

FILED  
IN COMMON PLEAS COURT

IN THE COURT OF COMMON PLEAS  
GEAUGA COUNTY, OHIO  
PROBATE DIVISION

2017 FEB 14 AM 10:28

PROBATE-JUVENILE  
DIVISION  
GEAUGA COUNTY, OHIO

**In Re Chester Township Park District**

Case No. 84 PC 000139

JUDGE JOHN J. LOHN, SITTING  
BY ASSIGNMENT

**NOTICE, ADVISEMENT AND ORDER  
FOR SERVICE**

**NOTICE OF EX PARTE COMMUNICATION  
AND ADVISEMENT TO THE CLERK AND LITIGANTS**

On February 7, 2017 I received a phone call from Ms. Kim Laurie ~~informing me~~ the probate court received an invoice from the master commissioner. Ms. Laurie ~~said the~~ court (Judge Grendell) is asking me to set a hearing on the invoice. I informed Ms. Laurie the fees had been approved in Judge Grendell's September 16, 2016 order and that I was not conducting further proceedings. I directed her to page 16 of my February 2, 2017 entry. I also asked her to send me a time-stamped copy of my February 2 entry. She emailed it to me later that day.

On February 9, 2017 I received two emails, with attachments, from Ms. Laurie. They are appended to this notice.<sup>1</sup> These communications are improper. I may not consider them, Jud. Cond.R. 2.9(A).

The Clerk and parties are hereby notified of these communications.

The February 7 phone call I view as communication for the purpose of scheduling a hearing. Such a communication is permitted under Jud.Cond.R. 2.9(A)(1). When I informed Ms. Laurie no hearing was necessary, that should have ended things.

The February 9 emails informed me I had not correctly interpreted Judge Grendell's September 16, 2016 order and that I did not understand and apply R.C. 2101.07.

<sup>1</sup> I redacted my personal email address from these materials.

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IN COMMON PLEAS COURT  
2017 FEB 15 PM 3:28  
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DIVISION  
GEAUGA COUNTY, OHIO

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IN COMMON PLEAS COURT

2016 FEB 11 AM 10:28

PROBATE-JUVENILE  
DIVISION  
GEAUGA COUNTY, OHIO

When I got the second email—the third ex parte communication—I felt I should respond on the record.

The September 16 entry states the fees “shall be allowed and taxed as costs.” I took the entry to mean what it said. Judge Grendell used the word “shall” three other times in his entries in exactly the same sense of a formal, resolute, unconditional command:

“Master Commissioner Trapp is authorized to and *shall* investigate . . . ;”

“Master Commissioner Trapp *shall* submit a written report to the Court . . . ;”

“These additional matters *shall* be addressed . . .”.

Moreover Judge Grendell captioned the September 16 order a “judgment entry” and the September 22 order a “supplemental judgment entry.” These entries are orders, not judgments.<sup>2</sup> I do not know why Judge Grendell chose to use the word “judgment” (implying self-execution and finality) in captioning these orders, but he did. Likewise I do not know why Judge Grendell did not write, “if the fees are found proper under R.C. 2101.07, they shall be allowed and taxed as costs,” but he did not.

Everything written and not written in the entries leads to the conclusion the master commissioner fees were approved. The master commissioner, herself an able lawyer, interpreted the September 16 entry the same way I did. She did not file a motion for approval of her fees. She simply sent an invoice directly to the court.

In my February 2 decision I wrote, “The probate court pre-approved the master commissioner’s fees and taxed them as court costs in its September 16, 2016 entry. There are no other matters left for me to consider.”

Right or wrong, my interpretation of the September 16 entry is a substantive matter. The recused judge has no business commenting on this issue or on any aspect of my decision, publicly or privately, directly or by proxy; Jud.Cond.R. 2.10(A). Judge Grendell recused while the Chief Justice contemplated his disqualification. He should be mindful of his recusal.

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<sup>2</sup> A judgment is a final, appealable decree settling the rights of the parties in an action. Orders are interlocutory decisions a court issues to control the course of litigation while a case is pending.

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The Chief Justice assigned me to review the master commissioner's findings and to conduct future hearings related to those findings. The reasonableness of the master commissioner's fees is related to Ms. Trapp's original appointment, but not related to her findings. Because I do not have authority to review the underlying September orders, I do not have the authority to review the reasonableness of the master commissioner's fees.


Even if Judge Grendell is correct and I have left an issue on the table, I can't deal with it until the appellate process is exhausted. For me to move forward now on the question of the reasonableness of the master commissioner's fees would violate two court orders and derogate the appellate court's jurisdiction.

I completed my assignment according to my ability and understanding.

If the judge feels there are matters remaining to be adjudicated, he should issue a second recusal and notify the Chief Justice. In fact, I urge him to do so. The Code of Judicial Conduct requires disqualification when a judge has an economic interest in the subject matter in controversy, Jud.Cond.R. 2.11(A)(3). If the September orders are found to be void, Geauga County and Judge Grendell personally may be liable for the master commissioner's fees, see *Borkowski v. Abood* (2008), 117 Ohio St. 3d 347, par. 7.

**IT IS ORDERED** that the Clerk shall file and serve a copy of this document upon the following persons: Hon. Timothy J. Grendell, Judge and ex officio Clerk; Master Commissioner Mary Jane Trapp; Chester Township Board of Trustees; Geauga County Prosecuting Attorney; Atty. Raskin/ Atty. Scialdone; Chester Township Board of Park Commissioners; Atty. Gillette

**SO ADVISED, SO ORDERED.**

  
JUDGE JOHN J. LOHN  
RETIRED JUDGE SITTING BY ASSIGNMENT  
Assign. No. 16 JA 2759

Armstrong Webmail

~~FILED  
JUDGE JOHN LOHN'S COURT  
jjlohn@zcominternet.net~~

~~2017 FEB 14 AM 10:29~~

**Master Commissioner Invoice**

~~PROBATE JUVENILE  
DIVISION  
GEAUGA COUNTY, OHIO~~

**From :** Kimberly D. Laurie  
<KLaurie@geaugacourts.org>

Thu, Feb 09, 2017 08:55 AM

1 attachment

**Subject :** Master Commissioner Invoice

**To :** [REDACTED]  
[REDACTED]

Good morning Judge Lohn,

I spoke with Judge Grendell regarding the invoice and he said that his September judgment entry indicated that the fees would be expensed to the Court, however he did not pre-approve the amount of the fees. We need you to please review the attached invoice and let me know if the fees charged are appropriate or if they require an adjustment.

Thank you,

**Kimberly Laurie**  
**Budget/Fiscal Director & County Liaison**  
Geauga County Probate Juvenile Court  
Courthouse Annex, 2<sup>nd</sup> Floor  
231 Main Street, Suite 200  
Chardon, OH 44024  
440-279-1868  
[klaurie@geaugacourts.org](mailto:klaurie@geaugacourts.org)  
[www.geaugacourts.org](http://www.geaugacourts.org)

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 **201702090858.pdf**  
2 MB

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THRASHER, DINSMORE & DOLAN  
 100 Seventh Avenue, Suite 150  
 Chardon, Ohio 44024-1079  
 (440) 285-2242 or (216) 255-5431  
 Fed. Tax ID [REDACTED]

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2017 FEB -3 AM 9:43

PROBATE-JUVENILE  
 DIVISION  
 GEAUGA COUNTY, OHIO

Invoice# 77726 MJT  
 Our file# 17051 00000

Billing through 01/25/2017

January 25, 2017

**GEAUGA COUNTY PROBATE COURT**

231 Main Street, Suite 200  
 Chardon, OH 44024\*

MASTER COMMISSIONER APPOINTMENT  
 IN RE: CHESTER TOWNSHIP PARK DISTRICT  
 GEAUGA COUNTY PROBATE COURT CASE NO. 84P000139

84PC000139

~~FILED  
 IN COMMON PLEAS COURT  
 2017 FEB 14 AM 10:29  
 PROBATE-JUVENILE  
 DIVISION  
 GEAUGA COUNTY, OHIO~~

Balance forward as of invoice dated December 25, 2016	\$150.00
Payments received since last invoice	0.00
Accounts receivable balance carried forward	\$150.00

**PROFESSIONAL SERVICES**

12/26/2016	MJT	Review of trustees minutes and Radtke emails.	2.50 hrs.	625.00
12/26/2016	MJT	Review emails re: status of negotiations on agreement and 8/9/16 hearing tape.	0.50 hrs.	125.00
12/26/2016	MJT	Research interference issues vis-a-vis agreements and 6/22/16 judgment entry.	3.00 hrs.	750.00
12/26/2016	MJT	Research fraud on court case law.	0.50 hrs.	125.00
12/26/2016	MJT	Research general questions re: dissolution, affect of initial application to probate court and agreement.	1.00 hrs.	250.00
12/27/2016	MJT	Call to Joe Weiss to arrange interview of Park Commissioners - not in, left detailed message with secretary. (N/C)	0.10 hrs.	N/C
12/27/2016	MJT	Call from Joe Weiss with contact numbers for Commissioners. (N/C)	0.10 hrs.	N/C
12/27/2016	MJT	Call to Phillbrick, not in - left detailed message on voicemail. (N/C)	0.10 hrs.	N/C
12/27/2016	MJT	Call to Laurence, not in - left detailed message on voicemail. (N/C)	0.00 hrs.	N/C
12/27/2016	MJT	Call to Parker, not in - left detailed message on voicemail. (N/C)	0.10 hrs.	N/C
12/27/2016	MJT	Call to Yandell - spoke with him re: contact.	0.20 hrs.	50.00
12/27/2016	MJT	Call from Laurence - spoke with him re: contact.	0.10 hrs.	25.00

Date	Initials	Description	Hours	Amount
12/27/2016	MJT	Call from Philbrick - spoke with her re: contact.	0.20 hrs.	50.00
12/27/2016	MJT	Letter to Attorney Raskin re: document production.	0.30 hrs.	75.00
12/27/2016	MJT	Review original formation judgment entry.	0.10 hrs.	25.00
12/29/2016	MJT	Review twp 2017 budget.	0.10 hrs.	25.00
12/29/2016	MJT	Email from Weiss with letter from Gillette to auditor and CTPD 2017 budget reviewed.	0.10 hrs.	25.00
12/30/2016	MJT	Email from Richter with 12/8/16 minutes and CD with additional meeting tapes will be available today. Review minutes.	0.10 hrs.	25.00
12/30/2016	MJT	Pick up additional documents at Chester.	0.20 hrs.	50.00
12/30/2016	MJT	Continue research and drafting; review court of appeals briefs.	5.00 hrs.	1,250.00
12/31/2016	MJT	Continue drafting; Review new tapes and Kinney emails.	4.00 hrs.	1,000.00
01/01/2017	MJT	Continue drafting; listen to tapes of 8/18/2016 and 9/3/2016 trustee meeting.	4.00 hrs.	1,000.00
01/02/2017	MJT	Revised draft 1.	2.00 hrs.	500.00
01/02/2017	MJT	Call from Al Parker.	0.10 hrs.	25.00
01/02/2017	MJT	Edit and finalize interim report.	1.50 hrs.	375.00
01/06/2017	MJT	Hearing.	2.00 hrs.	500.00
				<b>\$6,875.00</b>

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Billing Summary

Total professional services	\$6,875.00
Total of new charges for this invoice	\$6,875.00
Plus net balance forward	\$150.00
<b>Total balance now due</b>	<b>\$7,025.00</b>

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 GEauga COUNTY, OHIO  
 2017 FEB -3 AM 9:43

**IN ORDER TO ENSURE PROPER ALLOCATION OF YOUR PAYMENT, PLEASE INCLUDE YOUR INVOICE NUMBER ON YOUR CHECK. THANK YOU.**

Armstrong Webmail

jjlohn@zoominternet.net

Master Commissioner Invoice

From : Kimberly D. Laurie  
<KLaurie@geaugacourts.org>

Thu, Feb 09, 2017 11:08 AM

1 attachment

Subject : Master Commissioner Invoice

To : [REDACTED]  
[REDACTED]

Hi again,

To clarify what we need, ORC 2101.07 states *"The court shall allow the commissioner those fees that are allowed to other officers for similar services, and the court shall tax those fees with the costs."* Please see attached.

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In Judge Grendell's September judgment entry, he merely taxed the Master Commissioner fees with the costs to the court as statutorily mandated. He did not do so without limitation. Rather, under 2101.07, the Court must review the fees as submitted to determine if those fees are reasonable and "fees that are allowed to other officers for similar services." That determination remains for your adjudication.

Thanks,

**Kimberly Laurie**  
**Budget/Fiscal Director & County Liaison**  
Geauga County Probate Juvenile Court  
Courthouse Annex, 2<sup>nd</sup> Floor  
231 Main Street, Suite 200  
Chardon, OH 44024  
440-279-1868  
[klaurie@geaugacourts.org](mailto:klaurie@geaugacourts.org)  
[www.geaugacourts.org](http://www.geaugacourts.org)

 **Lawriter - ORC - 2101.07 Master commissioners - powers - fees.pdf**  
14 KB

**2101.07 Master commissioners - powers - fees.**

A special master commissioner of the probate court may administer all oaths required in the discharge of the commissioner's duties, may summon and enforce the attendance of witnesses, may compel the production of books and papers, and may grant adjournments the same as the court, and, when the court directs, the commissioner shall require the witnesses severally to subscribe the witnesses' testimony.

All process and orders issued by the commissioner shall be directed to the sheriff, shall be served, and return of the process and orders shall be made as if issued by the probate judge.

The court shall allow the commissioner those fees that are allowed to other officers for similar services, and the court shall tax those fees with the costs.

Amended by 129th General Assembly File No.52, SB 124, §1, eff. 1/13/2012.

Effective Date: 10-01-1953 .

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