



**LORAIN COUNTY COURT OF COMMON PLEAS  
LORAIN COUNTY, OHIO  
JOURNAL ENTRY  
Hon. D. Chris Cook, Judge**

Date Sept. 22, 2017

Case No. 16CV190684

JIMMIE LaPLANTE  
Plaintiff

Albert Sammon  
Plaintiff's Attorney

VS

MIKE BASS FORD, INC.  
Defendant

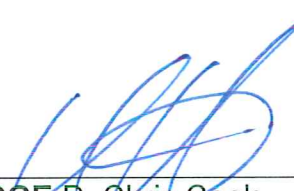
John Christie  
Defendant's Attorney

This matter is before the Court for hearing on September 20, 2017 for Attorney John Christie to appear and show cause why he should not be held in contempt.

Hearing had. Attorney Christie sanctioned.

See Judgment Entry.

IT IS SO ORDERED.

  
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JUDGE D. Chris Cook

cc: Sammon, Esq.  
Christie, Esq.



**LORAIN COUNTY COURT OF COMMON PLEAS  
LORAIN COUNTY, OHIO  
JUDGMENT ENTRY  
Hon. D. Chris Cook, Judge**

Date Sept. 22, 2017

Case No. 16CV190684

JIMMIE LaPLANTE  
Plaintiff

Albert Sammon  
Plaintiff's Attorney

VS

MIKE BASS FORD, INC.  
Defendant

John Christie  
Defendant's Attorney

**INTRODUCTION**

This matter is before the Court for hearing on September 20, 2017 for Attorney John Christie to appear and show cause why he should not be held in contempt on the Court's *sua sponte*, Show Cause Order to Attorney John Christie to appear and address irregularities that occurred at the court-ordered mediation on September 11, 2017.

Attorney Sammon and Plaintiff appeared; Attorney Christie, Attorney Patrick Harrington, General Counsel with full authority, appeared for Defendant, and Angela Incorvaia ("Incorvaia") appeared. Hearing had. At the hearing, the Court introduced two Exhibits, the Mediation Notices that were sent to the parties prior to the two mediations that occurred.

**FACTS**

The gravamen of the Court's concern is that contra both Mediation Notice Orders, Attorney Christie did not bring with him a representative of Defendant; in other words, despite ordered to do so, Defendant was not represented at either mediation by a "party" or representative with "full authority."

As for the first mediation held July 26, 2017, Attorney Christie sought leave to exclude the participation of a party or representative on behalf of Defendant as Defendant's representative was ill. This request was granted.

At the second mediation, and more troubling to the Court, Attorney Christie brought Incorvaia, the Office Administrator of Attorney Christie's law firm, in lieu of a client. For reasons that still remain foggy, Attorney Christie did not identify Incorvaia to the Mediator, her secretary, or counsel opposite (Attorney Sammon) as one of his firm's



employees, nor did he seek permission to excuse the attendance of a party or representative with authority from attending the mediation.

The mediation was unsuccessful and the matter was remanded to the Court for further proceedings.

The day after the mediation, the Court was contacted by the Mediator, Gail Ignatz Hoover ("The Mediator"), who advised that one Heather Seel ("Seel") had contacted Mediation and advised that she was a former employee of Attorney Christie's firm, Lewis Brisbois Bisgaard & Smith, LLP ("The Firm") and that she (Seel) had just resigned her position as a paralegal for The Firm

Seel advised Mediation, and ultimately this Court, that Incorvaia was an employee of The Firm and had nothing to do with the Defendant. Upon further inquiry by the Court, Attorney Sammon confirmed that he was unaware of the identity of Incorvaia and like The Mediator and her assistant, Cyndy Stiwald, believed that Incorvaia was a party/representative of Defendant.

At the Show Cause hearing, both parties confirmed the substance of these facts.

Attorney Christie stated on the record that on the morning of the second mediation, September 11, 2017, he learned that the corporate representative of Defendant, General Counsel Harrington, was again ill and unable to attend. As a result, believing that he was required to simply have a "client representative" present at the mediation, he contacted Incorvaia and directed her to attend the mediation.

As noted, Attorney Christie was silent as to the true identity of Incorvaia and allowed the mediation to proceed wherein counsel-opposite and The Mediator believed (understandably) that Incorvaia was associated with Defendant.

## DECISION

This lapse of ethical professionalism is one of omission, not commission. The Court is aware, as urged by Attorney Christie, that he never affirmatively misrepresented to anyone who Incorvaia actually was. He did not identify her as a party or representative nor did he profess that she was associated with Defendant.

And, the Court does not doubt that Attorney Christie learned "at the last moment" that Defendant's representative was unable to attend the mediation. That said, Attorney Christie's statement that he believed he simply needed a "client representative" at the mediation is a difficult explanation to accept.



Attorney Christie is an experienced litigator with over 20 years trial experience; he has attended many mediations in his career; he acknowledged the purpose and importance of having an actual “party” or person associated with a party with authority attend mediations; and he acknowledged receiving both Mediation Notices that ordered, “Trial counsel, **all parties**, and if applicable, the principal insurance adjuster(s), all with authority to settle, shall personally attend all mediation sessions . . .” (Emphasis added.)

Moreover, Attorney Christie *did* contact the Mediation Department to seek leave to excuse a party/representative for the first mediation (July 26, 2017) which confirms his knowledge and appreciation of the importance of having a party or representative attend mediations.

Why he was not as candid during the second mediation is at issue.

### LEGAL ANALYSIS

It is axiomatic that a lawyer: has an ethical and professional duty of candor toward the tribunal, ORPC 3.3(b); has a duty of fairness to an opposing party and counsel, ORPC 3.4(c); has an obligation of truthfulness in statements to others, ORPC 4.1(b); and, has a duty to avoid misconduct involving dishonesty, fraud, deceit, or misrepresentation or to engage in conduct that is prejudicial to the administration of justice, ORPC 8.4(c) & 8.4(d).

The Ohio Rules of Professional Conduct embody the concept that misrepresentation can also occur “. . . by partially true but misleading statements or omissions . . .” ORPC 4.1, Comment [1], Misrepresentation. (Emphasis added.)

It is clear beyond a reasonable doubt that Attorney Christie’s silence as to the identity of his “representative” Incorvaia, at the mediation of September 11, 2017, led The Mediator and counsel-opposite to assume (logically, rationally, and understandably) that Incorvaia was associated with the Defendant and was a “party” or “representative with authority,” when in fact she was an employee of Attorney Christie’s law firm.

### STANDARD OF REVIEW

A show-cause order is a vehicle in which to address conduct that is, or may have been, contemptuous. Contempt of a court may take the form of intentional acts directed to the court or near the court’s presence or purposeful omissions – silence when a person had a duty to speak or the purposeful disobeying of a court order.



The term "contempt of court" embraces a despising of the authority, justice, or dignity of a court, and one is guilty of such contempt whose conduct is such as tends to bring the administration of the law into disrepute and disregard or otherwise tends to impede, embarrass, or obstruct the court in the performance of its functions. *In re Green*, 172 Ohio St. 269 (1961).

Contemptuous conduct is distinguished as either "criminal" or "civil." Contempt can also be either "direct" or "indirect." The type of contempt at issue may be determined by the sanction administered by the court.

Sentences for criminal contempt are ". . . punitive in nature and are designed to vindicate the authority of the court." *State v. Kilbane*, 61 Ohio St.2d. 201, 205 (1980). If a definite punitive sentence, either a fine or term of imprisonment is imposed, the contempt is criminal.

Civil contempt is intended to force the contemnor to comply with the court's order. A sanction for civil contempt must allow for the contemnor to purge himself of the contempt. *Tucker v. Tucker*, 10 Ohio App.3d 251 (1983). If the contemnor is imprisoned or fined until he purges himself by doing the act ordered by the court, the contempt is civil.

Direct criminal contempt constitutes alleged misbehavior that (1) requires immediate punishment to preserve the court's authority; (2) takes place in the presence of the judge in open court or in or before any of its constituent parts, such as the court room or jury; and (3) obstructs the administration of justice by delaying or hindering or influencing a pending case. *State v. Treon*, 91 Ohio Law Abs. 229 (1963).

RC 2705.01 codifies the procedure for dealing with direct contempt. A court, or a judge at chambers, may summarily punish a person guilty of misbehavior in the presence of or so near the court or judge as to obstruct the administration of justice. Procedural due process rights, including the right to a hearing, are inapplicable to direct criminal contempt. *In re Lands*, 146 Ohio St. 589 (1949). Direct contempt that does not occur in the actual presence of the judge requires full constitutional due process proceedings.

The standard of proof of guilt of contempt is that of "beyond a reasonable doubt." *Brown v. Executive 200, Inc.*, 64 Ohio St.2d 250 (1980).

There is not statutory provision specifying punishment for direct criminal contempt. Punishment is within the sound discretion of the trial court, subject to appellate review for abuse. *Weiland v. Indus. Comm.*, 166 Ohio St. 62 (1956).



## SANCTION

In this matter, the Court finds, by proof beyond a reasonable doubt, that Attorney Christie is guilty of direct criminal contempt of this Court by 1) violating a court order that commanded him to produce a “. . . party . . . with authority to settle . . .” at the mediation that occurred on September 11, 2017. See: RC 2705.02(A) And, by failing to advise the Court, The Mediator, or counsel opposite that the individual that accompanied him to the mediation was not associated with his client, but was an employee of his law firm.

Attorney Christie’s “silence” in this situation gave the (perfectly reasonable) impression to all involved in the mediation that Incorvaia was a representative of Defendant when she was not.

This Court has significant latitude in fashioning a sanction and initially considered awarding counsel-opposite’s attorney fees for attending both the fruitless mediation and the show-cause hearing as punishment. That said, the Court is cognizant of Attorney Christie’s forthrightness, candor, expression of remorse and acknowledgement of his poor judgment, and genuine apology to all parties. Combined with the Court’s belief that such conduct will not be repeated, the mitigating factors weigh against the aggravating circumstances.

In fashioning a sanction, it was suggested by Attorney Sammon that Attorney Christie compensate Plaintiff, Jimmie LaPlante, for his lost wages incurred by attending the show-cause hearing. Plaintiff is employed at Ohio E-Check and earns \$8.15 per hour; he missed four (4) hours of work for a total of lost wages of \$32.60.

This amount, while admittedly nominal, is nevertheless significant. No attorney should ever want his ethical or professional integrity questioned – especially by a judge. Attorney Christie is an experienced, respected lawyer with an excellent reputation in the community with no prior discipline that I am aware of. This Court, accordingly, finds that Attorney Christie’s conduct herein was an aberration and not in accord with his conduct and character as an attorney.

Still, his misconduct was serious and the sanction *de minimus*. To that end, the Court shall order in addition to payment of the sum of \$32.60 to Plaintiff, Attorney Christie is hereby ordered to complete two and one-half hours (2 ½) of Professional Conduct CLE credits and show proof of such completion to the Court by December 31, 2017. As this is Attorney Christie’s reporting biennial compliance period (Gov. Bar R X, §4), this sanction may be superfluous; if Attorney Christie has already completed this requirement, then a refresher course on this subject is in order.



## CONCLUSION

Attorney John R. Christie, Supreme Court Bar Number (0067570), is hereby sanctioned by this Court for misconduct occasioned at the Court Ordered Mediation that occurred on September 11, 2017, wherein he failed to bring a party and failed to disclose that the individual he did bring was an employee of his firm, not a person associated with his client, the Defendant.

Attorney Christie is ordered to pay to Plaintiff, Jimmie LaPlante, the sum of \$32.60 by delivering a trust check to Attorney Sammon. Further, Attorney Christie is ordered to take and complete two and one-half (2 ½) hours of Professional Conduct CLE's by December 31, 2017 and is further ordered to provide proof of compliance by January 5, 2018.

IT IS SO ORDERED.



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JUDGE D. Chris Cook