MEMORANDUM IN SUPPORT OF JURISDICTION

IN THE SUPREME COURT OF OHIO

Prasad Bikkani Plaintiff-Appellant	) On Appeal from the
	) Cuyahoga County Court of Appeals,
v.	) **Eighth Appellate District**
Rotan Lee, **et al Defendants-Appellees**	) **Court of Appeals**
	) **Case No. CA-06-088650**
	) 06-2073
	)

MEMORANDUM IN SUPPORT OF JURISDICTION
FROM APPELLANT PRASAD BIKKANI

Rotan E Lee - **Appellee** 6333 Woodbine Ave Philadelphia, PA 19151	Dr. Marshall & Frank Kimber - **Appellees** % Michael C. Cohan 1401 The East Ohio Bldg Cleveland, OH 44114
Ruth Aaron - Appellee % Brian J Green Signature Square II, Suite 220 2501 Chagrin Blvd, Beachwood, OH 44122	Beptin & Associates Inc - **Appellees** & Arnold Pinkney 14506 South Park Blvd Cleveland, OH 44128
Moreno Miller - **Appellee** % Shia N. Shapiro 1370 Ontario Street, Suite 330 Cleveland, OH 44113	THCP - **Appellee** %Matthew Fitzsimmons 25 West Prospect Ave, Suite 1400 Cleveland, OH 44115
NEON - **Appellee** %Matthew Fitzsimmons 25 West Prospect Ave, Suite 1400 Cleveland, OH 44115	Barry Scheur, SMG, Robert McMillan, Jimmy Dee, Robert Eichler - **Appellees** One Gateway Center Ste 810 Newton, MA 02458
Matthew T. Fitzsimmons - **Appellee** 19687 Beach Cliff Blvd Rocky river, OH 44146	Paula M. Phelps – **Appellee** 4530 Warrensville Center Rd, 103 F Cleveland, OH 44128
Others who have their interest	
James M Petro (0022096) Attorney General of Ohio 30 E. Broad St, State Office Tower Columbus, OH 43215 (Per Ohio Rev. Code Ann. § 2923.34)	IRS EO Class 4910 DAL 1100 Commerce Street Dallas, TX 75242-1198 (Per IRC 4941)

FILED
NOV 09 2006
MARCIA J. MENGEL, CLERK
SUPREME COURT OF OHIO

TABLE OF CONTENTS

Content **Page(s)**

I. EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION 1

- A non profit corporation NEON's Board of Trustee, Attorney Fitzsimmons, representing all the Trustees for his pecuniary benefit, along with 30 conflicts of interests, IRC 4941 forbidden self-dealing transactions, violating Attorney general guidelines for nonprofit Corporation Board of Directors, over 25 DR Rule violations, being a party to a lawsuit representing others and including like rapist representing as a prosecutor against victim there by manipulation evidence and everything and taking away victim's rights and further draining emotionally
- A non profit corporation's NON/THCP Board of Trustee, Attorney Fitzsimmons, who involved for origination of instant case representing in the case on behalf of multiple clients with fraudulent affidavit submissions to conceal his role, getting stricken summons against him, representing against a dozen of his past clients/fiduciaries in the case who are defendants
- An attorney, Dennis Roth co-counsel of Attorney Mathew Fitzsimmons, who involved for origination of instant case disqualified from representing his clients for conflicts of interest but replaced with his own attorney Bryant Green in violation of DR 5-105, etc.

a) Similarity with Existing cases those are in front of court: 3

b) Attorney Matthew Fitzsimmons, Attorney Dennis Roth, and Attorney Bryant Green violated **Fourteenth Amendment** and **Sixth Amendment** besides Canon 5, Canon 4, Canon 9, and many DR violations: 5

c) Mr. Fitzsimmons caused deprivation without due process of law and the deprivation without due process of law is unconstitutional: 5

d) Effect of co-counsel relationship of Matthew Fitzsimmons with Attorney Dennis Roth in Scheur Enterprise, i) Attorney Dennis Roth's disqualification extension to Attorney Matthew Fitzsimmons's disqualification, ii) Attorney Dennis Roth's disqualification and Attorney Matthew Fitzsimmons's disqualification extension to Attorney Bryant Green to whom Attorney Dennis Roth is a client and vice versa: 6

II. STATEMENT OF THE CASE AND FACTS 8

III. ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW/ISSUES 11

Proposition of Law: An attorney who caused/participated in tort/crime/violation should not be representing in the subsequent court action on behalf of a party to cover his acts or otherwise and should not be immune from Appellate court R.C. 2505.02(B) review while offending constitution

IV CONCLUSION 15

V. PROOF OF SERVICE 15

APPENDIX

Journal Entry of the Cuyahoga County Appeals (September 26, 2006) **pages** 1

Note for references:
JB22: refers to corresponding Exhibit in June 22, 2006 Brief. For example,
JL06: Exhibit X refers to Exhibit X in July 6, 2006 Brief.
S1506: Exhibit X refers to Exhibit X of September 15, 2006 BRIEF
S1205: Exhibit X refers to Exhibit X in September 12, 2005 filed Brief
AB: Exhibit X refers to on or around 9/22/2006 filed Appellate Brief Exhibit X
Holders: Attorneys, parties who are in concert with each other in wrongdoing/conspiracy
(Due to page limitations, only some segments related to Attorney Fitzsimmons covered)

I. EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION

- A non profit corporation NEON's Board of Trustee, Attorney Fitzsimmons, representing all the Trustees for his pecuniary benefit, along with 30 conflicts of interests, IRC 4941 forbidden self-dealing transactions, violating Attorney general guidelines for nonprofit Corporation Board of Directors, over 25 DR Rule violations, being a party to a lawsuit representing others and including like rapist representing as a prosecutor against victim there by manipulation evidence and everything and taking away victim's rights and further draining emotionally
- A non profit corporation's NON/THCP Board of Trustee, Attorney Fitzsimmons, who involved for origination of instant case representing in the case on behalf of multiple clients with fraudulent affidavit submissions to conceal his role, getting stricken summons against him, representing against a dozen of his past clients/fiduciaries in the case who are defendants
- An attorney, Dennis Roth co-counsel of Attorney Mathew Fitzsimmons, who involved for origination of instant case disqualified from representing his clients for conflicts of interest but replaced with his own attorney Bryant Green in violation of DR 5-105, etc.

The instant case involved with dozens of issues as to RC 2502.02(B) compared to cases of attorneys involving with wrongdoings and at the same time continued to represent subsequently originated cases in the related disqualification/conflicts for the balance act of the final appealability based upon Bernbaum, Kala, and Polikoff. In the instant case, attorneys such as Attorney Matthew Fitzsimmons, Attorney Denise Roth, Attorney Bryant Green who are affiliated with Attorney Barry Scheur, Attorney Rotan Lee in their nationwide scheme and their agents' scheme caused harm to THCP, harm to Plaintiff, and harm to others and represented and or representing still in the subsequent case, i.e. instant case, in violation of many Disciplinary Rule standards, continued to cause prejudice, to cover-up the facts.

Mr. Scheur's and his team's fraudulent and criminal activities that led to his indictment in Louisiana, recruits attorney consultants as a part of litigation support division of SMG in an effort to abuse attorney-client privilege and in furtherance of crime and with that concept Mr. Fitzsimmons and Mr. Dennis Roth were recruited as alleged in the past, **S1506: p12,** and referred to http://www.scheur.com/scheur.nsf/smg/servicesconlitigation.htm article on Litigation Support. In a furtherance of scheme, while depleting/embezzling funds, SMG moves on to next victim/client by keeping enough control over corrupted past client board and counsel through blackmail and or through further bribes. In this scenario, SMG moved from THCP (OH) to Health care plan in Louisiana as a consulting group in by year 2000. Then took over fully the Louisiana with false pretenses defrauded them until early 2002 when Louisiana Insurance department discovered the scheme to defraud. That defraud resulted in indictment of Barry Scheur, Robert McMillan, and others with 14 Felony counts, AB: **Exhibit A**.

Attorney Dennis Roth disqualified himself from the instant case upon alerting the serious conflicts but Attorney Denise Roth inserted his own attorney, Bryant Green, in his place in further violations including DR-5-105 (D). Attorney Mathew Fitzsimmons himself is a party to the case (though court stricken him as a party but should be inserted as a party), he is representing with divided interest to alleged clients THCP/NEON, and representing all other defendants (some being represented by Attorneys) but Mr. Fitzsimmons' representing as they are his clients. Attorney Fitzsimmons submitted materially false affidavit for his pecuniary benefit in September 2005, he is a material witness, disqualification/enjoinment got denied, Protective order involved, Fraud involved, some of the defendants, besides Mr. Fitzsimmons's coconspirators and got indicted in Louisiana, *U. S. v. Scheur* et al (2005, Louisiana 05-**304**), AB: **Exhibit A,** and with **14** Felony counts per August 2006 second indictment which includes against Barry Scheur, Robert McMillan and others the **18 U.S.C. § 371, 18 U.S.C. § 1341, 18 U.S.C. § 1343, and 18 U.S.C. § 2.** Attorney Fitzsimmons

involved with many violations and his self interests ahead at the expense of constitution, clients, Appellant and others.

a) Similarity with existing cases those are in front of court:

Unfortunately Attorney's involvement in wrongdoing, representing under the names of clients and trying to cover-up with fraudulent affidavits to obstruct justice is becoming common and in all the cases even delayed justice is difficult to obtain without a prompt review and the harm would be more to judiciary system. Like in *Miles Landing homeowners Association v. Bikkani (*8th Dist., CV04-519870*)*, Kaman & Cusimano attorney group stayed until their involved fraud exposed by Bikkanis even with their ex parte communications, influencing the courts with fraudulent affidavits, like attorney Matthew Fitzsimmons produced fraudulent affidavit in the instant case, using their business partner Renner Management Group, by then hundreds of unit/homeowners lost their units for the scheme. At that time Appeal court does not have final appealable order related to their disqualification, just like instant case, and even they managed in a scheme with expired powers of a bankrupt/liquidated/DEAD corporation to appoint a Receiver to intimidate the victims. In furtherance of a scheme, as Appeal courts lacks jurisdiction for prompt review fraudsters recruited Attorney Keith Barton and made him a partner in the scheme including to open a joint bank account with them, and continued the crime and *Miles Landing Homeowners Association v. Harris* (8th Dist.CV03-507970, Ohio Supreme Court 2006- **2054**) is in front of court on the similar ground as the instant case or vice versa.

It is unfortunate that victims have to suffer for many years until wrongdoers completely exposed in the court system while they are manipulating the facts and or in conspiracy with prominent attorney firms such as Kaman & Cusimano. Holders got exposed in *Miles Landing Homeowners Assoc. v. Bikkani* (CV04-519870, Ohio Supreme Court **2005-1786**, 2006-1694) following materially false information submission to Honorable Judge Fuerst, in which Renner

Management even sent a fax to Judge Nancy Fuerst's office fax (216) 348-4092 around 3:48 pm on 4/21/2005, while having ex parte meeting by Attorney Russell Sysack of Kaman & Cusimano and Mark Hanslik yet judge denied in her letter dated April 27, 2006 to Ohio Supreme court having any ex parte communications. Following the heavy burdensome fraud exposure, Kaman & Cusimano and Renner Management quit MLHOA, since then Attorney Barton manipulating the facts thus Harris's case 2006-**2054** reached this Court and in October 2006 admitted for Mark Hanslik/Attorney Sysack's ex-parte meeting with Judge Fuerst and others lies while having ex parte communication etc but whatever harm they caused to Bikkanis already caused without ability to get reviewed promptly or through will-concealment and with somewhat similar background the instant case is following for a prompt review. In the instant case, attorney Fitzsimmons victimized Plaintiff in concert with others, caused a lawsuit, further victimized through fraudulent affidavit/material falsification of evidence while pretending to be representing some parties instead of defending himself as a party, and it is an additional emotional drain to the victim and it is as worst scenario as if a victim has to face rapist 2nd time in the shoes of a prosecutor and unconscionable and such proceedings should not continue any further. It is very unfortunate to get involved with similar attorney group involved cases. In Miles Landing case, upon years of extended investigation it turned out the scheme involved with expired/nonexisting powers of a corporation that ceased to exist since 1977 but attorneys involvement in the scheme extended their cover-up with false affidavits, ex-parte communications, and evidence falsification and in violations where Quo Warranto actions are appropriate including Corporate ID Theft, R.C. 1702.60(B)(1)(a) and (b) after 1977 cancellation, bankrupt/liquidation some 25 years later R.C. 2733.02(A), (B), (C), (D) and many more. Thus, like in the instant case, when attorneys involved with underlying case with their pecuniary benefit they have tendency to go to any extreme to cover-up their acts, violate constitution and without prompt review justice can not be served.

b) Attorney Matthew Fitzsimmons, Attorney Dennis Roth, and Attorney Bryant Green violated **Fourteenth Amendment** and **Sixth Amendment** besides Canon 5, Canon 4, Canon 9, and many DR violations:

The instant case appeal sounds similar to Attorney disqualification to the extent Mr. Fitzsimmons uses the law degree but involved with constitutional violation including with **Fourteenth Amendment** and **Sixth Amendment** violations. Like in *State v. Upshaw*, 110 Ohio St.3d 189, 2006 -Ohio- 4253 (2006), unless court reviews immediately probably no one could be held liable to Plaintiff and others in damages for the loss of liberty as the mistake is uncorrectable. In the instant case, under the current set of egregious facts, the appearance of impropriety was so great that any further delay irreparable to judiciary system. Any further continuation of proceedings without disqualifying NEON's board member, Mr. Fitzsimmons, disqualification of Attorney Dennis Roth/Brian Green from the instant case complicates, taints the proceedings, as they or their clients are material witness and or indispensable parties, obstructing justice, Statutory violation, protective orders, suppressions of evidence with continued claim of protections from every angle, suppressions of evidence from parties and non parties to protect himself, keeping his self interests ahead of his current clients and past client who are defendants in the instant case.

c) Mr. Fitzsimmons caused deprivation without due process of law and the deprivation without due process of law is unconstitutional:

Mr. Fitzsimmons caused deprivation without due process of law, *Baker v. McCollan*, 443 U. S. 137, 146 (1979), and the **deprivation without due process of law is unconstitutional**, *Zinermon v. Burch*, 484 U. S. 113 (1990), *Sorrell v. Thevenir* (1994), 69 Ohio St.3d 415, 422. **Mr. Fitzsimmons knowingly involved with conflicting and forbidden pecuniary benefiting transactions affecting the instant case.** To the extent to which civil corporate defendants', NEON/THCP, right under the Sixth Amendment is qualified the chosen attorney or Attorney self-imposed upon the corporation(s) through control to cover-up his wrongdoings to circumvent to his purported Fifth Amendment pleading, **1)** the Civil Corporate defendant THCP's right under Sixth Amendment is compromised

by imposing on it in violation of Fourteenth Amendment, **2)** Over a dozen civil defendants' rights under Sixth Amendment were compromised by imposing on them without a waiver from them and without appropriate disclosure to court and or with concealment of facts, **3)** Civil Plaintiff's right under the Sixth Amendment with fiduciary and past representation relationship, Fourteenth Amendment violation without pertinent Due process violation by forcing to deal with Attorney Fitzsimmons is in unconscionable status as if submitting a rape victim to the wrongdoer to further cause the emotional distress/trauma instead of putting the wrongdoer in appropriate place to serve justice and to reduce effect on the victim(s).

d) Effect of co-counsel relationship of Matthew Fitzsimmons with Attorney Dennis Roth in Scheur Enterprise, i) Attorney Dennis Roth's disqualification extension to Attorney Matthew Fitzsimmons's disqualification, ii) Attorney Dennis Roth's disqualification and Attorney Matthew Fitzsimmons's disqualification extension to Attorney Bryant Green to whom Attorney Dennis Roth is a client and vice versa:

Attorney Dennis Roth is a client of Attorney Brian Green, for example *Roth v. Schwartz* (Ohio 8th Dist CV-05-567944), *Schwartz v. Roth* et al (Ohio 8th Dist CV-05-567781) and while disqualifying himself, Attorney Dennis Roth, inserted his attorney Brian Green in further violations of Disciplinary Rules, **DR5-105 (D)** etc. In addition, Attorney Brian Green's client (Attorney Dennis Roth) is a key witness and detrimental to the parties. Attorney Roth's testimony includes the key Plaintiff's termination area and testimony would be detrimental to his former clients including to THCP, Barry Scheur, SMG, Ruth Aaron, his co attorney, Attorney Matthew Fitzsimmons. Attorney Brian Green should not have taken representation and or should be disqualified, *State v. Williams*, Ohio- 2533 (App. Dist.6 2003). Dennis Roth disqualified among other conflicts of interests with breach of its duty of undivided loyalty to clients in the instant case, under **Canon 5**, and that, under **Canon 4**, Brian Green is the extension of Dennis Roth violation of **Canon 9** that an attorney must avoid even the appearance of impropriety. The issue under **Canon 5**, simply put, is whether, by permitting Brian Green to pursue the underlying action, like allowing

Dennis Roth to violate by indirection those very strictures it cannot directly contravene, *Hafter v. Farkas*, 498 F.2d 587, 589 (2d Cir. 1974). The determination that Brian Green should be disqualified under **Canon 5** is further underpinned by the restraints imposed by **Canon 9**. While *Cinema 5 v. Cinerama Inc.*, 528 F.2d 1384 (2nd Cir. 1976) relied on the nexus of partnership; Courts have also held that disqualification extension to individuals associated with a firm in a lesser capacity, for example, a law clerk, *Consolidated Theatres v. Warner Bros. Cir. Man. Corp.*, 216 F.2d 920, 927 (2d Cir. 1954).

Two individuals lawyers working together in a case though both of them are in different firms (Meister worked closely with Morgan Lewis) stating an appearance of impropriety arises from the close association. *Consolidated Theatres, Inc. v. Warner Bros. Cir. Man. Corp.*, supra; *Akerly v. Red Barn System, Inc.*, 551 F.2d 539 (3d Cir. 1977); *American Can Co. v. Citrus Feed Co.*, 436 F.2d 1125 (5th Cir. 1971). Besides Many conflicts Matthew Fitzsimmons had directly on his own in the instant case, Mr. Fitzsimmons worked as co-counsel on many occasions with Dennis Roth in Scheur Enterprise including during 1999, having conflicts of interests in the instant case and disqualified Dennis Roth, as a co-counsel to Dennis Roth it extends to Mr. Matthew Fitzsimmons's disqualification too and vice versa and applicable to Attorney Brian Green too. Where just triangular relationships involved required the disqualification of a previously neutral law firm merely on a showing that the tainted lawyer client might have transmitted some confidences to the firm, *Hull v. Celanese Corp.*, 513 F.2d 568, 571 (2d Cir.1975). In *NCK Organization Ltd. v. Bregman*, 542 F.2d 128, 129 n. 2 (2d Cir. 1976), with analogically compelling triangle of conflict and court held without reservation that the firm's disqualification was required even in the absence of a showing that confidences had actually been disclosed, or that there was a potential for future disclosure. In the instant case, the relationship is much beyond triangular relationship and besides severe fiduciary relationship violations, canon ethics violations,

evading the properly served summons and being a party and fiduciary still representing others to obstruct justice.

II. STATEMENT OF THE CASE AND FACTS

On October 10, 1994, **AB: Exhibit F-H, S1205: Exhibit C**, Appellant, began working for NEON) formerly knows as CNHSI as Programmer/Analyst, **AB: Exhibit D-H** and to close corporation THCP and get promoted into various positions including finally to VP of MIS. After CEO's death THCP board hired SMG group and Attorney Fitzsimmons, a board member of NEON/CNHSI involved in schemes with conspiracies along with Barry Scheur ESQ of Scheur Management Group (SMG) at THCP/NEON in 1999. When Appellant Whistle-blow/reported, Holders retaliated by pretending as if VP of MIS position got eliminated, as whistle-blow is an obstruction for their multimillion dollars perpetual anticipated plan. Barry Scheur, Robert McMillan and some others get indicted in Louisiana as listed in second superseding Indictment filed 8/11/2006 and **the 14** Felony counts, **AB: Exhibit A**, includes the **18 U.S.C. § 371, 18 U.S.C. § 1341, 18 U.S.C. § 1343, and 18 U.S.C. § 2** violations.

In an effort to discredit Plaintiff, Attorney Fitzsimmons while working under the influence of Mr. Scheur and to conceal his own acts committed perjury in September 2005 by submitting a materially falsified affidavit, **AB: Exhibit B**. Besides facts shown, **JL06: Exhibit F, AB: Exhibit D6-12, JB22: Exhibit P-T** Attorney Fitzsimmons prejudiced through false affidavit in a supposedly straightforward situation by improperly extending his misleading acts into courtroom to improperly undermine the credibility of Appellant and to cover-up the facts including his activities against NEON board, **AB: Exhibit C, JB22: Exhibit K,** to falsely claim they met requirements of contract fulfillment, **AB: Exhibit Y, AO, AP, JB22: Exhibit AC, AD**. Similarly, Mr. Fitzsimmons is prejudicing in each step and representing as an attorney of record in the instant case in **violation of constitutional rights** and Attorney perjury evidence and or counter evidence

is in front of court **AB: Exhibit D-Q**. For his pecuniary benefit, one of the scheme Attorney Fitzsimmons as a board member f NEON involved together with SMG is in an effort to evade THCP's $1 million note through unauthorized letter obtained with Attorney Rotan Lee's signature, a SMG consultant without the knowledge of THCP Board of trustees and evaded that money at the critical junction of THCP survival. In another scheme, Attorney Fitzsimmons/NEON Board member claimed as if THCOP owes NEON by concealing millions of dollars already converted from THCP. In another scheme, claimed as if THCP is a child of NEON and collected over $1.4 million dollars through state agents however in the instant case claimed as if no relationship to NEON and THJCP. It is like in many other instances with deception, in violation of fiduciary and in violation of honest services, and along with Scheur group very serious violations included.

When a search was initiated for Network Administrator in July 1999 to replace part of Plaintiff's (Vice President of MIS) duties, Paula Phelps (VP of Human Resources) who worked closely with Attorney Fitzsimmons and others in ousting Plaintiff illegally communicated to Donald Butler, Jimmy Dee (SMG) and others on July 22,1999 stating, AB: **Exhibit AL, JB22: Exhibit V**:

> "Donald,
> I have attached a position description with recommended salary range for a Network Administrator for IT. Please note, I deliberately shield away from any language that would imply actual supervisory responsibilities. This done in an effort to divert any potential legal ramifications that might land us in court, due to the fact that the VP position was eliminated as there was no need for a position of that level or responsibility needed any longer.
> To recruit for a management level position, not having offered the VP an opportunity for that role, would be grounds for a lawsuit. Therefore, we need to be very sensitive to the fact that we may already be under scrutiny, as I have yet to hear from the former employee IT VP.
> Please advise as to your thoughts…
> Paula."

Similarly Ms. Paula Phelps who closely worked with Mr. Fitzsimmons to oust Plaintiff, Scheur Holders and NEON Holders communicated to Scheur Holders through Jimmy Dee, AB: **Exhibit AK, JB22: Exhibit U,** on July 22, 1999 and it stated:

> "Hey Jimmy-
> I've attached a position description for Network Administrator. Please note, I have steered clear of any terminology which might suggest supervisory duties. This in an effort to divert any possible legal ramifications which might land us in a court of law. If this is not in line with your thinking please advise.

Donald has requested that we try and get him a written description by
the end of the day.
Please advise.
Thanks…
Paula"

In Plaintiff's ouster, among others, NEON's board of trustee Matthew Fitzsimmons, Rotan Lee are in the loop and NEON's Board member, **Mr. Matthew Fitzsimmons** deliberately created the 40+ years old separation letter to Plaintiff in further discrimination and retaliatory way by withholding $20,000+ **unused vacation** [earned money] as part of separation agreement to get signed the agreement, along with other violations on which Plaintiff relied upon promise that was made and later to learn those also discriminated by paying to others of a different class. Matthew Fitzsimmons is a material witness including on termination, discrimination, trustee, fiduciary irrespective of whether he had a legal hat or not. He should not be hiding under legal that, he is extremely prejudicing Plaintiff and testifies against his clients thus prejudicing them too. He should be immediately disqualified/disbarred, and enjoined from THCP/NEON and restrained from any of the defendants otherwise creating impropriety to legal system too.

Immediate review is required to safeguard constitutional guarantee of fair trial to avoid irreparable harm to the judiciary system, to avoid continued impropriety, to avoid irreparable harm to over dozen parties including to Plaintiff/Appellant, because Mr. Fitzsimmons involved with about 30 serious conflicts besides being a board member, representing all board members, monopolizing the way he wants to complicate issues so that not only protects himself but earns more money through IRC forbidden self-dealings as a Board of trustee of a non-profit organization and by concealing his forbidden acts behind the name of client. This appeal is very distinguishable from Kala, Bernbaum, and other landmark cases. NEON's board of Trustee Mr. Matthew Fitzsimmons is a co-conspirator and instrumental in that act and in other many acts who is acting as NEON/THCP record of attorney in the instant case to cover-up his involvement and to

protect his past clients who are also defendants, collectively Holders, in the instant case. Attorney Matthew Fitzsimmons/NEON/THCP Board of Trustee Obligated to avoid statutorily forbidden self-dealings Internal Revenue Code **4941(d)**, Doc ID 200236401634 p2, **JL06: Exhibit B**, to maintain non-profit status to NEON and THCP-violated corporate formalities which mandates enjoinment/disqualification.

DR 5-105 forbids Attorney Brian Green's representation to any party in the instant case, as he is a partner/Attorney-client relationship with Attorney Dennis Roth who is forbidden through conflicts of interest in the instant case, and also extends restrictions to Brian Green's continuance through Attorney Fitzsimmons's working relationship. Attorney Fitzsimmons knew that he himself is a necessary party to the lawsuit and he and Attorney Dennis Roth were identified as a parties upon verifying related information in late last year though November 2005 service was not perfected on Attorney Fitzsimmons and or on Attorney Dennis Roth but June2006 initiated Sheriff's personal service was perfected on 6/27/2006 for Attorney Fitzsimmons though he refused the tendered service. In addition Attorney Matthew Fitzsimmons and Attorney Dennis Roth are necessary witnesses in the instant case related to employment discharge, and in absence of Robert McMillan, Paula Phelps, Jimmy Dee and Rotan Lee these two witnesses are essential followed by Ruth Aaron, THCP/NEON and Mr. Fitzsimmons's and Roth's testimony won't be in the best interests of their clients with divided loyalty.

III. ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW/ISSUES

Proposition of Law: An attorney who caused/participated in tort/crime/violation should not be representing in the subsequent court action on behalf of a party to cover his acts or otherwise and should not be immune from Appellate court R.C. 2505.02(B) review while offending constitution.

Relief in the future would be foreclosed, when a party, a material witness, a wrongdoer (Mr. Fitzsimmons) in the case representing other clients in the instant case and had many other clients/fiduciaries in the case and contaminating judiciary system in each step. Similarly, Relief in

the future would be foreclosed, when a party/a material witness withdrawn (Attorney Dennis Roth) admitting severe conflicts of interest but assigned his attorney (Bryant Green) to represent one of the clients in the instant case and had many other clients/fiduciaries in the case and contaminating judiciary system in each step, immediate voluntary disqualification or alternatively immediate Disqualification of Attorney Brian Green warranted. Attorney Matthew Fitzsimmons, Attorney Dennis Roth, and Attorney Bryant Green and their firms violated Fourteenth Amendment and Sixth Amendment besides Canon 5, Canon 4, Canon 9, and other DR violations as summarized in 9/7/2006 filing. To the extent to which civil corporate defendants', NEON/THCP, right under the **Sixth Amendment** is qualified the chosen attorney or Attorney self-imposed upon the corporation(s) through control to cover-up his wrongdoings to circumvent to his purported **Fifth Amendment** pleading. The Civil Corporate defendant THCP's right under **Sixth Amendment** is compromised in violation of **Fourteenth Amendment.** Over a dozen civil defendants' rights under **Sixth Amendment** were compromised by imposing on them **without a waiver from them** and without appropriate disclosure to court and or with concealment of facts. Civil Plaintiff's right under the **Sixth Amendment** with fiduciary and past representation relationship, **Fourteenth Amendment** violation without pertinent Due process violation by forcing to deal with him in unconscionable status as if submitting a rape victim to the wrongdoer to further cause the extreme emotional distress/trauma instead of putting the wrongdoer in appropriate place to serve justice and to reduce effect on the victim(s).

NEON's **Board member/Trustee** Mr. Fitzsimmons is a fiduciary or trustee to Plaintiff, *Hafter v. Farkas*, 498 F.2d 587, 589 (2d Cir. 1974). Being a material witness and a necessary party, if he goes through all the witnesses testimony, as a attorney of record in the instant case for multiple parties, and once trial is completed or gone through discovery the damage cannot be undone; Like a proverb "Once the bell has been rung, it cannot be unrung". Relief in the future

would be foreclosed in the instant case and violates the fundamental fairness of trial, causes prejudice, appearance of impropriety, etc. Mr. Fitzsimmons being a party, being a material witness and his testimony detrimental to his client's interest, refused personal service by Sheriff still claims as a nonparty, obstructs justice with about 30 severe violations to further taint the proceedings. NEON's Board member Matthew Fitzsimmons is an indispensable party whose absence seriously prejudices Plaintiff and other parties in the action, and prevents the court from rendering an effective judgment between the parties, *Layne v. Huffman* (1974), 43 Ohio App.2d 53, 333 N.E.2d 147. Attorney Matthew Fitzsimmons's several past clients who are current defendants in the instant case are necessary witnesses in the instant case and each have their own protective interests and Attorney Fitzsimmons is prejudicing for his self serving purposes and against Plaintiff.

In the instant case the violations are much beyond any case ever come to in front of court and involved many conflicts and constitutional violations and prevention at this stage is crucial for further tainting inconceivable harm to Plaintiff and harm to parties and to the judiciary system. Unlike in Kala to wait until the end of trail would be fruitless, as one of the supposed defendant, Mr. Fitzsimmons, steers the discovery, obtains evidence from all the parties and twists in his favor in a way to conceal his liability, after knowing completely who had what or who testifies what it is worst than coaching a witness, worst than witnesses attending trial and giving witness testimony following other witness testimony, worst than jury having access to contact with news media related to the case, while deliberations taking place the retrial would be. Here not only a contamination of proceedings/trial but alterations for the self serving purposes of Attorneys and their affiliates who involved in the cause of the problem.

Matthew Fitzsimmons himself has a competing attorney-client privilege with THCP, NEON, THCP Board, NEON Board, Plaintiff, other defendants of the instant case, and even breaching the fiduciary relationship he had with Plaintiff, to continue to cover his violations. Matthew Fitzsimmons's fiduciary duties for many parties, to THCP past trustees who are parties, SMG, Barry Scheur, Ruth Aaron who hired during their control of THCP to facilitate their scheme/acts. About a dozen of the parties in the instant case are Attorney Fitzsimmons' clients/ex-clients/ or express attorney-client relation and with whom he had direct Fiduciary duty including Plaintiff, thus strict standards of **Canon 5** is applicable. Mr. Fitzsimmons has been privy to THCP, NEON, Dr. Marshall, Mr. Kimber, Mr. Lee, Mr. Scheur, Ms. Aaron, SMG, Mr. McMillan, Ms. Phelps, Mr. Pinkney, Mr. Davis, and Plaintiff's; confidences, thus violation under **Canon 4** and Mr. Fitzsimmons should have been disqualified from representing the defendants in the instant case. In the course of the former representation Mr. Fitzsimmons acquired information related to the subject matter of his subsequent representation, and Mr. Fitzsimmons should be disqualified under **Canon 9** of the Code of Professional Responsibility, *Emle Industries Inc.* v. Patentex Inc., 478 F.2d 562 (2nd Cir. 1973), *Kala v. Aluminum Smelting & Refining Co., Inc.* (1998), 81 Ohio St.3d 1 at 5. Under Ethical Consideration ("**E-C**") **9-6**, an attorney should "strive to avoid not only professional impropriety but also the appearance of impropriety." As a matter of fact, attorney Mr. Fitzsimmons, Attorney Dennis Roth, Attorney Brian Green violated **Canon 4**, **Canon 5** and **Canon 9**. Attorney Brian Green is an attorney of disqualified Attorney Dennis Roth. It is clear that under **Canon 9** as well as **Canons 4 and 5**, Matthew Fitzsimmons should be disqualified. Similarly the **Canon** 4 of the Ohio Code of Professional Responsibility imposes a duty on Matthew Fitzsimmons, and on Dennis Roth to protect THCP's, Plaintiff's, THCP Board of Trustees, NEON's, and SMG defendants as all of them have privity with them confidences and secrets including to related to Plaintiff's wrongful termination claim, *State ex rel. Leslie v. Ohio*

Hous. Fin. Agency, 105 Ohio St.3d 261, (2005); DR 4-101(A); *Kala v. Aluminum Smelting & Refining Co., Inc.* (1998), 81 Ohio St.3d 1. Using the direction in Disciplinary Rule **5-105(D)** and by **Canon 9**'s warning that "A Lawyer Should Avoid Even the Appearance of Professional Impropriety" but getting violated in all aspects.

IV) Conclusion:

Attorney Fitzsimmons, Attorney Denise Roth, etc have many violations including Canon 4, Canon 5, Canon 9, DR 5-105(D), DR 7-102(A), DR 1-102(A), DR 7-102(B), DR 5-102(A) & DR 5-102(B), and caused conflicts and violations to constitutional Amendments, IRC 4941(d)(1)(B), and continuing with total disregard to judiciary system. Continuation of such constitution offending proceedings, with an immunity from Appellate court R.C. 2505.02(B) review complicates, taints, seriously affects the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself. For the reasons discussed above, where an attorney involved with underlying acts and continues to involved under the name of a client have a tendency to go any extent to cover-up their acts through falsification thus such cases involving matters of public and great general interest and very important substantial constitutional questions raise in conjunction with already existing cases of Ohio Supreme Court, 2006-**1694**, 2006-**2054**, etc. The appellant requests that this court accept jurisdiction so that the important issues presented will be reviewed on Constitution but with respect to Ohio law, and on conflicts with Federal law.

Respectfully submitted,

Prasad Bikkani, Pro Se
3043 forest Lake Dr, Westlake, OH-44145
(440) 808-1259, Prasadbabu@aol.com

Certificate of Service

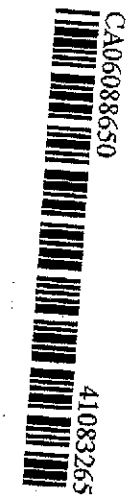
A copy of the foregoing was sent by ordinary U.S. mail/Fax on 9th day of November 2006 to counsel(s) for Appellees and to the listed ones on caption page.

Prasad Bikkani, Pro Se, Appellant

SEP 26 2006

Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Gerald E. Fuerst, Clerk of Courts



PRASAD BIKKANI

Appellant

COA NO. 88650 | LOWER COURT NO. CP CV-566249

COMMON PLEAS COURT

-vs-

ROTAN E. LEE, ESQ., ET AL.

Appellee

MOTION NO. 387686

Date 08/28/06

Journal Entry

SUA SPONTE, APPEAL IS DISMISSED FOR LACK OF A FINAL APPEALABLE ORDER. R.C. 2505.02.

FILED AND JOURNALIZED
PER APP. R. 22(E)

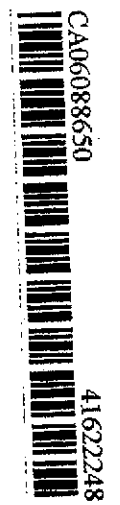
SEP 26 2006

GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY _____ DEP.

ANNOUNCEMENT OF DECISION
PER APP. R. 22(B), 22(D) AND 26(A)
RECEIVED

AUG 28 2006

GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY _____ DEP.



Judge FRANK D. CELEBREZZE,JR., Concurs

Administrative Judge ANN DYKE

NOTICE MAILED TO COUNSEL
FOR ALL PARTIES-COSTS TAXED

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also S.Ct.Prac.R. II, Section 2(A)(1).