



**TABLE OF CONTENTS**

**TABLE OF AUTHORITIES ..... iii**

**INTRODUCTION ..... 1**

**ARGUMENT ..... 1**

**Proposition of Law No. 1:**  
**Ohio judges who act within their judicial capacity have absolute immunity for procedural errors, including ruling during the time between the filing of a patently untimely Petition for Removal and the federal district court’s remand..... 1**

**I. As a preliminary matter, Mr. Borkowski improperly referenced a number of documents that were not attached to his underlying Complaint. As this appeal involves only the decision on a Rule 12(b)(6) motion to dismiss, these references must be disregarded on appeal..... 1**

**II. Judge Abood acted with proper jurisdiction for purposes of absolute immunity. .... 4**

**III. This Court’s review is not precluded by principles of *res judicata*. .... 6**

**IV. All Ohio and federal case law on judicial immunity supports the dismissal of this case..... 8**

**V. This Court must disregard Mr. Borkowski’s extraneous requests for relief throughout his Brief, as none was certified for this Court’s review. .... 10**

**CONCLUSION ..... 10**

**CERTIFICATE OF SERVICE..... 11**

## TABLE OF AUTHORITIES

### Cases

<i>Agi-Bluff Manor, Inc. v. Reagen</i> (D. Mo. 1989), 713 F. Supp. 1535.....	8
<i>Barnes v. Winchell</i> (C.A.6, 1997), 105 F.3d 1111 .....	6
<i>Borkowski v. Borkowski</i> , Fulton County Ct. Comm. Pls. No. 04-CV-000018, <i>reversed</i> by 6 <sup>th</sup> Dist. No. F-04-020, 2005-Ohio-2212 .....	passim
<i>Borkowski v. Markus</i> , Ohio Supreme Court No. 2007-0564 .....	4
<i>Bradley v. Fisher</i> (1871), 80 U.S. 335, 20 L.Ed. 646 .....	4
<i>Brubaker v. Ross</i> (Apr. 17, 2001), Franklin App. No. 00AP-1159, 2001 Ohio App. LEXIS 1764 .....	3
<i>Campbell v. Ohio Adult Parole Authority</i> (Oct. 28, 1997), 10 <sup>th</sup> Dist. No. 97APE05-616, 1997 Ohio App. LEXIS 4829.....	3
<i>Cronovich v. Dunn</i> (D. Mich. 1983), 573 F. Supp. 1330 .....	8
<i>Grava v. Parkman Twp.</i> , 73 Ohio St.3d 379, 1995-Ohio-331, 653 N.E.2d 226.....	6
<i>In re LoDico</i> , Stark App. No. 2003-CA-00446, 2005-Ohio-172 .....	3
<i>Kelly v. Whiting</i> (1985), 17 Ohio St.3d 91, 17 OBR 213, 477 N.E.2d 1123.....	5, 9
<i>Lansing v. Hybud Equip. Co.</i> , 5 <sup>th</sup> Dist. Ct. App. No. 2002CA00112, 2002-Ohio-5869 ....	3
<i>Laskowski v. Mears</i> (D. Ind. 1985), 600 F. Supp. 1568 .....	8
<i>Phillips v. Rayburn</i> (Aug. 9, 1996), 4 <sup>th</sup> App. Dist. No. 95CA26, 1996 Ohio App. LEXIS 3570.....	3
<i>Richard v. Schaefer</i> (June 18, 1992), 11 <sup>th</sup> App. Dist. No. 63069, 1992 Ohio App. LEXIS 3151.....	6-7
<i>Shore v. Howard</i> (N.D. Texas 1976), 414 F. Supp. 379 .....	8
<i>Stahl v. Currey</i> (1939), 135 Ohio St. 253, 14 Ohio Op. 112, 20 N.E.2d 529 .....	9
<i>State v. Raymundo</i> (Aug. 18, 1995), 11 <sup>th</sup> App. Dist. No. 94-T-5025, 1995 Ohio App. ....	3
<i>State ex rel. Crabtree v. Franklin County Bd. Of Health</i> (1997), 77 Ohio St.3d 247, 673 N.E.2d 1281 .....	2, 3

<i>State ex rel. Fisher v. Burkhardt</i> (1993), 66 Ohio St. 3d 189, 1993 Ohio 187, 610 N.E.2d 299.....	5
<i>State ex rel. Keller v. Cox</i> , 85 Ohio St.3d 279, 1999-Ohio-264, 707 N.E.2d 931 .....	3
<i>State ex rel. Neff v. Corrigan</i> , 75 Ohio St. 3d 12, 1996-Ohio-231, 661 N.E.2d 170.....	3
<i>State ex rel. Scott v. City of Cleveland</i> , 112 Ohio St. 3d 324, 2006-Ohio-6573, 859 N.E.2d 923 .....	3
<i>Stern v. Mascio</i> (C.A.6, 2001), 262 F.3d 600 .....	7, 8
<i>Stores Realty Co. v. Cleveland</i> (1975), 41 Ohio St.2d 41, 70 Ohio Op. 2d 123, 322 N.E.2d 629.....	2
<i>Stump v. Sparkman</i> (1978), 435 U.S. 349, 98 S. Ct. 1099, 55 L. Ed. 2d 331 .....	4, 6, 8
<i>The Deli Table, Inc. v. Great Lakes Mall</i> (Dec. 31, 1996), 11 <sup>th</sup> App. Dist. No. 95-L-012, 1996 Ohio App. LEXIS 5930.....	3
<i>Wilson v. Neu</i> (1984), 12 Ohio St.3d 102, 12 OBR 147, 465 N.E.2d 854 .....	1, 5, 9
<i>Wochna v. Kimbler</i> , 163 Ohio App. 3d 349, 2005 Ohio 4802, 837 N.E.2d 1226 .....	9

**Statutes**

28 U.S.C. § 1332.....	5
28 U.S.C. § 1441 .....	4
28 U.S.C. § 1446.....	5
42 U.S.C. § 1983.....	7
Ohio Civ. R. 12 .....	1, 2, 10

## INTRODUCTION

Appellee Borkowski essentially raises three arguments in opposition to Appellant Judge Abood's Brief: First, in *Borkowski v. Borkowski*, Judge Abood continued ruling after Mr. Borkowski filed a Petition for Removal, thereby acting in the clear absence of all jurisdiction and losing absolute immunity (Appellee's Brief, pp. 15-16). Second, this Court's review is precluded by the Sixth District Court of Appeals' underlying decision in *Borkowski v. Borkowski* (Appellee's Brief, pp. 16-18). And, finally, the judicial immunity cases Judge Abood cites—*except Wilson v. Neu* (1984), 12 Ohio St.3d 102, 12 OBR 147, 465 N.E.2d 854—are inapplicable because the underlying judicial acts occurred in criminal cases (Appellee's Brief, pp. 19-21).

Each of these arguments fails.

## ARGUMENT

### **Proposition of Law No. 1:**

**Ohio judges who act within their judicial capacity have absolute immunity for procedural errors, including ruling during the time between the filing of a patently untimely Petition for Removal and the federal district court's remand.**

- I. As a preliminary matter, Mr. Borkowski improperly referenced a number of documents that were not attached to his underlying Complaint. As this appeal involves only the decision on a Rule 12(b)(6) motion to dismiss, these references must be disregarded on appeal.**

The trial court granted Judge Abood's Motion to Dismiss the Complaint in this matter pursuant to Rule 12(B)(6). The Sixth District Court of Appeals reversed that dismissal. Both courts reached these decisions based only on the Complaint and its attachments: the Sixth District Court of Appeals' underlying decision in *Borkowski v. Borkowski* (Exhibit 1 to Complaint, Supp. 6-11); and a number of other documents from

*Borkowski v. Borkowski*, including two Judgment Entries, a Writ of Execution, a Writ of Possession, two “Official Notices,” and a Return of Service (Exhibit 2 to Complaint, Supp. 12-18). Pursuant to Rule 10(C), the trial and appellate courts below properly considered only the Complaint and its attachments in deciding the merits of Judge Abood’s Motion to Dismiss. *See also State ex rel. Crabtree v. Franklin County Bd. Of Health*, 77 Ohio St.3d 247, 249 n.1, 1997-Ohio-274, 673 N.E.2d 1281.

The first fourteen pages of Mr. Borkowski’s brief, save several paragraphs, primarily reference documents in the Appendix that were not attached to the Complaint. These documents include unauthenticated correspondence between non-parties to this action; Judgment Entries, Orders, transcripts, and other pleadings from the Northern District of Ohio, the Fulton County Court of Common Pleas, the Sixth District Court of Appeals, and this Court; and a mortgage assignment purportedly printed from the Fulton County Recorder’s website. (Appellee’s Brief, Appendix.) These attachments—and Mr. Borkowski’s references to these attachments throughout his Statement of Facts—are improper and must not be included in this Court’s analysis of the lower courts’ respective determinations.

First, as a practical matter, these documents were not considered by the lower courts in deciding the motion to dismiss. It would therefore be inappropriate to raise these matters for the first time at this late stage. *See, e.g., Stores Realty Co. v. Cleveland* (1975), 41 Ohio St.2d 41, 43, 70 Ohio Op. 2d 123, 322 N.E.2d 629. In addition, Mr. Borkowski could *never* have appropriately introduced these materials for consideration in opposition to a motion to dismiss (or in the subsequent appeals reviewing the trial court’s dismissal) because they are not permitted under Rule 12(B)(6). Rule 12(B)(6) determinations cannot rely on factual allegations or evidence

that exist outside the complaint and its attachments. *See, e.g., State ex rel. Scott v. City of Cleveland*, 112 Ohio St. 3d 324, 2006-Ohio-6573, 859 N.E.2d 923, at ¶ 26; *State ex rel. Keller v. Cox*, 85 Ohio St.3d 279, 281, 1999-Ohio-264, 707 N.E.2d 931; *State ex rel. Crabtree*, 77 Ohio St.3d at 249 n.1.<sup>1</sup>

Because they could not have been offered below—and, more importantly, because they were *not* offered in opposition to Judge Abood’s motion below—these documents and the information within them cannot be introduced now. Mr. Borkowski’s references to these documents must be excluded from this Court’s consideration of the case.

---

<sup>1</sup> While some courts occasionally apply an “adjudicative facts” exception to this rule—*see, e.g., State ex rel. Neff v. Corrigan*, 75 Ohio St. 3d 12, 16, 1996-Ohio-231, 661 N.E.2d 170—it would not apply here. First, Mr. Borkowski proffered no adjudicative facts below; it is too late to do it for the first time in this appeal. Second, had Mr. Borkowski attempted to obtain the lower courts’ recognition of these facts below, these efforts would have failed because the documents in the Appendix largely consist of unauthenticated documents that are not pleadings at all or are not pleadings from the Lucas County Court of Common Pleas—which is the only court from which the trial court could have conceivably taken judicial notice.

Even those few cases that have permitted such judicial notice require that the adjudicative facts come from their own court. *See Lansing v. Hybud Equip. Co.*, 5<sup>th</sup> Dist. Ct. App. No. 2002CA00112, 2002-Ohio-5869, at ¶16-17 (allowing the parties’ prior litigation history to be considered when deciding motion to dismiss). However, most courts are more stringent, requiring that the adjudicative facts come from the immediate case. *In re LoDico*, Stark App. No. 2003-CA-00446, 2005-Ohio-172, at ¶ 94; *Brubaker v. Ross* (Apr. 17, 2001), Franklin App. No. 00AP-1159, 2001 Ohio App. LEXIS 1764. These cases state a trial court cannot take judicial notice of proceedings in a separate action, even if the prior action was between the same parties and was tried before the same trial judge. *The Deli Table, Inc. v. Great Lakes Mall* (Dec. 31, 1996), 11<sup>th</sup> App. Dist. No. 95-L-012, 1996 Ohio App. LEXIS 5930; *State v. Raymundo* (Aug. 18, 1995), 11<sup>th</sup> App. Dist. No. 94-T-5025, 1995 Ohio App. LEXIS 3395; *Phillips v. Rayburn* (Aug. 9, 1996), 4<sup>th</sup> App. Dist. No. 95CA26, 1996 Ohio App. LEXIS 3570. The rationale for the majority rule is that “an appellate court cannot review the propriety of the trial court’s reliance on such prior proceedings because that record is not before the appellate court.” *Campbell v. Ohio Adult Parole Authority* (Oct. 28, 1997), 10<sup>th</sup> Dist. No. 97APE05-616, 1997 Ohio App. LEXIS 4829, *citing The Deli Table, Inc.*, 11<sup>th</sup> App. Dist. No. 95-L-012.

## II. Judge Abood acted with proper jurisdiction for purposes of absolute immunity.

Even if this Court considers Mr. Borkowski's additional facts, they do nothing to alter the analysis. They merely provide some procedural history from other cases in which Mr. Borkowski was—and is still—involved.<sup>2</sup> These added facts do nothing to change the conclusion that Judge Abood retained absolute judicial immunity for his challenged actions in presiding over the eviction matter of *Borkowski v. Borkowski*, as they were always judicial acts taken with sufficient jurisdiction for immunity purposes.

Mr. Borkowski claims Judge Abood lacked jurisdiction to rule during the 12-day window in which his ultimately unsuccessful Petition for Removal was pending; however, he does not dispute that Judge Abood had proper jurisdiction over the remainder of his case. This is adequate jurisdiction for immunity purposes. *Bradley v. Fisher* (1871), 80 U.S. 335, 351-352, 20 L.Ed. 646; *Stump v. Sparkman* (1978), 435 U.S. 349, 356-57, 98 S.Ct. 1099, 55 L.Ed. 2d 331.

In a judicial immunity analysis, the defendant judge must demonstrate only adequate jurisdiction, not proper jurisdiction. As Judge Abood argued in his opening brief, he had both: Mr. Borkowski's Petition for Removal in his underlying eviction action was clearly past the time period permitted by 28 U.S.C. § 1441<sup>3</sup>; Judge Abood was

---

<sup>2</sup> On May 7, 2007, Mr. Borkowski moved this Court to consolidate this case with *Borkowski v. Markus*, Ohio Supreme Court No. 2007-0564. While that opposed motion has not yet been granted, Mr. Borkowski nevertheless includes ample facts from that case in his Statement of Facts.

<sup>3</sup> Without a citation to any case or statute, Mr. Borkowski argues that 28 U.S.C. § 1441 permits a removal to occur up to four years after some undesignated event in a state court action “when a federal court has original jurisdiction of the matter.”

This is flawed on several fronts: First, the underlying matter was an eviction case—it clearly did not involve a federal question for which the U.S. District Court would

therefore permitted to ignore the Petition because he never lost proper jurisdiction over the case. (See Appellant's Brief, part II.B.2.)

Moreover, the only requirement to obtain judicial immunity is to have *some* jurisdiction over the subject matter of the case, at some period of time throughout the case. *State ex. rel. Fischer v. Burkhardt* (1993), 66 Ohio St.3d 189, 191, 1993 Ohio 187, 610 N.E.2d 299; *Kelly v. Whiting* (1985), 17 Ohio St. 3d 91, 93, 17 OBR 213, 477 N.E.2d 1123; *Wilson*, 12 Ohio St.3d at 104; see also Appellant's Brief, part II.C.2. Judge Abood easily satisfied this requirement; even under Mr. Borkowski's version of the law, Judge Abood had proper jurisdiction over the case except during the 12-day window in which Mr. Borkowski's removal petition was pending. Even then, Judge Abood always had proper subject matter jurisdiction over the controversy. (See Appellant's Brief, part II.A.) He was therefore absolutely immune for his judicial acts.

---

have original jurisdiction; moreover, there was nothing demonstrating the diversity of parties—Jennifer Borkowski was suing her father, A.J. Borkowski, to evict him from her Fayette, Ohio property. (Supp. 7, ¶ 4.) Further, 28 U.S.C. § 1446(b) requires *all* petitions for removal to be filed within 30 days from the defendant's receipt of the initial pleading in the case, or within service of summons, whichever is shorter. That did not happen here. (Supp. 2, ¶ 6; Supp. 7-8, ¶¶ 4-7.)

There is one exception to this rule, which did not apply (A defendant may move to remove a case within 30 days of receiving an amended pleading, motion, order, or other paper that makes the case newly removable. However, this notice cannot be filed later than one year after the commencement of the action if the basis for removal is diversity of citizenship under 28 U.S.C. § 1332.).

The opinion attached to the Complaint noted this case only involved Jennifer and A.J. Borkowski throughout. (Supp. 6-11.) Therefore, the 30 day removal requirement applied; there was no diversity of citizenship; and there was no federal question jurisdiction conferring original jurisdiction. Mr. Borkowski's Petition for Removal—filed nearly two months after his answer—was patently defective. (Supp. 2, ¶ 6; Supp. 7-8, ¶¶ 5, 7; see also 28 U.S.C. § 1446(b).)

### III. This Court's review is not precluded by principles of *res judicata*.

Mr. Borkowski additionally argues that because the Sixth District Court of Appeals determined Judge Abood acted without proper jurisdiction in *Borkowski v. Borkowski*, this Court is precluded from considering the issue in this matter. However, the *Borkowski v. Borkowski* court was only determining whether Judge Abood's decisions lacked jurisdiction for purposes of evaluating the propriety of Mr. Borkowski's eviction. The Sixth District Court of Appeals did not evaluate whether Judge Abood had adequate jurisdiction *for purposes of absolute immunity*. As the case law in part II.A. of Appellant's Brief demonstrates, these analyses are distinctly separate:

In the judicial immunity context, the term "jurisdiction" is broadly construed to effectuate the purposes of judicial immunity. *Stump*, 435 U.S. at 356. While judicial acts performed "in excess of jurisdiction," as compared to "in the clear absence of jurisdiction" are treated the same for purposes of determining judicial error in a case like *Borkowski v. Borkowski*, they are treated very differently in determining absolute immunity. Even those judicial acts performed in excess of a judge's jurisdiction—which could therefore be overturned on appeal—have immunity protection. *See, e.g., Barnes v. Winchell* (C.A.6, 1997), 105 F.3d 1111, 1122. In this case, Judge Abood's immunity—not whether he erred in *Borkowski v. Borkowski*—is at issue.

Furthermore, this case is not precluded by *res judicata* because Judge Abood was not a party in *Borkowski v. Borkowski*. In order to successfully demonstrate *res judicata*, Mr. Borkowski would have to demonstrate, among other things, that this case involves the same parties as *Borkowski v. Borkowski* and that Judge Abood raises defenses that were or could have been litigated in the prior action. *See Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 381-382, 1995-Ohio-331, 653 N.E.2d 226; *Richard v.*

*Schaefer* (June 18, 1992), 11<sup>th</sup> App. Dist. No. 63069, 1992 Ohio App. LEXIS 3151. Judge Abood was not a party in *Borkowski v. Borkowski*; he lacked standing to appeal the Sixth District's decision reversing his ruling; and the issues on review were substantively different than the ones here.

The Sixth Circuit Court of Appeals rejected this same argument in *Stern v. Mascio* (C.A.6, 2001), 262 F.3d 600 (discussed at length in Appellant's Brief, pp. 20-21). After this Court held Judge Mascio "patently and unambiguously lacked jurisdiction" to act in Stern's underlying case, Stern sued the judge in the Southern District of Ohio under 42 U.S.C. § 1983. He argued, like Mr. Borkowski, that the judge was precluded from claiming immunity because the issue had already been decided by another court, thereby triggering *res judicata*. *Id.* at 608. In addition to claiming the Supreme Court's opinion showed that the judge acted "in the complete absence of all jurisdiction," Stern argued that the state court's opinion should be given preclusive effect in the civil case against the judge. *Id.* The court disagreed, holding the two actions were expressly different for *res judicata* purposes, even though (unlike here) both cases involved the same parties: Because both cases did not involve the same claim, cause of action, or defenses, *res judicata* was improper:

Plaintiff's position, that the Ohio Supreme Court's resolution of the jurisdictional matter addressed the same issue as presently before this court, is belied by the circumstance that nowhere in its opinion did the Ohio court cite or consider a single state or federal case on judicial immunity from a suit for civil damages. . . .

The issue in [the Supreme Court matter] was whether Judge Mascio, as a particular judge, could exercise jurisdiction over a case when he had disqualified himself from hearing the case (he claims he did not intend to do so) and a party in the case had filed an Affidavit of Disqualification in the Supreme Court. Neither of these matters relate to whether he or his court had subject-matter jurisdiction over the Clancey's Bar case, in which he purported to act. Ohio courts use the term "jurisdiction" in a

variety of contexts related to a judge's authority to act in a case, not all of which depend upon his court's subject-matter jurisdiction.. . .State v. Swiger, 125 Ohio App.3d 456, 708 N.E.2d 1033, 1037 (Ohio Ct. App. 1998)(“Subject matter jurisdiction focuses on the court as a forum and on the case as one of a class of cases, not on the particular facts of a case or the particular tribunal that hears the case. . . . [In contrast, jurisdiction of a particular case] encompasses the trial court's authority to determine a specific case within that class of cases that is within its subject matter jurisdiction. It is only when the trial court lacks subject matter jurisdiction that its judgment is void; lack of jurisdiction of the particular case merely renders the judgment voidable.”).

*Id.* at 608-609, n3 and n4.

Similarly, the Sixth District did not address Judge Abood's jurisdiction for immunity purposes in *Borkowski v. Borkowski* – the decision solely addressed whether Judge Abood's rulings were proper. This is a completely separate issue in an unrelated action, involving different parties. Consequently, *res judicata* does not apply.

#### **IV. All Ohio and federal case law on judicial immunity supports the dismissal of this case.**

Mr. Borkowski next argues this Court must ignore all but one of the immunity cases Judge Abood presented because they involve judicial immunity in underlying criminal matters, not civil matters like the underlying case at hand. First, there is no distinction in any judicial immunity case law that applies the doctrine any differently in one kind of case versus another. “[I]mmunity applies whether the judicial process is criminal or civil.” *Agi-Bluff Manor, Inc. v. Reagen*(D. Mo. 1989), 713 F. Supp. 1535, 1544-1545 (citing *Stump*, 435 U.S. at 355-56); see also *Laskowski v. Mears* (D. Ind. 1985), 600 F. Supp. 1568, 1574 (citing *Shore v. Howard* (N.D. Texas 1976), 414 F. Supp. 379, 385)(“The application of the doctrine of judicial immunity is restricted to its single objective of protecting judicial freedom in the process of deciding civil and criminal cases.”); *Cronovich v. Dunn* (D. Mich. 1983), 573 F. Supp. 1330, 1335.

Moreover, there is a wealth of judicial immunity case law in both civil and criminal cases. This Court and other Ohio courts have consistently provided absolute immunity to judges presiding over civil matters. *See Kelly*, 17 Ohio St. 3d at 93; *Wochna v. Kimbler*, 163 Ohio App. 3d 349, 2005 Ohio 4802; 837 N.E.2d 1226; *Stahl v. Currey* (1939), 135 Ohio St. 253, 14 Ohio Op. 112, 20 N.E.2d 529. Mr. Borkowski cannot cite any case law stating the doctrine of judicial immunity applies only to criminal matters or applies any differently in civil matters—it does not exist.

Mr. Borkowski concedes *Wilson v. Neu*, 12 Ohio St.3d at 102, is a viable authority. *Wilson* states a judge will not lose his immunity because of an error in judgment, *even if the resultant act is in excess of the court's jurisdiction. Id.* at 103-104. It further noted that judges must only have jurisdiction over the controversy to be immune—they need not act within the proper boundaries of their authority. *Id.* at 104. This Court has addressed judicial immunity on multiple occasions since *Wilson*. In *Kelly*, 17 Ohio St.3d at 93, this Court found that a judge's proper subject matter jurisdiction to issue a *capias* was sufficient to entitle him to absolute immunity. Further, in *State ex. rel. Fischer*, 66 Ohio St.3d at 191, this Court noted a judge who rules with jurisdiction over the controversy is protected by absolute immunity.

Because Judge Abood had proper subject matter jurisdiction over Mr. Borkowski's eviction action, his judicial acts during the time Mr. Borkowski's ultimately unsuccessful Petition for Removal was pending—even to the extent those acts may have been improper or in excess of his judicial authority—were protected by absolute immunity.

**V. This Court must disregard Mr. Borkowski's extraneous requests for relief throughout his Brief, as none was certified for this Court's review.**

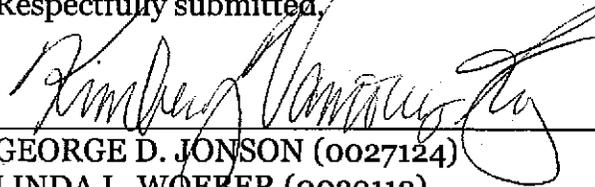
Mr. Borkowski raises a number of extraneous requests for relief throughout his Brief. For instance, he asks this Court to dismiss this appeal for lacking a substantial constitutional question or public or great general interest; to order the complete records in Fulton County Court of Common Pleas Cases 01CV000274, 03CV000330, 04CV0000018, 04CV000091, and 07MISC00006 to determine whether the judges assigned to *those* cases have failed to perform any of their duties; to conduct a hearing in which Fremont Investment and Loan and U.S. Bank (neither of which were parties in this case) must show cause why they should not be cited for criminal contempt, frivolous conduct, disciplinary action (Appellee's Brief, 15, 20-21). Moreover, Mr. Borkowski suggests several judges in his other cases engaged in conflicts of interest, but he does not identify what action he wants this Court to take in response. (Appellee's Brief, p. 11.)

As this Court did not certify any of these questions for review, they must be disregarded.

**CONCLUSION**

For the foregoing reasons, Appellant the Honorable Judge Charles D. Abood respectfully requests this Court reverse the decision of the Sixth District Court of Appeals and reinstate the dismissal under Civ.R. 12(B)(6) entered by the trial court.

Respectfully submitted,



GEORGE D. JONSON (0027124)  
LINDA L. WOEBER (0039112)  
KIMBERLY V. RILEY (0068187)(Counsel of Record)  
MONTGOMERY, RENNIE & JONSON  
36 East Seventh Street, Suite 2100  
Cincinnati, Ohio 45202

Tel: 513-241-4722

Fax: 513-241-8775

E-mail: [gjonson@mrj.cc](mailto:gjonson@mrj.cc), [lwoeber@mrj.cc](mailto:lwoeber@mrj.cc),  
[kriley@mrj.cc](mailto:kriley@mrj.cc)

*Counsel for Defendant-Appellant the Honorable  
Judge Charles D. Abood*

**CERTIFICATE OF SERVICE**

I hereby certify that on May 24, 2007, a copy of this Reply Brief was served, via regular U.S. Mail, upon A.J. Borkowski, Jr., PO Box 703, Fayette, Ohio 43521, *Pro Se Appellee*.



KIMBERLY VANOVER RILEY