

IN THE SOUTH EUCLID MUNICIPAL COURT  
SOUTH EUCLID, OHIO

IN RE CONTEMPT OF :  
 :  
JOE MAYS : CVH 2100349  
 :  
 : FINAL ENTRY & ORDER  
 : IMPOSING SANCTIONS FOR  
 : INDIRECT CIVIL CONTEMPT

This matter is before the Court sua sponte to Show Cause filed on April 13, 2021, seeking sanctions against the Respondent, Joe Mays for his failure to comply with an order of this Court, entered on March 24, 2021, and served on the Respondent, personally by South Euclid Municipal Court Chief Administrative Bailiff, Isaiah Simmons on March 24, 2021.

Based upon the Court's direct knowledge, the Court found probable cause to issue an Order to Show Cause, which was served on the Respondent, personally by South Euclid Municipal Court Chief Administrative Bailiff, Isaiah Simmons on April 13, 2021. The Respondent thereafter filed an appeal to the Ohio Supreme Court including a Writ of Mandamus and Writ of Prohibition requesting expedited review of the same and dismissal of the charge of contempt. This Court responded to said motion. The Ohio Supreme Court in Case No. 2021-0484 granted this court's motion to dismiss Respondent's claims as well as the cause of action. This matter was therefore scheduled for hearing on July 23, 2021 at 9:00AM. On that date, Respondent appeared with counsel, Kevin Spellacy after having commenced compliance with Administrative Order 2021-01. Thereupon, the hearing was continued until August 6, 2021 at 9:00AM and only after Respondent failed to continue the court ordered compliance.

At the contempt hearing, held on August 6, 2021, Respondent appeared with counsel, Kevin Spellacy and Walter Edwards and was given the opportunity to present a defense with the

presentation of any witnesses on his behalf. Additionally, Respondent was provided an opportunity to offer facts in mitigation of any potential sanctions.

### **FINDINGS OF FACT**

The recitation of events as outlined on the record by this court has established by clear and convincing evidence the following facts: This court issued a valid and enforceable order on March 24, 2021 pursuant to Administrative Order 2021-01. Despite Respondent's contention that said order was invalid, this court rejects Respondent's argument.

Upon notification of the Contempt Hearing, Respondent, through counsel, a Writ of Mandamus and Writ of Prohibition with a Motion for Expedited Review and Emergency Stay with the Ohio Supreme Court. Respondent's complaint sought to enjoin this court from enforcing what Respondent referred to as "any unlawful order, herein, namely, Administrative Order 2021-01 and Administrative Order 2020-12." Additionally, Respondent prayed for an Order of Dismissal of the charge of Contempt.

The plain reading and legal basis of Respondent's complaint asserted that this Court lacked the authority to issue Administrative Orders 2020-12 and 2021-01. Respondent indicated through the pleading that the purpose for bringing the action was to "prevent the unauthorized, arbitrary and stifling assumption of jurisdiction over nonjudicial matters resulting in the charge of Indirect Contempt of Court" against Respondent. And despite the thorough, demonstrative evidence contradicting Respondent's claims, as outlined in Administrative Order 2020-12, the filing further asserted this court "has no lawful authority to order the [South Euclid Police Department] to cease and desist handing out informational flyers that in no way impinge upon court operations." Respondent summarized the filing by asserting this court has "no lawful authority to issue a charge

and summons for Indirect Contempt of Court, also a person cannot be held in contempt for disobeying an unlawful order of the Court.”

There can be no mistake that Respondent argued this Court failed to issue a valid, legal order resulting in the issuance of the charge of Indirect Contempt against Respondent. In fact, Respondent argued that “subjecting [Respondent] to the potential loss of liberty through contempt proceedings when the underlying orders serving as the basis for Contempt are unlawful, defies the notion of fundamental fairness and due process in the justice system.”

To this filing, the Court with a Motion to Dismiss. This Court noted that Respondent failed to meet the elemental hurdles required to survive the requests placed before the Ohio Supreme Court. Specifically, this Court declared that said orders were not unlawful and did not lack the ability of enforcement. Further, this Court argued there was no improper exercise of judicial power through the issuance and enforcement of Administrative Orders 2020-12 and 2021-01 and Respondent lacked a clear right to interfere with Court purposes and functions.

On June 30, 2021, the Ohio Supreme Court issued a decision in Case No. 2021-0484 wherein this Court’s motion to Dismiss Respondent’s Complaint and Writs of Mandamus and Prohibition was granted. The ruling, although limited in dicta, clearly notes the Supreme Court’s consideration of all arguments, whether or not meritorious. Ultimately, this Court’s motion for dismissal was granted, despite Respondent’s multiple arguments alleging the lawlessness of this Court’s orders.

It is therefore the plain reading and interpretation of this Court that in Case No. 2021-0484, the Ohio Supreme Court determined this Court’s Administrative Orders 2020-12 and 2021-01 are in fact, valid.

The Respondent had knowledge of Administrative Order 2021-01 and the requirements contained therein. Respondent was fully aware that he was required to cease and desist the design, creation, duplication, reproduction, distribution, dissemination or communication of any and all information regarding operations of the South Euclid Municipal Court that have not been authorized. Further, Respondent had knowledge that in his official capacity as Chief of the South Euclid Police Department, Respondent was required to sign, on behalf of said police department, a notice of compliance with this Order, on a weekly basis beginning Friday April 2, 2021 and continuing for 12 weeks thereafter. Each notice of compliance shall simply state that, as of the date of the notice, the SEPD has complied with the Court's Order 2021-01. Each such notice shall be scanned and submitted to the Chief Administrative Bailiff of the South Euclid Municipal Court at [lsimmons@SECourt.org](mailto:lsimmons@SECourt.org) by 4:00pm on the date it is due. Respondent further had knowledge that the South Euclid Police Department is ORDERED to provide Exhibit "A" in Administrative Order 2021-01 as the only written information to be provided to the public regarding court operations until further notice.

Respondent put forth no evidence negating the sufficiency of this element. Indeed, Respondent proffered that he was officially sworn in as Chief of the South Euclid Police Department on or about April 12, 2021. Nonetheless, this court finds that Respondent did act in the capacity as Chief of the South Euclid Police Department on the date of service of Administrative Order 2021-01, thereby providing him with direct knowledge of the Order and requirements. Additionally, Respondent's initial compliance with the Order on July 23, 2021, further buttresses this Court's finding of Respondent's knowledge of Administrative Order 2021-01.

As of the date of the hearing, Respondent has willfully failed to fully comply with

Administrative Order 2021-01. Respondent has failed to sign on behalf of the South Euclid Police Department, as Chief of Police, a notice of compliance, on a weekly basis for 12 weeks thereafter, stating the South Euclid Police Department's compliance with Administrative Order 2021-01.

Respondent argued the timeframe as outlined in Administrative Order 2021-01 has long since expired, and thus absolves Respondent of compliance obligations. Respondent's argument is rejected and lacks sufficient merit commonly used for thoughtful and reasonable legal consideration. First, the plain reading of the Order is specific and clearly outlines Respondent's obligations. Respondent does not refute his failure to comply, except for the single instance on July 23, 2021. This court finds said action to hardly count as "consistent" and wholly fails to reach the mark of "12 weeks" as specifically outlined in Administrative Order 2021-01. Second, on April 13, 2021, upon notification of the Contempt filing, Respondent filed an appeal which automatically acts as a time tolling event.

Therefore, under no intellectually honest reading of the facts and events of this matter, as they have occurred, can Respondent make a faithful argument of compliance with Administrative Order 2021-01, or in the alternative, time expiration which would serve to absolve a compliance obligation.

In defense, Respondent presented evidence and testimony seeking to relitigate the failed rationale and basis for the creation and distribution of the "yellow cards," which lie at the heart of this matter. Said evidence did not support or negate any element of the contempt charge.

Respondent's evidence merely sought to justify the actions of the South Euclid Police Department by providing anecdotal examples of litigant frustration and the perception of court unavailability or incompetence. This Court can only presume said evidence was designed to

highlight the “plight of South Euclid police officers” who are routinely asked questions regarding court operations. Instead, this court finds that most, if not all examples both through the testimony of Lt. Brian Hegyes and the proffer made by defense counsel, demonstrate the lackluster effort by the South Euclid Police Department to fully vet the concerns of litigants. In fact, what appeared apparent is the blatant willingness of law enforcement to accept as “fact,” any litigant’s comment or (especially) complaint that would serve the purpose of maligning the South Euclid Municipal Court.

Insofar as it is not necessary to prove Respondent’s actions were willful, purposeful or intentional, this Court elects to disregard all evidence and testimony that fails to negate by a standard of clear and convincing evidence, any of the three elements of this offense, or in the alternative, an inability to comply with Administrative Order 2021-01. For these reasons, the testimony of Respondent’s witness is deemed largely irrelevant as well as those statements proffered by counsel that lay no foundation and provide no context for the elemental requirements of this case.

### **CONCLUSIONS OF LAW**

To prevail on a motion to impose sanctions for indirect civil contempt sanctions, it must be proven, by clear and convincing evidence that 1) the Court issued an order requiring certain action by the Respondent, 2) Respondent had knowledge of the order, and 3) Respondent has willfully failed to comply with the Court order. *Citicasters Co. v. Stop 26-Riverbend, Inc.*, 147 Ohio App.3d 531, 2002-Ohio-2286, 771 N.E.2d 317, ¶ 47 (7th Dist.); *Brown v. Executive 200, Inc.*, 64 Ohio St.2d 250, 416 N.E.2d 610 (1980). See also, *In re Guardianship of Finan*, 2014-Ohio-3572, 18 N.E. 2d 459, ¶17 (5th Dist. 2014). In the present case, the court accepts the facts

as outlined and therefore the burden of proof as required by law which establishes all the elements of a contempt action, have been satisfied. After a prima facie case for contempt is established the burden shifts to the Respondent to establish a valid excuse for the noncompliance. *Arthur Young & Co. v. Kelly*, 68 Ohio App.3d 287, 300, 588 N.E.2d 233 (10th Dist.1990).

The Court concludes that Respondent has failed to provide evidence or even attempt to produce facts to support a good faith excuse for failure to comply. Testimony and/or proffers seeking to explain or describe frustration with frequent questioning about court operations, as outlined by Lt. Hegyes and counsel for Respondent, is insufficient to mitigate the sanctions.

Therefore, the Court concludes that Respondent is in contempt of court. The contemptuous act occurred outside the presence of the Court, and is therefore categorized as indirect contempt. *In re Lands*, 146 Ohio St. 589, 595, 67 N.E.2d 433 (1946); *In re Purola* (1991), 73 Ohio App.3d 306, 596 N.E.2d 1140. The Court finds that the primary reason to impose sanctions against the Respondent is for the remedial purpose of compelling compliance with the court order, and therefore sanctions for indirect civil contempt are appropriate. *State v. Kilbane*, 61 Ohio St. 2d 201, 205, 400 N.E. 2d 386 (1980). The Court is guided by the sanctions identified in R.C. 2705.05, however, the Court has the inherent power to issue appropriate sanctions as punishment for disobedience of its orders. *City of Cincinnati v. Cincinnati Dist. Council 51, Am. Fedn. of State, Cty. & Mun. Emp., AFL-CIO*, 35 Ohio St.2d 197, 207, 299 N.E.2d 686, (1973); *Zakany v. Zakany*, 9 Ohio St. 3d 192, 459 N.E. 2d 870 (1984). A sanction for civil contempt must allow the contemnor to purge the contempt by completing a reasonable condition. *Burchett v. Miller* 123 Ohio App.3d 550, 552, 704 N.E.2d 636 (1997). The Court

concludes that a sanction of incarceration and monetary fine is appropriate, will best serve the purpose of compelling compliance with the court order.

**SANCTION**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Respondent Joe Mays is hereby sanctioned for contempt to a term of incarceration of 10 days, to be served on weekends ONLY at the Cuyahoga County jail, and a fine of \$1,000 dollars to be paid on or before August 23, 2021, to be donated to either (A) The Innocence Project, (B) The Southern Poverty Law Center or (C) The Equal Justice Initiative. Said donation shall contain a cover letter stating why the contribution is being made, unless the contempt is purged. The sanction may be purged on the condition that Respondent complies weekly with Administrative Order 2021-01, on or before 4:00pm beginning on Friday August 13, 2021. If the purge condition is not timely satisfied, Respondent Joe Mays is ORDERED to appear at the Cuyahoga County Jail, 1213 West 3<sup>rd</sup> Street, Cleveland, Ohio 44113 on Friday August 27, 2021, no later than 4:00p.m. to begin satisfaction of the jail term ordered herein and to continue serving all time until all incarceration days have been satisfied.

This court hereby schedules the hearing date to establish that the purge conditions have been satisfied as December 3, 2021 at 10:00am. Failure to appear as ordered will result in a warrant for the Respondent arrest. To stay the order of incarceration the Respondent may request bond in accordance with R.C. 2705.04.

THIS IS A FINAL APPEALABLE ORDER, AND THERE IS NO JUST REASON FOR DELAY FOR PURPOSES OF CIV. R. 54(B). APP. R. 4 REQUIRES A NOTICE OF APPEAL TO BE FILED WITHIN 30 DAYS OF THE DATE OF THIS ENTRY.



IT IS SO ORDERED.

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Judge Gayle Williams-Byers

**INSTRUCTIONS TO THE CLERK**

Pursuant to Civil Rule 58, the clerk is hereby directed to serve upon the following parties, notice of this entry and its date of entry upon the journal:

Kevin Spellacy, Esq. Counsel for Respondent  
Walter Edwards, Esq. Counsel for Respondent