

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO  
CIVIL DIVISION

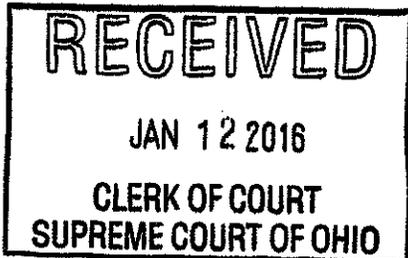
ANDRÉ TUCKER, <i>et al.</i> ,	:	
	:	
Plaintiffs,	:	Consolidated Cases No. 13CV-12010,
	:	13CV-12767 &
vs.	:	14CV-10459
	:	
NORTH CENTRAL OHIO	:	
EDUCATIONAL SERVICE CENTER	:	(JUDGE FRYE)
GOVERNING BOARD, <i>et al.</i> ,	:	
	:	
Defendants.	:	

**DECISION, FINDINGS OF FACT, AND CONCLUSIONS OF LAW  
FOLLOWING ATTORNEY FEES AND VEXATIOUS LITIGATOR HEARING.**

**I. Introduction.**

Before the court are requests to sanction André Tucker for frivolous litigation pursuant to R.C. 2323.51 and Civ. R. 11 and (in Case No. 14CV-10459) to hold that Mr. Tucker is a vexatious litigator pursuant to R.C. 2323.52. An evidentiary hearing lasting approximately six hours was held on December 28, 2015. Four large notebooks of Exhibits offered by the moving parties were admitted, along with roughly 60 separate Exhibits offered by respondent Tucker. In addition, the matter was thoroughly briefed during the months before the hearing.

After considering the filings of record in all three cases, the testimony of four witnesses, stipulations of the parties, the Exhibits, and the credibility of all the evidence the following constitute the court's findings of fact and conclusions of law.



## **II. Factual Background**

1. Mr. Tucker is 36 years old. A limited amount of information about his formal education or professional background<sup>1</sup> is shown in the record.<sup>2</sup> However, he undeniably is well-spoken and intelligent. In addition, his court filings in multiple cases in which he has represented himself *pro se* reflect that he has a better-than-average understanding of many aspects of the law and court procedure.

2. In mid-2012 Mr. Tucker approached defendant North Central Ohio Educational Service Center ["NCOESC"] about opening two charter schools in Columbus. Dr. James A. Lahoski is the Superintendent and CEO of NCOESC. That organization has its headquarters in Tiffin, Ohio, plus two branch offices in Mansfield and Marion. NCOESC serves schools scattered across much of Ohio, and not merely in the north central geographic area. NCOESC has roughly 350 employees. It is a nonprofit 501(c)(3) entity.

3. Dr. Lahoski testified for a number of hours at the December 28 hearing. The court finds his testimony credible. He has headed NCOESC since 2006, following a career that included service as the Superintendent of two separate public school districts.

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<sup>1</sup> Defendant's Ex. 86, at page 1353, is a Certificate from the Ohio Secretary of State evidencing that prior to the events at issue in this case Mr. Tucker had obtained non-profit corporate status for "Leadership Academy for Mathematics & Science of Columbus, Inc." in March 2011. Pages 1354 and 1388 are among business records showing that he was "Chair, Founding Board" as of May 2011. Litigation ensued brought by Mr. Tucker *pro se* beginning in April 2012 in this court; Mr. Tucker sued the Leadership Academy and at least one person associated with it. Case No. 12CV-04-4777. (Def. Exs.80-127.) In August 2012 a Magistrate of this court recommended injunctive relief, finding that a meeting of the Trustees of Leadership Academy occurred in April 2012 in violation of the Ohio Open Meetings Act. The school had apparently been on probation, and at the meeting (challenged by Tucker) board members voted to dissolve. A few weeks later the Sponsor indefinitely suspended operations, as well. (Ex. 97, page 1578.) After Tucker lost summary judgment he filed a "motion to vacate" the judgment alleging it was "tainted by fraud and misrepresentation." This is typical. (Ex. 124.)

<sup>2</sup> There are references in the factual record to Mr. Tucker's past involvement in criminal proceedings in Pennsylvania, Georgia, and Florida. (Exhibits 169, 170.) Mr. Tucker testified that despite material suggesting that he had criminal difficulties before the events at issue in these cases occurred, such records are incomplete or in error. Some records substantiate him in this regard. (Exhibits 146, 147.) On the other hand, Mr. Tucker admitted in his testimony that he was recently convicted of two F-5 level thefts here in Franklin County at a trial held before Judge Serrott in the fall of 2015. Those convictions remain on appeal. They apparently arose against the backdrop of the same events at issue in these civil cases, specifically money transmitted to Mr. Tucker by the Ohio Department of Education which he improperly retained after two charter schools, for which he was the Superintendent, had failed and gone out of business in mid-October 2013. (Def. Ex. 165 is a newspaper article about the criminal charges.)

4. An Educational Service Center ["ESC"] is a special entity intended to deliver services to schools that they may not otherwise have available, such as school psychologist and physical therapy services, consulting about technology, and services for special education students. In addition, in Ohio an ESC is legally able to "sponsor" nonprofit charter schools. These cases concern two very short-lived charter schools in Columbus for which NCOESC was the sponsor: Talented Tenth Academy for Boys ["TTAB"], and Talented Tenth Academy for Girls ["TTAG"].

5. In addition to sponsoring charter schools (which then operate through a separate "governing board") NCOESC could be hired to provide educational services to those same schools. Here, for instance, Mrs. Mandy France was retained to serve as Treasurer of the two community schools (TTAB and TTAG) although she was actually employed in Tiffin by NCOESC. She was retained through a contract with each school's governing board. NCOESC was then paid a monthly fee for her work. Unfortunately, that arrangement meant that state money for the two charter schools located in Columbus had to go through the schools, then up to Tiffin, following which checks could be issued out of NCOESC to pay bills due back down in Columbus.

6. The genesis for Mr. Tucker's involvement in this case, and his work with Dr. Lahoski and NCOESC was his desire to be Superintendent (or Executive Director) of two brand new charter schools in Columbus. After preliminary discussions over a number of months in late 2012 and early 2013 Tucker was hired by the NCOESC Board. (Ex. 136) He was employed for the school year at \$70,982 salary, and not entitled to overtime. (*Id.*) This August 1, 2013–July 31, 2014 contract replaced a short-term contract in force in prior months, that was on an hourly basis and did entitle Tucker to overtime. A clerical error in paragraph 5 of the largely boilerplate employment contract referenced "additional benefits specified in Attachment 1 hereto" but no such Attachment ever existed. Mr. Tucker claims otherwise, but his claim is not credible. As a result his claim for \$2,500 in "medical benefits" was unjustified. (Ex. 154)

7. It was intended that TTAB would initially operate from leased property known as the Gateway Health and Wellness Center on Jefferson Avenue in Columbus. (Lease dated Dec. 1, 2012; Def. Ex. 163.) Difficulties arose. Just as the new school year was getting underway, litigation was required between NCOESC and the landlord, which yielded a temporary restraining order that granted entry and the right to use the school.

(Def. Ex. 6, page 142, TRO entered by Judge Sheeran in 13CV-10720 on September 26, 2013)

8. TTAG was expected to operate in separate leased facilities within the King Arts Complex.

9. One of Mr. Tucker's responsibilities was to assist in recruiting and enrolling new students for these new charter schools. According to Dr. Lahoski, 25 students in each school were the minimum enrollment expected, but by late September 2013 one school had not met that enrollment, and the other had only slightly more than 25 enrolled. Given that by September other schools were well underway, the prospect for enrolling additional students at that late date was slim.

10. Beginning in late September and continuing into early October 2013, John Taracko of the Ohio Department of Education personally visited both schools. His memorandum dated October 17 details his observations, including "that neither school operates with a significant degree of educational integrity," that the schools were "inadequately staffed/supervised," that there had been fights requiring police to be called on several occasions, and in short that both schools' operations "must be suspended immediately." (Ex. 137)

11. In addition to the inspections by ODE, Thomas Shade of NCOESC visited the schools and made similar observations of very serious difficulties at both schools. These were communicated to Dr. Lahoski. While Mr. Shade is no longer employed by NCOESC and did not testify, the court finds the evidence compelling that the situation presented in both schools was chaotic and fully justified ceasing operations.

12. On October 17, 2013, NCOESC sent letters to the Board of each TTA school suspending operations immediately. (Exs. 138, 139) On or about the same date, Ohio Education Department Director Ross contacted NCOESC and asked for a meeting about the schools. The following day the ODE issued a "Media Release" stating that Dr. Ross had directed closing both schools. (Ex. 140) Plaintiff's position was abolished.

13. Initially, Mr. Tucker was offered the option of resigning retroactively to the end of the day on October 17 or suffering a Reduction in Force ["RIF"] effective October 18, 2013. (Ex. 141)

14. On October 30, 2013, NCOESC held a "special meeting" in Upper Sandusky, Wyandot County suspending all contracts relating to the TTA schools. On

October 31, Mr. Tucker was given written notice of a new Board meeting at NCOESC to be held on November 19 that would consider implementing a RIF. It would become effective November 20. (Ex. 142) This occurred. (Ex. 145)

15. On October 31, 2013, plaintiff filed a *pro se* complaint against NCOESC and Community Property Development Corporation (“CPDC”) alleging breaches of various contracts (Case No. 13CV-12010). Plaintiff sought a temporary restraining order, preliminary and permanent injunction, and monetary damages. Judge Holbrook denied plaintiff’s motion for a temporary restraining order on November 1, 2013.

16. On November 4, 2013, plaintiff filed a second *pro se* complaint against NCOESC and Dr. Lahoski in the Wyandot County Common Pleas Court. Plaintiff alleged that NCOESC and Dr. Lahoski had violated Ohio’s Sunshine Law at NCOESC’s October 30, 2013 meeting. On November 6, 2013, Judge Aubry granted plaintiff’s temporary restraining order and ruled that NCOESC had held one or more meetings in violation of Ohio’s Sunshine Law, and ordered defendants to comply with R.C. 121.22 in all future meetings. Ultimately, that case was transferred to Franklin County. (Case No. 13CV-12767).

17. On November 8 and again on November 22, 2013, Mr. Tucker threatened to bring litigation by TTAB and TTAG, in email sent to counsel for NCOESC and Dr. Lahoski. (Ex. 167, 168) This was not appropriate. As a non-lawyer, Tucker had no legal basis to act in the court system for TTAB and TTAG. However, he often ignored distinctions between himself and other legal entities.

18. On January 3, 2014, Plaintiff filed a third *pro se* complaint in Marion County. That case was dismissed by the court.

19. On September 29, 2014, plaintiff, through counsel, voluntarily dismissed Case No. 13CV-12010, and on October 16, 2014, Case No. 13CV-12767 was dismissed in the same manner. The claims have since been re-filed in this court as Case No. 15CV-8624.

20. On October 9, 2014, NCOESC filed a new lawsuit against Mr. Tucker to have him declared a vexatious litigator. Tucker’s counsel withdrew from the case in August 2015, and plaintiff represents himself *pro se*.

21. Without beating through a description of every one of the thousands upon thousands of pages filed or exchanged by Tucker and defendants, including those used in his multiple lawsuits, it is fair to offer the following general observations:

a. Other than the sunshine law violation that resulted in a TRO in Wyandot County, which NCOESC promptly remedied, Mr. Tucker has been unsuccessful in all of his litigation.

b. Generally, he brings claims and makes threats in a highly contentious fashion. His behavior in this regard borders on the obsessive and compulsive, notwithstanding that in person Mr. Tucker is mild-mannered and polite. For the last several years beginning with the old *Leadership Academy* litigation (footnote 1 above), Mr. Tucker finds no issue too minor to ignore; and no ruling or decision against him is easily accepted as final.

c. Even in recent months Mr. Tucker has shown poor judgment such as in serving subpoenas. His intention is apparently to keep alive every conceivable factual and legal issue despite the inconvenience to others, including non-parties to his cases perceived by him as potential witnesses.

d. Mr. Tucker's approach to litigation qualifies as vexatious under Ohio law.

e. Nevertheless, mistakes were made by NCOESC and others like the landlord for TTAB that explain—but do not excuse or redeem—some of Mr. Tucker's past conduct in litigation. This was candidly acknowledged by Dr. Lahoski. Two issues are fairly obvious: NCOESC did a poor job initially in interviewing and selecting Mr. Tucker for the demanding position of Superintendent at two brand-new charter schools; and then did a poor job of supervising him (and others, such as the new Board members for schools that NCOESC purported to "sponsor") as real work got underway. Mr. Tucker apparently was a rank amateur as a superintendent/school organizer. The outcome only a year or so earlier with Leadership Academy certainly ought to have stopped NCOESC from putting Mr. Tucker in such a demanding position. But, Mr. Tucker no doubt oversold his own ability and experience; he seems slow to acknowledge any shortcoming or mistake. In short, responsibility for the debacle that followed efforts to create TTAB and TTAG including these protracted, complicated lawsuits must be shared between the parties.

f. For these reasons, the court condemns, but will not sanction with an attorneys' fees award, the conduct of litigation by Mr. Tucker at issue on these motions. The court does order that Mr. Tucker be responsible for all court costs.

**II. Motion of Defendants NCOESC Governing Board and Dr. Lahoski for Attorney's Fees and Costs.**

22. On October 22, 2014, Defendants NCOESC and Dr. Lahoski filed a motion for attorney's fees and costs. On November 26, 2014, plaintiff filed a response, and on December 3, 2014, defendants filed a reply.

23. Defendants argue that "plaintiff's conduct consisted of allegations and other factual contentions that have no evidentiary support." (Def. Motion filed 10/22/14, p.10) They also assert that "plaintiff's action against defendants was not warranted under existing law or a good faith argument for new law." (*Id.* at p.11) Defendants contend that "plaintiff's conduct served to harass or maliciously injure defendants for the improper purpose of causing unnecessary delay." (*Id.* at p.12) Finally, defendants argue that they "were adversely affected by plaintiff's frivolous conduct." (*Id.* at p.14.) NCOESC and Dr. Lahoski both sought slightly more than \$56,000 in attorney fees in Cases No. 13CV-12010 and 13CV-12767. Defendants' Exhibits 179 and 180 are the fees statements from both attorneys at the Pepple & Waggoner firm. The court finds them appropriately detailed, recording necessary work at reasonable hourly rates. (Despite that, as noted above the court declines to award fees.)

24. Plaintiff argues that his "conduct was not frivolous pursuant to O.R.C. § 2323.51." (Pl. Response filed 11/26/14, p.4) He also asserts that he "had a good faith belief that the claims he was pursuing against defendants' [sic] were supported by law and fact[,] and he did not willfully violate Civ.R. 11." (*Id.* at p.8)

25. R.C. 2323.51(B)(1) provides as follows:

[A]t any time not more than thirty days after the entry of final judgment in a civil action or appeal, any party adversely affected by frivolous conduct may file a motion for an award of court costs, reasonable attorney's fees, and other reasonable expenses incurred in connection with the civil action or appeal. . . .

“Frivolous conduct” is defined in R.C. 2323.51(A)(2), and means:

- (a) Conduct of . . . [a] party to a civil action . . . that satisfies any of the following:
  - (i) It obviously serves merely to harass or maliciously injure another party to the civil action . . . or is for another improper purpose, including, but not limited to, causing unnecessary delay or a needless increase in the cost of litigation.
  - (ii) It is not warranted under existing law, cannot be supported by a good faith argument for an extension, modification, or reversal of existing law, or cannot be supported by a good faith argument for the establishment of new law.
  - (iii) The conduct consists of allegations or other factual contentions that have no evidentiary support or, if specifically so identified, are not likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.
  - (iv) The conduct consists of denials or factual contentions that are not warranted by the evidence or, if specifically so identified, are not reasonably based on a lack of information or belief.

26. “Since ‘willfulness’ is not a prerequisite for relief under R.C.2323.51, analysis of a claim under this statute boils down to a determination of (1) whether an action taken by the party to be sanctioned constitutes ‘frivolous conduct,’ and (2) what amount, if any, of reasonable attorney fees necessitated by the frivolous conduct is to be awarded to the aggrieved party.” *Judd v. Meszaros*, 10th Dist. No. 10AP-1189, 2011-Ohio-4983, 2011 Ohio App. LEXIS 3100, 2011 WL 4489049, ¶ 17 (quoting *Ceol v. Zion Indus., Inc.*, 81 Ohio App.3d 286, 291, 610 N.E.2d 1076 (1992)).

27. “No single standard of review applies in R.C.2323.51 cases; the inquiry is one of mixed questions of law and fact. *Judd* at ¶ 18 (citing *Wiltberger v. Davis*, 110 Ohio App.3d 46, 51, 673 N.E.2d 628 (1996)). “The initial determination of whether a party’s conduct was frivolous requires a factual determination.” *Judd* at ¶ 18 (citing *Ceol* at 291). “Review of a trial court’s factual determinations involves some degree of deference, and [the appellate court] will not disturb a trial court’s findings of fact where the record contains competent, credible evidence to support such findings.” *Judd* at ¶ 18 (citing *Wiltberger* at 52).

28. Ohio Civ. R. 11 offers a somewhat different remedy:

The signature of an attorney or *pro se* party constitutes a certificate by the attorney or party that the attorney or party has read the document; that to the best of the attorney's or party's knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a document is not signed or signed with intent to defeat the purpose of this rule, it may be stricken as sham and false and the action may proceed as though the document had not been served. For a willful violation of this rule, an attorney or *pro se* party, upon motion of a party or upon the court's own motion, may be subjected to appropriate action, including an award to the opposing party of expenses and reasonable attorney fees incurred in bringing any motion under this rule.

"An attempt to invoke Civ.R. 11 and seek sanctions under the rule involves a three-step process." *Judd* at ¶ 21 (citing *Ceol* at 290). "Initially, the trial court must consider whether the attorney signing the document has read the pleading, harbors good grounds to support it to the best of his or her knowledge, information, and belief, and did not file it for the purposes of delay." *Judd* at ¶ 21 (citing *Ceol* at 290). "If the court determines the attorney willfully violated the rules, it may award the opposing party its attorney fees and expenses." *Judd* at ¶ 21 (citing Civ. R. 11).

29. There is a different focus between the two potential remedies. "While Civ.R. 11 applies a subjective-bad faith standard, R.C. 2323.51 employs an objective standard in determining whether sanctions may be imposed for frivolous conduct." *Judd* at ¶ 22 (citing *Stafford v. Columbus Bonding Ctr.*, 177 Ohio App.3d 799, 2008-Ohio-3948, 896 N.E.2d 191, ¶ 8 (10<sup>th</sup> Dist.), *Per Curiam*). "Because a finding of frivolous conduct under R.C. 2323.51 is determined without reference to what the individual knew or believed, R.C. 2323.51 is broader in scope than Civ.R. 11." *Judd* at ¶ 22 (citing *Stafford* at ¶ 8).

30. "[T]he mere fact that a party is acting *pro se* does not shield that party from a finding of frivolous conduct." *Mitchell v. Mid-Ohio Emergency Servs., L.L.C.*, 10th Dist. Case No. 10AP-374, 2010-Ohio-6350, 2010 Ohio App. LEXIS 5296, ¶ 27 (citing *Bikkani v. Lee*, 8th Dist. Case No. 89312, 2008-Ohio-3130, 2008 Ohio App. LEXIS 2654, 2008 WL 2536983, ¶ 29).

**a. Evidentiary Support.**

31. "[A] party only needs minimal evidentiary support for its allegations or factual contentions in order to avoid a frivolous conduct finding. If a party makes an

allegation or factual contention on information or belief, then the party must have the opportunity to investigate the truth of that allegation or factual contention. However, if a party persists in relying on that allegation or factual contention when no evidence supports it, then the party has engaged in frivolous conduct under R.C. 2323.51(A)(2)(a)(iii).” *Carasalina LLC v. Bennett*, 10th Dist. No. 14AP-74, 2014-Ohio-5665, 2014 Ohio App. LEXIS 5478, ¶ 36.

32. To be sure, parts of pleadings and even Affidavits filed by Tucker go well beyond the bounds of reasonable factual statements. (Exhibits 43, 50, 57.) Likewise, purportedly factual arguments made in legal briefs such as that “NCOESC misappropriated public funds, executed contracts as a service provider and not a sponsor, discriminated against partners/employees, and ignored clear conflicts of interest” go well beyond reasonably supportable statements of fact. (Ex. 38, page 584, filed Feb. 20, 2014) But, across the whole range of material at issue –which addressed events over many months, involving not only Tucker and NCOESC but also the two new charter schools, their landlords, the Department of Education, and many individuals and parents—the court cannot find that there was quite enough as to constitute frivolous misconduct.

**b. Action Warranted Under Existing Law or a Good Faith Argument for New Law.**

33. “A determination that conduct is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law requires a legal analysis.” *Judd* at ¶ 19 (quoting *Stuller v. Price*, 10th Dist. No. 03AP-30, 2003-Ohio-6826, 2003 Ohio App. LEXIS 6127, ¶ 14).

34. “Discriminatory negligence” was alleged by plaintiff. This is not a valid legal claim for which relief can be granted under Ohio law. Perhaps Tucker felt he had a basis to pursue a “discrimination” claim in these lawsuits even though he had filed a claim with the Ohio Civil Rights Commission. (Ex. 78, dated March 20, 2014) The OCRC ultimately concluded that “no credible information” supported Tucker’s allegation of unlawful and discriminatory activity. (Ex. 79, Oct. 23, 2014) However, he did avail himself of the OCRC forum, and did not pursue “discriminatory negligence” in court thereafter.

35. Likewise civil conspiracy was argued by Mr. Tucker.

36. “The elements of a civil conspiracy are: (1) a malicious combination, (2) of two or more persons, (3) resulting in injury to person or property, and (4) the existence of an unlawful act independent of the actual conspiracy.” *Walter v. ADT Sec. Sys.*, 10th Dist. No. 06AP-115, 2007-Ohio-3324, 2007 Ohio App. LEXIS 3051, ¶ 36 (citing *Mitchell v. Mid-Ohio Emergency Servs., L.L.C.*, 10th Dist. No. 03AP-981, 2004-Ohio-5264, 2004 Ohio App. LEXIS 4736, ¶ 33). “A civil action for civil conspiracy requires a viable claim distinct from the conspiracy in order for the conspiracy claim to survive.” *Walter* at ¶ 36 (citing *Mitchell* at ¶ 33). This too was groundless but not sanctionable.

**c. Conduct Serving to Harass or Maliciously Injure for the Improper Purpose of Causing Unnecessary Delay.**

37. “[C]onduct is frivolous if it ‘obviously serves merely to harass or maliciously injure another party to the civil action or appeal or is for another improper purpose, including, but not limited to, causing unnecessary delay or a needless increase in the cost of litigation.’” *Adams, Babner & Gitlitz, LLC v. Tartan West, LLC*, 10th Dist. No. 14AP-277, 2014-Ohio-5305, 2014 Ohio App. LEXIS 5151, ¶ 23 (quoting R.C. 2323.51(A)(2)(a)(1)). The Revised Code does not define the term “purpose,” but one court has defined it “in terms of a specific intention either to cause a certain result, or to engage in conduct of a certain nature regardless of what the offender intends to accomplish through that conduct.” *Adams* at ¶ 23 (quoting *Wagner v. Cormeg, Inc.*, 5th Dist. No. 2010 CA 00134, 2011-Ohio-1205, 2011 Ohio App. LEXIS 1039, 2011 WL 915771, ¶ 40).

38. Certainly, Mr. Tucker might be seen as having had an improper purpose in much of what he has done. At times Tucker was explicitly cautioned that a “Court does not condone Plaintiff’s delay or find merit in Plaintiff’s arguments” because *pro se* litigants are bound by the same rules as those who retain a lawyer. (J. Holbrook order filed March 13, 2014, Ex. 48 at page 813.) However, as the case law also notes, merely losing a case—and in the process driving the other side crazy—is not the standard for finding frivolous litigation or misconduct.

39. Although much in the voluminous court papers filed over several years by Mr. Tucker is in hindsight difficult to square with legal rules or factual reality, the court still does not find that Tucker engaged in frivolous misconduct sufficient to justify a

sanction under R.C. 2323.51 or Civ. R. 11. With this as the background the court turns to the vexatious litigation arguments of defendants.

**IV. Complaint to Declare André Tucker a Vexatious Litigator Pursuant to R.C. 2323.52.**

40. In October 2014, North Central Ohio Educational Service Center Governing Board filed new Case No. 14CV-10459 seeking to have Mr. Tucker declared a “vexatious litigator.” That case was consolidated with the frivolous conduct claims (in the 2013 cases) in February 2015.

41. “‘Vexatious conduct’ is the conduct of a party in a civil action that ‘obviously serves merely to harass or maliciously injury another party to the civil action,’ ‘is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law,’ or ‘is imposed solely for delay.’” *State ex rel. Sapp v. Franklin County Court of Appeals*, 118 Ohio St.3d 368, 2008-Ohio-2637, 889 N.E.2d 500, ¶ 17 (quoting R.C. 2323.52(A)(2)(a) through (c)). “A ‘vexatious litigator’ is ‘any person who has habitually, persistently, and without reasonable grounds engaged in vexatious conduct in a civil action or actions, whether in the court of claims or in a court of appeals, court of common pleas, municipal court, or county court, whether the person or another person instituted the civil action or actions, and whether the vexatious conduct was against the same party or against different parties in the civil action or actions.’” *Sapp* at ¶ 17 (quoting R.C. 2323.52(A)(3)).

42. Ohio law does not require a party to seek and obtain R.C. 2323.51 frivolous conduct sanctions before a vexatious litigator declaration can be issued under R.C. 2323.52. *Catudal v. Netcare Corp.*, 10th Dist. No. 15AP-133, 2015-Ohio-4044, ¶ 20.

43. Under R.C. 2323.52(F)(2), “once a person has been designated a vexatious litigator, the requirement of applying/moving for leave to proceed is applicable to the institution of any new proceedings and the continuation of any pending proceedings.” *State ex rel. Porterfield v. McKay*, 11th Dist. No. 2014-T-016, 2014-Ohio-4989, 2014 Ohio App. LEXIS 4853, ¶ 5. The need to request leave in proceedings already pending or to be newly filed is applicable “to any matter before all state trial courts” once a person has been declared a vexatious litigator. *Id.* Pursuant to R.C. 2323.52(G), no appeal by the person subject to a vexatious litigator order may be taken from a decision of a court

of common pleas that denies the person leave to institute a new case or continue an existing one. *State v. Porterfield*, 11th Dist. Case No. 2014-T-005, 2014-Ohio-2225, 2014 Ohio App. LEXIS 2169, ¶ 4-5.

44. The court does find, based upon the entire record, that Mr. Tucker is a vexatious litigator. His intellect and experience is a double-edged sword: the court is fully satisfied that Tucker knows better than to pull some of the stunts in these cases that have so vexed NCOESC and Dr. Lahoski, and their counsel. They, and the court system, are entitled to protection against more of the same in the future.

#### V. **Conclusion.**

45. NCOESC and Dr. Lahoski shall prepare a separate final Judgment in each of the three cases and circulate them to Mr. Tucker before submitting them to the court pursuant to Local Rule 25.01. Court costs in all three cases are taxed against Mr. Tucker.

46. In regard to Case No. 14CV-10459, pursuant to R.C. 2323.52 and effective immediately, Mr. Tucker shall cease and desist from making **any** further filing in any new civil lawsuit or any existing civil lawsuit, including 15CV-8624. This applies to every filing in **any** Ohio trial court. Failure to honor this order will be punished by contempt of court sanctions. Additionally, Mr. Tucker's e-filing privileges are hereby revoked.

47. If Mr. Tucker desires to file any papers in existing or new civil cases anywhere in Ohio, he must first seek written permission from this court. This applies to all filings, including complaints, answers, motions, memoranda, witness subpoenas, and discovery requests to the other side. [He does not need to obtain leave of court to respond to discovery directed at himself, such as answering interrogatories.] Because of the large docket of other cases each judge of this court must address, Mr. Tucker must seek such leave of this court no less than 30 days prior to when he wishes to file new papers. The court simply cannot drop everything and address his needs more expeditiously.

48. The only exception to the 30-day minimum window for prior clearance is if Mr. Tucker submits an affidavit attesting to some genuine emergency, totally outside his control, that demands a quicker ruling. That is an emergency provision only. It

must not be abused. In the event Tucker faces an emergency that requires taking court action, the court will endeavor to reach the request within 10 business days.

49. Absent prior approval from this court on an item by item basis, Mr. Tucker may make no further filings in any Ohio court. Even if the 10-day or 30-day window has run, Mr. Tucker still may **not** make any filings, and his only remedy is to informally contact the court to assure that the matter will be addressed as promptly as reasonably possible.

50. All proposed filings seeking relief from the vexatious litigation order shall be made in the 14CV-10459. If Mr. Tucker institutes, continues, or makes an application in any legal proceedings without first obtaining approval from the court as described above, the proceedings or application will be dismissed. R.C. 2323.52(I).

51. Pursuant to R.C. 2323.52(H), the Clerk is **ORDERED** to “send a certified copy of the order to the supreme court [of Ohio] for publication . . . .”

**IT IS SO ORDERED.**

Franklin County Court of Common Pleas

**Date:** 01-07-2016  
**Case Title:** ANDRE TUCKER ET AL -VS- NORTH CENTRAL OHIO  
EDUCATIONAL SERVICE C ET AL  
**Case Number:** 13CV012010  
**Type:** DECISION

It Is So Ordered.

A handwritten signature in cursive script, "Richard A. Frye", is written over a circular official seal. The seal contains the text "FRANKLIN COUNTY OHIO" and "ALL THINGS ARE".

/s/ Judge Richard A. Frye

Electronically signed on 2016-Jan-07 page 15 of 15

THE STATE OF OHIO Franklin County, ss	} I, MARYELLEN O'SHAUGHNESSY, Clerk OF THE COURT OF COMMON PLEAS WITHIN AND FOR SAID COUNTY,
HEREBY CERTIFY THAT THE ABOVE AND FORE- GOING IS TRULY TAKEN AND COPIED FROM THE ORIGINAL <u>Decision</u>	
NOW ON FILE IN MY OFFICE	
WITNESS MY HAND AND SEAL OF SAID COUNTY	
THIS <u>7</u> DAY OF <u>Jan</u> A.D. 20 <u>15</u>	
MARYELLEN O'SHAUGHNESSY, Clerk	
By <u>sm</u>	Deputy

Court Disposition

Case Number: 13CV012010

Case Style: ANDRE TUCKER ET AL -VS- NORTH CENTRAL OHIO  
EDUCATIONAL SERVICE C ET AL

Motion Tie Off Information:

1. Motion CMS Document Id: 13CV0120102014-10-2299980000  
Document Title: 10-22-2014-MOTION FOR ATTORNEY FEES -  
DEFENDANT: NORTH CENTRAL OHIO EDUCATIONAL SERVICE C  
Disposition: MOTION DENIED
  
2. Motion CMS Document Id: 13CV0120102015-12-2299970000  
Document Title: 12-22-2015-MOTION TO QUASH - DEFENDANT:  
VERNON HOLLAND III  
Disposition: MOTION RELEASED TO CLEAR DOCKET
  
3. Motion CMS Document Id: 13CV0120102015-12-2299960000  
Document Title: 12-22-2015-MOTION TO QUASH - NON-PARTY:  
CLAUDIA WILLIAMS  
Disposition: MOTION RELEASED TO CLEAR DOCKET