

**MEMORANDUM IN SUPPORT OF JURISDICTION  
IN THE SUPREME COURT OF OHIO**

Prasad Bikkani Plaintiff-Appellant	)	Case No. 2006-2073
v.	)	Cuyahoga County Court of Appeals,
Rotan Lee, et al Defendants-Appellees	)	<b>Eighth Appellate District</b>
	)	<b>Court of Appeals</b>
	)	Case No. CA-06-089269
	)	
	)	

**Motion to request for leave to file for reconsideration of jurisdiction and against Motion to Dismiss**

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	Bepin & 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/NEON - Appellees %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	Paula M. Phelps - Appellee 4530 Warrensville Center Rd, 103 F Cleveland, OH 44128

**FILED**

MAR 12 2007

MARCIA J. MENGEL, CLERK  
SUPREME COURT OF OHIO

**Motion to request for leave to file for reconsideration of jurisdiction and against Motion to Dismiss**

Appellant Prasad Bikkani hereby requesting leave of the Honorable Court for reconsideration on jurisdiction and on Motion to Dismiss of the judgment entry entered on **2/28/2007, 3/5/2007**. The case involves matters of public and great general interest and by looking at the details court can determine that the Board of Trustee/Attorney Fitzsimmons involved with underlying acts which is unlike as he portrayed by using THCP/NEON names and by accusing Appellant in 1/11/2007 filing. The Appellees received a memorandum in opposition to 1/11/2007 with act and Court received it on 1/24/2007 along with detailed violations of **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)**, showing severe conflicts and **violations to constitutional Amendments, IRC 4941(d)(1)(B)**, etc. However, the attached 1/24/2007 letters from Supreme Court, **Exhibit A and Exhibit B** respectively for 2006-2073 and 2006-2302 are indicatives that detailed facts were not able to be filed for consideration and now without granting leave to file for reconsideration undermines judiciary system as Mr. Fitzsimmons concealed 14 count criminal indictments against some of the defendants in the instant case and the ongoing criminal investigation in the Miles Landing case and by quoting Appellant's relatedly used words requested to categorize Appellant as if vexatious. Upon granting the reconsideration motion and review of the facts the court can surprise the concealed facts and outcome would be in reverse.

The Board of Trustee, Mr. Fitzsimmons without admitting he as a Trustee involved deeply in the underlying case with serious conflicts of interests. Mr. Fitzsimmons not only representing with impropriety and with the appearance of impropriety with the above listed violations but also with pecuniary benefit portrayed victim/Appellant as if vexatious litigator. The Trustee/Mr. Fitzsimmons

even not mentioned basic facts about *Miles Landing Homeowners Association* which is a concealed defunct and liquidated corporation with expired/nonexisting rights through which handful of individuals collected several millions of dollars but turned it into his advantage without any merit. On 1/24/2007 the court received memorandum in opposition to Mr. Fitzsimmons's 1/11/2007 motion with twisted facts, but those were not filed by the court stating those were due by 1/22/2007. But those documents opposed Mr. Fitzsimmons's 1/11/2007 filings which are about 3 weeks later than Appellant's 12/18/2006 filings but also cited the nonfactual allegations. Without 1/24/2007 documents in front of court but by having 1/11/2007 filings of NEON/THCP Trustee cum Attorney's filings caused further prejudice in the many factors involved case. Whatever procedures apparently lacked during the process at this court or lower courts are not intentional by Appellant and unfortunate to get sanctioned and especially in absence of facts. Appellate court denied jurisdiction to take up the case prior to judgment and denied even appeal after the judgment.

Continuation of constitution offending proceedings by Mr. Fitzsimmons without a review, if needed by modifying the law, complicates, taints, and seriously affects the basic fairness, integrity, and public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself. Some of the issues involved with basic constitutional rights and those can be addressed in detail upon granting leave are:

<p><b>I. RECONSIDERATION AS TO WHY THIS CASE IS PUBLIC OR GREAT GENERAL INTEREST FOR JURISDICTION AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION, AND MR. FITZSIMMONS'S MOTION:</b></p>
<p>A) Introduction for reconsideration with the facts – why no attorney would represent in front of court under the name of a client like violations by Mr. Fitzsimmons/Board of Trustee as dozens of Disciplinary Rules forbid.</p>
<p>B) Whether a board of trustee, as a General counsel i) can violate IRC 4941(d)(1)(B), ii) can materially participate in improper acts for pecuniary benefit against corporation/client, iii) can materially participate in unlawful termination of employees in collaboration with third parties, iv) can materially participate in submission of wrong information/financial statements to corporation through third</p>

<p>parties, v) can participate in conversion of corporation against board of trustees, vi) can materially participate in the conversion of funds; and still can represent in the subsequent lawsuit against a victim/Appellant not only with conflicts of interests but also with further pecuniary benefit and to suppress/alter facts.</p>
<p>C) Whether an attorney in conjunction with the above violations/characteristics can submit to the Trial court i) materially falsified affidavit in September 2005 itself, ii) half truth pleadings, iii) evade deposition, iv) obtain protective order, for further pecuniary benefit and to protect all his past clients who happened to be over a dozen defendants in the instant case and attorney being a party to the lawsuit can refuse the summons and can represent in the case.</p>
<p>D) Whether an attorney in conjunction with the above violations/characteristics can participate in hundreds of improper activities; when sought help from higher courts can present half truth to the court to obtain sanctions against victim/Appellant then continue to portray as if the Appellant is vexatious. When the facts presented by Appellant and reviewed in fact those suggest the board member cum attorney as vexatious litigant with dozens of Disciplinary Rules forbidden practice of law/filings and proves that Appellant is not vexatious. The Board member/Trustee of NEON/THCP cum attorney who cited as if Appellant filed for x millions of dollars is not anywhere from the docket entry where normally a prayer amount shows and such shown amount is blank as it was not claimed but Mr. Fitzsimmons adding up from derivative claim amounts where hundreds of employees got effected through converting it into ceased to exist status.</p>
<p>E) Whether the parties can be represented by an attorney of the above violations/characteristics along with an attorney/group of another attorney's extension</p>
<p>F) Whether Appeal court lacks jurisdiction/appealable matter to review even when the same court considered Appellee's motion to impose sanctions against Appellant/victim when sought justice within the existing law, or to modify the existing law to protect community.</p>
<p>G) Some of Attorney Fitzsimmons's and others involvements/violations with his self interests ahead at the expense of constitution, clients, Appellant and others include:</p>
<p><b>Why an attorney who caused/participated in severe violations should not be representing in the subsequent court action on behalf of a party to cover his acts, should not get sanctions against victim when sought appeal to modify law if not final appealable and attorneys/board of trustees should not be immune while offending constitution, should not be allowed to violate Disciplinary Rules for pecuniary benefit, with forbidden <u>IRC 4941(d)(1)(B)</u>, State and Federal constitutional violations and or Attorney General Guidelines and should be allowed for review on appeal.</b></p>

**Attorney Fitzsimmons** involved with underlying acts and continued to involve under the name of a client thus went to extreme to cover-up wrongdoing and even through materially falsified affidavits submission on September 7, 2005 and by filing as many as 5 motions a day but causing sanctions to innocent victims such as for Appellant here, representing all the parties and using their confidences against each other in the same case in violation of many Disciplinary rules too. The case involved

matters of public and great general interest and important substantial constitutional questions involved.

**II. Halftruth/Sample alteration of facts by Mr. Fitzsimmons (materially false affidavit submission not included here):**

With severe pecuniary benefits and conflicts involved, Mr. Fitzsimmons altered facts many times and emphasized in memorandum of opposition. But in 1/11/2007 filing, Mr. Fitzsimmons further went into extreme while concealing where 14 count criminal indictment involved in a case and in the other case where criminal investigation involved against wrongdoers but accused the Appellant as vexatious litigator by pursuing against them at a huge cost and Mr. Fitzsimmons achieved his goal by confusing the court but in violation of additional Disciplinary Rules.

In December 2006 memorandum Mr. Fitzsimmons indicated as if he never a party in Trial court or in Appeal court and challenged the court to show on any docket. Since similar violations are routine to Mr. Fitzsimmons, Appellant was forced to list the pattern in the memorandum of opposition to indicate how deeply Mr. Fitzsimmons involved as a board of trustee, conversion of THCP, wrongful dischargement, representing clients against each other, representing all the parties in the instant case, etc. To safe guard victims and to have public trust various Disciplinary Rules are guiding and Mr. Fitzsimmons continued violations and conflicts continued to lead him to alteration of facts.

The following docket entries show details of tendering service on 6/27/2006 and as if stricken due to unopposing [though record is in front of court with details showing trustee, tortious interference, identifying and confirming as John Doe defendant] and not as claimed by Mr. Fitzsimmons:

06/27/2006 D18 SR 06/27/2006 8614346 THE WITHIN NAMED FITZSIMMONS/MATTHEW/T 06/26/2006  
SHERIFF DEPUTY SERV. REFUSED IN MY COUNTY.

As the below 7/5/2006 Docket entry indicates, Attorney Matthew Fitzsimmons filed on 7/5/2006 by claiming as if Plaintiff "purporting to serve" the amended complaint and on 7/25/2006 Trial court granted stating UNOPPOSED [unfortunately when the facts are part of record]. However, for the facts of record Mr. Fitzsimmons knew that Appellant in good faith listed Attorney Fitzsimmons in the instant case as he was named as a party in trial court and Appeal court. But Mr. Fitzsimmons maintained with half-truths as if he never a party but Appellant stated the facts with good faith based upon tendering the service and reinstatement of Mr. Fitzsimmons as a party and as part of Appeal process.

07/05/2006 D MO DEFENDANT(S) NORTH EAST OHIO NEIGHBORHOOD HEALTH SERVICES(D14) and TOTAL HEALTH CARE PLAN INC(D15) MOTION TO STRIKE PLAINTIFF'S AMENDED COMPLAINT PURPORTING TO NAME THEIR COUNSEL AS A DEFENDANT OR, IN THE ALTERNATIVE, TO BAR PLAINTIFF FROM FILING AND SERVICING THE AMENDED COMPLAINT FILED. MATTHEW T FITZSIMMONS 0013404 07/25/2006 - UNOPPOSED AND GRANTED

**Mr. Fitzsimmons concealed criminal acts in two cases and continued to conceal:**

Matthew Fitzsimmons intensely tried to blame Appellant for Miles Landing Home owners Association (MLHOA) cases by covering their wrongdoings in those cases and to blame as if Appellant as Vexatious, to take further advantage as his pecuniary benefits and several forbidden conflicts of interests involved in the instant case. With the same MLHOA plaintiff *Miles Landing Homeowners Association v. Harris*, (8<sup>th</sup> Dist, cv03-501112), the following docket entry shows the County prosecutor's criminal investigation involvement and due to continued investigation they refuse to provide documentation:

10/17/2006 N/A JE MOTION OF CUYAHOGA COUNTY PROSECUTOR'S OFFICE TO QUASH SUBPOENA AND FOR PROTECTIVE ORDER IS GRANTED. THE SUBPOENA ISSUED TO THE CUYAHOGA COUNTY PROSECUTOR'S OFFICE ON OCTOBER 7, 2006 IS HEREBY QUASHED. NANCY HARRIS IF PROHIBITED FROM MAKING FURTHER ATTEMPTS TO SUBPOENA THE RECORDS OF THIS CRIMINAL INVESTIGATION. BOOK 3695 PAGE 0507 10/17/2006 NOTICE ISSUED

10/12/2006 D1 MO D1 NANCY HARRIS MOTION TO MODIFY SUBPOENA DUCES TECUM ISSUED TO CTY PROSECUTOR'S OFFICE AS THEY STATED WITH 10-06-06 FILING THAT THE DOCUMENTS MAY YET RESULTS IN CRIMINAL INDICTMENT AND CRIMINAL PROSECUTION.....(W)..... PRO SE 9999999 10/17/2006 - DENIED

From the records, Mr. Fitzsimmons knew that *Miles Landing Homeowners Association* is a ceased to exist, concealed bankrupt and liquidated corporation through expired/nonexisting powers. In addition, Mr. Fitzsimmons knew that a few conspirators unjustly enriched by millions of dollars and hundreds of victims continued to suffer. It is unfortunate that Mr. Fitzsimmons continued to confuse the court to conceal the facts. Mr. Fitzsimmons knew that Appellant tried with good faith and seeking justice and MLHOA obtained receivership under the name of RC 5311.18 for a nonexisting/forbidden condominium Association and other ones as alleged but confuse the court through his 1/11/2007 filing.

Similarly, Mr. Fitzsimmons confused the court by concealing 14 Felony counts indictment in Louisiana court against some of the defendants of the instant case and the counts *U. S. v. Scheur et al* (2005, Louisiana 05-304), which included the **18 U.S.C. § 371, 18 U.S.C. § 1341, 18 U.S.C. § 1343, and 18 U.S.C. § 2**. By successfully concealing the facts from both the cases where criminal investigation and or criminal indictments involved against wrongdoers, Mr. Fitzsimmons portrayed to court as if victim is vexatious litigator when in fact the other way around is true. It should constitute additional violation of NEON/THCP board member, Mr. Fitzsimmons and his acts are beyond a malpractice and without a review causes serious harm.

**III. Some of Board member/Attorney Fitzsimmons's and others involvement/violations with his self interests ahead at the expense of constitution, clients, Appellant and others include:**

- i) Attorney Mathew Fitzsimmons himself is a party to the case due to his direct involvement in the underlying case; 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/represented, as they are his clients.
- ii) **Mr. Fitzsimmons as a NEON trustee personally involved and assisted the way Rotan Lee/Scheur wants to takeover THCP into his/NEON's fold and by unlawfully discharging Plaintiff and in further concealment of department under a different name, SlimFast with a different financial status to payoff bonus/finder fee to SMG, and ultimately eliminated THCP trustees by converting THCP into NEON and self appointed to represent on behalf of all.**

- iii) As evidenced in the past pleadings including in September 12, 2005 as well as September 15, 2006, September 22, 2006, Attorney Fitzsimmons prejudiced through materially false affidavit in his September 7, 2005 five motions which are supposedly straightforward but by extending his acts into courtroom and to confuse the facts for his pecuniary benefit in September 2005; he is a material witness, disqualification/enjoinment got denied, Protective order involved, along with several violations, there by caused prejudice.
- iv) Mr. Fitzsimmons joined improperly with Scheur Group without such disclosure to THCP's board, NEON achieved \$1 million dollar note waiver on 1/14/2000 in a way without the knowledge of THCP Board by getting unqualified SMG member, Rotan Lee's signature as if payment will be deferred **S1506: Exhibit Q**, when THCP is in critical junction, **S1506: Exhibit R, S** and Matthew Fitzsimmons involved with the previously received several millions of dollars from THCP to NEON, and claimed as if THCP owes that money to NEON **S1506: Exhibit T-W** in violation of all known laws.
- v) In violation of fiduciary and other legal violations, the Scheur Group joined with Mr. Fitzsimmons due to the fact that Mr. Fitzsimmons helped Scheur Enterprise to oust Plaintiff, and as if SMG fulfilled the obligation to get released and to obtain bonus, **S1506: Exhibit X, Y**, when in fact company got ruined, including as stated in Plant Moran's auditing fraud report stated and 4/14/1999 report pointed, **S1506: Exhibit Z**, and in numerous ways some of those mentioned in the past filings.
- vi) Mr. Matthew Fitzsimmons being a NEON board member in violation of many fiduciary duties involved with other holders in retaliation to whistleblowing and to eliminate Plaintiff, **S1506: Exhibit AA, AB**. changed department name to state whole department was eliminated and let Rotan Lee's intimate friend to takeover, **S1506: Exhibit AI, AJ** and hired others. NEON's Board member/Mr. Fitzsimmons violated confidences with Plaintiff and others to avoid reimbursing \$6,500 course fee that relied upon promises and informed on 6/25/1999 as if denied the decision was informed on 4/20/1999 in contrary to many facts, **S1506: Exhibit AC-AG** when in fact that document is still being reviewed by Mr. Fitzsimmons on May 26, 1999. More over, in a discriminatory way to a different class and younger individuals got paid for same courses much higher amount into five digits.
- vii) NEON's board member, Mr. Fitzsimmons involved with others and in bad faith prepared a unique discriminatory separation agreement in 1999 to withhold even unused vacation of about \$20,000, **S1506: Exhibit AN, AH**, from Plaintiff in an effort to blackmail, also omitted \$6,500 reimbursable amount and Mr. Fitzsimmons maintained and others maintained as if the position was eliminated knowing that it was not true, **S1506: Exhibit AI-M** to self-serve, **S1506: Exhibit AL, JB22: Exhibit V**. In addition, THCP/NEON's Board member, **Mr. Matthew Fitzsimmons** I bad faith created the 40+ years old separation letter to Plaintiff in further discrimination and retaliatory way. Discriminatory intent is evidentiary by direct evidence of age discrimination, and was motivated by discriminatory intent. *Mauzy v. Kelly Services Inc.* (1996), 75 Ohio St.3d 578, *Kohmescher v. Kroger Co.* (1991), 61 Ohio St.3d 501.
- viii) With bad faith, even when Board got authority over personnel and Plaintiff's request is pending in front of Board still not offered the available MIS director position to Plaintiff even in June 2, 2000, **S1506: JL06: Exhibit AO**, rather hired someone else.
- ix) Attorney Matthew Fitzsimmons/NEON's Board member produced a materially falsified affidavit in the first week of September 2005 itself and filed with court on or around September 7, 2005 to totally discredit Plaintiff extremely prejudiced the proceedings. It is in bad faith and with willful misrepresentation, regarding Plaintiff's employment with

- NEON, with misrepresentation and some actual harm to the instant case was contemplated. *Beck v. Manufacturers Hanover Trust Co.*, S.D.N.Y.1986, 645 F.Supp.675 (predicate act, even though the scheme's victims may not in fact have been Defrauded).
- x) In September 2005, submission of materially false affidavit by NEON/THCP Board member, cum Attorney Mr. Fitzsimmons to court caused harm to Plaintiff/Appellant, *Florida Evergreen Foliage v. E.I. Du Pont De Nemours, Co.*, S.D.Fla.2001, 135 F.Supp.2d 1271, affirmed. (Obstruction of justice, or tampering with witnesses could serve as predicate act even if manufacturer was absolutely immune from civil liability under state law).
  - xi) NEON, Mr. Fitzsimmons and others in concert filed a materially false affidavit in September 2005 and they stated as if plaintiff never an employee of NEON, nor in 1995, ... which are misrepresentations to obstruct the justice and submitted that affidavit to influence the judicial decision, there by violating laws which may include perjury.
  - xii) Matthew Fitzsimmons in a capacity of NEON board member and on behalf of NEON board qualified as a principle and participated with Paula Phelps in Scheur Enterprise activities to oust Plaintiff from April 1999 through June 25, 1999. Post ouster of Plaintiff, the enterprise participants misrepresented the facts of the MIS department existence to obstruct justice, hinder evidence. In a continued and concerted effort Matthew Fitzsimmons prepared an affidavit in September 2005 and with conflicting roles with court in all 5 Motion/Brief filings of September 2005 without disclosure where supposed to disclose and omitted of these material facts with failure to disclose information where duty exists, making half-truths and or for affirmative misrepresentation, *Katzman v. Victoria's Secret Catalogue*, S.D.N.Y.1996, 167 F.R.D. 649.
  - xiii) In an effort to discredit Plaintiff and to conceal the conflicting and pecuniary benefit involvement of Mr. Fitzsimmons, NEON along with board member Mr. Matthew T. Fitzsimmons in the court pleadings in the instant case stated as if no relationship between NEON and THCP. In contrary, around 2001 NEON and Matthew T. Fitzsimmons as a board member of NEON submitted to **Ohio Attorney General** and to their representatives along with other claims stated that a parent relationship between NEON and THCP and got about \$1 million note get waived.
  - xiv) In 2001, NEON and Matthew T. Fitzsimmons as a board member of NEON submitted series of claims stating a parent relationship with THCP to get excessive Federal Government funds upon medical claims payment and the government paid/transferred about \$1.4 million in year 2002 to NEON. NEON along with board member Matthew T. Fitzsimmons, and others in concert repeatedly claimed in the pleadings as if there was no relationship between NEON and THCP.
  - xv) Mr. Fitzsimmons/NEON's board member un-duly influenced Scheur Group by helping to oust Plaintiff for mutual benefit, and obtained a letter signed by another Scheur Holder [Rotan Lee] on behalf of THCP without board's authority/knowledge knowing his imminent departure/ouster as enrollment was frozen by state and THCP is struggling to survive through cash crunch due to over/duplicate payments, S1506: **Exhibit R, S**.
  - xvi) Mr. Fitzsimmons's influence get waived/postponed over a million dollars note that is being matured on or around June 30, 2000 by depriving THCP's right, S1506: **Exhibit Q**, when THCP is looking for cash infuser through any kind of alliance to survive, S1506: **Exhibit S**.
  - xvii) On or around 1/14/2000 Mr. Fitzsimmons and others improperly obtained a letter on THCP's letterhead as if THCP waiving \$1 million note, S1506: **Exhibit Q**, in a concealed way. The rivalry between THCP and NEON is evident through NEON's refusal to pay or

take responsibility citing THCP is at life and death and THCP officer [Scheur Holder]'s unauthorized colluded/deceptive letter when THCP board demanded the payment, \$1506: **Exhibit T-W**. With a similar influence in September 2005 Mr. Fitzsimmons created a materially false affidavit to totally discredit Plaintiff.

- xviii) Mr. Fitzsimmons is an implied attorney to Plaintiff there by Attorney-client relationship and Fiduciary relationship to Plaintiff exists. During the course of relationship with Plaintiff's relationship with NEON/THCP since 1994, and for the deals such as with Tingly Systems and RAM Technologies and as a Board member of NEON and as Fiduciary, Attorney Fitzsimmons had privy to Plaintiff's information, confidential or otherwise that, if revealed, would have been adverse or detrimental to the Plaintiff's cause. By communicating directly and or indirectly, representing THCP as an attorney, Representing RAM Technology and other on behalf of Plaintiff, others and Companies, as a board member of NEON, and through employee relationship Mr. Fitzsimmons obtained, to Plaintiff's detriment, improper access to Plaintiff's confidential information.
- xix) Because Matthew Fitzsimmons being a board member, an attorney, involved in a deep affairs of SMG enterprise, has motive to disregard fiduciary and attorney-client privilege to benefit/cover himself but against Plaintiff as demonstrated through materially false affidavit submission in September 2005, his current clients, and his past clients who are defendants in the instant case with his claimed privileges and hide the conduct, Plaintiff has little ability to verify that plaintiff's privilege or his other clients' privileges are being honored, and Mr. Fitzsimmons continuation as an attorney in the instant case is unfair and unworkable. *Perin v. Spurney*, 2005 -Ohio- 6811 (Ohio App. Dist.10 12/22/2005).
- xx) In addition to many others of some NEON/THCP employees, Mr. Fitzsimmons had Attorney-Client relationship with instant case Plaintiff as well as Defendants and **some of the involved key parties/issues** includes:
  - 1 Paula Phelps: Mr. Fitzsimmons was Confident/counsel to THCP officers such as Paula Phelps; with whom involved to oust Plaintiff and with tortuous interference **JB-Exhibit U, V** which lead to exhaust THCP assets, **JB22: Exhibit U-AR**, and get it announced as if whole department was eliminated **JB22-Exhibit Y3**, etc.
  - 2 Plaintiff/Prasad Bikkani (as explained above)
  - 3 Robert McMillan: in a method to avoid \$6,500 reimbursement to Plaintiff, with other retaliations related instant case, exchanged communications through Paula Phelps to Mr. Fitzsimmons,
  - 4 Rotan Lee: In several efforts to benefit NEON with millions of dollars through getting waived/deferred THCP note at critical time in an effort to help to unlawfully discharge Plaintiff, show artificial savings through SlimFast with fabricated information so Barry Scheur can get finder fee, release from promised obligations to THCP, and many other related methods,
  - 5-7 **5) Barry Scheur/6) Ruth Aaron/7) SMG**: Retained for NEON's and THCP's insider information along with Attorney Dennis Roth (whom later replaced by his attorney Brian Green) to make it appear settlements with hospitals to make it appear as if met requirements but conceal flaws with Rotan Lee to THCP Board etc,
  - 8-12 **8)Brenda Marshall/9) Moreno Miller/10) Frank Kimber/11) Joseph Davis, 12) Mr. Arnold Pinkney**: As Board of Trustees of THCP shared with Attorney. Fitzsimmons and relied on him including at the issue of making Rotan Lee as CEO of THCP against the wishes of NEON **JB22-Exhibit K5**, but acted in converting THCP into NEON in concert

with SMG, etc.

- 13-15 **13)** NEON board members collectively as one for now, **14)** NEON, **15)** THCP: Attorney Fitzsimmons pretended as if he is representing all of them while NEON and THCP has it's own conflicts of interests and with his self interests ahead and in conflicts with as a Board of Trustee of NEON (if not for THCP at any time), and as pleaded in detail with severe conflicts which is a record. Confidential/counsel to current trustees of THCP (whoever may be) and to current NEON Trustees to plead that there is no relationship between NEON and THCP, in contrary to **JL06: Exhibit B, C**, and acting as an owner of both with the way he feels fit with self-dealings and with all the above conflicts.
- 16 Attorney Dennis Roth (in concert with Dennis Roth as co-attorney to achieve Scheur/Ruth Aaron/Rotan Lee, etc goals at the expense of THCP, but Attorney Dennis Roth submitted for disqualification in the instant case when Plaintiff gave a notice to Attorney Fitzsimmons and to Attorney Dennis Roth with potential party to the case, but continued to violate disciplinary rules by using his attorney Brian Green's representation to his client(s) in the instant case.
- 17 Obligated to avoid conflicts if same attorney/firm claimed a different relationship between NEON-THCP while acting as Agent of THCP, and a different relationship while representing NEON to claim THCP assets including improper conveyance through \$1 million note at the most critical time of THCP, **JB22: Exhibit AL-AQ**.
- 18 Attorney Matthew Fitzsimmons/NEON 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 thus mandating injunction/disqualification.
- 19 Attorney Matthew Fitzsimmons/NEON's Trustee Obligated to uphold Attorney Disciplinary Rules by Profession- but totally and willfully disregarded by attempting to represent/and by representing about twenty entities/persons of conflicting interests/roles simultaneously to benefit himself against his clients.
- 20 Attorney Brian Green: 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.
- 21 Attorney Fitzsimmons: Mr. 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 though November 2005 service was not perfected on Attorney Fitzsimmons and or on Attorney Dennis Roth but June2006 initiated Sheriff's personal service on 6/27/2006 for Attorney Fitzsimmons though he refused the tendered service.

06/27/2006

D18

SR

06/27/2006 8614346 THE WITHIN NAMED FITZSIMMONS/MATTHEW/T 06/26/2006 SHERIFF DEPUTY SERV. REFUSED IN MY COUNTY.

Whatever 7/5/2006 filed Motion by Attorney Fitzsimmons's Motion reflecting future filings as if "Purporting to name their counsel as a defendant or, in the alternative, to bar Plaintiff from filing and serving" is/should be moot as it was already tendered on 6/27/2006 itself. The absence of a necessary party constitutes a jurisdictional defect. Dismissal due to a party's failure to join a necessary party is warranted where the defect cannot be cured. State, ex rel. *Bush, v. Spurlock*, 42 Ohio St.3d 77, 537 N.E.2d 641

(1989). Therefore, court may grant order Mr. Fitzsimmons to join as parties if tendered summons strike is final.

22 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.

**IV. ARGUMENT IN SUPPORT OF LEAVE TO GRANT FOR RECONSIDERATION FOR JURISDICTION :**

Appellant filed an Action on his own behalf, on behalf of employer THCP/NEON. The complaint sought breach of fiduciary duty, conversion, receipt of an unlawful distribution of assets, action false/misleading financial statements, action on conversion, reinstatement, retaliatory/unlawful termination, action on material falsification, etc. Appellant filed disqualification of Attorney Matthew Fitzsimmons arguing first that Mr. Fitzsimmons had a conflict of interest by way of Mr. Fitzsimmons's role as corporate counsel to THCP/NEON, Board member of NEON/THCP (Claimed NEON as a member of THCP), represented Appellant and other employees, represented other defendants, as a party to the lawsuit and served summons, involved in violations and too involved in unlawful discharge and other allegations of the complaint and evaded deposition and still a witness in the litigation. As the record indicates, a past attorney-client relationship existed between Appellant and Attorney Fitzsimmons; the subject matter of those relationships is substantially related; and Mr. Fitzsimmons acquired confidential information from Appellant and supports Attorney Fitzsimmons disqualification, *Dana Corp. v. Blue Cross & Blue Shield Mut. of N. Ohio* (C.A.6, 1990), 900 F.2d 882, 889; *Mentor Lagoons, Inc. v. Rubin* (1987), 31 Ohio St.3d 256.

Mr. Fitzsimmons eluded as if Appellant brought the derivative lawsuit for hundreds of employees in \$x millions (though none mentioned for any docket entry purpose) and there by on behalf of corporation asking the corporate counsel to be disqualified. Though generally, a party on the outside of an attorney-client relationship "lacks standing to complain of a conflict of interest in

that relationship." *Morgan v. North Coast Cable Co.* (1992), 63 Ohio St.3d 156, 159, it is true if an attorney never represented a client or stranger to the attorney-client relationship to complain any of the conflict of interest. It is not the case with Appellant and Mr. Fitzsimmons represented Appellant. Attorney Fitzsimmons's representation of the corporation is substantially/directly related. In such circumstances, though, whether Attorney ultimately is a material witness in the litigation does not matter, *Patrick v. Ressler* (Sept. 28, 2001), Franklin App. No. 00AP-1194, the factual context of his prior representation of THCP/NEON and the factual context of the present case create a relationship substantial enough to justify disqualification. Furthermore, Mr. Fitzsimmons is a board member, represented all the defendants, a party to the current lawsuit, altering evidence, materially participated in illegal activities including in retaliation and unlawful termination of Appellant for his pecuniary benefit.

Moreover, Appellant has brought the action on behalf of the corporation after giving series of notices/communications to nonprofit corporation/board of directors. As the corporation's counsel, it is presumed that Attorney Fitzsimmons received confidential information, *Brant v. Vitreo-Retinal Consultants Inc.* (April 3, 2000), Stark App. No. 1999CA00283 and the subsequent representation by Mr. Fitzsimmons is not vicarious but primary and unlike a need to presume the received confidences as rebuttable, *Brant v. Vitreo-Retinal Consultants, Inc.* (Apr. 3, 2000), Stark App. No. 1999CA00283, discretionary appeal denied, 90 Ohio St.3d 1402. Under the given circumstances, Appeal court imposing attorneys' fees would be unfortunate to determine the reasonableness, as well as amount of the attorney fee award. Similarly, it is unfortunate to rule in favor of Mr. Fitzsimmons' motion and by reconsidering the facts the Court should vacate the attorneys' fee award and in favor of Appellant including the vexatious litigant label. This great injustice is the further consequence of pecuniary benefit involved and the parties who involved in the underlying case representing the case with half truths and this case is unique for the final appealability or to

modify the law accordingly and the victim/Appellant should not be penalized for the good faith efforts and too in view of great loss already suffered through.

As stated earlier Mr. Fitzsimmons, and other attorneys/firms violated **Fourteenth Amendment** and **Sixth Amendment** besides **Canon 5**, **Canon 4**, **Canon 9**, and other DR violations. 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). 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 caused severe injustice to Appellant and to the judiciary system itself. 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-up violations. Attorney Fitzsimmons/Board member severely violated Disciplinary Rules and Fiduciary duties for over a dozen defendants in the instant case and to Plaintiff as all are his clients/ex-clients/ or express attorney-client relation, 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. 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.

Mr. Fitzsimmons improperly defending/defended against the disqualification motion, with serious disregard for the orderly process of justice, without a colorable basis in law, and causing a harsh blow to the process as it "will have a profound chilling effect upon victims/litigants and would interfere with the presentation of meritorious legal questions. In an idealized world, victim would have bowed out, but reality dictates that great injustice the proper course was to appeal or to get reviewed/modified the law as this kind of case never occurred before. The way Mr. Fitzsimmons involved continued to conceal facts is nothing less than an insult to the doctrine of stare decisis and a slap in the face of the adversary process, *Overnite Transp. Co. v. Chicago Indus. Tire Co.*, 697 F.2d 789 (7th Cir. 1983). Unfortunately, Mr. Fitzsimmons contaminating the law of attorney disqualification, which is a fundamental importance to the legal community and to our society. Mr. Fitzsimmons using confidential information that he has obtained from a client against that client on behalf of another one and representing an adversary of his former clients of the subject matter of the two representations is not just "substantially related," but same. Mr. Matthew Fitzsimmons not only had access to but also received confidential information of **Plaintiff/Appellant**, THCP, board of directors, officers, to NEON, board of directors, officers, and above a dozen defendants in the instant case. In the instant case Mr. Fitzsimmons and his firm

popped up as counsel to an adversary of Plaintiff, and other defendants following illegal conversion of THCP under NEON and representing against THCP board of directors officially. Thus Mr. Fitzsimmons's interference under the name of an attorney to two defendants in the instant case is not just the representations that are substantially related to past services/obtained confidences from others but totally and directly related. Consistently with this distinction, *Westinghouse Elec. Corp. v. Kerr-McGee Corp.*, 580 F.2d 1311, 1321 (7th Cir. 1978) -- like this is a case where the same law firm represented adversaries in substantially related matters -- states that it would have made no difference whether "actual confidences were disclosed" even if the law firm had set up a "Chinese wall" between the teams of lawyers working on substantially related matters, though the two teams were in different offices of the firm, located hundreds of miles apart. Mr. Fitzsimmons couldn't have created a Chinese wall in his mind between his multiple violations with various clients. Since it is a direct relationship, substantial relationship inquiry is not needed.

The fact that Mr. Fitzsimmons made stubbornness in resisting disqualification is improper, *Analytica, Inc. v. NPD Research Inc.*, 708 F.2d 1263 (7th Cir. 1983). Somehow **Appeal court and this court** got influenced by Mr. Fitzsimmons and awarded sanctions against Appellant even without taking up the case to which Appellant sought justice on basic principle of law, fairness to all litigants believing that fairness requires that any law firm and/or individual of professional impropriety, questionable ethics, or misconduct with the given the opportunity to rebut any and all adverse inferences which may have arisen by virtue of a prior filings. Unfortunately, instead of Matthew Fitzsimmons getting disqualified, innocent Appellant get sanctioned, suffered due process, due process guarantees, fundamental fairness to victims/litigants, *Lassiter v. Dept. of Social Services*, 452 U.S. 18, 24 (1981). In the instant case not only the counsel/Mr. Fitzsimmons changed the sides in representing against some other client also involved as a party, involved with dozens of serious violations of the Code of Professional Responsibility with a clear un rebutted factual basis.

Even just where "the firm itself changed sides", without having a need to have other conflicts such as in the instant case, the law firm was disqualified, *Analytica, Inc. v. NPD Research Inc.*, 708 F.2d 1263 (7th Cir. 05/31/1983). Unfortunately, Mr. Fitzsimmons's interest happened to be in violation of retaining client by way of controlling the board as a board of trustee and in denying a serious breach of professional ethics which outweighed any felt obligation to 'come clean ' by ignoring as officers of the court though generally most of the attorneys are trustworthy, *The Lawyer's Obligation to be Trustworthy when Dealing with Opposing Parties*, 33 S.C.L. Rev. 181 (1981). It is not a serious and studied disregard for the orderly process of justice. There is a legal basis for original position, material misrepresentation and cover-up involved as alleged whether that position was found to be legally correct/incorrect thus can not be characterized as lacking justification but Matthew Fitzsimmons is vexatious and representing his controlled clients to protect his improper acts, *Overnite Transp. Co. v. Chicago Indus. Tire Co.*, 697 F.2d 789 (7th Cir. 1983). In *Overnite Transp.*, the plaintiff brought suit based on a novel interpretation of the Interstate Commerce Act, not previously addressed in published case law. The district court granted the defendant's motion to dismiss, and on appeal the 7<sup>th</sup> Cir. Court affirmed then the district court granted the defendant's motion for an order assessing attorney's fees against the plaintiff's attorneys, finding that the attorneys had acted vexatious in instituting the lawsuit. On appeal from the attorney fee award, the 7<sup>th</sup> Cir. Court held that the district court had abused its discretion. In the instant case, the victim/Appellant deserves the fees and award and not Mr. Fitzsimmons under the name of THCP/NEON to get sanctions against Plaintiff. Appellant requests the honorable court to grant leave to file reconsideration motion and Disciplinary counsel should be allowed to investigate the existing dozens of serious violations and unfortunately 1/24/2007 court received documents were not filed in the court and made it appear as if what a board of Trustee cum attorney filed filings are

accurate. Based upon the facts pleaded in this request to grant leave, the harm is tremendous both to Appellant and to the judiciary system without granting a leave to file for reconsideration.

**IV) Conclusion for request for leave for reconsideration filing:**

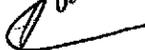
Attorneys including Attorney Fitzsimmons have many violations including Canon 4, Canon 5, Canon 9, DR 5-105(D), DR 7-102(A), DR 1-102(A), DR 7-102(B), DR 5-102(A) & DR 5-102(B), and caused conflicts and violations to constitutional Amendments, IRC 4941(d)(1)(B), and continuing with total disregard to judiciary system. NEON/THCP board member, Attorney Fitzsimmons continued with constitution offending proceedings, tainted with half truths, created materially false affidavit(s) in September 2005, submitted to court knowingly those are materially false, committed perjury with false affidavit in September 2005 itself, and seriously affected the basic fairness, integrity, and or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself and obtained sanctions against Appellant/victim. In the two cases the parties Mr. Fitzsimmons cited (MLHOA and the instant case) the parties involved with Criminal indictment in one case and criminal investigation in another case but Mr. Fitzsimmons portrayed as if they are victims and Appellant as vexatious in an effort to confuse the court and succeeded in doing so and in the same fashion Mr. Fitzsimmons continued to represent.

The Appeal court and this honorable court by declining jurisdiction, prior to judgment of trial court as well as after judgment, granted sanctions against Appellant/victim instead of even without reviewing the appeal or for modification of law due to unique conditions and also unfortunately ruled in favor of Mr. Fitzsimmons's Motion. For the reasons discussed above, where an attorney involved with underlying acts and continues to involve under the name of a client shown a tendency to go any extent thus this case involved matters of public and great general interest and very important substantial constitutional questions. The appellant requests

that this court reconsider the jurisdiction so that the important issues presented will be reviewed on Constitution with respect to Ohio law and Federal laws. In the instant case, the victim deserves the fees and award and not Mr. Fitzsimmons under the name of THCP/NEON to get sanctions against Plaintiff thus sanctions against Plaintiff/Appellant should be voided. Upon reviewing the facts the court can recognize that Appellant does not have any bad faith and serious attorney violations can be documented by Disciplinary counsel and judgment in favor of Mr. Fitzsimmons' motions should be vacated. The Appellant further requests the court to grant necessary leave to defend the allegations filed by Mr. Fitzsimmons to serve justice and allow the current filing to review and reconsider the facts.

The appellant requests that this court grant leave to file for reconsideration of jurisdiction and on other allowed decision/judgment entry so that the important issues presented will be reviewed on Constitution with respect to Ohio and Federal law. Also actual and appearance of impropriety can be eliminated. Since the Reconsideration motion is being submitted with the request of leave some portions are common. In the event, if Court grants additional time to file Appellant would like to submit with additional citations and with further concise facts and constitutional violations.

**Respectfully submitted,**

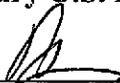


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**Prasad Bikkani, Pro Se**  
3043 Forest Lake Dr, Westlake, OH-44145  
(440) 808-1259, Prasadbabu@aol.com

**Certificate of Service**

A copy of the foregoing was sent by ordinary U.S. mail/Fax on 12th day of March 2007 to counsel(s) for Appellees.



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**Prasad Bikkani, Pro Se, Appellant**

# The Supreme Court of Ohio

OFFICE OF THE CLERK

65 SOUTH FRONT STREET, COLUMBUS, OH 43215-3431

CHIEF JUSTICE  
THOMAS J. MOYER

CLERK OF THE COURT  
MARCIA J. MENGE

JUSTICES  
PAUL E. PFEIFER  
EVELYN LUNDBERG STRATTON  
MAURHEN O'CONNOR  
TERRENCE O'DONNELL  
JUDITH ANN LANZINGER  
ROBERT R. CUFF

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January 24, 2007

Prasad Bikkani  
3043 Forest Lake Dr.  
Westlake, Ohio 44145

Re: *Prasad Bikkani v. Rotan E. Lee, Esq., et al.*  
Supreme Court of Ohio Case Number 06-2073

Dear Mr. Bikkani:

The enclosed documents were not filed and are being returned to you because they did not meet the requirements of the Rules of Practice of the Supreme Court of Ohio. Specifically, Rule XIV, Section 4(B), states that a memorandum opposing a motion shall be filed within 10 days after the motion is filed. For the above-named case, the motion to strike and motion to have appellant classified as a vexatious litigator were filed on January 11, 2006; therefore, a memorandum in opposition to appellee's motions was due in the Clerk's Office no later than January 22, 2007, by 5 p.m. The Clerk's Office received the memorandum opposing the motions on January 24, 2007. Pursuant to Rule XIV, Section 1(C), the Clerk's Office is prohibited from filing documents that are not submitted on time and motions to waive are also prohibited and shall not be filed.

Please refer to the Rules of Practice of the Supreme Court of Ohio for further information.

Sincerely,

Clerk's Office

Enclosures

Ex A

# The Supreme Court of Ohio

OFFICE OF THE CLERK

65 SOUTH FRONT STREET, COLUMBUS, OH 43215-3431

CHIEF JUSTICE  
THOMAS J. MOYER

CLERK OF THE COURT  
MARCIA J. MENGE

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January 24, 2007

Prasad Bikkani  
3043 Forest Lake Drive  
Westlake, OH 44145

Re: *Prasad Bikkani v. Rotan E. Lee, Esq., et al.*, Case No. 2006-2102

Dear Mr. Bikkani:

The enclosed document could not be filed because it is prohibited by Rule III, Section 3(B), of the Rules of Practice of the Supreme Court of Ohio. If you wish to file a motion to declare Mr. Fitzsimmons a vexatious litigator, this must be submitted separately.

Sincerely,  
Clerk's Office

Enclosures

Ex B

JAN 22 2007

# Court of Appeals of Ohio, Eighth District

County of Cuyahoga  
Gerald E. Fuerst, Clerk of Courts

PRASAD BIKKANI

Appellant

COA NO.  
89269

LOWER COURT NO.  
CP CV-566249

COMMON PLEAS COURT

-vs-

ROTAN LEE, ET AL.

Appellee

MOTION NO. 392443

Date 01/12/07

Journal Entry

SUA SPONTE, APPEAL IS DISMISSED FOR LACK OF A FINAL APPEALABLE ORDER AS TO ALL POST-TRIAL MOTIONS AND ORDERS SET FORTH IN THE NOTICE OF APPEAL. R.C. 2505.02. AS TO THE UNDERLYING CASE, FINAL ORDER ISSUED 10/03/06 AND APPEAL OF THE FINAL ORDER AT THIS TIME WOULD BE LATE. APP.R. 4(A).

FILED ... JOURNALIZED  
PER APP. R. 22(B)

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

JAN 22 2007

JAN 12 2007

GERALD E. FUERST  
CLERK OF THE COURT OF APPEALS  
BY [Signature] DEP.

GERALD E. FUERST  
CLERK OF THE COURT OF APPEALS  
BY [Signature] DEP.

Adm. Judge, FRANK D. CELEBREZZE, JR.,  
Concurs

[Signature]  
Judge JAMES J. SWEENEY

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).

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