

FILE NO

CV 11 768767

ASSIGNED JUDGE

Gubbin

Cruz, et al

VS *English Nancy & Guinness*

FILED

2015 OCT 30

CLERK OF COURTS
CUYAHOGA COUNTY

D
I
S
P
O
S
I
T
I
O
N

- | | | |
|--|--|--|
| <input type="checkbox"/> 02 REASSIGNED | <input type="checkbox"/> 81 JURY TRIAL | <input type="checkbox"/> 89 DIS. W/PREJ. |
| <input type="checkbox"/> 03 REINSTATED (C/A) | <input type="checkbox"/> 82 ADR DECREE | <input type="checkbox"/> 91 COGNOVITS |
| <input type="checkbox"/> 04 REINSTATED | <input type="checkbox"/> 83 COURT TRIAL | <input type="checkbox"/> 92 DEFAULT |
| <input type="checkbox"/> 20 MAGISTRATE | <input type="checkbox"/> 85 PRETRIAL | <input type="checkbox"/> 93 TRANS TO COURT |
| <input type="checkbox"/> 40 ADR | <input type="checkbox"/> 86 FOREIGN JUDGMENT | <input type="checkbox"/> 95 TRANS TO JUDGE |
| <input type="checkbox"/> 65 STAY | <input type="checkbox"/> 87 DIS. W/O PREJ | <input type="checkbox"/> 96 OTHER |
| <input type="checkbox"/> 69 SUBMITTED | <input type="checkbox"/> 88 BANKRUPTCY/APPEAL STAY | |

NO. JURORS

COURT REPORTER

START DATE

CV11768767

91535533

END DATE



PARTIAL

FINAL

POST CARD

DATE ____/____/____ (NUNC PRO TUNC ENTRY AS OF & FOR ____/____/____)

CLERK OF COURTS

*Rulings on Motion for Sanctions
& Motion for Prejudgment
Interest.*

(duplicate)

O.S.T.

JUDGE

JOURNAL

CIVIL CASE STATUS FORM

Court of Common Pleas, Cuyahoga County

FILED

Christina Cruz, et. al.

Plaintiffs

v.

English Nanny and Governess School, Inc.

et. al.

Defendants

2015 OCT 30 A 0:19

CLERK OF COURTS
CUYAHOGA COUNTY

Case Number CV-11-768767

Judge Burt W. Griffin

Rulings on Motion for Sanctions
and Motion for Prejudgment Interest

On August 17, 2015, the Court ruled in part on Defendants' motion for sanctions and scheduled an evidentiary hearing for September 14, 2015. The Court set a hearing for the same date on Plaintiffs' motion for prejudgment interest. The hearing was held on that date. Testimony, documents, and oral arguments were received.

The motion for sanctions alleged that plaintiffs' counsel violated R.C. Section 2323.51 by causing an article defaming defendants to be published in *Scene* magazine on the day evidence was to begin in the jury trial in this case. Defendants seek attorneys fees for a voir dire hearing of jurors to determine the impact of the article on the jurors and attorneys fees for pursuing the motion for sanctions.

Plaintiffs' motion for prejudgment interest is based on the claim that defendants failed to engage in good faith settlement negotiation both before and after publication of the *Scene* article.

Findings of Fact. Plaintiffs' counsel, Peter Pattakos, was retained by plaintiffs in September 2011. The Complaint in this case was filed in 2011. At that time, Mr. Pattakos was an occasional contributor of articles to *Scene* and was a friend of its present editor-in-chief,

Vincent Grzegorek, since 2009.

Scene is a newspaper about activities in the Cleveland area. It is printed on paper and published on-line. Its paper edition is distributed without charge in a basement coffee shop of the Lakeside Court House building in which the jury trial in this case was held. It is the only coffee shop in the building. Jurors, the general public, and court personnel use the coffee shop. *Scene's* on-line edition is also available to readers without charge. After its first publication of an article, the on-line edition often contains readers' comments.

At some time after the Complaint in this case was filed, Mr. Pattakos told Mr. Grzegorek about the dispute. He suggested that it might be a matter about which *Scene* would publish an article. Mr. Grzegorek concurred. Mr. Pattakos sent to Mr. Grzegorek copies of the Complaint, briefs in opposition to defendants' motion for summary judgment, and affidavits in connection with the opposition. Mr. Pattakos asked that no article about the dispute be published so long as settlement negotiations were pending. Mr. Grzegorek honored that request.

In February 2012, defendants were represented by John McLandrich, counsel retained by their insurance carrier. Mr. Pattakos made a demand of \$125,000 to settle all claims of both Ms. Cruz and Mrs. Kaiser. On February 24, 2012, Mr. McLandrich responded: "The carrier is not going to make an offer at this time. They are interested in a ruling on the pending motion and some initial discovery to understand the matter better . . ."

In 2013, plaintiffs increased their settlement demand to \$250,000-\$125,000 for Ms. Cruz and \$125,000 for Mrs. Kaiser. Defendants again made no offer of settlement. Later the joint demand was increased to \$750,000. Defendants once more made no offer.

On October 30, 2013, Judge Brian Corrigan granted defendants' motion for summary

judgment in part. The ruling denied Ms. Cruz's claims for defamation and intentional infliction of serious emotional distress but allowed her claim for breach of contract and Mrs. Kaiser's claim for wrongful discharge to remain.

Ms. Cruz then moved for reconsideration of the granting of defendants' motion for summary judgment. On reconsideration, Judge Corrigan reversed his denial of Ms. Cruz's claim for intentional infliction of serious emotional distress. Plaintiffs, in January 2014, then reduced their demand to \$424,000. Defendants again made no offer. Various pretrial conferences were held but no progress was made in settlement negotiations. Trial was set for January 20, 2015, before this judge—a visiting judge.

On January 7, 2015, at 4:58 p.m., Mr. Grzegorek sent the following E-mail to Mr. Pattakos: “ ? *where are you I miss you jesus it's been too long*”. Four minutes later Mr. Pattakos responded: “*Hey buddy, miss you too. Nanny trial starts two weeks from yesterday. I'm underwater until then or unless by some miracle it settles before that*”. Mr. Grzegorek then wrote: “*what? finally? it's happening?*”. To which Mr. Pattakos responded: “*January 20. Get your reporting pants on. Or at least tell one of your reporters to get his reporting pants on. It's not getting put off this time.*”

In fact, the trial was rescheduled to Monday, March 30. On that day settlement negotiations resumed. Plaintiffs' lowest demand was \$250,000. Defendants offered \$20,000 to Mrs. Kaiser. With respect to Ms. Cruz, defendants offered to dismiss their counter-claim for damages based on Ms. Cruz's failure to fully pay for attending the English Nanny and Governess School if Ms. Cruz would dismiss her claim for breach of a placement agreement with English Nannies and Governesses, Inc. and her claim for intentional infliction of serious emotional

distress.

Neither side would move further. Mrs. Kaiser and Ms. Cruz were negotiating as a team. Ms. Cruz found defendants' offer unacceptable. Ms. Cruz believed she would receive substantial compensation for lost wages, for emotional damages, for punitive damages, and perhaps for attorneys' fees. She and her lawyer believed a jury would easily find that Mrs. Roth and Mr. Gaylord were lying in claiming that they did not try to discredit her and that they did not attempt to discourage her from reporting child sex abuse by one of the Nanny organizations' clients.

Defendants, of course, denied that they lied or engaged in any of the alleged misconduct. Defendants also believed that the emotional suffering of Ms. Cruz was not serious, that their alleged conduct did not legally constitute intentional or reckless infliction of serious emotional distress, that legally one of the corporate defendants had not breached the placement agreement, and that, even if that agreement was breached, Ms. Cruz had not proved the amount of her damages. Defense counsel repeatedly stated his belief that after plaintiffs presented their case, the court would enter a directed verdict for defendants on Ms. Cruz's claims for intentional infliction of serious emotional distress and breach of contract.

The court then proceeded with the jury selection process. On Monday, March 30, 2015 at 9:35 p.m., Mr. Pattokos sent the following message to Mr. Grzegorek electronically: "*Opening statements will be probably be right after lunch tomorrow. Old Courthouse at One Lakeside Avenue, court room 3B. I will be cross-examining Sheilagh Roth right after. Should be action packed.*" Mr. Pattakos's prediction was inaccurate. Jury selection proceeded on Tuesday and Wednesday.

On Tuesday, March 31, 2015, *Scene*, without talking to defense counsel, published an article in its print edition which was available at the court house coffee shop and on-line. The article stated in pertinent part:

A Chagrin Falls “nanny school” that trains nannies before placing them with rich families is in court this week, three and a half years after a former student and former employee filed a lawsuit, saying the school’s owners retaliated after the student reported she saw a wealthy client sexually abuse his daughter in 2011.

The English Nanny and Governess School and owners Bradford Gaylord and Sheilagh Roth are accused of trying to suppress a report made by Christina Cruz, an ENGS student, who witnessed a wealthy Philadelphia area businessman sexually abuse his 9 year old daughter while she was on a three day “extended interview” with the family following her completion of the school’s three month program. Gaylord and Roth urged Cruz not to say anything—emphasizing that reporting child abuse “can ruin lives” and that “her career prospects would suffer if she made the report, including by communicating that her access to job opportunities through their placement service would be contingent on whether she made the report or not,” Cruz’s lawyers say. They were worried about losing business of “high-caliber clientele” and the public image of the school if she went through with it.

“What’s this mess”, Roth is accused of saying to Cruz. “You’re not going to be reporting to anybody, you’re not a professional, you’re not going to report our client.”

After Cruz made the report, which she was likely to have been required to make by state law and the school’s own teachings and policy, Gaylord and Roth are accused of engaging in a smear campaign to discredit her and limit her job prospects by saying that she was mentally “unstable” because she previously saw a therapist and her parents had divorced and remarried.

* * *

A Chester County (PA) detective—a witness for the plaintiffs—wrote an affidavit saying he did not find anything in his investigation that was “inconsistent” with what Cruz reported. He also stated there

was a previous complaint of child abuse against the man based on a cell phone video taken by the youngest daughter of him in bed with his naked older daughter.

Because of Cruz's report and subsequent investigation by the detective and the Chester County Office of Children and Family Services, the two children were removed from his custody, and the case remains open.

Cruz's statement of what she saw the Philadelphia client do was reported as true even though the defendants believed they had reason to doubt Ms. Cruz. The article did not report the reasons for defendants' disbelief.

The Pennsylvania detective was not expected by plaintiffs' counsel to testify and did not testify at trial. His statements came from an affidavit provided to *Scene* by Mr. Pattakos. No evidence was presented at trial concerning the removal of the child from the father's custody. At trial the defendants denied all of the allegations that were made against them in the *Scene* article.

Mr. Pattakos did not report the article to the Court. On Thursday morning, April 2, after the jury had been empaneled but before opening statements were given, defense counsel brought the article to the Court's attention. Mr. Pattakos denied that he had encouraged the article's publication and said that he had tried to discourage it. Subsequent testimony satisfies the Court that he did discourage publication prior to March 30 but that on March 30 he actively encouraged *Scene* coverage. There is no evidence that Mr. Pattakos saw the article before it was published.

In the period from March 31 to April 3, eleven on-line comments about the nanny school appeared in connection with the article. Nine were critical of the quality of the school or the integrity of its owners.

Upon learning of the article on April 2, the Court conducted an individual *voire dire* of

each juror. Two had seen the *Scene* article. They said they had read only the headline but, abiding by the Court's prior instruction, had not read the article. They said that they would not be influenced by it. The trial then proceeded.

On Monday, April 6, Mr. Pattakos did not appear for trial. He had been hospitalized over the weekend with a severe illness. Because Mr. Pattakos had primary responsibility for the trial and it was not possible to predict his availability, the Court declared a mistrial and set a new trial date of May 11 before a new jury.

On that date Mr. Pattakos offered to settle the case for \$90,000. Defendants declined to make any settlement offer. They stated their anger over the *Scene* article and on-line comments. Their lawyer indicated that the article made it essential that his clients be vindicated by a jury. A new jury was selected and the trial proceeded through June 17 with verdicts for both plaintiffs of compensatory and punitive damages totaling \$392,750 plus attorney's fees.

The Court has subsequently reduced the net amount of the judgment to \$194,066.76. Attorneys' fees have been added to that number in the amount of \$125,504.45, making \$319,571.16 the total amount awarded to plaintiffs.

Plaintiffs' Motion for Prejudgment Interest. For that judgment, plaintiffs seek prejudgment interest pursuant to R.C. Section 1343.03. Section 1343.03 provides in pertinent part:

(C) If, upon motion of any party to a civil action that is based on tortious conduct, that has not been settled by agreement of the parties, and in which the court has rendered a judgment, decree, or order for the payment of money, the court determines at a hearing held subsequent to the verdict or decision in the action that the

party required to pay the money failed to make a good faith effort to settle the case and that the party to whom the money is to be paid did not fail to make a good faith effort to settle the case, interest on the judgment, decree, or order shall be computed as follows:

- * * * *
- (ii) From the date on which the party to whom the money is to be paid filed the pleading on which the judgment, decree, or order was based to the date on which the judgment, decree, or order was rendered.

Relevant to whether either party made a good faith effort to settle the case are the strengths and weaknesses of their respective positions, their honest and objective perceptive perspectives on those strengths and weaknesses, the interests of the parties, and their negotiating history.

Defendants did not “fail to make a good faith effort to settle the case.” There were two plaintiffs in this case—each with distinctly different claims. Christina Cruz sought damages for emotional distress and lost income based on a claim of intentional or reckless infliction of serious emotional distress and a claim for breach of a placement agreement. Heidi Kaiser sought lost wages because of alleged wrongful discharge from her employment.

Defendants made a substantial offer to Mrs. Kaiser which fairly reflected the amount of compensatory damages to which she would be entitled if a verdict was returned in her favor. Indeed, the jury awarded such amount. Mrs. Kaiser rejected that offer—presumably because she choose to go to trial so long as substantial monetary compensation was not paid to Ms. Cruz.

The claims of Ms. Cruz were based on uncertain legal foundations. Judge Brian Corrigan had at one time denied the claim for intentional or reckless infliction of serious emotional distress. Even accepting the facts as alleged by Ms. Cruz, defendants believed—with reasonable

justification—that the emotional injury that she claimed was not sufficiently debilitating to be “serious emotional distress”. Defendants believed that the jury should be instructed according to a standard that would incorporate their view of the law. It was a reasonable interpretation of the law and a reasonable request. The Court rejected that view and instructed differently. There was a reasonable probability that if the defendants’ instruction had been given, the jury would have entered a verdict for defendants on the claim of intentional infliction of serious emotional distress. Although the Court disagrees with defendants’ view of the law, the Court recognizes that the defendants have a reasonably arguable position.

With respect to Ms. Cruz’s claim for lost income because of defendant’s breach of contract, the Court agreed and instructed the jury that it could award only nominal damages if it found for Ms. Cruz on her breach of contract claim. It was reasonable; therefore, for defendants to make no offer of settlement on that claim.

It was also reasonable for defendants to withdraw all offers of settlement after the *Scene* article was published. One incentive for defendants to settle had been to avoid adverse publicity. Mr. Pattakos knew that any article published by *Scene* was likely to discredit the defendants. By urging *Scene* to publish an article before the trial was concluded, Mr. Pattakos took action to remove that incentive for defendants to offer money to Ms. Cruz. Defendants’ failure to make such an offer to settle after the *Scene* article was published was not “fail[ing] to make a good faith effort to settle.”

Indeed, Mr. Pattakos’s seeking news media publicity once the jury was empaneled was, itself, a decision to abandon the settlement process. A primary reason for defendants to settle with both plaintiffs was to avoid adverse publicity that would come with a trial. Mr. Pattakos’s

decision to seek news media coverage once the jury was empaneled removed that incentive for the defendants to settle.

Mr. Pattakos offered to settle the case for \$90,000 after the news article was published. He, thus, continued to negotiate in good faith. He argues that the defendants' withdrawal of any offers of settlement at that point was a failure to negotiate in good faith.

The news paper article, however, increased the need for the defendants to redeem their reputations and, thus, to secure a jury verdict in their favor. Since the defendants had reasonable defenses to the claims of plaintiffs, it was reasonable for defendants to seek a favorable jury verdict provided a good faith, objective evaluation of their case could lead them to reasonably conclude that a favorable verdict might occur.

Mr. Pattakos has argued that Mrs. Roth and Mr. Gaylord did not have a reasonable, objective good faith evaluation of their case since they were lying in their proposed testimony, the jury concluded they were lying, and such lying renders it impossible for a court to conclude that they were negotiating in good faith.

Whether or not a witness is lying is not the same as whether a jury believes one witness or not. It certainly seems that the jury did not believe Mrs. Roth and Mr. Gaylord. They probably believed that Mrs. Roth and Mr. Gaylord were deliberately untruthful.

However, juries can be wrong. For a court to conclude, with respect to a determination of lack of good faith, that a witness is lying and, thus, not acting in good faith, there must be more than contradictory oral testimony, demeanor evidence, or a particular tone of voice. Sometimes there is physical evidence, a photograph, or a recording that clearly demonstrates the untruth. No such probative evidence exists.

In this case, the conflict was related to the precise words that were used at particular times. No recordings were made of those words. No writings were made. The words that were remembered by the witnesses were spoken at times when emotions were high on the part of all participants. Based on the evidence, the Court can not conclude with satisfactory certainty that Mr. Gaylord or Mrs. Roth was lying.

Accordingly, since defendants ultimately had a reasonable, good faith basis for seeking vindication from a jury, plaintiffs' motion for prejudgment interest is denied.

Defendants' Motion for Sanctions. Defendants have moved, pursuant to R.C. Section 2323.51, for sanctions against plaintiffs' attorney, Peter Pattakos,¹ because of his "involvement in the publication of an inflammatory article related to this case" and his "misrepresentation to the Court regarding the factual circumstances surrounding publication of the inflammatory article."

Section 2323.51 provides in pertinent part with respect to "the taking of any . . . action in connection with a civil action":

. . . . any party affected by frivolous conduct may file a motion for award of court costs, reasonable attorney's fees, and other reasonable expenses incurred in connection with a civil action . . . The court may assess and make an award to any party to the civil action . . . who was adversely affected by the frivolous conduct.

Under Section 2323.51(A)(1)(a), "Frivolous conduct" is defined to include "*[Conduct that] obviously serves merely to harass or maliciously injure another party to a civil action . . . or*

¹The Court previously denied the motion for sanctions as it related to James Rosenthal, Joshua Cohen, and the law firm of Cohen, Rosenthal, and Kramer, LLP.

is for another improper purpose, including, but not limited to, causing unnecessary delay or a heedless increase in the cost of litigation.

One dictionary definition of "Harass" is to "trouble" or "torment".² To "maliciously injure" has been defined as injuring with "active ill will" or "intentionally".³

Mr. Pattakos's involvement in publication of the *Scene* article was a malicious attempt to injure and was intended to "harass" each of the defendants. Mr. Pattakos had a purpose to defame defendants when he instructed Mr. Grzegorek on January 20 "Get your reporting pants on. Or at least tell one of your reporters to get his reporting pants on" and on March 30, 2015 notifying *Scene* that the trial was about to begin. He had abandoned hope of settlement.

Mr. Pattakos had previously supplied to *Scene* all of the information that it ultimately published. Although Mr. Pattakos did not write the article, he knew that the thrust of any reporting was likely to be to discredit the defendants and that, if believed by members of the public, the reporting would "injure" them. Urging *Scene* to begin coverage constituted initiating harassment.

Although Mr. Pattakos may have hoped that *Scene* would have a reporter at the trial, he knew that *Scene* did not have a reporter in daily attendance at the court house and that it did not publish daily. He should have expected that materials provided by him to *Scene*, rather than the attendance by a reporter at trial, might form the foundation of any article.

Simply taking actions which harasses or maliciously injures a party is insufficient, however, to violate R.C. 2323.51. Almost any action by an opponent in the context of litigation

²*Webster's New World Dictionary of the American Language* (1978)

³*Ibid.*

harasses or injures the opposition party. Under R.C. 2323.51, the action must “merely” be to harass or maliciously injure the party.

“Merely” has been defined as “only” or “no more than”.⁴ “No more than” is the more appropriate concept in the context of R.C. 2323.51. While a law suit may have multiple purposes for the parties, the purpose of litigation is the orderly and fair resolution of disputes. “Merely”, in the context of R.C.2323.51, requires the court to consider whether or not the lawyer’s actions served to advance the interests of a fair and orderly trial or resolution of the dispute.

Mr. Pattakos argues that he had a valid public purpose in urging *Scene* to “Put your reporter’s pants on”. That valid purpose was to generate news coverage that would inform the public about the need to report child abuse.

The Court does not doubt that the *Scene* article served that purpose and that Mr. Pattakos had that purpose. It is clear, however, that public education about reporting child abuse was a quite secondary purpose of Mr. Pattakos and that news coverage of the trial was not necessary to producing a fair and orderly resolution of the court case.

Mr. Pattakos admits that he discouraged *Scene* from reporting the dispute so long as he believed a possibility of settlement existed. Indeed, had Mr. Pattakos’s clients settled the dispute prior to trial, there probably would have been no article. A condition of any settlement would undoubtedly have been confidentiality. Perhaps even a statement of exculpation would have been exacted as a price for settlement. If the plaintiffs had accepted a monetary settlement that required confidentiality, Mr. Pattakos’s obligation to his clients would have required him to

⁴Ibid.

use his best efforts to prevent publication of the allegations contained in the *Scene*. In deed, publication might have invalidated the settlement.

Moreover, if publication education about reporting child abuse was a predominant purpose of seeking news media coverage, Mr. Pattakos's more effective approach would have been to seek coverage when his clients achieved victory at trial.⁵ The Court can only conclude, in the context of R.C. 2323.51, that the sole purpose of Mr. Pattakos in urging *Scene* on March 30 to begin coverage once the trial began was to harass or maliciously injure the defendants outside of the litigation process—that soliciting news media coverage once trial began served no purpose of achieving an orderly or fair adjudicative process or settlement. Thus, the actions of Mr. Pattakos in urging *Scene* to begin news coverage during the course of trial constituted “frivolous conduct” under R.C. 2323.51.

In mitigation of his conduct and in arguing that his conduct was not frivolous, Mr. Pattakos refers the court to Rule 3.6 of the Code of Professional Conduct. Rule 3.6 provides in pertinent part:

(a) A lawyer who is participating or has participated in the investigation or litigations of a matter shall not make an extrajudicial statement that a lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

(b) Notwithstanding division (a) of this rule and if permitted by Rule 1.6, a lawyer may state any of the following:

- (1) the claim, offense, or defense involved and, except when prohibited by law, the identity of the persons involved;*
- (2) the information contained in a public record;*

⁵In fact, Mr. Pattakos did secure coverage in *Scene* of his client's victory.

- (3) that an investigation in a matter is in progress;
- (4) the scheduling or result of any step in litigation;

Mr. Pattakos argues that all information that he provided to *Scene* was either in a public record or simply involved scheduling. Mr. Pattakos may be correct. For the purposes of this motion for sanctions, the Court accepts his claim. However, Rule 3.6 does not address the questions of how and when a lawyer may encourage publication of information protected by Rule 3.6(b) without violating the prohibition against frivolous conduct in R.C. 2323.51.

Mr. Pattakos had a primary obligation, as an officer of the Court, to avoid taking actions which raised a substantial risk of prejudicing a jury or requiring the Court to take special actions to prevent prejudice because of matters occurring outside of the court room. As an officer of the court, he was obliged to make reasonable efforts to minimize the likelihood that communications to the media would prejudice a jury.

While the information communicated to *Scene* by Mr. Pattakos may well have been protected by Rule 3.6(b), his urging that reporting begin once the jury was selected raised a substantial likelihood that the jury would read about his clients claims. Although there is no evidence that Mr. Pattakos knew when an article would be published, what it would contain, or that particular adverse comments about the defendants would be generated, he did know what information he had already provided to *Scene*. Thus, he knowingly put in motion both the news media process and the information contained in the article. If one lights a fire in a forest that starts a forest fire, he is responsible for the forest fire even if he did not intend it.

If the article had been read and retained by one or more jurors, the jury would have had a summary of plaintiffs' opening and closing arguments, evidence favorable to plaintiffs that had

not been introduced at trial, and—perhaps—on line comments critical of defendants’ integrity from unnamed individuals who claimed to know them. The article, which contained none of defendants’ defenses, was inconsistent with a fair adjudicative process.

Defense counsel—not Mr. Pattakos—brought the article to the Court’s attention. Mr. Pattakos stated to the court only that he had previously discouraged publication. Only after a hearing on the motion for sanctions did the Court learn that Mr. Pattakos had taken actions which clearly caused the article to be published after the jury had been impaneled.⁶ Mr. Pattakos, thus, initially did not accurately disclose to the Court his role in producing the *Scene* article.

Mr. Pattakos might have, but did not, give the Court advance notice that he had engaged in conversations with *Scene* that might produce an article which could prejudice the jury. In failing to take preventive actions or to warn the Court of a likely prejudicial publication, Mr. Pattakos forgot his primary obligation as an officer of the court to protect the integrity of the adjudicative process and to avoid communicating with the news media in a way that might impair that integrity. He engaged in frivolous conduct in violation of R.C. 2323.51.

In making these observations, the Court passes no judgment on whether Mr. Pattakos has violated Rule 3.6 or any other rule of professional conduct. The Court urges Mr. Pattakos and his lawyers to seek guidance from the Board of Commissioners on Grievances and Discipline as to whether the conduct which has been the subject of this motion for sanctions has violated the

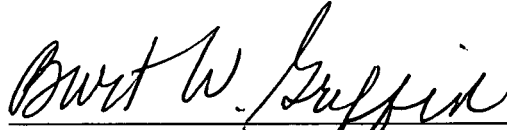
⁶The Court reiterates that there is no evidence that Mr. Pattakos knew that the article would be published on March 31, saw the article before it was published or that he had precise prior knowledge of its content.

Code of Professional Conduct.⁷

Defendants' motion for sanctions is granted.

Mr. Pattakos shall pay to defendants reasonable attorneys' fees for the voir dire examination of jurors on April 2, 2015 and pursuing this motion for sanctions. By October 15, 2015, defendants shall file their statement for attorneys' fees. Plaintiffs shall respond by October 22, 2015.

Hearing on attorneys' fees is set for October 26, 2015 at 9:00 a.m.


Burt W. Griffin, Common Pleas Judge
October 6, 2015

Notice of Service

A copy of this ruling was sent via E-mail to Mr. Peter Pattakos, Peter.Pattakos@chandralaw.com; Subodh Chandra, subodh.chandra@chandralaw.com; William D. Edwards, wdedwards@ulmer.com and Cory Thrush, cthrush@ulmer.com. this 6th day of October 2015.

⁷The Court notes that counsel for Mr. Pattakos detailed in oral argument that seeking media coverage is a common practice in connection with its field of specialization. For that reason the Court recommends that it seek advice from the Board of Commissioners on Grievances and Discipline.