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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
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Re: Case No. 20-1514, *Joseph Constant v. DTE Electric Company, et al*
Originating Case No. : 2:19-cv-10339

Dear Counsel and Mr. Constant,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Sharday S. Swain
Case Manager
Direct Dial No. 513-564-7027

cc: Ms. Kinikia D. Essix

Enclosure

Mandate to issue

Appendix-A

NOT RECOMMENDED FOR PUBLICATION

No. 20-1514

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JOSEPH CONSTANT, Plaintiff-Appellant, v. DTE ELECTRIC COMPANY, aka DTE Energy, aka Detroit Edison Company, aka DTE, et al., Defendants-Appellees.	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

ORDER

Before: COLE, Chief Judge; GILMAN and McKEAGUE, Circuit Judges.

Joseph Constant, a pro se Michigan resident, appeals the district court's judgment dismissing his civil action for failing to state a claim and for lack of subject-matter jurisdiction. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a). Constant has also filed various requests to strike attorneys' appearances, arguments, and filings; to issue various sanctions; to vacate state court judgments; to grant oral argument; and to allow him to file multiple reply briefs.

This appeal originates from a 2013 state lawsuit between Constant and the Detroit Electric Company (DTE) in which the Michigan courts granted DTE injunctive relief, allowing it to trim trees on Constant's property in order to provide clearance for an electrical line. Constant appealed that determination all the way to the United States Supreme Court, but he did not obtain relief. *See DTE Elec. Co. v. Constant*, No. 317976, 2014 WL 6861225 (Mich. Ct. App. Dec. 4, 2014) (per curiam), *leave to appeal denied*, 869 N.W.2d 580 (Mich. 2015), *cert. denied*, 136 S. Ct. 2503 (2016). Constant has since filed many unsuccessful lawsuits in both state and federal court

challenging this determination and claiming fraud and a conspiracy against him. *See, e.g.*, *Constant v. Chabot*, No. 2:17-cv-10018 (E.D. Mich. Feb. 1, 2017) (order); *Constant v. Schuette*, No. 2:16-cv-11639 (E.D. Mich. Sept. 8, 2016) (order); *Constant v. Hammond*, No. 2:16-cv-10629 (E.D. Mich. May 19, 2016) (order); *Constant v. Schuette*, No. 2:15-cv-11928 (E.D. Mich. July 17, 2015) (order); *Constant v. DTE Electric*, No. 2:15-cv-11927 (E.D. Mich. July 17, 2015) (order); *Constant v. Kumar*, No. 2:15-cv-11926 (E.D. Mich. July 15, 2015) (order). The Michigan Court of Appeals ultimately rejected Constant's many state-court appeals and ordered him to pay damages, expenses, and reasonable attorneys' fees to the various defendants due to the meritless and vexatious nature of his many lawsuits. *See Constant v. Hammond*, Nos. 336489, 336620, 337483, 338455, 338686, 2018 WL 3943081 (Mich. Ct. App. Aug. 16, 2018) (per curiam).

In the current case, Constant sues Michigan appellate Judges Deborah A. Servitto, Karen M. Fort Hood, and Jane M. Beckering; Oakland County Judges Shalina D. Kumar, Michael Davide Warren, Jr., Cheryl A. Matthews, Rae Lee Chabot, and Nanci J. Grant (Judicial Defendants); and DTE, Leland Prince, and James M. Hammond (DTE Defendants). Constant claims generally that the defendants collectively engaged in a grand racketeering conspiracy to deprive him of his rights and that the DTE Defendants paid off the many judges involved in his lawsuits to fraudulently and criminally rule against him. The various defendants moved to dismiss, and the district court granted their motions. The district court determined that the Judicial Defendants were entitled to absolute judicial immunity, that it lacked subject-matter jurisdiction to preside over Constant's claims against private entities, that it could not review state-court judgments under the *Rooker-Feldman* doctrine, *see D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983); *Rooker v. Fidelity Tr. Co.*, 263 U.S. 413 (1923), and that Constant's complaint was barred by res judicata. The district court also ordered that Constant must obtain permission from the district court before filing any new actions due to his history of filing repetitive and vexatious lawsuits.

On appeal, Constant argues at length that various Michigan judges—and Chief Judge Denise Page Hood, by virtue of having ruled against him below—are engaged in a criminal enterprise to defraud him and deprive him of his rights, that the Judicial Defendants were engaged

in the illegal practice of law, and that the bars on his lawsuit should not apply due to their corrupt actions. The Court of Appeals Judicial Defendants responded that they are entitled to absolute judicial immunity. Constant filed a reply expanding on his belief that the Michigan judiciary is corrupt, and he has since sought leave to file two amended reply briefs.

We review de novo a district court's judgment dismissing a complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). *Wesley v. Campbell*, 779 F.3d 421, 428 (6th Cir. 2015). To avoid dismissal, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* We also review de novo a district court's decision to dismiss a complaint for lack of subject-matter jurisdiction under Rule 12(b)(1). *See Gaylor v. Hamilton Crossing CMBS*, 582 F. App'x 576, 579 (6th Cir. 2014); *In re Carter*, 553 F.3d 979, 984 (6th Cir. 2009). A complaint is subject to dismissal under Rule 12(b)(1) if the facts, accepted as true and viewed in the light most favorable to the plaintiff, show that the court lacks subject-matter jurisdiction. *See Askins v. Ohio Dep't of Agric.*, 809 F.3d 868, 872 (6th Cir. 2016). Pleadings drafted by pro se litigants should be held to a less stringent standard than those drafted by lawyers and should be construed liberally, *Martin v. Overton*, 391 F.3d 710, 712 (6th Cir. 2004), but pro se litigants are not exempt from the requirements of the Federal Rules of Civil Procedure, *see Wells v. Brown*, 891 F.2d 591, 594 (6th Cir. 1989).

The district court did not err by concluding that the Judicial Defendants were entitled to absolute judicial immunity. Judges are immune from suit for monetary damages unless the action complained of was non-judicial or was performed in the complete absence of jurisdiction. *Mireles v. Waco*, 502 U.S. 9, 11–12 (1991) (per curiam). Constant makes a wide range of accusations against the defendants and the Michigan judiciary generally concerning perceived corruption, but the complaints of wrongdoing committed against him all pertain to his belief that the defendants conspired to issue unfavorable orders and judgments against him, such as providing DTE with an

injunction to trim trees on his property and dismissing his many lawsuits. These actions were taken in the judges' judicial function, and they are therefore entitled to immunity even if Constant believes that the actions derived from bad faith, malice, or corruption. *See id.* at 11; *Brookings v. Clunk*, 389 F.3d 614, 617 (6th Cir. 2004). The district court also did not err by concluding that it could not interfere with the state-court orders issued by the Michigan courts concerning his dispute with DTE, *see Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005); *Brent v. Wayne Cnty. Dep't of Hum. Servs.*, 901 F.3d 656, 674 (6th Cir. 2018), that Constant is trying to relitigate many issues raised in prior lawsuits that are barred by res judicata, and that it did not have a basis to assert subject-matter jurisdiction over Constant's claims against non-diverse private actors. Moreover, Constant's allegations that a grand conspiracy exists amongst the Michigan judiciary deriving ultimately from orders allowing DTE to trim some of his trees for a power line could be considered "totally implausible, attenuated, unsubstantial, frivolous, devoid of merit, or no longer open to discussion." *Apple v. Glenn*, 183 F.3d 477, 479 (6th Cir. 1999) (per curiam); *see Wagenknecht v. United States*, 533 F.3d 412, 417 (6th Cir. 2008).

The district court also did not abuse its discretion by imposing prefiling restrictions on Constant due to his history of repetitive and vexatious litigation. *See Feathers v. Chevron U.S.A., Inc.*, 141 F.3d 264, 269–70 (6th Cir. 1998); *Ortman v. Thomas*, 99 F.3d 807, 811 (6th Cir. 1996).

Accordingly, we **AFFIRM** the district court's judgment and **DENY** all of Constant's pending motions.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOSEPH CONSTANT,

Plaintiff,

v.

DTE ELECTRIC COMPANY, LELAND PRINCE, JAMES M. HAMMOND, SHALINA D. KUMAR, CHERYL A. MATTHEWS, MICHAEL DAVID WARREN, JR., NANCI J. GRANT, RAE LEE CHABOT, KAREN M. FORT HOOD, DEBORAH A. SERVITTO, and JANE M. BECKERING,

Defendants.
_____/

Civil Action No. 19-10339

HON. DENISE PAGE HOOD

ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS [ECF Nos. 23, 24, 25] and ENJOINING ANY FURTHER FILINGS BY PLAINTIFF WITHOUT LEAVE OF THE COURT

I. INTRODUCTION

Pro se Plaintiff filed the instant cause of action on February 4, 2019, and filed an amended complaint on June 17, 2019 (the "First Amended Complaint"). There are three "groups" of Defendants, each of which has filed a Motion to Dismiss: (1) the "Court of Appeals Defendants" (Deborah A. Servitto, Karen M. Fort Hood, and Jane M. Beckering) [ECF No. 23]; (2) the "DTE Defendants" (DTE Electric Company,

Leland Prince, and James M. Hammond) [ECF No. 24]; and (3) the "Oakland County Defendants" (Shalina D. Kumar, Michael David Warren, Jr., Cheryl A. Matthews, Rae Lee Chabot, and Nanci J. Grant) [ECF No. 25]. In their Motion to Dismiss, the DTE Defendants also ask the Court to enjoin Plaintiff from filing additional suits regarding the underlying subject matter without the court's permission.

Plaintiff filed three documents that the Court will treat as his collective response to the Motions to Dismiss. [ECF Nos. 29, 30, 31] The issues in the Motions to Dismiss have been adequately presented in the parties' briefs, such that oral arguments are not necessary. *See* E.D. Mich. L.R. 7.1(f)(2). For the reasons set forth below, the Court GRANTS all three Motions to Dismiss and ENJOINS Plaintiff from filing any new cases against any of the named Defendants regarding the underlying subject matter of this case without leave of the Court.

II. BACKGROUND[1]

In 2013, DTE brought suit against Plaintiff in the Oakland County Circuit Court ("Circuit Court"). Defendant Leland Prince is an in-house DTE attorney who handled the trial court litigation of a 2013 lawsuit filed by DTE against Plaintiff. Defendant

[1]For a more detailed description of the underlying events and history of Plaintiff's state court cases, see the Michigan Court of Appeals decision issued on August 16, 2018, as amended on August 21, 2018. ECF No. 23-2 (*DTE v. Hammond et al.*, unpublished per curiam opinion of the Court of Appeals, issued August 16, 2018 (Docket Nos. 336489; 336620; 337483; 338455; 338686)).

James Hammond is a DTE employee who submitted an affidavit in the 2013 suit, the substance of which was that trees on Plaintiff's property needed to be trimmed. As a result of the 2013 suit, preliminary and permanent injunctions orders issued by Circuit Court judge and Defendant Shalina D. Kumar allowed DTE to trim trees on Plaintiff's property. Plaintiff appealed the Circuit Court orders to the Michigan Court of Appeals, the Michigan Supreme Court, and the United States Supreme Court, but none of those courts reversed the trial court or issued a judgment in favor of Plaintiff. *See DTE v.Constant,* unpublished per curiam opinion of the Court of Appeals, issued December 4, 2104 (Docket No. 317976) (Michigan Court of Appeals); *DTE v. Constant*, 498 Mich.App. 883 (2015) (Michigan Supreme Court); *Constant v. DTE*, 136 S.Ct. 1664 (2016).

Since the 2013 suit, Plaintiff has initiated many cases against DTE, its representatives, and/or the Oakland County Defendants, including:

A. The cases attached to the Motion to Dismiss filed by the DTE Defendants, which include: (i) a Judgment of the Michigan Court of Appeals – issued by Defendants Karen M. Fort Hood, Deborah A. Servitto, and Jane M. Beckering – affirming the dismissal of five of Plaintiff's state court lawsuits, including lawsuits against DTE (2 cases), Prince (2 cases), and Hammond (1 case); (ii) an order issued by Judge Sean F. Cox of this court dismissing claims brought by Plaintiff against DTE and Hammond (No. 15-11927); and (iii) a second order by Judge Cox dismissing a cause of action brought by Plaintiff against Hammond (No. 16-10629). *See* ECF Nos. 24-2, 24-3, and 24-4.

B. Numerous cases filed in state court and federal court against, among

> others, Defendants Shalina D. Kumar, Michael David Warren, Cheryl A. Matthews, Rae Lee Chabot, and Nanci J. Grant, all of whom are or were Circuit Court judges who presided over all or part of Plaintiff's cases in the Circuit Court. *See, e.g., Constant v. Chabot*, No. 17-10018 (E.D. Mich. Feb. 1, 2017) (ECF No. 4, PgID 14); *Constant v. Kumar*, No. 15-11926 (E.D. Mich. 2015).

All of Plaintiff's prior causes of action alleged injury to his vegetation or claimed injury from the judgment(s) entered against him in the state court actions he filed.

In the instant action, Plaintiff alleges that the Court of Appeals Defendants and the Oakland County Defendants conspired with the DTE Defendants. Plaintiff alleges the DTE Defendants donated funds to the judicial election campaigns of the Court of Appeals Defendants and the Oakland County Defendants so that the Court of Appeals Defendants and the Oakland County Defendants would decide Plaintiff's state-court lawsuits against the DTE Defendants in favor of the DTE Defendants. ECF No. 11, PgID 149-56.

III. ANALYSIS

Pro se litigants are held to a less stringent standard than formal pleadings drafted by lawyers, *Haines v. Kerner*, 404 U.S. 519, 520 (1972), but the leniency granted to *pro se* litigants is not boundless. *Martin v. Overton*, 391 F.3d 710, 714 (6th Cir. 2004). All litigants must conduct a reasonable inquiry before filing any pleadings. Fed. R. Civ. P. 11(b).

A. The Court of Appeals Defendants and the Oakland County

Defendants are Entitled to Absolute Immunity

It is well-established law that judges are absolutely immune from suits arising out of the performance of their judicial functions. *See, e.g., Pulliam v. Allen*, 466 U.S. 522 (1984) (judicial immunity is a bar to a Section 1983 claim for damages, but not necessarily a Section 1983 claim for prospective injunctive relief); *Mann v. Conlin*, 22 F.3d 100, 103 (6th Cir. 1994) (same). *See also* Federal Courts Improvement Act of 1996, Pub. Law No. 104-317, § 309(c), 110 Stat. 3847, 3853 (1996) (forbidding injunctive relief absent a violation of a declaratory decree or the unavailability of declaratory relief, therefore effectively – if not formally – extending absolute judicial immunity to claims for injunctive relief).

Having reviewed Plaintiff's First Amended Complaint, the Court concludes that none of the alleged actions by any of the Court of Appeals Defendants or the Oakland County Defendants falls outside of the scope of judicial immunity. Regardless of the manner in which Plaintiff alleges the Court of Appeals Defendants and Oakland County Defendants, including conspiring with others to benefit DTE, Plaintiff's allegations directly challenge actions taken by such defendants in the exercise of their judicial functions. Specifically, and by example, the Court notes that Plaintiff challenges that the conspiracy "unlawfully, illegally and illicitly and fraudulently deliver[ed] to DTE the [following] listed racketeering and conspiracy objectives . . .

1) A judgment of property easement rights over and against [his] property without DTE paying [Plaintiff] any money for the easement rights[;] 2) An order of permanent injunction against [Plaintiff; and] 3) an order of preliminary injunction against [Plaintiff.]" ECF No. 29, PgID 11019-20. The Court finds that allegations set forth in the First Amended Complaint fail to allege, and the Court finds that the allegations do not allow for an interpretation, that any actions by any of the Court of Appeals Defendants or the Oakland County Defendants stem from any activity(ies) other than those undertaken in the performance of his or her judicial functions.

Accordingly, the Court holds that the Court of Appeals Defendants and the Oakland County Defendants are entitled to absolute judicial immunity. The Court dismisses Plaintiff's cause of action against the Court of Appeals Defendants and the Oakland County Defendants.

B. DTE Defendants - Absence of Subject Matter Jurisdiction

In the First Amended Complaint, Plaintiff indicates that this Court has federal question jurisdiction over his 42 U.S.C. § 1983 claims against the DTE Defendants. ECF No. 11, PgID 150 (¶10) ("This complaint in this United States Federal District Court now seeks to establish these violations of the Constitution and Federal laws of the United States in more details and to secure the remedies of the law, that the Constitution and the laws of the United holds, that I am entitled to."). As recently

stated by Judge Cox:

> "To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was *committed by a person acting under color of state law*." *West v. Atkins*, 487 U.S. 42, 48, 108 S.Ct. 2250, 101 L.Ed.2d 40 (1988) (emphasis added).

Constant v. Hammond, No. 16-10629, ECF No. 10, PgID 118-19 (emphasis in original).

Because the Court has dismissed the Court of Appeals Defendants and the Oakland County Defendants, the only remaining Defendants in this action are: (1) DTE, a private corporation; (2) Hammond, an employee of DTE; and (3) Prince, an attorney for DTE. It is well-established law that:

> [P]rivate corporations and their employees do not act under color of state law. *See, e.g., Jackson v. Metro. Edison Co.*, 419 U.S. 345, 358–59 (1974) (holding that heavily regulated electric company's decision is not a state action); *Rendell–Baker v. Kohn*, 457 U.S. 830, 840–42 (1982); (holding that private school's decisions not attributable to state despite extensive state regulation of school); *Blum v. Yaretsky*, 457 U.S. 991, 1008–12 (1982) (holding that nursing home not a state actor despite extensive state regulation of the industry); *Adams v. Vandemark*, 855 F.2d 312, 317 (6th Cir. 1988) (holding private corporation not a state actor despite being subject to state regulation); *Sanford v. DTE Energy Co.*, 2009 WL 790496 (E.D. Mich. 2009).

Constant v. Hammond, No. 16-10629, ECF No. 10, PgID 119. Accordingly, each of the DTE Defendants, without additional action, is a private actor and not a "person acting under color of state law." The Court finds that there are no factual allegations

in the First Amended Complaint that reasonably suggest that any of the DTE Defendants engaged in conduct that could be construed as "state action." The Court concludes that Plaintiff's Complaint does not state a Section 1983 claim against any of the DTE Defendants.

For the reasons stated above, the Court holds that Plaintiff's First Amended Complaint does not state a federal claim against any of the DTE Defendants over which the Court can exercise subject matter jurisdiction pursuant to 28 U.S.C. § 1331. The Court also finds that there is no diversity of citizenship between Plaintiff and any of the DTE Defendants because, like Plaintiff, all of the DTE Defendants are residents of the State of Michigan. The Court holds that it does not have diversity jurisdiction over any of the DTE Defendants pursuant to 28 U.S.C. § 1332. Accordingly, the Court dismisses Plaintiff's cause of action as to the DTE Defendants for lack of subject matter jurisdiction.

To the extent that Plaintiff's Complaint, which spans more than 150 pages, asserts any state-law claims against any of the DTE Defendants, this Court declines to exercise supplemental jurisdiction over those state-law claims, having dismissed any and all of Plaintiff's federal claims.

C. *Rooker-Feldman* Doctrine Operates to Bar this Cause of Action

The Court notes that, pursuant to the *Rooker-Feldman* doctrine, the Court does

not have jurisdiction to review or reverse orders issued in state court or state administrative proceedings. *See, e.g., Exxon Mobil Corp. v. Saudi Basic Indust. Corp.*, 544 U.S. 280, 284 (2005) (*Rooker-Feldman* doctrine bars federal district courts from exercising jurisdiction over "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments."); *Brent v. Wayne Cnty. Dep't of Human Servs.*, 901 F.3d 656, 674 (6th Cir. 2018) (citation and internal quotations omitted) (*Rooker-Feldman* doctrine "precludes federal district courts from hearing cases brought by state-court losers complaining of injuries caused by state-court judgments."); *Gilbert v. Ill. Bd. of Educ.*, 591 F.3d 896, 900 (7th Cir. 2010) (the *Rooker-Feldman* doctrine " prevents a state-court loser from bringing suit in federal court in order to effectively set aside the state-court judgment").

Plaintiff's alleged injuries stem from the state-court judgments rendered by the Court of Appeals Defendants and the Oakland County Defendants, as demonstrated by Plaintiff's express request that this Court "vitiate" those judgments in order to grant him relief. *See, e.g.,* ECF No. 11, PgID 270 (¶ 409); PgID 295 (¶ 470); PgID 296 (¶ 479). *See also* ECF No. 11, PgID 345-46. To grant Plaintiff the relief he seeks, however, the Court would have to review and reverse the state court decision rendered

by the Court of Appeals Defendants and the state court decisions of many of the Oakland County Defendants. For the Court to engage in that level of review, the Court would have to ignore – and violate – the established principles of the *Rooker-Feldman* doctrine. *See, e.g., Hall v. Callahan*, 727 F.3d 450, 454 (6th Cir. 2013) (plaintiff's claims against the state court judge who presided over plaintiff's state court case directly implicated the *Rooker-Feldman* concerns). The Court will not do so.

Accordingly, the Court declines to exercise jurisdiction over Plaintiff's cause of action pursuant to the *Rooker-Feldman* doctrine.

D. *Res Judicata* Operates to Bar Claims Against the DTE Defendants

The Full Faith and Credit Act provides, in relevant part, that "the records and judicial proceedings of any court of any . . . State . . . shall have the same full faith and credit in every court within the United States . . . as they have by law or usage in the courts of the state from which they are taken." *United States v. Dominguez*, 359 F.3d 839, 842 (6th Cir. 2004). Under Michigan law, a final judgment on the merits bars a subsequent suit involving the same transaction or occurrence and the same parties. *See, e.g., Sewell v. Clean Cut Mgt., Inc.*, 463 Mich. 569 (2001).

Res judicata will apply if: (1) the prior action was decided on the merits; (2) the decree in the prior action was a final decision; (3) the matter contested in the second

case was or could have been resolved in the first; and (4) both actions involved the same parties or their privies. *Peterson Novelties, Inc. v. City of Berkley*, 259 Mich.App. 1, 10 (2003). Michigan courts have broadly defined *res judicata* to bar litigation in the second action not only of those claims actually litigated in the first action, but also every claim arising out of the same transaction that the parties, exercising reasonable diligence, could have litigated but did not. *Sewell*, 463 Mich. at 575; *Dart v. Dart*, 460 Mich. 573, 586 (1999) (in Michigan, *res judicata* "bars not only claims already litigated, but also every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not"); *Peterson*, 259 Mich.App. at 11. For *res judicata* purposes, the test for determining whether two claims arise out of the same transaction or occurrence is whether the same facts or evidence are essential to the maintenance of the two actions. *Jones v. State Farm Mut. Ins. Co.*, 202 Mich.App. 393, 401 (1993).

The Court has reviewed the underlying nature of the cases attached to the Motion to Dismiss filed by the DTE Defendants, including: (a) the Judgment of the Michigan Court of Appeals – issued by the Court of Appeals Defendants – affirming the dismissal of five of Plaintiff's state court suits against DTE, Prince, and Hammond and summarizing many of Plaintiff's causes of action filed against the Oakland County Defendants; and (b) the orders issued by Judge Cox dismissing causes of

action brought by Plaintiff against DTE and Hammond (No. 15-11927) and Hammond alone (No.16-10629). *See* ECF Nos. 24-2, 24-3, and 24-4. The Court has also reviewed the other federal causes of action filed by Plaintiff related to the 2013 lawsuit (No. 17-20018; No. 15-11928; No. 15-11926).

The Court concludes that Plaintiff's claims in the instant case seek to revisit many of the issues previously decided – or allege claims that could have been raised – in: (1) the state court lawsuits filed by Plaintiff and decided by the Court of Appeals Defendants and/or many of the Oakland County Defendants, or (2) the federal causes of action cited in this Order. Accordingly, Plaintiff's claims against the DTE Defendants are barred by *res judicata.*

IV. PLAINTIFF ENJOINED FROM FILING FUTURE LAWSUITS WITHOUT PERMISSION OF THE COURT

In Plaintiff's words, the instant action is approximately the 40th "case" he has filed related to the 2013 suit. ECF No. 1, PgID 83-85. In reality, it is only the 14th such case he has filed – five filed in the Circuit Court and nine filed in this court. *Id.* The other 26 "cases" were appeals of those cases to the Michigan Court of Appeals, the Michigan Supreme Court, the Sixth Circuit Court of Appeals, and the U.S. Supreme Court. *Id.* Most of the actions, particularly in this Court, have been summarily dismissed by the various judges assigned to the case. *See* No. 15-11926, *Constant v. Kumar* (Cox; summarily dismissed for absolute immunity); *Constant v.*

DTE Electric Co., et al, No. 15-11927 (Cox; summarily dismissed under 28 U.S.C. § 1915(e)); *Constant v. Schuette, et al.*, No. 15-11928 (Cox; summarily dismissed under 28 U.S.C. § 1915(e)); *Constant v. Hammond*, No. 16-10629 (Cox; summarily dismissed under 28 U.S.C. § 1915(e)); *Constant v. Schuette, et al.*, No. 16-11639 (Cox; summarily dismissed for failure to pay filing fee); *Constant v. Matthews*, No. 16-14501 (O'Meara; granting motion to dismiss based on absolute immunity); *Constant v. Chabot*, No. 17-10018 (Edmunds; summarily dismissed under 28 U.S.C. § 1915(e) due to absolute immunity).

As noted in a February 1, 2017 order issued by Judge Nancy G. Edmunds, "Plaintiff has a history of filing meritless litigation against state court judges and officials." *Constant v. Chabot*, No. 17-10018 (E.D. Mich. Feb. 1, 2017) (ECF No. 4, PgID 14 n.1) (citing No.15-11926, No. 15-11928). Judge Edmunds' observations were consistent with the views of the Michigan Court of Appeals, which upheld the imposition of fees and costs by some of the Oakland County Defendants against Plaintiff in conjunction with Plaintiff's litigation practices. *See* ECF No. 23-2, PgID 10877-88. For that reason, Judge Edmunds "strongly advised [Plaintiff] to review Rule 11 of the Federal Rules of Civil Procedure before filing future lawsuits to prevent against the imposition of monetary or injunctive sanctions." *Constant v. Chabot*, No. 17-10018 (E.D. Mich. Feb. 1, 2017) (ECF No. 4, PgID 14 n.1).

The Sixth Circuit has held that district courts may properly enjoin vexatious litigants from filing further actions against a defendant without first obtaining leave of court. *Feathers v. Chevron U.S.A., Inc.*, 141 F.3d 264, 269 (6th Cir. 1998); *see also Filipas v. Lemons*, 835 F.2d 1145, 1146 (6th Cir. 1987). "There is nothing unusual about imposing prefiling restrictions in matters with a history of repetitive or vexatious litigation." *Feathers,* 141 F.3d at 269. A district court need only impose "a conventional prefiling review requirement." *Id.* The traditional tests applicable to preliminary injunction motions need not be applied since the district court's prefiling review affects the district court's inherent power and does not deny a litigant access to courts of law. See *In re Martin-Trigona,* 737 F.2d 1254, 1262 (2d Cir. 1984). A prefiling review requirement is a judicially imposed remedy whereby a plaintiff must obtain leave of the district court to assure that the claims are not frivolous or harassing. *See e.g.*, *Ortman v. Thomas*, 99 F.3d 807, 811 (6th Cir. 1996). Often, a litigant is merely attempting to collaterally attack prior unsuccessful suits. *Filipas*, 835 F.2d at 1146.

When filing the instant cause of action, the Court finds that Plaintiff failed to take Judge Edmunds' advice to review Rule 11 of the Federal Rules of Civil Procedure before filing this lawsuit. First, as discussed above, the Court of Appeals Defendants and Oakland County Defendants are unequivocally entitled to absolute

immunity, a legal conclusion expressly made clear to Plaintiff more than two years ago, with respect to at least two of Plaintiff's lawsuits filed in the Eastern District of Michigan. *See Constant v. Kumar*, No. 15-11926 (ECF No. 12, PgID 1928) ("Having reviewed Plaintiff's Complaint and Response, none of the alleged actions by Judge Kumar fall outside of the scope of judicial immunity."); No. 17-10018 (ECF No. 4, PgID 14 n.1) (same). Second, the Court has determined, Plaintiff's claims against the DTE Defendants are not eligible for resolution in the Eastern District of Michigan. As Plaintiff was expressly advised with respect to Hammond in 2016, the Court lacks subject matter jurisdiction over the DTE Defendants because none of them are state actors. *See* No. 16-10629, ECF No. 10, PgID 118-20.

Third, in this case, as in most of the other cases filed by Plaintiff against the DTE Defendants and the Oakland County Defendants, Plaintiff is attempting to collaterally attack prior unsuccessful lawsuits. All of Plaintiff's numerous meritless actions filed in this court – and the five cases he filed in Circuit Court – related to the 2013 suit in Circuit Court. Most of Plaintiff's cases have been filed against the DTE Defendants and the Oakland County Defendants, but in this case, Plaintiff has expanded his scope to include the Michigan Court of Appeals Defendants, all of whom are entitled to judicial immunity. Fourth, in addition to his claims being rejected before every court he has appeared, Judge Edmunds cautioned Plaintiff about

filing such cases in the future. Despite the foregoing facts, Plaintiff has not been deterred and the parties sued in this action have incurred unnecessary fees and costs to respond to Plaintiff's cause of action.

For all of the reasons stated above, the Court deems it appropriate to require that Plaintiff obtain permission of the district court for any new action to assure that the claims are not frivolous or harassing. Plaintiff is enjoined from further filing new actions without permission from the judge assigned to any new proposed complaint.

V. CONCLUSION

For the reasons set forth above,

IT IS ORDERED that the Motions to Dismiss filed by the Court of Appeals Defendants [ECF No. 23], the DTE Defendants [ECF No. 24], and the Oakland County Defendants [ECF No. 25] are GRANTED.

IT IS FURTHER ORDERED that this case is DISMISSED with prejudice. Judgment shall be entered accordingly.

IT IS FURTHER ORDERED that Plaintiff Joseph Constant is ENJOINED from filing any new action without first obtaining permission from the judge assigned to any new proposed complaint sought to be filed, whether the documents is entitled "Complaint" or a letter or any other document.

IT IS ORDERED.

s/Denise Page Hood
DENISE PAGE HOOD
UNITED STATES DISTRICT JUDGE

Dated: May 31, 2020

No. 20-1514

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Jun 21, 2021
DEBORAH S. HUNT, Clerk

JOSEPH CONSTANT,

Plaintiff-Appellant,

v.

DTE ELECTRIC COMPANY, AKA DTE ENERGY, AKA DETROIT EDISON COMPANY, AKA DTE, ET AL.,

Defendants-Appellees.

ORDER

BEFORE: COLE, GILMAN and McKEAGUE, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

Appendix C

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

100 EAST FIFTH STREET, ROOM 540
Deborah S. Hunt
Clerk
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988
Tel. (513) 564-7000
www.ca6.uscourts.gov

Filed: June 21, 2021

Joseph Constant
49 Highland Drive
Bloomfield Hills, MI 48302

Re: Case No. 20-1514, *Joseph Constant v. DTE Electric Company, et al*
Originating Case No.: 2:19-cv-10339

Dear Mr. Constant,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Beverly L. Harris
En Banc Coordinator
Direct Dial No. 513-564-7077

cc: Mr. David N. Asmar
Mr. Lincoln Glen Herweyer
Ms. Heather S. Meingast

Enclosure

Court of Appeals, State of Michigan

ORDER

Karen M. Fort Hood
Presiding Judge

Deborah A. Servitto

Jane M. Beckering
Judges

Joseph Constant v James M. Hammond; Joseph Constant v DTE Electric Company; Joseph Constant v Leland Prince; Joseph Constant v Leland Prince; Joseph Constant v DTE Electric Company

Docket Nos. 336489; 336620; 337483; 338455; 338686

LC Nos. 2016-155099-CZ; 2016-153631-CZ; 2016-155238-CZ; 2016-155238-CZ; 2016-153631-CZ

The Court orders that the August 16, 2018 opinion is hereby AMENDED as follows to correct clerical errors. In the captions for docket numbers 337483 and 338455, and in the first paragraph of the opinion, the name "Leland Price" is corrected to read "Leland Prince." Also, in the last sentence of the second paragraph of the opinion, the referenced date is corrected to read "December 4, 2014."

In all other respects, the August 16, 2018 opinion remains unchanged.

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

AUG 21 2018
Date

Chief Clerk

Appendix D

STATE OF MICHIGAN

COURT OF APPEALS

JOSEPH CONSTANT, Plaintiff-Appellant, v JAMES M. HAMMOND, Defendant-Appellee.	UNPUBLISHED August 16, 2018 No. 336489 Oakland Circuit Court LC No. 2016-155099-CZ
JOSEPH CONSTANT, Plaintiff-Appellant, v DTE ELECTRIC COMPANY, Defendant-Appellee.	No. 336620 Oakland Circuit Court LC No. 2016-153631-CZ
JOSEPH CONSTANT, Plaintiff-Appellant, v LELAND PRICE, Defendant-Appellee.	No. 337483 Oakland Circuit Court LC No. 2016-155238-CZ
JOSEPH CONSTANT, Plaintiff-Appellant, v LELAND PRICE,	No. 338455 Oakland Circuit Court LC No. 2016-155238-CZ

Defendant-Appellee.

JOSEPH CONSTANT,

Plaintiff-Appellant,

v

No. 338686
Oakland Circuit Court
LC No. 2016-153631-CZ

DTE ELECTRIC COMPANY,

Defendant-Appellee.

Before: FORT HOOD, P.J., and SERVITTO and BECKERING, JJ.

PER CURIAM.

In Docket No.'s 336489, 336620, 338455 and 338686, plaintiff appeals as of right orders granting summary disposition in favor of defendants James M. Hammond, DTE Electric Company, and Leland Price, and in Docket No. 337483 appeals by leave granted an order of the trial court allowing plaintiff to file a fourth amended complaint upon the posting of a security bond. The cases were consolidated on appeal. We affirm in all cases and further order damages against plaintiff and in favor of all defendants for plaintiff's filing of these vexatious appeals pursuant to MCR 7.216(C). We therefore remand each case to its respective trial court for a determination of actual damages and expenses incurred, including reasonable attorney fees, to be awarded to each defendant as a result of these vexatious appeals.

All of these appeals find their genesis in a 2013 action filed by defendant, DTE Electric Company ("DTE") against plaintiff in Oakland County Circuit Court seeking an injunction to enter onto plaintiff's residential property to trim trees and conduct line clearance on the property (hereafter "the 2013 case"). Defendant, Leland Prince ("Prince"), served as DTE's counsel in that case and defendant, James M. Hammond ("Hammond") is a DTE employee who provided an affidavit in that case attesting that the tree trimming and line clearance on plaintiff's property was necessary and that plaintiff was preventing DTE from entering onto his property to perform its job functions. The 2013 case, assigned to and heard by Judge Shalina Kumar, resulted in DTE obtaining a preliminary injunction and, later, a permanent injunction. Plaintiff appealed the decision concerning the preliminary injunction and a panel of this Court affirmed. *DTE v Constant*, unpublished per curiam opinion of the Court of Appeals, issued December 4, 2104 (Docket No. 317976).

In order to fully understand the basis for plaintiff's appeals in the instant matters as well as the substantial judicial resources that have been expended in these consolidated cases, this Court finds it necessary to provide a detailed history of plaintiff's complaints in the Oakland Circuit Court and his actions undertaken therein. Thus begins the laborious task of untangling the myriad claims and actions that led to the present appeals.

After his unsuccessful appeal of the DTE preliminary injunction, plaintiff filed an action against DTE in Oakland Circuit Court (Docket No. 336620), alleging that the 2013 case brought by DTE was a fraud and brought to defraud him of compensation he claims due him for DTE's line clearance right-of-way and easement over his property.[1] Plaintiff further alleged malicious prosecution, abuse of process, fraudulent misrepresentation, false pretenses, wrongfully issued preliminary injunction, fraud on the court, violation of MCR 2.114(D), libel, and violations of civil rights, due process and privacy. This action was initially assigned to Judge Cheryl Matthews, and when DTE moved to have the case reassigned to Judge Kumar (she having presided over the original 2013 case), plaintiff moved to disqualify Judge Kumar, stating that she was biased or prejudiced against him. Plaintiff noted that he had filed a federal lawsuit against Judge Kumar for violating his due process and civil rights, exceeding and abusing her judicial discretion, and for deliberate affirmative misconduct in the 2013 case, that he had filed a complaint against Judge Kumar with the judicial tenure commission, and that he was preparing to sue her in Oakland Circuit Court for fraud. In his motion to disqualify Judge Kumar, plaintiff used violent, hateful, abusive and derogatory language of the most outrageous kind to describe Judge Kumar. Though the case was nevertheless reassigned to Judge Kumar, the case was later reassigned to Judge Matthews when Judge Kumar recused herself. Plaintiff also moved to disqualify Judge Matthews, claiming that she too was biased and prejudiced against him after Judge Matthews sanctioned him for filing a motion that violated MCR 2.114(D) and MCR 2.114(F). In his motion to disqualify Judge Matthews, plaintiff stated, "I believe that Judge Mrs Matthews is a superlatively biased, prejudiced and a very bigoted human being and possibly a Klan-level graded racist." This case came to a conclusion when Judge Matthews granted DTE's motion for summary disposition. On defendant DTE's later motion, Judge Matthews found that plaintiff's action was frivolous and awarded DTE sanctions against plaintiff (Docket No. 338686).

Plaintiff also brought an action against defendant Prince, alleging that he was part of the alleged fraud in the 2013 case, that Prince libeled plaintiff in that case, and that he "knowingly signed, drove, and navigated the documents of the lawsuit, in full knowledge that it violated MCR 2.114(D), and the professional and ethical codes of conduct that he is bound by, and he knew that the entire act and process was abusive of the processes of law and was fully criminal in conduct, malicious and libelous and tortious" (Docket No. 3378455). That case was assigned to Judge Michael Warren, whom plaintiff also moved to disqualify, alleging that Judge Warren was complicit with DTE's alleged scheme to defraud plaintiff of claimed due compensation from DTE and was partial toward DTE's defense team. During the course of that action, Judge Warren entered an order allowing plaintiff to file a fourth amended complaint only upon the posting of a surety bond (Docket No. 337483). This case was resolved through Judge Warren's grant of Prince's motion for summary disposition based on MCR 2.116(C)(8) and res judicata. Prince's later motion for sanctions for plaintiff's filing of a frivolous action was stayed pending appeal.

---

[1] In 2010 DTE trimmed several trees on plaintiff's property, prompting plaintiff to complain to DTE that such trees were unlawfully trimmed and seeking from DTE, among other things, payment of $16,000 in cash for easement rights over his property.

Finally, plaintiff brought an action against defendant Hammond alleging that an affidavit provided by him in the 2013 case defamed and libeled him and that Hammond was a part of the alleged fraud in the 2013 case (Docket No. 336489). This case was assigned to Judge Rae Lee Chabot who recused herself for the stated reason of "personal fear of the in Pro Per Plaintiff" whereupon the matter was reassigned to Judge Warren. Judge Warren granted summary disposition in favor of defendant Hammond, finding that plaintiff's response to the motion was untimely and not in conformity with page limitations, because plaintiff failed to state a claim on which relief could be granted, because res judicata and the statute of limitations barred plaintiff's claims, and because plaintiff abandoned his claims. On defendant Hammond's later motion, the trial court awarded him sanctions for plaintiff's frivolous action.

On appeal, plaintiff first asserts that DTE and its employees, including Prince and Hammond, engaged in a civil conspiracy against plaintiff to obtain property easement rights over his property and avoid paying plaintiff for it by committing a fraud upon the court in the 2013 case. We disagree.

We first note that a civil conspiracy claim was not brought by plaintiff against the any of the defendants in the trial court. In civil actions, the failure to properly raise an issue in the trial court generally constitutes a waiver of that issue on appeal. *Johnson Family Ltd Pship v White Pine Wireless, LLC*, 281 Mich App 364, 377; 761 NW2d 353 (2008). We thus decline to review any claim based on civil conspiracy. Plaintiff's claim on appeal, however, could be read as an argument that reversal is warranted on the trial courts' grant of summary disposition in defendants' favor on plaintiff's claim of fraud upon the court based upon untrue statements made in the 2013 case. To the extent that is what plaintiff is instead asserting, this Court reviews a trial court's grant or denial of summary disposition de novo. *Al-Shimmari v Detroit Med Ctr*, 477 Mich 280, 287; 731 NW2d 29 (2007).

"In reviewing a motion for summary disposition under MCR 2.116(C)(7), a court considers the affidavits, pleadings, and other documentary evidence presented by the parties and accepts the plaintiff's well-pleaded allegations as true, except those contradicted by documentary evidence." *McLean v Dearborn*, 302 Mich App 68, 73; 836 NW2d 916 (2013). A summary disposition motion brought under subrule (C)(7) "does not test the merits of a claim but rather certain defenses," such as prior judgment or statute of limitations, that may eliminate the need for a trial. *Nash v Duncan Park Com'n*, 304 Mich App 599, 630; 848 NW2d 435 (2014).

A motion brought under subrule (C)(8) tests the legal sufficiency of the complaint solely on the basis of the pleadings. *Corley v Detroit Bd of Ed,* 470 Mich 274, 277; 681 NW2d 342 (2004). When deciding a motion under subrule (C)(8), we accept all well-pleaded factual allegations as true and construe them in the light most favorable to the nonmoving party. *Dalley v Dykema Gossett*, 287 Mich App 296, 304–05; 788 NW2d 679 (2010).

A fraud upon the court occurs "when some material fact is concealed from the court or some material misrepresentation is made to the court." *Matley v Matley,* 242 Mich App 100, 101; 617 NW2d 718 (2000). "[F]raud on the court cannot be committed in an adversary proceeding with respect to facts not known by the court, but known by both parties." *Id.* at 102. Where a party alleges that a fraud has been committed on the court, "courts understandably look

with skepticism upon a dissatisfied party's claim of fraud and insist on strict factual proof." *Yee v Shiawassee Co Bd of Com'rs*, 251 Mich App 379, 405; 651 NW2d 756 (2002).

The trial courts granted defendants' motions for summary disposition based, in part, on res judicata (Docket No's 336620 and 338455). As stated in *Adair v State*, 470 Mich 105, 121; 680 NW2d 386 (2004):

> The doctrine of res judicata is employed to prevent multiple suits litigating the same cause of action. The doctrine bars a second, subsequent action when (1) the prior action was decided on the merits, (2) both actions involve the same parties or their privies, and (3) the matter in the second case was, or could have been, resolved in the first. This Court has taken a broad approach to the doctrine of res judicata, holding that it bars not only claims already litigated, but also every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not. (internal citations omitted).

The 2013 case in which DTE sued plaintiff, and in which plaintiff asserts that the fraud occurred, was decided on the merits. That case and the current cases involved the same parties or their privies. The issue of whether DTE and its employees committed a fraud upon the court in the 2013 case could clearly have been resolved in the 2013 case. Plaintiff asserts that statements contained in the 2013 complaint were false, as was Hammond's affidavit submitted in that case and other various assertions made by DTE. Resolution of whether those statements, assertions and the affidavit were false would best be resolved in the first action by the trial court reviewing the same. Thus, plaintiff's claim of fraud upon the court in the 2013 action is barred by res judicata.

Witness immunity, another reason the trial courts relied upon in granting summary disposition in defendants' favor, also supports the trial courts' rulings of dismissal of plaintiff's claims of fraud. "Statements made during the course of judicial proceedings are absolutely privileged, provided they are relevant, material, or pertinent to the issue being tried." *Maiden v Rozwood*, 461 Mich 109, 134; 597 NW2d 817 (1999). Falsity on the part of the witness does not abrogate the privilege and the privilege is to be liberally construed so that participants in judicial proceedings are free to express themselves without fear of retaliation. *Id.* As stated by Our Supreme Court:

> The confluence of principles related to res judicata, collateral estoppel, and proximate cause serve to illustrate the logical underpinnings of the general rule giving witnesses immunity from civil suit. . . . If testimony in one suit, accepted by the court but disputed by the losing litigant, can give rise to a second suit, what would prevent a third suit arising from the unsatisfactory outcome of the second? Or a fourth arising from the third?
>
> Witness immunity is also grounded in the need of the judicial system for testimony from witnesses who, taking their oath, are free of concern that they themselves will be targeted by the loser for further litigation. Absent perjury of a character requiring action by the prosecuting attorney, the testimony of a witness is to be weighed by the factfinder in the matter at bar, not by a subsequent jury

> summoned to determine whether the first lawsuit was tainted by fraud. [*Daoud v De Leau*, 455 Mich 181, 202–03; 565 NW2d 639 (1997)]

Thus, statements made by DTE or its employees or privies in the 2013 case were subject to the privilege of witness immunity. To the extent that plaintiff felt such statements were false and perpetrated a fraud upon the court, he was required to raise those issues before the court hearing the matter, not in a separate action. This holds true for claims relating to any fraud allegedly perpetrated on the trial court in the 2013 action by DTE, Hammond, or Prince.

Plaintiff next asserts that because Judge Kumar recused herself from plaintiff's case against DTE, disqualification of Judges Matthews and Warren was required under stare decisis and that their disqualification was also required due to the extreme bias, prejudice and bigotry Judges Matthews and Warren had against plaintiff (all dockets). In reviewing a motion to disqualify a judge, we review the trial court's findings of fact for an abuse of discretion and review the applicability of the facts to relevant law de novo. *Armstrong v Ypsilanti Charter Twp*, 248 Mich App 573, 596; 640 NW2d 321 (2001).

First, plaintiff's reliance on the principle of stare decisis as authority for Judges Matthews and Warren's disqualifications is misplaced. "Under the longstanding doctrine of stare decisis, principles of law deliberately examined and decided by a court of competent jurisdiction should not be lightly departed." *Lansing Sch Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349, 366; 792 NW2d 686 (2010). Stare decisis, is defined in Black's Law Dictionary (7th ed.) as "[t]he doctrine of precedent, under which it is necessary for a court to follow earlier judicial decisions when the same points arise again in litigation." Judge Kumar's decision to recuse herself in a case is not a principle of law that was decided. It was a factual determination she made for herself. Her decision set no "precedent" in that case or other cases for other judges to recuse or disqualify themselves.

As to whether Judges Matthews and Warren should have otherwise disqualified themselves from plaintiff's cases, MCR 2.003(C)(1) provides, in relevant part:

> (1) Disqualification of a judge is warranted for reasons that include, but are not limited to, the following:
>
> (a) The judge is biased or prejudiced for or against a party or attorney.
>
> (b) The judge, based on objective and reasonable perceptions, has either (i) a serious risk of actual bias impacting the due process rights of a party as enunciated in *Caperton v Massey*, 556 US 868; 129 S Ct 2252; 173 L Ed 2d 1208 (2009), or (ii) has failed to adhere to the appearance of impropriety standard set forth in Canon 2 of the Michigan Code of Judicial Conduct.
>
> (c) The judge has personal knowledge of disputed evidentiary facts concerning the proceeding.

This Court has previously stated that repeated rulings against a litigant, even if erroneous, are not grounds for disqualification. *Armstrong*, 248 Mich App at 597, quoting *Band v Livonia Associates*, 176 Mich App 95, 118; 439 NW2d 285 (1989). In addition, "it can never be the

case, in our judgment, that a judge can be required to disqualify himself on the basis of hostile conduct directed toward him by the *attorney* or *litigant*, rather than on the basis of the *judge's* own conduct. To require recusal in these circumstances would be to incentivize hostile conduct by an attorney or litigant desirous of excluding disfavored judges from participation in their cases." *Grace v Leitman*, 474 Mich 1081, 1081-82; 711 NW2d 38 (2006).

Plaintiff contends that because he filed a lawsuit against Judge Matthews in federal court, there was an "obvious presence of bias and prejudice" and she should have disqualified herself. However, he has identified no specific conduct, aside from ruling against him that establishes any bias or prejudice on the part of Judge Matthews. More importantly, were a party to obtain disqualification on the bare fact that he has sued the judge, it would encourage judge shopping by the filing of frivolous lawsuits. "Indeed, if anyone can force a judge's disqualification merely by suing that judge, then any litigant would have an easy method of judge-shopping, eliminating disfavored judges until the desired judge has been obtained. The destructive effect of such a rule is too obvious to require further elaboration." *Grievance Adm'r v Fieger*, 476 Mich 231, 274; 719 NW2d 123 (2006).

With respect to Judge Warren, plaintiff asserts that he has exhibited bias, prejudice and bigotry by requiring plaintiff to post a $2500 cash bond to amend his complaint in the Prince case (Docket No. 337483) and not allowing plaintiff to amend his complaint against Hammond (Docket No. 336489). Neither of these cited reasons establishes any bias, prejudice or bigotry by Judge Warren.

Plaintiff filed his complaint against Prince in September 2016, an amended complaint in October 2016, a third amended complaint (with the court's permission) in December 2016, and then moved to file a fourth amended complaint in December 2016. He then moved to withdraw his request to file a fourth amended complaint in January 2017. In February 2017, plaintiff again filed a motion for leave to file a fourth amended complaint. Since the filing of the initial complaint, defendant had only filed a motion for summary disposition in early November 2016 and it appears that little or no discovery had taken place In a February 27, 2017 order, Judge Warren granted plaintiff's motion, subject to the posting of a $2500 cash bond. Judge Warren noted case law providing that the assertion of groundless allegations or a tenuous legal theory may be sufficient reason for ordering the posting of a security bond. Judge Warren further noted, "the Plaintiff has filed several related lawsuits, all of which have been dismissed. His current pleadings and motions provide little confidence that his positions are better grounded or more reasoned in this case. The Plaintiff's seriatim amendments clearly result in needless incurring of additional costs and fees by the Defendant. Nothing before the Court reveals why the claims and allegations set forth in the Fourth Amended Complaint could not have been presented in the original (or perhaps the First, or Second, or Third) Amended Complaint. Furthermore, for the reasons articulated in the Response, the motion is dilatory and likely futile." Plaintiff did not file the fourth amended complaint.

MCR 2.209 provides for security bonds, in relevant part, as follows:

> (A) Motion.
>
> On motion of a party against whom a claim has been asserted in a civil action, if it appears reasonable and proper, the court may order the opposing party to file with the court clerk a bond with surety as required by the court in an amount sufficient to cover all costs and other recoverable expenses that may be awarded by the trial court, or, if the claiming party appeals, by the trial and appellate courts. The court shall determine the amount in its discretion.

A court may require a security bond when there is a substantial reason for such a requirement. *In re Sur Bond for Costs*, 226 Mich App 321, 331; 573 NW2d 300 (1997). "A 'substantial reason' for requiring security may exist where there is a 'tenuous legal theory of liability,' or where there is good reason to believe that a party's allegations are 'groundless and unwarranted. *Id.* at 331-332. Given all of the prior amended complaints in this case and Judge Warren's experience with plaintiff in another substantially similar case, the requirement of a bond was warranted. The bond requirement in no way establishes bias, prejudice or bigotry on the part of Judge Warren.

Plaintiff asserts that Judge Warren's bias and prejudice was also demonstrated by his refusal to allow plaintiff to file a fifth amended complaint. However, there is nothing in the record to establish that plaintiff's motion to file a fifth amended complaint was addressed by Judge Warren or that such was necessary, given its grant of summary disposition in Hammond's favor.

It plainly appears to this Court that plaintiff's allegations of bias, prejudice and bigotry are nothing more than complaints against the trial court's rulings against him, as his complaints of the same (and motions to disqualify) appear in nearly every case where a decision against him has been issued. Rather than review his claims and pleadings to ensure that they have a basis, plaintiff engages in lengthy, hate-filled diatribes against each judge daring to not rule in his favor and thereafter claims even *more* bias and prejudice on the judges' parts based on his statements and claims made against them. As previously noted, plaintiff has referred to Judge Kumar in the most derogatory terms this Court has ever seen and caused Judge Chabot to recuse herself due to her personal fear of plaintiff. Plaintiff's apparent forum-shopping undermines the essential integrity of the judicial system and the blatant manipulation and exploitation of our judicial system by a plaintiff asking redress for totally baseless non-grievances will not be tolerated.

Plaintiff next contends that his rights to equality and to speak for and represent himself were grossly violated by Judge Matthews and Judge Warren. It appears that plaintiff may be raising a due process argument. If that is the case, this issue presents a question of constitutional law that we review de novo. *People v Aceval*, 282 Mich App 379, 389; 764 NW2d 285 (2009).

As stated in *Bonner v City of Brighton*, 495 Mich 209, 224; 848 NW2d 380 (2014):

> While the touchstone of due process, generally, "is protection of the individual against arbitrary action of government," the substantive component protects against the arbitrary exercise of governmental power, whereas the procedural component is fittingly aimed at ensuring constitutionally sufficient procedures for

the protection of life, liberty, and property interests.

"The Due Process Clause requires an unbiased and impartial decision maker. Thus, where the requirement of showing actual bias or prejudice under MCR 2.003(B)(1) has not been met, or where the court rule is otherwise inapplicable, parties have pursued disqualification on the basis of the due process impartiality requirement." *Cain v Michigan Dept of Corr*, 451 Mich 470, 497; 548 NW2d 210 (1996). In *Crampton v Dep't of State*, 395 Mich 347, 351; 235 NW2d 352 (1975), our Supreme Court stated:

> The United States Supreme Court has disqualified judges and decisionmakers without a showing of actual bias in situations where "experience teaches that the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable." Among the situations identified by the Court as presenting that risk are where the judge or decisionmaker
>
> (1) has a pecuniary interest in the outcome;
>
> (2) "has been the target of personal abuse or criticism from the party before him";
>
> (3) is "enmeshed in [other] matters involving petitioner ..."; or
>
> (4) might have prejudged the case because of prior participation as an accuser, investigator, fact finder or initial decisionmaker. [(citations omitted)]

Judicial disqualification pursuant to the Due Process Clause is only constitutionally required in the most extreme cases. *Cain*, 451 Mich at 498.

Plaintiff asserts that Judge Matthews paid more attention to defense counsel's arguments than his and allowed counsel to "hijack" arguments (Docket No. 336620). At an August 3, 2016 hearing, plaintiff spoke and was clearly heard by Judge Matthews. When plaintiff attempted to inform Judge Matthews about other cases and issues, she simply guided him back to the issue at hand. During a September 28, 2106 hearing Judge Matthews was extremely polite and helpful to plaintiff. Plaintiff spoke at length and Judge Matthews listened attentively. Plaintiff has not established that Judge Matthews responded to him in any way that was unprofessional. Plaintiff's complaint concerning Judge Warren relates to Judge Warren's alleged refusal to allow plaintiff to amend his complaint, which was previously addressed.

Finally, under a separate section entitled "Conclusion and Relief Requested" plaintiff asked that every order against him be voided, including those ordering sanctions against him because his claims in the trial court were not frivolous. While that is the extent of any "argument" challenging the award of sanctions against him, this Court nevertheless addresses this argument.

"A trial court's finding that an action is frivolous is reviewed for clear error." *Kitchen v Kit*chen, 465 Mich 654, 661; 641 NW2d 245 (2002). We review the amount of sanctions imposed by a trial court is reviewed for an abuse of discretion. *BJ's & Sons Const Co, Inc v Van Sickle*, 266 Mich App 400, 410; 700 NW2d 432 (2005).

Reviewing plaintiff's complaints and amended complaints in these matters, the trial courts could properly find that they were devoid of arguable legal merit. Plaintiff lost no property or rights by virtue of the 2013 case. The only thing that happened to plaintiff is that the trees on his property got trimmed around power lines and DTE maintained the ability to trim the trees, ensuring the safety of the neighborhood and plaintiff. Plaintiff appealed that decision, and this Court affirmed the trial court. He then applied for leave to appeal with the Supreme Court, which denied his application, *DTE v Constant*, 498 Mich App 883; 869 NW2d 580 (2015), and thereafter filed a petition for writ of certiorari with the United State Supreme Court, which was also denied. *Constant v DTE*, 136 S Ct 1664; 194 L Ed 2d 776 (2016). Rather than accept that the highest Court of our nation found no merit to his claims that DTE should have to pay him for an easement over his property to maintain the power lines or should not have trimmed the trees on his property around the power lines, plaintiff began a prolonged course of litigation in state and federal courts against anyone involved in the 2013 case, including the trial judge. All of these cases have resulted in dismissals and summary disposition rulings in favor of the defendants.

Plaintiff's filings exhibit a belief that DTE, its employees and privies, the trial court judge, the panel of judges who affirmed the lower court decision in the 2013 case, and a host of others have gathered together to conspire against him and deprive him of the just compensation allegedly due to him for the tree branches trimmed from his property and the easement over his property to trim said trees. His pleadings in the trial court cases are often disjointed and irate and sometimes border incoherent. In a response to defendant Hammond's motion for summary disposition, for example (Docket No. 336489), plaintiff stated:

> Defendant Hammond did not seek the consent of the Gods, acknowledged in the opening statements of the Michigan Constitution as the Authority for the State's existence, for their consent to mess with me in trying to take the little that this same Michigan God had granted to me in life, which includes property easements rights over my property, my freedom on my property, my Good name, image, and reputation, and the base of my approvability by prospective employers and creditors, by means of fraud, deception, false pretense, fraudulent misrepresentations, and malicious prosecution in a Michigan court of Justice, of all sacred places. . . . Hammond implicitly separated me, from other living things that share and help complete my existence, the trees on my property. And I am angry and bitter to the core more than the German Fuhrer held over 80+ years ago, but I am not violent like the Fuhrer.

Defendant also sent a letter to defense counsel on June 6, 2016, stating that he was "strongly convinced that you are left with no options than to hire a contract killer to kill me, and silence the greatest evidence against you all, and your infidelity in this matter, me" and that he had notified family in Africa and America of the situation "so they will know who to point law enforcement to, to seek justice against, if anything happens to me mortally, in the course of these proceedings." Defendants have been forced to defend against actions against them that have no basis in law and are unsupported by evidence and during those proceedings, have further been

forced to respond to a litany of meritless motions and to attempt to decipher the often off-topic and peculiar pleadings and correspondences from plaintiff.

Despite the fact that plaintiff has already consumed extensive judicial time and resources (requesting and receiving fee waivers in almost all cases) on his meritless and frivolous claims, this Court has patiently and carefully scrutinized every aspect of his claims on appeal to determine whether there is a scintilla of merit in any of them. Finding none, we affirm the trial court rulings in all cases. We further find that, given the substantial history in these cases and all related cases, plaintiff's appeals are vexatious in nature, taken without any reasonable basis for belief that there was a meritorious issue to be determined on appeal. We therefore remand each of these cases to the trial courts for a determination of actual damages and expenses incurred, including reasonable attorney fees, to be awarded to each defendant as a result of the vexatious appeals.[2]

Affirmed. We remand each case to its respective trial court pursuant to MCR 7.216(C)(2) for a determination of actual damages. We do not retain jurisdiction.

/s/ Karen M. Fort Hood
/s/ Deborah A. Servitto
/s/ Jane M. Beckering

[2] This Court has no doubt that it, too, will be accused of bias, prejudice, and bigotry against plaintiff as have most, if not all, of the judges who have rendered opinions in any case dealing with plaintiff.

Order

Michigan Supreme Court
Lansing, Michigan

April 2, 2019

Bridget M. McCormack,
Chief Justice

158457-61

David F. Viviano,
Chief Justice Pro Tem

Stephen J. Markman
Brian K. Zahra
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh,
Justices

JOSEPH CONSTANT,
Plaintiff-Appellant,

v

SC: 158457
COA: 336489
Oakland CC: 2016-155099-CZ

JAMES M. HAMMOND,
Defendant-Appellee.
_____/

JOSEPH CONSTANT,
Plaintiff-Appellant,

v

SC: 158458
COA: 336620
Oakland CC: 2016-153631-CZ

DTE ELECTRIC COMPANY,
Defendant-Appellee.
_____/

JOSEPH CONSTANT,
Plaintiff-Appellant,

v

SC: 158459
COA: 337483
Oakland CC: 2016-155238-CZ

LELAND PRINCE,
Defendant-Appellee.
_____/

JOSEPH CONSTANT,
Plaintiff-Appellant,

v

SC: 158460
COA: 338455
Oakland CC: 2016-155238-CZ

LELAND PRINCE,
Defendant-Appellee.
_____/

Appendix E

JOSEPH CONSTANT,
Plaintiff-Appellant,

v

SC: 158461
COA: 338686
Oakland CC: 2016-153631-CZ

DTE ELECTRIC COMPANY,
Defendant-Appellee.
_____/

On order of the Court, the application for leave to appeal the August 16, 2018 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

April 2, 2019

Clerk

a0325

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

JOSEPH CONSTANT,

Plaintiff,

v

Case No. 16-153631-CZ
Hon. Cheryl A. Matthews

DTE ELECTRIC COMPANY,

Defendant.

_____/

ORDER

At a session of said Court held in the Courthouse, City of Pontiac, Oakland County, Michigan on JAN 05 2017

PRESENT: THE HONORABLE CHERYL A. MATTHEWS, Circuit Judge

This matter is before the Court on the following three motions:

I. Plaintiff's Motion to Set Aside Sanctions;

II. Plaintiff's Motion for Disqualification of Judge Cherly (sic) A Matthews (P44761) Pursuant to MCR 2.003, MCR 2.119; and

III. Defendant's Motion for Summary Disposition pursuant to MCR 2.116(C)(7) and (C)(8)

The Court concludes that oral argument will not aid the Court in its decision on any of the above stated motions and thus dispenses with oral argument. MCR 2.119(E)(3).

I. Plaintiff's Motion to Set Aside Sanctions

The Plaintiff's motion appears to be a motion for reconsideration although it is not entitled as such. The Plaintiff has failed to show that he is entitled to relief pursuant to either

MCR 2.119 or MCR 2.612(C)(3) and therefore the Plaintiff's Motion to Set Aside Sanctions is DENIED. Further, Judgment shall enter for the outstanding amount owed.

II. Plaintiff's Motion for Disqualification of Judge Cherly (sic) A Matthews (P44761) Pursuant to MCR 2.003, MCR 2.119

The Plaintiff asks the Court to disqualify herself pursuant to MCR 2.003 and MCR 2.119 and alleges that she is personally biased, and prejudiced against him and extremely partial to "fellow licensed attorney, Mr. Timothy Young (P22657)." The Plaintiff states in his motion that he believes that he "cannot get fairness from her presiding over the case" and made other statements in his motion regarding his dissatisfaction with this Court's decisions.

MCR 2.003(C)(1)(a) and (b) states:

> (C) Grounds.
> (1) Disqualification of a judge is warranted for reasons that include, but are not limited to, the following:
> (a) The judge is biased or prejudiced for or against a party or attorney.
> (b) The judge, based on objective and reasonable perceptions, has either (i) a serious risk of actual bias impacting the due process rights of a party as enunciated in *Caperton v Massey*, 556 U.S. 868; 129 S Ct 2252; 173 L Ed 2d 1208 (2009), or (ii) has failed to adhere to the appearance of impropriety standard set forth in Canon 2 of the Michigan Code of Judicial Conduct.

The Plaintiff has failed to meet the burden for establishing grounds for disqualification pursuant to section (C)(1)(a) and (b). This Court is not biased or prejudice for or against either party. There is no risk of actual bias affecting the rights of the Plaintiff per *Caperton* and this Court denies that it has at any time failed to adhere to standards of conduct imposed on this Court to ensure the avoidance of even the appearance of impropriety. The Plaintiff has failed to demonstrate that this Court has acted with any actual bias and has failed to cite any case law that supports the Court's disqualification. The Court's actions toward the Plaintiff and toward the

Defendant have always been objective, reasonable, fair, and justified in view of the totality of the facts and complicated procedural history that exists in this case.

Disqualification is not mandated, nor is it warranted in this matter, and therefore the Plaintiff's motion is DENIED.

III. Defendant's Motion for Summary Disposition pursuant to MCR 2.116(C)(7) and (C)(8)

PROCEDURAL POSTURE

Plaintiff's Complaint was filed on June 23, 2016. The Defendant filed a Motion for More Definite Statement and to Strike all or Part of Plaintiff's Complaint on July 20, 2016. The Court granted that motion on September 28, 2016. Plaintiff filed a "Corrected Complaint" on September 30, 2016. However, the order reflecting the Court's ruling on September 28, 2016 was filed pursuant to MCR 2.602(B)(3) and therefore not entered until October 18, 2016. In the interim, on October 10, 2016, the Plaintiff filed an Application for Leave of the Court to Amend Complaint (MCR 2.118(A)(2) (sic) with a Second Amended Complaint. The Plaintiff was not granted leave or ordered to file the Second Amended Complaint. Therefore, the Defendant's motion for summary disposition is based upon Plaintiff's Corrected Complaint filed on September 30, 2016. Plaintiff filed other amended Complaints in this matter after October 10, 2016 that are improper and shall not be considered by this Court.

The Defendant asks the Court to dismiss the entirety of the Plaintiff's Corrected Complaint because every alleged claim is either barred by prior judgments, statute of limitations, and/or failing to state a claim upon which relief can be granted. The Plaintiff's Corrected Complaint makes many allegations against persons not named in this matter and discusses other litigation that has gone on with those individuals. The Plaintiff has previously initiated litigation regarding the principal subject matter of his current action and the Court declines to do written

findings of the procedural history of this matter because this Court has discovered that it has already been done in other actions, and by both Defendant and Plaintiff, and restating same is not necessary in this action.

STANDARD OF REVIEW

MCR 2.116(C)(7) states that entry of judgment, dismissal of the action, or other relief is appropriate because of [...] prior judgment, [...] statute of limitations, [...] before commencement of the action. A party may support a motion under MCR 2.116(C)(7) by affidavits, depositions, admissions, or other documentary evidence. If such material is submitted, it must be considered. MCR 2.116(G)(5). Moreover, the substance or content of the supporting proofs must be admissible in evidence. Unlike a motion under subsection (C)(10), a movant under MCR 2.116(C)(7) is not required to file supportive material, and the opposing party need not reply with supportive material. The contents of the complaint are accepted as true unless contradicted by documentation submitted by the movant. *Patterson v. Kleiman*, 447 Mich. 429 (1994). *Maiden v Rozwood*, 461 Mich 109 (1999).

A motion under MCR 2.116(C)(8) tests the legal sufficiency of the Complaint. All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the non-movant. *Wade v. Dep't of Corrections*, 439 Mich 158, (1992). A motion under MCR 2.116(C)(8) may be granted only where the claims alleged are "so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Id.* at 163. "When deciding a motion brought under this section, a court considers only the pleadings. MCR 2.116(G)(5)." *Maiden.*

DISCUSSION

The Plaintiff's Corrected Complaint alleges the following counts:

Count 1: Libel Against DTE Electric
Count 2: Fraud Against DTE Electric
Count 3: Violations (Malicious Prosecution Against DTE)
Count 4: Violations (Abuse of Process Against DTE)
Count 5: Violation (Fraudulent Misrepresentation Against DTE)
Count 6: Violations (False Pretenses Against DTE)
Count 7: Violations (Wrongful Enjoyment, Wrongfully-issued Preliminary Injunction Against DTE)
Count 8: Violations (Fraud-On-The-Court) (sic)
Count 9: (MCR 2.114(D) Violation Against DTE Electric and Mr. Leland Prince

After reviewing the admissible documentary evidence submitted in this matter and considering the legal arguments of both Plaintiff and Defendant, the Court concludes that each one of Plaintiff's Counts are barred by both MCR 2.116(C)(7) and (C)(8) and therefore summary disposition in GRANTED.

Plaintiff's Corrected Complaint is DISMISSED WITH PREJUDICE. This order resolves all pending claims and closes the case.

IT IS SO ORDERED.

JAN 05 2017
DATE

/s/Cheryl A. Matthews
MB HON. CHERYL A. MATTHEWS

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

JOSEPH CONSTANT,

Plaintiff,

v.

Case No. 16-155099-CZ
Hon. Michael Warren

JAMES M. HAMMOND,

Defendant.

/

ORDER GRANTING
DEFENDANT'S MOTION, IN LIEU OF ANSWER TO COMPLAINT, FOR SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C)(8) AND (7)

At a session of said Court, held in the County of Oakland, State of Michigan December 22, 2016.

PRESENT: HON. MICHAEL WARREN

/

The action is before the Court pursuant to the Defendant's Motion for Summary Disposition pursuant to MCR 2.116(C)(7), (C)(8) and (C)(6); Plaintiff having failed to respond to the Motion in a timely fashion in conformity with the page limitation set forth in MCR 2.119(A)(2) and the Court having struck the excessive answer the Plaintiff filed without leave, having denied the Plaintiff's motion to file an answer in excess of twenty page limitation, and having denied the Plaintiff's motion(s) to extend the time to answer the Defendant's Motion; the Court recognizing its authority to issue orders establishing times for events pursuant to MCR 2.116(G), MCR 2.119 and MCR 2.401; *Kemerko Clawson LLC v RXIV Inc,* 269 Mich App 347 (2005), and additional authorities *infra;* the Court finding that oral argument would not aid it in rendering a decision; and the Court being otherwise advised in the premises:

THE COURT HEREBY GRANTS the Defendant's Motion for Summary Disposition pursuant to MCR 2.116(C)(8) and (7) for the following (independent) reasons:

1. The Court is entitled to enforce its Scheduling Order. The Court has authority to issue orders establishing times for events pursuant to MCR 2.116(G), MCR 2.119 and

MCR 2.401. See *People v Grove*, 455 Mich 439, 465 (1997) ("[t]he court rules provide for and encourage the use of scheduling orders to promote the efficient processing of civil and criminal cases); SCAO 2007-3. In fact, the Michigan Supreme Court has affirmed summary disposition granted on the basis of a trial court enforcing its summary disposition scheduling order. *EDI Holdings LLC v Lear Corp*, 469 Mich 1021 (2004) (summarily reversing the Court of Appeals' determination that the trial court abused its discretion by refusing to accept a brief filed after the deadline established by the trial court's summary disposition scheduling order: "The Court of Appeals clearly erred in finding that the Oakland Circuit Court abused its discretion when it enforced the summary disposition scheduling order"). Applying this precedent, our Court of Appeals has reaffirmed a court's power to enforce its scheduling orders, and in so doing, upheld this Court in enforcing its summary disposition scheduling order in both *Moore v Whiting*, unpublished opinion per curiam of the Court of Appeals, issued November 10, 2015 (Docket No. 323697) and *Thigpen v Besam Entrance Solutions*, unpublished opinion per curiam of the Court of Appeals, issued September 16, 2014 (Docket No. 316696). See also *Kemerko*, 269 Mich App at 351-352, 353 (trial courts have authority to establish and enforce scheduling order deadlines in connection with summary disposition motions); *Bergin Financial, Inc v Delsean Littlejohn*, unpublished opinion per curiam of the Court of Appeals, decided September 16, 2008 (Docket No. 278088) ("A trial court has no obligation to consider whether enforcing a scheduling order is just under the circumstances. See *Kemerko Clawson LLC, supra* at 352-353. In other words, a trial court has the discretion to categorically refuse to consider a brief filed after the time set by a scheduling order. See also *EDI Holdings LLC v Lear Corp*, 469 Mich 1021 [2004] [reinstating an order granting summary disposition to the plaintiff because this Court 'clearly erred in finding that the (circuit court) abused its discretion when it enforced the summary disposition scheduling order']. Accordingly, the trial court was not required to consider plaintiff's argument to the effect that the negligence of a particular attorney should have been considered an excuse for the late filing. A party is responsible for inaction by the party's agent. *Alken-Ziegler v Waterbury Headers Corp*, 461 Mich 219, 224 (1999). The trial court did not abuse its discretion in striking plaintiff's response brief"). In short, a court need not prompt, await or accept an untimely brief. *Id.* See also *Citibank v Renner*, unpublished opinion per curiam of the Court of Appeals, issued November 27, 2012 (Docket No. 308841) (affirming summary disposition where no response was filed and the trial court canceled oral argument: "The trial court is not required to consider a response that was not timely filed. *EDI Holdings, LLC v Lear Corp*, 469 Mich 1021. * * * A trial court does not abuse [its] discretion when it dispenses with oral arguments, even if one party fails to respond to a motion, if it is fairly apprised of the issues that need to be decided. *Fisher [v Belcher*, 269 Mich App 247,] 252 [2005]. Here, the trial court was apprised of all issues because 'without plaintiff's argument, defendants' position required no further elaboration'" [certain citations omitted]). In the instant case, the Plaintiff failed to submit a timely brief in conformity with the page limitation requirements of MCR

2.119 despite ample opportunity to do so and he never sought leave to exceed the page limitation before the briefing deadline in the Scheduling Order or before filing his excessive, and thus, nonconforming brief. He also failed to notice for hearing his motion to exceed the page limitation, as well as his motion(s) for additional time which he filed on, and long after, the briefing deadline expired. This Court nevertheless considered the foregoing motions and denied them because there was no good cause to do grant them. It consequently struck the nonconforming, excessive brief filed without leave. The Court need not await an untimely, conforming brief in these circumstances (e.g., it need not prompt litigants to set motions for hearing or await or accept answers exceeding the page limitation set in MCR 2.119 where, as here, there was no cause to do so; courts also are not required to grant additional time where a litigant had more time to respond than provided in the Rules of Court and failed to show good cause for delay). Accordingly, under the authorities *supra,* the Court is enforcing the Scheduling Order and its prior Orders and granting the Defendant's Motion. As such, the Plaintiff is deemed to be without any authority for any position in opposition to the Plaintiff's supported Motion (see Scheduling Order). Further, the Court has been apprised of all the issues because, given that the Plaintiff failed to respond, the Defendant's supported, unchallenged arguments require no further elaboration. *Citibank, supra.* Under the authorities *supra* and the Court's prior Orders, the Court need not await or accept an untimely filing, where as here, the Plaintiff failed to submit a timely, conforming responsive brief despite ample opportunity to do so, and there has been no showing of good cause to extend the page limitation in MCR 2.119 or the deadline for responsive briefing set in the Court's Scheduling Order – a deadline which provided time beyond the two weeks otherwise provided by the Rules of Court. To hold otherwise in the instant circumstances effectively renders meaningless the power afforded by MCR 2.401 to enforce scheduling orders in effort to promote the efficient management of court dockets, and invites undue delay by litigants which, in turn, derails the just, speedy, and economical progression and determination of every action. This is a tact the Court will not follow where, as here, the moving party has supported its submission.

2. In addition, summary disposition pursuant to MCR 2.116(C)(8) is proper based on the uncontroverted authorities and analysis in the Defendant's Motion which are hereby incorporated and adopted herein. Simply put, the Defendant's uncontroverted exhibits, authorities and analysis, indisputably establish that the Plaintiff has failed to state any viable claims against the Defendant whom he alleges submitted a false affidavit in a prior judicial proceeding (*Constant v DTE,* Oakland County Case No. 13-132055-CH) because (1) statements made by witnesses who are an integral part of the judicial process "are wholly immune from liability for the consequences of their testimony or related evaluations" – i.e., "[s]tatements made during the course of judicial proceedings are absolutely privileged, provided they

are relevant, material, or pertinent to the issue being tried";[1] and (2) there is no cognizable civil action in Michigan for perjury or false swearing brought by a party in which the testimony was introduced.[2]

3. Summary disposition is also proper pursuant to MCR 2.116(C)(7). Under MCR 2.116(C)(7), summary disposition is proper if the claim is barred because of immunity, or a prior judgment.[3] The Court incorporates the foregoing Discussion establishing immunity. In addition, the Defendant's unchallenged arguments, legal authorities, and exhibits, hereby incorporated, indisputably establish the Plaintiff's claims are barred by res judicata and/or by the applicable states of limitation. The time to raise assertions of false testimony is *in* the action in which they were purportedly made. *Maiden, supra.* The Plaintiff did, in fact, argue to the Michigan Court of Appeals that the Defendant's Affidavit was false and that, thus, he was entitled to relief. The Court of Appeals stated: "We have reviewed all remaining issues and requests for relief and find them to be without merit." *DTE Electric Co v Constant,* unpublished opinion per curiam of the Court of Appeals, issued December 4, 2014 (Docket No. 317976). Since the Court of Appeals has already determined, in the only appropriate case in which it could be determined, that the Plaintiff's claims for relief based on the Defendant's purportedly false affidavit are without merit, the opinion settles the matter and the instant action is barred by res judicata as each element has been met.[4]

---

[1] *Maiden v Rozwood,* 461 Mich 109, 134 (1999) (internal quotations and citations omitted). See additional authorities in the Defendant's Motion and Brief hereby incorporated.

[2] *Id.* (citations omitted) ("Absent perjury of a character requiring action by the prosecuting attorney, the testimony of a witness is to be weighed by the factfinder in the matter at bar, not by a subsequent jury summoned to determine whether the first lawsuit was tainted").

As stated in footnote 3 of the Defendant's Brief, the Court in *Maiden* affirmed summary disposition under MCR 2.116(C)(8) based on immunity. There is no reason to dispute the holding. However, its substantive analysis also provides a basis for granting summary disposition under MCR 2.116(C)(7) which specifically identifies immunity.

[3] In determining whether a party is entitled to judgment as a matter of law under MCR 2.117(C)(7), a court must accept as true a plaintiff's well pleaded factual allegations and construe them in favor of the plaintiff's favor, unless contradicted by submitted affidavits or documentary evidence. See e.g., *Pusakulich v Ironwood,* 247 Mich App 80, 82 (2001). If no material facts are in dispute, then whether the movant is entitled to summary disposition is a question of law. *Huron Tool & Engineering Co v Precision Consulting Services Inc,* 209 Mich App 365, 377 (1995).

[4] Res judicata bars a second, subsequent action when (1) the first action was decided on the merits; (2) both actions involve the same parties or their privies; and (3) the matter in the second action was or could have been resolved in the first. *Adair v State,* 470 Mich 105, 121 (2004).

The Plaintiff's filing of two additional actions in federal court against the Defendant based on his allegedly false affidavit which have been dismissed with prejudice arguably constitute an additional basis for barring the instant action by res judicata. These are not the bases for finding res judicata here.

The Plaintiff's defamation claim must additionally fall because it is time-barred by the one year statute of limitations applicable to defamation claims. MCL 600.5805(9); *Mitan v Campbell,* 474 Mich 21, 23 (2005), citing MCL 600.5805(9). The Court incorporates the Defendant's uncontroverted authorities and analysis of irrefutable facts at pages 7-8 of its Supporting Brief (including but not limited to the fact that the Affidavit was signed and used in 2013 yet the instant action was not filed until 2016, years later).[5]

4. In addition, the Plaintiff has abandoned any contrary position. *Mitcham v City of Detroit,* 355 Mich 182, 203 (1959) (a party may not "leave it up to this Court to discover and rationalize the basis for his claims, or unravel and rationalize the basis for his arguments, and then search for authority either to sustain or reject his position"); *Walters v Nadell,* 481 Mich 377, 388 (2008) ("Trial Courts are not the research assistants of the litigants; the parties have a duty to fully present legal arguments for its resolution of their dispute"); *Houghton v Keller,* 256 Mich App 336, 339-340 (2003) ("failure to properly address the merits of [one's] assertion of error constitutes abandonment of the issue. * * *[A party] may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims . . . nor may he give issues cursory treatment with little or no citation of supporting authority").

Thus, for all of the foregoing reasons, the Motion is properly granted.[6]

ORDER

In light of the foregoing, the COURT HEREBY GRANTS the Defendant's Motion for Summary Disposition pursuant to MCR 2.116(C)(8) and (7).

This Opinion & Order resolves the last pending claim and closes the case.

/s/Michael Warren
_____/
HON. MICHAEL WARREN,
CIRCUIT COURT JUDGE

[5] The Court need not address whether "fraud" is time-barred because the substance of the claim has been rendered meritless under MCR 2.116(C)(8) and (7) for other reasons.
[6] The Court need not address the Defendant's alternative argument for summary disposition under MCR 2.116(C)(6).

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

JOSEPH CONSTANT,

Plaintiff,

v.

Case No. 16-155238-CZ
Hon. Michael Warren

LELAND PRINCE,

Defendant.

OPINION AND ORDER REGARDING
DEFENDANT'S MOTION, IN LIEU OF ANSWER TO THIRD AMENDED COMPLAINT, FOR SUMMARY DISPOSITION AND FOR VEXATIOUS LITIGANT INJUNCTION

At a session of said Court, held in the
County of Oakland, State of Michigan
May 2, 2017.

PRESENT: HON. MICHAEL WARREN

OPINION

I

Overview

Before the Court is Defendant Leland Prince's Motion, In lieu of Answer to Plaintiff's Third Amended Complaint, for Summary Disposition and For Vexatious Litigant Injunction. At stake are:

- Whether the Plaintiff's Third Amended Complaint should be dismissed because it fails to state any viable cause of action and is otherwise barred by the immunity afforded by the "litigation privilege" and/or by res judicata? The answer is "yes" because the same nucleus of common facts has been previously litigated, some of the claims are not recognized by Michigan, and others are

Appendix H

barred by immunity, and as such, the Defendant's Motion for Summary Disposition is granted pursuant to MCR 2.116(C)(7) and (8).

- Whether the Defendant's request for a "vexatious litigant injunction" can be granted by this Court when the Defendant's own authority reflects that the power to grant such an order, if it exists at all, belongs to the Chief Judge of this Circuit Court pursuant to the "Chief Judge Rule," particularly MCR 8.110(C)(3)(a)? Because the answer is "no," this portion of the Defendant's Motion is denied without prejudice to seeking and obtaining such relief from the Chief Judge.

Oral argument is dispensed pursuant to MCR 2.119(E)(3) as the briefing and the Court's independent familiarity with the instant action and its underpinnings are more than sufficient to address the issues presented.

II

The Defendant's Motion for Summary disposition is granted

A

Standards of review

A motion for summary disposition pursuant to MCR 2.116(C)(7) is proper if the cause of action is barred, *inter alia,* because of a prior judgment (e.g., res judicata or collateral estoppel) or "immunity granted by law . . . ." "Under MCR 2.116(C)(7), the trial court must accept as true the contents of the complaint, unless they are contradicted by documentary evidence submitted by the moving party." *Davis v City of Detroit,* 269 Mich App 376, 378 (2005). If there is no factual dispute, whether a plaintiff's claim is barred under a principle set forth in MCR 2.116(C)(7) is a question of law for the court to decide. If a factual dispute exists, however, summary disposition is not appropriate. *RDM Holdings, Ltd v Continental Plastics Co,* 281 Mich App 678, 687 (2008) (citations omitted).

A motion brought pursuant to MCR 2.116(C)(8) tests the legal sufficiency of the complaint, and may be granted only where the claims alleged are "so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Maiden v Rozwood*, 461 Mich 109, 119 (1999). Only the pleadings may be considered, and all well pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant. *Id.*

B

Procedural background

The procedural history articulated in the Defendant's briefing, hereby incorporated, reflects the slew of state, federal, and administrative complaints filed by the Plaintiff, acting in pro per, centering on a dispute with DTE Energy ("DTE") and springing from civil litigation DTE filed in 2013 before the Honorable Shalina Kumar in which DTE obtained a preliminary injunction permitting DTE to enter onto the Plaintiff's property to trim trees and/or conduct line clearance in connection with an easement. Defendant Prince is an in-house attorney employed by DTE who handled the trial court proceedings in the 2013 litigation (intermittently, the "original action"). The original action before Judge Kumar was affirmed by the Court of Appeals, and leave was denied by the Michigan Supreme Court. The Plaintiff thereafter sought leave before the United States Supreme Court, which likewise was denied. Two grievances before the Attorney Grievance Commission, including one against the instant Defendant, have been dismissed for lack of merit. The Plaintiff's subsequent lawsuit against the Attorney Grievance Commission before the Michigan Supreme Court was also denied.[1] Complaints filed by the Plaintiff before the Michigan Judicial Tenure against Judge Kumar and the Court of Appeals judges affirming Judge Kumar's rulings

[1] On March 7, 2017, the Michigan Supreme Court denied the Plaintiff's motion for reconsideration regarding the Court's ruling on the grievance against the instant Defendant. *Constant v Grievance Commission*, ___ Mich __; 890 NW2d 672 (2017).

in the original action granting DTE's motion for preliminary injunction and subsequent motion for voluntary dismissal have been rejected. The Plaintiff has additionally summarily lost lawsuits he filed in the United States District Court for the Eastern District of Michigan seeking (1) to compel the State of Michigan and various political subdivisions to prosecute DTE employee James Hammond for supposed perjury arising from an affidavit he submitted in the original action; (2) retribution against Judge Kumar; (3) and relief against James Hammond (in two separate lawsuits). He appealed those losses to the Sixth Circuit Court of Appeals for the United States and lost. He also has lost several additional lawsuits he filed in the Oakland County Circuit Court including (1) an action against DTE arguing that the 2013 action in front of Judge Kumar was a fraud (Oakland County Case No. 2016-153631-CZ before the Honorable Cheryl Matthews); (2) another action against Mr. Hammond (ultimately transferred to this Court from the Honorable Rae Lee Chabot) claiming that Hammond's affidavit defamed the Plaintiff and was part of fraud (Oakland County Case No. 2016-155099-CZ); (3) a complaint for writ of mandamus against the same state political subdivisions he sued unsuccessfully in federal court to prosecute Hammond for his supposed false affidavit (Oakland County Case No. 16-153074-AW assigned to and dismissed by this Court). Each of the Oakland County lawsuits were dismissed on summary disposition.

The instant case centers on the same common nucleus of operative fact as the foregoing cases – i.e., the original action filed by DTE before Judge Kumar and the supposed false affidavit by Hammond. The Plaintiff's pro se Third Amended Complaint spans more than sixty pages to allege the following 11 claims:

- Tort of Spoliation (Count I)
- Civil Conspiracy (Count II)
- Fraud on the Court (Count III)
- Fraud (Count IV)

- Two Counts labeled "Count V" for Fraudulent Misrepresentation
- Abuse of Process (Count VII)[2]
- Libel and The Doctrine of Continuing Offense (Count VIII)
- Tortious Interference in my career, work, employments, and livelihood (Count IX)
- Collateral Violations of MCR 2.114(D) (Count X)
- Violations of MCR 9.104(1), (2)(3), (4), (5) (Count XI)[3]

C

Rulings

The Court incorporates by reference the Defendant's arguments for dismissal under MCR 2.116(C)(8) and/or MCR 2.116(C)(7) due to failure to state a claim, immunity pursuant to the "litigation privilege," and/or by res judicata. More particularly, and without limiting those arguments:

- "Tort of Spoliation" (Count I) is dismissed pursuant to MCR 2.116(C)(8) because Michigan does not recognize spoliation of evidence as a valid cause of action. *Teel v Meredith*, 284 Mich App 660, 661, 662, 665 (2009). Rather, spoliation is an evidentiary concept and constitutes a discovery violation; its redress is left to the trial court before which the evidence would be presented to craft the appropriate evidentiary sanction. *Id.* at 666. See generally *Id.* at 661-674. None of the jurisprudence cited in the Plaintiff's pleading or Response warrant a contrary finding. In fact, the Plaintiff's own pleading acknowledges that spoliation of evidence is controlled by a jury instruction, M Civ JI2d 6.01(d).[4]

[2] No Count is denominated as Count VI.
[3] With exhibits, the pleading spans seven hundred sixty nine pages.
[4] Third Amended Complaint at Paragraph 43. The jurisprudence cited in the pleading further confirms that Michigan has yet to recognize spoliation of evidence as a valid, independent cause of action. It is not a trial court's function to legally recognize a cause of action the appellate courts and Michigan legislature have yet to create.

- "Violations of MCR 9.104(1), (2), (3), (4), (5)" (Count XI) fails to state an actionable claim because, by its own terms, MCR 9.104 clarifies that violations of its subrules are "grounds for discipline" under the disciplinary proceedings defined in Subchapter 9.100 of the Michigan Rules of Court. Additionally, MRPC 1.0(b) and Michigan jurisprudence clearly and unambiguously establish that violations of the Michigan Rules of Professional Conduct do not give rise to a civil cause of action. MCL 1.0(b) (violations of the MRPC "do not, however, give rise to a cause of action for enforcement of a rule or for damages caused by failure to comply with an obligation or prohibition imposed by a rule"); *Watts v Polaczyk,* 242 Mich App 600, 607 n 1 (failure to comply with the requirements of the MRPC do not give rise to a cause of action for enforcement of rules); *Underwood v Bullard,* unpublished opinion per curiam of the Court of Appeals, issued January 20, 2009 (Docket Nos 279457 and 280528); 2009 WL 127658 at *3. Furthermore, even if violations of MCR 9.104 could give rise to civil cause of action (and it plainly does not), the Attorney Grievance Commission and the Michigan Supreme Court have already ruled that the Plaintiff's allegations of misconduct by the instant Defendant are without any merit. The Michigan Supreme Court's decision in *Constant v Attorney Grievance Commission,* 500 Mich 890 (2016), reconsideration denied __ Mich __; 890 NW2d 672 (2017) is binding on this Court.

- "Collateral Violations of MCR 2.114(D)" (Count X) is dismissed pursuant to MCR 2.116(C)(8) because no authority before the Court recognizes a cognizable cause of action for violation of the Rule in a prior lawsuit. By its terms, MCR 2.114(D) simply addresses the effect of a signature of an attorney (or party) on a document filed with the Court in a lawsuit. The remedy for violating MCR 2.114(D) is located in MCR 2.114(E) which provides that, "on motion of a party or on the court's own initiative," the trial court presiding over the action in which the Rule was violated may impose the "appropriate sanction" (emphasis supplied). This language confirms that violation of MCR 2.114(D) does not give rise to a separate cause of action in a second lawsuit, and it is not this trial court's function to create a new cause of action our appellate courts and legislature have yet to recognize.

  Count X also falls pursuant to MCR 2.116(C)(7) (res judicata). Violation of MCR 2.114 by "DTE's attorney" was raised and rejected by the Court of Appeals in the original action. *DTE Electric Co v Constant,* 2014 WL 6861225 at *2. The Plaintiff's

instant pleading confirms that "DTE's attorney" in the original action was the instant Defendant.[5]

- The balance of the Plaintiff's claims fall pursuant to MCR 2.116(C)(8) and/or MCR 2.116(C)(7) (immunity and/or res judicata) because:

  (1) Based on the Defendant's authorities and analysis in Argument I of its Supporting Brief, pages 6 through the first paragraph on page 9, hereby incorporated, the purportedly false Hammond affidavit and other statements made by attorneys, including but not limited to the instant Defendant, and witnesses during the course of judicial proceedings are absolutely privileged provided they are relevant, material or pertinent to the issue being tried. *Sanders v Leeson Air Conditioning Corp*, 362 Mich 692, 695 (1961) (dismissing counts for libel, malicious use of process, and abuse of process); *Daoud v De Leau*, 455 Mich 181 (1997) (dismissing fraud and perjury claims as barred by the doctrines of absolute witness immunity and res judicata); *Maiden*, 461 Mich at 134 (discussing witness immunity); *Oesterle v Wallace*, 272 Mich App 260, 264 (2006) (discussing attorneys and witnesses and dismissing defamation claim). Falsity or malice on the part of the witness or attorney does not abrogate the privilege. *Sanders*, 362 Mich at 695 (internal citations and quotations omitted) (reiterating that "If statements made in the course of judicial proceedings, in pleadings or in argument, are relevant, material, or pertinent to the issue, their falsity or the malice of their author is not open to inquiry. They are then absolutely privileged" [emphasis supplied]); *Maiden*, 461 Mich at 134, citing *Sanders*, 362 Mich at 695. The affidavit, arguments by the instant Defendant, and documents submitted in the original action before Judge Kumar were relevant, material and pertinent to the issue being tried (access by way of easement to trim trees). The Plaintiff's argument that the affidavit and other statements by DTE witnesses are not relevant, material or pertinent because they are "fake, fictitious and bogus" based on Table 1 and

[5] Res judicata bars a second, subsequent action when (1) the first action was decided on the merits; (2) both actions involve the same parties or their privies; and (3) the matter in the second action was or could have been resolved in the first. *Adair v State*, 470 Mich 105, 121 (2004).

attendant exhibits in his Response ignores the immunity the privilege provides.[6]

Litigation immunity cannot be avoided "by artful pleading; the gravamen of plaintiff's is determined by considering the entire claim." *Maiden*, 461 Mich at 135. In the instant case, the gravamen of the Plaintiff's Third Party Complaint is that the instant Defendant supposedly injured the Plaintiff by filing Hammond's purported false affidavit in the original action and making arguments based on that affidavit. Just as in *Maiden* and *Sanders*, it does not matter how the Plaintiff fashions his claims, none are viable due to litigation immunity.

(2) Furthermore, no matter the label, no cognizable civil action in Michigan arising from perjury or false swearing in one suit exists so as to authorize a second suit brought by a party to the prior suit. As explained by our Supreme Court in *Daood v De Leau*, 455 Mich 181, 200-203 (1997) (citations omitted):

> Where statutes and court rules provide effective means for dealing with a judgment fraudulently obtained through perjury, it is neither sound law nor sound policy to permit a separate cause of action for fraud.
>
> ***
>
> The confluence of principles related to res judicata, collateral estoppel, and proximate cause serve to illustrate the logical underpinnings of the general rule giving witnesses immunity from civil suit. . . . If testimony in one suit, accepted by the court but disputed by the losing litigant, can give rise to a second suit, what would prevent a third suit arising from the unsatisfactory outcome of the second? Or a fourth arising from the third?
>
> Witness immunity is also grounded in the need of the judicial system for testimony from witnesses who, taking their oath, are free of concern that they themselves will be targeted by the loser for further litigation. Absent perjury of a character requiring action by

[6] Our Supreme Court's decision in *Daoud* is especially instructive because it addressed a somewhat factually analogous setting as it involved claims that witnesses perjured themselves in an earlier civil action (before the probate court) causing the plaintiff injury (loss of parental rights).

the prosecuting attorney, the testimony of a witness is to be weighed by the factfinder in the matter at bar, not by a subsequent jury summoned to determine whether the first lawsuit was tainted by fraud.

***

[A] second suit for fraud, based on perjury ("intrinsic fraud"), may not be filed against a person involved in a first suit, if the statutes and court rules provide an avenue for bringing the fraud to the attention of the first court and asking for relief there. . . . .

As previously discussed, the gravamen of the Plaintiff's Third Party Complaint is that the instant Defendant supposedly injured the Plaintiff by filing Hammond's purported false affidavit in the original action and making arguments based on that affidavit. However, under the foregoing principles, the Hammond affidavit cannot provide the basis for the instant claims because multiple forums have determined the affidavit does not constitute perjury of a character requiring action by the prosecuting attorney, and the Plaintiff has lost each proceeding he initiated to compel the State of Michigan and various political subdivisions to prosecute Hammond. The balance of allegations in the Third Amended Complaint, taken as true, likewise fail to state or infer perjury of a character requiring action by the prosecuting attorney as the Plaintiff has lost every proceeding he has initiated against the instant Defendant, DTE, Hammond and others based on the same nucleus of operative fact.

Consequently, the foregoing jurisprudence confirms that the time to raise assertions of false testimony was in the action in which they were purportedly made - i.e., the original action. *Sanders, supra.*

(3) Res judicata also bars the Plaintiff's claims for the reasons discussed by the Defendant in Argument II(A) hereby incorporated and *DTE Electric Co v Constant,* 2014 WL 6861225 at *2 -*3.

(4) The Defendant's Reply, Argument I (excluding the statute of limitations), hereby incorporated further establishes why the Plaintiff's conspiracy claim is not viable and requires dismissal under MCR 2.116(C)(8), at a minimum.

The Court declines to address the Defendant's statute of limitations argument as it is unnecessary to the resolution of the Motion which is resolved by the foregoing Rulings.

III

The Defendant's Motion for Vexatious Litigation Injunction is denied without prejudice to seeking and obtaining such relief before the Chief Judge pursuant to the Chief Judge Rule, MCR 8.110(C)(3)(a)

The Defendant requests this Court to include in its "judgment" an "order enjoining [the Plaintiff] from filing another action arising out of the same nucleus of operative facts unless he first petitions this Court for, and obtains, permission to do so." Directly on point, albeit non-binding, is *Chastang v Sandles*, unpublished opinion per curiam of the Court of Appeals, issued January 22, 2015 (Docket No. 318640), lv den 498 Mich 885 (2015). The Court in *Chastang* affirmed an order issued in Wayne Court Circuit Court pursuant to a "complaint for supervisory control by Chief Judge . . . pursuant MCR 8.110(C)(3)(a)" enjoining a "prolific litigant" from "filing any complaint or pleading in the Third Circuit Court without seeking and obtaining an order from the Chief Judge approving the filing of any complaint or pleading[.]" In that case, the litigant had filed over 80 federal cases from 1995 until 2008 when he was enjoined by United States District Court for the Eastern District of Michigan Judge Marianne O. Battani from filing future actions without first seeking and obtaining leave of court. Thereafter, he filed at least five more actions in Wayne County Circuit Court naming similar defendants and claims to federal actions he had filed relating to his incarceration for two federal bank robbery convictions, one of which occurred in Michigan. Recognizing that no binding Michigan authority exists on the issue, the Court of Appeals in *Chastang* affirmed the order on the basis of (1) federal precedent holding that similar "pre-filing" orders do not violate due process rights, and (2) Michigan jurisprudence confirming that this State's circuit courts have subject matter jurisdiction to grant injunctive relief.

Although *Chastang* is very instructive given the absence of binding state authority on the issue and its thoughtful application of Michigan subject matter jurisdiction principles and federal precedent, it does not provide the power to *this* Court to consider or grant the Defendant's request. Rather, under *Chastang*, that power belongs to the Chief Judge of this Circuit Court (the Honorable Nanci Grant). The procedural setting in *Chastang* was a complaint for supervisory control by the Chief Judge of the Third Circuit Court pursuant to MCR 8.110(C)(3)(a). MCR 8.113 is the "Chief Judge Rule" and subrule (C)(3)(a) provides:

> (3) As director of the administration of the court, a chief judge shall have administrative superintending power and control over the judges of the court and all court personnel with authority and responsibility to:
>
> (a) supervise caseload management and monitor disposition of the judicial work of the court[.]

This Court lacks the "administrative superintending power and control over the judges of the court and all court personnel with authority" and "responsibility to . . . supervise caseload management and monitor disposition of the judicial work of the court." Without such authority or responsibility, this Court lacks the power to consider or order the relief requested. Consequently, this portion of the Motion is denied without prejudice to the Defendant seeking an order from the Chief Judge.

ORDER

Based on the foregoing Opinion, the Court

1. GRANTS Defendant's Motion for Summary Disposition in lieu of Answer to Third Amended Complaint pursuant to MCR 2.116(C)(8) and (7).

2. DENIES WITHOUT PREJUDICE the Defendant's Motion for Vexatious Litigant Injunction.

This resolves the last pending claim and closes the case.

/s/Michael Warren

_____/

HON. MICHAEL WARREN
CIRCUIT COURT JUDGE

The Circuit Court
for the Sixth Judicial Circuit of Michigan
COURTHOUSE TOWER
PONTIAC, MICHIGAN 48341-0404

May 2, 2017

MICHAEL WARREN
CIRCUIT JUDGE

TELEPHONE
(248) 975-4250
FACSIMILE
(248) 975-9796

Re: Constant v. Prince 2016-155238-CZ

Dear Joseph Constant:

Pursuant to Administrative Order 2007-3, mandatory eFiling is required on all pending "C", "N", "A", and "P" case types assigned to Judge Michael Warren. Beginning on May 1, 2017 the 6th Judicial Circuit Court of Oakland County moved to a new version of eFile entitled Tyler Odyssey. Service Contact information will not be migrated from Wiznet to the new system. You are receiving this one-time courtesy notification because your case falls into one of the eFile categories, yet to date, you have not registered as a user with the Court's Tyler (Odyssey) e-filing system for this case. Your enrollment is essential in order to file, serve and/or receive filings on your case (except as otherwise indicated in SCAO 2007-3[8]). Please contact Odyssey regarding enrollment at 1-800-297-5377 or efiling.support@tylertech.com. (Training and support information also is available through these contact resources.)

In the alternative, you must file a motion before the Court to remove yourself from the program. We suggest you review SCAO 2007-3(3)(b) regarding any such motion as well as MCR 2.119(A).

This will be your **last** notice reminding you of the Court's e-filing requirement. For your convenience, we have enclosed a courtesy copy of the Court's most recent filing.

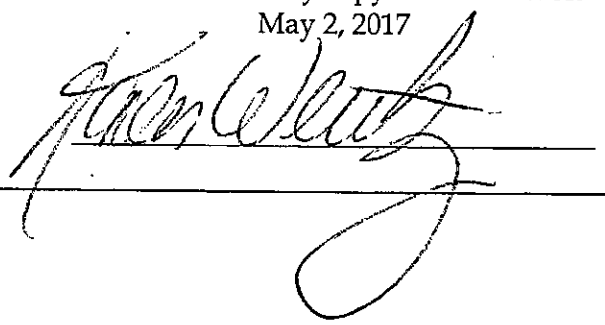
Very truly yours,
Chambers of the Hon. Michael Warren

Enclosure

PROOF OF SERVICE

The undersigned certifies that e-service was attempted with the Court's Order Regarding Opinion & Order Regarding Defendant's Motion, in Lieu of Answer to Third Amended Complaint, for Summary Disposition and for Vexatious Litigant Injunction, upon parties in the above case (as this is an e-filing case subject to the e-filing and e-service requirements). However, parties are not properly attached as e-filing contacts. Therefore, a one-time courtesy copy was mailed on

May 2, 2017



Supremacy Clause

Article VI, Paragraph 2 of the U.S. Constitution is commonly referred to as the Supremacy Clause. It establishes that the federal constitution, and federal law generally, take precedence over state laws, and even state constitutions. It prohibits states from interfering with the federal government's exercise of its constitutional powers, and from assuming any functions that are exclusively entrusted to the federal government. It does not, however, allow the federal government to review or veto state laws before they take effect.

Last updated in June of 2017 by Stephanie Jurkowski.

- wex

Appendix I

Fourth Amendment

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Appendix J

Seventh Amendment

Amendment VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

APPENDIX K

14th Amendment

Amendment XIV

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.

Section 2.

Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Section 3.

No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall

Appendix L

have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4.

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5.

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

wex resources

Section 1.

18 U.S. Code § 1341 - Frauds and swindles

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation occurs in relation to, or involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with, a presidentially declared major disaster or emergency (as those terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)), or affects a financial institution, such person shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

Whoever, for the purpose of conducting, promoting, or carrying on by means of the Postal Service, any scheme or device mentioned in section 1341 of this title or any other unlawful business, uses or assumes, or requests to be addressed by, any fictitious, false, or assumed title, name, or address or name other than his own proper name, or takes or receives from any post office or authorized depository of mail matter, any letter, postal card, package, or other mail matter addressed to any such fictitious, false, or assumed title, name, or address, or name other than his own proper name, shall be fined under this title or imprisoned not more than five years, or both.

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses,

Appendix M

representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation occurs in relation to, or involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with, a presidentially declared major disaster or emergency (as those terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)), or affects a financial institution, such person shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

Whoever knowingly executes, or attempts to execute, a scheme or artifice—
(1)
to defraud a financial institution; or
(2)
to obtain any of the moneys, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution, by means of false or fraudulent pretenses, representations, or promises;
shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.
(1) If a person is—
(A)
violating or about to violate this chapter or section 287, 371 (insofar as such violation involves a conspiracy to defraud the United States or any agency thereof), or 1001 of this title;
(B)
committing or about to commit a banking law violation (as defined in section 3322(d) of this title); or
(C)
committing or about to commit a Federal health care offense;
the Attorney General may commence a civil action in any Federal court to enjoin such violation.
(2) If a person is alienating or disposing of property, or intends to alienate or dispose of property, obtained as a result of a banking law violation (as defined in section 3322(d) of this title) or a Federal health care offense or property which is traceable to such violation, the Attorney General may commence a civil action in any Federal court—

(A)
to enjoin such alienation or disposition of property; or
(B) for a restraining order to—
(i)
prohibit any person from withdrawing, transferring, removing, dissipating, or disposing of any such property or property of equivalent value; and
(ii)
appoint a temporary receiver to administer such restraining order.
(3)
A permanent or temporary injunction or restraining order shall be granted without bond.
(b)
The court shall proceed as soon as practicable to the hearing and determination of such an action, and may, at any time before final determination, enter such a restraining order or prohibition, or take such other action, as is warranted to prevent a continuing and substantial injury to the United States or to any person or class of persons for whose protection the action is brought. A proceeding under this section is governed by the Federal Rules of Civil Procedure, except that, if an indictment has been returned against the respondent, discovery is governed by the Federal Rules of Criminal Procedure.

18 U.S. Code § 1343 - Fraud by wire, radio, or television

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation occurs in relation to, or involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with, a presidentially declared major disaster or emergency (as those terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)), or affects a financial institution, such person shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

Whoever knowingly executes, or attempts to execute, a scheme or artifice—
(1)
to defraud a financial institution; or
(2)
to obtain any of the moneys, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution, by means of false or fraudulent pretenses, representations, or promises;
shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

Appendix N

18 U.S. Code § 1962 - Prohibited activities

(a)

It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b)

It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c)

It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d)

It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

(a) Whoever violates any provision of section 1962 of this chapter shall be fined under this title or imprisoned not more than 20 years (or for life if the violation is based on a

APPENDIX O

racketeering activity for which the maximum penalty includes life imprisonment), or both, and shall forfeit to the United States, irrespective of any provision of State law—

(1)

any interest the person has acquired or maintained in violation of section 1962;

(2) any—

(A)

interest in;

(B)

security of;

(C)

claim against; or

(D)

property or contractual right of any kind affording a source of influence over;

any enterprise which the person has established, operated, controlled, conducted, or participated in the conduct of, in violation of section 1962; and

(3)

any property constituting, or derived from, any proceeds which the person obtained, directly or indirectly, from racketeering activity or unlawful debt collection in violation of section 1962.

The court, in imposing sentence on such person shall order, in addition to any other sentence imposed pursuant to this section, that the person forfeit to the United States all property described in this subsection. In lieu of a fine otherwise authorized by this section, a defendant who derives profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds.

(b) Property subject to criminal forfeiture under this section includes—

(1)

real property, including things growing on, affixed to, and found in land; and

(2)

tangible and intangible personal property, including rights, privileges, interests, claims, and securities.

(c)

All right, title, and interest in property described in subsection (a) vests in the United States upon the commission of the act giving rise to forfeiture under this section. Any such property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered

forfeited to the United States, unless the transferee establishes in a hearing pursuant to subsection (l) that he is a bona fide purchaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture under this section.

(d)

(1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subsection (a) for forfeiture under this section—

(A)

upon the filing of an indictment or information charging a violation of section 1962 of this chapter and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or

(B) prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that—

(i)

there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

(ii)

the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered:

Provided, however, That an order entered pursuant to subparagraph (B) shall be effective for not more than ninety days, unless extended by the court for good cause shown or unless an indictment or information described in subparagraph (A) has been filed.

(2)

A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a hearing when an information or indictment has not yet been filed with respect to the property, if the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and that provision of notice will jeopardize the availability of the

property for forfeiture. Such a temporary order shall expire not more than fourteen days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time, and prior to the expiration of the temporary order.

(3)

The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence.

(e)

Upon conviction of a person under this section, the court shall enter a judgment of forfeiture of the property to the United States and shall also authorize the Attorney General to seize all property ordered forfeited upon such terms and conditions as the court shall deem proper. Following the entry of an order declaring the property forfeited, the court may, upon application of the United States, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the United States in the property ordered forfeited. Any income accruing to, or derived from, an enterprise or an interest in an enterprise which has been ordered forfeited under this section may be used to offset ordinary and necessary expenses to the enterprise which are required by law, or which are necessary to protect the interests of the United States or third parties.

(f)

Following the seizure of property ordered forfeited under this section, the Attorney General shall direct the disposition of the property by sale or any other commercially feasible means, making due provision for the rights of any innocent persons. Any property right or interest not exercisable by, or transferable for value to, the United States shall expire and shall not revert to the defendant, nor shall the defendant or any person acting in concert with or on behalf of the defendant be eligible to purchase forfeited property at any sale held by the United States. Upon application of a person, other than the defendant or a person acting in concert with or on behalf of the defendant, the court may restrain or stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture, if the applicant demonstrates that proceeding with the sale or disposition of the property will result in irreparable injury, harm or loss to him. Notwithstanding 31 U.S.C. 3302(b), the

proceeds of any sale or other disposition of property forfeited under this section and any moneys forfeited shall be used to pay all proper expenses for the forfeiture and the sale, including expenses of seizure, maintenance and custody of the property pending its disposition, advertising and court costs. The Attorney General shall deposit in the Treasury any amounts of such proceeds or moneys remaining after the payment of such expenses.

(g) With respect to property ordered forfeited under this section, the Attorney General is authorized to—

(1)

grant petitions for mitigation or remission of forfeiture, restore forfeited property to victims of a violation of this chapter, or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this chapter;

(2)

compromise claims arising under this section;

(3)

award compensation to persons providing information resulting in a forfeiture under this section;

(4)

direct the disposition by the United States of all property ordered forfeited under this section by public sale or any other commercially feasible means, making due provision for the rights of innocent persons; and

(5)

take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.

(h) The Attorney General may promulgate regulations with respect to—

(1)

making reasonable efforts to provide notice to persons who may have an interest in property ordered forfeited under this section;

(2)

granting petitions for remission or mitigation of forfeiture;

(3)

the restitution of property to victims of an offense petitioning for remission or mitigation of forfeiture under this chapter;

(4)

the disposition by the United States of forfeited property by public sale or other commercially feasible means;

(5)

the maintenance and safekeeping of any property forfeited under this section pending its disposition; and

(6)

the compromise of claims arising under this chapter.

Pending the promulgation of such regulations, all provisions of law relating to the disposition of property, or the proceeds from the sale thereof, or the remission or mitigation of forfeitures for violation of the customs laws, and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions hereof. Such duties as are imposed upon the Customs Service or any person with respect to the disposition of property under the customs law shall be performed under this chapter by the Attorney General.

(i) Except as provided in subsection (*l*), no party claiming an interest in property subject to forfeiture under this section may—

(1)

intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this section; or

(2)

commence an action at law or equity against the United States concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this section.

(j)

The district courts of the United States shall have jurisdiction to enter orders as provided in this section without regard to the location of any property which may be subject to forfeiture under this section or which has been ordered forfeited under this section.

(k)

In order to facilitate the identification or location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of an order declaring property forfeited to the United States the court may, upon application of the United States, order that the testimony of any witness relating to the

property forfeited be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place, in the same manner as provided for the taking of depositions under Rule 15 of the Federal Rules of Criminal Procedure.

(l)

(1)

Following the entry of an order of forfeiture under this section, the United States shall publish notice of the order and of its intent to dispose of the property in such manner as the Attorney General may direct. The Government may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the order of forfeiture as a substitute for published notice as to those persons so notified.

(2)

Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the United States pursuant to this section may, within thirty days of the final publication of notice or his receipt of notice under paragraph (1), whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property. The hearing shall be held before the court alone, without a jury.

(3)

The petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, any additional facts supporting the petitioner's claim, and the relief sought.

(4)

The hearing on the petition shall, to the extent practicable and consistent with the interests of justice, be held within thirty days of the filing of the petition. The court may consolidate the hearing on the petition with a hearing on any other petition filed by a person other than the defendant under this subsection.

(5)

At the hearing, the petitioner may testify and present evidence and witnesses on his own behalf, and cross-examine witnesses who appear at the hearing. The United States may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing. In addition to testimony and evidence presented at the hearing, the court shall consider the relevant

portions of the record of the criminal case which resulted in the order of forfeiture.
(6) If, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that—
(A)
the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or
(B)
the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section;
the court shall amend the order of forfeiture in accordance with its determination.
(7)
Following the court's disposition of all petitions filed under this subsection, or if no such petitions are filed following the expiration of the period provided in paragraph (2) for the filing of such petitions, the United States shall have clear title to property that is the subject of the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.
(m) If any of the property described in subsection (a), as a result of any act or omission of the defendant—
(1)
cannot be located upon the exercise of due diligence;
(2)
has been transferred or sold to, or deposited with, a third party;
(3)
has been placed beyond the jurisdiction of the court;
(4)
has been substantially diminished in value; or
(5)
has been commingled with other property which cannot be divided without difficulty;
the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5).
(a)

The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

(b)

The Attorney General may institute proceedings under this section. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

(c)

Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee, except that no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962. The exception contained in the preceding sentence does not apply to an action against any person that is criminally convicted in connection with the fraud, in which case the statute of limitations shall start to run on the date on which the conviction becomes final.

(d)

A final judgment or decree rendered in favor of the United States in any criminal proceeding brought by the United States under this chapter shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought by the United States.

(a)

Any civil action or proceeding under this chapter against any person may be instituted in the district court of the United States for any district in which such person resides, is found, has an agent, or transacts his affairs.

(b)

In any action under section 1964 of this chapter in any district court of the United States in which it is shown that the ends of justice require that other parties residing in any

other district be brought before the court, the court may cause such parties to be summoned, and process for that purpose may be served in any judicial district of the United States by the marshal thereof.

(c)

In any civil or criminal action or proceeding instituted by the United States under this chapter in the district court of the United States for any judicial district, subpenas issued by such court to compel the attendance of witnesses may be served in any other judicial district, except that in any civil action or proceeding no such subpena shall be issued for service upon any individual who resides in another district at a place more than one hundred miles from the place at which such court is held without approval given by a judge of such court upon a showing of good cause.

(d)

All other process in any action or proceeding under this chapter may be served on any person in any judicial district in which such person resides, is found, has an agent, or transacts his affairs.

In any proceeding ancillary to or in any civil action instituted by the United States under this chapter the proceedings may be open or closed to the public at the discretion of the court after consideration of the rights of affected persons.

(a)

Whenever the Attorney General has reason to believe that any person or enterprise may be in possession, custody, or control of any documentary materials relevant to a racketeering investigation, he may, prior to the institution of a civil or criminal proceeding thereon, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to produce such material for examination.

(b) Each such demand shall—

(1)

state the nature of the conduct constituting the alleged racketeering violation which is under investigation and the provision of law applicable thereto;

(2)

describe the class or classes of documentary material produced thereunder with such definiteness and certainty as to permit such material to be fairly identified;

(3)

state that the demand is returnable forthwith or prescribe a return date which will provide a reasonable period of time within which the material so demanded may be

assembled and made available for inspection and copying or reproduction; and

(4)

identify the custodian to whom such material shall be made available.

(c) No such demand shall—

(1)

contain any requirement which would be held to be unreasonable if contained in a subpena duces tecum issued by a court of the United States in aid of a grand jury investigation of such alleged racketeering violation; or

(2)

require the production of any documentary evidence which would be privileged from disclosure if demanded by a subpena duces tecum issued by a court of the United States in aid of a grand jury investigation of such alleged racketeering violation.

(d) Service of any such demand or any petition filed under this section may be made upon a person by—

(1)

delivering a duly executed copy thereof to any partner, executive officer, managing agent, or general agent thereof, or to any agent thereof authorized by appointment or by law to receive service of process on behalf of such person, or upon any individual person;

(2)

delivering a duly executed copy thereof to the principal office or place of business of the person to be served; or

(3)

depositing such copy in the United States mail, by registered or certified mail duly addressed to such person at its principal office or place of business.

(e)

A verified return by the individual serving any such demand or petition setting forth the manner of such service shall be prima facie proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

(f)

(1)

The Attorney General shall designate a racketeering investigator to serve as racketeer document custodian, and such additional racketeering investigators as he shall determine from time to time to be necessary to serve as deputies to such officer.

(2)

Any person upon whom any demand issued under this section has been duly served shall make such material available for inspection and copying or reproduction to the custodian designated therein at the principal place of business of such person, or at such other place as such custodian and such person thereafter may agree and prescribe in writing or as the court may direct, pursuant to this section on the return date specified in such demand, or on such later date as such custodian may prescribe in writing. Such person may upon written agreement between such person and the custodian substitute for copies of all or any part of such material originals thereof.

(3)

The custodian to whom any documentary material is so delivered shall take physical possession thereof, and shall be responsible for the use made thereof and for the return thereof pursuant to this chapter. The custodian may cause the preparation of such copies of such documentary material as may be required for official use under regulations which shall be promulgated by the Attorney General. While in the possession of the custodian, no material so produced shall be available for examination, without the consent of the person who produced such material, by any individual other than the Attorney General. Under such reasonable terms and conditions as the Attorney General shall prescribe, documentary material while in the possession of the custodian shall be available for examination by the person who produced such material or any duly authorized representatives of such person.

(4)

Whenever any attorney has been designated to appear on behalf of the United States before any court or grand jury in any case or proceeding involving any alleged violation of this chapter, the custodian may deliver to such attorney such documentary material in the possession of the custodian as such attorney determines to be required for use in the presentation of such case or proceeding on behalf of the United States. Upon the conclusion of any such case or proceeding, such attorney shall return to the custodian any documentary material so withdrawn which has not passed into the control of such court or grand jury through the introduction thereof into the record of such case or proceeding.

(5) Upon the completion of—

(i)

the racketeering investigation for which any documentary material was produced under this chapter, and

(ii)

any case or proceeding arising from such investigation, the custodian shall return to the person who produced such material all such material other than copies thereof made by the Attorney General pursuant to this subsection which has not passed into the control of any court or grand jury through the introduction thereof into the record of such case or proceeding.

(6)

When any documentary material has been produced by any person under this section for use in any racketeering investigation, and no such case or proceeding arising therefrom has been instituted within a reasonable time after completion of the examination and analysis of all evidence assembled in the course of such investigation, such person shall be entitled, upon written demand made upon the Attorney General, to the return of all documentary material other than copies thereof made pursuant to this subsection so produced by such person.

(7) In the event of the death, disability, or separation from service of the custodian of any documentary material produced under any demand issued under this section or the official relief of such custodian from responsibility for the custody and control of such material, the Attorney General shall promptly—

(i)

designate another racketeering investigator to serve as custodian thereof, and

(ii)

transmit notice in writing to the person who produced such material as to the identity and address of the successor so designated.

Any successor so designated shall have with regard to such materials all duties and responsibilities imposed by this section upon his predecessor in office with regard thereto, except that he shall not be held responsible for any default or dereliction which occurred before his designation as custodian.

(g)

Whenever any person fails to comply with any civil investigative demand duly served upon him under this section or whenever satisfactory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, the Attorney General may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of this section, except that if such person transacts business in more than one such district such petition shall

be filed in the district in which such person maintains his principal place of business, or in such other district in which such person transacts business as may be agreed upon by the parties to such petition.

(h)

Within twenty days after the service of any such demand upon any person, or at any time before the return date specified in the demand, whichever period is shorter, such person may file, in the district court of the United States for the judicial district within which such person resides, is found, or transacts business, and serve upon such custodian a petition for an order of such court modifying or setting aside such demand. The time allowed for compliance with the demand in whole or in part as deemed proper and ordered by the court shall not run during the pendency of such petition in the court. Such petition shall specify each ground upon which the petitioner relies in seeking such relief, and may be based upon any failure of such demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person.

(i)

At any time during which any custodian is in custody or control of any documentary material delivered by any person in compliance with any such demand, such person may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian a petition for an order of such court requiring the performance by such custodian of any duty imposed upon him by this section.

(j)

Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of this section.

18 U.S. Code § 1964 - Civil remedies

(a)

The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

(b)

The Attorney General may institute proceedings under this section. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

(c)

Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee, except that no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962. The exception contained in the preceding sentence does not apply to an action against any person that is criminally convicted in connection with the fraud, in which case the statute of limitations shall start to run on the date on which the conviction becomes final.

(d)

A final judgment or decree rendered in favor of the United States in any criminal proceeding brought by the United States under this chapter shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought by the United States.

(a)

Any civil action or proceeding under this chapter against any person may be instituted

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in the district court of the United States for any district in which such person resides, is found, has an agent, or transacts his affairs.

(b)

In any action under section 1964 of this chapter in any district court of the United States in which it is shown that the ends of justice require that other parties residing in any other district be brought before the court, the court may cause such parties to be summoned, and process for that purpose may be served in any judicial district of the United States by the marshal thereof.

(c)

In any civil or criminal action or proceeding instituted by the United States under this chapter in the district court of the United States for any judicial district, subpenas issued by such court to compel the attendance of witnesses may be served in any other judicial district, except that in any civil action or proceeding no such subpena shall be issued for service upon any individual who resides in another district at a place more than one hundred miles from the place at which such court is held without approval given by a judge of such court upon a showing of good cause.

(d)

All other process in any action or proceeding under this chapter may be served on any person in any judicial district in which such person resides, is found, has an agent, or transacts his affairs.

In any proceeding ancillary to or in any civil action instituted by the United States under this chapter the proceedings may be open or closed to the public at the discretion of the court after consideration of the rights of affected persons.

(a)

Whenever the Attorney General has reason to believe that any person or enterprise may be in possession, custody, or control of any documentary materials relevant to a racketeering investigation, he may, prior to the institution of a civil or criminal proceeding thereon, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to produce such material for examination.

(b) Each such demand shall—

(1)

state the nature of the conduct constituting the alleged racketeering violation which is under investigation and the provision of law applicable thereto;

(2)

describe the class or classes of documentary material produced thereunder with such definiteness and certainty as to permit such material to be fairly identified;

(3)

state that the demand is returnable forthwith or prescribe a return date which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction; and

(4)

identify the custodian to whom such material shall be made available.

(c) No such demand shall—

(1)

contain any requirement which would be held to be unreasonable if contained in a subpena duces tecum issued by a court of the United States in aid of a grand jury investigation of such alleged racketeering violation; or

(2)

require the production of any documentary evidence which would be privileged from disclosure if demanded by a subpena duces tecum issued by a court of the United States in aid of a grand jury investigation of such alleged racketeering violation.

(d) Service of any such demand or any petition filed under this section may be made upon a person by—

(1)

delivering a duly executed copy thereof to any partner, executive officer, managing agent, or general agent thereof, or to any agent thereof authorized by appointment or by law to receive service of process on behalf of such person, or upon any individual person;

(2)

delivering a duly executed copy thereof to the principal office or place of business of the person to be served; or

(3)

depositing such copy in the United States mail, by registered or certified mail duly addressed to such person at its principal office or place of business.

(e)

A verified return by the individual serving any such demand or petition setting forth the manner of such service shall be prima facie proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

(f)

(1)

The Attorney General shall designate a racketeering investigator to serve as racketeer document custodian, and such additional racketeering investigators as he shall determine from time to time to be necessary to serve as deputies to such officer.

(2)

Any person upon whom any demand issued under this section has been duly served shall make such material available for inspection and copying or reproduction to the custodian designated therein at the principal place of business of such person, or at such other place as such custodian and such person thereafter may agree and prescribe in writing or as the court may direct, pursuant to this section on the return date specified in such demand, or on such later date as such custodian may prescribe in writing. Such person may upon written agreement between such person and the custodian substitute for copies of all or any part of such material originals thereof.

(3)

The custodian to whom any documentary material is so delivered shall take physical possession thereof, and shall be responsible for the use made thereof and for the return thereof pursuant to this chapter. The custodian may cause the preparation of such copies of such documentary material as may be required for official use under regulations which shall be promulgated by the Attorney General. While in the possession of the custodian, no material so produced shall be available for examination, without the consent of the person who produced such material, by any individual other than the Attorney General. Under such reasonable terms and conditions as the Attorney General shall prescribe, documentary material while in the possession of the custodian shall be available for examination by the person who produced such material or any duly authorized representatives of such person.

(4)

Whenever any attorney has been designated to appear on behalf of the United States before any court or grand jury in any case or proceeding involving any alleged violation of this chapter, the custodian may deliver to such attorney such documentary material in the possession of the custodian as such attorney determines to be required for use in the presentation of such case or proceeding on behalf of the United States. Upon the conclusion of any such case or proceeding, such attorney shall return to the custodian any documentary material so withdrawn which has not passed into the control of such court or grand jury through the introduction thereof into the record of such case or

proceeding.

(5) Upon the completion of—

(i)

the racketeering investigation for which any documentary material was produced under this chapter, and

(ii)

any case or proceeding arising from such investigation, the custodian shall return to the person who produced such material all such material other than copies thereof made by the Attorney General pursuant to this subsection which has not passed into the control of any court or grand jury through the introduction thereof into the record of such case or proceeding.

(6)

When any documentary material has been produced by any person under this section for use in any racketeering investigation, and no such case or proceeding arising therefrom has been instituted within a reasonable time after completion of the examination and analysis of all evidence assembled in the course of such investigation, such person shall be entitled, upon written demand made upon the Attorney General, to the return of all documentary material other than copies thereof made pursuant to this subsection so produced by such person.

(7) In the event of the death, disability, or separation from service of the custodian of any documentary material produced under any demand issued under this section or the official relief of such custodian from responsibility for the custody and control of such material, the Attorney General shall promptly—

(i)

designate another racketeering investigator to serve as custodian thereof, and

(ii)

transmit notice in writing to the person who produced such material as to the identity and address of the successor so designated.

Any successor so designated shall have with regard to such materials all duties and responsibilities imposed by this section upon his predecessor in office with regard thereto, except that he shall not be held responsible for any default or dereliction which occurred before his designation as custodian.

(g)

Whenever any person fails to comply with any civil investigative demand duly served upon him under this section or whenever satisfactory copying or reproduction of any

such material cannot be done and such person refuses to surrender such material, the Attorney General may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of this section, except that if such person transacts business in more than one such district such petition shall be filed in the district in which such person maintains his principal place of business, or in such other district in which such person transacts business as may be agreed upon by the parties to such petition.

(h)

Within twenty days after the service of any such demand upon any person, or at any time before the return date specified in the demand, whichever period is shorter, such person may file, in the district court of the United States for the judicial district within which such person resides, is found, or transacts business, and serve upon such custodian a petition for an order of such court modifying or setting aside such demand. The time allowed for compliance with the demand in whole or in part as deemed proper and ordered by the court shall not run during the pendency of such petition in the court. Such petition shall specify each ground upon which the petitioner relies in seeking such relief, and may be based upon any failure of such demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person.

(i)

At any time during which any custodian is in custody or control of any documentary material delivered by any person in compliance with any such demand, such person may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian a petition for an order of such court requiring the performance by such custodian of any duty imposed upon him by this section.

(j)

Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of this section.

42 U.S. Code § 1983 - Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

(1) Preventing officer from performing duties
If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

(2) Obstructing justice; intimidating party, witness, or juror
If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of

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impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) Depriving persons of rights or privileges

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

(R.S. § 1980.)

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding $5,000

damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

(R.S. § 1981.)

The United States attorneys, marshals, and deputy marshals, the United States magistrate judges appointed by the district and territorial courts, with power to arrest, imprison, or bail offenders, and every other officer who is especially empowered by the President, are authorized and required, at the expense of the United States, to institute prosecutions against all persons violating any of the provisions of section 1990 of this title or of sections 5506 to 5516 and 5518 to 5532 of the Revised Statutes, and to cause such persons to be arrested, and imprisoned or bailed, for trial before the court of the United States or the territorial court having cognizance of the offense.

(a) Applicability of statutory and common law

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of titles 13, 24, and 70 of the Revised Statutes for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty.

(b) Attorney's fees

In any action or proceeding to enforce a provision of sections 1981, 1981a, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92–318 [20 U.S.C. 1681 et seq.], the Religious Freedom Restoration Act of 1993 [42 U.S.C. 2000bb et seq.], the Religious Land Use and Institutionalized Persons Act of 2000 [42 U.S.C. 2000cc et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], or section 12361 of title 34, the court, in its discretion, may allow the prevailing party, other than the United States, a

reasonable attorney's fee as part of the costs, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity such officer shall not be held liable for any costs, including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction.

(c) Expert fees
In awarding an attorney's fee under subsection (b) in any action or proceeding to enforce a provision of section 1981 or 1981a of this title, the court, in its discretion, may include expert fees as part of the attorney's fee.

The district courts of the United States and the district courts of the Territories, from time to time, shall increase the number of United States magistrate judges, so as to afford a speedy and convenient means for the arrest and examination of persons charged with the crimes referred to in section 1987 of this title; and such magistrate judges are authorized and required to exercise all the powers and duties conferred on them herein with regard to such offenses in like manner as they are authorized by law to exercise with regard to other offenses against the laws of the United States. Said magistrate judges are empowered, within their respective counties, to appoint, in writing, under their hands, one or more suitable persons, from time to time, who shall execute all such warrants or other process as the magistrate judges may issue in the lawful performance of their duties, and the persons so appointed shall have authority to summon and call to their aid the bystanders or posse comitatus of the proper county, or such portion of the land or naval forces of the United States, or of the militia, as may be necessary to the performance of the duty with which they are charged; and such warrants shall run and be executed anywhere in the State or Territory within which they are issued.

Every marshal and deputy marshal shall obey and execute all warrants or other process, when directed to him, issued under the provisions of section 1989 of this title. Every marshal and deputy marshal who refuses to receive any warrant or other process when tendered to him, issued in pursuance of the provisions of this section, or refuses or neglects to use all proper means diligently to execute the same, shall be liable to a fine in the sum of $1,000, for the benefit of the party aggrieved thereby.

(R.S. §§ 1985, 5517.)
Every person appointed to execute process under section 1989 of this title shall be

entitled to a fee of $5 for each party he may arrest and take before any United States magistrate judge, with such other fees as may be deemed reasonable by the magistrate judge for any additional services necessarily performed by him, such as attending at the examination, keeping the prisoner in custody, and providing him with food and lodging during his detention, and until the final determination of the magistrate judge; such fees to be made up in conformity with the fees usually charged by the officers of the courts of justice within the proper district or county, as near as may be practicable, and paid out of the Treasury of the United States on the certificate of the judge of the district within which the arrest is made, and to be recoverable from the defendant as part of the judgment in case of conviction.

Whenever the President has reason to believe that offenses have been, or are likely to be committed against the provisions of section 1990 of this title or of section 5506 to 5516 and 5518 to 5532 of the Revised Statutes, within any judicial district, it shall be lawful for him, in his discretion, to direct the judge, marshal, and United States attorney of such district to attend at such place within the district, and for such time as he may designate, for the purpose of the more speedy arrest and trial of persons so charged, and it shall be the duty of every judge or other officer, when any such requisition is received by him to attend at the place and for the time therein designated.

(R.S. § 1988; June 25, 1948, ch. 646, § 1, 62 Stat. 909.)

The holding of any person to service or labor under the system known as peonage is abolished and forever prohibited in any Territory or State of the United States; and all acts, laws, resolutions, orders, regulations, or usages of any Territory or State, which have heretofore established, maintained, or enforced, or by virtue of which any attempt shall hereafter be made to establish, maintain, or enforce, directly or indirectly, the voluntary or involuntary service or labor of any persons as peons, in liquidation of any debt or obligation, or otherwise, are declared null and void.

(R.S. § 1990.)

In all cases of criminal contempt arising under the provisions of this Act, the accused, upon conviction, shall be punished by fine or imprisonment or both: Provided however, That in case the accused is a natural person the fine to be paid shall not exceed the sum of $1,000, nor shall imprisonment exceed the term of six months: Provided further, That in any such proceeding for criminal contempt, at the discretion of the judge, the accused may be tried with or without a jury: Provided further, however, That in the event

such proceeding for criminal contempt be tried before a judge without a jury and the sentence of the court upon conviction is a fine in excess of the sum of $300 or imprisonment in excess of forty-five days, the accused in said proceeding, upon demand therefore, shall be entitled to a trial de novo before a jury, which shall conform as near as may be to the practice in other criminal cases.

This section shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice nor to the misbehavior, misconduct, or disobedience, of any officer of the court in respect to the writs, orders, or process of the court.

Nor shall anything herein or in any other provision of law be construed to deprive courts of their power, by civil contempt proceedings, without a jury, to secure compliance with or to prevent obstruction of, as distinguished from punishment for violations of, any lawful writ, process, order, rule, decree, or command of the court in accordance with the prevailing usages of law and equity, including the power of detention.

On and after August 11, 1978, it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites.

(a) Congressional findings and declarations
The Congress finds and declares that—
(1)
for many Indian people, the traditional ceremonial use of the peyote cactus as a religious sacrament has for centuries been integral to a way of life, and significant in perpetuating Indian tribes and cultures;
(2)
since 1965, this ceremonial use of peyote by Indians has been protected by Federal regulation;
(3)
while at least 28 States have enacted laws which are similar to, or are in conformance with, the Federal regulation which protects the ceremonial use of peyote by Indian religious practitioners, 22 States have not done so, and this lack of uniformity has

created hardship for Indian people who participate in such religious ceremonies;

(4)

the Supreme Court of the United States, in the case of Employment Division v. Smith, 494 U.S. 872 (1990), held that the First Amendment does not protect Indian practitioners who use peyote in Indian religious ceremonies, and also raised uncertainty whether this religious practice would be protected under the compelling State interest standard; and

(5)

the lack of adequate and clear legal protection for the religious use of peyote by Indians may serve to stigmatize and marginalize Indian tribes and cultures, and increase the risk that they will be exposed to discriminatory treatment.

(b) Use, possession, or transportation of peyote

(1)

Notwithstanding any other provision of law, the use, possession, or transportation of peyote by an Indian for bona fide traditional ceremonial purposes in connection with the practice of a traditional Indian religion is lawful, and shall not be prohibited by the United States or any State. No Indian shall be penalized or discriminated against on the basis of such use, possession or transportation, including, but not limited to, denial of otherwise applicable benefits under public assistance programs.

(2)

This section does not prohibit such reasonable regulation and registration by the Drug Enforcement Administration of those persons who cultivate, harvest, or distribute peyote as may be consistent with the purposes of this section and section 1996 of this title.

(3)

This section does not prohibit application of the provisions of section 481.111(a) of Vernon's Texas Health and Safety Code Annotated, in effect on October 6, 1994, insofar as those provisions pertain to the cultivation, harvest, and distribution of peyote.

(4)

Nothing in this section shall prohibit any Federal department or agency, in carrying out its statutory responsibilities and functions, from promulgating regulations establishing reasonable limitations on the use or ingestion of peyote prior to or during the performance of duties by sworn law enforcement officers or personnel directly involved in public transportation or any other safety-sensitive positions where the performance of such duties may be adversely affected by such use or ingestion. Such regulations shall be adopted only after consultation with representatives of traditional Indian religions for

which the sacramental use of peyote is integral to their practice. Any regulation promulgated pursuant to this section shall be subject to the balancing test set forth in section 3 of the Religious Freedom Restoration Act (Public Law 103–141; 42 U.S.C. 2000bb–1).

(5)

This section shall not be construed as requiring prison authorities to permit, nor shall it be construed to prohibit prison authorities from permitting, access to peyote by Indians while incarcerated within Federal or State prison facilities.

(6)

Subject to the provisions of the Religious Freedom Restoration Act (Public Law 103–141; 42 U.S.C. 2000bb–1) [42 U.S.C. 2000bb et seq.], this section shall not be construed to prohibit States from enacting or enforcing reasonable traffic safety laws or regulations.

(7)

Subject to the provisions of the Religious Freedom Restoration Act (Public Law 103–141; 42 U.S.C. 2000bb–1), this section does not prohibit the Secretary of Defense from promulgating regulations establishing reasonable limitations on the use, possession, transportation, or distribution of peyote to promote military readiness, safety, or compliance with international law or laws of other countries. Such regulations shall be adopted only after consultation with representatives of traditional Indian religions for which the sacramental use of peyote is integral to their practice.

(c) Definitions

For purposes of this section—

(1)

the term "Indian" means a member of an Indian tribe;

(2)

the term "Indian tribe" means any tribe, band, nation, pueblo, or other organized group or community of Indians, including any Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

(3) the term "Indian religion" means any religion—

(A)

which is practiced by Indians, and

(B)

the origin and interpretation of which is from within a traditional Indian culture or community; and

(4)

the term "State" means any State of the United States, and any political subdivision thereof.

(d) Protection of rights of Indians and Indian tribes

Nothing in this section shall be construed as abrogating, diminishing, or otherwise affecting—

(1)

the inherent rights of any Indian tribe;

(2)

the rights, express or implicit, of any Indian tribe which exist under treaties, Executive orders, and laws of the United States;

(3)

the inherent right of Indians to practice their religions; and

(4)

the right of Indians to practice their religions under any Federal or State law.

(1) Prohibited conduct

A person or government that is involved in adoption or foster care placements may not —

(A)

deny to any individual the opportunity to become an adoptive or a foster parent, on the basis of the race, color, or national origin of the individual, or of the child, involved; or

(B)

delay or deny the placement of a child for adoption or into foster care, on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved.

(2) Enforcement

28 U.S. Code § 1331 - Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between—

(1)

citizens of different States;

(2)

citizens of a State and citizens or subjects of a foreign state, except that the district courts shall not have original jurisdiction under this subsection of an action between citizens of a State and citizens or subjects of a foreign state who are lawfully admitted for permanent residence in the United States and are domiciled in the same State;

(3)

citizens of different States and in which citizens or subjects of a foreign state are additional parties; and

(4)

a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

(b)

Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff who files the case originally in the Federal courts is finally adjudged to be entitled to recover less than the sum or value of $75,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

(1) a corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business, except that in any direct action against the insurer of a policy or contract of liability insurance, whether incorporated or unincorporated, to which action the insured is not joined as a party-defendant, such insurer shall be deemed a citizen of —

Appendix R

(A)
every State and foreign state of which the insured is a citizen;
(B)
every State and foreign state by which the insurer has been incorporated; and
(C)
the State or foreign state where the insurer has its principal place of business; and
(2)
the legal representative of the estate of a decedent shall be deemed to be a citizen only of the same State as the decedent, and the legal representative of an infant or incompetent shall be deemed to be a citizen only of the same State as the infant or incompetent.
(d)
(1) In this subsection—
(A)
the term "class" means all of the class members in a class action;
(B)
the term "class action" means any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action;
(C)
the term "class certification order" means an order issued by a court approving the treatment of some or all aspects of a civil action as a class action; and
(D)
the term "class members" means the persons (named or unnamed) who fall within the definition of the proposed or certified class in a class action.
(2) The district courts shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs, and is a class action in which—
(A)
any member of a class of plaintiffs is a citizen of a State different from any defendant;
(B)
any member of a class of plaintiffs is a foreign state or a citizen or subject of a foreign state and any defendant is a citizen of a State; or
(C)
any member of a class of plaintiffs is a citizen of a State and any defendant is a foreign

state or a citizen or subject of a foreign state.

(3) A district court may, in the interests of justice and looking at the totality of the circumstances, decline to exercise jurisdiction under paragraph (2) over a class action in which greater than one-third but less than two-thirds of the members of all proposed plaintiff classes in the aggregate and the primary defendants are citizens of the State in which the action was originally filed based on consideration of—

(A)

whether the claims asserted involve matters of national or interstate interest;

(B)

whether the claims asserted will be governed by laws of the State in which the action was originally filed or by the laws of other States;

(C)

whether the class action has been pleaded in a manner that seeks to avoid Federal jurisdiction;

(D)

whether the action was brought in a forum with a distinct nexus with the class members, the alleged harm, or the defendants;

(E)

whether the number of citizens of the State in which the action was originally filed in all proposed plaintiff classes in the aggregate is substantially larger than the number of citizens from any other State, and the citizenship of the other members of the proposed class is dispersed among a substantial number of States; and

(F)

whether, during the 3-year period preceding the filing of that class action, 1 or more other class actions asserting the same or similar claims on behalf of the same or other persons have been filed.

(4) A district court shall decline to exercise jurisdiction under paragraph (2)—

(A)

(i) over a class action in which—

(I)

greater than two-thirds of the members of all proposed plaintiff classes in the aggregate are citizens of the State in which the action was originally filed;

(II) at least 1 defendant is a defendant—

(aa)

from whom significant relief is sought by members of the plaintiff class;

(bb)
whose alleged conduct forms a significant basis for the claims asserted by the proposed plaintiff class; and
(cc)
who is a citizen of the State in which the action was originally filed; and
(III)
principal injuries resulting from the alleged conduct or any related conduct of each defendant were incurred in the State in which the action was originally filed; and
(ii)
during the 3-year period preceding the filing of that class action, no other class action has been filed asserting the same or similar factual allegations against any of the defendants on behalf of the same or other persons; or
(B)
two-thirds or more of the members of all proposed plaintiff classes in the aggregate, and the primary defendants, are citizens of the State in which the action was originally filed.
(5) Paragraphs (2) through (4) shall not apply to any class action in which—
(A)
the primary defendants are States, State officials, or other governmental entities against whom the district court may be foreclosed from ordering relief; or
(B)
the number of members of all proposed plaintiff classes in the aggregate is less than 100.
(6)
In any class action, the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs.
(7)
Citizenship of the members of the proposed plaintiff classes shall be determined for purposes of paragraphs (2) through (6) as of the date of filing of the complaint or amended complaint, or, if the case stated by the initial pleading is not subject to Federal jurisdiction, as of the date of service by plaintiffs of an amended pleading, motion, or other paper, indicating the existence of Federal jurisdiction.
(8)
This subsection shall apply to any class action before or after the entry of a class

certification order by the court with respect to that action.

(9) Paragraph (2) shall not apply to any class action that solely involves a claim—

(B)

that relates to the internal affairs or governance of a corporation or other form of business enterprise and that arises under or by virtue of the laws of the State in which such corporation or business enterprise is incorporated or organized; or

(C)

that relates to the rights, duties (including fiduciary duties), and obligations relating to or created by or pursuant to any security (as defined under section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1)) and the regulations issued thereunder).

(10)

For purposes of this subsection and section 1453, an unincorporated association shall be deemed to be a citizen of the State where it has its principal place of business and the State under whose laws it is organized.

(11)

(A)

For purposes of this subsection and section 1453, a mass action shall be deemed to be a class action removable under paragraphs (2) through (10) if it otherwise meets the provisions of those paragraphs.

(B)

(i)

As used in subparagraph (A), the term "mass action" means any civil action (except a civil action within the scope of section 1711(2)) in which monetary relief claims of 100 or more persons are proposed to be tried jointly on the ground that the plaintiffs' claims involve common questions of law or fact, except that jurisdiction shall exist only over those plaintiffs whose claims in a mass action satisfy the jurisdictional amount requirements under subsection (a).

(ii) As used in subparagraph (A), the term "mass action" shall not include any civil action in which—

(I)

all of the claims in the action arise from an event or occurrence in the State in which the action was filed, and that allegedly resulted in injuries in that State or in States contiguous to that State;

(II)

the claims are joined upon motion of a defendant;

(III)

all of the claims in the action are asserted on behalf of the general public (and not on behalf of individual claimants or members of a purported class) pursuant to a State statute specifically authorizing such action; or

(IV)

the claims have been consolidated or coordinated solely for pretrial proceedings.

(C)

(i)

Any action(s) removed to Federal court pursuant to this subsection shall not thereafter be transferred to any other court pursuant to section 1407, or the rules promulgated thereunder, unless a majority of the plaintiffs in the action request transfer pursuant to section 1407.

(ii) This subparagraph will not apply—

(I)

to cases certified pursuant to rule 23 of the Federal Rules of Civil Procedure; or

(II)

if plaintiffs propose that the action proceed as a class action pursuant to rule 23 of the Federal Rules of Civil Procedure.

(D)

The limitations periods on any claims asserted in a mass action that is removed to Federal court pursuant to this subsection shall be deemed tolled during the period that the action is pending in Federal court.

(e)

The word "States", as used in this section, includes the Territories, the District of Columbia, and the Commonwealth of Puerto Rico.

The district courts shall have original jurisdiction, exclusive of the courts of the States, of:

(1)

Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.

(2)

Any prize brought into the United States and all proceedings for the condemnation of property taken as prize.

(June 25, 1948, ch. 646, 62 Stat. 931; May 24, 1949, ch. 139, § 79, 63 Stat. 101.)

(a)

Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

(b)

Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

(c)

(1)

Except with respect to a case under chapter 15 of title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

(2)

Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

(d)

Any decision to abstain or not to abstain made under subsection (c) (other than a decision not to abstain in a proceeding described in subsection (c)(2)) is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title. Subsection (c) and this subsection shall not be construed to limit the applicability of the stay provided for by section 362 of title 11, United States Code, as such section applies to an action affecting the property of the estate in bankruptcy.

(e) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction—

(1)

of all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate; and

(2)

over all claims or causes of action that involve construction of section 327 of title 11,

United States Code, or rules relating to disclosure requirements under section 327.
(a) The district courts shall have original jurisdiction of any civil action of interpleader or in the nature of interpleader filed by any person, firm, or corporation, association, or society having in his or its custody or possession money or property of the value of $500 or more, or having issued a note, bond, certificate, policy of insurance, or other instrument of value or amount of $500 or more, or providing for the delivery or payment or the loan of money or property of such amount or value, or being under any obligation written or unwritten to the amount of $500 or more, if
(1)
Two or more adverse claimants, of diverse citizenship as defined in subsection (a) or (d) of section 1332 of this title, are claiming or may claim to be entitled to such money or property, or to any one or more of the benefits arising by virtue of any note, bond, certificate, policy or other instrument, or arising by virtue of any such obligation; and if
(2) the plaintiff has deposited such money or property or has paid the amount of or the loan or other value of such instrument or the amount due under such obligation into the registry of the court, there to abide the judgment of the court, or has given bond payable to the clerk of the court in such amount and with such surety as the court or judge may deem proper, conditioned upon the compliance by the plaintiff with the future order or judgment of the court with respect to the subject matter of the controversy.
(b)
Such an action may be entertained although the titles or claims of the conflicting claimants do not have a common origin, or are not identical, but are adverse to and independent of one another.
(a)
Except as otherwise provided by Act of Congress, the district courts shall have jurisdiction of any civil action to enforce, in whole or in part, any order of the Surface Transportation Board, and to enjoin or suspend, in whole or in part, any order of the Surface Transportation Board for the payment of money or the collection of fines, penalties, and forfeitures.
(b)
When a district court or the United States Court of Federal Claims refers a question or issue to the Surface Transportation Board for determination, the court which referred the question or issue shall have exclusive jurisdiction of a civil action to enforce, enjoin, set aside, annul, or suspend, in whole or in part, any order of the Surface Transportation Board arising out of such referral.

(c)
Any action brought under subsection (b) of this section shall be filed within 90 days from the date that the order of the Surface Transportation Board becomes final.
There is hereby authorized to be established a working capital fund for the Department of Justice, which shall be available, without fiscal year limitation, for expenses and equipment necessary for maintenance and operations of such administrative services as the Attorney General, with the approval of the Office of Management and Budget, determines may be performed more advantageously as central services. The capital of the fund shall consist of the amount of the fair and reasonable value of such inventories, equipment, and other assets and inventories on order pertaining to the services to be carried on by the fund as the Attorney General may transfer to the fund less related liabilities and unpaid obligations together with any appropriations made for the purpose of providing capital. The fund shall be reimbursed or credited with advance payments from applicable appropriations and funds of: (1) the Department of Justice, other Federal agencies, and other sources authorized by law for supplies, materials, and services; and (2) federally recognized tribes for supplies, materials, and services related to access to Federal law enforcement databases; at rates which will recover the expenses of operations including accrual of annual leave and depreciation of plant and equipment of the fund. The fund shall also be credited with other receipts from sale or exchange of property or in payment for loss or damage to property held by the fund. There shall be transferred into the Treasury as miscellaneous receipts, as of the close of each fiscal year, any net income after making provisions for prior year losses, if any.

The Attorney General shall promulgate rules and regulations which require the disqualification of any officer or employee of the Department of Justice, including a United States attorney or a member of such attorney's staff, from participation in a particular investigation or prosecution if such participation may result in a personal, financial, or political conflict of interest, or the appearance thereof. Such rules and regulations may provide that a willful violation of any provision thereof shall result in removal from office.

(a) Beginning on June 1, 1979, and at the beginning of each regular session of Congress thereafter, the Attorney General shall report to Congress on the activities and operations of the Public Integrity Section or any other unit of the Department of Justice designated to supervise the investigation and prosecution of—

(1)
any violation of Federal criminal law by any individual who holds or who at the time of such violation held a position, whether or not elective, as a Federal Government officer, employee, or special employee, if such violation relates directly or indirectly to such individual's Federal Government position, employment, or compensation;
(2)
any violation of any Federal criminal law relating to lobbying, conflict of interest, campaigns, and election to public office committed by any person, except insofar as such violation relates to a matter involving discrimination or intimidation on grounds of race, color, religion, or national origin;
(3)
any violation of Federal criminal law by any individual who holds or who at the time of such violation held a position, whether or not elective, as a State or local government officer or employee, if such violation relates directly or indirectly to such individual's State or local government position, employment, or compensation; and
(4)
such other matters as the Attorney General may deem appropriate.
Such report shall include the number, type, and disposition of all investigations and prosecutions supervised by such Section or such unit, except that such report shall not disclose information which would interfere with any pending investigation or prosecution or which would improperly infringe upon the privacy rights of any individuals.
(b) Notwithstanding any provision of law limiting the amount of management or administrative expenses, the Attorney General shall, not later than May 2, 2003, and of every year thereafter, prepare and provide to the Committees on the Judiciary and Appropriations of each House of the Congress using funds available for the underlying programs—
(1)
a report identifying and describing every grant (other than one made to a governmental entity, pursuant to a statutory formula), cooperative agreement, or programmatic services contract that was made, entered into, awarded, or, for which additional or supplemental funds were provided in the immediately preceding fiscal year, by or on behalf of the Office of Justice Programs (including any component or unit thereof, and the Office of Community Oriented Policing Services), and including, without limitation, for each such grant, cooperative agreement, or contract: the term, the dollar amount or value, a description of its specific purpose or purposes, the names of all grantees or

parties, the names of each unsuccessful applicant or bidder, and a description of the specific purpose or purposes proposed in each unsuccessful application or bid, and of the reason or reasons for rejection or denial of the same; and

(2) a report identifying and reviewing every grant (other than one made to a governmental entity, pursuant to a statutory formula), cooperative agreement, or programmatic services contract made, entered into, awarded, or for which additional or supplemental funds were provided, after October 1, 2002, by or on behalf of the Office of Justice Programs (including any component or unit thereof, and the Office of Community Oriented Policing Services) that was programmatically and financially closed out or that otherwise ended in the immediately preceding fiscal year (or even if not yet closed out, was terminated or otherwise ended in the fiscal year that ended 2 years before the end of such immediately preceding fiscal year), and including, without limitation, for each such grant, cooperative agreement, or contract: a description of how the appropriated funds involved actually were spent, statistics relating to its performance, its specific purpose or purposes, and its effectiveness, and a written declaration by each non-Federal grantee and each non-Federal party to such agreement or to such contract, that—

(A)

the appropriated funds were spent for such purpose or purposes, and only such purpose or purposes;

(B)

the terms of the grant, cooperative agreement, or contract were complied with; and

(C)

all documentation necessary for conducting a full and proper audit under generally accepted accounting principles, and any (additional) documentation that may have been required under the grant, cooperative agreement, or contract, have been kept in orderly fashion and will be preserved for not less than 3 years from the date of such close out, termination, or end;

except that the requirement of this paragraph shall be deemed satisfied with respect to any such description, statistics, or declaration if such non-Federal grantee or such non-Federal party shall have failed to provide the same to the Attorney General, and the Attorney General notes the fact of such failure and the name of such grantee or such party in the report.

The Attorney General or the Attorney General's designee is authorized to pay the travel expenses of newly appointed special agents and the transportation expenses of their

families and household goods and personal effects from place of residence at time of selection to the first duty station, to the extent such payments are authorized by section 5723 of title 5 for new appointees who may receive payments under that section.

There are authorized to be used from appropriations, for any fiscal year, for the Department of Justice, such sums as may be necessary—

(1)

for travel and related expenses of employees of the Department of Justice serving abroad and their families, to be payable in the same manner as applicable with respect to the Foreign Service under paragraphs (2), (3), (5), (6), (8), (9), (11), and (15) of section 901 of the Foreign Service Act of 1980, and under the regulations issued by the Secretary of State; and

(2)

for health care for such employees and families, to be provided under section 904 of that Act.

(a)

An attorney for the Government shall be subject to State laws and rules, and local Federal court rules, governing attorneys in each State where such attorney engages in that attorney's duties, to the same extent and in the same manner as other attorneys in that State.

(b)

The Attorney General shall make and amend rules of the Department of Justice to assure compliance with this section.

(c)

As used in this section, the term "attorney for the Government" includes any attorney described in section 77.2(a) of part 77 of title 28 of the Code of Federal Regulations and also includes any independent counsel, or employee of such a counsel, appointed under chapter 40.

(a) In General.—Except to the extent provided otherwise by law, the activities of the Department of Justice (including any bureau, office, board, division, commission, subdivision, unit, or other component thereof) may, in the reasonable discretion of the Attorney General, be carried out through any means, including—

(1)

through the Department's own personnel, acting within, from, or through the Department itself;

(2)
by sending or receiving details of personnel to other branches or agencies of the Federal Government, on a reimbursable, partially-reimbursable, or nonreimbursable basis;
(3)
through reimbursable agreements with other Federal agencies for work, materials, or equipment;
(4)
through contracts, grants, or cooperative agreements with non-Federal parties; and
(5)
as provided in subsection (b), in section 524, and in any other provision of law consistent herewith, including, without limitation, section 102(b) of Public Law 102–395 (106 Stat. 1838), as incorporated by section 815(d) of Public Law 104–132 (110 Stat. 1315).
(b) Permitted Uses.—
(1) General permitted uses.—Funds available to the Attorney General (i.e., all funds available to carry out the activities described in subsection (a)) may be used, without limitation, for the following:
(A)
The purchase, lease, maintenance, and operation of passenger motor vehicles, or police-type motor vehicles for law enforcement purposes, without regard to general purchase price limitation for the then-current fiscal year.
(B)
The purchase of insurance for motor vehicles, boats, and aircraft operated in official Government business in foreign countries.
(C)
Services of experts and consultants, including private counsel, as authorized by section 3109 of title 5, and at rates of pay for individuals not to exceed the maximum daily rate payable from time to time under section 5332 of title 5.
(D)
Official reception and representation expenses (i.e., official expenses of a social nature intended in whole or in predominant part to promote goodwill toward the Department or its missions, but excluding expenses of public tours of facilities of the Department of Justice), in accordance with distributions and procedures established, and rules issued, by the Attorney General, and expenses of public tours of facilities of the Department of

Justice.

(E)

Unforeseen emergencies of a confidential character, to be expended under the direction of the Attorney General and accounted for solely on the certificate of the Attorney General.

(F)

Miscellaneous and emergency expenses authorized or approved by the Attorney General, the Deputy Attorney General, the Associate Attorney General, or the Assistant Attorney General for Administration.

(G) In accordance with procedures established and rules issued by the Attorney General—

(i)

attendance at meetings and seminars;

(ii)

conferences and training; and

(iii)

advances of public moneys under section 3324 of title 31: Provided, That travel advances of such moneys to law enforcement personnel engaged in undercover activity shall be considered to be public money for purposes of section 3527 of title 31.

(H)

Contracting with individuals for personal services abroad, except that such individuals shall not be regarded as employees of the United States for the purpose of any law administered by the Office of Personnel Management.

(I)

Payment of interpreters and translators who are not citizens of the United States, in accordance with procedures established and rules issued by the Attorney General.

(J)

Expenses or allowances for uniforms as authorized by section 5901 of title 5, but without regard to the general purchase price limitation for the then-current fiscal year.

(K) Expenses of—

(i)

primary and secondary schooling for dependents of personnel stationed outside the United States at cost not in excess of those authorized by the Department of Defense for the same area, when it is determined by the Attorney General that schools available in the locality are unable to provide adequately for the education of such dependents;

and

(ii)

transportation of those dependents between their place of residence and schools serving the area which those dependents would normally attend when the Attorney General, under such regulations as he may prescribe, determines that such schools are not accessible by public means of transportation.

(L) payment of rewards (i.e., payments pursuant to public advertisements for assistance to the Department of Justice), in accordance with procedures and regulations established or issued by the Attorney General: *Provided*, That—

(i) no such reward shall exceed $3,000,000, unless—

(I)

the reward is to combat domestic terrorism or international terrorism (as defined in section 2331 of title 18); or

(II)

a statute should authorize a higher amount;

(ii)

no such reward of $250,000 or more may be made or offered without the personal approval of either the Attorney General or the President;

(iii)

the Attorney General shall give written notice to the Chairmen and ranking minority members of the Committees on Appropriations and the Judiciary of the Senate and of the House of Representatives not later than 30 days after the approval of a reward under clause (ii);

(iv)

any executive agency or military department (as defined, respectively, in sections 105 and 102 of title 5) may provide the Attorney General with funds for the payment of rewards; and

(v)

neither the failure of the Attorney General to authorize a payment nor the amount authorized shall be subject to judicial review.

(M)

(i)

At the request of an appropriate law enforcement official of a State or political subdivision, the Attorney General may assist in the investigation of violent acts and shootings occurring in a place of public use and in the investigation of mass killings and

attempted mass killings. Any assistance provided under this subparagraph shall be presumed to be within the scope of Federal office or employment.

(i) [1] For purposes of this subparagraph—

(I)

the term "mass killings" means 3 or more killings in a single incident; and

(II)

the term "place of public use" has the meaning given that term under section 2332f(e)(6) of title 18, United States Code.

(2) Specific permitted uses.—

(A) Aircraft and boats.—

Funds available to the Attorney General for United States Attorneys, for the Federal Bureau of Investigation, for the United States Marshals Service, for the Bureau of Alcohol, Tobacco, Firearms and Explosives, for the Drug Enforcement Administration, and for the Immigration and Naturalization Service may be used for the purchase, lease, maintenance, and operation of aircraft and boats, for law enforcement purposes.

(B) Purchase of ammunition and firearms; firearms competitions.—Funds available to the Attorney General for United States Attorneys, for the Federal Bureau of Investigation, for the United States Marshals Service, for the Bureau of Alcohol, Tobacco, Firearms and Explosives, for the Drug Enforcement Administration, for the Federal Prison System, for the Office of the Inspector General, and for the Immigration and Naturalization Service may be used for—

(i)

the purchase of ammunition and firearms; and

(ii)

participation in firearms competitions.

(C) Construction.—

Funds available to the Attorney General for construction may be used for expenses of planning, designing, acquiring, building, constructing, activating, renovating, converting, expanding, extending, remodeling, equipping, repairing, or maintaining buildings or facilities, including the expenses of acquisition of sites therefor, and all necessary expenses incident or related thereto; but the foregoing shall not be construed to mean that funds generally available for salaries and expenses are not also available for certain incidental or minor construction, activation, remodeling, maintenance, and other related construction costs.

(3) Fees and expenses of witnesses.—Funds available to the Attorney General for fees

and expenses of witnesses may be used for—

(A)

expenses, mileage, compensation, protection, and per diem in lieu of subsistence, of witnesses (including advances of public money) and as authorized by section 1821 or other law, except that no witness may be paid more than 1 attendance fee for any 1 calendar day;

(B)

fees and expenses of neutrals in alternative dispute resolution proceedings, where the Department of Justice is a party; and

(C)

construction of protected witness safesites.

(4) Federal bureau of investigation.—

Funds available to the Attorney General for the Federal Bureau of Investigation for the detection, investigation, and prosecution of crimes against the United States may be used for the conduct of all its authorized activities.

(5) Immigration and naturalization service.—Funds available to the Attorney General for the Immigration and Naturalization Service may be used for—

(A)

acquisition of land as sites for enforcement fences, and construction incident to such fences;

(B)

cash advances to aliens for meals and lodging en route;

(C)

refunds of maintenance bills, immigration fines, and other items properly returnable, except deposits of aliens who become public charges and deposits to secure payment of fines and passage money; and

(D)

expenses and allowances incurred in tracking lost persons, as required by public exigencies, in aid of State or local law enforcement agencies.

(6) Federal prison system.—Funds available to the Attorney General for the Federal Prison System may be used for—

(A)

inmate medical services and inmate legal services, within the Federal prison system;

(B)

the purchase and exchange of farm products and livestock;

(C)
the acquisition of land as provided in section 4010 of title 18; and
(D)
the construction of buildings and facilities for penal and correctional institutions (including prison camps), by contract or force account, including the payment of United States prisoners for their work performed in any such construction;
except that no funds may be used to distribute or make available to a prisoner any commercially published information or material that is sexually explicit or features nudity.
(7) Detention trustee.—
Funds available to the Attorney General for the Detention Trustee may be used for all the activities of such Trustee in the exercise of all power and functions authorized by law relating to the detention of Federal prisoners in non-Federal institutions or otherwise in the custody of the United States Marshals Service and to the detention of aliens in the custody of the Immigration and Naturalization Service, including the overseeing of construction of detention facilities or for housing related to such detention, the management of funds appropriated to the Department for the exercise of detention functions, and the direction of the United States Marshals Service and Immigration Service with respect to the exercise of detention policy setting and operations for the Department of Justice.
(c) Related Provisions.—
(1) Limitation of compensation of individuals employed as attorneys.—
No funds available to the Attorney General may be used to pay compensation for services provided by an individual employed as an attorney (other than an individual employed to provide services as a foreign attorney in special cases) unless such individual is duly licensed and authorized to practice as an attorney under the law of a State, a territory of the United States, or the District of Columbia.
(2) Reimbursements paid to governmental entities.—
Funds available to the Attorney General that are paid as reimbursement to a governmental unit of the Department of Justice, to another Federal entity, or to a unit of State or local government, may be used under authorities available to the unit or entity receiving such reimbursement.
(d) Foreign Reimbursements.—
Whenever the Department of Justice or any component participates in a cooperative project to improve law enforcement or national security operations or services with a friendly foreign country on a cost-sharing basis, any reimbursements or contributions

received from that foreign country to meet its share of the project may be credited to appropriate current appropriations accounts of the Department of Justice or any component. The amount of a reimbursement or contribution credited shall be available only for payment of the share of the project expenses allocated to the participating foreign country.

(e) Railroad Police Training Fees.—

The Attorney General is authorized to establish and collect a fee to defray the costs of railroad police officers participating in a Federal Bureau of Investigation law enforcement training program authorized by Public Law 106–110, and to credit such fees to the appropriation account "Federal Bureau of Investigation, Salaries and Expenses", to be available until expended for salaries and expenses incurred in providing such services.

(f) Warranty Work.—

In instances where the Attorney General determines that law enforcement-, security-, or mission-related considerations mitigate against obtaining maintenance or repair services from private sector entities for equipment under warranty, the Attorney General is authorized to seek reimbursement from such entities for warranty work performed at Department of Justice facilities, and to credit any payment made for such work to any appropriation charged therefor.

(a) Report.—

(1) In general.—The Attorney General shall submit to the Congress a report of any instance in which the Attorney General or any officer of the Department of Justice—

(A) establishes or implements a formal or informal policy to refrain—

(i)

from enforcing, applying, or administering any provision of any Federal statute, rule, regulation, program, policy, or other law whose enforcement, application, or administration is within the responsibility of the Attorney General or such officer on the grounds that such provision is unconstitutional; or

(ii)

within any judicial jurisdiction of or within the United States, from adhering to, enforcing, applying, or complying with, any standing rule of decision (binding upon courts of, or inferior to those of, that jurisdiction) established by a final decision of any court of, or superior to those of, that jurisdiction, respecting the interpretation, construction, or application of the Constitution, any statute, rule, regulation, program, policy, or other law whose enforcement, application, or administration is within the responsibility of the

Attorney General or such officer;

(B) determines—

(i)

to contest affirmatively, in any judicial, administrative, or other proceeding, the constitutionality of any provision of any Federal statute, rule, regulation, program, policy, or other law; or

(ii)

to refrain (on the grounds that the provision is unconstitutional) from defending or asserting, in any judicial, administrative, or other proceeding, the constitutionality of any provision of any Federal statute, rule, regulation, program, policy, or other law, or not to appeal or request review of any judicial, administrative, or other determination adversely affecting the constitutionality of any such provision; or

(C) approves (other than in circumstances in which a report is submitted to the Joint Committee on Taxation, pursuant to section 6405 of the Internal Revenue Code of 1986) the settlement or compromise (other than in bankruptcy) of any claim, suit, or other action—

(i)

against the United States (including any agency or instrumentality thereof) for a sum that exceeds, or is likely to exceed, $2,000,000, excluding prejudgment interest; or

(ii) by the United States (including any agency or instrumentality thereof) pursuant to an agreement, consent decree, or order (or pursuant to any modification of an agreement, consent decree, or order) that provides injunctive or other nonmonetary relief that exceeds, or is likely to exceed, 3 years in duration: *Provided*, That for purposes of this clause, the term "injunctive or other nonmonetary relief" shall not be understood to include the following, where the same are a matter of public record—

(I)

debarments, suspensions, or other exclusions from Government contracts or grants;

(II)

mere reporting requirements or agreements (including sanctions for failure to report);

(III)

requirements or agreements merely to comply with statutes or regulations;

(IV)

requirements or agreements to surrender professional licenses or to cease the practice of professions, occupations, or industries;

(V)

any criminal sentence or any requirements or agreements to perform community service, to serve probation, or to participate in supervised release from detention, confinement, or prison; or

(VI)

agreements to cooperate with the government in investigations or prosecutions (whether or not the agreement is a matter of public record).

(2) Submission of report to the congress.—For the purposes of paragraph (1), a report shall be considered to be submitted to the Congress if the report is submitted to—

(A)

the majority leader and minority leader of the Senate;

(B)

the Speaker, majority leader, and minority leader of the House of Representatives;

(C)

the chairman and ranking minority member of the Committee on the Judiciary of the House of Representatives and the chairman and ranking minority member of the Committee on the Judiciary of the Senate; and

(D)

the Senate Legal Counsel and the General Counsel of the House of Representatives.

(b) Deadline.—A report shall be submitted—

(1)

under subsection (a)(1)(A), not later than 30 days after the establishment or implementation of each policy;

(2)

under subsection (a)(1)(B), within such time as will reasonably enable the House of Representatives and the Senate to take action, separately or jointly, to intervene in timely fashion in the proceeding, but in no event later than 30 days after the making of each determination; and

(3)

under subsection (a)(1)(C), not later than 30 days after the conclusion of each fiscal-year quarter, with respect to all approvals occurring in such quarter.

(c) Contents.—A report required by subsection (a) shall—

(1)

specify the date of the establishment or implementation of the policy described in subsection (a)(1)(A), of the making of the determination described in subsection (a)(1)(B), or of each approval described in subsection (a)(1)(C);

(2) include a complete and detailed statement of the relevant issues and background (including a complete and detailed statement of the reasons for the policy or determination, and the identity of the officer responsible for establishing or implementing such policy, making such determination, or approving such settlement or compromise), except that—

(A)

such details may be omitted as may be absolutely necessary to prevent improper disclosure of national-security- or classified information, of any information subject to the deliberative-process-, executive-, attorney-work-product-, or attorney-client privileges, or of any information the disclosure of which is prohibited by section 6103 of the Internal Revenue Code of 1986, or other law or any court order if the fact of each such omission (and the precise ground or grounds therefor) is clearly noted in the statement: Provided, That this subparagraph shall not be construed to deny to the Congress (including any House, Committee, or agency thereof) any such omitted details (or related information) that it lawfully may seek, subsequent to the submission of the report; and

(B) the requirements of this paragraph shall be deemed satisfied—

(i)

in the case of an approval described in subsection (a)(1)(C)(i), if an unredacted copy of the entire settlement agreement and consent decree or order (if any) is provided, along with a statement indicating the legal and factual basis or bases for the settlement or compromise (if not apparent on the face of documents provided); and

(ii)

in the case of an approval described in subsection (a)(1)(C)(ii), if an unredacted copy of the entire settlement agreement and consent decree or order (if any) is provided, along with a statement indicating the injunctive or other nonmonetary relief (if not apparent on the face of documents provided); and

(3)

in the case of a determination described in subsection (a)(1)(B) or an approval described in subsection (a)(1)(C), indicate the nature, tribunal, identifying information, and status of the proceeding, suit, or action.

(d) Declaration.—

In the case of a determination described in subsection (a)(1)(B), the representative of the United States participating in the proceeding shall make a clear declaration in the proceeding that any position expressed as to the constitutionality of the provision

involved is the position of the executive branch of the Federal Government (or, as applicable, of the President or of any executive agency or military department).
(e) Applicability to the President and to Executive Agencies and Military Departments.—The reporting, declaration, and other provisions of this section relating to the Attorney General and other officers of the Department of Justice shall apply to the President (but only with respect to the promulgation of any unclassified Executive order or similar memorandum or order), to the head of each executive agency or military department (as defined, respectively, in sections 105 and 102 of title 5, United States Code) that establishes or implements a policy described in subsection (a)(1)(A) or is authorized to conduct litigation, and to the officers of such executive agency.

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

2013-132055-CH
JUDGE SHALINA KUMAR

DTE ELECTRIC COMPANY f/k/a
THE DETROIT EDISON COMPANY,
a Michigan corporation,

Plaintiffs,

Case No:

Honorable

v.

JOSEPH CONSTANT
an Individual,

Defendant.

/

LELAND PRINCE (P30686)
DTE ELECTRIC COMPANY
Attorney for Plaintiff
One Energy Plaza
688 WCB – Legal Department
Detroit, Michigan 48226
(313) 235-7725 - Office
princel@dteenergy.com

/

MOTION FOR ORDER TO SHOW CAUSE WHY THIS COURT SHOULD NOT ISSUE A PRELIMINARY INJUNCTION

NOW COMES the Plaintiff, DTE Electric Company, ("DTE Electric") by and through its attorney, Leland Prince, and for its Motion For Order To Show Cause Why This Court Should Not Issue A Preliminary Injunction, states as follows:

1. Plaintiff is a Michigan corporation whose address is One Energy Plaza, Detroit, Michigan 48226. Plaintiff is a regulated utility company that supplies electricity to residential and commercial customers in the State of Michigan.

2. Defendant is a customer of DTE Electric and is the owner of property located at 49 Highland Drive Bloomfield Hills Michigan, legally described as: Section 4 T2 N.R. 10E Twp.

Appendix S

of Bloomfield Oakland County Michigan. (Hereinafter "Subject Parcel")

3. Plaintiff has installed poles, overhead electric lines and equipment on land situated adjacent to and on the property where Defendant's property is located.

4. Pursuant to Michigan Public Service Commission, Rule C5.4, Access to Premises, it is the customer's responsibility: "[a]s a condition of taking service, [to provide] authorized employees and agents of the Company ... access to the customer's premises at all reasonable hours to install, turn on disconnect, inspect, read, repair or remove its meters, and to install, turn on, disconnect, repair, or remove its meters and to install, operate and maintain company property, and to inspect and determine the connected electrical load."

5. Plaintiff is required by Michigan Public Service Commission Rule 460.3505 to adopt and maintain a line clearance program, including tree trimming, to maintain the reliability of the electric line, Plaintiff must trim portions of Defendant's trees that are growing into the easement and are endangering the reliability of the lines.

6. Plaintiff has an express easement and claims a prescriptive easement to maintain and operate its electric lines and equipment situated near and on the property occupied by Defendant.

7. MCLA 560.190(d) provides that public utilities shall have the right to trim or remove trees that interfere with their use of easements.

8. Despite Plaintiff's lawful authority to access the property, Defendant has consistently refused to allow Plaintiff to trim trees that are growing into the easement, thus preventing Plaintiff from completing its line clearance reliability improvement program.

9. Defendant's refusal to allow access to his property to trim and remove trees is endangering the electric reliability of hundreds of Plaintiff's customers serviced by the lines.

There is a threat of immediate irreparable harm is resulting from Defendant's actions.

10. There is no adequate remedy at law to protect the customers affected by Defendant's refusal to allow the line clearance reliability improvement program to be completed.

11. Plaintiff has filed a Complaint for Permanent Injunction to enjoin Defendant from interfering with Plaintiff's line clearance reliability improvement program.

12. The electric reliability of the lines will be jeopardized during the time required for final determination of the issues stated in the complaint.

13. Plaintiff is seeking a preliminary injunction to enjoin Defendant from interfering with Plaintiff's line clearance reliability improvement program.

14. Four factors are considered in determining whether a preliminary injunction should issue: (a) harm to the public interest if the injunction issues; (b) whether harm to the applicant in the absence of the injunction outweighs the harm to the opposing party if the injunction is granted; (c) the strength of the applicant's demonstration that the applicant is likely to prevail on the merits; and (d) a demonstration that the applicant will suffer irreparable injury if a preliminary injunction is not granted. Thermatool Corp v. Borzym, 227 Mich App 366, 377, 575 NW2d 334 (1998).

15. Each of the above four factors favors granting a preliminary injunction where (a) a preliminary injunction will cause no harm to the public but instead will greatly benefit the public interests by improving the safety and reliability of electrical service to all the commercial and residential customers served by this line; (b) the potential harm to Plaintiff and its residential and commercial customers in the form of equipment damage, power outages and low voltage service outweighs any potential harm to the Defendant stemming from the tree trimming; (c) Plaintiff has an easement for its electrical line on Defendants' land and thus Plaintiff is likely to

prevail on the merits; and (d) Plaintiff will suffer irreparable injury if a preliminary injunction does not issue because of the compromised reliability of the electric line and the increased risk of outages and damages to the customers served by that line.

WHEREFORE, the Plaintiff respectfully requests that this Court will issue an Order to Show Cause requiring Defendant to appear before this Court and Show Cause why a Preliminary Injunction should not issue. Following the hearing, Plaintiff requests a Preliminary Injunction enjoining Defendant from interfering with Plaintiff's rights to complete its line clearance reliability improvement program and allow Plaintiff's workers with their vehicles and equipment to gain access to Defendant's property to trim and remove trees that are growing into Plaintiff's electric line easement.

Respectfully submitted,

DTE ELECTRIC COMPANY

By: /s/ Leland Prince

LELAND PRINCE (P30686)
Attorney for Plaintiff
One Energy Plaza
688 WCB – Legal Department
Detroit, Michigan 48226
(313) 235-7725 - Office
princel@dteenergy.com

Dated: February 5, 2013

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

DTE ELECTRIC COMPANY f/k/a
THE DETROIT EDISON COMPANY,
a Michigan corporation,

Plaintiffs,

v.

JOSEPH CONSTANT
an Individual,

Defendant.

2013-132055-CH
JUDGE SHALINA KUMAR
Case No:

Honorable

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LELAND PRINCE (P30686)
DTE ELECTRIC COMPANY
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One Energy Plaza
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(313) 235-7725 - Office
princel@dteenergy.com

/

NOTICE OF HEARING

PLEASE TAKE NOTICE that an "Order To Show Cause Why This Court Should Not Issue A *Preliminary Injunction*" will be brought on for hearing on FEB 20, 2013 beginning at 1:30pm [redacted], or as soon thereafter as counsel may be heard. The Court hearing location will be at the 6th Circuit Court of Michigan; Oakland County Circuit Court; 1200 N. Telegraph Road; Pontiac, Michigan 48341.

Respectfully submitted,

DTE ELECTRIC COMPANY

By: /s/ Leland Prince
LELAND PRINCE (P30686)
Attorney for Plaintiff
One Energy Plaza
688 WCB – Legal Department
Detroit, Michigan 48226
(313) 235-7725 - Office
princel@dteenergy.com

Dated: February 5, 2013

STATE OF MICHIGAN

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/

ORDER TO SHOW CAUSE WHY A
PRELIMINARY INJUNCTION SHALL NOT ISSUE

At a session of this Court, held in the City of Pontiac,
County of Oakland, State of Michigan, on FEB 05 2013

PRESENT: HONORABLE SHALINA KUMAR

CIRCUIT COURT JUDGE

Upon review of the Plaintiff's Complaint, the Motion for an Order to Show Cause Why A Preliminary Injunction Should Not Issue, and the Court being fully advised in the premises:

IT IS HEREBY ORDERED that Defendant Joseph Constant show cause before the above entitled court, Oakland County Circuit Court; 6th Circuit Court; 1200 N. Telegraph; Pontiac, Michigan 48341; beginning at 1:30pm o'clock of said day; on the 20th day of February, 2013, at, or as soon thereafter as counsel may be heard, as to why the court should not grant a Preliminary Injunction Restraining and Enjoining Defendant, his agents, servants and employees and anyone receiving notice of the preliminary injunction from preventing, interfering with or in any way impeding Plaintiff's access to property located at 49 Highland Drive Bloomfield Hills Michigan for the purpose of cutting and trimming trees, maintaining, replacing and or repairing DTE Electric Company electricity lines, poles and equipment situated at or near the subject property.

IT IS FURTHER ORDERED that a copy of this **Order to Show Cause Why A Preliminary Injunction Should Not Issue**, the **Complaint for Permanent Injunction** and the **Motion For Order To Show Cause Why This Court Should Not Issue A Preliminary Injunction** above referred to, be served upon the Defendant on or before the 13th day of February, 2013.

/s/Shalina Kumar

CIRCUIT COURT JUDGE AL
SHALINA KUMAR

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

DTE ELECTRIC COMPANY f/k/a
THE DETROIT EDISON COMPANY,
a Michigan corporation,

Plaintiffs,

v.

JOSEPH CONSTANT
an Individual,

Defendant.

2013-132055-CH
JUDGE SHALINA KUMAR
Case No:

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LELAND PRINCE (P30686)
DTE ELECTRIC COMPANY
Attorney for Plaintiff
One Energy Plaza
688 WCB – Legal Department
Detroit, Michigan 48226
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princel@dteenergy.com

/

CERTIFICATE OF SERVICE

The undersigned, being first duly sworn, states that on the **5th** day of **February, 2013,** she served a copy of Plaintiff's **"Motion For Order To Show Cause Why This Court Should Not Issue A Preliminary Injunction; Notice of Hearing; Order To Show Cause"** and this ***"Certificate of Service"*** upon: Joseph Constant; 49 Highland Drive; Bloomfield Hills, Michigan 48302, via Electric Case Filing (ECF) System and U.S. 1st Class Mail.

Sworn to and subscribed before me this 5th day of February, 2013.

/s/ Karen L. Bradley

Notary Public, Wayne County, MI

Acting in Wayne County, MI

My Commission Expires: September 13, 2014

/s/ Karen L. Bradley
Karen L. Bradley, Notary Public

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

DTE ELECTRIC CO

Plaintiff,

V

CONSTANT,JOSEPH,,

Defendant,

NO: 2013-132055-CH

HON. SHALINA KUMAR

ORDER

At a session of Court
held in Oakland County, Michigan
on 02/21/2013

THE COURT FINDS:

The parties having appeared before the Court for Plaintiff's Motion for Preliminary Injunction.

THEREFORE, THE COURT HEREBY ORDERS:

The Order to Show Cause why a Preliminary Injunction is hereby adjourned to allow the parties to file supplemental briefs within 2 weeks of the entry of this Order. The Court will decide whether to grant or deny a Preliminary Injunction on the briefs and submissions of the parties.

/s/Shalina Kumar

HON. SHALINA KUMAR AL

Circuit Court Judge

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

DTE ELECTRIC COMPANY f/k/a
THE DETROIT EDISON COMPANY,

Plaintiff,

Case No. 13-132055-CH
Hon. Shalina D. Kumar

v.

JOSEPH CONSTANT,

Defendant.
_____/

OPINION AND ORDER

At a session of said Court held in the
Courthouse, City of Pontiac, Oakland County,
Michigan, on MAR 27 2013

PRESENT: THE HON. SHALINA D. KUMAR, CIRCUIT COURT JUDGE

This matter is before the Court on Plaintiff DTE Electric Company's f/k/a The Detroit Edison Company ("Plaintiff's" or "DTE's") "Motion for Preliminary Injunction."[1] On February 5, 2013, the Court ordered Defendant Joseph Constant ("Defendant" or "Constant") to show cause why the Court should not grant a Preliminary Injunction restraining and enjoining Defendant from interfering with or in any way impeding Plaintiff's access to 49 Highland Drive, Bloomfield Hills, Michigan, 48302 (the "Property")[2] for the purpose of cutting and trimming trees, as well as maintaining,

[1] On February 5, 2013, Plaintiff filed its "Complaint for Permanent Injunction" and "Motion for Preliminary Injunction."
[2] The Property is legally described as "Section 4 T2 N.R. 10E, Township of Bloomfield, Oakland County, Michigan."

replacing, and repairing Plaintiff's electricity lines, poles, and equipment situated at or near the Property.[3] On February 21, 2013, the Court issued an Order adjourning Plaintiff's Motion in order to allow both parties to file supplemental briefs no later than March 7, 2013. On March 1, 2013, Plaintiff filed its supplemental brief. Defendant filed his supplemental brief on March 15, 2013, in contravention of the Court's February 21, 2013 Order.[4] Pursuant to MCR 2.119(F)(2), the Court dispenses with oral argument.

I. Facts

Plaintiff is a regulated utility company that supplies electricity to residential and commercial customers in the State of Michigan. Defendant is one of Plaintiff's customers and owns the Property at issue in this case. On or about October 21, 1912, E. Waldman, the previous owner of the Property, granted Plaintiff's predecessor in interest, the Eastern Michigan Edison Company ("Eastern"), a Right of Way to place its electric lines over the Property.[5] Since October 21, 1912, Plaintiff has openly and

[3] The Court's February 5, 2013 Order also directed the parties to appear before the Court at 1:30pm on February 20, 2013.

[4] In his untimely response brief, Defendant repeatedly asserts that Plaintiff's "representations in its Complaint[ ] and Motion are extensively and exhaustively false and fraudulently stated." In support of this contention, Defendant refers generally to the 103 pages of exhibits that he attached to his response brief. Importantly, "a mere statement without authority is insufficient to bring an issue before this Court. It is not sufficient for a party 'simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.'" *Wilson v Taylor*, 457 Mich 232, 243 (1998) (citing *Mitcham v Detroit*, 355 Mich 182, 203 (1959)).

[5] The Right of Way has the following legal description: "North of and adjacent to the south line of the subdivision known and recorded as Bloomfield Highlands, from Woodward Avenue to the west line of said subdivision; also south of and adjacent to the north line of the same subdivision of Bloomfield Highlands from Woodward Avenue to the west line of said subdivision. Poles to be set within three feet of the property line, and wherever possible, on or near the lot lines between the several lots, to be designated by first party."

notoriously installed, maintained, serviced, repaired, and replaced poles, overhead electrical lines and equipment in the following locations in relation to the Property: the west border south to north and the south border east to west. Plaintiff has also trimmed and removed trees on the land situated on and adjacent to Defendant's Property during the same time period. Moreover, at least every five years since 1912, DTE crews and contractors have visited the Property to trim trees and otherwise maintain Plaintiff's poles and equipment. However, Defendant now refuses to allow Plaintiff to access the Property in order to trim and cut trees or make necessary repairs and replacements for the safe and efficient delivery of electricity to Defendant, as well as other residential and commercial customers in the area.[6]

II. Standard of Review

MCR 3.310 governs a motion for a preliminary injunction. "The granting of injunctive relief is within the sound discretion of the trial court, although the decision must not be arbitrary and must be based on the facts of the particular case." *Comm'r of Ins v Arcilio*, 221 Mich App 54, 77 (1997). The object of a preliminary injunction is to preserve the status quo, so that upon the final hearing the rights of the parties may be determined without injury to either. *Attorney Gen v Thomas Solvent,* 146 Mich App 55, 56 (1985). In determining whether to issue a preliminary injunction, the Court must consider four factors: (1) harm to the public interest if an injunction issues, (2) whether harm to the applicant in the absence of temporary relief outweighs the harm to the opposing party if relief is granted, (3) the strength of the applicant's demonstration that the applicant is likely to prevail on the merits, and (4) demonstration that the applicant

[6] On November 11, 2010, Defendant first objected to Plaintiff accessing the Property.

will suffer irreparable injury if the relief is not granted. *Comm'r of Ins*, 221 Mich App at 77-78; *see also Michigan State Employees Ass'n v Dep't of Mental Health*, 421 Mich 152 (1984).

III. Analysis

A. Plaintiff's Right of Way

Plaintiff's easement was created by a Right of Way that Eastern received on October 21, 1912. The Right of Way granted Eastern the right to trim trees and maintain its equipment and electric lines that were erected on the Property. The Right of Way also expressly granted Eastern the right "to further extend its said lines across said lands for the purpose of enabling it to furnish service to the owners or occupants of property on Bloomfield Highlands."

Importantly, the rights of the holder of an easement are defined by the easement agreement. *Great Lakes Gas Transmission Co v MacDonald*, 193 Mich App 571, 575 (1992). Further, the grantee has all rights that are incident or necessary to the reasonable and proper enjoyment of the easement. *Unverzagt v Miller*, 306 Mich 260, 265 (1943). The owner of the land subject to an easement has the right to use the land in any manner not inconsistent with the easement, but has no right to interfere with or obstruct the reasonable and proper use of the easement. *Andrews v Columbia Gas Transmission Corp*, 544 F 3d 618, 624 (6th Cir 2008). Moreover, the owner of an easement has the right to remove objects within it that unreasonably interfere with or obstruct its reasonable and proper use. *Id.*

In his response brief, Defendant asserts that "Plaintiff has no easement[ ] rights on . . . Defendant's [P]roperty at the westerly side of [his] [P]roperty beyond 3 feet from

the southerly lot line of [his] [P]roperty. Plaintiff's easement is at the easterly side and southerly side of [his] [P]roperty. Defendant has never objected to Plaintiff's access of [his] lines." Essentially, Defendant argues that Plaintiff is not allowed to operate outside of its easement rights. However, Plaintiff has not asked the Court to issue a preliminary injunction with respect to areas of land outside of Plaintiff's Right of Way, but rather has asserted its rights that are incident and necessary to Plaintiff's use of the easement. Moreover, Defendant has not presented evidence that Plaintiff seeks to exercise its easement rights outside of Plaintiff's Right of Way. In sum, Plaintiff seeks access to Defendant's Property so that its crews and contractors can trim trees and maintain Plaintiff's equipment on the Property pursuant to Plaintiff's Right of Way.

B. Plaintiff's Prescriptive Easement

In addition to the Right of Way, Plaintiff also has a prescriptive easement to access the Property to trim trees and maintain its equipment. "[A]n easement by prescription arises from a use of [another's property] that is open, notorious, adverse, and continuous for a period of fifteen years." *Goodall v Whitefish Hunting Club*, 208 Mich App 642, 645 (1995). As stated above, the poles and lines that overhang the Property were erected in 1912. Since that time, Plaintiff's crews have come on the Property at least every five years to trim trees and maintain Plaintiff's electrical lines and equipment.[7] Furthermore, pursuant to the Subdivision Control Act of 1967, "[t]he public utilities shall have the right to trim or remove trees that interfere with their use of easements." MCL 560.190. Therefore, Plaintiff is entitled to access Defendant's

[7] In his response brief, Defendant acknowledges that he "never . .. consistently refused to allow Plaintiff to trim trees that are growing into the easement thus preventing Plaintiff from completing its line clearance reliability improvement program."

Property for the purpose of trimming trees and maintaining its equipment pursuant to Plaintiff's prescriptive easement. *Goodall, supra.*

C. MCR 3.310

Plaintiff has presented the Court with John Hammond's sworn testimony that the failure to trim trees and maintain Plaintiff's equipment on the Property will cause the tree branches to touch or fall upon the electric wires, which would disrupt electrical service and create a serious safety hazard to the public.[8] In his Affidavit, Mr. Hammond asserts that "it is absolutely necessary to trim trees and maintain equipment on Defendant's [P]roperty in order to comply with the State of Michigan['s] requirements for line reliability and safety." Moreover, Mr. Hammond avers that "[t]he failure to trim the trees and maintain the equipment creates a real and present danger of falling lines, potential fires and interruption of electric service." Hence, there is uncontroverted evidence that if Plaintiff does not trim the trees and maintain its equipment on the Property, Plaintiff's customers will not only be deprived of electricity, but will also face significant safety risks and threats to their well-being.

Consequently, the harm to Plaintiff and the public in the absence of an injunction outweighs the harm to Defendant.[9] *See Comm'r of Ins, supra.* Relatedly, the issuance of the requested injunction will not harm the public interest. *See id.* Instead, the Plaintiff and the public will suffer irreparable harm if the injunction is not granted. *See id*; *see also* Hammond Affidavit. In addition, by preventing Plaintiff from trimming trees on the Property, Defendant is interfering with Plaintiff's Right of Way and prescriptive

[8] Mr. Hammond is employed by DTE as the corporation's Supervisor of Regional Planning.

[9] As an additional note, Defendant has not articulated the nature of the harm that Plaintiff's use of its easement will cause Defendant.

easement, in addition to acting contrary to Michigan law. *See Andrews, supra; Goodall, supra;* MCL 560.190. Therefore, Plaintiff has demonstrated that, under Michigan law, it is likely to prevail on its Complaint for Permanent Injunction seeking to enjoin Defendant from interfering with Plaintiff's easement and its right to access the Property to perform line clearance by trimming and removing trees that are growing into Plaintiff's easement. *See id.* Hence, the Court grants Plaintiff's "Motion for Preliminary Injunction."

WHEREFORE IT IS HEREBY ORDERED that Plaintiff DTE Electric Company's "Motion for Preliminary Injunction" is hereby **GRANTED**.

IT IS SO ORDERED.

THIS ORDER DOES NOT RESOLVE THE LAST PENDING CLAIM AND DOES NOT CLOSE THE CASE.

Dated: MAR 27 2013

/s/Shalina Kumar

Hon. Shalina D. Kumar AL

Proof of Service

I certify that a copy of the above instrument was served upon the attorneys of record or the parties not represented by counsel in the above case by **EFILING** it to their addresses as disclosed on the 27th day of March, 2013.

/s/ Jenice R. McGruder

STATE OF MICHIGAN IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

DTE ELECTRIC CO Plaintiff, NO: 2013-132055-CH
V HON. SHALINA KUMAR
CONSTANT,JOSEPH,, Defendant,

In the matter of:

ORDER REGARDING MOTION

Motion Title: **Plaintiff's motion for voluntary dismissal.**

The above named motion is:

- [x] **granted.**
- [ ] **granted in part, denied in part.**
- [ ] **denied.**
- [x] **for the reasons stated on the record.**

In addition:

DATED: 08/15/2013

/s/Shalina Kumar
HON. SHALINA KUMAR TM
Circuit Court Judge

Appendix V

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

JOSEPH CONSTANT,

Plaintiff,

C.A. No. 2016-155099-CZ

HON. RAE LEE CHABOT

vs.

JAMES M HAMMOND,

Defendant.

ORDER OF DISQUALIFICATION

At a session of the said Court, held in the Courthouse Tower, City of Pontiac, County of Oakland, State of Michigan, on NOV 23 2016.

PRESENT: HONORABLE RAE LEE CHABOT, Circuit Judge

IT IS HEREBY ORDERED:

Judge Rae Lee Chabot, P28006, on motion of the Court, is disqualified from hearing this case for the following reason, pursuant to MCR 2.003:

___ a. Interested as a party.

___ b. Personally biased or prejudiced for or against a party or attorney.

___ c. Consulted or employed as an attorney in the matter in controversy.

___ d. Was a partner of a party, attorney for a party, or member of a law firm representing a party within the preceding two years.

___ e. Related within the third degree (civil law) of consanguinity or affinity to a person acting as an attorney or within the sixth degree (civil law) to a party.

___ f. The judge's spouse or minor child owns a stock, bond, security, or other legal or equitable interest in a corporation which is a party, unless specifically excepted by MCR 2.003 (B)(6)(a)(b)or (c).

X g. Other: Personal fear of the in Pro Per, Plaintiff.

Hon. Rae Lee Chabot, Circuit Judge

Appendix W

Additional material from this filing is available in the Clerk's Office.