No._____

IN THE
SUPREME COURT OF THE UNITED STATES

MARK A. DI CARLO, *PETITIONER*
vs.
JAMES R. SWARTZ, JR., TONIMARIE SWARTZ, VILMA SWARTZ, *RESPONDENTS*

ON PETITION FOR A WRIT OF CERTIORARI
TO
UNITED STATES COURT OF APPEALS FOR
THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. CAN A FEDERAL DISTRICT COURT JUDGE GRANT ATTORNEYS FEES IN FEDERAL DISTRICT COURT IN A FEDERAL REMOVAL PROCEEDING FROM OHIO STATE COURTS FOR DEFAMATION WHEREIN ATTORNEYS FEES ARE NOT PERMITTED IN THE OHIO STATE LAWS FOR DEFAMATION; AND/OR, THE ATTORNEYS FEES ARE IMPROPERLY AWARDED UNDER FEDERAL RULE OF CIVIL PROCEDURE 54 BY THE DISTRICT COURT JUDGE; AND/OR, CAN ATTORNEYS FEES BE AWARDED UNDER FEDERAL RULE OF CIVIL PROCEDURE 54 BASED UPON FRAUDULENT AND ILLEGAL AFFIDAVITS TO SUPPORT THE FEES FILED BY THE ATTORNEYS?

2. CAN A UNITED STATES DISTRICT COURT JUDGE LOSE JURISDICTION TO DECIDE ATTORNEYS FEES WHICH WERE BASED UPON ILLEGAL AND

FRAUDULENT AFFIDAVITS; WERE NOT FILED WITHIN FOURTEEN DAYS; AND BY THE JUDGES FAILURE TO RULE ON THE OBJECTIONS; AND HIS FAILURE TO COMPLY WITH THE CODE OF JUDICIAL CONDUCT?

3. DOES A DISTRICT COURT JUDGE HAVE JURISDICTION TO DECIDE ATTORNEYS FEES AGAINST A DEFENDANT IN A CIVIL LAWSUIT, DIVERSITY CASE, APPROXIMATELY THIRTEEN MONTHS AFTER THE JURY AWARD, WITHOUT CAUSE; WHEREIN THE BILLING WAS NOT IN CONFORMITY WITH THE JUDGE'S OWN ORDER FOR SPECIFICITY IN BILLING?

4. WAS THE PETITIONER DENIED THE RIGHT TO APPEAL THE AWARD OF ATTORNEYS FEES TO THE THE UNITED STATES DISTRICT COURT FOR THE SIXTH CIRCUIT UNDER DUE PROCESS GUARANTEES

OF THE FOURTEENTH AMENDMENT; IN PARTICULAR WHEN THE APPEALS COURT REFUSED TO ADDRESS HIS ISSUES?

5. WAS THE PETITIONER DENIED HIS RIGHT TO APPEAL THE AWARD OF ATTORNEYS FEES BY THE SIXTH CIRCUIT COURT OF APPEALS IN VIOLATION OF DUE PROCESS UNDER THE FOURTEENTH AMENDMENT ON THE BASIS THAT THEY WERE NOT PROPERLY BRIEFED; AFTER THEY HAD REFUSED TO ALLOW HIM TO FILE AN OVERSIZED BRIEF DESPITE THE NUMBER OF PARTIES AND NUMEROUS ERRORS BY THE TRIAL COURT; AFTER THEY WERE BRIEFED IN MOTIONS IN THE TRIAL COURT AND CITED IN THE APPEAL?

LIST OF ALL PARTIES

Vilma Swartz, sister of Henry M. Di Carlo, Sr.; ToniMarie Swartz daughter of Vilma Swartz; James R. Swartz, son of Vilma Swartz; Attorney Stephen Komarjanksi, Third Party Defendant; Aultman Health Foundation, Third Party Defendant; Emeritus Sr. Living, Third Party Defendant. Mark A. Di Carlo, son of Henry M. Di Carlo, Sr. Defendant, and Petitioner before the United States Supreme Court.

LIST OF PROCEEDINGS IN

STATE AND FEDERAL COURT

No. 13-3971, United States Court of Appeals for the Sixth Circuit, Document 27-1, Filed: 06/04/2014. The Sixth Circuit Orders that Respondent - Di Carlo's counterclaims action against the Plaintiffs James R. Swartz, Jr.; Tonimarie Swartz; Vilma Swartz in an action for defamation be dismissed as the "order appealed from disposed of fewer than all claims and parties involved in the action and did not direct entry of a final appealable judgment under Federal Rule of Civil Procedure 54(b)."

No. 14-4092, United States Court of Appeals for the Sixth Circuit. Case: 14-4092, Document: 4-1, Filed 11/24/2014. Respondent - Di Carlo's counterclaims against James Swartz; Tonimarie Swartz; and, Vilma Swartz are dismissed, in the Sixth Circuit Court of Appeals as Respondent's action did not direct

entry of a final, appealable judgment under Federal Rule of Civil Procedure 54 (b).

TABLE OF CONTENTS

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

OPINIONS BELOW

The opinions of the United States Court of Appeals for the Sixth Circuit appear as an Appendix to the petition and are unpublished:

APPENDIX A: No. 19-41490, order filed 08/20/2021.

APPENDIX B: No. 14-4092, order filed 11/24/2014.

APPENDIX C: No. 13-3971, order filed 6/04/2014.

JURISDICTION

The United States Court of Appeals for the Sixth Circuit decided the case against the Respondent on 08/20/2021. Article III, Section II of the Constitution states that the Supreme Court has appellate jurisdiction on any case that involves a point of constitutional or federal law. A petition for rehearing was not filed. 28 U.S. Code § 1254(1).

CONSTITUTIONAL PROVISIONS, TREATISES, STATUTES ORDINANCES AND REGULATIONS INVOLVED IN THE CASE

U.S. Constitution, Amend. 1 § 1 "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Code of Conduct for United States Judges Canon 3: (B)(6) "A judge should take appropriate action upon receipt of reliable information indicating the likelihood that a judge's conduct contravened this Code, that a judicial employee's conduct contravened the Code of Conduct for Judicial Employees, or that a lawyer violated applicable rules of professional conduct."

Ohio Rev. Code 147.141(1) and (4)(A) "A notary public shall not do any of the following: "(1) Perform a

notarial act with regard to a record or document executed by the notary; (4) Perform a notarial act if the notary has a conflict of interest with regard to the transaction in question." *Ohio Rev. Code 1337.16(c)* "Sections 1337.11 to 1337.17 of the Revised Code and a durable power of attorney for health care created under section 1337.12 of the Revised Code do not affect or limit the authority of a physician or a healthcare facility to provide or not to provide health care to a person in accordance with reasonable medical standards applicable in an emergency situation."

Ohio Rev. Code 2315.21(B)(1)(b) "If the jury determines in the initial stage of the trial that the plaintiff is entitled to recover compensatory damages for the injury or loss to person or property from the defendant, evidence may be presented in the second stage of the trial, and a determination by that jury shall be made, with respect to whether the plaintiff additionally is entitled to recover punitive or exemplary damages for the injury or loss to person

or property from the defendant."

O. R. Pro. Conduct. 1.16(a) Subject to divisions (c), (d), and (e) of this rule, a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if any of the following applies: (1) the representation will result in violation of the Ohio Rules of Professional Conduct or other law;

O. R. Pro. Conduct 2.1 "Advice couched in narrow legal terms may be of little value to a client, especially where practical considerations, such as cost or effects on other people, are predominant. Purely technical legal advice, therefore, can sometimes be inadequate. It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice. Although a lawyer is not a moral advisor as such, moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied."

O.R . Pro. Conduct 8.4 "It is professional misconduct

for a lawyer to do any of the following: (a) violate or attempt to violate the Ohio Rules of Professional Conduct, *knowingly* assist or induce another to do so, or do so through the acts of another;(b) commit an *illegal* act that reflects adversely on the lawyer's honesty or trustworthiness;(c) engage in conduct involving dishonesty, *fraud*, deceit, or misrepresentation;(d) engage in conduct that is prejudicial to the administration of justice."

OH Const. Art. I, § 12 "No person shall be transported out of the state, for any offense committed within the same; and no conviction shall work corruption of blood, or forfeiture of estate."

6th Cir. R. 28 "A brief must direct the court to the parts of the record it refers to. (1) District Court Appeals. In an appeal from the district court, a brief must cite the "Page ID #" shown on the header or footer of the page(s) of the original record being referenced, along with a brief title and the record entry number of the document referenced."

STATEMENT OF THE CASE

The Petitioner, Attorney Mark A. Di Carlo, hereafter referred to as "Petitioner", respectfully prays that a writ of certiorari issue to review the judgment below, as the Petitioner, believes that there are compelling reasons why the Petition be granted, including that the Attorneys fees are supported by illegal affidavits by three attorneys; and, the District Court Judge failed to follow Ohio laws and federal laws in the awarding of the Attorneys fees. The United States District Court and the United States Court of Appeals for the Sixth Circuit have decided an important federal question regarding the award of Attorneys fees in a way that conflicts with a decision by Ohio state laws and Federal Laws; both courts have departed from the accepted and usual course of judicial proceedings; and the Sixth Circuit Court of Appeals denied the Petitioner the right to appeal the issue. The Sixth Circuit Court of Appeals has sanctioned departure by the

United States District Court for the Northern District of Ohio, the lower court, in awarding Attorneys fees, as to call for an exercise of this Court's supervisory power.

The "Swartzes" consists of Respondents James R. Swartz, his sister Tonimarie Swartz , and their mother Vilma Swartz. Vilma Swartz is the sister of Henry M. Di Carlo, Sr. The Respondents and former Plaintiffs, the Swartzes, filed a suit against Petitioner, Mark A. Di Carlo, a Attorney in Corpus Christi, Texas. The suit was filed on November 7, 2012 in Lake County, Ohio, Common Pleas Court alleging unspecified facts regarding defamation/libel; intentional infliction of emotional distress; and, invasion/false light against Respondent for two letters he had written regarding what he "believed" was the murder and/or trafficking and and/or abusive treatment of his 85 year old, emotionally disturbed father, with a limited education, and World War II veteran, Henry M. Di Carlo, Sr. ("Di Carlo Sr.") by the Swartzes which he opined resulted in his death from being

deprived of medical care, and food and water, for approximately seven days while he was at Emeritus Sr. Living. R.1,PageID#26. Petitioners "First Amended Answer and Counterclaims and Cross Claims", hereafter "Amended Answer", was filed on 07/31/13. R.59. Respondents' Amended Answer contained affirmative defenses which were not submitted to the jury despite written instructions and interrogatories which the Judge did not rule on; and a court proffer which the court did not hear nor rule on; and proffered evidence which the Judge would not allow the jury to consider because it was not tabulated separately in the Defendant's Exhibit volumes; and various laws ignored by the court. R.59, Page ID#2559.

The court dismissed Di Carlo's lawsuit against Aultman Hospital, wherein Di Carlo Sr. was initially treated and against Respondents Attorney Komarjanski although they did not deny nor dispute the facts and

allegations by Petitioner. The court dismissed Petitioner's suit against Emeritus, wherein Di Carlo Sr. was held without food and water and medicalcare for approximately seven days over Respondent's protestations. The court dismissed Petitioner's lawsuit and did not consider: uncontroverted evidence attached to Petitioners' Amended answer; that Respondents did not file an answer to Petitioner's counterclaims of fraud, or intentional infliction of emotional distress; and that no discovery had been conducted.

The Respondents filed a motion to dismiss Petitioner's counterclaims on 03/04/13 alleging the petitioner: Is not the "personal representative" of Di Carlo Sr.; Did not adequately plead a RICO claim; Cannot sue under the Younger abstention doctrine, for breach of fiduciary duties; Petitioner is not a real party in interest, failed to identify the nature and type of property, and did

not set forth the elements of conversion. As to his unjust enrichment and fraud claim Petitioner did not allege the elements; And also for fraud he did not allege time, place, and content of the misrepresentation. R.26, Page ID ##237-245.

Magistrate McHargh made a RECOMMENDATION to dismiss Respondent's counterclaims on 06/21/13 stating that Petitioners' pleading was "wholly" deficient; that Di Carlo's Intentional Infliction of Emotional distress claim was not considered in the order. R.52, Page ##2500-2501

Petitioner Objections to the Magistrates' Report, 07/05/2013: Facts are contained in an emergency letter to Emeritus on 05/02/12 and which were ignored. R. 1-2,PageID#40. Petitioner's letter to Emeritus on May 2 was never published to a third party but was only published to Emeritus, his father's health care provider and was permitted. See, Ohio Rev. Code 2317.05 Petitioner's letters

have qualified privilege under Ohio Rev. Code 2305.25 and Jacobs v. Frank, 60 Ohio St.3d 111 (1991); The phrase "murder and/or euthanasia" meant deprivation of food and water to an incompetent senior citizen. Petitioner's allegations against the Swartzes were not denied, and should be taken as true. R.56, Page ID#2531.

Petitioner stated: A frivolous objection to removal was filed by the Respondents, based on a fraudulent affidavit filed by their attorney, and Petitioner filed a response. R.8,PageID#15; The Swartzes family attorney Komarjanski, who changed Di Carlo's will and notarized the will while Di Carlo, Sr. was residing at Emeritus, refused to sign a waiver of service and Petitioner had to file a "praecipe" in Federal Court. Petitioner attended a hearing in Federal Court on 04/29/2013 and there is no record of the proceedings. R.30. Petitioner filed a response to Emeritus' and Aultman's Motion to Dismiss on 2/3/13 and 3/5/13 (R.#23). R.17,R.56,PageID#2531.

Petitioner's Objections to Par. III.B. stated the Plaintiffs are a RICO "family" and are organized. Di Carlo, Sr. was made to sign documents including a "State of Ohio Health Care Power of Attorney" form which led to his death and/or "assisted suicide." Petitioner alleged James Swartz and Tonimarie Swartz are medical professionals and should have been aware of the Ohio Rules which were violated. R.1-2,Page ID#28. See allegations which substantiate violations of 42 U.S.C. §482.43 regarding discharge planning for Di Carlo, Sr. by Aultman R.#17. Citing O.R.C. 1337.16(D)(1) for the failure of Emeritus to contact Petitioner and Petitioner's elimination from his father's health care decision. R.23, PageID##4-5.

Petitioner Objected to Par. III.C. in his Claim for Breach of Fiduciary Duty that all disputed facts in his lawsuit were interpreted in favor of the Swartzes including the facts that Di Carlo, Sr. was competent to execute documents; that Vilma Swartz was authorized in good faith

or her decision was in good faith. Petitioner asserted his father was denied his rights. R.23, PageID##4-5; R.56,PageID##2534-2535 .

Petitioner responded to Par.III.E. that his Claims for Conversion, Fraud, and Unjust Enrichment were required compulsory counterclaims, as a complaint will survive a motion to dismiss if it alleges facts that state a plausible claim for relief and if accepted as true is sufficient to raise relief above the speculative level. Petitioner asserted that the Swartzes caused the death of the incompetent Di Carlo Sr. by having him execute documents drawn up by their own lawyer, Komarjanski, and that Petitioner was deprived of his inheritance and companionship of his father. R.56, PageID#253.7

Petitioner alleged there was no showing that these issues are the same issues as in the pending Estate case. A. Zappitelli v. Miller, 114 Ohio St.3d 102, 2007-Ohio-3251.

The Respondents sued which subjected them to compulsory counterclaims. R.56, PageID#2538.

Judge Boyko granted the Plaintiffs-Respondents Motion to Dismiss on 07/19/13 repeatedly referring to Petitioner's failure to provide evidence. R.58,##2549,2555. Ohio Rev. Code 1337.16 (c) states the duties of health care facilities, Emeritus and Aultman. A durable power of attorney does not affect or limit the authority of a physician or a healthcare facility to provide health care to a person in accordance with reasonable medical standards in an emergency situation. Petitioner alleged Di Carlo Sr.'s death was caused by deprivation of food, water and medical care.

Petitioner's Motion for Judgment on the Pleadings as to the Plaintiffs was denied as untimely on 11/17/2014. R.136. Seventeen months later the Plaintiffs were permitted to file a Motion for Summary Judgment. R.128,133,136,148,149.

Petitioner asserted violations of Ohio Rev. Code 1337.16 by Emeritus and Aultman for violation of duties of health care facilities and reasonable medical standards, including not contacting Petitioner as Di Carlo, Sr. had no guardian and no spouse. R.59.

Respondent Aultman filed a three page Motion to Dismiss on 01/10/2013 asserting Petitioner's complaint is flawed because Petitioner termed the lawsuit a "cross claim" and did not allege a claim. PageID##71-73, R.6,PageID#74.

The Petitioner asserted that in the 6th Circuit the labeling of a pleading does not determine the pleading; Aultman Hospital released and transported his father without contacting him, despite his having the medical power of attorney. Petitioner cited an article regarding illegal Discharges by Northeast Ohio Hospitals and Nursing Homes R.17, Page ID #186. Petitioner filed a Motion to Strike and/or for More Definite Statement for Aultman's

Motion to Dismiss on 02/13/13 objecting that Aultman Hospital did not state what F.R.C.P. they are referencing; does not state whether there is a lack of subject matter jurisdiction under 12(b); and/or improper venue; failure to state a claim upon which relief can be granted and; or failure to join a party. Fed. R. Civ. Pro. 12 R.17,PageID#181. Petitioner asserted the Motion to Dismiss was not in compliance with F.R.C.P. Rule 12, 84 and 19. R.17, PageID#18. Petitioner's First Amended Answer and Counterclaims and Cross Claims on 07/31/13 against the Swartzes with causes of action such as intentional infliction of emotional distress, fraud, RICO, etc. and Petitioner, also, filed a cross complaint (sic), that is third party complaint against Aultman, Emeritus, and Komarjanski. R.1-2, R.59. Petitioner's **cross claims [sic],** Third Party Claims, against Aultman and Emeritus were dismissed by Judge Boyko on 08/06/2013 as there were no objections to the Recommendations by the Magistrate R.63.

Petitioner's Counterclaims for Intentional Infliction of Emotional Distress against the Swartzes were dismissed on 09/29/2014. R. 128. Petitioner's Third Party Claim against Attorney Komarjanski was dismissed on 11/21/2014 R.130,137. Similarly, Petitioner's counterclaims against the Swartzes were dismissed on 07/09/2013. R.58. The Magistrate's 05/24/13 Report recommended the dismissal of Petitioner's claims against Emeritus and Aultman stating that Petitioner falls short of the "concise and direct standard." R.47,PageID#388.

Emeritus filed a 1½ page answer on 02/25/13 denying Petitioner's allegations; asserting that they lack information to form a belief as to the truth; asserting they are not a corporate entirety capable of being sued. R.21,Page ID#207. Emeritus filed a 1½ page Motion for Judgment on the Pleadings on 02/27/13 and only stated Docket Entry 1 failed to state a cause of action against Emeritus. R.22, PageID#211

Petitioner filed a RESPONSE TO EMERITUS asserting the denial of the allegations is in bad faith and is a violation of F.R.C.P. 8 and 12; and, that the denial of the Petitioner's factual allegations is fraudulent and in bad faith. R.23,PageID#213. Emeritus did not state the basis of the Motion and referenced their own Affirmative Defenses. R.23,Page ID#213-214. Petitioner alleged his allegations were not denied and should be taken as true under F.R.C.P. 8(b)(6).

Petitioner asserted: "(A)n allegation is admitted if a responsive pleading is required and the allegation is not denied" and that every allegation by Petitioner is admitted under F.R.C.P. 8(b)(6) and the Motion to Dismiss must fail.

R.23,PageID#217. Also, Emeritus failed to state in short and plain terms, its defenses to each claim under F.R.C.P. 8(b)(1)(A) and admit or deny the allegations asserted against it. R. 23, Page ID # 217.

Petitioner's Answer stated: Emeritus has not

answered; They did not attempt to contact Petitioner or consult with him regarding his father, even when Petitioner arrived at Emeritus; Petitioner was accessible by telephone, was earlier telephoned by Aultman and had medical power of attorney; And, Petitioner arrived at Emeritus and begged Doctors and personnel for his father's care. R.23,PageID#217,218.

Petitioner requested a more definite statement under F.R.C.P. 51 regarding Emeritus' Answer, their affirmative defenses, and facts they are denying; as he cannot interpose a responsive pleading. R.23, PageID#219.

Petitioner asserted Emeritus filed an inadequate answer under F.R.C.P. 23 and moved to strike the answer under F.R.C.P. 12(f) as Emeritus' denial of all allegations against was improper, not containing every defense, not in good faith under F.R.C.P. 8(b) in denying the allegations in Petitioner's pleading which were admitted by Emeritus in state court including denying that Di Carlo Sr. passed

away and passed away at Emeritus; and that Petitioner is his son. PageID##220-221.

The Magistrate's 05/24/13 Report recommended the dismissal of Petitioner's claims against Emeritus and Aultman. R.47.

Petitioner alleged professional malpractice against Komarjanski for violating Rules 1.16 and 2.1 of the O. R. Pro. Con. by failing to exercise independent professional judgment to render and advise Di Carlo Sr. based on moral, economic, social factors: A) Di Carlo Sr.'s age at 85; B) Di Carlo Sr.'s recent transfer to Emeritus from Aultman; C) That Emeritus is a home for the seriously impaired elderly; and, D) By failing to reasonably inquire as to Di Carlo Sr.'s suicidal tendencies; E) By failing to take action to rectify his involvement in this case by appointing a guardian; and, F) Failing to inquire as to his medical problems and/or side effects of medication. R.59PageID# 2577.

Respondent Kormarjanski filed a one page answer

on 05/06/13 stating Petitioner's fraud claim should be dismissed because Petitioner does not attribute any specific representation or concealment to Komarjanski and Petitioner's RICO claim is devoid factual matter to support a violation. R.108,PageID##3097-3098.

The 10/24/14 Magistrate Report recommended Petitioner's third party claim against Komarjanski be dismissed. R.108,PageID#3397-3398. Petitioner's lawsuit was dismissed against Aultman on 08/06/2013.

The court found Petitioner's statements in the May 2, letter to Emeritus such as "I believe" and "in my opinion" imply an assertion of fact. R.167 ,PageID#4952; Found that the July 13th letter contained actionable words. R.167,PageID#4955; That it was a private letter to the employer of James Swartz and Tonimarie Swartz, intended to produce an investigation of wrongful conduct. R. 167, PageID# 4955.R.167,

PageID#4958.

Petitioner's affirmative defenses which were not controverted included: Substantial truth; Protected free speech, U.S. Constitution, Amend. 1 § 1; The remarks were of public concern; The statements were in good faith and reasonably believed to be true; R.126, PageID#4373. The court refused to charge these affirmative defenses to the jury despite written and oral requests by the Respondent.

Petitioner asserted he should have been granted summary judgment and his motion to dismiss as to defamation against the Plaintiffs because he made an opinion. Vail v. The Plain Dealer, 72 Ohio St.3d 279, at 281 (1995); OH Const. art. I, § 12 Opinion is a complete defense to defamation in Ohio. Wampler v. Higgins, 93 Ohio St.3d 111 (2001).

Petitioner filed a "Defendant's Objections to

Attorneys Fees. . . .” based, in part, on the filing of an affidavit of Attorney Boehm, who improperly notarized two of the three affidavits. R. 269, Page ID ## 5756-5758. Petitioner stated Zapka’s affidavit dated 03/06/2014 was fraudulently notarized by Attorney Patrick McLaughlin, Attorney Zapka’s partner on 03/06/2014. R.87-1 Attorney Boehm notarized an affidavit for Plaintiffs co-counsel, Lavin regarding Attorneys fees. R.269,PageID#5757. Petitioner’s objected that Boehm's Affidavit should have been struck because he notarized the affidavits of two of his co-counsels illegally. R.269,PageID#5758.

The Petitioner asserted the court erred in granting attorneys fees to the Plaintiffs because: 1) They are based upon untimely affidavits filed by the Plaintiffs counsel; 2) They were based upon fraudulent and illegal affidavits, improperly notarized by co-counsel or members of the firm representing the Plaintiffs; 3) The award included attorneys fees for causes of actions by the Plaintiffs the Swartzes

which were dismissed; 4) Most of the Attorney's fees of the Respondent's were based upon the Plaintiffs motions such as their Motion to Dismiss and Summary Judgment which were supported by their illegally notarized and criminal affidavits; 5) The award of punitive damages by the jury was not in accord with Ohio law nor federal law and therefore attorneys fees were improper, and could not be awarded; 6) The billable records of the Respondents attorneys are not in accord with the federal rules of evidence; 7) The attorneys fees were granted because of the age of the "age" of the case and the "contentiousness" of the case which were the results of the Respondents actions and the courts improper actions such as delays in deciding the issue of attorneys fees; 8) The Respondent was denied his rights to submit interrogatories and discovery regarding the fees. (R.276)

The jury was not tendered the attachments to the alleged defamatory statements to the V.A. which

substantiated his opinions as these were not admissible because Di Carlo had not submitted them in his Exhibit volume even though they were attached to his amended answer.

SUMMARY OF ARGUMENT

The attorneys fees were granted to the Respondents about thirteen months after the request for fees. Based upon the record, this was a tactic by the trial judge to confuse the Appellate deadline, or an attempt to make the Appellant file two writs to the Supreme Court; one for the trial judgment and one for the Attorneys fees. The attorneys fees were based upon numerous fraudulent and illegal affidavits filed by all three of the Attorneys for the Respondents and the trial court awarded fees over objection to these affidavits. Neither the trial court judge nor the court of appeals judges reported illegal actions by federally licensed attorneys to the Bar or to authorities; nor did they inquire as to the actions of the attorneys.

The Petitioner was denied his right to Appeal for Attorneys fees by the Sixth Circuit. The Appeals Court did not review Petitioner's objections for the stated reason that he did not brief the issues. However, the Appeals court did not allow the Petitioner to file an oversized brief; and the Petitioner's objections were referenced in the Petitioner's Brief by Document Number. The Appellant's proposed length was due to the egregious and improper actions by the court, the three Plaintiffs', and three third party defendants. The court of Appeals required that the Appellant refer to the Motions and Orders in the brief, and then determined that they will not refer to the arguments made in the motions.

"The Supreme Court should explicitly recognize a due process right of appeal in both civil and criminal cases. Appeals play a number of important roles in the justice system: they allow the correction of legal and factual errors, encourage the development and refinement of legal

principles, increase uniformity and standardization in the application of legal rules, and promote respect for the rule of law." Cassandra Burke Robertson, The Right to Appeal, Case Western University School of Law, 91 N.C.L. REV. 1219 (2013). The Respondents request for Attorneys fees did not comply with the Judge's order about specificity, which exceeded the fourteen days permitted by the Judge. The fees were granted under Federal Law even though the fees were to be considered under Ohio law and under Ohio Law for defamation. The request for Attorneys fees was not in accord with the Federal Rules. Many of the former Motions which the respondents filed, and which the Petitioner was ordered to pay Attorneys fees for the drafting of such motions, were based upon fraudulent affidavits of counsel, and even of the Plaintiffs themselves in their summary judgment; as the three plaintiffs used identical wording in their affidavits.

ARGUMENT

The 6th Circuit local rules requires references to the record, and a brief must cite the "Page ID #" shown on the header or footer of the page(s) of the original record being referenced, along with a brief title and the record entry number of the document referenced. 6 Cir. Loc. R. 28(a)(1) The 6th circuit court then represents that the issues were not briefed, although cited and listed in the electronic file, and limited the length of the brief. The Petitioner asserts these were pretexts to deny the Petitioner the right of appeal, to deny the petitioner due process of law, and to hide the egregious actions of the Swartzes, the Swartzes Attorneys, and the District Court Judge.

"Whoever, having knowledge of the actual commission of a felony cognizable by a court . . . conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined under this title or

Imprisoned not more than three years, or both." 18 U.S.C. § 4.

Punitive and exemplary damages in Ohio are only for subsequent tort actions involving the same act or course of conduct for which exemplary damages have been awarded; or, in a subsequent action. Ohio Rev. Code 2315.21 (D)(5)(b) (2005). Therefore, no punitive damages can be granted in this case nor attorneys fees under state law..

The Sixth Circuit Ordered on 08/21/2021: Petitioner Di Carlo filed a notice of appeal on December 5, 2019 and it is untimely except for the award of Attorneys fees; The Notice of Appeal must be filed within 30 days after the entry of judgment or order under Fed. R. App. Pro. 4(a)(i) (2016); A motion for Attorneys fees or costs does not extend the time to file an appeal; That under Fed. R. Civ. Pro. 58(e) a motion for an award of fees or costs does not extend the time to file an

appeal; that the 30 day ruling is "mandatory" and jurisdictional; that Petitioner filed timely post judgment motions which were denied on January 11, 2019; and Petitioner did not file his appeal until December 5, 2019, ten months too late; and then the Court of Appeals dismissed the appeal except as to Attorneys fees.

The Sixth Circuit Court stated that Ohio laws allows a prevailing plaintiff to recover attorneys fees when the jury awards punitive damages involving fraud, insult or malice; That Ohio law employs the "lodestar method" in determining attorney's fees; That these fees are reviewed for an abuse of discretion; That Petitioner's objections to Attorneys fees were forfeited by his assigning error without legal support. Case: 14-4190 Document 82-2.

Ohio only allows attorneys fees for fraud, insult or malice. Cruz v. English Nanny, 2017-Ohio-4176, par. 96 (Ohio Ct. App. 2017) A jury in Ohio is to award fees.

Neal-Pettit v. Lehman, 125-Ohio St. 3d- 327 par. 96, 2010 Ohio 1929) Moreover, this was recodified in Ohio Rev. Code 2315.21(B)(1)(b) (2021) Punitive or exemplary damages. Only juries in Ohio are allowed to award attorneys fees, so attorneys fees were granted under federal law. and/or it was improper for the federal just to grant attorneys fees.

The petitioner attempted to file an oversized brief and that was denied by the court in document 67 under the local rules, on 12/09/2020. The denial by the Court was egregious: given the numerous issues; the actions of the three Plaintiffs-Respondents and their counsel; the actions of third party Defendant's and three Plaintiffs; and three counter defendants. Therefore, the Petitioner, in his brief to the Sixth circuit, cited the objections in his brief through his motions in the trial court, as they required. These issues were briefed by incorporation, as ordered by the local rules. The Petitioner asserts that the local rule limiting the size of the brief, and not incorporating the briefed motions, and

limiting the length of his brief was a violation of due process.

The Sixth Circuit Court of Appeals court states that that "DiCarlo" (sic) forfeited his appellate review, by simply listing assignment of error without developing any argument." The Petitioner notes that he asserts this without "developing" the discussion and ruling on each point separately. These issues are of record, and the general assertion that Petitioner did not "develop" his argument should be considered in the limited length of the brief; the number of seven parties; the fact that the issues were thoroughly briefed at trial and are impliedly incorporated by reference, and the number of issues which were caused by the numerous fundamental errors by an obviously biased and result oriented trial court Judge; who apparently has no respect for his position; federal laws; or the courts of theUnited States.

The Petitioner reiterated the arguments to Attorneys fees in his objections by reference to the motions in court. R.276,R.277,R.269,PageID#5756-5758. The Petitioner was limited to the length of his brief, see order Document 67-2 The 6th Court of Appeals limited the length of Petitioner's brief. Case: 1:12-cv-03112-CAB,Doc #269,Page ID:5755.

This is a federal diversity case and there is no right of attorneys fees under Ohio law for the attorneys fees, the Plaintiffs were aware of this, and their counsel requested attorneys fees under Federal law; admitting they were not entitled to Attorneys fees under state law. However, there was no discussion that they had "forfeited their right." The Court of Appeals does not give an explanation for the illegal granting of Attorneys fees and the Judge had no jurisdiction to grant Attorneys fees based upon untimely requests, upon illegal affidavits, etc.

The Respondents moved for attorneys fees improperly under F.R.C.P. 54, untimely, without specificity, nor adequate supporting affidavits, and the court of appeals affirmed these fees and ignored Petitioner's arguments. (See DOC. #: 251) The Judge ordered Attorneys fees under Federal Rule of Civil Procedure 54(d) for a case wherein, Ohio law was to be applied, and Ohio law did not permit the fees. See, Doc#:276,PageID#:6427.

"(T)he guaranty of due process in the Fourteenth Amendment is intended to preserve, and a purely arbitrary or capricious exercise of that power, whereby a wrongful and highly injurious invasion of property rights is practically sanctioned and the owner stripped of all real remedy, is wholly at variance with those principles." Truax v. Corrigan, 257 U.S. 312, 313 (1921)

Judge Boyko did not have authority or jurisdiction to grant untimely attorneys fees under federal law for attorneys fees based upon illegal affidavits, which do not

constitute evidence, refuse to consider the Petitioner's objections, and grant attorneys fees which were not permitted under Ohio laws for several reasons.

The Petitioner's objections at trial court were briefed and part of the electronic record. Case: 1:12-cv-03112-CAB Doc #: 269. The Petitioner could not brief his numerous and merited objections in an Appellate brief dealing with six opposing parties, when severely restricted in the length of his brief.

In District Court the Petitioner renewed his prior objection that the court no longer has jurisdiction to grant attorneys' fees for the Plaintiffs as the requests are untimely. Doc#269,PageID#5755. The petitioner moved to strike the affidavits of Attorneys Zapka, Boehm, and Lavin for as illegal and fraudulent.

The Petitioner moved to strike the affidavit of Zapka and billable hours upon which the illegal affidavit was based

as it was notarized by Attorney for the Respondents, Boehm. See, for example, “the commission does not expire comment” and see the handwriting of Boehm on correspondence dated June 28, 2019. A Notary Public in Ohio holds office for five years, except for Attorneys. Ohio Rev. Code 147.03 (2001), Ohio Rev. Code 147.03 (2019). Doc#269,PageID #5755. Zapka admitted that slander, defamation, etc. are not his primary areas of practice in his “affidavit”, par. 20, and he does not have the qualifications to assert the hourly billing rates in the field. Case:1:12-cv-03112-CAB,Doc#:269, Filed:07/15/19, 2 of 12.PageID #: 5756.

A notary is prohibited from performing a notarial act with regard to a conflict of interest. Ohio Rev. Code 147.141(A)(4) (2001).

The identical nature of the affidavits of Boehm, and Lavin, and Zapka established that Boehm prepared the affidavits or the Lavin Boehm, LLC firm executed the record, that is the affidavits; neither Boehm nor Lavin nor Zapka

denied the Petitioner's assertions regarding the affidavits. Case:1:12-cv-03112-CAB Doc #:269 Filed: 07/15/19,1of12, PageID#: 5755

An Ohio notary cannot perform a "notarial act" if they have a conflict of interest, for example, a direct financial interest, with regard to the transaction. Ohio Rev. Code 147.141(B)(1).

The "Affidavit" states that Lavin and the lawyer-notary Boehm, represented a "blended rate for his services and the services of David, Boehm"; therefore, there is a conflict of interest.

Ohio Rule of Professional Conduct 8.4(b) states that it is professional misconduct for a lawyer to commit an illegal act that reflects adversely on the lawyer's honesty. Case:1:12-cv-03112,Doc#:269,Filed:07/15/19,1of12,PageID#:5756.

"Illegal" denotes criminal conduct or a violation of an applicable statute or administrative regulation. Ohio R. Pro.

Con 1.0(e) (2007, rev'd 2021) Respondent's attorney Zapka conducted an illegal act by signing an affidavit in front of an attorney who has an interest in the case. Zapka asserted in his signed, and legally unsworn affidavit, that his primary areas of practice include professional malpractice, so Zapka had a high standard of duty. The Petitioner asserted that the actions of Zapka indicate that he does not have competent experience in the field, because he signed an affidavit in front of an attorney who has a conflict. Case:1:12-cv-03112-CAB, Doc#:269, Filed: 07/15/19, 1of 12, PageID #:5756.

"A judge should take appropriate action upon receipt of reliable information . . . that a lawyer violated applicable rules of professional conduct." Code of Conduct for United States Judges Canon 3: (B)(6). The information is reliable based upon the Respondent's filings, and admissions, and the Judge took no action to conduct a "show cause" hearing; or make any

inquiries of record.

The Petitioner moved to strike the affidavit filled by Zapka dated July 1, 2019, as a fraudulent affidavit, and the court conducted no investigation; nor made no findings; and, the court instead apparently found that the affidavit was fraudulent because the case was removed to federal court despite the fraudulent assertions that the federal courthouse was closed on the filing of the removal. (Doc.#13-1) The Petitioner was ordered to pay attorneys fees to respond to this fraudulent motion to remand.

Lavin illegally acted by signing an affidavit in front of an attorney, Boehm, who has an interest in the case. Lavin asserts in his signed and legally unsworn affidavit, that he has experience in ethics investigation. (Par. 6.) The actions of Lavin establish that he violated Rules of Professional Conduct and engaged in the act of co-counsel Boehm. fees billed by Lavin, and this issue was addressed by the court only by

misstating the law.. Case: 1:12-cv-03112-CAB Doc #: 269 Filed: 07/15/19 3 of 12. PageID #: 5757

The affidavit of Boem, DHB, stated that he prepared the affidavits on 6/25/19; then notarized two of the three affidavits supporting attorneys fees. Therefore, there is no affidavit either signed by Lavin or by Zapka. Boehm is of record in abusing his notary privileges. Case:1:12-cv-03112-CAB, Doc#:269, Filed :07/15/19, 4of12, PageID#:5758.

Boehm states in his "affidavit", on 06/27/2019 that he started the law firm of Lavin Boehm LLC with Lavin on 06/01/2017; and he notarized the affidavit of Lavin and Zapka illegally with a conflict of interest.

The Petitioner objected that a judge should take action upon receipt of reliable information that a lawyer violated applicable rules of professional conduct. Code of Conduct for 40 United States Judges Canon 3: (B)(6). The failure of the District Court Judge to take "action" against Lavin, Zapka, and Boehm, including a show cause hearing, is in violation of

the rules resulted in his loss of jurisdiction as a judge to consider Attorneys fees. The Judge granted Attorneys fees improperly on fraudulent affidavits; which were not filed in 14 days; and failed to rule on the Petitioner's uncontroverted objections.

On 04/11/2014 the Respondents, the Swartzes, attorney Zapka, notarized an affidavit for Respondents attorney Boehm, which resulted in an order by the court in favor of the Respondents. (Doc#102-1). Attorney McLaughlin, is a partner attorney with McLaughlin & McCaffrey; Zapka's employer, or firm partner and he notarized an affidavit on behalf of Zapka.

https://www.manta.com/c/mm7nl47/mclaughlin-mccaffrey; https://pview.findlaw.com/view/3204678_1. See, Notice of firm change from McLaughlin &McCaffrey, LLP to McLaughlin Law, LLP. (Doc#:7)

The Petitioner, objected to the granting of Attorneys fees to the Plaintiffs based upon motions such as Doc#102-1 based upon such improper affidavits, filed by Respondents and the time spent drafting the motions and affidavits. These motions also include the motion to remand, reviewing the defendant's motion to remove; the Plaintiffs' Motion for Summary Judgment wherein three affidavits of the Plaintiffs were ignored by the court because they contained identical language; Affidavits filed post judgment by Zapka and Lavin and Boehm. Case:1:12-cv-03112-CAB, Doc#:269, Filed:07/15/19,4 of 12; PageID #:5758-5759. The Court basically ordered the Petitioner to pay for the Respondents' criminal behavior.

The Petitioner objected to attorneys fees for misrepresentation of the laws to the court by the same legal entity of McLaughlin Law, and McLaughlin McCaffrey,

and partner Zapka. These hours were 12.7 hours from 02/05/13 through 02/04/13.

The affidavit of Attorney Zapka, filed early in litigation, 03/06/2014, was similarly fraudulently notarized by Attorney Laughlin, and the Petitioner objected to those attorney's fees which totalled $1,475.00, and they were upheld by the District Court. (Doc.#87-1)

The Respondents made no effort to file proper affidavits for Attorneys fees after Petitioner's Objections, and the court made no suggestion for them to file properly notarized affidavits. There is some indication that there was some sort of massive fraud wherein, the Respondents did not want to be responsible under oath for perjury, and they would invoke the Attorney Client privilege if queried about these affidavits and payments for fees.

The actions of the Attorneys for the Plaintiffs-Respondents, were indicative of forms of fraud and

illegal conduct that he objected to repeatedly, including threefraudulent affidavits filed with the plaintiffs' summary judgment, misleading the court about law and precedent, etc.

The uncontested facts show from the time Di Carlo, Sr. was illegally moved from Aultman Hospital to Emeritus without notice to the Petitioner; to the time the elderly, World War II veteran, with severe emotional problems, Di Carlo, Sr. was brutally and illegally denied food and water and medical care; through pretrial and posttrial procedures that ignored the Rules of Evidence and Procedure and Ohio state laws; to the rules which were applied in a discriminatory manner in an utter contempt for due process or fundamental fairness; in an apparent effort to hide the egregious actions of the Swartzes various entities and nursing homes to maliciously harm Di Carlo, Sr. and his son the Petitioner, physically, emotionally and monetarily. Case: 1:12-cv-03112- CAB,Doc #:269, Filed:07/15/19,PageID#:5759.

Appellate review of punitive damage awards entered by trial courts was essential to preclude the arbitrary deprivation of property without due process of law. TXO Products Corp. v. Alliance Resources Corp., 509 U.S. 443, 453 (1993), and Honda Motor Co. v. Oberg, 512 U.S. 415, 430 (1994). In defamation cases, it recognized that Appellate review is necessary in defamation cases to ensure that the legal principles announced by the lowers courts "have been constitutionally applied" in a consistent manner "in order to preserve the precious liberties established and ordained by the Constitution." Bose Corp. v. Consumers Union of U.S., Inc., 466 U.S. 485, 508 (1984). The petitioner was denied his right to trial, and the right to appeal by the trial court judge waiting 14 months to rule on attorneys fees, and the right of appeal by the 6th Circuit Court of Appeals.

The actions of Judge Boyko, in violation of the Federal Rules of Civil Procedure; the Federal Rules of Evidence, and

in violation of the Code of Conduct for United States Judges resulted in violations of Due Process of law. PageID # 5721-5722 "No State shall. . . deprive any person of life, liberty, or property, without due process of law. . . ." U.S. Const. Amend. XIV, § 1. The lack of an impartial judge is violative of the due process clause of the 14th amendment. See, e.g., Aetna Life Ins. Co. v. Lavoie, 475 U.S. 813, 814 (1986); In re Murchison, 349 U.S. 133 (1955); Tumey v. Ohio, 273 U.S. 510, 522 (1927) The District Court Judge impliedly admitted he made biased rulings against the Petitioner, wherein he made an "ex parte", unsworn, statement, not unsupported that "trial security" entered the courtroom during Petitioner's opening. The record shows the Judge stated at trial Petitioner should make no more dramatic statements, and show Petitioner was not held in contempt. R.273,PageID##6028-6011 This bias against continued through the allowances of numerous illegal and criminal affidavits to support Attorneys

fees.

The Court of Appeals failed to act as an appellate court, by their summary of the case and by failing to discuss the issues under the pretext that Petitioner had not adequately briefed the issues, after limiting the length of his brief.

The Petitioner objected that these billable records were not certified in accordance with the federal rules of evidence. The records appeared to be from an electronic device or storage medium. See, Fed. R. Evid. 902(13), 902(14). The records must meet the requirements of Fed. R. Evid. 803(6). There is no certification which meets 902(11) nor 803(6). Fed. R. Evid. 902.11. Fed. R. Evid. 803(6). Fed. R. Evid. 902(13), 902(14), 803(6) requires records of a regularly conducted business activity. Fed. R. Evid. 902(13), Fed. R. Evid. 902(14) The Petitioner moved to strike all of the records and there are not legally supporting affidavits for the record and objected to the grant of attorneys fees in

entirety. Case:1:12-cv-03112-CAB, Doc#:269, Filed: 07/15/19, 6of12, PageID #: 5760.

The court gave the Respondents counsel another opportunity to submit billing records, after 14 days. The Petitioner formerly objected that the Plaintiffs were allowed to go between federal and state law, and that attorneys' fees are not permitted. The Respondents submitted billing records based upon illegal affidavits, without authorization, and without timely filing the affidavits. The Respondent also submitted billing records for causes of action which were dismissed. Case: 1:12-cv-03112-CAB,Doc#:269, Filed:07/15/19,6 of 12, PageID#5760.

The court order filed on 06/20/2019 stated: 1) A detailed itemization of attorneys bills is required by July 1, 2019. (Doc # 261) 2) A description of the work performed; 3) Time spent on that work; 4) Plaintiffs may file a redacted itemization to protect any privileged materials but must submit

the unredacted versions in camera for court's review. Case:1:12-cv-03112-CAB, Doc#:269,Filed:07/15/19,6-7of12,PageID#:5721-5722,5760-5761

The Attorneys fees were unwarranted, and neither the District court Judge, nor the respondents, nor their counsel who continued in the case after criminal wrongdoing was established responded to his allegation.

The granting of attorneys fees was unwarranted, and violative of due process: 1) The itemization was not detailed and did not include a description of the work performed. There was no explanation as to issues and the copy that the Petitioner received contained numerous redacted records. Case: 1:12-cv-03112-CAB , Doc#:269, Filed :07/15/19, 7 of 12. PageID#:5761. 2) The Petitioner asserted in his objections there is no citation to the billing records which may be privileged. Therefore, the Defendants billing records submitted July 1, 2019 were not in accordance with the court order.

The Petitioner pointed out that the Attorneys charged separately at $250.00 per hour for attendance of the deposition, despite their representation to the court that they charged a "blended" rate. The alleged "affidavit" of Boehm, stated his hourly rate for himself and David P. Zapka was $250.00 and was then reduced to $185.00. Therefore, the Respondents' counsel double billed for the one day deposition on page 98 of the records, See paragraphs one and three. The Petitioner - objected to the payment of $1,750.00 twice. Case: 47 1:12-cv-03112-CAB, Doc#:269, Filed:07/15/19, 8of12, Page ID#5762. Neither the District Court nor the Court of Appeals addressed this issue.

The costs for the video deposition was already denied and were billed for $1,436.00, on page 100 and the Respondent objected. The Defendant objects to the copies charges as they are not properly attorneys fees and should have been submitted as costs; at least according to the Plaintiffs' the charges for costs are to be billed separately.

The copy charges included $994.47 on 5/14/18 which were billed formerly and the Respondents were requested those fees again.

The Petitioner Di Carlo objected to the billing of preparation of affidavits on 06/25/19, as two of the three alleged affidavits were signed by attorneys at the same firm or attorneys who had a conflict of interest, and the third affidavit by Boehm was made by him concurrently with his improper notarization of two attorneys who he had a financial interest with or a partnership agreement.. 1:12-cv-03112-CAB,Doc#:269,Filed:07/15/19,8 of 12,PageID #:5762

Two of the Respondent's three causes of action were dismissed, and the Respondent asserted as attorneys fees in these two causes of action cannot be granted. The hours should be divided between the causes of action which were dismissed and those which were not. *Gilson v. Am. Inst. Of Alternative Medicine,* 62 N.E.3d 754, ¶¶ 115-121, 2016-Ohio-1324 (2016) The Respondents did not make any attempt to

divide these fees after nine months nor make a supporting argument for the division that two of the three causes of action were dismissed on 3/6/2015. The Respondent attempted to do an accurate breakdown of attorneys fees through 03/06/15, and the Defendants total was $153,713.50. Two of the three causes of action were dismissed prior to 03/06/15 and is $153,713.50 is divided by three, and multiplied by two, those fees for the two causes of action would add up to $102,475.66. Therefore, attorney fees would be reduced in a prorated basis by $102,475.66. The Petitioner's Motion to Dismiss on two of the three causes of action was granted on 03/06/15. (Doc #:140) Therefore, Attorneys fees on two of the three causes of action cannot be granted prior to 03/06/2015 and they are to be prorated, that is the Intentional Infliction of Emotional Distress Claim and the invasion of privacy claim. The Respondents fail to make an argument that these causes of action were sufficiently connected to the cause of action which went forward in this case. Case: 1:12-cv-03112-CAB,Doc #:

269, Filed: 07/15/19, 9of 12, PageID #: 5763. The court, however, refused to rule on these objections as did the court of appeals.

The Petitioner objected to the request for additional attorneys' fees of $2,502.50 based upon postjudgment work caused by the negligent actions of the Respondents in not providing billing appropriate and timely, based upon misstating the law to the courts and based upon the preparation of affidavits improperly notarized, etc. Case:1:12-cv-03112-CAB, Doc #:269 Filed: 07/15/19 9 of 12. PageID #: 5763. Neither the District Court Judge nor the Court of Appeals responded to this objection.

The Petitioner objected to the submission of Attorneys fees, as the Plaintiffs did not make, nor attempt to make an assertion regarding which Plaintiff paid the fees, nor the totals. The Judgment should reflect who paid the fees. Fed. R. Civ. Pro. 54 states that a Judgment should grant the relief to which the party is entitled. The Court cannot draft a Judgment as to

the Attorneys fees each Plaintiff may be entitled based upon the information provided. Case:1:12-cv-03112-CAB, Doc#:269, Filed:07/15/19, 9of12,PageID #: 5763.

The Petitioner objected to computerized billing statement on July 1, 2019 because the "slip listings" are primarily redacted; that is they were obviously whited out, as there are partial letters showing, and gaps in the lines which indicate missing words, or they were not specific, or appeared to address another matter. Therefore, these bills were not adequate for the court to grant attorneys' fees in accordance with the court order that there be a detailed itemization of attorneys bills and a description of the work performed; as required by July 1, 2019. Doc#261 These bills totalled $60,794.00, and the Petitioner objected to their being granted, and to the Respondents failing to submit to those to the defendant pursuant to a confidentiality agreement. 1:12-cv-03112-CAB, Doc #:269, Filed: 07/15/19, 10 of 12, Page ID #:5764

The Respondent included various costs in the computerized statement of Attorneys' fees, Exhibit A, and the court addressed these costs previously and granted costs previously. The bills for copies, etc. add up to $5,238.94. Case:1:12-cv-03112-CAB, Doc#:269,Filed: 07/15/19,10 of12, PageID #: 5764 fees: 1) As expressed in his motions; 2) The granting of Attorneys fees for the services of Zapka and Lavin as they had. The Petitioner prayed and objected to the Attorneys not submitted an affidavit in accordance with the court order; 3) The granting of Attorneys fees based upon the affidavit of Boehm, as his affidavit should be struck, as he engaged in an illegal act by notarizing the affidavits of Zapka and Boehm; 5) The submission of the Attorneys fees prior to the dismissal of two of the three causes of action, as there has not been a 53showing that they were related to the single existing cause of action and the total attorney fees would be reduced by $102,475.66; 6) The granting of attorneys' fees as

the court cannot divide up the fees appropriately between the three plaintiffs in accordance with the Federal Rule 54; 7) Attorneys' fees of $60,794.00, as these fees are not specific and are redacted, and the unredacted version was not submitted to the Petitioner, so they are not in accordance with the court order; 8) Costs of $5,238.94 as these costs were previously addressed by the court; 9) The Respondent also specifically objects to the attorneys' fees as follows: a) $3,300.00 which the Defendant objects to an award of attorneys fees for the unwarranted motion to remand to state court, which was based on a fallacious affidavit signed by Zapka. b) Those attorneys' fees which total $1,475.00 based in part on the affidavit of Zapka dated 03/07/2014 as it is notarized by his partner, and the same legal entity upon which he splits the profits, McLaughlin. (Doc # 87-1) d) The payment of $1,750.00 twice for two Attorneys attending the deposition as it was supposed to be a "blended" rate. 11) None of these billable records are certified in accordance with the federal

rules of evidence. Fed. R. Evid. 803(6). 902(13), 902(14); (12) The Petitioner requested thirty days to submit ten interrogatories, ten requests for production, and ten requests for admission to each of the three Respondents,which are in part included the following, as found in Exhibit B.Case:1:12-cv-03112-CAB,Doc#:269, Filed:07/15/19,11of12, PageID #: 5765 The Respondents moved for attorney's fees under Federal Rule of Civil Procedure 54. Fed. R. Civ. Pro. 54. DOC.#:251 The Plaintiff's counsel was obviously aware that attorney's fees could not be granted under Ohio law; and yet the federally licensed attorney requested the fees by motion. The District Court Judge ordered attorney's fees under Fed. R. Civ. Pro. 54(d); and yet as discussed the requisites of R. 54 were not complied with. See, Doc #:276, PageID#: 6427.

A United States District Court Judge granted attorney's fees based upon illegal and fraudulent affidavits; and failed to

rudimentarily comply with the rules, in particular Rule 54, regarding the granting of attorney's fees. The Court of Appeals was in accordance with the granting of attorney's fees from a federal statute, Federal Rule of Civil Procedure 54, wherein they cannot be granted under Ohio law; and refused to hear his appeal. Canon 1 of the Code of Judicial conduct states: "A Judge Should Uphold the Integrity and Independence of the Judiciary- An independent and honorable judiciary is indispensable to justice in our society. . . . A judge should accord to every person . . . the full right to be heard according to law." Code of Judicial Conduct, Canon 3(4).

CONCLUSION

The petition for a writ of certiorari should be granted. The Petitioner was denied his right to have the issue regarding Attorney's fees heard by the District Court Judge and the Appellate Court regarding Attorney's fees; the Attorneys fees are not warranted under Federal Law or Ohio state law; the Attorneys fees are predicated upon insufficient and illegal affidavits; and, generally the procedure awarding the fees was violative of due process of law.

Respectfully submitted,

_____

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