

IN THE CLINTON COUNTY COURT OF COMMON PLEAS  
CLINTON COUNTY, OHIO

Robert E Baughman 6864 S.R. 350 Clarksville, Ohio 45113 Plaintiff	:	CASE # CVH20150282  Judge: McCracken
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Vs.	:	<u>Plaintiff's Motion for Change of Venue, Instante</u>
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Robert P Shumaker 6022 S.R. 350 Clarksville, Ohio 45113	:	
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Defendant	:	
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Twin Elm Trust B 6022 S.R. 350 Clarksville, Ohio 45113	:	
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Defendant

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Now Comes Plaintiff Robert E Baughman, who respectfully request that this Court expedite and grant his Motion for Change of Venue based on the circumstances and facts of this case, along with Ohio Rules of Civil Procedure and in the interest of Justice. The basis for this motion is as follows:

1. Defendants' Counsel may or may not have failed to provide Defendants' with the most diligent defense possible.
2. Defendant's counsel may be liable to Defendants' for a portion of the amount sought in Plaintiff's Default Judgement which he is entitled to and has filed for, based on the very real facts that defendants' by and through counsel have failed to timely respond to Plaintiff's Complaint, or any motions Plaintiff has filed since this case was filed on July 31, 2015.

3. Defendants' counsel Brett W. Rudduck is the son of Elected Clinton County Common Pleas Court Judge John W. Rudduck.
4. Judge John W. Rudduck is the highest ranking official in the Clinton County Common Pleas Court, and has been in that position for many years.
5. Judge John W. Rudduck, it is safe to assume, has longstanding relationships with most employees of the Court.
6. Unfortunately from this point forward many of the rulings in the future of this case will involve decisions about the reasonableness of the actions or inactions of the Judge's son which creates an uncomfortable situation where the Plaintiff feels that choices have to be made between following the rules of law which protect the Plaintiff's rights or protecting Brett W. Rudduck from the consequences of his actions and choices.
7. Plaintiff has reason to believe and is waiting for Open Records Request and Federal Freedom of Information Request responses regarding actions by Defense Counsel that may increase the spotlight on Brett W. Rudduck and his diligence.
8. It is a basic human instinct to protect your children and children of those close to you.
9. Plaintiff has information from the Ohio Supreme Court, Attorney Services Office that Mr. Rudduck's Attorney Registration under Gov.Bar R.VI lapsed on September 1, 2015 and he practiced law illegally for 61 days until he filed and was granted "active" status on November 1, 2015, so any documents or actions by Defendants' counsel from Sept 1, 2015 thru Nov 1, 2015 were done contrary to law and should receive no consideration.
10. The "Defendants' Motion for Enlargement of Time in Which to File an Answer to Plaintiff's Complaint" was filed Oct 28, 2015 during Mr. Rudduck's delinquency.
11. Ohio Rules of Civil Procedure Civil, Rule 3(C)(4) under change of venue, states: "Upon Motion of any party or upon its own motion the court may transfer any action to an adjoining county within this state when it appears that a fair and impartial trial cannot be had in the county which the suit is pending"
12. Plaintiff points to "Defendants' Motion for Enlargement of Time in Which to File an Answer to Plaintiff's Complaint", which was filed after the Plaintiff had filed a Motion for Default Judgement, failed to meet the requirements under the rules for motions, and was granted Ex Parte, Instante, without any evidence, and contrary to the Rules as an example of situations that call into question if Plaintiff can receive Justice in this case particularly being that this case is at a point where Plaintiff is entitled

to Default Judgement due to the inaction of Defendants' who are represented by Mr. Rudduck and now Defendants' have failed to file any timely opposition to Plaintiff's Motion for Default Judgement, and Motion for Civil Protection Order and/or No Contact Order with memorandum of support included. When Defendants' do file documents, not even one document has followed the rules. Whichever court hears these arguments have to decide if a pattern of untimely documents which fail under the rules should prevail over the rights of the Plaintiff to have the rules followed which benefit his case.

13. Plaintiff did not choose to turn this into a case about the Judge's son, this only came as a result of Plaintiff trying to find evidence of either excusable neglect, or inexcusable neglect in the context of a Ohio Civil Rule 6(B) motion to file an Answer after the time had passed. Plaintiff was also preparing for a possible Ohio Civil Rule 60(B) challenge. While doing research in that context, Plaintiff quickly discovered a pattern of inexcusable neglect that seems to surround Brett W. Rudduck. Plaintiff is more concerned by the fact that Mr. Rudduck is apparently not even making an attempt to be diligent or follow the rules, which leads Plaintiff to believe that in the past Mr. Rudduck's actions have been over looked, or covered up. A Person does not go from being Responsible and diligent to careless and reckless overnight..
14. Plaintiff does not accuse anyone in particular of any wrong doing, but simply states that in Interest of Justice and to remove any possibility of the appearance or claims that the Defendants' receive preferential treatment in order to protect Defendants counsel from himself for failing to timely act and conduct himself in a diligent fashion, Plaintiff seeks that this case be moved to a completely independent court.
15. This court should not consider conduct of Defendants' counsel any less than the conduct of the Defendants' themselves. The Ohio Supreme Court in *GTE Automatic Electric, Inc., Appellee, v. ARC Industries, Inc., Appellant*. 47 Ohio St. 2<sup>nd</sup> 146 (1976) citing The United States Supreme Court in *Link V. Wabash R.R. Co.* (1962), 370 U.S. 626 at pages 633-634 found: "There is certainly no merit to the contention that dismissal of petitioner's claim because of his counsel's unexcused conduct imposes an unjust penalty on the client. Petitioner voluntarily chose this attorney as his representative in the action, and cannot now avoid the consequences of the acts or omissions of this freely selected agent. Any other notion would be wholly inconsistent with our system of representative litigation, in which each party is deemed bound by the acts of his lawyer-agent and is considered to have notice of all facts, notice of which can be charged on

the attorney.” The court continued at page 634, fn.10: “Surely if a criminal defendant may be convicted because he did not have the presence of mind to repudiate his attorney’s conduct in the course of the trial, a civil [defendant] may be deprived of his [defense] if he failed to see to it that his lawyer acted with dispatch in the prosecution of his lawsuit. And if an attorney’s conduct falls substantially below what is reasonable under the circumstances, the client’s remedy is against the attorney in a suit for malpractice. But keeping this suit alive merely because\*\*\* [defendant] should not be penalized for the omissions of his own attorney would be visiting the sins of\*\*\* [defendant’s] lawyer upon the\*\*\* [plaintiff]”.

In Conclusion: This motion is not intended as a personal attack on anyone but is intended to state facts and support the application of justice, which at this point Plaintiff is concerned about his prospects for equitable application of the rules. Had Defendants’ Counsel Brett W. Rudduck conducted himself in an ordinary manner by timely filing documents which satisfy the rules we would still be focused on the merits of the case rather than on Mr. Rudduck’s failures. Judge John W. Rudduck’s son Brett W. Rudduck has conducted himself in a manner that has the possibility of long lasting, life changing problems due to his poor decisions. Given the fact that this court could mitigate some of the damages caused by Brett W. Rudduck by denying the Plaintiff of his rights under the rules it is a fair to request an impartial venue where decisions are made on the facts and without peripheral issues

Wherefore: Based on the facts, The Ohio Rules of Civil Procedure and in the interest of Justice Plaintiff respectfully request that this case be transferred to an impartial court outside of Clinton County Ohio.

Respectfully Submitted,

Robert E Baughman  
Plaintiff  
6864 S.R. 350  
Clarksville, Ohio 45113  
(937) 725-1045

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing, Plaintiff's Motion for Change of Venue via U.S. Mail postage prepaid on this 13<sup>th</sup> day of November 2015 upon:

Brett Rudduck  
Rudduck Law Office  
Attorney for Defendant Shumaker  
P.O. Box 806  
Wilmington, Ohio 45177

Brett Rudduck  
Rudduck Law Office  
Attorney for Defendant Twin Elm Trust B  
P.O. Box 806  
Wilmington, Ohio 45177

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Robert E Baughman, Plaintiff

IN THE CLINTON COUNTY COURT OF COMMON PLEAS  
CLINTON COUNTY, OHIO

Robert E Baughman

:

CASE # CVH20150282

6864 S.R. 350

Clarksville, Ohio 45113

Judge: McCracken

Plaintiff

Vs.

:

Plaintiff's Motion for  
Change of Venue, Instanter

Robert P Shumaker

:

6022 S.R. 350

Clarksville, Ohio 45113

Defendant

:

Twin Elm Trust B

6022 S.R. 350

:

Clarksville, Ohio 45113

Defendant

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1. Defendants' Counsel may or may not have failed to provide Defendants' with the most diligent defense possible.
2. Defendant's counsel may be liable to Defendants' for a portion of the amount sought in Plaintiff's Default Judgement which he is entitled to and has filed for, based on the very real facts that defendants' by and through counsel have failed to timely respond to Plaintiff's Complaint, or any motions Plaintiff has filed since this case was filed on July 31, 2015.

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15. This court should not consider conduct of Defendants' counsel any less than the conduct of the Defendants' themselves. The Ohio Supreme Court in *GTE Automatic Electric, Inc., Appellee, v. ARC Industries, Inc., Appellant*. 47 Ohio St. 2<sup>nd</sup> 146 (1976) citing The United States Supreme Court in *Link V. Wabash R.R. Co.* (1962), 370 U.S. 626 at pages 633-634 found: "There is certainly no merit to the contention that dismissal of petitioner's claim because of his counsel's unexcused conduct imposes an unjust penalty on the client. Petitioner voluntarily chose this attorney as his representative in the action, and cannot now avoid the consequences of the acts or omissions of this freely selected agent. Any other notion would be wholly inconsistent with our system of representative litigation, in which each party is deemed bound by the acts of his lawyer-agent and is considered to have notice of all facts, notice of which can be charged on



the attorney.” The court continued at page 634, fn.10: “Surely if a criminal defendant may be convicted because he did not have the presence of mind to repudiate his attorney’s conduct in the course of the trial, a civil [defendant] may be deprived of his [defense] if he failed to see to it that his lawyer acted with dispatch in the prosecution of his lawsuit. And if an attorney’s conduct falls substantially below what is reasonable under the circumstances, the client’s remedy is against the attorney in a suit for malpractice. But keeping this suit alive merely because\*\*\* [defendant] should not be penalized for the omissions of his own attorney would be visiting the sins of\*\*\* [defendant’s] lawyer upon the\*\*\* [plaintiff]”.

In Conclusion: This motion is not intended as a personal attack on anyone but is intended to state facts and support the application of justice, which at this point Plaintiff is concerned about his prospects for equitable application of the rules. Had Defendants’ Counsel Brett W. Rudduck conducted himself in an ordinary manner by timely filing documents which satisfy the rules we would still be focused on the merits of the case rather than on Mr. Rudduck’s failures. Judge John W. Rudduck’s son Brett W. Rudduck has conducted himself in a manner that has the possibility of long lasting, life changing problems due to his poor decisions. Given the fact that this court could mitigate some of the damages caused by Brett W. Rudduck by denying the Plaintiff of his rights under the rules it is a fair to request an impartial venue where decisions are made on the facts and without peripheral issues

Wherefore: Based on the facts, The Ohio Rules of Civil Procedure and in the interest of Justice Plaintiff respectfully request that this case be transferred to an impartial court outside of Clinton County Ohio.

Respectfully Submitted,

Robert E Baughman  
Plaintiff  
6864 S.R. 350  
Clarksville, Ohio 45113  
(937) 725-1045

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing, Plaintiff's Motion for Change of Venue via U.S. Mail postage prepaid on this 13<sup>th</sup> day of November 2015 upon:

Brett Rudduck  
Rudduck Law Office  
Attorney for Defendant Shumaker  
P.O. Box 806  
Wilmington, Ohio 45177

Brett Rudduck  
Rudduck Law Office  
Attorney for Defendant Twin Elm Trust B  
P.O. Box 806  
Wilmington, Ohio 45177

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Robert E Baughman, Plaintiff

IN THE CLINTON COUNTY COURT OF COMMON PLEAS  
CLINTON COUNTY, OHIO

Robert E Baughman	:	CASE # CVH20150282
6864 S.R. 350		
Clarksville, Ohio 45113		Judge: McCracken
Plaintiff		

Vs.	:	<u>Plaintiff's Motion to Strike</u>
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Robert P Shumaker	:	
6022 S.R. 350		
Clarksville, Ohio 45113		

Defendant	:	
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Twin Elm Trust B	:	
6022 S.R. 350		
Clarksville, Ohio 45113		

Defendant

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Now Comes Plaintiff Robert E Baughman, who under Ohio Civil Rules of Procedure Rule 12(F) under "Motion to Strike" respectfully request that this Court Strike from the record Defendant's untimely filed answer, in which the events leading to this document being filed violated a multitude of rules and procedures. To allow this document to receive consideration also violates Plaintiff's constitutional rights under the United States Constitution and The Ohio Constitution. To allow this document to receive consideration also prejudice the Defendants', as they will have to bear the additional expense and time of defending this case, knowing if the Plaintiff receives a judgement for a dollar less than he is entitled to under his Default Judgement this case will be appealed.

1. Plaintiff filed his complaint against the two Defendants on July 31, 2015.
2. Service was completed when both summons where signed for by Shannon Shumaker on August 5, 2015.
3. Ohio Civil Rule 12(A)(1) States; "Generally the defendant shall serve his answer within twenty-eight days after service of the summons and complaint upon him..."

4. Under Ohio Civil Rule 12(A)(1) the day for Defendants' answer would be Sept 2, 2015.
5. Defendants' on Aug 21, 2015 filed a document claiming to be a motion entitled "Defendants' Motion for a More Definitive Statement and Partial Motion to Dismiss", this Document was fatally flawed as it failed to even attempt to comply with Ohio Civil Rule 7(B)(1) which states: " A motion, whether written or oral, shall state with particularity the grounds therefor, and shall set forth the relief or order sought". Defendants' document failed to state with particularity the grounds therefor.
6. Clinton County Common Pleas Court Rules of Local Practice Rule 5(A) under Motions States; "All motions shall be accompanied by a brief or memorandum stating the grounds thereof and citing the authorities relied upon". No such brief or memorandum accompanied Defendants' document.
7. "Defendants' Motion for a More Definitive Statement and Partial Motion to Dismiss " which presumably was attempting to file a motion under Ohio Civil Rule 12(E) which states; " Motion for definitive statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, he may move for a definitive statement before interposing his responsive pleading. The motion shall point out the defects complained of and the details desired..." Defendants' document failed to point out the defects complained of and details desired.
8. Defendants' in that one motion, failed to comply with the rules at least four times, when the rules state that the party "shall" take a particular action.
9. This Court's Entry filed Oct 1, 2015 titled "Entry Denying Motion for a More Definitive Statement and Partial Motion to Dismiss" ordered that Defendant's "shall" have until October 15, 2015 to file their answer to the complaint.
10. Defendants' having failed to take actions required of them for at least the fifth time, did not file their answer by October 15, 2015 as Ordered by this Court.
11. Plaintiff being entitled to equal protection, and having the rules and laws applied in an equitable fashion, on Oct 21, 2015 filed "Plaintiff's Motion for Default Judgement, and Motion for Civil Protection Order and/or No Contact Order. With Memorandum in support included."
12. Oct 28, 2015 Defendants' counsel who's legal registration as required under the Ohio Supreme Court Rules for the Government of the Bar of Ohio (hereon refer to as Gov. Bar) Rule VI was in default (see exhibit A), which prohibits him from practicing law, after failing to timely file an Answer to Plaintiff's Complaint which was filed July 31, 2015, filed an untimely document claiming to be a motion with this court.

13. The document was titled “Defendants’ Motion for Enlargement of Time in Which to File Answer to Plaintiff’s Complaint”. Defendants’ document contained fatal defects which should have prevented it from receiving any consideration. Ohio Bar.Gov “Rule VI. Under Registration of Attorneys Section 1.Certificate of Registration and Registration Fee: Active Attorneys.” (A) On or before the first day of September in each odd-numbered year, each attorney who is admitted to the practice of law in Ohio shall file with the Office of Attorney Services of the Ohio Supreme Court a Certificate of Registration furnished by the Office of Attorney Services together with a registration fee of three hundred fifty dollars. An Attorney who registers and pays the fee required under this section shall be granted active status.”, Defendants’ counsel failed to comply with this rule and did not register, pay, and obtain active status until November 1, 2015.
14. Ohio Gov.Bar Rule VI Section (2) states “ until the attorney request and is granted reinstatement of active status, an inactive attorney shall not be entitled to practice law in Ohio; hold himself or herself out as authorized to practice law in Ohio.
15. On October 28, 2015 when Defendants’ counsel filed their document titled “DEFENDANTS’ MOTION FOR ENLARGEMENT OF TIME IN WHICH TO FILE ANSWER TO PLAINTIFF’S COMPLAINT” Defendant’s counsel had been in violation of Ohio Gov. Bar Rule VI for 57 days and was not entitled to practice law or file any documents with any this Court or any Court in Ohio. Also this document failed to satisfy the Rules pertaining to “Motions” in Ohio Rules of Civil Procedure, Rule 7(B)(1) which states: ”A motion whether written or oral, shall state with particularity the grounds therefor,...”. Black’s Law Dictionary states under “Ground” “To base something, eg., a legal principal or judicial decision on...” Clearly this document fails under that rule.
16. Defendant’s counsel was listed by the Ohio Supreme Court under Registration as “No” from September 1, 2015 until November 1, 2015. Nothing in the rules allows an attorney to practice law while his status is not active, which is what Mr. Rudduck did for 61 days.
17. Clinton County Common Pleas Court Local Rules of Practice, Rule 5(A) is clear when it says: “All motions shall be accompanied by a brief or memorandum stating the grounds thereof and citing the authorities relied upon.” The key word being “shall” which Black’s Law Dictionary defines as: “Shall, vb. 1.has duty to; more broadly is required to...” Defendants’ document makes no attempt to satisfy the rules, therefore deserves no consideration.

18. DEFENDANTS' MOTION FOR ENLARGEMENT OF TIME IN WHICH TO FILE ANSWER TO PLAINTIFF'S COMPLAINT violated presiding rules stating that the party "shall" take specific actions at least three more times.
19. This Motion was granted Ex Parte which seems contrary to Local Court Rule 9 which states: "Ex parte applications, orders and entries shall not be submitted unless expressly authorized by law. (See Ohio Civil Rule 65). Plaintiff had evidence of inexcusable neglect by Defendants' Counsel which received no consideration.
20. Local Court Rule 5(A) under the heading "Motions" also states: The Opposing counsel or party may file a memorandum in opposition to the motion by the fourteenth (14<sup>th</sup>) day after the day on which the motion was filed... On the twenty first calendar day after the motion was filed, the motion shall be deemed submitted to the trial judge." This motion was submitted to the judge and granted on the third business day after being filed and before the Plaintiff even had notice that the Motion was filed. Again this action seems contrary to Local Rule 5.
21. Ohio Civil Rule 1. (A) Applicability. Reads as follows: "These rules prescribe the procedure to be followed in all courts of this state in the exercise of civil jurisdiction at law or in equity, with the exceptions stated in subdivision (C) of this rule." The exceptions stated in subdivision (C) do not apply here.
22. The Ohio Supreme Court has held, as cited in *Thomas v. Thousand Adventures of Ohio, Inc.* (Feb 10, 2000), Wyandot App. No 16-9907, unreported:" \*\*\*The Ohio Supreme Court, in *Evans V. Chapman* [(1986), 29 Ohio St.3d 132, 135], found it significant that no default motion was pending at the time the appellee therein filed a Civ.R.6(B) motion for leave to file an answer brief instantanr. *Id.* At 135\*\*\*. In explaining *Chapman*, the Supreme Court in *Marion Credit Assn. v. Cochran* (1988), 40 Ohio St.3d 265(/case/marion-production-credit-assn-v-cochran) \*\*\*recognized that "[A]though a party is under no obligation to seek a judgement by default upon a counterclaim where no reply thereto has been filed, it cannot be denied that the decision not to seek such a judgement, for whatever reason, weighs in favor of granting leave to reply. Until a motion for default is filed, it is presumed that the complaining party is not entitled to a default judgement, which fact serves to enlarge the discretion of the trial court to allow a delayed pleading." *Id.* at 272\*\*\* It follows then the converse is equally compelling. That is, when a motion for default judgement has been filed and thereafter a motion for extension of time within to file an answer is filed, the decision to seek default judgement prior to the filing of the motion for extension serves to narrow the discretion of the trial court to allow a delayed responsive pleading.\*\*\*".

23. The United States Constitution Amendment XIV. states under “Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”
24. The Ohio Constitution Article I Section 2. States; “Right to Alter, Reform, or Abolish Government, and Repeal Special Privileges. All political power is inherent in the people. Government is instituted for their equal protection and benefit, ...”
25. A scheduling order on August 31, 2015 from this Court Stating that “before the court is Defendants’ August 21, 2015 Motion for a More Definitive Statement and Partial Motion to Dismiss. Plaintiff filed a response to said motions on August 25, 2015. Defendants’ shall have until September 11, 2015 to file a reply. The Motions will then be considered submitted to the court for decision.”
26. Plaintiff provides that Defendants’ counsel did not check his mail daily, as evidenced by U.S .Postal Service tracking information and tracking documents which show mail being available for over five days before being picked up(see exhibits B,C,andD).
27. Defendants’ did not make the claim of “excusable neglect” under Ohio Civil Rule 6(B)(2), which is required and the only situation that would allow a Defendant to file an answer after the time had passed. Plaintiff will therefore address that standard. Cuyahoga County Common Pleas Court Judge John P. O’Donnell, in David D. Walsh v. Victor J. Schkurley, et al Cuyahoga Common Pleas Court Case No: CV 08 675621 states: “A majority of the cases finding excusable neglect also have found unusual or special circumstances that justified the neglect of the party or attorney.<sup>5</sup> Neglect is inexcusable, pursuant to Civil Rule 6(B), when a party’s inaction can be classified as a “complete disregard for the judicial system.”<sup>6</sup> likewise, conduct falling “substantially below what is reasonable under the circumstance” constitutes inexcusable neglect.<sup>7</sup> Further, if the party could have prevented the circumstances from occurring, neglect will not be considered excusable.<sup>8</sup>”

<sup>5</sup> Kay,supra.

<sup>6</sup> GTE Automatic Elec., Inc. v. ARC Industries, Inc.(1976), 47 Ohio St.2d146, 153,351N.E. 2d113.

<sup>8</sup> Id at 152.

<sup>8</sup> McKinley v. Rhee, Allen App. No.1-01-168, 2002 Ohio 1768, citing Vanest v. Pillsbury Co.(1997), 124 Ohio App.3d 525,706 N.E.2d 825.

28. Defendants' counsel claiming he did not receive notice of this court's order that an answer be provided by Oct 15, 2015 although the Clinton County Clerk of Courts website clearly states "copies to Robert Baughman and Brett Rudduck", is not excusable neglect considering the Plaintiff has provided conclusive evidence that Defendants' by and through counsel have exhibited a pattern of a complete disregard for the judicial system, they have failed to; follow basic attorney registration that is required of every attorney, follow the civil rules at least eight times, follow an Order of the Court, check mail daily when you are in profession that requires prompt responses and are presumably waiting on a ruling which could have been ordered any day after Sept 11, 2015 per the courts scheduling order of Sept 1, 2015 . Given the evidence that the Defendants' counsel regularly fails to follow the rules and has a history of missing time deadlines which are required of him, along with the fact that Defendants provided no evidence as required as to why they were not aware of the court's ruling, there is no conceivable interpretation which allows the finding of "Excusable Neglect" required in Ohio Civil Rule 6(B)(2) to be met, particularly when the date to file an answer by, should have been Sept 2, 2015.
29. Excusable Neglect is neglect that could not have been avoided, and where evidence exists of special or unusual circumstances. Without any evidence the court is left to assume that the Defendants' counsel exhibited a complete disregard for the judicial process for which he is licensed to practice, and should have a high level of knowledge. "Excusable neglect is not present if the party could have prevented the circumstances from occurring."<sup>12</sup>

<sup>12</sup> Malone, supra, ¶ 8 citing Porter, Wright, Morris & Arthur, LLP v. Frutta Del Mondo, Ltd, 10<sup>th</sup> Dist. No. 08AP-69, 2008-Ohio-3567, ¶ 22.

30. This court should not consider conduct of Defendants' counsel any less than the conduct of the Defendants' themselves. The Ohio Supreme Court in GTE Automatic Electric, Inc., Appellee, v. ARC Industries, Inc., Appellant.<sup>47</sup> Ohio St. 2<sup>nd</sup> 146(1976) citing The United States Supreme Court in Link V. Wabash R.R. Co. (1962), 370 U.S. 626 at pages 633-634 found: "There is certainly no merit to the contention that dismissal of petitioner's claim because of his counsel's unexcused conduct imposes an unjust penalty on the client. Petitioner voluntarily chose this attorney as his representative in the action, and cannot now avoid the consequences of the acts or omissions of this freely selected agent. Any other notion would be wholly inconsistent with our system of representative litigation, in which each party is deemed bound by the acts of his lawyer-agent and is considered to have notice of all facts, notice of which can be charged on the attorney." The court continued at page 634, fn.10: "Surely if a criminal defendant may be convicted because he did not have the presence of mind to repudiate his attorney's conduct in the course of the trial, a civil [defendant] may be deprived of his [defense] if he failed to see to it that



his lawyer acted with dispatch in the prosecution of his lawsuit. And if an attorney's conduct falls substantially below what is reasonable under the circumstances, the client's remedy is against the attorney in a suit for malpractice. But keeping this suit alive merely because\*\*\* [defendant] should not be penalized for the omissions of his own attorney would be visiting the sins of\*\*\* [defendant's] lawyer upon the\*\*\* [plaintiff]".

In Conclusion: Defendants' have failed to file even one document since this case was filed on July 31, 2015 that complies with The Ohio Rules of Civil Procedure and Clinton County Common Pleas Court Local Rules of Practice, The Defendants' counsel was prohibited, by his failing to receive active status, from filing any documents and therefore regardless of the facts or circumstances they should not be granted leave to file an answer after the time has passed because their actions and documents are insufficient under the rules. Defendants' counsel failing to pay and register for active status in a timely fashion exhibits undeniably that, failing to file an answer on time is not the first deadline he has missed within a relatively close time period. This Court granted Defendants' motion; Ex Parte, contrary to Local Court Rule 5 which prescribes a timeline for motions that does not submit the motion to the court for twenty one days after giving the opposing party the ability to respond, without any facts or evidence presented, or consideration of facts beyond Defendants' counsel's claims which are unsupported.

Wherefore: Based on the facts, The Ohio Rules of Civil Procedure, Clinton County Common Pleas Court Rules of Local Practice, Ohio Gov. Bar Rule VI, standing case law, The United States Constitution, The Ohio Constitution, Justice and Equity, Plaintiff hereby respectfully moves this Court to Strike Defendants' untimely answer which harms the Plaintiff who is entitled to and has filed for Default Judgement under the Rules.

Respectfully Submitted,

Robert E Baughman  
Plaintiff  
6864 S.R. 350  
Clarksville, Ohio 45113  
(937) 725-1045

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing, Plaintiffs Motion to Strike, has been served via U.S. Mail postage prepaid on this 2nd day of December 2015 upon:

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Robert E Baughman, Plaintiff