 2(b) of this memorandum, the Director of OMB and the Archivist, in coordination with the Associate Attorney General, shall issue a Records Management Directive that directs agency heads to

of OMB and the Associate Attorney General, shall review relevant statutes, regulations, and official NARA guidance to identify opportunities for reforms that would facilitate improved Government-wide records management practices, particularly with respect to electronic records. The Archivist, in coordination with the Director of OMB and the Associate Attorney General, shall present to the President the results of this review, no later than the date of the directive's issuance, to facilitate potential updates to the laws, regulations, and policies governing the management of Federal records.

(c) In developing the directive, the Director of OMB and the Archivist, in coordination with the Associate Attorney General, shall consult with other affected agencies, interagency groups, and public stakeholders.

SEC. 4. General Provisions. (a) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(b) Nothing in this memorandum shall be con-

(1) Present Sense Impression. A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it.

(2) Excited Utterance. A statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused.

(3) Then-Existing Mental, Emotional, or Physical Condition. A statement of the declarant's then-existing state of mind (such as motive, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity or terms of the declarant's will.

(4) Statement Made for Medical Diagnosis or Treatment. A statement that:

(A) is made for — and is reasonably pertinent to — medical diagnosis or treatment; and

(B) describes medical history; past or present symptoms or sensations; their inception; or

(C) making the record was a regular practice of that activity;

(D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(11) or (12) or with a statute permitting certification; and

(E) neither the opponent does not show that the source of information nor or the method or circumstances of preparation indicate a lack of trustworthiness.

(7) Absence of a Record of a Regularly Conducted Activity. Evidence that a matter is not included in a record described in paragraph (6) if:

(A) the evidence is admitted to prove that the matter did not occur or exist;

(B) a record was regularly kept for a matter of that kind; and

(C) neither the opponent does not show that the possible source of the information nor or other circumstances indicate a lack of trustworthiness.

(i) the record or statement does not exist; or

(ii) a matter did not occur or exist, if a public office regularly kept a record or statement for a matter of that kind; and

(B) in a criminal case, a prosecutor who intends to offer a certification provides written notice of that intent at least 14 days before trial, and the defendant does not object in writing within 7 days of receiving the notice — unless the court sets a different time for the notice or the objection.

(11) Records of Religious Organizations Concerning Personal or Family History. A statement of birth, legitimacy, ancestry, marriage, divorce, death, relationship by blood or marriage, or similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(12) Certificates of Marriage, Baptism, and Similar Ceremonies. A statement of fact contained in a certificate:

(A) made by a person who is authorized by a religious organization or by law to perform the

Interest in Property. A statement contained in a document that purports to establish or affect an interest in property if the matter stated was relevant to the document's purpose — unless later dealings with the property are inconsistent with the truth of the statement or the purport of the document.

(16) Statements in Ancient Documents. A statement in a document that was prepared before January 1, 1998, and whose authenticity is established.

(17) Market Reports and Similar Commercial Publications. Market quotations, lists, directories, or other compilations that are generally relied on by the public or by persons in particular occupations.

(18) Statements in Learned Treatises, Periodicals, or Pamphlets. A statement contained in a treatise, periodical, or pamphlet if:

(A) the statement is called to the attention of an expert witness on cross-examination or relied on by the expert on direct examination; and

community concerning the person's character.

(22) Judgment of a Previous Conviction. Evidence of a final judgment of conviction if:

(A) the judgment was entered after a trial or guilty plea, but not a nolo contendere plea;

(B) the conviction was for a crime punishable by death or by imprisonment for more than a year;

(C) the evidence is admitted to prove any fact essential to the judgment; and

(D) when offered by the prosecutor in a criminal case for a purpose other than impeachment, the judgment was against the defendant.

The pendency of an appeal may be shown but does not affect admissibility.

(23) Judgments Involving Personal, Family, or General History, or a Boundary. A judgment that is admitted to prove a matter of personal, family, or general history, or boundaries, if the matter:

(A) was essential to the judgment; and

(B) could be proved by evidence of reputation.