STATEMENT OF THE CASE AND FACTS

Defendant provides the following narrative outlining the ***proximate cause*** of each and all proceedings events originating since near case outset, with the cognizable event(s) at the earliest date of December 13, 2018 and asserting more recently with his obtaining the official Court Record and Hearing Transcript fourth quarter 2020 and first quarter 2021 respectively and more recently with Plaintiff Counsel ongoing efforts, in part, as outlined in this request.

For each bold font definition herein, serving as preface to the supporting paragraphs which follow the source of reference utilized is Black's Law Dictionary which is proceeded by to case law excerpts from the Court System of Ohio in advance of the forthcoming Law and Argument section.

Cause defined
That which produces an effect; whatever moves, impels, or leads. The origin or foundation of a tiling, as of a suit or action; a ground of action. Corning v. McCullough, 1 N. Y. 47, 49 Am. Dec. 287; State v. Dougherty, 4 Or. 203. The consideration of a contract,- that is, the inducement to it, or motive of the contracting party for entering into it, is, in the civil and Scotch law, called the "cause." The civilians use the term "cause," in relation to obligations, in the same sense as the word "consideration" is used in the jurisprudence of England and the United States. It means the motive, the inducement to the agreement,

Proximate Cause defined
Also known as direct cause. The result of an direct action and cause of loss to property that sets in motion a chain of events that is unbroken and causes damage, injury and destruction with no other interference. The loss is the result of one event.

{¶22} "The rule of proximate cause 'requires that the injury sustained shall be the natural and probable consequence of the negligence alleged; that is, such consequence as under the surrounding circumstances of the particular case might, and should have been foreseen or anticipated by the wrongdoer as likely to follow his negligent act.' " Jeffers v. Olexo, 43 Ohio St.3d 140, 143, 539 N.E.2d 614 (1989); quoting Ross v. Nutt, 177 Ohio St. 113, 203 N.E. 118 (1964). "[I]n order to establish proximate cause, foreseeability must be found. * * * 'If an injury is the natural and probable consequence of a negligent act and it is such as should have been

foreseen in the light of all the attending circumstances, the injury is then the proximate result of the negligence * * *.' " Mussivand v. David, 45 Ohio St.3d 314, 321, 544 N.E.2d 265 (1989); quoting Mudrich v. Standard Oil Co., 153 Ohio St. 31, 39, 90 N.E.2d 859 (1950). "The standard test for establishing causation is the sine qua non or 'but for' test. Thus, a defendant's conduct is a cause of the event (or harm) if the event (or harm) would not have occurred but for that conduct; conversely, the defendant's conduct is not the cause of the event (or harm) if the event (or harm) would have occurred regardless of the conduct. Prosser & Keeton, Law of Torts (5th Ed.1984) 266." Anderson v. St. Francis–St. George Hosp., Inc., 77 Ohio St.3d 82, 84- 85, 671 N.E.2d 225 (1996). " '[L]egal responsibility must be limited to those causes which are so closely connected with the result and of such significance that the law is justified in imposing liability.' " Johnson v. Univ. Hosp. of Cleveland, 44 Ohio St.3d 49, 57, 540 N.E.2d 1370 (1989) quoting Prosser & Keeton, Law of Torts (5th Ed.1984) 264, Section 41; see, also, Hester v. Dwivedi, 89 Ohio St.3d 575, 733 N.E.2d 1161 (2000).

Westfall v. Lemon, 2015-Ohio-384

December 8, 2016

Exhibit C, Plaintiff Supplementation with attached exhibit(s) including Narrative Supplement 16-32756

Then Plaintiff Counsel filed a PLAINTIFF SUPPLEMENTATION to her motion practice activities seeking temporary custodian assignment attaching as her supporting documentation the formal NARRATIVE SUPPLEMENT from the local township authorities crafted due to a non-event the weekend of December 3, 2016 requesting an officer visit to the real property the parties and their beloved underage children shared together. This NARRATIVE SUPPLEMENT, 16-32756, Remarks, paragraph 4, sentence 2, completely exonerates from any wrongdoing and was provided to document their visit in place of an otherwise required INCIDENT REPORT should an actual incident have occurred.

December 11, 2016

Exhibit D, Magistrate's Order, page 1, section 11, Findings of Fact, sentence 5

The court, then magistrate, subsequently acknowledges the NARRATIVE SUPPLEMENT in her order, indicating ***the parties beloved underage children wished to stay with their father instead of their mother*** when Reporting Officer asked the parties beloved underage children for their preference. Plaintiff refused the Reporting Officer request of the parties beloved underage children to depart the real property to forego a subsequent visit for the evening. Considering her obstinance the Reporting Officer inquired with Defendant of his willingness to accommodate the department standard for one party to depart and he in cooperation agreed with stipulations of which they concurred.

January 24, 2017

Exhibit E, Transcript of Proceedings

page 18, row 8-13, 19, 20; page 33, row 12-21; page 36, row 19-21; page 37, row 1-3, 4-21; page 38, row 1-9

Then magistrate hearing pursuant to then Plaintiff Counsel December 8, 2016 motion practice activities was conducted January 24, 2017, following a three week postponement request by then CASA/GAL, with a subsequent magistrate from the trier of facts who acknowledged the NARRATIVE SUPPLEMENT in her order December 11, 2016. With a mere thirty days post assignment at request of then Plaintiff Counsel following the non-event as prefabricated for December 3, 2016, then CASA/GAL served as then Plaintiff Counsel exclusive witness for her

hearing activities. Under false pretenses the two officers of the court posited Defendant instigated the non-event the weekend of December 3, 2016 specifically citing the NARRATIVE SUPPLEMENT as the basis for their direct examination completely practicing against ABA Model Rules of Professional Conduct, Ohio Rules of Professional Conduct and Ohio Revised Code by their repeated misrepresentations of material facts in a fraudulent effort to impede the court from her ability to function in her judiciary capacity. Within said hearing, the instruments, PLAINTIFF SUPPLEMENTATION with NARRATIVE SUPPLEMENT of December 8, 2016 and order December 11, 2016 as submitted and filed the Stark County Clerk of Courts, were either not provided to the court (subsequent magistrate to the trier of facts acknowledging receipt in her entry dated December 11, 2016), Defendant Counsel or Defendant or with possession, then Plaintiff Counsel and then CASA/GAL promoted the narrative while having filed and retained the evidence to the contrary.

Then CASA/GAL during then Plaintiff Counsel direct examination committed perjury testifying the Defendant instigated the non-event of December 3, 2016, next testified Defendant directly questioned the parties beloved underage children to stay with him while the NARRATIVE SUPPLEMENT as attached to the December 8, 2016 PLAINTIFF SUPPLEMENTATION and acknowledged with the December 11, 2016 order referencing ***the parties beloved underage children wished to stay with their father instead of their mother,*** clearly indicates the opposite documenting the Reporting Officer asked the parties beloved underage children for their preference, and then continued her documented violations during cross examination testifying three times the parties beloved underage children had not indicated a preference to parental visitation. Then CASA/GAL only confessed after "shuffling of papers", "noise of paper shuffling" following repeated inquiry citing their known preferences as they each

shared during and following their unwanted meeting with her, affirming the stated wishes of the parties beloved underage daughter to spend all of her time with Defendant and the parties beloved underage son to spend four days per week with Defendant specifically citing Saturday, Sunday, Monday and Tuesday of each week.

Instrument Defined
A written document; a formal or legal document in writing, such as a contract, deed, will, bond, or lease. State v. Phillips, 157 Ind. 4S1, 62 N. E. 12; Cardenas v. Miller, 108 Cal. 250, 39 Pac. 783, 49 Am. St Rep. 84; Benson v. McMahon, 127 U. S. 457, 8 Sup. Ct 1240, 32 L. Ed. 234; Abbott T. Campbell, 60 Neb. 371, 95 N. W. 592. In the law of evidence. Anything which may be presented as evidence to the senses of the adjudicating tribunal. The term "instruments of evidence" includes not merely documents, but witnesses and living things which may be presented for inspection. 1 Whart Ev.

October 12, 2017 and October 27, 2017

Exhibit F

Order Granting Application for Authority to Sell Real Estate under R.C.2735.04(D)(2) and Judgment Entry Confirming Sale of Real Estate and Ordering Distribution of Sales Proceeds

Effective October 27, 2017, subsequent Plaintiff Counsel signed an instrument seemingly crafted by him, and he also signed on behalf of the court appointed resource, Receiver negating the same from inception. Plaintiff Counsel then followed this instrument (illegal) with a cascading series of filings promulgated throughout the Court System of Ohio, locally and at the Fifth District Court of Appeals. With the order then pending as a result of Plaintiff Counsel actions at the time, counsel was pursued on behalf of Defendant November 9, 2017 to prosecute the appeal which as outlined in the following paragraphs was unnecessary due to Plaintiff testimony December 13, 2018, pages 163, 164 of Hearing Transcript.

December 13, 2018

Exhibit G

Transcript of Proceedings, page 163, row 14-23; page 164, row 1-16

Further, this same subsequent Plaintiff Counsel with regards to appeal, was negligent in his duties as fiduciary for Plaintiff as she testified during trial December 13, 2018 of her adamant disinterest in pursuing an appeal for the real property altogether, see pages 163, 164 of Hearing Transcript, having already volunteered to depart the property for Defendant to retain.

Lacking knowledge of these fatal errors of then Plaintiff Counsel and then CASA/GAL until being provided the Plaintiff testimony reference herein, official Court Record less than twelve months ago and attainment of the Hearing Transcript this year, Defendant was compelled to seek representation for an appellate case which need not have been enlisted as referenced above.

Notwithstanding the foregoing, then Plaintiff Counsel and CASA/GAL according to Plaintiff testimony December 13, 2018, pages 163, 164, were privileged to this vital information effective January 2017 and withheld from the court, Defendant Counsel and Defendant and informed Plaintiff according to her testimony, her wishes would not be pursued. Then Plaintiff Counsel, then CASA/GAL and subsequent Plaintiff Counsel invoiced Plaintiff significant legal fees for the activities prior to and following appeal, and later requested the court for Defendant to remunerate, forming the basis of the most recent appeal to the Fifth District Court of Appeals effective August 2020 and the response to the complaint of Plaintiff Counsel seeking additional compensation which hereto would never have transpired but for their own negligence in representation.

{¶ 24} Here, the appellees clearly asserted claims grounded in fraud and breach of fiduciary duty against the trustees and successor trustees. Claims for fraud and breach of fiduciary duty based on fraud are governed by the four-year statute of limitations set forth in R.C. 2305.09, unless the claim is not discovered despite reasonable diligence. See *Investors REIT One v. Jacobs* (1989), 46 Ohio St.3d 176, 546 N.E.2d 206, paragraph 2b of the syllabus **("by the express terms of R.C. 2305.09(D), the four-year limitations period does not commence to run on claims presented in fraud or conversion until the complainants have discovered, or should have discovered, the claimed matters")**; *State ex rel. Lien v. House* (1944), 144 Ohio St. 238, 29 O.O. 399, 58 N.E.2d 675, paragraph two of the syllabus (action against trustees for breach of trust involving tortious conduct such as bad faith, negligence, and double-dealing is one that accrues, "in the absence of undiscovered fraud," when the trusteeship is terminated, and the action is barred in four years).

Cundall v. U.S. Bank, 122 Ohio St. 3d 188, 192-93 (Ohio 2009)

Fraud defined

Fraud consists of some deceitful practice or willful device, resorted to with intent to deprive another of his right, or in some manner to do him an injury. As distinguished from negligence, it is always positive, intentional. Maher v. Hibernia Ins. Co.,67 N. Y. 292; Alexander v. Church, 53 Conn. 501, 4 Atl. 103; Studer v. Bleistein. 115 N.Y. 31G, 22 X. E. 243, 7 L. R. A. 702; Moore v. Crawford, 130 U. S. 122, 9 Sup. Ct. 447,32 L. Ed. 878; Fechheimer v. Baum (C. C.) 37 Fed. 167; U. S. v. Beach (D. C.) 71 Fed.160; Gardner v. Ileartt, 3 Denio (N. Y.) 232; Monroe Mercantile Co. v. Arnold, 108 Ga. 449, 34 S. E. 176.Fraud, as applied to contracts, is the cause of an error bearing on a material part of the contract, created or continued by artifice, with design to obtain some unjust advantage to the one party, or to cause an inconvenience or loss to the other. Civil Code La. art. 1S47.Fraud, In the sense of a court of equity, properly Includes all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust, or confidence justly reposed, and are injurious to another, or by which an undue and unconscientious advantage is taken of another. 1 Story, Eq. Jur.

Since then Plaintiff Counsel(s), then CASA/GAL and subsequent Plaintiff Counsel alleged fraudulent activities and negligence are the proximate cause(s) for the civil rights violations as experienced by the parties beloved underage children, Defendant and Plaintiff, enduring intentional infliction of emotional distress for each of the aforementioned and extended family members, financial asset depletion of a previous balance total of approximately 250,000 excluding the 75,000 estimated Defendant needed secure separately to fund his early defense efforts and living expenses as the case ensued, initiation of professional resources to advance

their cause(s), listing of the parties real property which sold recently for an estimated 50,000 increase from the prior transaction referenced herein, permanent and temporary displacement of professional occupation(s) for the parties, significant legal fees and proceedings assessed all involved, and tax implications as another example among others, Defendant avers ***but for*** their actions the remuneration past and present is unwarranted as each serving as legal representatives and officers of the court directly withheld evidence from the court(s), led an effort against the best interests of the parties beloved underage children, Defendant and Plaintiff and exacerbated their malfeasance through enlisting each the Court of Common Pleas, Civil Division, Domestic Relations Division and the Fifth District Court of Appeals to unknowingly serve as vehicles to remuneration of their pursuits as self-orchestrated in an effort to fabricate a narrative attempting to be compensated for their practices.

{¶ 26} Subsequently to *Scholler* , multiple Ohio courts, including this court, have concluded that, if the alleged fraud occurred between the parties, Civ.R. 60(B)(3) is the only ground upon which the aggrieved party can seek relief from a prior judgment. If, on the other hand, an attorney or other officer of the court perpetrates a fraud on the court, then Civ.R. 60(B)(5) is the proper basis for requesting relief. *Wells Fargo Bank, N.A. v. Bluhm* , 6th Dist. No. E-13-052, 2015-Ohio-921, 2015 WL 1137972, ¶ 30–31 ; *Costakos v. Costakos* , 10th Dist. No. 03AP-959, 2004-Ohio-2138, 2004 WL 886900, ¶ 11 ; *McGowan v. Stoyer* , 10th Dist. No. 02AP-263, 2002-Ohio-5410, 2002 WL 31248020, ¶ 18 ; *Applegate v. Applegate* , 10th Dist. No. 99AP–1321, 2000 WL 1358063 (Sept. 21, 2000) ; *In re Foreclosure of Liens for Delinquent Land Taxes* , 10th Dist. No. 99AP–714 (Mar. 28, 2000); *Turoczy v. Turoczy* , 30 Ohio App.3d 116, 506 N.E.2d 942 (8th Dist.1986), syllabus; *accord In re Dankworth Trust* at ¶ 38 (holding that Civ.R. 60(B)(5) is "used when the fraud alleged is done by an officer of the court; Civ.R. 60(B)(3) only applies to fraud that is committed by an adverse party"); *BAC Home Loans Servicing, L.P. v. Meister* , 11th Dist. No. 2012-L-042, 2013-Ohio-873, 2013 WL 942747, ¶ 16, quoting *Coulson* at 15, 448 N.E.2d 809 ("[A] party may use Civ.R. 60(B)(5) to raise the issue of fraud upon the court; however, this concept has been distinguished from fraud by an adverse party and has been carefully limited to the occasion where an 'officer of the court * * * actively participates in defrauding the court.' "); *Huffman v. Huffman* , 4th Dist. No. 00CA704, 2001 WL 1383020 (Oct. 30, 2001) ("[I]n order to show fraud upon the court, and be subject to Civ.R. 60(B)(5)'s more lenient time limits, a party must show that an officer of the court actively participated in defrauding the court.").

Luke v. Roubanes, 109 N.E.3d 671, 678-79 (Ohio Ct. App. 2018)

LAW AND ARGUMENT

Defendant – Appellant introduces case law as decided, First, by Ohio Courts of Appeals Fraud and Forgery as decided by the Fifth District Court of Appeals; Second, by former Stark County Court of Common Pleas Hon. Sara Lioi regarding the proper application of Ohio Rules of Civil Procedure, Rule 12(F) and 7(A), (B) respectively ruling from the United States Federal Circuit Courts of Appeals, Northern Ohio; and Third, in similar presentation this honorable court decisions specific to Summary Judgment should they be applicable now attached hereto as Exhibit H with Fraud Upon the Court case law as decided by the Ohio Appellate Districts following as Exhibit I.

I. THE LOWER COURT(S) ERRED AND ABUSED ITS DISCRETION NEGLECTING TO PROCEED THE APPEALS PROCESS BY CONTINUING THE LOWEST COURT PROCEEDINGS ACTIVITIES REGARDING THE APPROPRIATE DISTRIBUTION OF MARITAL ASSETS, INCLUDING BUT NOT LIMITED TO, IN PERTINENT PART, COMPENSATION TO COUNSEL DESPITE EVIDENCE PROVIDED OF DOCUMENTED VIOLATIONS OF OHIO REVISED CODE (ORC) R.C. 2901.22, R.C. 2921.11, R.C. 2913.31, R.C. 2921.12, R.C. 2921.32, OHIO RULES OF PROFESSIONAL CONDUCT AND OHIO RULES OF SUPERINTENDENCE AMONG OTHERS AND THE ASSIGNMENT OF MONTHLY RECURRING CHARGE PAYMENTS WHICH EXCEED CURRENT INCOME LEVELS.

FORGERY AND FRAUD, FIFTH DISTRICT COURT OF APPEALS CASE ONE

{¶ 13} "THE TRIAL COURT'S FINDING OF GUILTY WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AND WAS NOT SUPPORTED BY SUFFICIENT EVIDENCE."

{¶ 14} In the assignment of error appellant argues that the conviction is against the manifest weight and sufficiency of the evidence. We disagree.

{¶ 15} In determining whether a verdict is against the manifest weight of the evidence, the appellate court acts as a "thirteenth juror." Under this standard of review, the appellate court weighs the evidence in order to determine whether the trier of fact "clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." *State v. Thompkins* (1997), 78 Ohio St.3d 380, 387, 678 N.E.2d 541. However, the appellate court must bear in mind, the trier of fact's superior, first-hand perspective in judging the demeanor and credibility of witnesses. See *State v. DeHass* (1967), 10 Ohio St.2d 230, 227

N.E.2d 212, paragraph one of the syllabus. The power to reverse on "manifest weight" grounds should only be used in exceptional circumstances, when "the evidence weighs heavily against the conviction." *Thompkins*, at 387, 678 N.E.2d 541.

{¶ 16} A sufficiency of the evidence argument challenges whether the State has presented adequate evidence on each element of the offense to allow the case to go to the jury or sustain the verdict as a matter of law. *State v. Thompkins*, supra. The proper test to apply to such an inquiry is the one set forth in paragraph two of the syllabus of *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492: "An appellate court's function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. The relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt."

{¶ 17} In this case, appellant was convicted of three counts of forgery in violation of 2913.31(A)(3) which states in pertinent part as follows:

{¶ 18} "(A) No person with purpose to defraud, or knowing that the person is facilitating a fraud, shall do any of the following:

{¶ 19} "(3) Utter or possess to utter, any writing that the person knows to have been forged."

{¶ 20} Appellant contends that the verdict was against the manifest weight of the evidence on the grounds that the State failed to prove that appellant did not have the authority to utter the checks, and also that appellant acted with a purpose to defraud.

{¶ 21} Defraud means to "knowingly obtain, by deception, some benefit for oneself or another, or to knowingly cause, by deception, some detriment to another." R.C. 2913.01(B).

{¶ 22} Purpose requires an intention to cause a certain result or to engage in conduct that will cause that result. R.C. 2901.22(A).

{¶ 23} Purpose or intent can be established by circumstantial evidence, direct evidence and/or the surrounding facts and circumstances in the case. *State v. Seiber* (1990), 56 Ohio St.3d 4, 13-14, 564 N.E.2d 408. See also, *State v. Smith*, Delaware App. No. 07CAA010007, 2007-Ohio-4749.

{¶ 24} If the State relies upon circumstantial evidence to prove an essential element of an offense, it is not necessary for "such evidence to be irreconcilable with any reasonable theory of innocence in order to support a conviction." *State v. Daniels*, 9th Dist. No. 18761, (decided June 3, 1998), unreported, quoting *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph one of the syllabus. See also, *State v. Smith*, Delaware App. No. 07CAA01007, 2007-Ohio-4749. "Circumstantial evidence and direct evidence inherently possess the same probative value." *State v. Smith*, 9th Dist. No. 99CA007399, (decided Nov. 8, 2000), unreported,

quoting *Jenks*, 61 Ohio St.3d at paragraph one of the syllabus. Moreover, a series of facts and circumstances can be employed by a jury as the basis for the ultimate conclusion in a case. *State v. Lott* (1990), 51 Ohio St.3d 160, 168, 555 N.E.2d 293, citing *Hurt v. Charles J. Rogers Transp. Co.* (1955), 164 Ohio St. 329, 331, 130 N.E.2d 820.

{¶ 25} In this case, three witnesses testified that on three separate occasions the appellant presented business checks from Loeffler Construction Company to be cashed. The Loefflers testified that they only draft checks to the subcontractors and not to individual laborers. They further testified that they were not familiar with the appellant, appellant was not an employee of the company, and that they had never drafted a check to the appellant. Finally, after examining the checks, the Loefflers testified that, although the checks belonged to the business, they were not drafted in accordance with the standard procedure of the business, they appeared to have the payee's name typewritten rather than computer generated and they contained a signature of Bryce Leoffler which was not authentic and had been spelled incorrectly. Mr. Rawahneh from M K Market testified that when he questioned the authenticity of the check and threatened to call the police, the appellant fled.

{¶ 26} Upon review we find that the surrounding circumstances as set forth in the record sufficiently established that the appellant was not authorized to utter the three checks and that the appellant was aware or should have been aware that he was facilitating a fraud for his own benefit and to the detriment of another.

{¶ 27} Accordingly, we find that the jury's verdict was not against the manifest weight or sufficiency of the evidence. For these reasons we hereby overrule appellant's assignment of error.

{¶ 28} The judgment of the Stark County Court of Common Pleas is hereby affirmed.

Edwards, J. Gwin, P.J. and Farmer, J. concur

JUDGMENT ENTRY
For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the

Stark County Court of Common Pleas is affirmed. Costs assessed to appellant.

State v. Gowins, No. 2007-CA-00170, 4-8 (Ohio Ct. App. 2008)

As Defendant – Appellant has presented, subsequent Plaintiff – Appellee counsel has violated Ohio Revised Code as outlined in paragraphs 17 through 19, and 21, 22 in *State v. Gowins*, No. 2007-CA-00170, 4-8 (Ohio Ct. App. 2008) decided by the appellate court beginning with the paragraphs 17 through 19.

See October 12, 2017 and October 27, 2017, Exhibit F, Order Granting Application for Authority to Sell Real Estate under R.C.2735.04(D)(2) and Judgment Entry Confirming Sale of Real Estate and Ordering Distribution of Sales Proceeds.

Review of the written instrument crafted in an effort to illegally confirm the sale is indisputably signed by subsequent Plaintiff – Appellee counsel first in his proper area legally to the left, and second, illegally to the right in the area designated exclusively for the Receiver in the instant case by appointment.

Thereby in addition to R.C.2913.31(A)(3), subsequent Plaintiff – Appellee counsel also further is in breach of the code subsections (A)(1) and (A)(2), having actually been the party to sign as opposed to simply uttering the forged instrument which already has been proven to occurred in his provision to the lower court for signature prior to filing with the Stark County Clerk of Courts and becoming officially part of the record before the appellate court for review.

Upon further regard to then Plaintiff – Appellee counsel and then CASA/GAL, each together with subsequent Plaintiff – Appellee counsel Defendant – Appellant contends their actions meet the definitions of defraud and purpose as referenced in paragraphs 21, 22 of the same OPINION, defining each from R.C.2913.01(B) and R.C.2901.22(A).

Wherefore the appellate court responds to the opposing allegations of the State failure to prove his guilt in Paragraph 23, Defendant – Appellant seeks her jurisprudence to find similarly in the instant case regarding each then Plaintiff – Appellee counsel, then CASA/GAL and subsequent Plaintiff – Appellee counsel with regards to their actions as referenced in detail in the STATEMENT OF THE CASE AND FACTS above effective the weekend of December 2, 2016, December 3, 2016, December 8, 2016, December 11, 2016, January 24, 2017, October 12, 2017,

October 27, 2017 as confirmed December 13, 2018, and closing with Paragraph 26, each of the three officers of the court "was [were] aware or should have been aware that he [she, they] was [were] facilitating a fraud for his [her, their, or others] own benefit and to the detriment of another".

FORGERY AND FRAUD, FIFTH DISTRICT COURT OF APPEALS CASE TWO

I. {¶9} In his sole Assignment of Error, appellant argues the trial court erred and violated his rights to due process and a fair trial by overruling his motion for acquittal. We disagree.

{¶10} An appellate court reviews a denial of a Crim.R. 29 motion for acquittal using the same standard used to review a sufficiency of the evidence claim. See State v. Larry, 5th Dist. Holmes No. 15CA011, 2016-Ohio-829, ¶ 20, citing State v. Carter(1995), 72 Ohio St.3d 545, 553, 651 N.E.2d 965, 1995–Ohio–104. Thus, "[t]he relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt." State v. Jenks (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus.

{¶11} In the case sub judice, appellant was convicted of tampering with records in violation of R.C. 2913.42(A)(1), which states:

{¶12} "No person, knowing the person has no privilege to do so, and with the purpose to defraud, or knowing that the person is facilitating a fraud, shall * "[f]alsify,**

1We note appellant does not challenge the remaining count of tampering with records (Count 29) in the text of his assigned error.

destroy, remove, conceal, alter, deface, or mutilate any writing, computer software, data, or record."

{¶13} Appellant was also convicted of forgery in violation of R.C. 2913.31(A)(2), which states:

{¶14} "No person, with purpose to defraud, or knowing that the person is facilitating a fraud, shall * [f]orge any writing so that it purports to be genuine when it is actually spurious, or to be the act of another who did not authorize the act, or to have been executed at a time or place or with terms different from what in fact was the case, or to be a copy of an original when no such original existed."**

{¶15} In raising his argument as to sufficiency of the evidence, appellant does not herein factually dispute that he repeatedly forged his brother's signature and fraudulently presented

himself to law enforcement and court officials as charged; his present focus is on the legislative meaning behind the tampering with records statute.

{¶16} As a general rule, issues of statutory construction are reviewed de novo by appellate courts. Divernuity Properties, L.L.C. v. Stark Cty. Bd. of Revision, 5th Dist. Stark No. 2012 CA 00048, 2012-Ohio-4364, ¶ 16. It is a well-established principle of statutory construction that a statute is to be read, to the extent practicable, to give effect to all its parts. See Weckbacher v. Sprintcom, Inc., 5th Dist. Stark No. 2006 CA 00033, 2006-Ohio-4398, 2006 WL 2459077, ¶ 9. See, also, R.C. 1.47(B).

{¶17} As an initial matter, appellant concedes that the Ohio Supreme Court's decision in State v. Brunning, 134 Ohio St.3d 438, 2012-Ohio-5752, 983 N.E.2d 316, indicates that a person may be convicted of tampering with records pursuant to R.C. 2913.42 if he or she files a form with law enforcement containing false information with a purpose to defraud. Id. at ¶ 32. However, appellant urges that Brunning, which involved a convicted sex offender filing an address-verification form with a county sheriff, does not address the issues raised herein.

{¶18} Appellant first urges that the term "falsify" in the records tampering statute, R.C. 2913.42(A)(1), supra, is ambiguous. He directs us to the textual canon of noscitur a sociis, which "interprets a general term to be similar to more specific terms in a series." See In re R.V., 2nd Dist. No. 2009-CA-107, 190 Ohio App.3d 313, 2010-Ohio-5050, 941 N.E.2d 1216, ¶ 24. (Grady, J., dissenting). Appellant accordingly posits that the remaining terms set forth in R.C. 2913.42(A)(1), namely "destroy," "remove," "conceal," "alter," "deface," and "mutilate" are indicative of acts involving an existing record or documents, and that interpreting "falsify" to mean creating a forged document for the first time would be inconsistent with those terms.

{¶19} Appellant secondly asks us to consider R.C. 2913.42(A)(1) in pari material with R.C. 2913.31(A)(2), contending that if a person indeed "falsifies" a record by creating one, then the two statutes in this context have identical elements, rendering one of them surplusage.

{¶20} Should we accept that the term "falsify" in the records tampering statute is ambiguous, appellant urges that we apply the rule of lenity, which is codified in R.C. 2901.04(A) and generally provides that "sections of the revised Code defining offenses or penalties shall be strictly construed against the state, and liberally construed in favor of the accused." See State v. Harp, 12th Dist. Clermont No. CA2016-11-072, 2017-Ohio-9096, 91 N.E.3d 761, ¶ 14.

{¶21} However, the principles of statutory construction also indicate that separate terms should reasonably be given distinct meaning. See D.A.B.E., Inc. v. Toledo–Lucas County Bd. of Health, 96 Ohio St.2d 250, 254, 2002-Ohio-4172, 773 N.E.2d 536 (stating "all words [in a statute] should have effect and no part should be disregarded"). The term "falsify" has been commonly defined as "to state untruthfully or alter in order to deceive." Dept. of Pub. Safety v. Garrett, 4th Dist. Ross No. 94-CA-2031, 1995 WL 363248, citing The American Heritage Dictionary, 1976. As the State aptly argues in its response herein, if "falsify" in the records tampering statute (R.C. 2913.42(A)(1)) was legislatively intended to mean only the act of "alter[ing]" an existing document or record, then one

statutory term would be unnecessary and would have to be disregarded. Because the General Assembly did include the distinct prohibition against falsifying under R.C. 2913.42(A)(1), we find that appellant's acts of untruthfully using his brother's name on official documents were sufficient to effect the violations of the records tampering statute as charged.

{¶22} Accordingly, appellant's sole Assignment of Error is overruled.

{¶23} For the reasons stated in the foregoing opinion, the judgment of the Court of Common Pleas, Muskingum County, Ohio, is hereby affirmed. By: Wise, John, P. J. Delaney, J., and Wise, Earle, J., concur. . JWW/d 0731

State v. Mason, 2018-Ohio-3329

As Defendant – Appellant has presented, then Plaintiff – Appellee counsel, then CASA/GAL and subsequent Plaintiff – Appellee counsel have violated Ohio Revised Code as outlined in paragraphs 11 through 14 in *State v. Mason*, 2018-Ohio-3329 decided by the appellate court.

Each of the three officers of the court throughout case history according in part to Plaintiff – Appellee sworn under oath witness stand testimony have further violated R.C. 2913.42(A)(1) regarding the parties real property, either first in concealing the wishes of Plaintiff – Appellee herself which was in alignment with the documented pursuits of Defendant – Appellant directly, and by and through Defendant – Appellant counsel effective February 17, 2017 for the domestic relations case as argued throughout their tenure and separately effective November 9, 2017 to represent the appeal. See December 13, 2018, Exhibit G, Transcript of Proceedings, page 163, row 14-23; page 164, row 1-16, and through the act of forgery itself.

In addition to R.C. 2913.42(A)(1), subsequent Plaintiff – Appellee counsel as referenced in *State v. Gowins*, No. 2007-CA-00170, 4-8 (Ohio Ct. App. 2008) specific to R.C. 2913.31(A)(3), also per code violated R.C. 2913.31 sections (A)(1) and (A)(2) respectively as

noted above in part for this case, addressing the action of forging any writing whereas the former case referenced narrowly was applicable to the action of uttering.

The appellate court further in contesting allegations of the responsible party in this case found regarding statutory language usage and the term falsify in Paragraph 21, as including “to state untruthfully” or “alter” in order to deceive, as Defendant – Appellant outlines effective January 24, 2017 then Plaintiff – Appellee counsel and then CASA/GAL exchanges whereby the perjury allegations are recorded, see January 24, 2017, Exhibit E, Transcript of Proceedings page 18, row 8-13, 19, 20; page 33, row 12-21; page 36, row 19-21; page 37, row 1-3, 4-21; page 38, row 1-9 which also is in violation of R.C. 2921.11, Perjury as defined in the Ohio Revised Code.

FORGERY AND FRAUD, FIFTH DISTRICT COURT OF APPEALS CASE THREE

{¶ 12} It is from this conviction and sentence Appellant appeals, raising the following assignments of error:

{¶ 13} "I. APPELLANT'S CONVICTION WAS AGAINST THE SUFFICIENCY OF THE EVIDENCE.

{¶ 14} "II. APPELLANT'S CONVICTION WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

I, II

{¶ 15} In these assignments of error, Appellant challenges the sufficiency and manifest weight of the evidence.

{¶ 16} In *State v. Jenks* (1981), 61 Ohio St.3d 259, the Ohio Supreme Court set forth the standard of review when a claim of insufficiency of the evidence is made. The Ohio Supreme Court held: "An appellate court's function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. The relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt." *Id.* at paragraph two of the syllabus.

{¶ 17} On review for manifest weight, a reviewing court is to examine the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witnesses and determine whether in resolving conflicts in the evidence, the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the judgment must be reversed. The discretionary power to grant a new hearing should be exercised only in the exceptional case in which the evidence weighs heavily against the judgment." *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52, citing *State v. Martin* (1983), 20 Ohio App.3d 172, 175. Because the trier of fact is in a better position to observe the witnesses' demeanor and weigh their credibility, the weight of the evidence and the credibility of the witnesses are primarily for the trier of fact. *State v. DeHass* (1967), 10 Ohio St.2d 230, syllabus 1.

{¶ 18} Appellant was convicted of forgery, in violation of R.C. 2913.31(A)(3), which provides:

{¶ 19} "No person, with purpose to defraud, or knowing that the person is facilitating a fraud, shall do any of the following:

{¶ 20} "* * *

{¶ 21} "(3) Utter, or possess with purpose to utter, any writing that the person knows to have been forged."

{¶ 22} Appellant argues his conviction for forgery was based upon insufficient evidence because the State failed to establish he had the culpable mental state required to commit the offense. Appellant submits the State failed to present any direct evidence he had purpose to defraud or knew he was facilitating a fraud. Instead, the State relied upon evidence which, "at best could possibly be termed circumstantial evidence". Brief of Appellant at 6.

{¶ 23} Because a defendant's mental state is difficult to demonstrate with direct evidence, it may be inferred from the surrounding circumstances in the case. *State v. Logan* (1979), 60 Ohio St.2d 126, 131. Culpable mental states can be established by circumstantial as well as direct evidence. *State v. Kincaid*, 9th Dist. No. 01CA007947, 2002-Ohio-6116, citing *Kreuzer v. Kreuzer* (2001), 144 Ohio App.3d 610, 613.

{¶ 24} If the State relies upon circumstantial evidence to prove an essential element of an offense, it is not necessary for "such evidence to be irreconcilable with any reasonable theory of innocence in order to support a conviction." *State v. Daniels* (June 3, 1998), 9th Dist. No. 18761, quoting *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph one of the syllabus. "Circumstantial evidence and direct evidence inherently possess the same probative value[.]" *State v. Smith* (Nov. 8, 2000), 9th Dist. No. 99CA007399, quoting *Jenks*, 61 Ohio St.3d at paragraph one of the syllabus. Furthermore, "[s]ince circumstantial evidence and direct evidence are indistinguishable so far as the * * * fact-finding function is concerned, all that is required of the [fact finder] is that i[t] weigh all of the evidence, direct and circumstantial, against the standard of proof beyond a reasonable doubt." *State v. Chisolm* (July 8, 1992), 9th Dist. No. 15442, quoting *Jenks*, 61 Ohio St.3d at 272. While inferences cannot be based on inferences, a number of conclusions can result from the same set of facts. *State v. Lott* (1990), 51 Ohio St.3d 160, 168, citing *Hurt v. Charles J.*

Rogers Transp. Co. (1955), 164 Ohio St. 329, 331. Moreover, a series of facts and circumstances can be employed by a jury as the basis for its ultimate conclusions in a case. *Lott*, 51 Ohio St.3d at 168, citing *Hurt*, 164 Ohio St. at 331.

{¶ 25} In the instant action, the testimony established Appellant was approached by two men whom he did not know. The men asked Appellant if he needed to make money, which Appellant did. The men told Appellant their boss would write a check in his name and he would be given $100.00 to cash the check. Appellant provided the men with his identification card. The party proceeded to McDonald's, where the passenger exited the vehicle, while Appellant purchased and ate breakfast. Appellant and the passenger returned to the vehicle and the three men proceeded to the SkyBank branch in Westerville. Appellant was unfamiliar with the area. Appellant's girlfriend spoke with Appellant on the cell phone on the trip to Westerville, and advised him she did not think he should be involved in the situation.

{¶ 26} Without looking at the check and without knowing from whom these gentlemen received the check, Appellant went into a bank and attempted to cash it. We find Appellant knowingly facilitated a fraud because, regardless of his purpose, he was aware his conduct would probably cause a certain result. An individual is equally culpable whether the individual had positive knowledge or deliberate ignorance. *United States v. Jewell* (9th Circuit 1976), 532 F 2 nd 697, 700. After viewing the evidence in a light most favorable to the State, we find any rational trier of fact would have found the essential elements of forgery proven beyond the reasonable doubt.

{¶ 27} Appellant further argues his conviction was against the manifest weight of the evidence because the greater amount of credible evidence supported his position he did not act with the culpable mental state.

{¶ 28} As discussed, supra, Appellant engaged in a situation in which all the surrounding circumstances should have made him aware he was probably facilitating a fraud. The jury was free to accept or reject any or all of the testimony of the witnesses. The jury found Appellant purposefully or knowingly committed the offense. We find the jury's verdict was not against the manifest weight of the evidence.

{¶ 29} Appellant's first and second assignments of error are overruled.

{¶ 30} The judgment of the Delaware County Court of Common Pleas is affirmed.

By: Hoffman, P.J. Farmer, J. and Edwards, J. concur

JUDGMENT ENTRY

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Delaware County Court of Common Pleas is affirmed. Costs assessed to Appellant.

State v. Smith, No. 07CAA010007, (Ohio Ct. App. 2007)

As Defendant – Appellant has presented, subsequent Plaintiff – Appellee counsel has violated Ohio Revised Code as outlined in paragraphs 18 through 21 in *State v. Smith*, No. 07CAA010007, (Ohio Ct. App. 2007) decided by the appellate court per the references previously established in both *State v. Gowins*, No. 2007-CA-00170, 4-8 (Ohio Ct. App. 2008) and *State v. Mason*, 2018-Ohio-3329.

Circumstantial evidence and direct evidence according to the appellate court are next established in Paragraphs 23 and 24 with multiple references throughout the Ohio Courts of Appeals, acknowledging "mental state is difficult to demonstrate with direct evidence, it may be inferred from the surrounding circumstances in the case" stating further "it is not necessary" for "such evidence to be irreconcilable with any reasonable theory of innocence in order to support a conviction" as "circumstantial evidence and direct evidence inherently possess the same probative value[.]"

From paragraphs 26 through 28. the evidence provided in the attached Exhibits C, D, E, F and G, Defendant – Appellant, together with the narrative extended in the STATEMENT OF THE CASE AND FACTS preceding, argues while possessing both the direct evidence establishing the contradiction between the December 8, 2016, Exhibit C, Plaintiff Supplementation with attached exhibit(s) including Narrative Supplement 16-32756 and January 24, 2017, Exhibit E, Transcript of Proceedings page 18, row 8-13, 19, 20; page 33, row 12-21; page 36, row 19-21; page 37, row 1-3, 4-21; page 38, row 1-9, then Plaintiff – Appellee counsel and then CASA/GAL have been clearly defined, and the disclosure by Plaintiff – Appellee sworn under oath witness stand testimony as documented, December 13, 2018, Exhibit G, Transcript of Proceedings, page 163, row 14-23; page 164, row 1-16, the evidence is clear and convincing regarding the origins of the fraud upon the court activities proximate cause, as referenced in

Paragraph 26 while narrowly construed to forgery as detailed at length already, the alleged conduct of each officer of the court "knowingly facilitated a fraud because, regardless of his [her, their] purpose, he [she, they] were aware of his [her, their] conduct would probably cause a certain result.

In arguendo, should the parties attempt to present otherwise, such averments fail according to the appellate court standing referenced in the OPINION above as each "engaged in a situation in which all the surrounding circumstances should have made him [her, them] aware he [she, they] were probably facilitating a fraud".

II. THE LOWER COURT(S) ERRED AND ABUSED ITS DISCRETION NEGLECTING TO PROCEED THE APPEALS PROCESS BY CONTINUING THE LOWEST COURT PROCEEDINGS ACTIVITIES GRANTING PLAINTIFF MOTION TO STRIKE FILED SEPTEMBER 30, 2021 IN RESPONSE TO DEFENDANT "MOTION TO VACATE, VOID JUDGMENT ENTRY OR ORDER FRAUD UPON THE COURT ***ORAL HEARING REQUESTED*** FILED SEPTEMBER 27, 2021. FURTHER, THE LOWER COURT(S) ERRORED ON TWO SEPARATE COUNTS AS A MATTER OF LAW INVOLVING THE OHIO RULES OF CIVIL PROCEDURE. FIRST, IN ITS MISINTERPRETING A 'MOTION' AND 'PLEADING' AS DEFINED IN RULE 7(A) AND SECOND IN ITS JUDGMENT ENTRY IN VIOLATION OF RULE 12(F) RESPECTIVELY.

FEDERAL CIRCUIT COURTS OF APPEALS MOTION TO STRIKE CASE ONE

At the outset, the court must address the fact that HBPS has not identified any procedural basis for its motion. The court assumes HBPS is proceeding under Federal Rules of Civil Procedure 12(f) "Motion to Strike." Rule 12(f) authorizes a court to strike certain specified types of matters "from any pleading":

> Upon motion made by a party before responding to a pleading, or if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon the party or upon the court's own initiative at anytime, the court may order stricken from a pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

FED. R. Civ. P. 12(f). Deposition errata sheets and supplementary reports, however, are not among the documents identified as "pleadings" in Rule 7(a) , which only enumerates pleadings

as "a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint . . . and a third-party answer. FED. R. Civ. P. 7(a).

Thus, a motion to strike is not the proper procedural device to object to an errata sheet and supplementary report. ***See Dawson v. City of Kent*****, 682 F. Supp. 920, 922 (N.D. Ohio 1988) (finding a motion to strike relates only to pleadings and is inapplicable to other filings);** ***Lombard v. MCI Telecom. Corp.*****, 12 F. Supp.2d 621, 625 (N.D. Ohio 1988) (refusing to strike exhibits to summary judgment motion, holding that Rule 12(f) provides no basis for doing so).** It is enough for the movant to make its objections known in a reply memorandum if one is permitted, in open court if a hearing is held, or otherwise. *See Lombard*, 12 F. Supp.2d at 625 (noting that a court may, at its discretion, disregard inadmissible evidence). It is enough for the movant to make its objections known in a reply memorandum if one is permitted, in open court if a hearing is held, or otherwise. See Lombard, 12 F. Supp.2d at 625 (noting that a court may, at its discretion, disregard inadmissible evidence).

PORTER v. HAMILTON BEACH/PROCTOR-SILEX, INC., No. 01-2970-MaV, (W.D. Tenn. Jul. 28, 2003)

Appreciating the first referenced case is resident to another state in the union, she articulates informatively and persuasively the nature of the Federal Rules of Civil Procedure as embraced throughout the United States Federal Circuit Courts of Appeals.

Beginning in paragraph one of the excerpt she assumes one of the two parties is seeking relief under Federal Rules of Civil Procedure 12(f) “Motion to Strike”, next offers insight to a portion of the rule itself whereby Rule 12(f) authorizes a court to strike certain specified types of matters “from any pleading”, then inserts the language as approved by Congress prior to its subsequent ratification.

Deposition errata sheets and supplementary reports, in her case specifically, “are not among the documents identified as ‘pleadings’ in Rule 7(a), which only enumerates pleadings as a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint . . . and a third-party answer.”

Her case while exclusive to a striking of a motion as was entered in the instant case and judgment entry being appealed with this honorable court, establishes the foundation for Defendant – Appellant requests as further validated in the cases which follow.

Prior to ruling, she adds citations from the United States Federal Circuit Court of Appeals for Ohio, Northern District with a quantity of two effective prior to her OPINION being issued, effective fifteen years earlier.

Reference one, *Dawson v. City of Kent*, 682 F. Supp. 920, 922 (N.D. Ohio 1988) found a "motion to strike relates only to pleadings and is inapplicable to other filings" and reference two, *Lombard v. MCI Telecom. Corp.*, 12 F. Supp.2d 621, 625 (N.D. Ohio 1988) refused to "strike exhibits to summary judgment motion, holding Rule 12(f) provides no basis for doing so".

FEDERAL CIRCUIT COURTS OF APPEALS MOTION TO STRIKE CASE TWO

MEMORANDUM OPINION AND ORDER

Before the Court is plaintiff's motion to strike (Doc. No. 68) the motion for judgment on the pleadings (Doc. No. 63 ["MJOP"]) filed by defendant Dr. Lowell Levine. Defendant Levine has filed a brief in opposition to the motion to strike. (Doc. No. 69.)

"Plaintiff moves to strike defendant's motion partly in reliance upon Fed. R. Civ. P. 12(f)(2). Defendant *properly* points out that this rule addresses the striking of matter from *pleadings* and defendant Levine's motion is not a "pleading" as defined by Fed. R. Civ. P. 7(1)."

Plaintiff argues, in reliance upon Fed. R. Civ. P. 12(c), that the MJOP was filed prematurely because the pleadings are not yet closed since numerous defendants have only filed motions to dismiss, not answers.

Prade v. City of Akron, CASE NO. 5:14CV188, (N.D. Ohio May. 8, 2015)

Building upon the preceding case citation one, *Porter v. Hamilton Beach/Proctor-Silex, Inc. No. 01-2970-MaV,* (W.D. Tenn. Jul. 28, 2003), twelve years later Honorable Sara Lioi formerly serving as trier of fact(s) for the Stark County Court of Common Pleas in advance of her appointment to the United States Federal Circuit Courts of Appeals found similarly.

Coordinating without specific citation to the two reference cases in support for *Porter,* she issues her OPINION regarding the applicability of Federal Rules of Civil Procedure, Rule 12(f) and endorses the Defendant reply to the Plaintiff attempting to utilize the rule improperly against a "Motion", noting "Defendant ***properly*** points out that this rule addresses the striking of matter from *pleadings* and defendant Levine's motion is not a "pleading" as defined by Fed. R. Civ. P. 7(1)."

Further delineating the applicability of Rule 12(f) she establishes the basis for her denial of the Plaintiff attempt in her case to petition the court for striking a "motion" as the rule only applies to "pleadings" as defined in Rule 7.

FEDERAL CIRCUIT COURTS OF APPEALS MOTION TO STRIKE CASE THREE

B. Motions to strike

The court will address this latter motion first. The parties have filed several "motions to strike." (Doc. 28, 50, 53, 54, 58, 73.)

A "motion to strike" applies only to "pleadings." Fed. R. Civ. P. 12(f); *see also* Fed. R. Civ. P. 7(a) (pleadings, such as complaint and answer to complaint). *See, e.g., Waltner v. United States*, 98 Fed.Cl. 737, 766 (Fed. Cl. 2011), *aff'd*, 679 F.3d 1329 (Fed. Cir. 2011) (other documents may not be attacked by motion to strike) (citing cases); *Fox v. Michigan State Police Dept.*, No. 04-2078, 2006 WL 456008, at *2 (6th Cir. Feb. 24, 2006) (not to exhibits attached to dispositive motion); *Pilgrim v. Trustees of Tufts College*, 118 F.3d 864, 868 (1st Cir. 1997) (not to briefings on dispositive motions); *Johnson v. Manitowoc Boom Trucks, Inc.*, 406 F.Supp.2d 852, 864 n.10 (M.D. Tenn. 2005), *aff'd*, 484 F.3d 426 (6th Cir. 2007); *VanDanacker v. Main Motor Sales Co.*, 109 F.Supp.2d 1045, 1047 (D. Minn. 2000).

Even where such a motion is proper under the Civil Rules, "courts view motions to strike with disfavor and rarely grant them." *Waltner*, 98 Fed.Cl. at 766; *see also BJC Health Sys. v. Columbia Cas. Co.*, 478 F.3d 908, 917 (8th Cir. 2007) ("extreme and disfavored measure"); *Boreri v. Fiat S.p.A.*, 763 F.2d 17, 23 (1st Cir. 1985) (disfavored) (citing cases).

Lautenschlager's motion (doc. 73) to strike Shell's motion to compel is improper, and is DENIED.

Shell v. Ohio Family Rights, Case No. 1:15CV1757, 4-5 (N.D. Ohio Aug. 29, 2016)

Case referenced herein also from the United States Federal Circuit Court of Appeals for Ohio, Northern District addresses the parties motions to strike requests presented her during the course of proceedings.

Defining the basis for her OPINION, she directly asserts a "motion to strike" applies only to "pleadings." Fed. R. Civ. P. 12(f); *see also* Fed. R. Civ. P. 7(a) (pleadings, such as complaint and answer to complaint). *See, e.g., Waltner v. United States*, 98 Fed.Cl. 737, 766 (Fed. Cl. 2011), *aff'd*, 679 F.3d 1329 (Fed. Cir. 2011) (other documents may not be attacked by motion to strike) (citing cases).

Following above initial citation she provides multiples of others from the United States Federal Circuit Courts of Appeals regarding motion to strike requests throughout the nation indicating “not to exhibits attached to dispositive motion” and “not to briefings on dispositive motions” among the four additional cases included.

In her next statement she comments regarding the sentiments among the various Courts of Appeals peers, “courts view motions to strike with disfavor and rarely grant them” referencing for a second time, *Waltner*, 98 Fed.Cl. at 766; adding two additional cases finding a proper motion to strike as “extreme and disfavored measure” and “disfavored”.

Motion to strike Plaintiff “motion to compel” in this case, she issues her OPINION closing with the request as “improper” as outlined above,and DENIED as a result.

CONCLUSION

Wherefore Defendant first provides Statement of the Case and Facts narrative establishing cause and proximate cause, next presents material fact information regarding the actions throughout case docket history made available to him with the copy of the Official Record and Transcript of Proceedings, and then cites case law specific to addressing the prior decisions by the Federal Circuit Courts of Appeals, State of Ohio Courts of Appeals and the appellate court validating his appeal request December 7, 2021 NOTICE OF APPEAL pursuant to his September 27, 2021 MOTION REQUEST TO VACATE, VOID JUDGMENT ENTRY OR ORDER FRAUD UPON THE COURT ***ORAL HEARING REQUESTED*** meeting the heightened standards for fraud per her prior findings in Advanced Prod. Ctr., Inc. v. Emco Maier Corp., 5th Dist. Delaware No. 2003CAE03020, 2003-Ohio-6206, ¶ 15 ("The circumstances constituting fraud include the time, place, and content of the false representation; the fact misrepresented; the identification of the individual giving the false representation; and the nature of what was obtained or given as a consequence of the fraud."), and documenting the law affirming his meeting the burden to set forth specific facts demonstrating a genuine issue of material fact does exist, he requests this honorable court remand, vacate or void the underlying case at the lower court level and order the conducting of evidentiary hearing(s) activities, dismissal of actions past and present, and the scheduling of a new trial series whereby the parties beloved underage children, Defendant – Appellant and Plaintiff – Appellee may be extended complete and full restitution from the parties alleged for their violations as outlined in this appeal.

With gratitude,

/s/ Sean M. Solon

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Third Party Plaintiff

CERTIFICATE OF SERVICE

A copy of the foregoing is being served on the _19th_ day of September, 2022, by electronic mail and/or by regular U.S. Mail, postage prepaid, upon the following:

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/s/ Sean M. Solon

Sean M. Solon
Defendant – Appellant (Self-represented)