

IN THE SUPREME COURT OF OHIO

STATE EX REL. : Case No. 2014-0749
SCHOOL CHOICE OHIO, INC., :
 :
Relator, :
 :
vs. : Original Action in Mandamus
 :
CINCINNATI PUBLIC SCHOOL :
DISTRICT, et al., :
 :
Respondents. :

OBJECTIONS OF RESPONDENT, SPRINGFIELD CITY SCHOOL DISTRICT, TO
RELATOR'S APPLICATION FOR ATTORNEYS' FEES AND COSTS

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Now comes Responent, Springfield City School District (“SCSD”) to file its objections to Relator, School Choice Ohio’s (“SCO”), Application for Attorneys’ Fees and Costs. These objections are supported by the attached Memorandum, as well as the Affidavit of Jarrod Mohler, Esq., and Scott A. Sollmann, Esq. filed contemporaneously herein.

Respectfully submitted,

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MEMORANDUM

I. INTRODUCTION

This Court's Opinion issued on July 21, 2016, granting in part and denying in part, Relator SCO's, writ of mandamus. Additionally, this Court granted costs and attorney fees associated with SCO's mandamus action pursuant to Ohio's Public Records Act. This Court instructed SCO to provide a detailed application for reasonable attorney fees and costs to be awarded within twenty days of the date aforementioned July 21, 2016 opinion. SCO filed its application for attorneys' fees and costs along with itemized billing statement attached as Exhibit "A" on August 10, 2016. It is from this application for attorneys' fees and itemized billing statement to which Respondent, SCSD, maintains the following objections as detailed in this memorandum and the affidavit of Jarrod Mohler, Esq.

II. ARGUMENT

"The most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate. This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services." *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983). The reasonable fees multiplied by the hours reasonably expended is commonly referred to as the "lodestar." *Geier v. Sundquist*, 372 F.3d 784, 791 (6th Cir. 2004). In determining "this initial fee calculation," the district court should exclude "hours that were not 'reasonably expended.'" *Hensley*, 461 U.S. at 434. Additionally, the hourly rate charged should reflect the prevailing market rate in the relevant community for the services performed. *Glover v. Johnson*, 934 F.2d 703, 716 (6th Cir. 1991).

The market rate can be established by proving that the rates sought are rates charged for similar services by lawyers of comparable skill, experience, and reputation. *Id.* at 895 n. 11, 104 S.Ct. at 1547 n. 11.” *Glover*, 934 F.2d at 716. “In seeking some basis for a standard, courts properly have required prevailing attorneys to justify the reasonableness of the requested rate or rates. To inform and assist the court in the exercise of its discretion, the burden is on the fee applicant to produce satisfactory evidence--in addition to the attorney's own affidavits--that the requested rates are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation. A rate determined in this way is normally deemed to be reasonable, and is referred to--for convenience--as the prevailing market rate.” *Blum v. Stenson*, 465 U.S. 886, 896 (1984).

The prevailing party “bears the burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates. The applicant should exercise ‘billing judgment’ with respect to hours worked, and should maintain billing time records in a manner that will enable a reviewing court to identify distinct claims.” *Hensley*, 461 U.S. at 437. It is error for the Court to apply a presumption in favor of the plaintiffs where ambiguities in the billing records exist. *Wooldridge v. Marlene Industries Corp.* 898 F.2d 1169, 1176 (6th Cir. 1990).

- 1. In determining the lodestar, the Court should utilize a reasonable fee or hourly rate commensurate to a lawyer’s comparable skill, experience, and reputation.**

The party requesting an award of attorney fees bears the burden “to produce satisfactory evidence—in addition to the attorney's own affidavit—that the requested rate [is] in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation.” *Huntington Natl. Bank v. Stanley Miller Constr. Co.*, 2015 WL

1851164, ¶53 (Ohio App. 5th Dist., April 13, 2015) citing *TCF Natl. Bank v. Williams*, 2010 WL 1256218, ¶ 26 (Ohio App. 5th Dist.) quoting *Blum v. Stenson*, 465 U.S. 886, 895 fn. 11 (1984). In the case at bar, SCO submits an itemized billing statement detailing the continually increasing hourly rates of David Movius (hereinafter “DTM”) who initially bills \$440.00 per hour for the first five months of the case, but then raises his hourly rate to \$460.00 for the next five months, and finally finishes the last five months of the case billing \$485.00 per hour. DTM’s hourly rate increasing by \$45 per hour over the course of approximately twenty-six (26) months is unreasonable. (Affidavit of Mohler, ¶ 14 attached hereto as Exhibit “A”).

DTM requests an exorbitant rate which steadily rises as the days pass and attempts to substantiate such excessive rate because he has been practicing law in Ohio for eighteen years and has represented clients in matters relating to the Public Records Act. (SCO App. for Atty. Fees, p. 1). DTM asserts he is also entitled to such rate because he “has presented continuing legal education on technology issues arising under the Public Records Act” in the past. (SCO App. for Atty. Fees, p. 2). However, all of these assertions are unsubstantiated as DTM fails to submit any supporting affidavit. Furthermore, research on Westlaw detailing DTM’s experience indicates that out of thirty-two cases in which DTM served as counsel, only two, **including this one**, involved the Public Records Act. (Affidavit of Sollmann attached hereto at Exhibit “B”, ¶ 7, Ex. “A”). The only other case where DTM represented a client involved in a Public Records Act dispute was *State ex rel. Data Trace Information Servs., L.L.C. v. Cuyohoga Cty. Fiscal Officer*, 131 Ohio St.3d 255 (2012), which was before this Court as an original mandamus action in 2012. (Affidavit of Sollmann, ¶ 7, Ex. “A”). The Westlaw attorney profile of DTM does cite to a single seminar he presented in January of 2011, but his areas of practice indicated data privacy, cybersecurity, and intellectual property. (Affidavit of Sollmann, ¶ 7, Ex. “A”). Quite frankly,

DTM does not have the resume and experience with respect to Public Records' cases to warrant his exorbitant hourly rate.

DTM's experience is more comparable with that of his co-counsel, Matthew J. Cavanagh (hereinafter "MJC"). SCO's *Application for Attorney Fees* also touts MJC as having "substantial experience representing public and private clients in matters related to the Public Records Act." (SCO App. for Atty. Fees, p. 2). Again, such assertion is not supported by any corresponding affidavit. The itemized billing statement details MJC initially billing at an hourly rate of \$340 only to increase his hourly rate from \$340 to \$360 over just ten (10) months. (SCO App. for Atty. Fees, Ex. "A", pp. 1-17). Again, such arbitrary \$20 increase in a short period of time is unreasonable and should not be awarded. (Affidavit of Mohler, ¶ 14). Westlaw also details MJC's only experience with the Public Records Act as consisting of *the same two cases as DTM*, this case and *State ex rel. Data Trace Information Servs., L.L.C. v. Cuyohoga Cty. Fiscal Officer*, 131 Ohio St.3d 255 (2012). (Affidavit of Sollmann, ¶ 8, Ex. "B"). Out of the thirty-seven cases listing MJC as counsel for a party, only two, the same two involve a Public Records Act dispute. (Affidavit of Sollmann, ¶ 8, Ex. "B"). The Westlaw attorney profile of MJC also indicates his areas of practice are appeals, intellectual property, trade secret, non-compete, and unfair competition. (Affidavit of Sollmann, ¶ 8, Ex. "B"). Accordingly, since DTM and MJC have the same experience, their hourly rates should be commensurate with each other. DTM's three hourly rates of \$440, \$460, and \$485 are both excessive and unreasonable and should be reduced accordingly. (Affidavit of Mohler, ¶ 13).

With respect to the experience of Mark Masterson ("MM"), SCO's *Application for Attorneys' Fees* does not provide any detail. (SCO App. for Atty. Fees, pp. 1-3). In addition, SCO fails to provide any affidavit in support of the reasonableness of setting MM's hourly rate at

\$225 initially and \$235 at the case's conclusion. Westlaw research details his one and only experience with respect to serving as counsel in litigation on a case is as counsel *on this case*. (Affidavit of Sollmann, ¶ 9, Ex. "C"). The Westlaw attorney profile of MM indicates his only area of practice is intellectual property. (Affidavit of Sollmann, ¶ 9, Ex. "C"). Given MM's general inexperience in addition to his lack of experience with this type of Public Records case, his hourly rate of \$225.00 per hour from 8/18/14- 9/30/14 and rate of \$235.00 per hour from 10/1/14- 2/6/15 are both excessive and unreasonable and should be reduced accordingly.

Finally, paralegal Robbie Bannan ("RHB") charging \$170 per hour with respect to his/her work on the case is clearly excessive and unreasonable. Even assuming RHB was a highly experienced paralegal, anything more than \$140 per hour would still be unreasonable. (Affidavit of Mohler, ¶ 15). However, similar to MM, SCO's Application for Attorneys' Fees does not speak to paralegal RHB's experience nor is the alleged reasonableness of \$170 per hour supported by any corresponding affidavit. (SCO App. for Atty. Fees, pp. 1-3). Furthermore, compensating paralegal RHB \$170 per hour would result in her having a higher hourly rate than attorneys representing Respondent SCSD as the hourly rate of Attorney Sollmann was only \$130 per hour from 5/20/14- 1/5/15 and \$140 per hour from that point on in this case. (Affidavit of Sollmann, ¶ 4). An hourly rate of \$170 for a paralegal in the state of Ohio is unreasonable and it should be reduced accordingly. (Affidavit of Mohler, ¶ 15). SCSD challenges SCO's counsel's inclusion of time spent on clerical and paralegal tasks at this hourly rate. In *James v. Frank*, 772 F.Supp. 984, 1001 (S.D. Ohio, W.D. 1991), the court held that "hours billed at attorney rates for filing and delivering is inappropriate and will not be allowed." The salary for clerical staff is typically part of a firm's overhead and is not billed to the client. It should not, therefore, be billed to the client's opponent, particularly not at the rate of \$170 per hour.

2. In determining the lodestar, the Court should exclude hours that were not “reasonably expended.”

a. SCO’s Drafting of Mediation Statement was Excessive

With respect to the court-ordered mediation that occurred early on in this case, it was clearly unreasonable for DTM to spend approximately sixteen (16) hours in drafting and preparing a mediation statement. An experienced attorney like DTM should have recognized that there was little, if any, room for mediation in this case between Relator, School Choice Ohio ("SCO"), and Respondent, Springfield City School District ("SCSD"), given that SCO either obtained the information it requested from SCSD or it did not. Furthermore, the parties were not even required to complete or submit a mediation statement for the telephone mediation. (Affidavit of Sollmann, ¶ 5). DTM taking approximately sixteen (16.0) hours to draft a mediation statement, as detailed in the entries between 6/26/14 to 7/2/14, for a court-mandated telephone mediation which only lasted a couple hours even despite the participation of three parties is excessive and unreasonable. (Affidavit of Mohler, ¶ 17). DTM taking more time to draft and prepare the aforementioned non-mandatory mediation statement than the drafting of SCO’s initial Complaint further establishes the excessiveness of such request for fees. (SCO App. for Atty. Fees, Ex. “A”, pp. 1-3). “In the private sector, ‘billing judgment’ is an important component in fee setting. It is no less important here. Hours that are not properly billed to one’s client also are not properly billed to one’s adversary pursuant to statutory authority.” (Citations omitted.) *Hensley*, 461 U.S. at 434. The drafting of that mediation statement should have taken no more than six (6) hours, and any time beyond six (6) hours is unreasonable. (Affidavit of Mohler, ¶ 17). Thus, such request for compensation of such fees should be reduced accordingly.

b. SCO's Drafting of Discovery Requests to SCSD was Excessive.

SCSD also objects to the request by SCO to be compensated for 23.5 hours with respect to the time it allegedly took SCO to draft discovery requests to SCSD. DTM reported spending 8.2 hours drafting discovery requests to SCSD while MM reportedly spent 15.3 hours to draft thirty-two (32) interrogatories, twenty (20) requests for admission ("RFAs"), and twenty-three (23) requests for production of documents ("RPoD's") which breaks down into roughly one interrogatory, one RFA, and one RPoD per hour. (SCO App. for Atty. Fees, Ex. "A", pp. 5-7). In comparison, SCSD spent 5.3 hours drafting twenty-seven (27) interrogatories, five (5) RFAs and thirteen (13) RPoD's or roughly half the work in a quarter of the time. (Affidavit of Sollmann, ¶ 10). Spending over half a work week on SCO's aforementioned discovery requests which include a number of standard discovery interrogatories and RPoD's is not reasonable and clearly excessive. The hours spent researching the issue and the format are unreasonable as "[a] fee applicant cannot demand a high hourly rate—which is based upon his or her experience, reputation, and a presumed familiarity with the applicable law—and then run up an inordinate amount of time researching the same law. Double dipping, in any form, cannot be condoned." *Knop v. Johnson*, 712 F.Supp. 571, 578 (W.D. Michigan S.D. 1989). DTM and MM should not have taken any longer than eight (8) hours to draft said discovery requests to SCSD. (Affidavit of Mohler, ¶ 19). Thus, such request for compensation of such fees should be reduced accordingly.

c. SCO's Fees Related to a Motion to Compel Are Not Reasonable.

In its *Application for Attorneys' Fees*, between 12/10/14 and 12/11/14 SCO details approximately 5.5 hours¹ (DTM for 3.0 hours and MM for 2.5 hours) related to the drafting of a motion to compel which was never filed nor ever warranted. It is ironic that SCO ultimately threatened SCSD with a motion to compel given the manner in which SCO was obstructionist in regard to almost every effort of SCSD to obtain documents in this case including documents subpoenaed from third parties which will be more fully discussed in section 4 below. After SCSD initially propounded discovery requests to SCO on 8/7/14, SCO provided discovery responses on 9/4/14 objecting to *every single one* of SCSD's twenty-seven (27) interrogatories, five (5) RFAs and thirteen (13) RPoD's. (Affidavit of Sollmann, ¶ 11). In that same 9/4/14 email without requesting any additional time or providing any underlying reason, SCO also advised SCSD that it would be "producing associated documents *shortly*." (Affidavit of Sollmann, ¶ 12, Ex. D, p. 2)(emphasis added). "Shortly" ultimately turned into twenty-eight (28) later, only after SCSD made multiple inquires as to such outstanding discovery documents once twelve days passed on 9/16/14 and again after another sixteen days passed on 10/2/14. (Affidavit of Sollmann, ¶ 12, Ex. D, pp. 3-4). SCO's overdue production of documents was bare-bones and consisted of only the following: two tax returns from 2012 and 2013 (sixty-nine pages); one invoice from Capitol Contender (4 pages); one Old Trail Printing invoice (1 page); Old Trail Printing Data Security/Nondisclosure Policies (1 page); an example of a SCO post card (2 pages); and a confidentiality and non-disclosure agreement between SCO and E-Roots Consulting, LLC (3 pages). (Affidavit of Sollmann, ¶ 13).

¹ The aforementioned entries in the billing statements consist of block billing by DTM and MM; and thus, determining the amount of exact time that was put forth towards the drafting of a motion to compel at issue is not possible.

SCO then propounded discovery requests to SCSD on 10/10/14 and a few weeks later SCSD advised SCO production of such requested may result in voluminous materials. (Affidavit of Sollmann, ¶ 12, Ex. D, pp. 7-8). In an email sent by SCSD to SCO on 11/5/14, a request was made for additional time up to and including 12/1/14 to provide SCSD's production of documents. (Affidavit of Sollmann, ¶ 12, Ex. D, p. 9). SCO responded that it was surprised by the requested extension, but expected that we could come to an agreement for a reasonable accommodation. (Affidavit of Sollmann, ¶ 12, Ex. D, p. 11). The following day, SCSD timely responded to SCO's twenty (20) requests for admission as previously promised. (Affidavit of Sollmann, ¶ 12, Ex. D, p. 14). Without any further communication between either party for over a month, SCO then sent an email on December 9, 2014, stating SCSD had until December 11, 2014 to produce its discovery responses and production of documents. (Affidavit of Sollmann, ¶ 12, Ex. D, p. 16). On December 11, 2014 at 1:08 p.m., SCSD produced its discovery responses and advised that it would forward its production of documents by the end of the day. (Affidavit of Sollmann, ¶ 12, Ex. D, p. 15). SCSD then sent its production of documents bates-stamped #1-315 to SCO in two emails. (Affidavit of Sollmann, ¶ 12, Ex. D, pp. 18, 21). SCO's assertion that SCSD resisted providing critical discovery is incorrect as SCSD advised SCO that it was performing numerous searches in attempts to locate emails and correspondence requested by SCO which may exist within its vast computer space..

Furthermore, SCSD complied with the one and only deadline provided by SCO following SCO's first extrajudicial attempt to resolve the discovery issue. In short, the 5.5 total hours (DTM for 3.0 hours and MM for 2.5 hours) related to the drafting of any motion to compel which was never filed is unreasonable due to it being unnecessary and unwarranted. Furthermore, spending 5.5 hours to research and draft a motion to compel even if one had been

proper is also excessive. Thus, for the aforementioned reasons, the request for compensation of such fees should be reduced accordingly.

d. MM's Fees Related to Researching Attorneys' Fees & Costs Were Excessive.

SCSD acknowledges that the hours of research and drafting related to the completion of a Merit Brief can be extensive and it proffers no objections with respect to the 51.0 hours reported by DTM or the 11.1 hours reported by MJC (SCSD continues to refute the hourly rates of both DTM and MJC charged for that time), but SCSD does object to MM spending thirteen (13) hours as detailed in MM's entries on 1/9/15, 1/12/15, 1/13/15, and 1/14/15, to research arguments regarding the granting of statutory and attorneys' fees as excessive and unreasonable. Such research should have been completed in a much more efficient manner and taken no more than six (6) hours. (Affidavit of Mohler, ¶ 20). This argument is highlighted by the fact that over 17% of the total time put forth towards SCO's Merit Brief only resulted in 3 of its 38 pages on a pretty straightforward issue. Accordingly, any time spent over six (6) hours to conduct such research was excessive and unreasonable and the request for such compensation of that time should be denied and reduced accordingly.

3. In determining the lodestar, the Court should exclude hours that were related to SCO correcting its own errors and deficiencies.

It is not proper for SCO to profit and be compensated with attorneys' fees as a result of time spent correcting errors and deficiencies that were contained and not addressed in its original Complaint. (Affidavit of Mohler, ¶ 18). DTM Entry on 10/10/14 states "Prepare Amended Complaint to Correct Caption and Statutory References" and DTM Entry on 2/12/15 which states "Draft Conditional Motion to Amend Complaint by Interlineation to Correct Party Name,

if Necessary,” are both examples of time spent by SCO correcting its own errors and deficiencies that were contained in its original complaint.

On October 10, 2014, DTM emailed counsel for SCSD requesting consent to amend SCO's complaint “to (i) correct the caption of its complaint to clarify that School Choice Ohio brings this action in the name of the State of Ohio and (ii) correct several references to Revised Code 3319.321, which were incorrectly identified as Revised Code 3313.321 in School Choice Ohio’s complaint.” (Affidavit of Sollmann, ¶ 14, Ex. E, p. 2). Shortly thereafter SCSD provided such consent. (Affidavit of Sollmann, ¶ 14, Ex. E, p. 1). SCSD should not be penalized with additional fees due to SCO's own errors in drafting its original complaint, particularly when SCSD made no objection and cooperated fully with SCO’s request for leave to amend. SCO’s billing statement now details that it took DTM a total of approximately 3.5 hours² to incorporate the aforementioned minor corrections. (SCO App. for Atty. Fees, Ex. “A”, pp. 7).

Thus, because the evidence establishes that time entries of 10.5 hours (8 hours from DTM and 2.5 hours from MM) which occurred between 10/8/14 to 10/13/14 and 2/6/15 to 2/13/15 were related to researching and drafting motions to amend thereby correcting SCO’s own errors and deficiencies contained in its original complaint caused by no one but themselves, such time entries are unreasonable and excessive. (Affidavit of Mohler, ¶ 18). Thus, SCO’s request for compensation of that time should be denied and reduced accordingly.

4. **In determining the lodestar, the Court should exclude hours that detail SCO’s improper conduct of being involved in the production of documents with respect to a subpoena SCSD issued to a third-party.**

² The relevant entries in the billing statements consist of block billing by DTM and MM; and thus, determining the amount of exact time that was put forth towards the researching and drafting of a motion to amend at issue is not possible.

It is also improper for SCO to request compensation for fees while spending time representing other entities in this litigation. Due to the lack of discovery documents received by SCO, SCSD issued subpoenas to third party entities identified by SCO in its discovery responses. SCSD issued subpoenas duces tecum to Old Trail Printing and ERoots Consulting, LLC (“ERoots”) on or about September 25, 2014 seeking documents from those third party entities regarding SCO. (Affidavit of Sollmann, ¶ 15). Although SCSD had identified such subpoenaed materials as being due on or by October 10, 2014, SCSD had been in communication with ERoots and was advised by ERoots President, Sam Gedert, that ERoots was in the process of compiling documents for production to SCSD. (Affidavit of Sollmann, ¶ 16).

Then on October 20, 2014, prior to any production of documents by ERoots to SCSD, Attorney Sollmann received a curious email presumably inadvertently sent by SCO Executive Director, Matt Cox, and copying ERoots President, Sam Gedert, as well as SCO counsel, DTM and MM which detailed the coordination of a telephone conference among all of them that day. (Affidavit of Sollmann, ¶ 14, Ex. E, p. 3). SCSD believed such contact with ERoots President, Sam Gedert, to be inappropriate given ERoots was still in the process of producing subpoenaed documents to SCSD, but did not pursue the issue.

SCO’s Application for Attorneys’ Fees now details the participation of MM in a teleconference with ERoots on October 21, 2014 as well as “Draft[ing] Response to Subpoena Duces Tecum on Behalf of ERoots Consulting” on October 22, 2014. (SCO App. for Atty. Fees, Ex. “A”, p. 8). DTM also had an October 22, 2014 entry detailing correspondence with ERoots. (SCO App. for Atty. Fees, Ex. “A”, p. 8). Even more disconcerting is that then on MM’s 10/30/14 entry it states “*Review Documents submitted by ERoot; Identify questionable*

discoverable material that may be protected by privilege; Identify possible discovery objections; Draft email to Mr. Movius.” Despite a clear and undeniable conflict in this matter, the evidence establishes counsel for SCO played a direct role in determining what documents were provided by ERoots to SCSD in response to a third party subpoena that was issued primarily because SCO had yet to produce any documents to SCSD. It should be noted that in SCO’s production of documents a single confidentiality and non-disclosure agreement between SCO and E-Roots Consulting, LLC (3 pages) was produced whereas ERoots, in response to the subpoena duces tecum, ultimately turned over 1,500 pages of materials regarding and detailing interaction with SCO. (Affidavit of Sollmann, ¶¶ 13, 16). Now SCO has the audacity to request compensation for the time it took to determine and prepare what documents were ultimately produced by E-Roots in response to the third-party subpoena duces tecum issued by SCSD. SCO’s requested compensation should be denied due to the impropriety of such conduct given the clear conflict of interest SCO ignored. Accordingly, SCO should not be entitled to any legal fees with respect to such attorney time and paralegal time spent deciding what documents ERoots should produce or not produce to Respondent SCSD. Thus, the total of 11.6 hours (1.6 from DTM; 4.6 from MM; and 5.4 from RHB) should be determined unreasonable and denied with respect to SCO’s application for attorney fees. (Affidavit of Mohler, ¶ 21).

III. CONCLUSION

As ordered by this Court, Relator SCO is entitled to reasonable attorney’s fees incurred in this litigation, but only as reduced in hourly rates and hours as delineated in the SCSD’s above-referenced objections. In addition, SCO’s *Application for Attorneys’ Fees and Costs* lacks any supporting affidavit(s) establishing the reasonableness of its assertions. For all the aforementioned reasons, SCO’s compensation should be reduced accordingly.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via electronic mail pursuant to Ohio Civ. R. 5(B)(2)(f) and S.Ct.Prac.R. 3.11(C)(1) this 19th day of August, 2016, upon the following:

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Now comes Jarrod M. Mohler, Esq., having been duly cautioned and sworn, to state that he is competent to testify and has personal knowledge of the following:

1. I am an attorney licensed to practice law in the State of Ohio, in the United States District Courts for the Southern and Northern District of Ohio and the Northern District of Illinois, in the Sixth Circuit Court of Appeals, and before the United States Supreme Court. I have been licensed to practice law in Ohio since 2000.
2. I have been personally involved in appeals before the United States Supreme Court, the United States Court of Appeals for the Sixth Circuit, the Ohio Supreme Court, and Courts of Appeals throughout the State of Ohio.
3. I am a partner at Robbins, Kelly, Patterson & Tucker, a law firm of twenty (20) attorneys. I have been a partner there since 2010.
4. I have no financial interest in this litigation. I have never served as co-counsel in a case with Lawrence Barbieri, Scott Sollmann, David Weaver, or Karen Osborn.
5. 90% of my is practice is dedicated to litigation, with my areas of practice including civil litigation, commercial litigation, consumer law, employment law, personal injury, Worker's Compensation, aviation, probate estate litigation, and appellate practice.
6. I served on the Cincinnati Bar Association's Grievance Committee from 2006-2011, and in 2011 I was appointed to the Ohio State Bar Association's Legal Ethics and Professional Conduct Committee, upon which I presently serve.
7. I have made applications for attorney fees and costs as well as opposed applications for attorney fees and costs in my sixteen (16) of experience. My standard hourly rate is \$285 per hour.

8. In addition to my trial experience, I regularly manage the work of multiple attorneys, including associates and other partners, as well as paralegals, through all phases of litigation, including the initial investigation of claims, the drafting of pleadings, conducting of discovery, and through trial and appeals. I also have primary responsibility for client billing in many of these matters. Thus, I am familiar with the efficiency that is required of attorneys and paralegals litigating civil actions and how those efficiencies vary relative to an individual's level of experience.
9. Counsel for Springfield City School District has asked me to review Relator, School Choice Ohio's ("SCO"), fee petition submitted in this case, and to provide my objective opinion regarding the reasonableness of the attorneys' fees requested in this action based on my knowledge and experience. I have reviewed *Relator, School Choice Ohio's, Application for Attorneys' Fees and Costs* and the itemized billing statement included in such fee petition.
10. In reviewing the fee petition and accompanying billing statements, I assessed the reasonableness of the amount requested using my experience and knowledge of the criteria set forth in the state of Ohio.
11. In reviewing the number of hours expended on litigation, I relied on my sixteen (16) years of experience as an attorney, many of which have been spent as a partner litigating and/or managing civil litigation.
12. In reviewing the itemized billing statement, I noticed that SCO's attorneys charged the following hourly rates:
 - a. Attorney David Movius ("DTM") charged \$440.00 per hour from 5/2/14-9/30/14; \$460.00 per hour from 10/1/14- 2/23/15; \$485.00 per hour from 10/28/15- 7/25/16.

- b. Attorney Matthew J. Cavanagh ("MJC") charged \$340.00 per hour from 5/7/14-7/7/14 and \$360.00 per hour from 12/9/14- 2/19/15.
 - c. Attorney Mark Masterson ("MM") charged \$225.00 per hour from 8/18/14-9/30/14 and \$235.00 per hour from 10/1/14- 2/6/15.
13. In my opinion and experience, even with the experience asserted by DTM, I believe his hourly rates of \$440, \$460, and \$485 are all unreasonably high, and that the high end of a reasonable hourly rate for a litigator with his alleged experience in this type of case would be \$350 for DTM in the state of Ohio.
14. While I do not necessarily opine that the \$340 hourly rate for MJC with his alleged experience is unreasonable, it is my opinion that annual increases of an attorney's hourly rates above \$10 are unreasonable. Therefore, it is my opinion that MJC's hourly rate increasing from \$340 to \$360 over the course of approximately ten (10) months is unreasonable. It is also my opinion that DTM's hourly rate increasing by \$45 per hour from \$440 to \$485 over the course of approximately twenty-six (26) months is also unreasonable.
15. I also noticed that paralegal Robbie Bannan ("RHB") charged \$170 per hour with respect to his work on the case, and it is my opinion that such rate is unreasonable for a paralegal in the state of Ohio. In my opinion and experience, the high end of a reasonable hourly rate for a highly experienced paralegal in any type of case would be no more than \$140 per hour.
16. Based upon my review of the fee petition and accompanying billing statements provided in support thereof, it is my opinion that there were many instances where the time expended by Relator's Counsel was excessive and unreasonable.

17. Specifically, DTM taking approximately sixteen (16.0) hours to draft a mediation statement, as detailed in the entries between 6/26/14 to 7/2/14, for a telephone mediation that only lasted 2.6 hours, is unreasonable. I would note that the drafting of the initial Complaint, per the itemized billing statement, took counsel only 14.1 hours. In my opinion, the drafting of a mediation statement should have taken no more than six (6) hours, and any time beyond six (6) hours is unreasonable.
18. In my opinion, I also believe it is unreasonable for a party to claim and/or obtain attorneys' fees with respect to correcting errors and deficiencies that party made with respect to their own complaints and/or counterclaims. Thus, if any of the time related to researching and drafting motions to amend as indicated in the entries between 10/8/14 to 10/13/14¹ and 2/6/15 to 2/13/15² were based upon correcting errors and deficiencies contained in SCO's original complaint, which did not arise due to circumstances outside counsel's ability to control, then those time entries totaling 10.5 hours (8 hours from DTM and 2.5 hours from MM) are unreasonable and excessive.
19. In my opinion and experience, I also believe the 23.5 hours taken by DTM and MM between 9/17/14 and 10/10/14 to draft discovery requests to Respondent is excessive and neither reasonable nor consistent with efficient work. Spending over half a work week drafting discovery requests consisting of 32 interrogatories, 20 requests for admission, and 23 requests for production of documents far exceeds a reasonable amount of time. In

¹ DTM Entry on 10/10/14 states "Prepare Amended Complaint to Correct Caption and Statutory References," which I believe constitutes SCO correcting its own errors and deficiencies that were contained in SCO's original complaint.

² DTM Entry on 2/12/15 states "Draft Conditional Motion to Amend Complaint by Interlineation to Correct Party Name, if Necessary," which is another entry I believe equates with SCO correcting its own errors and deficiencies that were contained in SCO's original complaint.

my opinion, it should have taken counsel no more than eight (8) hours to draft said discovery requests.

20. I also opine that MM spending 13 hours, as detailed in MM's entries on 1/9/15, 1/12/15, 1/13/15, and 1/14/15, to research arguments regarding the granting of statutory and attorneys' fees was excessive and unreasonable. Such research should have been completed in a much more efficient manner and taken no more than six (6) hours.

21. Finally, reviewing SCO's fee petition and accompanying billing statements, I came across entries between 10/21/14 and 11/4/14 related to a subpoena duces tecum issued to a third party by the name of EROOTS Consulting. Specifically, I discovered MM's entry on 10/30/14, which states "Review Documents submitted by EROOTS; Identify questionable discoverable material that may be protected by privilege; Identify possible discovery objections; Draft email to Mr. Movius." In my opinion and experience, SCO should not have been involved in or affected *any* type of production of documents in regards to a subpoena issued to EROOTS Consulting by Respondent SCSD in this case due to a direct conflict of interest. Accordingly, SCO should not now be entitled to any legal fees with respect to such attorney time and paralegal time spent deciding what documents EROOTS Consulting should produce or not produce to Respondent SCSD. Thus, the total of 11.6 hours (1.6 from DTM; 4.6 from MM; and 5.4 from RHB) should be determined unreasonable and denied with respect to SCO's application for attorney fees.

22. In conclusion, based upon my background and experience in civil litigation and for the aforementioned reasons, it is my opinion that SCO should not awarded the full amount it seeks to be compensated as such amount is not reasonable or justified.

FURTHER AFFIANT SAYETH NAUGHT.


Jarrod M. Mohler, Esq.

Sworn to before me and subscribed in my presence this 19 day of August 2016.





REBECCA D. BASS
Notary Public, State of Ohio
My Commission Expires
June 29, 2020

IN THE SUPREME COURT OF OHIO

STATE EX REL. : Case No. 2014-0749
SCHOOL CHOICE OHIO, INC., :
 :
Relator, :
 :
vs. : Original Action in Mandamus
 :
CINCINNATI PUBLIC SCHOOL :
DISTRICT, et al., :
 :
Respondents. :

AFFIDAVIT OF SCOTT A. SOLLMANN, ESQ.

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Scott A. Sollmann (#0081467)
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Counsel of Record
Matthew J. Cavanagh, Esq. (#0079522)
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Now comes Scott A. Sollmann, Esq., having been duly cautioned and sworn, to state that he is competent to testify and has personal knowledge of the following:

1. I am a partner attorney with Schroeder, Maundrell, Barbieri & Powers and am one of the attorneys for the Respondent, Springfield City School District (“SCSD”) in the above captioned matter of *State Ex. Rel. School Choice Ohio, Inc. v. Cincinnati Public School Dist., et al.* The other attorney from my firm for SCSD in this case is Lawrence E. Barbieri, Esq.
2. I am over the age of 18 and have personal knowledge of the matters asserted herein.
3. I am licensed to practice law in the State of Ohio, in the United States District Courts for the Southern and Northern District of Ohio and in the United States Sixth Circuit Court of Appeals. I have been licensed to practice law in Ohio since 2006.
4. While representing Respondent SCSD in this case from May 20, 2014 to January 5, 2015, I billed an hourly rate of \$130. Beginning on January 6, 2015, I then began billing \$140 per hour for my services in representing Respondent SCSD in this case and currently continue to bill such amount in this case.
5. I participated and represented SCSD in the court-ordered mediation that occurred on or about July 7, 2014, in this case and neither SCSD nor any of the other parties in the case were required to complete or submit a mediation statement for the telephone mediation.
6. I attest that I conducted research on Westlaw with respect to the attorney profile and case experience of David T. Movius (DTM”), an attorney from McDonald Hopkins, LLC, who is currently representing Relator, School Choice Ohio, Inc. (“SCO”) in this above-captioned case. I attest that the materials contained in Exhibit “A” attached hereto are

true and accurate copy of the results I obtained from my Westlaw research regarding DTM.

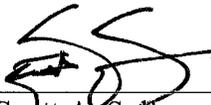
7. I attest that I conducted research on Westlaw with respect to the attorney profile and case experience of Matthew J. Cavanagh (“MJC”), an attorney from McDonald Hopkins, LLC, who is currently representing Relator, School Choice Ohio, Inc. (“SCO”) in this above-captioned case. I attest that the materials contained in Exhibit “B” attached hereto are true and accurate copy of the results I obtained from my Westlaw research regarding MJC.
8. I attest that I conducted research on Westlaw with respect to the attorney profile and case experience of Mark J. Masterson (“MM”), an attorney from McDonald Hopkins, LLC, who is currently representing Relator, School Choice Ohio, Inc. (“SCO”) in this above-captioned case. I attest that the materials contained in Exhibit “C” attached hereto are true and accurate copy of the results I obtained from my Westlaw research regarding MM.
9. While I do not necessarily opine that the \$340 hourly rate for MJC with his alleged experience is unreasonable, it is my opinion that annual increases of an attorney’s hourly rates above \$10 are unreasonable. Therefore, it is my opinion that MJC’s hourly rate increasing from \$340 to \$360 over the course of approximately ten (10) months is unreasonable. It is also my opinion that DTM’s hourly rate increasing by \$45 per hour from \$440 to \$485 over the course of approximately twenty-six (26) months is also unreasonable.
10. The discovery requests which SCSD received from SCO on or about October 10, 2014, consisted of thirty-two (32) interrogatories, twenty (20) requests for admission (“RFAs”),

and twenty-three (23) requests for production of documents (“RPoD’s”). I spent and billed 5.3 hours drafting discovery requests which SCSD propounded to SCO on or about August 7, 2014, which consisted of twenty-seven (27) interrogatories, five (5) RFAs and thirteen (13) RPoD’s.

11. SCO objected to every single one of SCSD’s discovery responses including the twenty-seven (27) interrogatories, five (5) RFAs and thirteen (13) RPoD’s that were all propounded to SCO.
12. I attest that the documents attached hereto as Exhibit “D” are true and accurate copies of email correspondence I either sent or received in the above-captioned case.
13. I attest that the discovery documents SCSD received from SCO on or about October 2, 2014, consisted of eighty (80) documents which included the following materials: sixty-nine (69) pages of 2012 and 2013 tax documents; one invoice from Capitol Contender (4 pages); one Old Trail Printing invoice (1 page); Old Trail Printing Data Security/Nondisclosure Policies (1 page); an example of a SCO post card (2 pages); and a confidentiality and non-disclosure agreement between SCO and E-Roots Consulting, LLC (3 pages).
14. I attest that the documents attached hereto as Exhibit “E” are true and accurate copies of email correspondence I either sent or received in the above-captioned case.
15. Due to the lack of discovery documents receive by SCO, SCSD issued subpoenas to third party entities identified by SCO in its discovery responses and issued subpoenas deuces tecum to Old Trail Printing and ERoots Consulting, LLC (“ERoots”) on or about September 25, 2014 seeking documents from those third party entities regarding SCO.

16. Although SCSD had identified such subpoenaed materials as being due on or by October 10, 2014, SCSD had been in communication with ERoots and was advised by Sam Gedert that ERoots was in the process of compiling documents. ERoots ultimately produced over 1,500 pages of materials regarding and detailing interaction with SCO.

FURTHER AFFIANT SAYETH NAUGHT.



Scott A. Sollmann, Esq.

Sworn to before me and subscribed in my presence this 19th day of August 2016.



DONNA S FAY
Notary Public
In and for the State of Ohio
My Commission Expires
July 11, 2017



Contact Information

David T. Movius
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Cuyahoga County
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Position:

Member

Education:

American University, Washington College of Law, Washington, District of Columbia, United States of America, 1998
J.D.

Honors: magna cum laude

University of Puget Sound, 1995

B.A.

Major: Computer Science

Admitted:

Ohio, 1998

U.S. Court of Appeals 6th Circuit

U.S. Court of Appeals Federal Circuit

U.S. District Court District of Colorado

U.S. District Court Eastern District of Michigan

U.S. District Court Northern District of Ohio

U.S. District Court Southern District of Ohio

U.S. Patent and Trademark Office



Published Works:

"Bernstein v. United States Dep't of State: Encryption, Justiciability and the First Amendment," 49 Admin. L. Rev. 1051, 1997

Contributor, "Doing Business In and With the United States", 1999

Co-Author, "Intellectual Property Protection in Cyberspace: Toward a New Consensus", Information Technology Association of America, 1996

"United States Department of Justice, Supplement to Federal Guidelines for Searching and Seizing Computers", 1997

Ohio New Sales Representative Stature, OSBA Corporate Counsel News, 2000

"USPTO not immune from budget cuts," McDonald Hopkins LLC Alert, May 2011

Classes/Seminars Taught:

"2009 Patent Reform Legislation", Association of Corporate Counsel, Cleveland Chapter, June 2009

"How Not To Be A Target Of Opportunity: Information, Security and You", Craintech, The City Club of Cleveland, November 2004

"Lost Profit Patent Damages in the Presence of Non-Infringing Substitutes", West LegalEdcenter, April 2010

"Patent Reform: Significant changes are coming March 16, 2013. Is your business ready?", McDonald Hopkins webcast, January 16, 2013

"Technology Issues Under Ohio's Public Records Act", Cleveland Metropolitan Bar Association, January 2011

"The Economics of the Hypothetical Negotiation, Life After the 25% Rule", West LegalEdcenter, July 2011

Legal Panelist, "The Power of Angel Investing", JumpStart, Inc., October 2006

"The Social Media Phenomenon", The Golf Exchange, ESPN Radio 760, August 2009

Honors:

Ohio Rising Stars, 2012 - 2013

Past Positions:

Computer Crime and Intellectual Property Section of the Criminal Division of the United States Department of Justice in Washington, D.C.

Thompson Hine LLP

Affiliations:

American Bar Association

American Intellectual Property Law Association

Beach Cliff No. 1, Board of Trustees

Beach Cliff No. 1 Board of Trustees

Cleveland Bar Association

Cleveland Intellectual Property Law Association

MC2 STEM School (Cleveland Metropolitan School District), Former Advisory Board Member

Ohio Bar Association

Rocky River City School District Strategic Planning Committee, Technology Action Team

Total Firm Size:

101-250

Office Size:

51-100

Areas of Practice:

Data Privacy and cybersecurity

Intellectual Property

This constitutes the most current information Thomson Reuters Westlaw has on record for this listing. If you wish to update this information, please use the "Update Your Profile" link under Related Tools.

References (32)

Title	Type	Court	Date
<p>1. State ex rel. School Choice Ohio, Inc. v. Cincinnati Pub. School Dist.</p> <p>N.E.3d</p> <p>EDUCATION - Records. Nonprofit corporation that informed parents about alternative educational opportunities was entitled to school district's directory information.</p>		Ohio	July 21, 2016
<p>2. MRI Software, LLC. v. Lynx Systems, Inc.</p> <p>2016 WL 375101</p> <p>This matter is before the Court on Defendant Donald Robinson's Motion to Dismiss (ECF #'s 106 & 118). For the following reasons, the Court denies, in part, Robinson's Motion and...</p>		N.D. Ohio	February 1, 2016
<p>3. Switchback Group, Inc. v. Zweigle </p> <p>2015 WL 4162897</p> <p>This matter appears before the court on a Motion to Dismiss for Lack of Personal Jurisdiction filed by John Zweigle, the defendant. For the following reasons, this motion is...</p>		N.D. Ohio	July 9, 2015
<p>4. MRI Software, LLC v. Lynx Systems, Inc.</p> <p>2014 WL 4855028</p> <p>This matter is before the Court on Defendant Lynx Systems, Inc.'s Motion to Partially Dismiss MRI Software, LLC.'s Amended Complaint Under Rule 12(b)(6). (ECF # 97). For the...</p>		N.D. Ohio	September 29, 2014
<p>5. PolyOne Corp. v. Teknor Apex Co.</p> <p>2014 WL 4207671</p> <p>This matter is before the Court on Defendant Teknor Apex Company's Motion to Dismiss (ECF # 11). For the following reasons, the Court grants Defendant's Motion. Plaintiffs...</p>		N.D. Ohio	August 25, 2014
<p>6. State ex rel. Data Trace Information Servs., L.L.C. v. Cuyahoga Cty. Fiscal Officer</p> <p>963 N.E.2d 1288</p> <p>GOVERNMENT - Records. Records requesters were entitled to electronic copies of instruments recorded at county recorders' office to be provided at actual cost.</p>		Ohio	February 29, 2012
<p>7. K-Tec, Inc. v. Vita-Mix Corp.</p> <p>2011 WL 1899391</p> <p>Before the court are the parties' joint motion for entry of an amended judgment and Vita-Mix Corp.'s ("Vita-Mix") motion for review of taxed costs. The court has concluded that...</p>		D. Utah	May 19, 2011
<p>8. K-TEC v. Vita-Mix</p> <p>765 F.Supp.2d 1304</p> <p>PATENTS - Damages. Patentee was entitled to award of enhanced damages for infringement of patents for high-performance blending jar.</p>		D. Utah	January 26, 2011
<p>9. Step2 Co., LLC v. Parallax Group Intern., LLC</p> <p>2010 WL 3783151</p> <p>Plaintiff The Step2 Company, LLC ("Plaintiff" or "Step2") filed this declaratory judgment action against Defendants Bruce Thrush ("Thrush") and Parallax Group International, LLC...</p>		N.D. Ohio	September 17, 2010

List of 32 References for Movius, David T.

Title	Type	Court	Date
<p>10. K-Tec, Inc. v. Vita-Mix Corp. 729 F.Supp.2d 1312 PATENTS - Consumer Goods. Fact issues existed whether patents for food blending jar were invalid as anticipated by prior art references.</p>		D.Utah	May 27, 2010
<p>11. K-Tec, Inc. v. Vita-Mix Corp. 2010 WL 2079682 PATENTS - Judgment. Genuine issue of material fact as to whether patent owner was entitled to lost profits precluded summary judgment for patent infringement.</p>		D.Utah	May 24, 2010
<p>12. K-Tec, Inc. v. Vita-Mix Corp. 2010 WL 1816266 K-TEC brought suit against Vita-Mix, claiming that Vita-Mix has infringed two K-TEC blending jar device patents: U.S. Patent No. 6,979,117 (the #117 patent) and U.S. Patent No....</p>		D.Utah	May 3, 2010
<p>13. K-Tec, Inc. v. Vita-Mix Corp. 2010 WL 1486781 K-TEC owns U.S. Patent No. 6,979,117 and U.S. Patent No. 7,281,842 (collectively the "K-TEC Patents"). K-TEC sued Vita-Mix for infringing these patents. Vita-Mix has challenged the...</p>		D.Utah	April 13, 2010
<p> 14. K-Tec, Inc. v. Vita-Mix Corp. 2010 WL 1417862 K-TEC owns U.S. Patent No. 6,979,117 (the #117 patent) and U.S. Patent No. 7,281,842 (the #842 patent). The K-TEC patents claim a blending jar device. K-TEC has moved for an order...</p>		D.Utah	April 6, 2010
<p>15. K-Tec, Inc. v. Vita-Mix Corp. 2010 WL 446974 Plaintiff K-TEC, Inc. owns U.S. Patent No. 6,797,117 (the "#117 Patent") and U.S. Patent No. 7,281,842 (the "#842 Patent"). Both patents describe a generally rectangular blending...</p>		D.Utah	February 2, 2010
<p>16. Mondo Polymers Technologies, Inc. v. Monroeville Indus. Moldings, Inc. 2009 WL 3698432 PATENTS - Design. Genuine issue of material fact existed as to whether an ordinary observer would have believed that the allegedly infringing offset block was the same as the...</p>		S.D.Ohio	November 3, 2009
<p>17. K-Tech, Inc. v. Vita-Mix Corp. 2009 WL 3568623 TENA CAMPBELL, Chief Judge. Plaintiff K-TEC, Inc. (K-TEC) owns U.S. Patent No. 6,9117 (the "#117 Patent") and U.S. Patent No. 7,281,842 (the "#842 Patent"). Both patents describe a...</p>		D.Utah	October 23, 2009
<p> 18. Vita-Mix Corp. v. Basic Holding, Inc. 581 F.3d 1317 PATENTS - Consumer Goods. Accused blender did not contributorily infringe patent directed to a method of preventing air pockets in blenders.</p>		C.A.Fed. (Ohio)	September 16, 2009

List of 32 References for Movius, David T.

Title	Type	Court	Date
<p>19. K-Tech, Inc. v. Vita-Mix Corp. 2009 WL 2436694</p> <p>Chief District Judge Tena Campbell referred this case to Magistrate Judge Paul M. Warner pursuant to 28 U.S.C. § 636(b)(1)(A) . Before the court is K-TEC, Inc.'s ("K-TEC") motion...</p>		D.Utah	August 7, 2009
<p>20. Mondo Polymers Technologies, Inc. v. Monroeville Indus. Moldings, Inc. 2009 WL 230123</p> <p>On January 7, 2009, the captioned case came on for a Markman hearing. Prior to the scheduled commencement of that hearing, the Court met with counsel for the parties in Chambers...</p>		S.D. Ohio	January 30, 2009
<p>21. State v. Romeo 2008 WL 835831</p> <p>{¶ 1} Appellant, Michael J. Romeo, appeals from the June 27, 2007 judgment entry of the Portage County Municipal Court, Kent Division, which sentenced him for one count of sexual...</p>		Ohio App. 11 Dist.	March 28, 2008
<p>22. Vita-Mix Corp. v. Basic Holdings, Inc. 2008 WL 495781</p> <p>This matter is before the Court upon plaintiff's motion to preclude (Doc. 100) and plaintiff's motion to compel documents pursuant to Federal Rule of Evidence 612 (Doc. 102)....</p>		N.D. Ohio	February 22, 2008
<p>23. Vita-Mix Corp. v. Basic Holdings, Inc. 2007 WL 2816209</p> <p>This matter is before the Court upon the motion of defendant Focus Products Group, LLC to dismiss or, in the alternative, for summary judgment on all claims (Doc. 49). In...</p>		N.D. Ohio	September 27, 2007
<p>24. Vita-Mix Corp. v. Basic Holdings, Inc. 2007 WL 2344750</p> <p>This matter is before the Court upon Plaintiff's Motion for Protective Order and to Quash Subpoena of Edward Greive, Esq. (Doc. 64) In this suit, plaintiff alleges, among other...</p>		N.D. Ohio	August 15, 2007
<p>25. Gabriel Performance Prods., L.L.C v. Cognis Corp. 2007 WL 1395518</p> <p>{¶ 1} Appellant, Cognis Corporation ("Cognis"), appeals the September 18, 2006, judgment of the Ashtabula County Court of Common Pleas, in which it granted appellee, Gabriel...</p>		Ohio App. 11 Dist.	May 11, 2007
<p>26. Cequent Trailer Products, Inc. v. Intradin (Shanghai) Machinery Co., Ltd. 2007 WL 1362457</p> <p>With this Opinion and Order, the Court decides whether to grant the motion of Defendant Intradin (Shanghai) Machinery Co., Ltd. ("Intradin") to reconsider damages awarded to...</p>		N.D. Ohio	May 7, 2007
<p>27. Cequent Trailer Products, Inc. v. Intradin (Shanghai) Machinery Co., Ltd. 2007 WL 438140</p> <p>The Court conducted a bench trial in this matter solely on the issue of damages. The parties presented evidence on December 1, 2006 and January 8 and 9, 2007. During the course of...</p>		N.D. Ohio	February 7, 2007

List of 32 References for Movius, David T.

Title	Type	Court	Date
<p>28. Cequent Trailer Products, Inc. v. Intradin (Shanghai) Machinery Co., Ltd.</p> <p>2006 WL 3228768</p> <p>With this Order, the Court decides whether to adopt the Magistrate Judge's Report and Recommendation on Plaintiff's motion for sanctions against Defendant. [Docs. 43, 48.] For the...</p>		N.D. Ohio	November 6, 2006
<p>29. Innovative Engineering & Consulting Corp. v. Hurley & Associates, Inc.</p> <p>2006 WL 2806387</p> <p>On March 21, 2005, Innovative Engineering & Consulting Corp. ("IEC"), Plaintiff, filed the above-captioned case against Hurley & Associates, Inc., HurleyIR, Inc., and Thomas L....</p>		N.D. Ohio	September 28, 2006
<p>30. Innovative Engineering & Consulting Corp. v. Hurley & Associates, Inc.</p> <p>2006 WL 2422910</p> <p>This matter arises on Defendants' Rule 16(f) Motion for Sanctions (Doc. 29). For the reasons outlined briefly below, that motion is GRANTED. Defendants' motion seeks monetary...</p>		N.D. Ohio	August 22, 2006
<p>31. Appraisal Management Co. III, LLC v. FNC, Inc.</p> <p>2005 WL 3088561</p> <p>This matter comes before the Court upon Defendant FNC, Inc.'s ("FNC's") Motion To Impose Dismissal Sanctions Against Appraisal Management Company III, LLC dba AMCO ("AMCO"). (ECF...</p>		N.D. Ohio	November 17, 2005
<p>32. Mag-Nif Inc. v. Royal Sovereign Intern., Inc. ↗</p> <p>2004 WL 5627175</p> <p>COURT REPORTER: Bruce Matthews Hearing held on plaintiff's motion to show cause why defendants should not be held in contempt (Doc. 82). Michael L. Snyder and David B. Cupar...</p>		N.D. Ohio	August 25, 2004

Contact Information

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Position:

Member

Education:

Case Western Reserve University Law School, Cleveland, Ohio, United States of America, 2005
J.D.

Honors: magna cum laude; Order of the Coif

Law Review: Case Western Reserve University Law Review

Boston University, 1998

B.S.

Major: Mechanical Engineering

Admitted:

Ohio, 2005

U.S. Court of Appeals 6th Circuit, 2009

U.S. Court of Appeals Federal Circuit, 2013

U.S. District Court District of Colorado, 2010

U.S. District Court Eastern District of Arkansas, 2010

U.S. District Court Northern District of Illinois, 2009

U.S. District Court Northern District of Ohio, 2005

U.S. District Court Southern District of Ohio, 2012

U.S. District Court Western District of Arkansas, 2010

U.S. District Court Western District of New York, 2009

U.S. Patent and Trademark Office

Published Works:



Slamming the Lid on Pandora's Box: How the Ohio Legislature Compensated the Insurance Industry for Scott-Pontzer at the Expense of Ohio's Drivers, 55 Case W. Res. L. Rev. 997, 2005

Representative Cases:

Ashcroft v. Iqbal, U.S. Supreme Court

Honors:

Order of the Coif

Selected for inclusion in Ohio Rising Stars, 2015

Past Positions:

LTV Steel Company, Mechanical Engineer

NASA

General Electric

Affiliations:

American Bar Association

Cleveland Intellectual Property Law Association

Cleveland Metropolitan Bar Association

Cleveland Municipal Bar Association

Mensa International

Ohio Bar Association

Thomas More Law Center

U.S. Patent and Trademark Office

Total Firm Size:

101-250

Office Size:

51-100

Areas of Practice:

Appeals

Intellectual Property

Trade Secret, Non-Compete and Unfair Competition

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References (37)

Title	Type	Court	Date
<p>1. Cequent Performance Products, Inc. v. Let's Go Aero, Inc.</p> <p>2016 WL 4036754</p> <p>Plaintiff Cequent Performance Products, Inc. ("Cequent") filed its Petition to Compel Arbitration in this case on October 27, 2014. See Dkt. 1 That Petition seeks to compel...</p>		N.D.Ill.	July 28, 2016
<p>2. Ancestry.com Operations, Inc. v. DNA Diagnostics Center, Inc. ↗</p> <p>2016 WL 3999315</p> <p>This matter is before the Court on Plaintiffs' ("Ancestry") Motion (Doc. No. 51) to Dismiss Counts V, VI and VIII from Defendant's ("DDC") First Amended Counterclaims (Doc. No....</p>		S.D. Ohio	July 26, 2016
<p>3. State ex rel. School Choice Ohio, Inc. v. Cincinnati Pub. School Dist. ↗</p> <p>N.E.3d</p> <p>EDUCATION - Records. Nonprofit corporation that informed parents about alternative educational opportunities was entitled to school district's directory information.</p>		Ohio	July 21, 2016
<p>4. Eveready Battery Company, Inc. v. Spectrum Brands, Inc.</p> <p>Fed.Appx.</p> <p>Background: The United States Patent and Trademark Office, Patent Trial and Appeal Board, in inter partes examination determined that patent directed to improving design on...</p>		C.A.Fed.	May 31, 2016
<p>5. Ancestry.com Operations, Inc. v. DNA Diagnostics Center, Inc.</p> <p>2016 WL 1621723</p> <p>This matter is before the Court on Plaintiff Ancestry.com Operations, Inc., et al.'s motion for a preliminary injunction (Doc. No. 8), Magistrate Judge Bowman's Report and...</p>		S.D. Ohio	April 25, 2016
<p>6. Joint Commission on Accreditation of Healthcare Organizations v. Greeley Company, Inc.</p> <p>2016 WL 1450051</p> <p>The plaintiffs, the Joint Commission on Accreditation of Healthcare Organizations ("the Joint Commission") and Joint Commission Resources, Inc. ("JCR"), bring suit against the...</p>		N.D.Ill.	April 13, 2016
<p>7. Let's Go Aero, Inc. v. Cequent Performance Products, Inc.</p> <p>641 Fed.Appx. 988</p> <p>Background: Patent owner commenced action against licensee, asserting patent-infringement and that licensee's sales of certain products and other conduct violated its rights under...</p>		C.A.Fed. (Colo.)	March 3, 2016
<p>8. A Metal Source, LLC v. All Metal Sales, Inc.</p> <p>2016 WL 245981</p> <p>Before this Court is Defendants All Metal Sales, Inc. and Thomas G. Klocker's Motion to Dismiss and for Attorneys' Fees, Doc #: 36. For the reasons stated below, this Motion is...</p>		N.D. Ohio	January 21, 2016
<p>9. Switchback Group, Inc. v. Zweigle ↗</p> <p>2015 WL 4162897</p> <p>This matter appears before the court on a Motion to Dismiss for Lack of Personal Jurisdiction filed by John Zweigle, the defendant. For the following reasons, this motion is...</p>		N.D. Ohio	July 9, 2015

List of 37 References for Cavanagh, Matthew J.

Title	Type	Court	Date
<p>10. Wyers Products Group, Inc. v. Cequent Performance Products, Inc.</p> <p>2015 WL 3494718</p> <p>This matter is before me on the following: (1) Wyers Products Group, Inc. and Philip Wyers' Motion for Clarification and Reconsideration of Order Construing Patent Claim Terms &...</p>		D.Colo.	June 2, 2015
<p>11. Cequent Performance Products, Inc. v. Hopkins Mfg. Corp.</p> <p>2015 WL 1510671</p> <p>Defendants Hopkins Manufacturing Corporation and The Coast Distribution System, Inc. (collectively "Hopkins") have moved to stay all proceedings in this matter pending resolution...</p>		E.D.Mich.	April 1, 2015
<p>12. Wyers Products Group, Inc. v. Cequent Performance Products, Inc.</p> <p>2015 WL 1514711</p> <p>This matter is before the court on the following: (1) Cequent Performance's Motion to Partially Dismiss Second Amended Complaint under Rule 12(b) (6) [# 139] filed April 7, 2014;...</p>		D.Colo.	March 30, 2015
<p>13. Wyers Products Group, Inc. v. Cequent Performance Products, Inc.</p> <p>2015 WL 1515896</p> <p>This matter is before me on the following filings concerning claim construction: (1) Wyers Products Group, Inc.'s Amended Opening Claim Construction [# 54] filed June 3, 2013...</p>		D.Colo.	March 30, 2015
<p>14. Let's Go Aero, Inc. v. Cequent Performance Products, Inc.</p> <p>2015 WL 1468485</p> <p>This matter is before the Court on Defendant Cequent Performance Products, Inc.'s ("Cequent") motion to stay (ECF No. 50) the matter pending resolution of Cequent's appeal before...</p>		D.Colo.	March 26, 2015
<p>15. Let's Go Aero, Inc. v. Cequent Performance Products, Inc.</p> <p>2015 WL 1402394</p> <p>Editor's Note: Order amended and superseded. For superseding order, see 2015 WL 1468485.</p>		D.Colo.	March 20, 2015
<p>16. Let's Go Aero, Inc. v. Cequent Performance Products, Inc.</p> <p>78 F.Supp.3d 1363</p> <p>COMMERCIAL LAW - Judgment. Setting aside default entered against licensee was warranted in licensor's suit arising from alleged breach of licensing agreement.</p>		D.Colo.	January 28, 2015
<p>17. Esparza v. Klocker</p> <p>27 N.E.3d 23</p> <p>LITIGATION - Discovery. Competitor was not entitled to quashing of subpoena to telephone company or blanket protective order prohibiting discovery of subpoenaed materials.</p>		Ohio App. 8 Dist.	January 15, 2015
<p>18. Memorylink Corp. v. Motorola Solutions, Inc., Motorola Mobility, Inc.</p> <p>773 F.3d 1266</p> <p>PATENTS - Limitations. Accrual of fraud-based claims was not delayed by alleged false statements and omissions associated with inventorship.</p>		C.A.Fed. (III.)	December 5, 2014

List of 37 References for Cavanagh, Matthew J.

Title	Type	Court	Date
<p>19. A Metal Source, LLC v. All Metal Sales, Inc. 2014 WL 4245992 Plaintiff A Metal Source, LLC ("A Metal Source" or "Plaintiff") owns the trademarks for the marks "A Metal Source" and "All Metal Source." Plaintiff commenced this lawsuit against...</p>		N.D. Ohio	August 26, 2014
<p>20. PolyOne Corp. v. Teknor Apex Co. 2014 WL 4207671 This matter is before the Court on Defendant Teknor Apex Company's Motion to Dismiss (ECF # 11). For the following reasons, the Court grants Defendant's Motion. Plaintiff's...</p>		N.D. Ohio	August 25, 2014
<p>21. Zoya Co. v. NIOS, Inc. 2013 WL 4511922 This matter comes before the Court on Defendant Nios Inc.'s ("Nios") Motion to Dismiss on the basis of lack of personal jurisdiction and improper venue pursuant to Rules 12(b)(2)...</p>		N.D. Ohio	August 23, 2013
<p>22. Wyers Products Group v. Cequent Performance Products, Inc. 2013 WL 2466917 This matter is before the court on "Cequent's Motion to Stay Discovery Pending Resolution of its Rule 12(b)(1) Motion." (Doc. No. 43, filed May 17, 2013 [Mot. Stay].) Plaintiff...</p>		D. Colo.	June 7, 2013
<p>23. Swingaway Sports Products, Inc. v. Escalade, Inc. 2013 WL 2468002 Plaintiff, SwingAway Sports Products, Inc. ("SwingAway"), filed this civil action against Defendant, Escalade, Inc., d/b/a Escalade Sports ("Escalade"), alleging patent...</p>		S.D. Ind.	June 7, 2013
<p>24. Cequent Performance Products, Inc. v. Pacific Rim Intern., LLC 2013 WL 1411762 On January 29, 2013, Plaintiff Cequent Performance Products, Inc. filed a complaint against Defendant Pacific Rim International, LLC. Cequent says that Pacific Rim infringed on a...</p>		N.D. Ohio	April 8, 2013
<p>25. Norgren Automation Solutions, Inc. v. K & A Tool Co. 2013 WL 1282029 This matter came before the court on plaintiff Norgren Automation Solutions' June 25, 2012 motion for partial summary judgment; defendant K & A Tool Company's June 25, 2012 motion...</p>		E.D. Mich.	March 26, 2013
<p>26. All Metal Sales, Inc. v. All Metal Source, LLC 2012 WL 1831235 This matter is before the Court on Plaintiff's Renewed Motion for Judgment as a Matter of Law or, for a New Trial (ECF # 71). On January 5, 2012, after a two day trial, the twelve...</p>		N.D. Ohio	May 18, 2012
<p>27. McGlothlin v. Drake 2012 WL 1768098 Danny McGlothlin and MCB Sales & Installation Services, Inc., initiated this action against Frank Drake and Cequent Performance Products, Inc., seeking monetary damages and...</p>		E.D. Ark.	May 16, 2012

List of 37 References for Cavanagh, Matthew J.

Title	Type	Court	Date
<p>28. SwingAway Sports Products, Inc. v. Escalade, Inc. 2012 WL 1431277 Plaintiff SwingAway Sports Products, Inc. has sued defendant Escalade, Inc. in a four count complaint alleging patent infringement, reverse palming-off in violation of the Lanham...</p>		N.D.Ill.	April 23, 2012
<p>29. State ex rel. Data Trace Information Servs., L.L.C. v. Cuyahoga Cty. Fiscal Officer 963 N.E.2d 1288 GOVERNMENT - Records. Records requesters were entitled to electronic copies of instruments recorded at county recorders' office to be provided at actual cost.</p>		Ohio	February 29, 2012
<p>30. Zoya Co. v. Julep Nail Parlor Co. 2011 WL 5975054 This is a trademark infringement case. Plaintiffs filed their complaint on August 15, 2011 asserting four causes of action: (1) federal unfair competition under the Lanham...</p>		N.D. Ohio	November 29, 2011
<p>31. All Metal Sales, Inc. v. All Metal Source, LLC 2011 WL 2976927 This case is before the Court on Plaintiff, All Metal Sales, Inc.'s Motion to Enforce Settlement. (ECF # 27). Plaintiff asserts that the parties entered into an enforceable...</p>		N.D. Ohio	July 20, 2011
<p>32. Cequent Performance Products, Inc. v. Let's Go Aero, Inc. 2011 WL 1743418 This matter is before me on the Motion to Partially Dismiss Let's Go Aero's Counterclaims Under Rule 12(b)(6) (ECF No. 8) filed by Plaintiff-Counterclaim Defendant Cequent...</p>		D.Colo.	May 5, 2011
<p>33. All Metal Sales, Inc. v. All Metal Source, LLC 2011 WL 867020 This matter is before the Court on Plaintiff, All Metal Sales, Inc.'s Motion to Dismiss Counterclaim Under Rule 12(b)(6). (ECF # 9). Defendant, A Metal Source, LLC f/k/a All Metal...</p>		N.D. Ohio	March 11, 2011
<p>34. Cboss, Inc. v. Zerbonia 2010 WL 3835092 Pending are the parties' cross motions for summary judgment. The instant matter concerns Plaintiff Cboss, Inc.'s ("Cboss") allegations that Defendants Ralph R. Zerbonia...</p>		N.D. Ohio	September 29, 2010
<p>35. Bounce Properties, L.L.C. v. Rand 2010 WL 547894 N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of...</p>		Ohio App. 8 Dist.	February 18, 2010
<p>36. Janosek v. Janosek 2009 WL 2400313 FAMILY LAW - Spousal Support. Order awarding wife \$15,000 per month in spousal support for a period of 18 years was not an abuse of discretion.</p>		Ohio App. 8 Dist.	August 6, 2009

List of 37 References for Cavanagh, Matthew J.

Title	Type	Court	Date
37. Pryor v. Holder 2009 WL 1490574 This is a pro se case in which dismissal has been entered in favor of all parties, concluding with entry of such order as to remaining defendants on February 26, 2009. [Doc. 52]....		N.D. Ohio	May 27, 2009

Contact Information

Mark J. Masterson
Organization: McDonald Hopkins LLC

600 Superior Avenue, East
Suite 2100
Cleveland, Ohio 44114
Cuyahoga County
U.S.A.

Phone: (216) 348-5427

Fax: (216) 348-5474

Email: mmasterson@mcdonaldhopkins.com

Website: <http://www.mcdonaldhopkins.com>

Position:

Associate

Education:

Cleveland State University, Cleveland-Marshall College of Law, Cleveland, Ohio, United States of America, 2010
J.D.

Honors: cum laude

University of Cincinnati, 2003

B.S.

Major: Mechanical Engineering

Admitted:

Ohio

U.S. District Court Northern District of Ohio

U.S. Patent and Trademark Office

Published Works:

"The patent system is not as bad as Elon Musk says it is", Business Advocate, September 02, 2014

Affiliations:

American Intellectual Property Law Association, Member

Cleveland Intellectual Property Law Association, Member

Cleveland Metropolitan Bar Association

U.S. Patent and Trademark Office

Total Firm Size:

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Office Size:



51-100

Areas of Practice:

Intellectual Property

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References (1)

Title	Type	Court	Date
1. State ex rel. School Choice Ohio, Inc. v. Cincinnati Pub. School Dist.  N.E.3d EDUCATION - Records. Nonprofit corporation that informed parents about alternative educational opportunities was entitled to school district's directory information.		Ohio	July 21, 2016

Scott A. Sollmann

From: Scott A. Sollmann
Sent: Thursday, August 07, 2014 3:33 PM
To: dmovius@mcdonaldhopkins.com; mcavanagh@mcdonaldhopkins.com
Cc: dweaver@martinbrowne.com; hoyingd@cps-k12.org; kosborn@martinbrowne.com; Lawrence E. Barbieri
Subject: School Choice Ohio, Inc. vs. Cincinnati Public Schools & Springfield School District | Case No. 2014-0749
Attachments: #9 ANSWER OF RESPONDENT, SPRINGFIELD CITY SCHOOL DISTRICT, TO RELATOR'S COMPLAINT FOR ALTERNATIVE & PEREMPTORY WRITS OF MANDAMUS.pdf; Respondent, Springfield City School District, to Relator's Complaint for Alternative & Peremptory Writs of Mandamus.pdf; 1st Set of Discovery propounded to SCO by SCSD.docx

Dear Counselors:

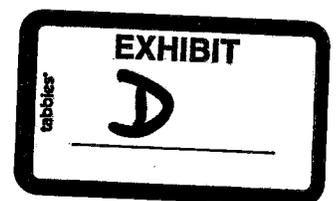
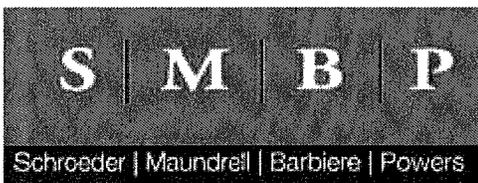
Attached hereto please find correspondence. Also attached please find the following in connection with the above-captioned case:

- **Answer of Respondent, Springfield City School District, to Relator's Complaint for Alternative and Peremptory Writs of Mandamus; &**
- **Respondent, Springfield City School District's, First Set of Interrogatories, Requests for Admissions, and Requests for Production of Documents to Relator, School Choice Ohio, Inc.**

Should you have any questions or comments pertaining to any of the attached documents, please do not hesitate to contact me either by email at ssollmann@smbplaw.com or by phone at 513.707.4249. Thank you for your kind attention to this matter.

Yours truly,
Scott

Scott A. Sollmann, Esq.
SCHROEDER, MAUNDRELL, BARBIERE & POWERS
5300 Socialville-Foster Road, Suite 200
Mason, Ohio 45040
Tel. (513) 583-4200
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Scott A. Sollmann

From: Masterson, Mark <mmasterson@mcdonaldhopkins.com>
Sent: Thursday, September 04, 2014 6:11 PM
To: 'dweaver@martinbrowne.com'; 'kosborn@martinbrowne.com'; Lawrence E. Barbieri;
Scott A. Sollmann
Cc: Movius, David; Cavanagh, Matthew J.
Subject: Ohio Supreme Court Case No. 2014-0749 - School Choice Ohio's Response to
Springfield's First Set of Discovery Requests
Attachments: School Choice Ohio's Response to Springfield's First Set of Discovery Requests 9.4.14
(5087199x7AB84).pdf

Counselors:

Please see the attached document regarding School Choice Ohio, Inc.'s Response to Springfield City School District's First Set of Discovery Requests in the Supreme Court of Ohio, Case No. 2014-0749. School Choice Ohio, Inc. will be producing associated documents shortly.

Regards,

Mark J. Masterson
Attorney

T: 216.348.5427
mmasterson@mcdonaldhopkins.com
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Scott A. Sollmann

From: Masterson, Mark <mmasterson@mcdonaldhopkins.com>
Sent: Thursday, October 02, 2014 4:08 PM
To: Scott A. Sollmann
Cc: Movius, David; Lawrence E. Barbieri; Osborn, Katy (kosborn@martinbrowne.com); Weaver, David (dweaver@martinbrowne.com)
Subject: RE: School Choice Ohio, Inc. v. Springfield City School District
Attachments: FIRST PRODCUTION SCO00001-80 (5129244-2x7AB84).pdf

Scott,

Attached is School Choice Ohio's first production of documents with Bates numbers SCO00001-SCO00080. We plan to submit discovery requests to Springfield shortly.

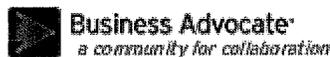
Regards,
-Mark

Mark J. Masterson
Attorney

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mmasterson@mcdonaldhopkins.com
www.mcdonaldhopkins.com

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From: Scott A. Sollmann [<mailto:ssollmann@smbplaw.com>]
Sent: Thursday, October 02, 2014 10:08 AM
To: Movius, David; Masterson, Mark
Cc: Cavanagh, Matthew J.; Lawrence E. Barbieri; Weaver, David (dweaver@martinbrowne.com); Osborn, Katy (kosborn@martinbrowne.com)
Subject: RE: School Choice Ohio, Inc. v. Springfield City School District

Dear David & Mark,

Neither of you have responded in any manner to my September 16, 2014 email requesting a date as to when we can expect to receive outstanding discovery documents. All of School Choice Ohio's Responses to Springfield City School District's First Set of Requests for Production of Documents made reference to the production of documents/responsive materials to the extent that such documents existed. More importantly, Responses #10, 11 & 12 specifically acknowledged the existence of certain documents and advised such documents would be produced. Once again, can you please advise when we can expect such materials. Please feel free to contact me on my direct line at (513) 707-4249 if you wish to further discuss this issue.

Yours truly,
Scott

Scott A. Sollmann, Esq.
SCHROEDER, MAUNDRELL, BARBIERE & POWERS
5300 Socialville-Foster Road, Suite 200
Mason, Ohio 45040
Tel. (513) 583-4200
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From: Scott A. Sollmann
Sent: Tuesday, September 16, 2014 2:56 PM
To: dmovius@mcdonaldhopkins.com; Masterson, Mark
Cc: mcavanagh@mcdonaldhopkins.com; Lawrence E. Barbieri; Weaver, David (dweaver@martinbrowne.com); Osborn, Katy (kosborn@martinbrowne.com)
Subject: School Choice Ohio, Inc. v. Springfield City School District

Dear David & Mark,

In School Choice Ohio's Responses to Springfield City School District's First Set of Requests for Production of Documents emailed on September 4, 2014, all of the Responses made reference to the production of documents/responsive materials to the extent that such documents existed in addition to Responses #10, 11 & 12 that promised specific documents would be produced. Please advise when we can expect such materials.

Yours truly,
Scott

Scott A. Sollmann, Esq.
SCHROEDER, MAUNDRELL, BARBIERE & POWERS
5300 Socialville-Foster Road, Suite 200
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Scott A. Sollmann

From: Movius, David <dmovius@mcdonaldhopkins.com>
Sent: Friday, October 10, 2014 12:01 PM
To: Lawrence E. Barbieri; Scott A. Sollmann; 'dweaver@martinbrowne.com'; 'kosborn@martinbrowne.com'
Cc: Cavanagh, Matthew J.; Masterson, Mark
Subject: School Choice Ohio v. Cincinnati Public School District et al.
Attachments: ECOPEY20_CPU_LDAPMAIL_10102014-115336.pdf; 5118359.docx

Dear Messrs. Barbieri, Sollmann and Weaver and Ms. Osborn:

Please see School Choice Ohio, Inc.'s First Set of Interrogatories, Requests for Admission and Requests for Production of Documents to Springfield City School District, which School Choice Ohio is hereby serving pursuant on Springfield City School District pursuant to Ohio Rule of Civil Procedure 5(B)(2)(f) and S.Ct.Prac.R. 3.11(B)(1).

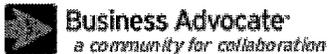
Regards,

Dave

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Scott A. Sollmann

From: Scott A. Sollmann
Sent: Friday, October 24, 2014 8:37 AM
To: dmovius@mcdonaldhopkins.com; mcavanagh@mcdonaldhopkins.com
Cc: dweaver@martinbrowne.com; kosborn@martinbrowne.com; Lawrence E. Barbieri
Subject: School Choice Ohio, Inc. vs. Cincinnati Public Schools, et al. | Case No. 2014-0749
Attachments: Movius & Cavanagh 10-24-14.pdf

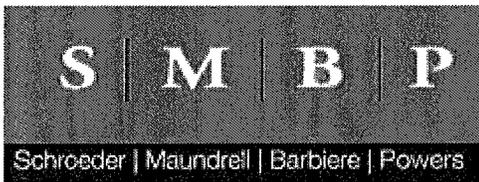
Dear Counselors:

Attached hereto please find correspondence for your information and review in connection with the above-captioned case. Should you have any questions or comments pertaining to the attached document, please do not hesitate to contact me either by email at ssollmann@smbplaw.com or by phone at 513.707.4249.

Thank you for your kind attention to this matter.

Yours truly,
Scott

Scott A. Sollmann, Esq.
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Mason, Ohio 45040
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Fax. (513) 583-4203



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ATTORNEYS AND COUNSELORS AT LAW

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MASON, OHIO 45040

TEL. 513-583-4200

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Writer's Direct Dial Number

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Robert S. Hiller¹

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Keating Ritchie & McGary LPA

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2 Also Admitted in West Virginia
3 Also Admitted in Indiana
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Jay D. Patton^{1,3}
Scott A. Sollmann
Kurt M. Irely¹
J. Michael Morgalls⁵
Katherine L. Barbieri
John M. Milligan

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ssollmann@smbplaw.com

October 24, 2014

David T. Movius, Esq.
Matthew J. Cavanagh, Esq.
MCDONALD HOPKINS LLC
School Choice Ohio, Inc.
600 Superior Avenue, E., Suite 2100
Cleveland, Ohio 44114

via electronic mail

Re: *School Choice Ohio, Inc., vs. Cincinnati Public Schools & Springfield City School District*; Supreme Court of Ohio Case No. 2014-0749;
SMBP Ref.: 5858-0459

Dear Counselors:

On October 10, 2014, we received School Choice Ohio's First Set of Interrogatories, Requests for Admissions, and Requests for Production of Documents. We are currently in the midst of responding to those requests and have determined it may be necessary to print out voluminous materials in order to redact, bates-stamp and properly respond. Please confirm School Choice Ohio will be willing to pay for the copying costs of such voluminous materials if such are produced. Please also advise if we can have additional time to respond to the Interrogatories and Requests for Production of Documents up to and including December 1, 2014. Given the recent filing of School Choice Ohio's Amended Complaint, we do not believe an extension will create any issues. Please note that we still intend to respond to School Choice Ohio's Requests for Admissions prior to November 7, 2014.

If you have any questions or concerns, please do not hesitate to email me or contact me on my direct line at (513) 707-4249.

Very truly yours,

SCHROEDER, MAUNDRELL, BARBIERE & POWERS


Scott A. Sollmann

SAS/sg

cc: David A. Weaver, Esq.; Karen W. Osborn, Esq.

Scott A. Sollmann

From: Scott A. Sollmann
Sent: Wednesday, November 05, 2014 4:58 PM
To: dmovius@mcdonaldhopkins.com; mcavanagh@mcdonaldhopkins.com
Cc: dweaver@martinbrowne.com; kosborn@martinbrowne.com; Lawrence E. Barbieri
Subject: RE: School Choice Ohio, Inc. vs. Cincinnati Public Schools, et al. | Case No. 2014-0749

Dear David & Matthew,

I am following up with respect to my October 24th correspondence. We have yet to receive any response and were hoping: 1) you could please confirm School Choice Ohio will be willing to pay for the copying costs of voluminous materials if such are produced and 2) please advise if SCSD can have additional time to respond to the Interrogatories and Requests for Production of Documents up to and including December 1, 2014.

Yours truly,
Scott

Scott A. Sollmann, Esq.
SCHROEDER, MAUNDRELL, BARBIERE & POWERS
5300 Socialville-Foster Road, Suite 200
Mason, Ohio 45040
Tel. (513) 583-4200
Fax. (513) 583-4203



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From: Scott A. Sollmann
Sent: Friday, October 24, 2014 8:37 AM
To: dmovius@mcdonaldhopkins.com; mcavanagh@mcdonaldhopkins.com
Cc: dweaver@martinbrowne.com; kosborn@martinbrowne.com; Lawrence E. Barbieri
Subject: School Choice Ohio, Inc. vs. Cincinnati Public Schools, et al. | Case No. 2014-0749

Dear Counselors:

Attached hereto please find correspondence for your information and review in connection with the above-captioned case. Should you have any questions or comments pertaining to the attached document, please do not hesitate to contact me either by email at ssollmann@smbplaw.com or by phone at 513.707.4249.

Thank you for your kind attention to this matter.

Yours truly,
Scott

Scott A. Sollmann, Esq.
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Scott A. Sollmann

From: Movius, David <dmovius@mcdonaldhopkins.com>
Sent: Thursday, November 06, 2014 4:57 PM
To: Scott A. Sollmann
Cc: dweaver@martinbrowne.com; kosborn@martinbrowne.com; Lawrence E. Barbieri; Cavanagh, Matthew J.; Masterson, Mark
Subject: RE: School Choice Ohio, Inc. vs. Cincinnati Public Schools, et al. | Case No. 2014-0749

Scott –

As per my voicemail, please advise what you anticipate regarding the cost of production, in terms of volume, format and cost. I would ordinarily anticipate production in an electronic format, where the associated copying costs are negligible. Please confirm whether you have the same understanding and expectation.

Second, regarding the requested extension, I was a bit surprised by the length of the requested extension. That being said, I would expect that we can come to an agreement on a reasonable accommodation. To that end, please confirm whether Springfield City Schools will serve its responsive documents with its written responses or whether it anticipates merely serving written responses at that time.

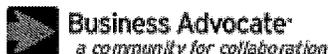
Regards,

Dave

David T. Movius
Member

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Chicago • Cleveland • Columbus • Detroit • Miami • West Palm Beach

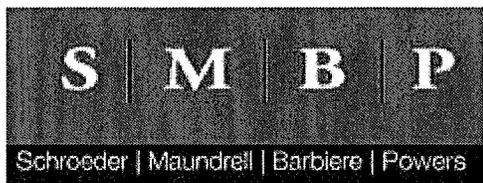
From: Scott A. Sollmann [<mailto:ssollmann@smbplaw.com>]
Sent: Wednesday, November 05, 2014 4:58 PM
To: Movius, David; Cavanagh, Matthew J.
Cc: dweaver@martinbrowne.com; kosborn@martinbrowne.com; Lawrence E. Barbieri
Subject: RE: School Choice Ohio, Inc. vs. Cincinnati Public Schools, et al. | Case No. 2014-0749

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To: dmovius@mcdonaldhopkins.com; mcavanagh@mcdonaldhopkins.com
Cc: dweaver@martinbrowne.com; kosborn@martinbrowne.com; Lawrence E. Barbieri
Subject: School Choice Ohio, Inc. vs. Cincinnati Public Schools, et al. | Case No. 2014-0749

Dear Counselors:

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Thank you for your kind attention to this matter.

Yours truly,
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Scott A. Sollmann

From: Scott A. Sollmann
Sent: Friday, November 07, 2014 2:04 PM
To: dmovius@mcdonaldhopkins.com; mcavanagh@mcdonaldhopkins.com; Masterson, Mark <mmasterson@mcdonaldhopkins.com> (mmasterson@mcdonaldhopkins.com)
Cc: Lawrence E. Barbieri; Osborn, Katy (kosborn@martinbrowne.com)
Subject: School Choice Ohio, Inc. vs. Cincinnati Public Schools, et al. | Case No. 2014-0749
Attachments: Springfield City School District's Responses to Relator's First Request for Admissions.pdf

Dear Counselors:

Attached hereto please find *Relator, Springfield City School District's, Responses to Relator's First Request for Admissions* in connection with the above-captioned case. Should you have any questions or comments pertaining to the attached document, please do not hesitate to contact me either by email at ssollmann@smbplaw.com or by phone at 513.707.4249.

Thank you for your kind attention to this matter.

Yours truly,
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Scott A. Sollmann

From: Scott A. Sollmann
Sent: Thursday, December 11, 2014 1:08 PM
To: Movius, David
Cc: Lawrence E. Barbieri; Osborn, Katy (kosborn@martinbrowne.com); Cavanagh, Matthew J.; Masterson, Mark
Subject: RE: School Choice Ohio v. Springfield City Schools
Attachments: MOVIUS 12-11-14.pdf; Springfield City School District's Responses to Relator's First Set of Interrogatories and Request for Production of Documents.pdf

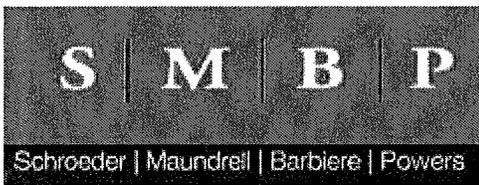
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Thank you for your kind attention to this matter.

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From: Movius, David [mailto:dmovius@mcdonaldhopkins.com]

Sent: Tuesday, December 09, 2014 2:03 PM

To: Scott A. Sollmann

Cc: Lawrence E. Barbieri; Osborn, Katy (kosborn@martinbrowne.com); Cavanagh, Matthew J.; Masterson, Mark

Subject: School Choice Ohio v. Springfield City Schools

Scott –

I write to address Springfield City School District's complete failure to provide any response to School Choice Ohio's interrogatories and requests for production and its failure to provide proper responses to its requests to admit.

As you know, Springfield's responses to School Choice Ohio's interrogatories and requests for production were due on or before November 7, 2014. Springfield did not receive any extension to the deadline for its response, as I did not receive a response to my November 6, 2014, email on that subject. Springfield's responses therefore are more than a month late, and Springfield has waived any and all objections to those discovery requests.

Moreover, Springfield's objections to School Choice Ohio's requests to admit are inappropriate such that Springfield has failed to fairly meet the substance of the requested admissions as required under Civil Rule 36(A)(2). Overall, Springfield has attempted to redefine nearly every request so as to change its meaning to create a basis for denial, which is improper. Moreover, for nearly all of School Choice Ohio's requests, Springfield has objected on the basis that School Choice Ohio's definition of "Student Information" is vague and ambiguous and has further objected to any reference to the "Current Policy" as vague, ambiguous and irrelevant to this case. Both objections are improper and must be withdrawn immediately.

With respect to "Student Information," there is nothing in the way that School Choice Ohio has defined and used that term that is in any way vague or ambiguous. Moreover, there is no basis for it to object to the use of that term with respect to current or former students, as the context and content of School Choice Ohio's requests makes clear what is being requested. Certainly, Springfield had no trouble understanding the subject matter to which those terms are directed when it denied School Choice Ohio's public records requests or when Superintendent Estrop when on record regarding this case in the media. It therefore is clear that Springfield's objections on this basis are nothing more than lawyer-driven wordsmithing and gamesmanship for the purpose of trying to avoid Springfield's unavoidable discovery obligations.

The same is true with respect to its objections regarding the "Current Policy." Springfield's claims that the "Student Acceptable Use Policy & Directory Information Consent" is somehow not a "policy," that it is irrelevant, and that it merely includes an "optional form" are disingenuous at best – especially when Springfield itself produced records relating to that "policy" in response to School Choice Ohio's pre-litigation public records request. Simply put, Springfield knows exactly what School Choice Ohio is referring to when it uses the term "Current Policy" and it must respond to each request using that term on the merits. The fact that Springfield may not want to admit facts that are harmful—if not fatal—to its defenses does not constitute a legitimate basis for its objections.

In view of the Supreme Court's grant of the alternative writ on December 3, 2014 – which we just received today – it is essential that Springfield immediately cure these deficiencies by (i) providing full and complete written responses to School Choice Ohio's interrogatories and requests for production (without any objections, which have been waived due to its failure to respond), (ii) producing all responsive documents in a suitable electronic format, (iii) providing supplemental responses to School Choice Ohio's requests to admit that fairly meet the substance of those requests, and (iv) agreeing to join in a joint motion to sufficiently extend the case deadlines so School Choice Ohio can complete its discovery of Springfield, including depositions of at least Superintendent Estrop and Kim Fish. If we do not receive a written commitment by Springfield that it will comply with each of the foregoing by Thursday, December 11, 2014, at 1 p.m., School Choice Ohio will have little choice but to move the Ohio Supreme Court for immediate relief.

Thank you for your prompt attention to these matters.

Regards,

Dave

David T. Movius
Member

McDonald Hopkins

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a community for collaboration

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F: 216.348.5474
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www.mcdonaldhopkins.com

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Suite 2100
Cleveland, OH 44114

Chicago • Cleveland • Columbus • Detroit • Miami • West Palm Beach

Scott A. Sollmann

From: Scott A. Sollmann
Sent: Thursday, December 11, 2014 6:33 PM
To: Movius, David
Cc: Lawrence E. Barbieri; Osborn, Katy (kosborn@martinbrowne.com); Cavanagh, Matthew J.; Masterson, Mark
Subject: RE: School Choice Ohio v. Springfield City Schools- Part 1
Attachments: Bates 1-208 Springfield's Responses to SCO's Request for Production of Documents.pdf

Dear David,

Please see that attached documents in PDF form being in response to School Choice Ohio's request for production of documents. It will be sent in two parts.

Yours truly,
Scott

Scott A. Sollmann, Esq.
SCHROEDER, MAUNDRELL, BARBIERE & POWERS
5300 Socialville-Foster Road, Suite 200
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Subject: RE: School Choice Ohio v. Springfield City Schools

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Sent: Tuesday, December 09, 2014 2:03 PM
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Dave

David T. Movius
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Suite 2100
Cleveland, OH 44114

Scott A. Sollmann

From: Scott A. Sollmann
Sent: Thursday, December 11, 2014 6:33 PM
To: Movius, David
Cc: Lawrence E. Barbieri; Osborn, Katy (kosborn@martinbrowne.com); Cavanagh, Matthew J.; Masterson, Mark
Subject: RE: School Choice Ohio v. Springfield City Schools- Part 2
Attachments: Bates 209-315 Springfield's Responses to SCO's Request for Production of Documents.pdf

Dear David,

Please see that attached documents in PDF form being in response to School Choice Ohio's request for production of documents. This is Part 2.

Yours truly,
Scott

Scott A. Sollmann, Esq.
SCHROEDER, MAUNDRELL, BARBIERE & POWERS
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Sent: Thursday, December 11, 2014 1:08 PM
To: Movius, David
Cc: Lawrence E. Barbieri; Osborn, Katy (kosborn@martinbrowne.com); Cavanagh, Matthew J.; Masterson, Mark
Subject: RE: School Choice Ohio v. Springfield City Schools

Dear David,

Scott A. Sollmann

From: Scott A. Sollmann
Sent: Tuesday, October 14, 2014 3:26 PM
To: Movius, David; Lawrence E. Barbieri; 'dweaver@martinbrowne.com'; 'kosborn@martinbrowne.com'
Cc: Cavanagh, Matthew J.; Masterson, Mark
Subject: RE: School Choice Ohio - Request for Consent

Dear Dave,

You have our collective consent with respect to filing the Notice of Consent to School Choice Ohio amending its complaint in the above-referenced action.

Yours truly,
Scott

Scott A. Sollmann, Esq.
SCHROEDER, MAUNDRELL, BARBIERE & POWERS
5300 Socialville-Foster Road, Suite 200
Mason, Ohio 45040
Tel. (513) 583-4200
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From: Movius, David [<mailto:dmovius@mcdonaldhopkins.com>]
Sent: Friday, October 10, 2014 1:22 PM
To: Lawrence E. Barbieri; Scott A. Sollmann; 'dweaver@martinbrowne.com'; 'kosborn@martinbrowne.com'
Cc: Cavanagh, Matthew J.; Masterson, Mark
Subject: School Choice Ohio - Request for Consent

Dear Messrs. Barbieri, Sollmann and Weaver and Ms. Osborn:

Please advise whether Springfield City School District will consent to School Choice Ohio amending its complaint to (i) correct the caption of its complaint to clarify that School Choice Ohio brings this action in the name of the State of Ohio and (ii) correct several references to Revised Code 3319.321, which were incorrectly identified as Revised Code 3313.321 in School Choice Ohio's complaint. For your consideration, School Choice Ohio's proposed amended complaint, a



comparison of its proposed amended complaint against its complaint as filed on May 12, 2014, and a proposed Notice of Consent to File Amended Complaint are attached.

Please conform at your earliest convenience whether Springfield City School District consents to School Choice Ohio filing the Notice of Consent and its Amended Complaint.

Regards,

Dave

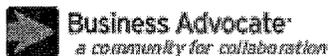
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Cleveland, OH 44114

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Scott A. Sollmann

From: Matt Cox <mcox@scoho.org>
Sent: Monday, October 20, 2014 11:32 AM
To: David Movius; Sam Gedert; Mark Masterson
Subject: Conf call to discuss discovery response

Figured best thing to do would be send a group email to coordinate a time to get on the phone today with eroots.

I am not available until 3 pm and Sam is not available after 2 pm so today will not work. How about tomorrow? I can do anytime in the afternoon.

Let me know what works for you all.

Sent from my iPhone