IN THE SUPREME COURT OF THE UNITED STATES

MATTHEW TASSONE	:	
	:	CASE NO. 19-6852
APPELLANT,	:	
	:	
vs.	:	
	:	
ZEPHYNIA TASSONE	:	
	:	
APPELLEE.	:	

PETITION FOR A WRIT OF CERTIORARI

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II. QUESTIONS PRESENTED TO THE COURT FOR REVIEW:

1. Are the Due Process requirements of the Constitution of the United States violated when the state defrauds a litigant of fair notice and a meaningful opportunity to be heard?
2. When the "notice" provided by the state amounts to a false, misleading, and/or fraudulent representation, has the litigant been denied "Fair Notice" as required by the Constitution of the United States?
3. Does the Collateral Judgment doctrine apply to judgments governed by 28 U.S.C. § 1257(a)? If so, does the judgment appealed satisfy the Cohen test?
4. Was the judgment appealed herein procured through fraud or Deception? If so, was such fraud and/or Deception state action?
5. Is an Order or Judgment procured through state action amounting to extrinsic fraud or conduct in the nature of extrinsic fraud, where the object of such fraud is to defraud a litigant of Due Process, void?
6. Did the trial court deny Appellant his Due Process Rights?

IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR CERTIORARI

Petition, Matthew Tassone, respectfully prays that that a Writ of Certiorari issue for review of the Judgment below

OPINION BELOW:

The relevant trial court and appeals courts opinions are listed below in appendix A.

JURISDICTION

The Ohio Supreme Court issued its decision on September 3, 2019. A copy is attached at appendix A. The jurisdiction of this Court is invoked under 28 U.S.C. 1257(a).

CONSTITUTIONAL PROVISIONS:

AMENDMENT 14, SECTION 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; ***nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.***

III. STATEMENT OF THE CASE:

1. On November 30th, 2017, Zephynia Tassone filed for a divorce via her then lawyer, John C. Ruiz-Bueno III. On that same day, John C. Ruiz-Bueno III filed a motion with the trial court requesting "full psychological evaluation of the parties" (inclusive of Mr. Tassone). ***On June 15th, 2018, Magistrate Black and John C. Ruiz-Bueno III affirmatively represented to Mr. Tassone that John C. Ruiz-Bueno III was not requesting a psychological evaluation (emphasis added).***

2. In the Magistrate's September 28th, 2018 Order, the Magistrate affirmatively represented, in the form of factual findings and procedural histories made in the Magistrate's September 28th 2018 order, that on June 15th, 2018 "the court and defendant were informed that plaintiff was seeking a custodial evaluation ***and not a psychological evaluation (emphasis added)***"***the court [Magistrate Black] "***specifically cautioned both parties one month prior that he (Magistrate Black) would only hear evidence regarding a custodial evaluation and would not allow Mr. Ruiz-Bueno III to argue for a psychological evaluation based upon Mr. Ruiz-Bueno III's representations that day to the court*** (***emphasis added***). Without a doubt, on June 15th, 2018, the court and Mr. Bueno represented to Mr. Tassone that no psychological evaluation, at all, was being requested by Plaintiff's counsel. The Magistrate's own factual findings demonstrate as much.

3. At some point after June 15th, 2018, John Ruiz-Bueno III (Plaintiff's then council who left the case after the state Disciplinary Council informed him of probable

cause for an investigation into his conduct during this case, specifically, his use of Appellant's daughter as a child hostage and coercion exercised by Mr. Bueno against Appellant) again seemed to be vaguely & indirectly attempting to alter his arguments as to the nature of the evaluation requested, via a motion for expense, filed after June 15th, 2018. After June 15th, 2018, Mr. Bueno alleged that a custodial evaluation can include a psychological evaluation in a motion for expense; however, Mr. Bueno's representations after June 15th, 2018 and prior to July 17th, 2018 were not before the court for consideration during that relevant period of time, and those representations by Mr. .Bueno in his motion for expense were wholly inconsistent with the position of the court and Mr. Bueno as represented to Mr. Tassone on June 15th, 2018.

4. Furthermore, On June 15th, 2018 the court purportedly accepted Mr. Bueno's representation that Mr. Bueno was not requesting a psychological evaluation; furthermore, the court affirmatively represented that it would not permit evidence, testimony, or argument in support of a psychological evaluation; thus, ***in preparing his case between June 15th, 2018 and July 17th, 2018, Mr. Tassone could not and did not rely on any representation that a custodial evaluation can include a psychological evaluation because; after all, per Magistrate Black's factual findings in his September 28th 2018 Order, "The court also informed the parties that it would not consider evidence related to a psychological evaluation because such an evaluation was not being requested by plaintiff", and the fact that the court allegedly "would not allow Mr. Ruiz-Bueno III to***

argue for a psychological evaluation based upon Mr. Ruiz-Bueno III's representations that day [June 15th, 2018] to the court (***emphasis added***).

5. Mr. Tassone prepared his case based on representations, as made by Magistrate Black and Mr. Bueno, that a psychological evaluation was not being requested by opposing counsel, and that Mr. Bueno would not be permitted to present evidence, testimony, or arguments in support of a psychological evaluation on July 17th, 2018.

6. Contrary to the court and Mr. Bueno's representations that Mr. Bueno was not requesting a psychological evaluation, and contrary to the representation that the court purportedly would not allow Mr. Bueno to present evidence, argument, or testimony in support of a psychological evaluation; on July 17th, 2018 well after trial had commenced, Mr. Bueno represented to the court that the issue presented before the court on July 17th, 2018 was whether to order a psychological evaluation. Mr. Bueno was permitted to present argument and evidence in support of a psychological evaluation, despite the representations and notice that was given to Mr. Tassone on June 15th, 2018. The transcript of the proceedings in the record demonstrates the truth of Appellant's assertions herein.

7. In his September 28th, 2018 Order, Magistrate Black found that "***the whole purpose of the Magistrate's discussion [on June 15th, 2018] was to ensure that defendant was provided a specific statement by Mr. Ruiz-Bueno III so that defendant could adequately prepare for the hearing that occurred on July***

17th, 2018 (emphasis added)." The Magistrate's finding explicitly establishes that the position of the court was such that, in order for Mr. Tassone to prepare for hearing on July 17, 2018, Mr. Tassone required accurate notice as to the nature of the evaluation being requested by Plaintiff. Implicitly, the Magistrate's finding purports that Mr. Tassone's Due Process Rights required that Mr. Tassone be given fair and accurate notice as to the nature of the evaluation being requested.

8. The Magistrate, in his September 28th, 2018 Order, engages in speculation. The Magistrate purports that R.C. 3109.04(C) bestows the Magistrate with authority to order whatever evaluation the Magistrate ordered; however, the Magistrate's arguments on those matters are pure speculation, and should not be considered by any court.

9. Ultimately, the Court's Order granting a psychological evaluation was predicated on a party's motion, not the court's own action or motion. Furthermore, the court's decision was based on evidence, argument, and testimony presented at trial; therefore, the Magistrate's representation that, "even if a reviewing court were to determine that Defendant did not receive proper notice or opportunity to present his case at the July 17, 2018 hearing, the court notes that O.R.C. 3109.04(C) does not require the filing of a motion by either party as "the court may cause an investigation to be made" is a purely speculative, and irrelevant proposition that does not speak to the facts & law of the instant case, nor to the relevant July 17th, 2018 trial.

10. Furthermore, the Magistrate specifically found that "the whole purpose of the Magistrate's discussion [on June 15th, 2018] was to ensure that defendant was provided a specific statement by Mr. Ruiz-Bueno III so that defendant could adequately prepare for the hearing that occurred on July 17th, 2018." This finding alone, which is not speculative, creates serious doubt as to the veracity of any representation, implicitly or expressly stated, that Notice and a Meaningful Opportunity to be Heard were not considered necessary by the trial court.

11. Mr. Tassone filed a timely motion to set aside the Magistrate's order ordering a "custodial evaluation." Judge Gill denied that motion. Furthermore, Judge Gill supported upholding the motion based on allegations which both Judge Gill and Magistrate Black alleged, in their own court orders, that they are not convinced of, and based on citation to a record which Judge Gill represented, in her own order, as being insufficient to support the allegations therein . Mr. Tassone then filed an appeal in the 10th circuit court of appeals for the state of Ohio.

12. After having filed a notice of appeal in 18AP912, Mr. Tassone filed a motion to supplement the record with a recording of a conversation between Dr. Lowenstein and Mr. Tassone because the recording proffered new evidence which tended to prove that Judge Gill, John C. Ruiz-Bueno III, and Magistrate Black did and were perpetuating a fraud upon Mr. Tassone and the Court. In his motion, Mr. Tassone explained the following:

a. On October 16th, 2018, Dr. Lowenstein contacted Mr. Tassone to schedule an appointment. At some point, Mr. Tassone began discussing potential dates with Mr. Lowenstein. Mr. Tassone stated to Mr. Lowenstein "Why don't, why don't we just do it in December. Why don't we do December." Mr. Lowenstein responded and stated "Uhm, sure, I can just let you know that that's not going to be okay for the court—I can tell you that right away. But I'm more than willing to do it, if you wanted to do it in December, we can do that. But I'm sure that you will have difficulty with them at the court. according to what I've been told by the attorneys and the magistrate, is that they wanted it soon." By "it", Mr. Lowenstein was referring to a "psychological evaluation."

b. The call disconnected, then Mr. Lowenstein called Mr. Tassone once more, and the conversation continued. Mr. Tassone asked Mr. Lowenstein if Mr. Lowenstein read the relevant court document and there was a conversation regarding whether Mr. Lowenstein read the relevant court document and such. Mr. Lowenstein verified that he did read the relevant court document in question. At some point, Mr. Tassone said to Mr. Lowenstein: "Let me ask you, what kind of evaluation are you doing? Is it a psychological evaluation?" Mr. Lowenstein responded and stated "Psychological, you're right." Mr. Tassone responded and said "Okay, so, uhm, the court order states that 1, it states that a custodial evaluation was ordered." Dr.

Lowenstein responded and stated "Right. Which is the same thing as a psychological evaluation."

13. That motion to supplement the record on appeal in 18AP912 was denied; however, while the appeal was pending Mr. Lowenstein testified before the trial court and authenticated the recording that Mr. Tassone had sought to introduce as evidence in the appeals court. Mr. Tassone then filed a subsequent memorandum for the record explaining that the appeals court's decision to deny Appellant's motion to supplement the record resulted in Mr. Tassone not having a meaningful hearing, nor a meaningful opportunity to present his case in the appeals court. The court of appeals dismissed the case for lack of a final appealable order, and the court cited Myers v. Toledo, Prakash v. Prakash, Yazdani-Isfehani v Yazdani-Isfehani in support of its decision, all of which are factually and legally distinguishable from the instant case.

14. In an unusual move. Dr. Lowenstein hired a defense lawyer to represent him during the proceedings, Mr. Lowenstein then testified before the trial court and exclaimed that he would not be willing participate in the case any further, nor would he be willing to do any evaluations for the court. Mr. Lowenstein was then replaced as the court's expert. This is substantial because any lawyer behind closed doors would ask the question: "what did he do wrong" to compel him to hire a defense lawyer and withdraw from the case? This court runs a fraudulent scheme where it defrauds citizens of fair notice regularly & in a similar manner as described herein, and I believe that is part of the motivation behind Mr. Lowenstein's actions.

15. The trial court's own expert, Dr. Lowenstein, testified that, in his 40+ years of experience, much of which was spent performing these evaluations for courts around the state of Ohio, what was ordered is a psychological evaluation. Dr. Lowenstein further testified that all he can or ever would have done (if he hadn't refused to participate in the case) with respect to the instant case is conduct a psychological evaluation. Essentially, Dr. Lowenstein, the state's own expert, refuted the trial courts' fraudulent assertions while under oath.

16. The Representations made by Judge Gill, John C. Ruiz-Bueno III, and Magistrate Black; through their own orders, findings, assertions and filings, are plainly fraudulent after a thorough review of the record.

Any reviewing court is left in a bind. The trial court's judgments and findings, insomuch as those findings purport that it ordered something other than a psychological evaluation that should be governed by Ohio Civ.R.35, are fraudulent. The judgments and certain findings of the trial court are fraudulent, deceptive, misleading, and tainted. And any review by an appeals court, where such review relies on those certain findings and judgments, runs a substantial risk of being tainted by those certain corrupted findings and judgments by the trial court.

17. The 10th Court of Appeals for the State of Ohio implicitly recognized the falsity of the trial courts' contentions regarding this matter because the cases cited by the appeals court dealt exclusively with Rule 35(A) psychological evaluations, despite the fact that the trial court fraudulently represented that it did not order a Rule 35(A) psychological evaluation.

The Record Shows that The Trial Court's September 28th, 2018 Order ordering a "custodial evaluation" was Procured through Extrinsic Fraud, Collateral Fraud, and Common Law Fraud, misrepresentation, and deceit.

18. Common Law Fraud, Extrinsic Fraud, Collateral Fraud, and Fraud upon the Court, as perpetuated by Magistrate Black, John C. Ruiz-Bueno III, and Judge Gill, are demonstrated in the record. However, I will focus on extrinsic fraud.

19. Extrinsic fraud is "fraud that induces a person not to present a case or deprives a person of the opportunity to be heard. Relief is granted for extrinsic fraud on the theory that because the fraud prevented a party from fully exhibiting and trying his case, there has never been a real contest before the court on the subject matter of the action" [Hilton Head Ctr. of South Carolina v. Public Serv. Comm'n, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987).].

20. Both Mr. Bueno and Magistrate Black specifically misled Mr. Tassone into believing that Plaintiff was requesting a custodial evaluation, and ***not a psychological evaluation***—per Magistrate Black's factual findings, "The court also informed the parties that it would not consider evidence related to a psychological evaluation [at the July 17th, 2018 trial] because such an evaluation was not being requested by plaintiff", and Magistrate Black further alleged, in the Magistrate's own factual findings, that on June 15th, 2018, Magistrate Black informed the parties that he "would not allow Mr. Ruiz-Bueno III to argue for a psychological evaluation

[on July 17th, 2018] based upon Mr. Ruiz-Bueno III's representations that day [June 15th, 2018] to the court" (***emphasis added***). Magistrate Black and John C. Ruiz-Bueno III also misled Mr. Tassone into believing that no evidence, testimony, or argument would be permitted with respect to a psychological evaluation during the relevant July 17th, 2018 trial.

21. The record firmly establishes that the Court's September 28th, 2018 Order ordering an evaluation was procured through extrinsic fraud, as perpetuated by Magistrate Black and Mr. Bueno. Magistrate David Black and John C. Ruiz-Bueno III induced Mr. Tassone not to present his case on July 17th, 2018, and those individuals deprived Mr. Tassone of fair notice & a meaningful hearing, & the opportunity to be heard.

22. In the instant case, Mr. Tassone prepared his case between June 15th, 2018 and July 17th, 2018 based on the false representations, as represented by Mr. Bueno and Mr. Black, that Plaintiff was not requesting a psychological evaluation, and that no evidence, testimony, or arguments would be permitted with respect to a psychological evaluation.

23. Mr. Tassone had the reasonable expectation and prepared his case under the pretense that arguments and evidence submitted by Plaintiff previously which were purportedly proffered in support of a psychological evaluation prior to June 15th, 2018 were moot & not relevant based on the representations made by Magistrate Black and John C. Ruiz-Bueno that Plaintiff was not seeking a psychological evaluation, and that no evidence, testimony, or argument relating to a psychological evaluation

would be permitted to be presented to the magistrate, the court, and the record on July 17th, 2018.

24. Mr. Tassone prepared his case based on the fraudulent misrepresentations by Magistrate Black that Mr. Ruiz-Bueno III would not be permitted to argue for, or present evidence in support of a psychological evaluation on July 17th, 2018. ***In this way, Mr. Tassone was defrauded of Due Process by joint action between the state and Mr. Bueno; specifically, though not limited to, fair notice, a meaningful opportunity to be heard, an opportunity to prepare his case, and in fact Mr. Tassone was prevented from knowing the issues that would be presented and litigated by Mr. Bueno on July 17th, 2018 as a result of the frauds perpetuated by Magistrate Black and John C. Ruiz-Bueno III (emphasis added).***

25. It is clear then, and the record demonstrates, that the June 15th, 2018 representations by Mr. Bueno and Mr. Black that Plaintiff's lawyer wasn't requesting a psychological evaluation, and that Plaintiff's lawyer would not be permitted to present evidence, argument, or testimony in support of a psychological evaluation are demonstrative of conduct and representations in the nature of fraud, especially extrinsic fraud—"fraud that induces a person not to present a case or deprives a person of the opportunity to be heard."

26. As a direct consequence of the fraudulent misrepresentations made by Magistrate Black and John C. Ruiz-Bueno III On June 15th, 2018; Mr. Tassone was

prevented from fully exhibiting and trying his case on July 17th, 2018. There has never been a real contest before the court on the subject matter of Plaintiff's Motion for Psychological evaluation or, as amended, "motion for custodial evaluation." Mr. Bueno and Mr. Black, via fraud, prevented Mr. Tassone from knowing the issues that would be presented on July 17th, 2018 during trial.

27. Had John C. Ruiz-Bueno III and Magistrate Black not fraudulently represented to Mr. Tassone that no psychological evaluation was being requested, and that no evidence, argument, or testimony would be permitted at trial on July 17th, 2018, the outcome would have been different, and Mr. Tassone would have prepared his legal arguments differently, and Mr. Tassone would have retained a forensic handwriting expert to analyze Plaintiff's signature and testify regarding the analysis; Defendant would have called witnesses with knowledge of the minor child's social interactions with children; Defendant would have produced numerous exhibits & witnesses in defense of himself, which rebut Plaintiff's allegations; Defendant would have prepared his case differently and in a manner which would have substantially rebutted the testimony, arguments, and evidence presented by Plaintiff and her counsel on July 17th, 2018.

28. As an example of evidence that could have been presented at trial on July 17th, 2018 but wasn't, because the magistrate and Mr. Bueno defrauded Mr. Tassone of Fair Notice & Due Process generally, includes: 1) a signed letter by Plaintiff where Plaintiff admits that Defendant never abused Plaintiff, and in the same letter Plaintiff admits that she lied to the police and made false allegations of domestic

violence (in fact, there was never an arrest, charge or conviction regarding those allegations); a signed letter where Plaintiff had agreed to never withhold Defendant's daughter from Defendant while Plaintiff travelled to Canada, which Plaintiff violated; letters from the minor childs' teachers where such teachers allege that the minor child works well others, is well liked, follows rules, and the like, Appellant could have called people who know him and the minor child such as appellant's landlord who often visits and talks to Lucia, Appellant could have called various teachers, tutors, and academic advisors to explain the difficulties of school and why appellant may not have a great deal of time to socialize given how difficult certain courses were at university; appellant would have requested and retained an expert to analyze Plaintiff's signature (plaintiff represented that she did not have knowledge of the letter which she signed, where she admits to lying to police, and Plaintiff also represented that she didn't sign the document where Plaintiff purports to have made false allegations against appellant, therefore, a forensic document examiner would have been necessary). This list is not an exhaustive list of evidence that could have be presented in defense of Appellant and to rebut Appellee's allegations on July 17th 2018, but wasn't presented because Mr. Tassone was made ignorant of the issues to be presented on July 17th, 2018 as a result of fraudulent misrepresentations made by Magistrate Black and John C. Ruiz-Bueno III.

29. Any reviewing court, including the reviewing Judge in the trial court, necessarily depend or depended on the evidence, arguments, and testimony presented at trial on July 17th, 2018; thus, the extrinsic and collateral fraud discussed above, as

perpetuated by Magistrate Black and John C. Ruiz-Bueno III against Mr. Tassone, necessarily prevents Mr. Tassone from having a meaningful opportunity to be heard at every subsequent legal proceeding which seeks to review the magistrate's order (including Mr. Tassone's motion to set aside, Mr. Tassone's relevant appeals, and the instant appeal) because any evidence and testimony not presented at trial on July 17th, 2018 regarding the fraudulently dubbed "custodial evaluation" cannot be presented to or considered by a reviewing court. Essentially, via extrinsic and collateral fraud, Magistrate Black and John C. Ruiz-Bueno III forever barred Mr. Tassone from fully, fairly, and completely presenting his case, evidence, legal arguments, and testimony with respect to a psychological evaluation; thereby, defrauding Mr. Tassone of Due Process at every stage of litigation pertaining Plaintiff's request for "custodial evaluation" or psychological evaluation, whatever it is.

30. The testimony of the expert appointed by the court itself proffers compelling evidence that Judge Gill, Magistrate Black, and John C. Ruiz-Bueno III secured and sustained the court order ordering a fraudulently dubbed "custodial evaluation" via fraud. For example, while under oath, Dr. Lowenstein was asked "So, did you represent to Matthew Tassone that a psychological evaluation is the same thing as a custodial evaluation?" Dr. Lowenstein answered "Yes." Dr. Lowenstein was then asked as follows: "Do you believe that your representations are true?" Dr. Lowenstein answered "Yes." Dr. Lowenstein further represented, under oath, that he does not distinguish any difference between a "custodial evaluation" and a psychological

evaluation. The transcripts of the proceedings verify the truth of Appellant's assertions herein.

31. Essentially, the presiding judicial officers in the trial court have attempted to fraudulently distinguish a difference between a custodial evaluation and a psychological evaluation; furthermore, those same judicial officers have attempted to fraudulently represent that what was requested and ordered as a "custodial evaluation, not a psychological evaluation." But many of these representations, many of them, only came after the court was accused of engaging in fraudulent behavior.

32. Here, the trial court is motivated, at least in part, to defraud citizens of Franklin County generally of Due Process and the protections of Ohio Civ.R.35(A). Ohio Civ.R.35(A) sets forth strict procedures that the trial court must follow in order to compel a litigant into a psychological evaluation; namely, "good cause" must be shown before the court can order any such evaluation; furthermore, the court must define the nature, scope, and time and place of the evaluation, and only after motion, for good cause shown, can such an evaluation be ordered. The trial court runs a fraudulent scheme, fraudulently misrepresenting these evaluations as something they're not, and further the court defrauds citizens of Due Process via the same scheme. Furthermore, the Ohio Constitution demands that the rules of practice set forth by the Supreme Court of Ohio take precedent over conflicting legislation enacted by the Ohio Legislature, so even R.C. 3109 cannot control or minimize the procedural requirements of motion, good cause, and the like as set forth in Ohio Civ.R.35(A).

STATE ACTION AND DUE PROCESS VIOLATIONS:

33. "Fairness of procedure is "due process in the primary sense." Brinkerhoff-Faris Co. v. Hill, 281 U. S. 673, 681. It is ingrained in our national traditions and is designed to maintain them. In a variety of situations the Court has enforced this requirement by checking attempts of executives, legislatures, and lower courts to disregard the deep-rooted demands of fair play enshrined in the Constitution" [Joint Anti-Fascist Refugee Comm. v. McGrath, 341 US 123 - Supreme Court 1951].

34. "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."***The notice must be of such nature as reasonably to convey the required information" [Mullane v. Central Hanover Bank & Trust Co., 339 US 306 - Supreme Court 1950].

35. As discussed above, Magistrate Black and John C. Ruiz-Bueno III jointly defrauded Appellant of Fair Notice, an opportunity to present his objections, a meaningful opportunity to be heard, Fairness of Procedure, and Due Process generally. The actions of the Ohio Judiciary in this case are so repugnant to the Constitution of the United States that their actions may well be construed not only as an individual attack on the liberties and Rights of the Appellant, but the actions of the Ohio Judiciary can rightly be construed as an affront to the Constitution of the United States itself.

36. The conduct of the judicial offers in the trial court is clearly in opposition to the numerous rulings handed down by the Supreme Court of the United States. Fair Notice, Fairness of Procedure, and an opportunity to a meaningful hearing are all fundamental, elementary requirements of the Constitution of the United States, and this Supreme Court has made that clear in its numerous rulings that have been handed down over the centuries.

37. And there is no doubt that Magistrate Black's actions, as described herein, constitute state action within the meaningful of the 14th Amendment to the Constitution. Regarding all of the relevant action discussed herein, the Magistrate was acting under color of law, as a presiding judicial officer of the state of Ohio in connection with a pending case before him. The Magistrate's conduct can be fairly construed as that of the state or state action within the meaning of the 14th Amendment to the Constitution of the United States.

The Court Order ordering an Evaluation is Void.

38. "There is no question of the general doctrine that fraud vitiates the most solemn contracts, documents, and even judgments" [United States v. Throckmorton, 98 US 61 - Supreme Court 1878].

39. "In the landmark case of New York Life Insurance Company v. Nashville Trust Company, 200 Tenn. 513, 292 S.W.2d 749 (1956), Mr. Justice Burnett held that fraud vitiates and avoids all human transactions, from the solemn judgment of a court to a private contract. A distinction was made, however, between extrinsic fraud which renders a judgment, decree, order or agreement void and therefore subject to

collateral attack and intrinsic fraud which, if not remedied on appeal, is not grounds for equitable collateral relief."***"***It is said that fraud upon the Court, or fraud which induces an adversary to withdraw his defense or prevents him from presenting an available defense, is the type which equity will relieve.* Nashville Trust Company, supra, at p. 519, 292 S.W.2d 749. Additionally, a court may set aside a judgment where it appears that such is manifestly unconscionable."

40. "It is the unquestioned law of Ohio that fraud vitiates everything that its use creates" [State, ex rel. Pucel v. Green, 101 Ohio App. 531 - Ohio: Court of Appeals 1956].

41. In Ohio Pyro, Inc. v. Ohio Dept. of Commerce, 115 Ohio St.3d 375, 2007-Ohio-5024, 875 N.E.2d 550, ¶ 20, the Ohio Supreme Court wrote as follows "In our jurisprudence, there is a firm and longstanding principle that final judgments are meant to be just that— final. Therefore, subject to only rare exceptions, direct attacks, i.e., appeals, by parties to the litigation, are the primary way that a civil judgment is challenged. For these reasons, it necessarily follows that collateral or indirect attacks are disfavored and that they will succeed only in certain very limited situations." After making these comments, the Supreme Court of Ohio went on to observe that: "*This court has determined that the reasons for disfavoring collateral attacks do not apply in two principal circumstances—when the issuing court lacked jurisdiction or when the order was the product of fraud (or of conduct in the nature of fraud)*. See Coe [v. Erb], 59 Ohio St. [259,] at 271, 52 N.E. 640 [1898] (strangers to a judgment are permitted to attack the judgment based on "fraud

and want of jurisdiction"). See also Lewis v. Reed (1927), 117 Ohio St. 152, 159, 157 N.E. 897 (absent an invalid or void judgment or fraud in the procurement of the judgment, a valid judgment cannot be collaterally attacked). Id. at ¶ 23."

42. In OHIO PYRO v. Dept. of Commerce, the Ohio Supreme Court held that "When a judgment was issued without jurisdiction or was procured by fraud, it is void and is subject to collateral attack" (***emphasis added***).

43. In Kett v. Community Credit Plan, Inc.,222 Wis.2d 117, 127-28, 586 N.W.2d 68 (Ct.App.1998), the court explained the distinctions between a judgment that is void and one that is voidable: A void judgment is a mere nullity, and any proceedings founded upon it are equally worthless. See Fischbeck v. Mielenz, 162 Wis. 12, 17, 154 N.W. 701, 703 (1916); Neylan v. Vorwald, 124 Wis. 2d 85, 99, 368 N.W.2d 648, 656 (1985). A void judgment cannot create a right or obligation, as it is not binding on anyone. See Fischbeck, 162 Wis. at 17, 154 N.W. at 703

44. The Magistrate's September 28th, 2018 Order ordering a deprivation of Mr. Tassone's property, an evaluation of Mr. Tassone, an invasion of Mr. Tassone's privacy, and the like was obtained via extrinsic, collateral, and common law fraud as well as fraud on the Court as demonstrated by the record. The Magistrate's September 28th, 2018 Court order is void and subject to collateral attack in this appeal and in other collateral proceedings. Any proceedings founded upon the Magistrate's September 28th, 2018 Order are equally worthless, and void.

45. The precedent is clear: a judgment procured through extrinsic fraud is void. And the Supreme Court of the United States should decide that an order procured through extrinsic fraud perpetuated by the state, as is the case with the judgment which is the subject of this appeal, then such judgment is void and in violation of the Constitution of the United States and the Due Process Clauses of our Constitution.

THE COLLATER JUDGMENT DOCTRINE AND THE COHEN TEST:

46. The questions presented to the trial court on July 17th, 2018, regarding the relevant order, was 1) whether to order a psychological evaluation, such evaluation fraudulently misrepresented as a custodial evaluation; and 2) how to allocate the costs of that evaluation. Due Process is required for, at the very least, two reasons: 1) the order in question seeks to violate the Privacy Rights of Appellant; and 2) the order in question orders an indefinite deprivation of Mr. Tassone's property by allocating %50 of the costs associated with any evaluation deemed necessary by the relevant psychologist. Essentially, the court has ordered a property deprivation that is; at the very least, likely to be in the many thousands of dollars. This is even more troubling, given the court has deemed that Appellant is indigent, and so poor that he cannot afford to pay even court costs of about $100.

47. The Supreme Court of the United States has recognized that there are some orders which are effectively final. This recognition was first articulated in Cohen v. Beneficial Industrial Loan Corp., 337 US 541 - Supreme Court 1949. From that case the Cohen Test was born. The Supreme Court of the United States has construed

final decisions to include those orders which; although not ending the entire case, are "practically" or "effectively" final. These "collateral orders" must: 1) be completely separate from the merits of the case; 2) must conclusively determine the disputed question and 3) cause irreparable harm to the appellant if review is delayed.

48. In Cohen, the Supreme Court held that the relevant judgment in that case was an appealable judgment "because it is a final disposition of a claimed right which is not an ingredient of the cause of action and does not require consideration with it."

49. Recall that the primary issues presented for consideration by the court—the issues which led to the need for this appeal—are a denial of the elementary requirements of Due Process via the courts joint perpetuation of extrinsic fraud upon Mr. Tassone; namely, the requirements of "Fair Notice" and "Fairness of Procedure." These matters have absolutely nothing to do with the merits of the case, the cause of action, and these questions can be resolved without "consideration with it." In the instant case, the order is a "final disposition of a claimed right which is not an ingredient of the cause of action and does not require consideration with it"; namely, the claimed right being Appellant's Rights to Due Process, to Fair Notice & Fairness of Procedure, as a required by the Due Process Clause of 14th Amendment to the Constitution of the United States.

50. The trial courts order ordering a deceptively titled "custodial evaluation" is completely separate from the cause of action in the trial court case. The relevant trial court order does not make a decision on the merits of the case, and review of it does

not require review of the merits of the cause of action of the case. Furthermore, the trial court will not review or modify the relevant order, nor has the court demonstrated any intention of doing the same. In fact, the record shows that the only thing left for the court to do, with respect to the judgment which is the subject of this petition, is to enforce the aforementioned judgment. The record shows and it is a fact that the court ordered evaluation will not come on for review in any subsequent hearing by the trial court or any other court. The matter is settled and "effectively final" and the record demonstrates as much.

51. Under Ohio Law, the court ordered evaluation will forever remain interlocutory as construed by Ohio Courts; therefore, the order will evade any and all attempts to procure review of said order and the unconstitutional proceedings which gave rise to it, as the record demonstrates. Under Ohio Law & given the Ohio Supreme Courts' refusal to permit discretionary review of this matter, this ordered evaluation and the unconstitutional proceedings which gave rise to said order will never come on for review in Ohio Courts. What this means is that the deprivation of Appellant's property and liberty interests is final and the judgment in question is effectively final.

52. It is important to note that the primary concerns of this appeal—state action which amounts to a fraudulent deprivation of Appellant's Rights to fair notice and fairness of procedure—will unquestionably never be given again to Mr. Tassone. That is to say that, the unconstitutional proceedings which led to the ordered deprivation of Mr. Tassone's property & liberty interests are set in stone, unless the Supreme

Court of the United States accepts review of this matter and undoes these unconstitutional proceedings. In the Cohen case, the Supreme Court of the United States asserted that the requirement of finally ought to be given a "practical rather than a technical construction." Under the guidelines developed in the Cohen case, and considering the facts of the instant case, the judgment which Appellant seeks review of is practically final. The first two requirements of the Cohen test are satisfied, and the record demonstrates as much.

53. The Appellant will suffer irreparable harm if this petition is denied. Not only has defendant been ordered to serve a jail sentence for his refusal to abide by an order which was obtained in violation of the Constitution of the United States, but the Defendant has been ordered into any procedure deemed necessary by the state's medical expert (the extraction of blood which can be done in relation to psychological testing, the invasion of Appellant's home and the like (the state's expert even said he may wish to investigate my home) are all permitted by the court order in question). Finally, the Appellant has been ordered to forfeit his privacy as well as his property (an indefinite financial sum to paid by Appellant to the State's expert). However, the judgment in question will not be reviewed by the state trial court again; rather, all that is left is enforcement of said judgment, and the record clearly demonstrates as much. Nor will the matter be reviewed at final trial. Essentially, the judgment in question will forever be considered interlocutory by the Ohio Courts, and will forever evade review in the Courts of Ohio; therefore, unconstitutional proceedings like this can and do occur, and such proceedings evade all review as a result of the Ohio

Judiciary's permitting such to occur and the state's refusal to permit review of such orders.

54. All 3 requirements of the Cohen test are met. Now, the only question is whether the "collateral judgment" doctrine applies to state court judgments governed by 28 U.S.C. 1257(a). I believe that the answer is yes. The collateral judgment doctrine is concerned with judgments that are practically or effectively final, not where those judgments originated; although, that is an important question regarding proper appellate review generally, it is not intrinsic to the collateral judgment doctrine. The primary concern of the collateral judgment doctrine, I believe to be, is that of Justice. The whole point of courts is to ensure that Justice is rendered. And there are some orders which are effectively final and, to ensure that fairness and justice are properly administered, the collateral judgment doctrine was born. And when 28 U.S.C. § 1257(a) speaks of final judgments, it speaks of final judgments in the same way that 28 U.S.C. § 1291 speaks of final judgments. The primary difference between the two laws is where the judgment originated and what courts must first review or be given the opportunity to review the final judgment before it can reach the Supreme Court of the United States. But both speak of the same types of "final judgments", regardless of where such final judgments originate. There is no practical or even legal reason why the collateral judgment doctrine should not be applied to judgments governed by 28 U.S.C. § 1257(a).

WHY THE SUPREME COURT SHOULD CONSIDER THIS CASE:

55. The Supreme Court has previously agreed to hear cases where the state has engaged in action which is in flagrant opposition to the Commands of the Supreme Court and the Constitution. This case is one such case. The actions of the trial court are a direct assault on not only the individual liberties and protections of the Appellant, but the trial court's conduct is an affront to the Constitution of the United States; the actions of the relevant judicial officers strike at the very heart of our Constitutional Republic and intrinsically undermine our Constitution. In the instant case, the trial court has flagrantly defrauded the Appellant of Due Process, as discussed above. And the relevant judicial officers herein mentioned, like any other criminal, will only feel emboldened and motivated to commit more crimes against the Constitution and the people should this Supreme court decline review.

56. Finally, the public is at grave risk, at least, any member of the public who may have the misfortune of appearing before the relevant judicial officers. The relevant Ohio Courts have demonstrated a clear, flagrant, & offensive disregard for the Constitution of the United States and the Rights retained by the people via that Constitution. The relevant judicial officers will only continue their assault on the Constitutional Rights of the Citizens of Ohio unless a Superior Court steps in and reminds that trial court that the Constitution matters and that it cannot be flagrantly disregarded, as the trial court has done.

CONCLUSION:

57. The Supreme Court of the United States should accept this petition for Certiorari.

Respectfully Submitted,

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