

IN THE SUPREME COURT OF OHIO

**THE STATE OF OHIO, ex rel.
FAITH ANDREWS, CLERK OF
COURTS FOR LAKE COUNTY, OHIO**

CASE NO. 2022-0409

Relator,

ORIGINAL ACTION

v.

**THE COURT OF COMMON PLEAS
OF LAKE COUNTY, OHIO, et al.**

Respondents

**RESPONDENTS' RESPONSE TO
MOTION FOR PROTECTIVE ORDER**

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Clerk*

Introduction

Respondent Judges agree with Relator that a detailed invoice for services rendered by an attorney, which is likely to include a description of attorney-client communications, is exempt from disclosure under the Ohio Public Records Act. Further, the Judges have no interest in claiming Relator has waived the attorney-client privilege by disclosing those communications to a third party. Despite Relator's apparent suspicions, neither Respondent Judges nor their counsel played any part in obtaining Porter Wright's first invoice for services or releasing it to the media and would have no objection to a Protective Order, if this Court views it as necessary, with respect to future invoices.

Respondents do not, however, agree that an order restraining communication with media representatives is necessary or appropriate. The judges and their counsel are familiar with the ethical boundaries of Rule 3.6 of the Rules of Professional Responsibility and Rule 2.10 of the Ohio Code of Judicial Conduct. They have not made, and will not make, any public statement in violation of those rules. Requesting the Ohio Supreme Court to order parties or their counsel to comply with their ethical duties, especially in the absence of any past improper statement, is a waste of judicial resources and public funds.¹

I. It is entirely within the control of Relator and her counsel to avoid disclosure of privileged communications in the future.

Relator seeks an order from this Court "prohibiting the public disclosure of the narrative portions of the undersigned counsel's future invoices for legal services... and confirming the Relator has not waived her privilege with respect to those portions." (Relator's Motion for Protective Order, "Motion," p. 10). Although Respondents do not object to a protective order and immediately advised counsel for Relator of this position

¹ Counsel for Relator are being paid by Lake County, and counsel for Respondents are being paid by the State of Ohio.

upon receiving the Motion, such a ruling is unnecessary, because the past disclosure of counsel's invoices could have been avoided, and future disclosures can likewise be prevented without the necessity of motion practice or an order from the Court.

When Porter Wright Morris & Arthur was employed by Lake County to represent Faith Andrews, three attorneys from the Lake County Prosecutor's Office, Chief Assistant Prosecutor David Hackman, Assistant Prosecutor Kelly Echols, and Assistant Prosecutor Michael DeLeone, contacted Edmund Searby and Kevin Kelley of Porter Wright to discuss the firms' proposed engagement letter (Affidavit of David J. Hackman ¶¶ 4-5). During that call, Hackman advised that the engagement letter should be sent to Ms. Andrews, because she is Porter Wright's client. Id. at ¶ 6. Searby then raised the subject of invoicing for legal services, and Hackman advised Searby to direct any invoice to Lake County Administrator Jason W. Boyd. Id. at ¶7. DeLeone told Searby and Kelley that neither the Commissioners nor the Prosecutor's Office wanted to see any attorney-client privileged communication and that generally an invoice for services rendered is a public record. Hackman suggested that Searby redact any privileged information from Porter Wright's invoices prior to submitting it to the County Administrator. (Id. at ¶ 8; Affidavit of Michael L. DeLeone ¶ 4). Searby stated he would submit "sanitized" invoices to the County to protect the attorney-client privilege and ensure that they were delivered to Lake County Administrator Boyd at the Commissioners' Office. (Hackman Aff. ¶¶9-10; DeLeone Aff. ¶ 5).

Approximately two weeks after that conversation, DeLeone learned that Relator had hand-delivered the Porter Wright invoice to Boyd's office. DeLeone then learned that the Commissioners' office had produced the invoice in response to a public records request from the media. That information did not raise and red flags for DeLeone because

Searby had stated his intention to redact or “sanitize” the firm’s invoices before submitting them for payment (DeLeone Aff. ¶¶ 7-8). On May 12, 2022, Channel 3 News aired a story about the above-captioned matter and discussed the bill it had obtained from the Commissioners’ Office (Affidavit of Kelly Echols, ¶ 11 and Motion, p. 5, note 3).

The next day, Searby (with Kevin Kelley present) placed an angry call to the Prosecutor’s Office about the County’s release of Porter Wright’s invoice as a public record and insinuated that the invoice had been “leaked” by someone at the Prosecutor’s Office and/or the Respondent Judges to the local news (Echols Aff. ¶¶ 12-13; Hackman Aff. ¶¶ 11-14; DeLeone Aff. ¶8). Searby sounded upset, saying he had never seen such “dirty pool” and that the invoices should not have been provided to the media. *Id.* In response, Hackman stated he did not appreciate the accusation; that his office had had no contact with the news outlet that aired the story; and reminded Searby of his assurance that no attorney-client privileged communication would be included in Porter Wright’s monthly invoices submitted to the Commissioners, as the Commissioners are not the firm’s client (Hackman Aff. ¶¶12-14; DeLeone Aff. 8-10; Echols Aff. ¶15). Neither Searby nor Kelley commented on or responded to that reminder (DeLeone Aff. ¶9).

Counsel then discussed whether the invoice was a public record and how this type of situation could be avoided in the future. Hackman said Searby should do what he stated he would do during their April 14, 2022, call and provide only redacted invoices to the County Administrator. Hackman and DeLeone stated their belief that once the invoice was submitted to the Commissioners’ Office (which is not Porter Wrights’ client), it became a public record subject to production under R.C. 149.43, and that, in the absence of a court order, the Prosecutor’s Office could not prevent the release of such a record (Hackman Aff. ¶ 15; Echols Aff. ¶ 16). The phone call concluded with Searby and Kelley

complimenting Hackman, Echols, and DeLeone on their handling of the matter (Echols Aff. ¶ 17; DeLeone Aff. ¶ 10).

Despite these conversations and the readily apparent fact that the submission of an unredacted invoice was the result of an error committed by Relator or her counsel or both, Relator now seeks to place the blame elsewhere. Relator makes unfounded accusations about the Prosecutor's Office, the Respondent Judges, and their counsel, instead of acknowledging the error and ensuring, by her own conduct, that her privileged communications are not disclosed to third parties.

The Respondent Judges, as the parties sued by Ms. Andrews, obviously played no role in the manner in which invoices were to be submitted or were actually submitted to the County. And neither Respondents nor their counsel had any involvement in responding to the public records request to the County or in providing the invoice to the media. Relator's unfounded accusations, built upon suspicion and nothing more, are unprofessional and unwarranted ("Ms. Andrews is concerned that the above-described publication of her counsel's bill, including the privileged entries, is part of a continuing pattern of using the media against Ms. Andrews" (Motion, p. 7)). At no time did counsel for Relator contact Respondents' counsel about this concern or ask whether Respondents had any information about the release. The first notice Respondents received of these accusations was when the Motion for Protective Order was filed.

Upon reviewing the Motion for Protective Order, counsel for Respondents contacted Relator's counsel, advising that Respondents and their counsel had nothing to do with release of the invoice to the media; that the invoice should have been redacted; and that they would not object to measures taken to protect privileged communications in the future.

Although the Respondents have no part to play in Porter Wright’s method of submitting future invoices to the County or whether the County would have an obligation to redact privileged portions of any unredacted invoices it receives, Respondents do not oppose the proposed protective order. They do, however, submit that the solution to Relator’s apparent dilemma is simple and could easily be accomplished without further briefing or an order from this Court. This Court has held that privileged portions of an invoice submitted to a public agency client, while litigation is pending, may be redacted prior to disclosure pursuant to a public records request pursuant to R.C. 149.43(A)(1)(v). *State ex rel. Pietrangelo v. Avon Lake*, 146 Ohio St. 3d 292, 2016-Ohio-2974 (citing *State ex rel. Dawson v. Bloom-Carroll Local School Dist.*, 131 Ohio St. 3d 10, 2011-Ohio-6009 ¶ 28-29; distinguishing *State ex rel. Anderson v. Vermilion*, 134 Ohio St. 3d 120, 2012-Ohio-5320) (Relator requested invoices from City for legal services rendered to City in a pending action. City properly redacted privileged narrative portions and dates, hours, and rates of legal services).

Here the facts are different. Relator, as the holder of the privilege, gave her detailed copy of the invoice, which Relator argues includes narrative portions protected by the attorney-client privilege, to a third party—the County—for purposes of payment (Echols Aff. ¶ 10). The County Administrator/Commissioners’ Office is not Porter Wright’s client and was not in a position to know whether the submitted invoice had been “sanitized,” and if not, what should be removed in order to protect the privileged communication that was not redacted by Relator or her counsel. Further, Relator has not suggested that the County insisted on receiving an unredacted invoice, complete with narrative portions that included privileged communication, before issuing payment. To the contrary, the evidence shows legal counsel for the County (the Lake County Prosecutor’s Office) agreed

that Porter Wright should submit *only* a redacted invoice to the County Administrator for payment.² If Relator instructs her counsel to take those agreed-upon steps prior to submitting an invoice for payment, and if Relator refrains from disclosing her own unredacted copy of the invoice to any third parties, a court order is not needed.

II. An order prohibiting Respondents and their counsel from making “prejudicial extrajudicial statements” is not warranted.

A gag order is a prior restraint on speech that implicates First Amendment rights and is subject to a heavy presumption against its constitutional validity. *See State ex rel. Toledo Blade v. Henry County Court of Common Pleas*, 125 Ohio St.3d 149, 2010-Ohio-1533, citing *FW/PBS, Inc. v. Dallas*, 493 U.S. 215, 225, 110 S.Ct. 596, 107 L.Ed.2d 603 (1990); *Seven Hills*, 76 Ohio St.3d at 307, 667 N.E.2d 942. This is because “prior restraints on speech and publication are the most serious and least tolerable infringement on First Amendment rights.” *Id.*, citing *Tory v. Cochran* (2005), 544 U.S. 734, 738, 125 S.Ct. 2108, 161 L.Ed.2d 1042 (2005). The cases cited by Relator do not support such prior restraint in this instance, where the dispute involves public officials and court operations.

In re T.R., 52 Ohio St. 3d 6, 556 N.E.2d 439 (1990), cited by Relator, involved a gag order issued in juvenile court proceedings. This Court noted that “Juvenile Courts differ significantly from courts of general jurisdiction. The mission of the juvenile court is to act as insurer of the welfare of children and provider of social and rehabilitative services.” 52 Ohio St. 3d at 15, citing R.C. 2151.01. The court also noted that Juvenile court records are confidential. citing Juv. R. 37(B); see, also, Juv. R. 32(B) (mental and physical examinations of children pursuant to court order may not be used for other

² Assistant Prosecutor Kelly Echols testified that Relator’s representation that her counsel received assurances that Porter Wright’s invoices “would be treated appropriately and confidentially” is not accurate. To the contract, it was explicitly agreed that Porter Wright would redact any privileged information from their invoices provided to the Commissioners. (Echols Aff. ¶¶19-20).

purposes); R.C. 2151.18(B) and (C) (those juvenile court records which are open to the public shall not include the identity of any party to a case); R.C. 5153.17 (records of investigations by public children's services agencies on abused, neglected, and dependent children are confidential); *Gault, supra*, at 25 ("there is no reason why, consistently with due process, a State cannot continue * * * to provide and to improve provision for the confidentiality of records * * * relating to juveniles").

Disciplinary Counsel v. Rohrer, 124 Ohio St.3d 65 (2009) also involved proceedings in juvenile court which, as noted above, have separate and distinct privacy considerations that are not implicated in this matter.

State v. Grate, 164 Ohio St.3d 9 (2020) involved pretrial publicity in an aggravated murder case. Thus, "a primary purpose of the order was to shield the jury pool by limiting both parties from disclosing information about the case to the media." *Id.* at ¶66. Such concerns regarding jury pool tainting are not at issue in this case.

Finally, the internal cases cited by this Court in *In re T.R.*, and included in Relator's Motion are not analogous to the facts of this case. See *Seattle Times v. Rhinehardt*, 467 U.S. 20 (1982) (protective order prohibiting the dissemination of information gathered through discovery did not violate petitioner's First Amendment rights); *Bridges v. California*, 314 U.S. 252 (1941) (contempt of court overturned where editorials disseminated by newspaper and labor leader in labor dispute could not have caused the substantive evil of unfair disposition of the cases); *S.N.E. v. R.L.B.*, 699 P.2d 875 (Alaska 1985) (wherein Alaska recognized that a court may close child custody proceedings if closure is in the best interest of the child); *Nebraska Press Association v. Stuart*, 427 U.S. 539 (1976) (challenged order in a jury trial violated the First Amendment's guarantee of free press where the record did not show that alternatives to a prior restraint on the news

media would not have sufficiently mitigated the adverse effects of pretrial publicity so as to make prior restraint unnecessary); *Sheppard v. Maxell*, 384 U.S. 333 (1966) (judge failed to protect rights of defendant in jury trial where there was no doubt that the deluge of publicity reached at least some of the jury); *Florida Freedom Newspapers, Inc. v. McCrary*, 497 So.2d 652, 657 (Fla.App. 1986) (to safeguard a defendant's right to receive a fair jury trial, the court had a constitutional duty to minimize the effects of prejudicial pretrial publicity after the court had considered alternatives).

In the instant case, which is neither being heard by a jury nor beholden to the unique concerns of a juvenile court, Relator seeks to gain a private benefit by restricting the free speech of Respondents, without serving any articulable public interest. The requested gag order would prevent the dissemination of any “extrajudicial statement to the press” about Relator, even if that information is truthful and in the public interest regarding elected officials and court operations.³

In support of her assertion that this Court should issue a gag order restricting Respondents and their counsel from making any “prejudicial” extrajudicial statement to a member of the press “or anyone else,” Relator makes numerous unfounded accusations:

1. that the publication of her counsel’s bill is part of a continuing pattern of using the media against her (Motion, p. 7);
2. that Respondents’ counsel have begun to make their case against Relator in the press because the same reporter "who was immediately on the spot" to obtain Porter Wright’s invoice for legal services had previously published an article with a quote from

³ Relator’s concern about statements that might damage her future electability (Motion, p. 9) is a private interest.

Respondents' counsel and allegedly never attempted to quote the other side of the story (Id.);

3. that Montgomery Jonson provided a statement on behalf of the court that addresses disputed issues in the proceeding in violation of Rule 3.6 of the Rules of Professional Conduct (Id.);

4. that Respondents "arguably encouraged" employees of the clerk's office to file lawsuits against Relator (Id. at p. 8); and

5. that Respondents have advocated through the media to damage Relator's future electability (Id. at p. 9).

The above accusations are supported by nothing more than speculation, and counsel for Relator has not taken the opportunity to professionally engage with Respondents' counsel to determine whether any of the accusations are true. The first two allegations imply that Respondents or their counsel played some role in releasing the invoice Relator submitted to the Commissioner's office and insinuates that Respondents or their counsel had something to do with Mr. Maymik being "immediately on the spot to obtain an unredacted copy of Porter Wright's invoice." (Motion page 7).

In fact, neither the Respondents nor their counsel have affirmatively reached out to the media. In response to questions from reporter Chad Felton, counsel for Respondents provided a statement that addresses, not disputed issues, but an explanation of how the Lake County court system works and the interplay between the courts and the clerk's office. This case is unquestionably a matter of public concern, and it is appropriate for judges to educate the public, who do not have day-to-day contact with the court system or a detailed understanding of the duties of a clerk of court vis-à-vis the judicial branch, about the justice system (Jud. Cond. Rule 2.10). Before providing the statement on behalf

of the Respondents, counsel not only thoroughly analyzed the applicable Rules but also sought the advice of outside ethics counsel to ensure that they and their clients made no statement in contravention of Rule 3.6 of the Rules of Professional Responsibility or Rule 2.10 of the Code of Judicial Conduct.

What a reporter does with that information or whether he or she obtains a similar statement from the opposing party, is not within the control of Respondents or their counsel. Notably, in the news links provided by Relator in her Motion, the reporters are shown attempting to obtain a statement from Relator, without success, and the articles cited by Relator state that Ms. Andrews could not be reached for comment.

The only statement of counsel for Respondents about which Relator complains is: “[Ms. Andrews] has no independent mission, duties, or discretion.” The cited article quotes Ms. Riley as stating that “The clerk has no independent mission, duties or discretion.” (Motion, p. 7). Whether referring generally to clerks of court in Ohio or Ms. Andrews, the statement did not address a disputed issue in the proceeding. It is a statement of law. *See State v. Wilson*, (1995) 102 Ohio App. 3d 467, 471–72, 657 N.E.2d 518, 520 (2nd Dist.) the Appellate Court stated that:

A clerk of courts is a ministerial officer, one who performs a fixed and designated function that involves no exercise of discretion. The clerk makes and has custody of the court's records, has the power to certify the correctness of transcripts from those records, and files the court's papers, enters its judgments, and issues writs and process in the court's name. The clerk is an arm of the court in these respects, doing acts which a judge of the court would otherwise do. *See, 22 Ohio Jurisprudence 3d (1980) 288–289, Courts and Judges, Section 180.* The clerk is not a judicial officer, and cannot perform judicial duties or act in exercise of the judicial power. *See, e.g., Mellinger v. Mellinger* (1906), 73 Ohio St. 221, 76 N.E. 615.56 Not every judicial duty involves an exercise of discretion. Some judicial duties are ministerial, duties of a judge incident to the judicial power. Generally, those ministerial duties of a judge may be delegated to the clerk by statute or by court order.

See also Glass v. Chapman, 67 Ohio St. 1 (1902); *McKean v. Graves*, 91 Ohio St. 23, 24(1914); and R.C. 2303.26.

The only other criticism of Respondents' statement to the press is that it "wrongly impl[ies]" that Ms. Andrews does not support the courts' operations. (Motion, p. 7). The quoted statement in the *News Herald* article contains no improper statements that would necessitate a restraint on future speech.⁴

In addition to the fact that the statement provided on behalf of the court is entirely consistent with the letter and spirit of the Rules, the matter before this court is not a jury trial or a juvenile court proceeding. It is instead a petition by the Relator, an elected Clerk, seeking to stop or require certain acts of elected Judges. As Relator notes "it is not surprising that the local media has taken an interest in this matter." (Motion, p. 3). Respondents could have left the media to speculate on the statutory relationship between the courts and the Clerk's office but chose instead to respond to requests for factual information that would provide some context for the legal issues presented. The information provided to the media, which was limited to neutral factual statements and procedural explanation, presents this Court with no cause to restrain Respondents or their counsel in the future.

Relator's Motion seeking an Order restraining respondent or their counsel from making inappropriate statements to the press has no place in the current scenario and has accomplished nothing more than increasing legal fees paid by public entities and wasting this court's time.

⁴ [Lake County Clerk of Courts files suit against Common Pleas Court – News-Herald](#)

Respondents respectfully urge this court to deny Relator's Motion for an Order precluding Respondents or their counsel from making "prejudicial extrajudicial statements to the press or anyone else." With respect to the Motion for Protective Order, while Respondents view such an order as entirely unnecessary given the much more obvious options for resolving Relator's concern, they do not oppose the issuance of such an order.

Respectfully submitted,

/s/ Linda L. Woeber

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Counsel for Respondents

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the following counsel for Relator was served with the foregoing Response via electronic mail on this 27th day of May, 2022.

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Counsel for Respondents

STATE OF OHIO)
) ss.
COUNTY OF LAKE)

AFFIDAVIT

Now comes David J. Hackman, Jr., after being duly sworn according to law deposes and says:

1. Affiant is employed with the Lake County Prosecuting Attorney’s Office as the Chief Assistant Prosecuting Attorney of the Civil Division.

2. On April 1, 2022, Affiant was first contacted by Edmund W. Searby, Esq. (“Attorney Searby”) regarding his representation of Faith Andrews, Lake County Clerk of Courts (“Ms. Andrews”).

3. On or about April 14, 2022, Affiant called Attorney Searby in the presence of Lake County Assistant Prosecuting Attorneys Kelly A. Echols and Michael L. DeLeone (“Assistant Prosecutor Echols” and “Assistant Prosecutor DeLeone”). Affiant identified himself to Attorney Searby and informed him he was on speaker phone with Assistant Prosecutor Echols and Assistant Prosecutor DeLeone present in Affiant’s office. Attorney Searby indicated that Kevin J. Kelley, Esq. (“Attorney Kelley”) was also on speaker phone with him in his office.

4. Affiant states that the conference call with Attorneys Searby and Kelley focused on a proposed engagement letter from Porter, Wright, Morris & Arthur LLP (“Porter Wright”) to the Lake County Board of Commissioners (“Commissioners”).

5. Affiant states that he had prior discussions and corresponded with Attorney Searby regarding Affiant’s review of the proposed engagement letter.

6. Affiant’s conference call was intended to inform Attorney Searby that, upon further reflection, any engagement letter and/or retainer agreement should be sent to Ms. Andrews as she is his client.

7. Affiant states the subject of invoicing was raised by Attorney Searby. Affiant advised Attorney Searby to direct any invoice to Lake County Administrator, Jason W. Boyd.

8. Affiant states that the potential for attorney-client privileged information contained within an invoice was also discussed. Affiant suggested that Attorney Searby redact any privileged information from his invoices. While in Affiant’s presence, Assistant Prosecutor DeLeone advised Attorney Searby that generally an invoice is a public record.

9. Affiant states that prior to concluding the conference call, Attorney Searby outwardly praised the professionalism of Assistant Prosecutor Echols, Assistant Prosecutor DeLeone, and Affiant throughout the dealings of this matter. Attorney Kelley uttered similar praise.

10. Affiant states that the conference call concluded with Attorney Searby stating he would submit “sanitized” invoices to protect the attorney-client privilege.

11. On May 13, 2022, Affiant spoke with Attorney Searby via telephone. At the outset of the telephone call, Affiant advised Attorney Searby he was on speaker phone with Assistant Prosecutor Echols and Assistant Prosecutor DeLeone present in Affiant’s office. Affiant believes that Attorney Searby was also on speaker phone with Attorney Kelley present in his office.

12. Attorney Searby indicated his displeasure regarding a television news report that aired the previous evening regarding Porter Wright’s invoice submitted to the Commissioners on behalf of Ms. Andrews. Attorney Searby indicated that the Porter Wright invoice contained attorney-client privileged information which was aired on television. Attorney Searby was upset.

13. Attorney Searby made mention of “dirty pool” being played against him. Affiant told Attorney Searby that he did not like hearing Attorney Searby’s comment about “dirty pool”.

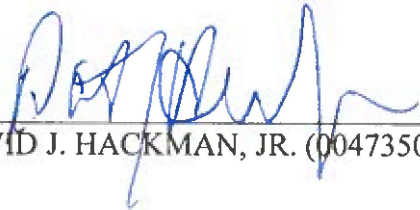
14. Attorney Searby insinuated that the Porter Wright invoice may have been “leaked” by someone at the Prosecuting Attorney’s Office. Attorney Searby was informed that neither Affiant, Assistant Prosecutor Echols, or Assistant Prosecutor DeLeone had contact with the local news station that aired the report regarding the Porter Wright invoice.

15. Affiant states that further discussion occurred regarding whether the Porter Wright invoice was a public record. Affiant stated that it was Affiant’s opinion that the Porter Wright invoice submitted to the Commissioners is a public record.

16. Attorney Searby inquired as to how this type of situation could be avoided for future submission of invoices. Affiant told Attorney Searby he should submit “sanitized” or redacted invoices moving forward. Affiant reminded Attorney Searby of their April 14, 2022, conference call and reminded him the word “sanitized” was suggested by Attorney Searby during that conference call.

17. The conference call of May 13, 2022, ended with Attorney Searby and Attorney Kelley thanking Affiant, Assistant Prosecutor Echols, and Assistant Prosecutor DeLeone for their professionalism in this matter.

FURTHER AFFIANT SAYETH NAUGHT.



DAVID J. HACKMAN, JR. (0047350)

SWORN TO BEFORE ME and subscribed in my presence this 24th day of May, 2022.



NOTARY PUBLIC



CONNIE JO AQUILA
NOTARY PUBLIC • STATE OF OHIO
Recorded in Lake County
My commission expires July 26, 2023

STATE OF OHIO)
) ss.
COUNTY OF LAKE)

AFFIDAVIT

Now comes Michael L. DeLeone after being duly sworn according to law deposes and says:

1. Affiant is employed with the Lake County Prosecuting Attorney’s Office as an Assistant Prosecuting Attorney of the Civil Division since July 22, 2002.

2. On or about April 14, 2022, Affiant participated in a conference call with Chief Assistant Prosecuting Attorney David J. Hackman, Jr. (“Chief Assistant Prosecutor Hackman”), Assistant Prosecuting Attorney Kelly A. Echols (“Assistant Prosecutor Echols”), and Edmund W. Searby, Esq. (“Attorney Searby”).

3. During the April 14, 2022, conference call, it was discussed and decided that a written agreement to represent Faith Andrews, Lake County Clerk of Courts (“Ms. Andrews”) would not need to be signed by the Lake County Board of Commissioners (“Commissioners”) as such agreement would likely contain attorney-client privileged information.

4. Affiant states that Attorney Searby then raised the issue of billing. Affiant informed Attorney Searby that neither the Commissioners nor the Lake County Prosecuting Attorney’s Office (“Prosecuting Attorney’s Office”) wanted to see any attorney-client privileged information.

5. Affiant states that Attorney Searby determined that his office will “sanitize” the monthly invoices so that the invoices would not contain any attorney-client privileged information. Attorney Searby also stated that the sanitized invoices would be delivered to Lake County Administrator, Jason W. Boyd (“Mr. Boyd”).

6. Approximately two (2) weeks after this conversation, Affiant learned that Ms. Andrews hand-delivered the first invoice to Mr. Boyd’s office.

7. Affiant learned that said invoice was provided, unredacted, in response to a public records request of the Commissioners. Affiant did not anticipate any issue based on Attorney Searby’s determination to sanitize any attorney-client privileged information from his invoices prior to delivery to the Commissioners, who are not Attorney Searby’s client.

8. On May 13, 2022, a second conference call took place between Affiant, Chief Assistant Prosecutor Hackman, Assistant Prosecutor Echols, Attorney Searby, and Kevin J. Kelley, Esq., of Attorney Searby’s office. Attorney Searby accused the Prosecuting Attorney’s Office of “dirty pool” regarding the Commissioners’ release of the Porter Wright invoice as a public record.


9. Affiant states that he, Assistant Prosecutor Echols, and Chief Assistant Prosecutor Hackman reminded Attorney Searby of his assurances that no attorney-client privileged information would be included in his monthly invoices submitted to the Commissioners as the Commissioners are not a client of Attorney Searby. Attorney Searby and Attorney Kelley did not comment.

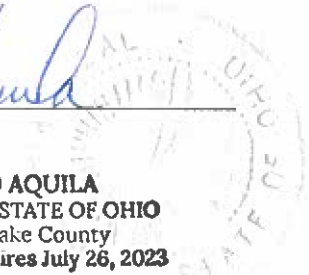
10. Affiant states that the conversation concluded with Attorney Searby and Attorney Kelley complimenting Chief Assistant Prosecutor Hackman, Assistant Prosecutor Echols, and Affiant's handling of this matter at this point of the case.

FURTHER AFFIANT SAYETH NAUGHT.


MICHAEL L. DELEONE (0073324)

SWORN TO BEFORE ME and subscribed in my presence this 24th day of May, 2022.


NOTARY PUBLIC
CONNIE JO AQUILA
NOTARY PUBLIC • STATE OF OHIO
Recorded in Lake County
My commission expires July 26, 2023



STATE OF OHIO)
) ss.
COUNTY OF LAKE)

AFFIDAVIT

Now comes Kelly A. Echols after being duly sworn according to law deposes and says:

1. Affiant is employed with the Lake County Prosecuting Attorney’s Office as an Assistant Prosecuting Attorney of the Civil Division.

2. In early April 2022, Affiant participated in, or was present for, a number of conversations between Chief Assistant Prosecuting Attorney of the Civil Division, David J. Hackman, Jr. (“Chief Assistant Prosecutor Hackman”), and Attorney Edmund W. Searby (“Attorney Searby”) regarding the intent of the Lake County Prosecuting Attorney (“Prosecuting Attorney”) to seek a resolution from the Lake County Board of Commissioners (“Commissioners”) to jointly apply with the Prosecuting Attorney for an order appointing Attorney Searby and the law firm of Porter, Wright, Morris & Arthur LLP (“Porter Wright”) to represent Faith Andrews, the Lake County Clerk of Courts (“Ms. Andrews”), regarding a dispute she was experiencing with the judges of the Lake County Common Pleas Court.

3. On April 7, 2022, the Commissioners passed a resolution to join with the Prosecuting Attorney to apply to the Lake County Common Pleas Court to employ counsel for Ms. Andrews.

4. On April 11, 2022, the Lake County Common Pleas Court granted the joint application to appoint counsel, authorizing the Commissioners to employ Attorney Searby and the law firm of Porter Wright as counsel for Ms. Andrews.

5. On or about April 14, 2022, Affiant was present for a telephone conversation between Chief Assistant Prosecutor Hackman and Attorney Searby. Assistant Prosecuting Attorney of the Civil Division, Michael L. DeLeone (“Assistant Prosecutor DeLeone”) was present as well.

6. This conversation was regarding the procedure for Attorney Searby and Porter Wright to bill for the services rendered to Ms. Andrews. It was agreed that Porter Wright would sign a retainer agreement with Ms. Andrews, which would not be provided to the Commissioners or the Prosecuting Attorney’s Office.

7. It was further agreed that Porter Wright would submit a more generic agreement to Lake County Administrator, Jason W. Boyd. To Affiant’s knowledge, no such agreement has ever been provided to Mr. Boyd.

8. During this conversation, Attorney Searby expressed concern about providing attorney-client privileged information on invoices, since the invoices would be submitted to and paid by the Commissioners, who were not clients of Attorney Searby and/or Porter Wright. Affiant understood Attorney Searby's concern that if such information were to be included in the invoices submitted to the Commissioners, the information would no longer be privileged.

9. Attorney Searby indicated that he would "sanitize" the invoices so they did not contain any attorney-client privileged information. Chief Assistant Prosecutor Hackman agreed that attorney-client information should be redacted from the invoices submitted to the Commissioners.

10. Affiant later learned that the first invoice for services rendered was delivered personally to the Commissioners' office by Attorney Searby's client, Ms. Andrews, and that the invoice had not been redacted.

11. Affiant further learned that, as a result of a public records request, the invoice had been provided to Channel 3 News, who aired a story on May 12, 2022 regarding the bill.

12. On or about May 13, 2022, Attorneys Searby and Kevin J. Kelley, Esq. ("Attorney Kelley") of Porter Wright contacted Chief Assistant Prosecutor Hackman via telephone. Affiant was present for the conversation, as was Assistant Prosecutor DeLeone. Attorney Searby was upset about the media coverage regarding Porter Wright's bill for services to Ms. Andrews.

13. During this conversation, Attorney Searby accused the Prosecuting Attorney's Office and/or the Lake County judges of leaking the bill to the media and stated that he had never seen such "dirty pool."

14. Attorney Searby stated that the attorney-client information should not have been provided to the media.

15. Chief Assistant Prosecutor Hackman, Assistant Prosecutor DeLeone, and Affiant reminded Attorney Searby of their prior conversation where it was agreed that Attorney Searby would "sanitize" the invoices.

16. Attorney Searby asked how to prevent release of the invoices in the future. Assistant Prosecutor DeLeone explained that once invoices are provided to the Commissioners they are public records, that the public has an interest in the expenditure of public funds, and that, in the absence of a court order, the Prosecuting Attorney's Office could not prevent the release of the records without violating the public records laws of the state of Ohio.


17. Towards the end of the conversation, Attorney Searby thanked and complimented Chief Assistant Prosecutor Hackman, Assistant Prosecutor DeLeone, and Affiant for the manner in which the Prosecuting Attorney's Office handled the application for employment of counsel process and the way in which the Prosecuting Attorney's Office dealt with him and his office in that process.

18. Having previously subscribed through the Ohio Supreme Court's website to *State ex rel. Andrews v. Court of Common Pleas of Lake County, Ohio*, Case No. 2022-0409, Affiant received a notification of the filing of the motion for protective order on May 19, 2022.

19. In reviewing the motion for protective order, Affiant noticed that the motion included a factually inaccurate statement regarding the procedure of submitting invoices to the Commissioners.

20. Specifically on Page 5, the motion states that undersigned counsel received assurances that Porter Wright's invoices would be treated confidentially. No such assurances were made by Affiant or in Affiant's presence. In fact, as detailed above, Affiant was present when it was explicitly agreed that Porter Wright would redact any attorney-client privileged information from their invoices provided to the Commissioners.

FURTHER AFFIANT SAYETH NAUGHT.

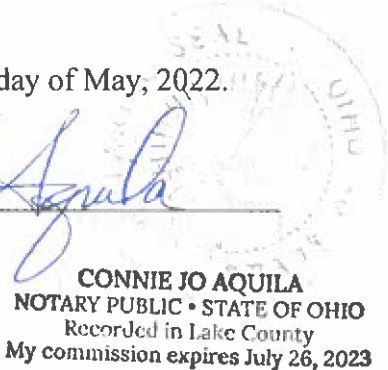


KELLY A. ECHOLS (0076550)

SWORN TO BEFORE ME and subscribed in my presence this 24th day of May, 2022.



NOTARY PUBLIC


CONNIE JO AQUILA
NOTARY PUBLIC • STATE OF OHIO
Recorded in Lake County
My commission expires July 26, 2023