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RESPONSE TO APPELLANT'S MEMORANDUM IN SUPPORT OF JURISDICTION  
AND MOTION TO DISMISS APPEALS FROM A NON-APPEALABLE ORDER

PROCEDURAL HISTORY

On March 4, 2011, the respondent judge filed a judgment that declared the appellant to be a vexatious litigator, together with twenty pages of contemporaneous findings of fact and conclusions of law. The judgment provided in part:

This court declares that James Helfrich, who currently resides in Pataskala, Ohio, is a vexatious litigator. He must comply with the provisions of R.C. 2323.52(F) if he proposes to file or continue to assert any civil case without duly authorized legal counsel in the Ohio Court of Claims, or any Ohio County Court, Municipal Court, or Common Pleas Court. He shall not make any application other than an application to proceed for any case he has filed without duly authorized legal counsel in the Ohio Court of Claims, or any Ohio County Court, Municipal Court, or Common Pleas Court.

Pursuant to R.C. 2323.52(F), this court shall not grant him leave to file or continue any civil case without duly authorized legal counsel unless he satisfies this court that the proceedings or application are not an abuse of process of the court in question and that there are reasonable grounds for that proceeding or application.

On March 14, 2011, the appellant filed a request for leave to file a *pro se* action in an unspecified municipal court against Jeffrey Keyser. (attached to appellant's notice of appeal in Case No. 11-0854). His request crossed in the mail with the respondent judge's Instructions to the Applicant and the Clerk of Court, which the Clerk filed on March 15, 2011. Those Instructions sought to facilitate the court's consideration of any requests the appellant might file to pursue *pro se* litigation. They provided in part:

1. If Mr. Helfrich seeks leave to file any new case or to pursue any existing case in any of those courts, he shall file a typewritten or printer font Application for Leave to take that action. The Clerk shall file all such Applications in this Court Case Number and send this assigned judge a copy for consideration.

2. For any such Application, Mr. Helfrich shall attach a typewritten or printer font copy of his pleading for the proposed action, together with one or more affidavits

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from himself or others with any necessary supporting material to show the factual basis for each claim in that pleading.

For the appellant's request to file an action against Jeffrey Keyser, the judge ruled on March 23, 2011:

This court denies that Application for failure to comply with the Instructions filed on March 15, but grants him leave to refile an Application for Leave that complies with those Instructions.

Rather than refile his application, the appellant (a) sought to appeal from the respondent judge's Instructions order and (b) asked the Fifth District Court of Appeals for leave to file a mandamus action which would compel this judge to grant him leave to assert his claim against Jeffrey Keyser.

Complying with its duty under R.C. 2323.52(F), the appeals court denied those requests on April 11, 2011, finding that:

This Court is not satisfied these proceedings are not an abuse of process. There do not appear to be reasonable grounds for either of these actions.

On April 12, 2011, the appellant filed a motion for the appeals court to reconsider that ruling, which the appeals court denied on May 5, 2011.

On May 18, 2011, the appellant filed these two *pro se* appeals from that appeals court order, asserting both a discretionary appeal and an appeal as a matter of right.

#### RESPONSE TO CLAIMED BASIS FOR JURISDICTION

In substance, the appellant contends that the court of appeals abused its discretion by denying him leave to challenge the trial court judge's discretion in providing Instructions for a

vexatious litigator's requests to file *pro se* claims. These appeals assert no substantial constitutional question and are hardly matters of public or great general interest.

The appellant prefers to handwrite data in blanks on a preprinted form, rather than

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submitting a typewritten or printer generated pleading. As the respondent judge explained in subsequent orders for this separately created "application" docket (Licking County Common Pleas Case No. 2011 MD 0006):

Mr. Helfrich prefers to submit handwritten entries on printed forms that a court or some other supplier provides. Nothing prevents him from completing those same forms with a computer or typewriter, from obtaining comparable forms in data format that permit computer inserts and additions, or from copying those same forms with any word processing program that permits him to insert additional data if he plans to use them repeatedly (order filed on April 21, 2011).

None of the Instructions are unduly onerous or burdensome. He complains that the Instructions direct him to supply typewritten or printer font documents, though he has filed a plethora of typewritten documents in the underlying vexatious litigator case and this ancillary matter. He disdains the direction to assert his allegations in an affidavit, though he readily filed multiple affidavits in the underlying vexatious litigator case. The clerk's office reported that he declined to caption his applications with the newly created docket number until the clerk's office refused to file them without an appropriate case file number. (order filed on April 21, 2011)

Mr. Helfrich's handwriting is sometimes less than clear, so the Instructions apply the practice of many courts that require typewritten documents. This court has reason to doubt the veracity of some of his previous unsworn filings, so the Instructions direct him to support his application's factual allegations with one or more affidavits from himself or others. The court intends to grant him leave if his application provides any reasonable basis to proceed. (order filed on April 21, 2011)

The law requires Mr. Helfrich to satisfy this judge "that the proceedings or application are not an abuse of process of the court in question and that there are reasonable grounds for that proceeding or application." For this purpose, the judge requires Mr. Helfrich to specify the claim he wishes to assert, each person against whom he wishes to assert that claim, and the court where he proposes to assert it. Since the judge must determine whether his documents assert a legally cognizable claim and whether Mr. Helfrich has "reasonable grounds" to assert that claim, the judge requires him to file the proposed pleading with one or more affidavits from himself or others to show some factual basis for that claim. To facilitate this process, the judge requires him to submit typewritten or computer generated documents rather than sometimes less legible handwriting. (order filed on May 11, 2011)

On Saturday, May 7, 2011, Mr. Helfrich faxed the attached document to this

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judge's private residence. In that message he asks the judge to provide him with secretarial service by preparing his application to assert a claim against Chris Bitler. This judge has repeatedly told Mr. Helfirch that he cannot consider or rely on any privately transmitted documents that are not filed with the Clerk of Court. The public has a right to know whatever the judge relies upon for any decision. It appears that this most recent communication is simply another example of vexatious conduct which this court found it the underlying case. Mr. Helfirch has never claimed to be indigent. If he requires secretarial assistance, he should consult his local classified telephone directory to locate a suitable secretarial service. (order filed on May 11, 2011)

The respondent urges this court to reject these appeals, which challenge procedural directions less comprehensive and less burdensome than the Rules of Appellate Procedure and this Court's own rules. See App. R. 19(A); S.Ct. Prac. R. 8.4.

MOTION TO DISMISS APPEALS FROM A NON-APPEALABLE ORDER

The current proceedings seek to appeal from a non-appealable order. R.C. 2323.52(G) provides:

During the period of time that the order entered under division (D)(1) of this section is in force, no appeal by the person who is the subject of that order shall lie from a decision of the court of common pleas or court of appeals under division (F) of this section that denies that person leave for the institution or continuance of, or the making of an application in, legal proceedings in the court of claims or in a court of appeals, court of common pleas, municipal court, or county court.

(Emphasis added). The order from which the appellant filed his two notices of appeal is an order pursuant to R.C 2323.52(F). Accordingly, the respondent asks this court to dismiss these two appeals as statutorily prohibited.

Further, this Court has previously dismissed appeals by persons found to be vexatious litigators who sought leave from the court of appeals, and when that was denied, sought to appeal to this Court. Cf. *State ex rel. Bozsik*, 114 Ohio St.3d 1473 (Table), 2007-Ohio-3699, (dismissing appeal as "barred by R.C. 2323.52(G)"); *In re Bozsik*, 114 Ohio St.3d 1473 (Table),

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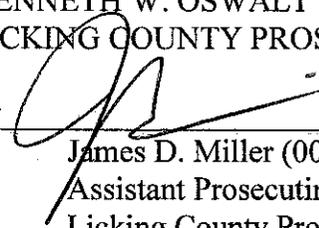
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2007-Ohio-3699, (same). Indeed, in the two *Bozsik* cases, merit briefs had already been filed when the Court *sua sponte*, and without opinion, dismissed the appeals as being barred.

Helfrich's current litigation before this Court clearly runs afoul of the provisions of division (G) of R.C. § 2323.52. For this reason, this appeal should be summarily dismissed.

Respectfully submitted,

KENNETH W. OSWALT  
LICKING COUNTY PROSECUTOR

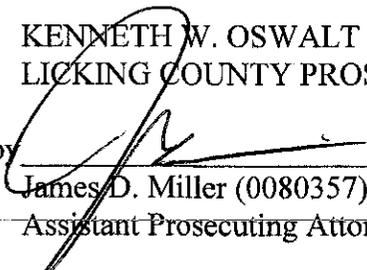
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CERTIFICATE OF SERVICE

I certify that a copy of this pleading was served upon the Appellant directing a copy of the same to him at the address indicated on the cover page hereto by ordinary U.S. mail, postage pre-paid, this 26<sup>th</sup> day of May, 2011.

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