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**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

KATHERYN CLOVER, T AL
Plaintiff

Case No: CV-22-959454

Judge: ANDREW J. SANTOLI

ANTHONY VIOLA
Defendant

JOURNAL ENTRY

96 DISP.OTHER - FINAL

ORDER ON PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT. OSJ.
COURT COST ASSESSED TO THE DEFENDANT(S).

PURSUANT TO CIV.R. 58 (B), THE CLERK OF COURTS IS DIRECTED TO SERVE THIS JUDGMENT IN A MANNER
PRESCRIBED BY CIV.R. 58 (B). THE CLERK MUST INDICATE ON THE DOCKET THE NAMES AND ADDRESSES OF ALL
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Judge Signature

Date

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CLERK OF COURTS
CUYAHOGA COUNTY

**IN THE COURT OF COMMON PLEAS
GENERAL DIVISION
CUYAHOGA COUNTY, OHIO**

KATHERYN CLOVER, et al.)	CASE NO. CV 22 959454
)	
Plaintiffs,)	JUDGE ANDREW J. SANTOLI
)	
V.)	
)	
ANTHONY VIOLA)	
)	
Defendant.)	

ORDER ON PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT, FILED ON JANUARY
26, 2023.

This matter is before the Court on Plaintiffs' Motion for Summary Judgment, which was filed on January 26, 2023. In their Motion, Plaintiffs Katheryn Clover, John Patrick, Kelly Connors, Susan Kasaris, and Third-Party Plaintiff Daniel Kasaris (collectively, "Plaintiffs") argue that no genuine issue of material fact exists and that, as a matter of law, Defendant Anthony Viola ("Viola") should be declared a vexatious litigant pursuant to R.C. 2323.52. Viola filed his Brief in Opposition and Plaintiffs filed their Reply Brief. After considering the parties' briefs and arguments, this Court agrees that, in viewing the evidence in a light most favorable to Viola, no genuine issue of material fact exists and Viola's actions amount to vexatious conduct as a matter of law. For the reasons that follow, this Court thus declares Viola to be a vexatious litigant pursuant to R.C. 2323.52.

I. PROCEDURAL POSTURE AND FACTUAL BACKGROUND

In 2011 and following a federal jury trial in the Northern District of Ohio, Viola was convicted of two counts of conspiracy to commit wire fraud and thirty-three counts of wire fraud

and was sentenced to 150 months in federal prison. *United States v. Viola*, No. 12-3112, 2013 U.S. App. LEXIS 26454, at *1-*2 (6th Cir. 2013). These charges were prosecuted by then-Assistant United States Attorney Mark Bennett and Viola was represented by Attorney Jay Milano. Viola filed a motion for a new trial prior to his sentencing, arguing that he was denied effective assistance of counsel due to an alleged conflict of interest, and, once that motion was denied, a motion for reconsideration. *United States v. Viola*, N.D. Ohio No. 1:08CR506, 2011 U.S. Dist. LEXIS 148017 (Dec. 22, 2011). *See also id.* at *1. Viola was then tried for similar crimes in state court, but was acquitted of all charges. 2013 U.S. App. LEXIS 26454 at *2. Viola was prosecuted by then-Cuyahoga County Prosecutor Daniel Kasaris, whose case-in-chief included testimony by Katheryn Clover. After Viola was acquitted in state court, he filed a subsequent second motion for a new trial in federal court, which was denied. *United States v. Viola*, N.D. Ohio No. 1:08 CR 506, 2012 U.S. Dist. LEXIS 103789 (Jul. 25, 2012). *See also id.* Viola then appealed his federal conviction and sentence to the Sixth Circuit, arguing ineffective assistance of counsel and prosecutorial misconduct. 2013 U.S. App. LEXIS 26454 at *2-*3. In arguing prosecutorial misconduct, Viola contended on appeal that the government had a spy within his defense, presented false or perjured testimony, withheld exculpatory evidence, and engaged in a sham prosecution. *Id.* at *9. The Sixth Circuit rejected Viola's appeal and affirmed the denial of his request for a new trial. *Id.*

Since Viola's appeal was rejected in 2013, he has filed many federal appeals and lawsuits attempting to either call his conviction into question or obtain a new trial. *E.g.*, *United States v. Viola*, N.D. Ohio No. 1:08CR506, 2014 U.S. Dist. LEXIS 84495 (Jun. 20, 2014); *United States v. Viola*, N.D. Ohio No. 1:08CR506, 2014 U.S. Dist. LEXIS 164410 (Nov. 24, 2014); *United States v. Viola*, N.D. Ohio No. 1:08CR506, 2015 U.S. Dist. LEXIS 155221 (Nov. 17, 2015) (denying Viola's § 2255 petition in which he alleged prosecutorial misconduct against Mark Bennett and

Daniel Kasaris for using perjured testimony, among other arguments); *United States v. Viola*, N.D.Ohio No. 1:08CR506, 2015 U.S. Dist. LEXIS 94780 (Jul. 21, 2015); *U.S. Bank N.A. v. Viola*, N.D. Ohio No. 1:08CR506, 2016 U.S. Dist. LEXIS 165913 (Dec. 1, 2016) (denying Viola’s cross-claim and motion to refer Mark Bennett to the Office of Professional Responsibility as a “thinly veiled and improper attempt * * * to collaterally attack his conviction” in this foreclosure proceeding); *Viola v. Kasaris*, N.D.Ohio No. 2:16CV1036, 2017 U.S. Dist. LEXIS 26142 (Feb. 24, 2017) (granting Daniel Kasaris’s Motion to Dismiss Viola’s complaint for injunctive relief and violation of his First Amendment rights arising from Viola’s use of photographs of Kasaris and his family and alleging that Kasaris has committed various crimes on his personal website); *Viola v. Bennett*, N.D.Ohio No. 1:17cv456, 2017 U.S. Dist. LEXIS 77349 (May 22, 2017) (dismissing Viola’s complaint alleging violations of his civil rights against Mark Bennett for “making representations * * * that [Viola] waived conflicts of interest regarding his counsel.”); *Viola v. Bair*, N.D.Ohio No. 1:17-cv-0827, 2017 U.S. Dist. LEXIS 124242 (Aug. 7, 2017) (dismissing the § 1983 action brought by Viola against Mark Bennett, Daniel Kasaris, and several other public and private citizens); *Viola v. United States DOJ*, W.D.Penn. No. 15-242, 2017 U.S. Dist. LEXIS 126208 (Aug. 8, 2017); *United States v. Viola*, N.D.Ohio No. 1:08 CR 506, 2017 U.S. Dist. LEXIS 141993 (Sept. 1, 2017); (discussed at II.C(1)(a), *infra*); *Viola v. FDIC*, D.D.C. No. 18-2351, 2019 U.S. Dist. LEXIS 99942 (Jun. 14, 2019); *In re Viola*, No. 20-1325, 2020 U.S. App. LEXIS 27288 (6th Cir.2020); *Viola v. Cuyahoga County Land Bank*, N.D.Ohio No. 1:21 CV 1196, 2021 U.S. Dist. LEXIS 207734 (Oct. 28, 2021) (discussed at II.C(1)(b), *infra*); *Viola v. Yost, et al.*, S.D.Ohio No. 2:21-cv-3088, 2022 U.S. Dist. LEXIS 38296 (Mar. 4, 2022) (discussed at II.C(1)(c), *infra*); *Viola v. United States DOJ*, D.D.C. No. 21-01462, 2022 U.S. Dist. LEXIS 133590 (Jul. 27, 2022) (dismissing Viola’s complaint alleging violations of the Privacy Act when the Department of

Justice published a press release recognizing Mark Bennett for his work in mortgage-fraud related cases, including Viola's.).

Viola's filings, allegations, and actions throughout these and other federal cases have caused the federal courts to declare him to be a vexatious litigator and/or impose filing requirements on him in at least three instances. See *United States v. Viola*, 2017 U.S. Dist. LEXIS 141993, at *9; *Viola v. Cuyahoga County Land Bank*, 2021 U.S. Dist. LEXIS 207734, at *28; *Viola v. Yost, et al.*, 2022 U.S. Dist. LEXIS 38296, at ¶ 27.

In addition to his numerous federal lawsuits, Viola has used the Cuyahoga County Court of Common Pleas and other state courts purportedly in an attempt to hold accountable those he perceives to have been involved with, benefitted from, or were associated in any manner with his state or federal prosecutions. *Viola v. Clover*, Cuyahoga C.P. No. CV-20-936897 (Sept. 4, 2020) (alleging intentional infliction of emotional distress against Kathryn Clover); *Viola v. Kasaris, et al.*, Cuyahoga C.P. No. CV-21-951041 (Aug. 26, 2021) (alleging civil conspiracy against Susan Kasaris, Kelly Connors, John Patrick, and Kathryn Clover for allegedly covering up crimes that Daniel Kasaris has allegedly committed.) Both of these matters were dismissed by the trial courts.

While CV-21-951041 was pending, Plaintiffs filed this action, asking that this Court declare Viola to be a vexatious litigant pursuant to R.C. 2323.52. On March 3, 2022, Viola filed an Answer, Counterclaim, and Third-Party Complaint, adding Daniel Kasaris¹, Jay Milano, Mark Bennett, and Arvin Clar as third-party defendants. Once Viola named Mark Bennett, a federal employee, as a defendant, this matter was removed to federal court and heard by Judge J. Philip Calabrese. See *Viola v. Kasaris, et al.*, N.D.Ohio No. 1:22cv559 (Jun. 22, 2022).

¹ Daniel Kasaris also filed a Motion to Intervene, which this Court granted on October 27, 2022.

Viola's Third-Party Complaint will be discussed in more detail below in Section II.C(2)(c). However, it is sufficient to state here that this filing prayed for monetary and punitive damages for negligence and civil conspiracy for a number of misdeeds allegedly committed by those he named as third-party defendants. Once the matter was in federal court, the United States filed a motion to dismiss Viola's Third-Party Complaint on several bases. In ruling on that motion, Judge Calabrese noted that Viola's Third-Party Complaint "asserts claims that are entirely unrelated to the original complaint." *Id.* at p. 8. He further observed that

Mr. Viola appears to have filed his third-party claims for the improper purpose of harassing individuals connected to his prosecutions. The issues raised in the Third-Party Complaint are not new to this Court, the United States District Court for the Southern District of Ohio, or the Ohio courts. Mr. Viola has litigated these issues against Mr. Bennett and Mr. Kasaris on at least four occasions in this Court alone.

Id. Judge Calabrese concluded that "at the very least, the claims in this Third-Party Complaint are no longer open for discussion" and are barred by res judicata. *Id.* at p. 11. Thus, the court granted the United States' motion and dismissed Viola's Third-Party Complaint in its entirety. Plaintiffs' Complaint was then remanded back to this Court. *Id.* at p. 12.

On January 26, 2023, Plaintiffs filed their Motion for Summary Judgment, arguing that no genuine issue of material fact exists and Viola should be declared a vexatious litigant as a matter of law. Viola, through counsel, filed a Brief in Opposition. Plaintiffs then filed a Reply Brief. After considering the parties' briefs, legal arguments, and exhibits, and construing the evidence in a light most favorable to Viola, this Court finds that no genuine issue of material fact exists and, for the reasons that follow, Viola is declared a vexatious litigant.

II. LAW AND ANALYSIS

A. Motion for Summary Judgment Standard.

Summary judgment is appropriate where (1) no genuine issue of material fact exists; (2) the movant is entitled to judgment as a matter of law; and (3) the evidence can only produce a finding that is contrary to the non-moving party. Civ.R. 56(C). Before making such a finding, the Court must view the evidence “most strongly in favor of” of the non-moving party, and must resolve all doubts in its favor. *Murphy v. Reynoldsburg*, 65 Ohio St.3d 356, 358-359 (1992).

Summary judgment proceedings create a burden-shifting paradigm. To prevail on a motion for summary judgment, the movant has the initial burden to identify the portions of the record demonstrating the lack of a genuine issue of material fact and the movant’s entitlement to judgment as a matter of law. *Dresher v. Burt*, 75 Ohio St.3d 280, 283 (1996). When satisfying that initial burden, the movant need not offer affirmative evidence, but it must identify those portions of the record that support its argument. *Id.* Once the movant overcomes its initial burden, the non-moving party is precluded from merely resting on the allegations contained in the pleadings to establish a genuine issue of material fact. Civ.R. 56(E). Instead, the non-moving party has the reciprocal burden of establishing and setting forth specific facts that demonstrate the existence of a genuine triable issue. *State ex rel. Zimmerman v. Tompkins*, 75 Ohio St.3d 447, 449 (1996).

B. Standard for Declaring a Vexatious Litigator.

A “vexatious litigator” is one who

habitually, persistently, and without reasonable grounds engaged in vexatious conduct in a civil action or actions, whether in the court of claims or in a court of appeals, court of common pleas, municipal court, or county court, whether the person or another person instituted the civil action or actions, and whether the

vexatious conduct was against the same party or against different parties in the civil action or actions.

R.C. 2323.52(A)(3). "Vexatious conduct" obviously serves merely to harass or maliciously injure another party to the civil action; is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law; or is imposed solely for delay. R.C. 2323.52(A)(2)(a)-(c). "Conduct" includes "[t]he filing of a civil action, the assertion of a claim, defense, or other position in connection with a civil action, the filing of a pleading, motion, or other paper in a civil action, including, but not limited to, a motion or paper filed for discovery purposes, or the taking of any other action in connection with a civil action[.]"

R.C. 2323.51(A)(1)(a):

One who has been the target of alleged vexatious conduct may initiate a civil suit to have that person declared a vexatious litigator "while the civil action or actions in which the habitual and persistent vexatious conduct occurred are still pending or within one year after the termination of the civil action or actions in which the habitual and persistent vexatious conduct occurred." R.C. 2323.52(B).

If a court declares someone to be a vexatious litigator, the court may prohibit that individual from doing one or more of the following without first obtaining leave of court:

- (a) Instituting legal proceedings in the court of claims or in a court of common pleas, municipal court, or county court;
- (b) Continuing any legal proceedings that the vexatious litigator had instituted in [a court of common pleas, municipal court, or county court] prior to the entry of the order;
- (c) Making any application, other than an application for leave to proceed * * * in any legal proceedings instituted by the vexatious litigator or another person in [a court of common pleas, municipal court, or county court].

R.C. 2323.52(D)(1).

The Ohio Supreme Court has recognized that

[t]he purpose of the vexatious litigator statute is clear. It seeks to prevent abuse of the system by those persons who persistently and habitually file lawsuits without reasonable grounds and/or otherwise engage in frivolous conduct in the trial courts of this state. Such conduct clogs the court dockets, results in increased costs, and oftentimes is a waste of judicial resources -- resources that are supported by the taxpayers of this state. The unreasonable burden placed upon courts by such baseless litigation prevents the speedy consideration of proper litigation.

Mayer v. Bristow, 91 Ohio St.3d 3, 13 (Dec. 29, 2000) (quoting *Cent. State Transit Auth. v. Timson*, 132 Ohio App.3d 41 (10th Dist.1998)). It follows that, when vexatious litigants use the court process for amusement or as a weapon, they undermine the people's faith in the legal system, threaten the integrity of the judiciary, and cast a shadow upon the administration of justice. *Mayer* at 13. Further, “[i]t is patently unfair and unreasonable that any person should be continually forced to defend against, and the court system should be forced to handle, the same unwarranted complaint that cannot be supported by any recognizable good-faith argument.” *Davie v. Nationwide Ins. Co. of Am.*, 8th Dist. Cuyahoga No. 105261, 2017-Ohio-7721, at ¶ 39 (quoting *Hull v. Sawchy*, 145 Ohio App.3d 193 (8th Dist.2001.))

To evaluate whether an individual's actions amount to vexatious conduct, courts are instructed to consider the party's conduct beyond just the case in which the vexatious litigator claim is brought. *See Davie* at ¶ 41 (stating, “the trial court may consider the party's conduct in other, older cases as well as his or her conduct in the case in which the vexatious litigator claim is brought.”). It is the nature of the claims pursued, not the number of total lawsuits, that determine whether someone has engaged in vexatious conduct. *Id.* at ¶ 40. “Whether undertaken in an array of cases or in a single action, the consistent repetition of arguments and legal theories that have been rejected by the court numerous times can constitute vexatious litigation.” (Citation omitted.)

Id.

For these reasons, summary judgment may be an appropriate means for declaring someone to be a vexatious litigant. *Id.* at ¶ 43. However, this Court recognizes that declaring one to be a vexatious litigant is an “extreme measure that should be granted only ‘when there is no nexus’ between ‘the filings made by the plaintiff[] and [his or her] ‘intended claims.’” (Citations omitted.) *Id.*

C. Breadth of Evidence this Court may Consider.

Viola argues that the one-year filing requirement contained in R.C. 2323.52(B) restricts the scope of actions this Court may consider when assessing the nature of Viola’s conduct. (Brief in Opposition at 4 (arguing that this Court may only consider “state court claims which have remained active in the year immediately preceding the initiation of the above captioned case.”).) However, R.C. 2323.52(B) concerns the timing of when a party may file a claim to have an individual declared a vexatious litigator, not the scope of evidence before it.

Indeed, appellate courts throughout Ohio have rejected Viola’s argument. *E.g.*, *Davie*, 2017-Ohio-7721 at ¶ 41 (stating, “the trial court may consider the party's conduct in other, older cases as well as his or her conduct in the case in which the vexatious litigator claim is brought.”); *Prime Equip. Group, Inc. v. Schmidt*, 10th Dist. Franklin No. 15AP-584, 2016-Ohio-3472, at **14 (stating that “[w]e do not find any restriction on the trial court's reliance on conduct occurring in cases that terminate more than one year before [the plaintiff] filed its vexatious litigator complaint.”); *Buoscio v. Macejko*, 7th Dist. Mahoning No. 00-CA-00138, 2003-Ohio-689, at *18 (finding that, “[u]nder R.C. 2323.52(A)(3), a person's behavior in prior civil actions can also form the basis for declaring him a vexatious litigator.”). Based on this guidance, it is clear that this Court

may consider the full extent of Viola's conduct throughout his federal and state lawsuits when ruling on Plaintiffs' Motion.

Federal Cases

It is not necessary for this Court to examine each of Viola's federal appeals and lawsuits in detail. However, the following three cases are illustrative of Viola's conduct within the federal court system and highlight some of the arguments he has advanced in his state court cases, as well.

- a. ***United States v. Viola*, N.D. Ohio No. 1:08 CR 506, 2017 U.S. Dist. LEXIS 141993 (Sept. 1, 2017).**

Although Viola's direct appeal of his federal conviction and sentence were affirmed by the Sixth Circuit in 2013, *see United States v. Viola*, N.D. Ohio No. 1:08CR506, 2011 U.S. Dist. LEXIS 148017 (Dec. 22, 2011); *United States v. Viola*, No. 12-3112, 2013 U.S. App. LEXIS 26454 (6th Cir. 2013), Viola continued to file motions in his criminal case until 2017, including motions to take judicial notice, motions for sanctions, and motions to make various pieces of correspondence part of the record of his case. *United States v. Viola*, 2017 U.S. Dist. LEXIS 141993, at *1-*2. In essence, Viola's filings were attempts to overturn the previous denial of his request for a new trial. *Id.* at *3.

Judge Donald Nugent denied each of Viola's motions, noting first that "the motions Mr. Viola has filed serve no legitimate purpose and could not have any possible effect on Mr. Viola's conviction or sentence." *Id.* Second, "[t]he majority of the issues raised have been raised and addressed in a myriad of other motions and hearings and have been resolved against Mr. Viola in multiple decisions" from various federal courts. *Id.* Notably, Judge Nugent observed that

Mr. Viola has repeatedly raised the issue of Ms. Clover's alleged relationship with the prosecutor in his state case, of an alleged existence of a conflict of interest, and of the allegation that the bank victims had unclean hands. The Court has already addressed each of these issues in prior opinions, finding that none of these allegations had any effect on the Constitutionality of Mr. Viola's federal trial.

[Viola's Motions] also fail to provide a basis for imposing sanctions on the federal prosecutor. Mr. Viola has also repeatedly argued that he was deprived of available information during his trial, and there is new evidence available that would support his request for a new trial. The Court has painstakingly addressed these arguments in prior opinions[.]

(Emphasis added.) *Id.* at *5-*6.

Based on Viola's numerous filings, which all contained arguments and information previously denied, Judge Nugent found that "Viola has established a pattern of filing motions in this case that are repetitive and baseless." *Id.* at *8. Despite being told by both the District Court and Sixth Circuit that the courts will not consider baseless arguments, Viola "continues filing motions that have no bearing on any actual relief that he is legally entitled to pursue. These filings appear calculated to abuse the judicial process and to harass the prosecution." *Id.* Viola was then permanently enjoined from filing any document related to his conviction without permission from the Sixth Circuit. *Id.* at *9.

b. *Viola v. Cuyahoga County Land Bank*, N.D. Ohio No. 1:21 CV 1196, 2021 U.S. Dist. LEXIS 207734 (Oct. 28, 2021).

In 2021, Viola filed a federal lawsuit against the Cuyahoga County Land Bank, the FBI, and Mark Bennett, among others, which primarily challenged the restitution he was ordered to pay in connection with his federal convictions, as well as challenging part of a foreclosure action initiated to satisfy part of that restitution order. *Viola v. Cuyahoga County Land Bank*, 2021 U.S. Dist. LEXIS 207734 at *2-*4. During the course of this matter (which was later dismissed by Judge Pamela Barker for failure to state a claim upon which relief may be granted), the named defendants filed a motion to have Viola declared a vexatious litigator. *Id.* at *11. "They contend that [Viola] has a history of filing frivolous civil laws suits and motions attacking his conviction and sentence, attacking the restitution order in his criminal case, and harassing the Assistant United States Attorneys who represented the government in his criminal case." *Id.*

In addition to *United States v. Viola*, which was previously discussed in Section II.C(1)(a), Judge Barker considered the following five cases when ruling on the motion to have Viola declared a vexatious litigator:

- *Viola v. Kasaris*, S.D.Ohio No. 2:16 CV 1036, 2017 U.S. Dist. LEXIS 44385 (Mar. 27, 2017).
- *Viola v. Bennett*, N.D.Ohio No. 1:17 CV 456, 2017 U.S. Dist. LEXIS 77349 (May 22, 2017)
- *Viola v. Ohio Attorney General*, N.D.Ohio No. 20 CV 766, 2021 U.S. Dist. LEXIS 26701 (Feb. 11, 2021)
- *Viola v. United States Probation Office*, N.D.Ohio No. 1:20 CV 2194, 2021 U.S. Dist. LEXIS 21580 (Feb. 4, 2021) (claiming prosecutorial misconduct)
- *Viola v. Dep't of Justice*, D.D.C. No. 1:21 CV 1462 (May 27, 2021).

Viewing Viola's conduct throughout these cases, and others, in the Northern District of Ohio, Judge Barker found it "apparent that despite this Court's warning, [Viola] intends to continue to file frivolous pleadings to challenge his conviction and sentence and to harass individuals that participated in his prosecution." *Id.* at *26. Indeed, "there comes a point when [the courts] can no longer allow [Viola] to misuse the judicial system." *Id.* Judge Barker thus granted the defendants' motion to have Viola declared a vexatious litigator and imposed filing requirements on him prior to filing any new lawsuit or document. *Id.* at *28.

c. *Viola v. Yost, et al.*, S.D.Ohio No. 2:21-cv-3088, 2022 U.S. Dist. LEXIS 38296 (Mar. 4, 2022).

In 2022, Viola filed another federal lawsuit, this time alleging violations of his First Amendment rights against Attorney General Dave Yost, Daniel Kasaris, and a private attorney. *See Viola v. Yost*, 2022 U.S. Dist. LEXIS 38296 at *2. In this lawsuit, Viola claimed that he was acquitted of the state court charges based on alleged exculpatory information provided by a whistleblower who was prevented from testifying during his state court trial due to alleged prosecutorial misconduct. *Id.* He argued that the whistleblower would have provided evidence

corroborating his repeated allegations of prosecutorial misconduct. *Id.* at *2-*3. The named defendants filed a motion to dismiss Viola's complaint and motions for sanctions.

Before addressing the parties' legal arguments, Judge Marbley detailed some of the extensive litigation history that Viola had initiated against Kasaris, including filings made in the following cases:

- *Viola v. Kasaris*, 2017 U.S. Dist. LEXIS 44385
- *United States v. Viola*, 2017 U.S. Dist. LEXIS 141993 (discussed in II.C(1)(a), above)
- *Viola v. Ohio Attorney General*, N.D. Ohio No. 1:20-cv-0765 (alleging prosecutorial misconduct against Kasaris, among other claims);
- *Viola v. Cuyahoga County Land Bank*, 2021 U.S. Dist. LEXIS 207734 (discussed in II.C(1)(b), above).

See id. at *4-*13. In each of these cases, Viola has attempted to attack his federal conviction and sentence by alleging that Kasaris had committed prosecutorial misconduct for various actions that allegedly occurred before, during, and after his trials.

Judge Marbley then addressed the defendants' motion to dismiss Viola's complaint. He highlighted the following:

[Viola's] underlying allegations of prosecutorial misconduct [] have been heard and adjudicated multiple times. * * * Yet, in this case, [Viola] again requests the Court to '[r]efer the romantic relationship between Kasaris and government witness Kathryn Clover, as well as the use of perjured testimony to obtain a conviction, to the Ohio Supreme Court Office of Disciplin[ary] Counsel for an investigation.'

Id. *22-*23. He found that these arguments "simply ignore[] the prior adverse rulings" given to him by other courts, which are "fatal" to his claims of prosecutorial misconduct. *Id.* at *23. Thus, Judge Marbley granted the defendants' motion to dismiss this complaint. *Id.* at *26.

The court further imposed prefilling restrictions on Viola and declared him, once again, to be a vexatious litigator. In doing so, Judge Marbley determined that "[t]his case, like those preceding it, presents salacious allegations while ignoring repeated court rulings that foreclose the

relief sought. The Court determines that this case too was filed for an improper purpose, namely ‘to harass’ Defendant Kasaris and his private counsel[.]” *Id.* at *27.

2. *State Cases*

a. *Viola v. Clover, Cuyahoga C.P. No. CV-20-936897 (Sept. 4, 2020).*

In 2020, Viola filed his first state complaint against Kathryn Clover, claiming intentional infliction of emotional distress against her using the same arguments he had attempted against Daniel Kasaris throughout his federal filings. (*See, generally*, Compl.) However, throughout the course of this lawsuit, Viola made clear that he was not focused on pursuing an intentional infliction of emotional distress claim against Clover; rather, he wanted to again attack his conviction and sentence, as well as those responsible for his prosecutions. (Motion for Conflict of Interest Inquiry at p. 1-2.) The court dismissed this complaint on October 4, 2022.

To that end, Viola presented the same allegations he made in his complaint in various other formats without advancing any legal theory of recovery. For example, he filed a Motion for Conflict of Interest Inquiry, in which he claimed that he “reluctantly sued Ms. Clover” to obtain “the truth of the matter” surrounding the affairs he has alleged, the alleged perjured or improper testimony admitted during his trials, and the impartiality of the lawyers involved in his cases. (Motion for Conflict of Interest Inquiry at p. 1-2.) Additionally, he filed several motions to take judicial notice—including two filed after this matter was dismissed by the trial court—asking the court to repeatedly take judicial notice of what he believed was evidence in support of an alleged affair between Clover and Kasaris, the death of a witness during the course of his trial, and information related to other individuals who were involved in his federal trial and not parties to this lawsuit. (*See* Dec. 2, 2021, Feb. 26, 2021, Dec. 10, 2022, Dec. 25, 2022 Motions to Take Judicial Notice.) He then filed a Motion for Relief from Judgment in which he simply repeated the

same allegations he made throughout his complaint and other filings, which had all been previously rejected by the court. (Motion for Relief from Judgment at 2.) Finally, again after his complaint was dismissed, he filed a Motion for Criminal Referral, which parroted many of the same arguments he had previously made against Daniel Kasaris, both in this case and in his prior federal filings. Indeed, this Motion bears striking resemblance to one that was considered, and rejected, by Judge Marbley in *Viola v. Yost, et al.*, S.D.Ohio No. 2:21-cv-3088, 2022 U.S. Dist. LEXIS 38296, at *22-*23 (Mar. 4, 2022. The trial court denied each of these motions.)

b. *Viola v. Kasaris, et al.*, Cuyahoga C.P. No. CV-21-951041 (Aug. 26, 2021).

On August 26, 2021, and while the above matter was still pending, Viola filed a lawsuit against the Plaintiffs in this matter—Susan Kasaris, Kelly Connors, John Patrick, Kathryn Clover—and four other individuals. As he has argued in many previous lawsuits and filings, Viola alleged in this lawsuit that Daniel Kasaris (though not named as a defendant) committed misconduct and/or crimes and that the named defendants failed to report him. (Compl. at ¶ 44.)

Throughout this lawsuit, as he has in multiple lawsuits and filings before, he repeated allegations of affairs among some of the named defendants, the alleged destruction of evidence during his trials, and the alleged use of perjured testimony during his trials. However, since these claims have been heard, and rejected, in many ways by multiple courts, Viola’s complaint in this matter included a new wave of salacious and irrelevant allegations. These new allegations do not require a verbatim recitation by this Court; however, it is sufficient to state Viola’s “evidence” in support of a civil conspiracy included allegations of affairs by named defendants and non-parties dating back to the 1990s, non-parties’ opinions of the named defendants, the personal and family lives of the named defendants and other non-parties, and office policies at a Cleveland-area law firm of which Viola has never been employed. (*See generally*, Compl.)

Viola's complaint was dismissed in its entirety and on the merits as to each named defendant by December 8, 2021.² As of December 8, 2021, the only remaining substantive issue was a motion for sanctions that each named defendant filed against Viola. (*See* December 30, 2021 Orders.) The trial court issued orders on the motions for sanctions on November 28, 2022 and January 25, 2023.

The court's written opinion on the motion for sanctions notes that Viola's complaint "is the best indicator of Viola's bad faith and malicious intent." (Nov. 28, 2022 Order at p. 5.) After citing a few allegations from the complaint (which were summarized above), the court emphasized that "[t]his is just a sampling of irrelevant factual allegations: irrelevant because, even if true, the conduct alleged cannot possibly serve as the basis for a civil cause of action by Viola." (*Id.*)

Further,

[t]he litigation history is also relevant to discerning Viola's motives. It is just not credible that Viola filed this lawsuit with a good faith belief that his claims were actionable. Since he has consistently proffered baseless legal theories against those he sees as the agents of his persecution, it is clear that here he was after something other than - or, at best, in addition to - the legal relief he claims to be entitled to. And that something is to harass the defendants by creating anxiety and embarrassment and by consuming their time, attention, effort and resources.

(*Id.* at p. 6.)

Although Viola's complaint in this matter was dismissed in December 2021, he continued to file motions aimed at supporting his complaint and his proffered allegations. For example, he filed a Motion to take Judicial Notice on January 26, 2022, asking the court to take judicial notice of a news article regarding Daniel Kasaris. (January 26, 2022 Motion to Take Judicial Notice at p. 1.) Viola also filed a Motion to Compel Discovery on February 28, 2022, seeking to compel the

² Each of the eight named defendants filed separate motions to dismiss Viola's Complaint. The trial court granted John Patrick's Motion on September 20, 2021, Susan Kasaris's Motion on November 2, 2021, Kathryn Clover's Motion on December 8, 2021, and Kelly Connors' Motion on December 8, 2021.

production of documents he claimed would support his allegations that the named defendants “covered up” evidence of the alleged affair he claimed took place between Kasaris and Clover. (Feb. 28, 2022 Motion to Compel at p. 1.) Finally, on January 10, 2023, Viola filed a motion captioned a “Motion to Take Judicial Notice;” however it was another request that the trial court refer all eight named defendants for criminal prosecution. Viola argued, as he did in his then-dismissed complaint, that each of the eight defendants should be referred for prosecution for allegedly destroying and/or hiding and/or covering up evidence. (January 10, 2023 Motion to Take Judicial Notice at p. 1.) All of these motions were denied.

c. *Clover, et al. v. Viola, Cuyahoga C.P. No. CV-22-959454 (Feb. 11, 2022).*

In the case before this Court, which was filed for the sole purpose of determining whether Viola’s conduct is considered vexatious within the meaning of R.C. 2323.52, Viola has continued to advance the same, failed arguments he has presented throughout the past decade in both state and federal courts. On March 22, 2022, which is after his complaint had been dismissed on the merits in *Viola v. Kasaris, et al.*, Cuyahoga C.P. No. CV-21-951041 (Aug. 26, 2021), Viola filed an Answer and Counterclaim in this matter, alleging, once again, that Plaintiffs concealed and/or destroyed evidence, the existence of affairs amongst several Plaintiffs, and a civil conspiracy to cover up Daniel Kasaris’s alleged criminal activities. (*See generally*, Answer and Counterclaim.) His Counterclaim contains the same allegations that were dismissed on the merits in December 2021 in 951041.

In addition to this Counterclaim, Viola also filed a Third-Party Complaint against Daniel Kasaris, Mark Bennett, Jay Milano, and Arvin Clar. (*See generally*, Third-Party Complaint.) Viola alleged that these individuals committed a civil conspiracy against him, were negligent, and are liable to him for both monetary and punitive damages. (*Id.*) As he has in countless proceedings

before, Viola alleged in this filing that Daniel Kasaris and Clover had an improper affair, that Milano was ineffective during his federal trial, and that Bennett provided false information regarding a conflict of interest waiver during his federal trial. (*See generally, id.*) He also asked that Kasaris be referred for criminal prosecution. (*Id.* at Prayer for Relief.)

As previously mentioned, Viola's Third-Party Complaint caused this matter to be removed to federal court for consideration. Once the matter was in federal court, the United States filed a motion to dismiss Viola's Third-Party Complaint. In ruling on that motion, Judge Calabrese noted that Viola's Third-Party Complaint "asserts claims that are entirely unrelated to the original complaint." *Id.* at p. 8. He further observed that

Mr. Viola appears to have filed his third-party claims for the improper purpose of harassing individuals connected to his prosecutions. The issues raised in the Third-Party Complaint are not new to this Court, the United States District Court for the Southern District of Ohio, or the Ohio courts. Mr. Viola has litigated these issues against Mr. Bennett and Mr. Kasaris on at least four occasions in this Court alone.

Id. Judge Calabrese concluded that "at the very least, the claims in this Third-Party Complaint are no longer open for discussion" and are barred by res judicata. *Id.* at p. 11. He further bemoaned that Viola "has litigated multiple claims against the [Plaintiffs] in multiple actions and has received decisions on the merits of those claims. He cannot continue to harass these individuals by proceeding in this Court with yet another lawsuit against them." *Id.* at p. 12. For these reasons, the court granted the United States' motion and dismissed Viola's Third-Party Complaint in its entirety.

Once this matter was remanded to this Court, Viola continued to advance the same arguments he was informed were "no longer open for discussion." For example, on August 30, 2022, Viola filed his Opposition to Motion for Protective Order, in which he sought to obtain evidence "to support all factual claims made in previous litigation," including evidence to

substantiate several affairs he has claimed took place, some of which had no apparent connection to the investigations into his criminal actions or his trials. (Aug. 30, 2022 Opposition at p. 1-2.) Also on August 30, 2022, Viola filed a Motion to Take Judicial Notice, asking this Court to take judicial notice of disciplinary action taken against non-party Mark Bennett. (Aug. 30, 2022 Motion to Take Judicial Notice at p. 1.) This Court denied these motions.

D. Viola's Actions and Filings Amount to Vexatious Conduct.

Viola's federal and state lawsuits plainly contain salacious allegations that satisfy the definition of "vexatious conduct." Those allegations serve merely to harass or maliciously injure those he deems responsible for his federal conviction, state trial, and related investigations. They are not warranted under existing law nor are they based on good faith argument for an extension, modification, or reversal of existing law. R.C. 2323.52(A)(2)(a)-(b). Several courts have ruled that Viola cannot continue to proffer the same baseless, irrelevant, and rejected allegations, and his hope that the continued re-litigation of those allegations will produce a different outcome is not sufficient to avoid a finding of vexatious conduct. *E.g., United States v. Viola*, N.D.Ohio No. 1:08 CR 506, 2017 U.S. Dist. LEXIS 141993, at *5-*6 (Sept. 1, 2017); *Viola v. Cuyahoga County Land Bank*, N.D.Ohio No. 1:21 CV 1196, 2021 U.S. Dist. LEXIS 207734, at* 26 (Oct. 28, 2021); *Viola v. Yost, et al.*, S.D.Ohio No. 2:21-cv-3088, 2022 U.S. Dist. LEXIS 38296, at *22-*23 (Mar. 4, 2022).

Nevertheless, Viola continues to make these same arguments in the Cuyahoga County Court of Common Pleas that the federal courts have previously rejected. *Viola v. Clover*, Cuyahoga C.P. No. CV-20-936897 (Sept. 4, 2020); *Viola v. Kasaris, et al.*, Cuyahoga C.P. No. CV-21-951041 (Aug. 26, 2021). His filings are riddled with allegations (which are presented as facts) that are demeaning, harassing, embarrassing, and degrading to the objects of his scorn. While Daniel

Kasaris and Kathryn Clover have been his primary targets throughout the cases highlighted by this Court, members of their families, their professional contacts, their attorneys, and others who even tangentially touched the investigations into Viola's conduct and subsequent criminal prosecutions have received at least one off-handed remark or allegation in his filings. After being told repeatedly by courts in many written decisions that his lawsuits and filings do not have a basis in law, he continues to proffer the same, rejected arguments and legal theories. For this reason, this Court can come to only one conclusion: that Viola's conduct serves merely to harass or injure others and that there is no basis in law for his arguments. Thus, Viola's conduct satisfies the definition of "vexatious conduct" under R.C. 2323.52(A)(2)(a)-(b).

E. Viola Has Habitually, Persistently, and Without Reasonable Grounds Engaged in Vexatious Conduct.

Moreover, Viola has "habitually, persistently, and without reasonable grounds engaged in vexatious conduct" in the Cuyahoga County Court of Common Pleas. R.C. 2323.52(A)(3). The Eighth District Court of Appeals has stated that "the consistent repetition of arguments and legal theories that have been rejected by the court numerous times" constitutes vexatious litigation. (Citation omitted.) *Davie v. Nationwide Ins. Co. of Am.*, 8th Dist. Cuyahoga No. 105261, 2017-Ohio-7721, at ¶ 39. Here, Viola has advanced claims against Plaintiffs throughout the Cuyahoga County Court of Common Pleas which seek to attack his federal conviction, state trial, and investigations into his conduct that serve as the basis for his indictments. Viola first raised many of these allegations on his direct appeal from his federal conviction. *See United States v. Viola*, No. 12-3112, 2013 U.S. App. LEXIS 26454, at *1-*2 (6th Cir. 2013). However, since he received the Sixth Circuit's opinion in 2013, Viola has continued to advance those same rejected arguments

in the Cuyahoga County Court of Common Pleas. In CV-21-951041, it was clear to the court that his lawsuit was an attempt to harass Plaintiffs by continuing to lob embarrassing allegations against them and consume their time, energy, and resources to be involved in yet another lawsuit. (Nov. 28, 2022 Order at p. 6.) That court observed that “[i]t is just not credible that Viola filed this lawsuit with a good faith believe that his claims were actionable.” (*Id.*)

However, Viola again parroted the same allegations and arguments to this Court when he filed his Counterclaim and Third-Party Complaint. Viola has received decisions on the merits for each allegation and cause of action he seeks to pursue; yet, he again attempted to proceed on those same claims in this case. Even after being informed that his claims were “no longer up for discussion,” he attempted to proffer them once again through various motions.

As several other courts have noted, it is simply not enough for the courts to inform Viola that his claims have been presented and rejected on the merits, or that his claims are baseless or irrelevant. *See Viola v. Cuyahoga County Land Bank*, N.D. Ohio No. 1:21 CV 1196, 2021 U.S. Dist. LEXIS 207734, at *26 (Oct. 28, 2021). It is clear that, without court action, he will continue to file lawsuits and other documents involving these same rejected arguments and allegations. Indeed, the purpose of the vexatious litigant statute is to prevent the continual defense of “the same unwarranted complaint that cannot be supported by any recognizable good-faith argument.” *Davie* at ¶ 39. Since Viola has argued the same unwarranted complaint against Plaintiffs in several lawsuits and filings, this Court finds that he has habitually, persistently, and without reasonable grounds engaged in vexatious conduct against Plaintiffs and others. R.C. 2323.52(A)(3).

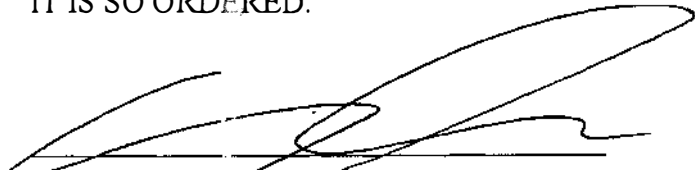
III. CONCLUSION

Accordingly, Anthony Viola is expressly and indefinitely prohibited from doing any of the following without first obtaining leave of that court to proceed:

- (a) Instituting legal proceedings in the court of claims or in a court of common pleas, municipal court, or county court;
- (b) Continuing any legal proceedings that he had instituted in any of the courts specified above prior to this order;
- (c) Making any application, other than an application for leave to proceed allowed under division (F)(1) of Ohio Revised Code 2323.52, in any legal proceedings instituted by himself or another person in any of the courts specified above.

R.C. 2323.52(L)(1)(a). Any proceedings instituted or continued, or any application made by Anthony Viola without leave of that court to proceed shall be dismissed. The Clerk of Courts is hereby ordered to send a certified copy of this Order to the Ohio Supreme Court for publication pursuant to Ohio Revised Code § 2323.52(H). Court costs assessed to Viola.

IT IS SO ORDERED.



 JUDGE ANDREW J. SANTOLI

7/18/2023

 DATE



The State of Ohio }
 Cuyahoga County } ss. I, The Clerk of the Court
 Of Common Pleas within
 And for said County

Hereby certify that the above and foregoing is truly
 Taken and copied from the original _____

Now on file in my office
 Witness my hand and seal of said Court this _____
 Day of Aug A.D. 2023

By Mark Egan Deputy
 CLYAHOGA COUNTY CLERK OF COURTS