

IN THE FOURTH DISTRICT COURT OF APPEALS MAY 28 2025
ATHENS COUNTY, OHIO

Candy S. Russell, CLERK
COURT OF APPEALS

STATE OF OHIO, ex rel. Margarita
Nguyen, *et al.*,

Case No. 24CA0011

Relators,

Judge Smith, *presiding*

v.

Judge Abele

Judge Wilkin

Opha Lawson, *et al.*,

Respondents.

CITY OF NELSONVILLE'S MOTION FOR BRIEFING SCHEDULE ON MOTION
TO EXCLUDE AND ALTERNATIVE REPLY TO RELATORS' RESPONSE TO
NELSONVILLE'S OBJECTION TO ATTORNEY MATHEW VOLTOLINI'S
TESTIMONY

Jonathan E. Robe (100698)
Robe Law Office
14 W. Washington St.
Athens, Ohio 45701
Phone (740) 593-5576
Fax (740) 593-5280
Jonathan.Robe@robelaoffice.com
Nelsonville City Attorney
Counsel for Third Party City of Nelsonville

IN THE FOURTH DISTRICT COURT OF APPEALS
ATHENS COUNTY, OHIO

STATE OF OHIO, ex rel. Margarita
Nguyen, *et al.*,

Relators,

v.

Opha Lawson, *et al.*,

Respondents.

Case No. 24CA0011

Judge Smith, *presiding*

Judge Abele

Judge Wilkin

**CITY OF NELSONVILLE'S MOTION FOR BRIEFING SCHEDULE ON MOTION
TO EXCLUDE AND ALTERNATIVE REPLY TO RELATORS' RESPONSE TO
NELSONVILLE'S OBJECTION TO ATTORNEY MATHEW VOLTOLINI'S
TESTIMONY**

Third Party City of Nelsonville ("City") hereby respectfully moves this Court for an Order setting a briefing schedule for the City to file a Motion to Exclude Testimony of the City's former legal counsel as an adverse witness against the City's legal position. Alternatively, Nelsonville replies to Relators' Response to Nelsonville's Objection to Attorney Mathew Voltolini's Testimony.

Good cause exists to grant the City's motion. A memorandum in support attached hereto. A proposed Order Setting Briefing Schedule is also attached hereto.

Respectfully submitted,

/s/ Jonathan E. Robe

Jonathan E. Robe (100698)

Robe Law Office

14 W. Washington St.

Athens, Ohio 45701

Phone (740) 593-5576

Fax (740) 593-5280

Jonathan.Robe@robelaoffice.com

Nelsonville City Attorney

MEMORANDUM IN SUPPORT

Relators' Response confirms the propriety and lawfulness of the City's timely Objection. And Relators' Response demonstrates the need for the City to move this Court to exclude the testimony of the City's former legal counsel that Relators appear intent on offering as testimony adverse to the City's legal position. Thus, the City's Objection should be sustained. The City should be given opportunity to file a motion to exclude such testimony so the City can protect its lawful interest in its privileged material and information.

Alternatively, the City replies to Relators' Response. Relators' Response is wrong on the facts, and it's wrong on the law. Accordingly, the City's Objection should be sustained.

I. Introduction

Relators' Response confirms the City's worst fears here: Relators intend to use the City's own former legal counsel against the City to deprive the City of its lawful interest in its privileged and confidential information. *See* Rel. Resp. at 5 ("Attorney Voltolini is available to testify to the *entire subject matter* that ought in fairness be considered with his opinion[.]") (emphasis added). That's precisely why the City filed its Objection: to preserve its lawful interest in and to prevent the unlawful disclosure of its privileged and confidential information and to prevent the unlawful disclosure.

Instead, Relators are attempting, by stealth, to force an unauthorized disclosure of the City's privileged and confidential information, at the same time Relators are taking the position the City can have no legal representation to defend the City's interest. That's not right. That's not the law. This Court should see through Relators' attempted deception and sustain the City's Objection and provide the City an opportunity to move to exclude such testimony to protect the City's lawful privilege and confidentiality.

All of this litigation over this issue is completely unnecessary—and entirely the fault of Relators. The City has no objection to Relators (or any party to this action, for that matter) using Attorney Voltolini's various legal opinions as evidence.¹ In fact, within a day of filing its Objection, the City Attorney reached out to Relators' Counsel with a draft proposed stipulation as to the authenticity of Attorney Voltolini's legal opinions.

The City's purpose in filing its Objection was two-fold: 1) make the City's lawful and timely Objection of record (to avoid even the appearance of waiver of privilege and confidentiality through non-action); and 2) avoid protracted litigation over an issue that doesn't need to be litigated (except to protect the City's lawful interests in its privileged and confidential information). *Compare City's Exhibit 3* (service email of City's Objection, also copying the Magistrate) *with City's Exhibit 4* (email to counsel, attaching a proposed stipulation of authenticity) *and City's Exhibit 5* (the proposed stipulation). Instead of taking the easy—and legally correct—road, Relators insisted on unnecessarily litigating the issue. *See City's Exhibit 6* (email response from Relators' counsel indicating Relators refuse to agree to the proposed stipulation).

The City's Objection is proper and lawful. It should be sustained so the City can then file appropriate motions to give effect to the sustained Objection.

II. The City's Objection Is Grounded in Law and Fact

A. The City Needed to Lodge Its Objection to Prevent Its Former Legal Counsel Being Called as a Material Fact Witness Against the City's Lawful Interests

¹ The City believes the evidentiary value of those legal opinions is minimal to non-existent. Except for the fact they exist, non-binding legal opinions on a matter can't serve as substantive evidence on a matter. Even so, the City doesn't want to deprive a party here the opportunity to rely upon the non-binding legal opinions as evidence.

Relators' Response confirms the need for the City to lodge its Objection: Relators intend to use the City's own former legal counsel against the City to deprive the City of its lawful interest in its privileged and confidential information. *See* Rel. Resp. at 5 ("Attorney Voltolini is available to testify to the *entire subject matter* that ought in fairness be considered with his opinion[.]") (emphasis added). And Relators do that while also arguing the City should be deprived of the legal counsel of its choice to protect the City's lawful interests. *Id.* at 2, para. 8 (disputing the City Attorney is Nelsonville's City Attorney); *see also id.* at para. 6 (arguing the City isn't a party to this case even while attempting to disclose the City's privileged and confidential information in the case).²

There's no dispute Attorney Voltolini is former legal counsel for the City. *See* City's **Exhibit 1** (employment contract); *see also* City's **Exhibit 2** (Motion to Disqualify Defendant's Counsel Based on Past Representation of the City of Nelsonville and Related Conflicts of Interest filed in Athens County Municipal Court Case No. 2025crb00504).³ Thus, the City's objection is proper and lawful and the City should be provided an opportunity to exclude the adverse testimony of its former legal counsel.

B. Relators Are Forcing the City to Unnecessarily Litigate to Protect the City's Lawful Interests

² Relators neglect to note their May 3, 2024 Motion to Disqualify the City Attorney (which is wrong on the merits) was denied as moot by this Court on July 8, 2024. In any case, the City Attorney is currently serving on a separate and distinct appointment and under a new contract, so there's no basis for filing a renewed motion now, anyway.

³ The Exhibits to this Motion are not included but are available at the Athens County Municipal Court's online docket.

There's no question the City has a valid claim to privilege and confidentiality. Nor is there a reasonable basis for arguing the City's waived its privilege or confidentiality. It hasn't. *See City's Exhibit 2*. And, yet, Relators are deliberately, stealthily, attempting to strangle the City's lawful privilege and confidentiality by forcing an involuntary disclosure of the City's privileged and confidential information. This wolf, like others, "comes as a wolf." *Morrison v. Olson*, 487 U.S. 654, 108 S. Ct. 2597, 2623, 101 L. Ed. 2d 569 (1988) (Scalia, J., dissenting). Relators' subterfuge shouldn't be countenanced.

When the City served its Objection on Relators' Counsel, the City prepared a proposed joint stipulation to the authenticity of Attorney Voltolini's legal opinions. The proposed stipulation would allow Relators to use Attorney Voltolini's legal opinions while also protecting the City's lawful interests in its privileged and confidential information. The City prepared the proposed joint stipulation (at its own expense) to avoid Relators spending additional of Relators' attorney time drafting a proposed stipulation from scratch. Relators, apparently, are hell-bent in litigating an issue that, by their own admission, isn't necessary to litigate. *See Rel. Resp.* at 3, para. 14 (acknowledging the authenticity of Attorney Voltolini's legal opinions is an "uncontested issue"). Relators are unnecessarily litigating an issue that doesn't need to be litigated. They are wasting this Court's time and other parties' time and money. That's not right. That's not the law. The City should be afforded an opportunity to file its motion to exclude.

If the Court deems it necessary, the City respectfully requests a conference call with the Court to discuss the matter of the City's privileged or confidential material or information prior to the City filing its Motion to Exclude.

Respectfully submitted,

/s/ Jonathan E. Robe
Jonathan E. Robe (100698)
Robe Law Office

14 W. Washington St.
Athens, Ohio 45701
Phone (740) 593-5576
Fax (740) 593-5280
Jonathan.Robe@robelaoffice.com
Nelsonville City Attorney

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing **City of Nelsonville's Motion for Briefing Schedule on Motion to Exclude and Alternative Reply to Relators' Response to Nelsonville's Objection to Attorney Mathew Voltolini's Testimony** was served upon the following counsel of record via e-mail on May 28, 2025 as follows

Joshua J. Brown, Esq.
Josh Brown Law, LLC
1554 Polaris Parkway, Suite 325
Columbus, Ohio 43240
josh@joshbrownesq.com
Counsel for Relators

Thomas N. Spyker, Esq.
REMININGER CO., L.P.A.
200 Civic Center Drive, 8th Floor
Columbus, Ohio 43215
Phone: (614) 228-1311
Fax: (614) 232-2410
tspyker@reminger.com
*Counsel for Respondents Opha Lawson,
Tony Dunfee and Gregg Clement*

/s/ Jonathan E. Robe
Jonathan E. Robe (100698)
Robe Law Office
Nelsonville City Attorney

EMPLOYMENT AGREEMENT

This employment agreement ("Agreement") is made and effective as of February 10 2024 by and between the governmental entity known as The City Council of Nelsonville Ohio having its principal place of business at 211 Lake Hope Drive, Athens County, Nelsonville, Ohio, 45764 ("Employer") and Mathew Voltolini with a mailing address of 5665 State Route 56 West, Circleville, Ohio, Circleville, Ohio, 43113 ("Employee").

WHEREAS the Employer intends to hire the Employee for the position of City Attorney pursuant to section 6:05 of the Nelsonville City Code and the Employee desires to provide their services on the conditions set forth.

IN CONSIDERATION of promises and other good and valuable consideration the parties agree to the following:

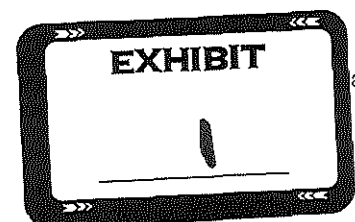
I. Employee Duties. The Employee agrees that they will act in accordance with this Agreement and to the best interests of the Employer, which may or may not require them to present the best of their skills, experience, and talents, to perform all the duties required of the position. In carrying out the duties and responsibilities of their position, the Employee agrees to adhere to any and all policies, procedures, rules, and regulations as administered by the Employer. In addition, the Employee agrees to abide by all local, county, State, and Federal laws while employed by the Employer.

II. Responsibilities. The Employee shall be given the job title of City Attorney ("Position") which shall involve the following responsibilities:

1. All responsibilities outlined in Section 6.05 of the City of Nelsonville Charter
2. Be present for all scheduled City Council meetings and arrive one hour before each scheduled meeting. Shall attend emergency meetings if possible.

The Employer may also assign duties to the Employee from time to time by the Employer. The Employee shall be expected to work on a part-time basis with their hours fluctuating as needed by the Employer.

III. Employment Period. The Employer agrees to hire the Employee for a period beginning on February 11 2024 and ending on May 11 2024. At the end of said time-period, both parties will no longer have any obligation excluding severance as outlined in this Section, confidentiality as listed in Section XI and any non-compete as listed in Section XII.



IV. Pay. As compensation for the services provided, the Employee shall be paid \$3,333.33 per month for 3 months ("Compensation"). The Compensation is a gross amount. As an independent Contractor, Employee is responsible for all Federal, state and local taxes, and holds the Employer harmless for any Tax Liability. Payment shall be distributed to the Employee on a monthly basis.

V. Employee Benefits. During the term of this Agreement, the Employee shall not be eligible or entitled to any Benefits other than the agreed upon Compensation. This may change at any time or if Benefits become available by the Employer.

VI. Out-of-Pocket Expenses. The Employer agrees to reimburse the Employee for expenses that are incurred while performing the duties of their position under this Agreement, including but not limited to: "

Travel from Employees office to Employers office at a "per mile rate equal to that allowed by the IRS

VII. Trial Period. There shall be no Trial Period or any such period of time where the Employee shall be prohibited from Benefits, Vacation Time, Personal Leave, or any other leave that is paid or unpaid in this Agreement.

XII. Personal Leave. The Employee shall not be entitled to any type of time-off from their position in regard to personal or health related issues. Any time-off that is requested must be approved by the Employer, and if the request is approved, may or may not be deducted from the Employee's Compensation.

IX. Holidays. The Employee shall not be required to appear during any Federal Holiday unless otherwise instructed by the Employer. This is subject to change by the Employer from time to time. If for any reason the Employee should request a holiday off, the Employer shall determine if the Employee may do so and if it shall be taken from either the Employee's Personal Leave or Vacation Time. Holidays are determined by the Employer and may change every calendar year.

X. Confidentiality. The Employee understands and agrees to keep any and all information confidential regarding the following: All information shall be kept confidential as Attorney Client Privilege and any other information that could be considered privileged to the Employer ("Privileged Information"). The Employee understands that disclosure of any such Privileged Information, either directly or indirectly, shall be an ethics violation under the Ohio Rules of Professional Conduct. Further said violation could result in litigation with the Employer eligible for equitable relief to the furthest extent of the law,

including but not limited to, filing claims for losses and/or damages. In addition, if it is found that the Employee divulged Confidential Information to a third (3rd) party with the Employer shall be entitled any and all reimbursement for their legal and attorney's fees.

XI. Non-Compete. There shall be no Non-Compete established in this Agreement. After the termination of this Agreement, the Employee will be allowed to seek employment or work in the same or like industry free of liability to the Employer.

XII. Employee's Role. The Employee shall not have the right to act in the capacity of the Employer. This includes, but is not limited to, making written or verbal agreements with the general public, or third (3rd) party. Employees role is strictly advisory.

XIII. Return of Property. The Employee agrees to return any and all property of the Employer upon the termination of employment. This includes, but is not limited to, equipment, electronics, records, access, notes, data, tests, vehicles, reports, models, or any property that is requested by the Employer.

XIV. Notices. All notices that are to be sent under this Agreement shall be done in writing and to be delivered via Certified Mail (return receipt) to the following mailing addresses:

Employer

The City Council of Nelsonville Ohio
211 Lake Hope Drive, Nelsonville, Ohio, 45764

Employee

Mathew Voltolini
5665 State Route 56 West, Circleville, Ohio, circleville, Ohio, 43113

The aforementioned addresses may be changed with the act of either party providing written notice.

XV. Amendments. This Agreement may be modified or amended under the condition that any such amendment is attached and authorized by all parties.

XVI. Severability. This Agreement shall remain in effect under the circumstance a section or provision is unenforceable or invalid. All remaining sections and provisions shall be deemed legally binding unless a court rules that any such provision or section is invalid or unenforceable, thus, limiting the effect of another provision or section. In such case, the affected provision or section shall be enforced as so limited.

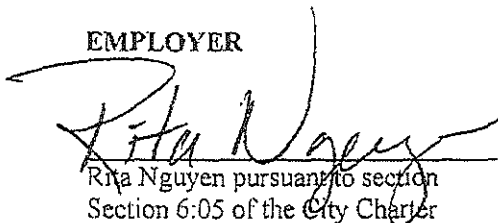
XVII. Waiver of Contractual Right. If the Employer or Employee fails to enforce a provision or section of this Agreement, it shall not be determined as a waiver or limitation. Either party shall remain the right to enforce and compel the compliance of this Agreement to its fullest extent.

XVIII. Governing Law. This Agreement shall be governed under the laws in the State of Ohio.

XIX. Additional Terms & Conditions. Employee is an independent contractor and shall be paid on the 15th of each month starting February 15th 2025.

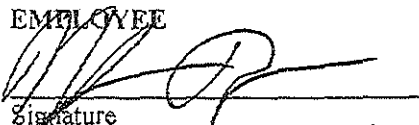
XX. Entire Agreement. This Agreement, along with any attachments or addendums, represents the entire agreement between the parties. Therefore, this Agreement supersedes any prior agreements, promises, conditions, or understandings between the Employer and Employee.

EMPLOYER

 Date 2/12/2024
Rita Nguyen pursuant to section
Section 6:05 of the City Charter

Title: City Council President

EMPLOYEE

 Date 2/12/2024
Signature
MATHew Volio
Print Name

IN THE ATHENS COUNTY
MUNICIPAL COURT

STATE OF OHIO

: Case Number 2025crb00504

Plaintiff,

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

Judge Todd L. Grace

v.

FILED
ATHENS COUNTY MUN. COURT

MARGARITA NGUYEN,

MAY 23 2025

Defendant.

CLERKS OFFICE
ATHENS COUNTY, OHIO

**MOTION TO DISQUALIFY DEFENDANT'S COUNSEL BASED ON PAST
REPRESENTATION OF THE CITY OF NELSONVILLE AND RELATED CONFLICTS
OF INTEREST**

The City of Nelsonville, by and through the undersigned special counsel, respectfully moves this Court to disqualify Attorney Mathew Voltolini in this matter based on his past representation of the City of Nelsonville on matters closely related to Ms. Nguyen and her previous position on the Nelsonville City Council. A memorandum in support of this Motion is attached hereto. Good cause exists to grant the City of Nelsonville's motion.

Respectfully submitted,

/s/ Jesse J. Shamp

THADDEUS M. BOGGS (0089231)

JESSE J. SHAMP (0097642)

Frost Brown Todd LLP

10 West Broad Street; Suite 2300

Columbus, Ohio 43215

Phone: (614) 559-7275

Fax: (614) 464-1737

tboggs@fbtlaw.com

jshamp@fbtlaw.com

Special Counsel to City of Nelsonville



MEMORANDUM IN SUPPORT

I. INTRODUCTION

Trial judges exercise broad authority to disqualify counsel when representation would violate the Ohio Rules of Professional Conduct. Defendant's counsel, Mathew Voltolini, previously served as attorney for the City of Nelsonville. This fact alone does not bar him from representing a party adverse to the City. However, the subject matter of his representation of the City and his legal opinions drafted during his representation of the City relate directly to a potential defense Defendant could raise during trial. This establishes a conflict that the City has not waived and the Court should not ignore. Because of this inescapable conflict, Attorney Voltolini should be disqualified from representing Defendant in this case.

II. FACTS

Nelsonville City Council voted to hire Mathew Voltolini to represent the City of Nelsonville on February 10, 2024 via Ordinance 16-24. A contract was executed (apparently the same day) so that Attorney Voltolini could serve as "City Attorney pursuant to section 5:05 of the Nelsonville City Code." See Exhibit A – Voltolini Contract (the "Contract"). The Contract was signed on behalf of the City by the Defendant in this matter, Margarita Nguyen, in her role as City Council President.¹ The Contract specifically states that Mr. Voltolini is the City Attorney and that he had "[a]ll responsibilities outlined in Section 6.05 of the City of Nelsonville Charter." *Id.* The contract ran from February 12, 2024 to May 11, 2024.

During Mr. Voltolini's engagement as City Attorney, he authored two legal opinions addressing the composition of City Council, opining on the legality of appointments made to

¹ There was subsequently a dispute among Members of Nelsonville City Council whether Ms. Nguyen was authorized to sign the Contract on behalf of the City. Regardless, Nelsonville City Council subsequently ratified the Contract via Ordinance 27-24, thus mooting that dispute.

Council, and alleging Public Meeting Act violations. *See* Exhibit B – Voltolini Opinions. These opinions were drafted for, relied on during, and directly relate to the controversy regarding whether Defendant remained on Council, the validity of subsequent appointments to Council, and whether the Council meetings were legally valid meetings. *Id.*

In addition to the legal opinions cited above, Mr. Voltolini engaged in at least one privileged and confidential discussion with current City Attorney Jonathan Robe, then-City Manager Thomas Cangemi, and Police Chief Devon Tolliver about the issue of Defendant’s resignation and attempted rescission of her resignation from Council, which included a strategy discussion for potential court actions to resolve the issue. *See* Exhibit C – Tolliver Affidavit. And during this time, Voltolini also engaged in several non-public email exchanges with city officials and members of Nelsonville City Council regarding the controversy and his legal opinions. *See* Exhibit D – Emails.

III. LEGAL ANALYSIS

A. Courts have broad authority to disqualify counsel when conflicts exist.

“In general, [t]rial courts have the inherent power to disqualify an attorney from acting as counsel in a case when the attorney cannot or will not comply with the Ohio Rules of Professional Conduct and when such action is necessary to protect the dignity and authority of the court.” *Shinn v. Columbus*, 2025-Ohio-183, ¶ 48 (10th Dist.) (quoting *Reo v. Univ. Hosps. Health Sys.*, 2019-Ohio-1411, ¶ 17 (11th Dist.)). This is even true in criminal cases because, “although fundamental, the right to counsel is not absolute,” and “[a] defendant has no right to an attorney with a conflict of interest.” *State v. Hackney*, 2021-Ohio-2064, ¶ 10 (6th Dist.) (citing *State v. Ross*, 2018-Ohio-3524, ¶ 5 (9th Dist.)).

While “disqualification is a drastic measure,” it is necessary and unavoidable when, as here, the City has demonstrated that Defendant’s counsel has “an actual conflict or[.]” at a

minimum, “a serious potential for conflict.” *Hollis v. Hollis*, 124 Ohio App. 3d 481, 485 (8th Dist. 1997); *State v. Johnson*, 2022-Ohio-1479, ¶ 11 (4th Dist.).

B. Voltolini should be disqualified because his representation of Defendant violates several conflict-of-interest rules in the Ohio Rules of Professional Conduct.

This court should exercise its broad authority to disqualify Voltolini from this matter because Voltolini’s representation of Defendant violates several Ohio Rules of Professional Conduct pertaining to conflicts of interest. Also, Voltolini apparently is prepared to be a material fact witness in Defendant’s civil suit against her successor and disclose the City’s privilege and confidential information in a way that’s adverse to the City’s interest and legal position. Exhibit C – Tolliver Aff.

1. Voltolini’s representation violates Prof.Cond.R. 1.11(a)(2) because he personally and substantially participated in this controversy as the then-Law Director.

Voltolini’s representation of Defendant in this matter violates the “special conflicts of interest for former ... government officers and employees” rule of professional conduct. Under Prof.Cond.R. 1.11(a)(2), “[a] lawyer who has formerly served as a public officer or employee of the government shall ... not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee.”² “Matter” encompasses any “request for a ruling or other determination, ... controversy, ... or other particular matter involving a specific party or parties.” Prof.Cond.R. 1.11(e)(1).

Here, Defendant is accused of disturbing a lawful meeting of Council. Voltolini represented the City as the City Attorney/Acting City Attorney/Special Counsel (depending on the title he chose to use) from February 12, 2024 until April 8, 2024 when his engagement was terminated by Ordinance 27-24. During his time representing the City, Voltolini drafted multiple opinions

² There is an exception if the former government client “gives its informed consent, confirmed in writing, to the representation. Prof.Cond.R. 1.11(a)(2). In this matter, the City has not given, and does not intend to give, informed written consent to waive the conflict and allow Voltolini to continue representing Defendant in this matter.

regarding the composition of City Council, including specifically the validity of an alleged resignation by Defendant from Council. *See* Exhibit B— Voltolini Opinions. Those legal opinions are rightly classified as “request[s] for a ruling or other determination.”

Voltolini’s representation of Defendant is “in connection with” the opinions and advice Voltolini provided to the City, as well as the privileged conversations Voltolini had with city officials, because Defendant’s alleged reliance on said opinions and advice likely forms a potentially viable defense available to Defendant in this case. Specifically, a conviction for disturbing a lawful meeting requires that the meeting at issue be “lawful.” [132.04(A)]. To establish this defense, Voltolini would have to argue on behalf of Defendant that either: (1) the meeting Defendant is accused of disturbing was not lawful; or (2) Defendant reasonably believed the meeting was not lawful based on Voltolini’s opinions written and advice given on behalf of the City. For either argument, Voltolini would be forced to use the advice he provided in his capacity as the City’s attorney directly against the City.

In the alternative, Voltolini could argue on behalf of Defendant that she could not disturb a lawful meeting because she was a lawful member of Council during the meeting she is accused of disturbing. Similar to the “lawful meeting” defense, this would again force Voltolini to use the advice he provided to the City in his role as the City’s attorney directly against the City.

In short, because Voltolini “personally and substantially” played a role in providing legal analysis and advice to the City regarding the resignation and appointments controversy in his capacity as City attorney, and because Voltolini may need to use said advice to mount a viable defense on behalf of Defendant in a matter directly adverse to the City, a conflict undeniably exists. This Court should exercise its broad authority to disqualify Voltolini due to the conflict.

2. Voltolini’s representation violates Prof.Cond.R. 1.9(a) because this matter is substantially related to a matter where Voltolini represented the City.

In addition to the special former government attorney conflict, Voltolini's representation of Defendant in this matter also violates the general former client conflict rule. Under Prof.Cond.R. 1.9(a), "[u]nless the former client gives informed consent, confirmed in writing, a lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client." A "substantially related matter" is a matter "that involves the same transaction or legal dispute or one in which there is a substantial risk that confidential factual information that would normally have been obtained in the prior representation of a client would materially advance the position of another client in a subsequent matter." Prof.Cond.R. 1.0(n). Ultimately, "[t]he underlying question is whether the lawyer was so involved in the matter that the subsequent representation can be justly regarded as a changing of sides in the matter in question." Prof.Cond.R. 1.9, Comment 2.

Voltolini's representation of Defendant in this case is directly adverse to his former client's interests in a matter substantially related to his representation of the City. As discussed above, Voltolini represented the City as the City Attorney/Acting City Attorney/Special Counsel, and the legal opinions he provided in his official capacity are substantially related to potential defenses for Defendant in this case. *See Exhibit B – Voltolini Opinions*. Additionally, the City's official position is that Defendant's resignation from Council was final and the subsequent appointments to Council were valid. *See Exhibit C – Tolliver Aff. at Attachment A (City Attorney letter articulating the City's legal position)*. Because Voltolini would now be arguing the opposite position on behalf of Defendant by using legal advice he provided to the City during his representation of the City, this creates an untenable situation where Voltolini would be arguing a position materially adverse to the City's interests in the same matter. Further, to the extent Voltolini's legal opinions and advice

to the City advance Defendant's case, it raises the question of whether Voltolini fulfilled his duty to the City in good faith or, in the alternative, merely used the advice and his position to materially advance Defendant's position in preparation for issues such as this case arising.

3. In the alternative to Prof.Cond.R. 1.9(a), Voltolini's representation also violates Prof.Cond.R. 1.9(c).

Voltolini will almost certainly argue in response to this Motion that Prof.Cond.R. 1.9(a) does not apply to former government attorneys.³ That is an oversimplification of the matter; but, even if true, Voltolini's representation of Defendant violates Prof.Cond.R. 1.9(c). Prof.Cond.R. 1.9(c) unquestionably applies to former government lawyers. *See* Prof.Cond.R. 1.11(a)(1) ("A lawyer who has formerly served as a [government lawyer] ... shall comply with ... Rule 1.9(c) regarding conflicts of interest"). Under Prof.Cond.R. 1.9(c), "A lawyer who has formerly represented a client in a matter ... shall not thereafter[:] ... (1) use information relating to the representation to the disadvantage of the former client except ... when the information has become generally known; [or] (2) reveal information relating to the representation."

Here, the City does not dispute that Voltolini's legal opinions discussed above are generally known because they were public records and distributed in the newspaper. However, when combined with several non-public emails and at least one privileged conversation related to the issue at hand, a broader conflict is demonstrated. *See* Exhibit C – Tolliver Aff.; Exhibit D – Emails. At a minimum, this creates substantial doubt regarding a conflict, and "[a]ny doubts as to the existence of an asserted conflict must be resolved in favor of disqualification in order to dispel any appearance of impropriety." *Bank of New York v. Aponte*, 2013-Ohio-4360, ¶ 12 (7th Dist.) (citing *Kala v. Aluminum Smelting & Refining Co.*, 81 Ohio St. 3d 1, 11 (1998)).

³ Comment 1 to Rule 1.9 states that "[c]urrent and former government lawyers must comply with this rule to the extent required by Rule 1.11," and Rule 1.11(a)(1) states that "[a] lawyer who has formerly served as a [government lawyer] ... shall comply with ... all applicable laws and Rule 1.9(c) regarding conflicts of interest."

IV. CONCLUSION

For the reasons stated herein, this Court should disqualify Attorney Voltolini in this matter. The appearance of impropriety and the impossibility of disentangling his previous position with the City and legal advice he provided that directly relate to this criminal matter necessitate this disqualification.

Should the Court require a hearing on the City's Motion, the City respectfully requests the Court set this for a Motion Hearing at 11:00 a.m. on June 2, 2025, as this case is already set for a pre-trial on the same date.

Respectfully submitted,

/s/ Jesse J. Shamp

THADDEUS M. BOGGS (0089231)

JESSE J. SHAMP (0097642)

Frost Brown Todd LLP

10 West Broad Street; Suite 2300

Columbus, Ohio 43215

Phone: (614) 559-7275

Fax: (614) 464-1737

tboggs@fbtlaw.com

jshamp@fbtlaw.com

Special Counsel to City of Nelsonville

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion and exhibits has been delivered upon Attorney Mathew Vòtolini via e-mail to mathew@voltolinilaw.com on this 23rd day of May, 2025.


Jesse J. Shamp (0097642)

0138568.0805497 4907-1296-1862v1

Jonathan Robe

From: Jonathan Robe
Sent: Wednesday, May 14, 2025 7:33 PM
To: josh@joshbrownesq.com; Thomas N. Spyker
Cc: Tasha Ruth
Subject: State ex rel. Nguyen, et al. vs. Clement, et al. | Fourth Dist. (Athens Cnty) Case No. 24CI0011 | Nelsonville Objection
Attachments: Nelsonville Notice of Objection to Testimony of Voltolini.pdf; Exhibit 1 (Voltolini Employment Agreement).pdf

Counsel:

Please find service copies of the attached Objection and Exhibit, which were filed in the above-referenced case today on behalf of the City of Nelsonville. I'm copying the Court's Magistrate on this service email because, as the City notes in its Objection, the City is available for a conference call with the Court, should the Court deem it necessary to have one. I will follow up separately with counsel to see if the City can facilitate a stipulation as suggested by the City in its Objection as a way to speedily resolve the issue raised.

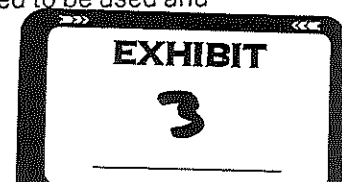
Best regards,
Jonathan

Jonathan E. Robe
Attorney-at-Law
Patent Attorney
Licensed in Ohio, Virginia, and District of Columbia
Registered to practice before the U.S. Patent and Trademark Office

Robe Law Office
14 W. Washington St.
P.O. Box 727
Athens, Ohio 45701
Tel.: (740) 593-5577
Fax: (740) 592-5280

CONFIDENTIALITY NOTICE: This e-mail communication, including any attachments, is intended only for the use of the designated recipient(s). This communication may contain information that is privileged, confidential or otherwise exempt from disclosure under applicable law. If the recipient of this communication is not the designated recipient or the employee or agent responsible for delivering this communication to the designated recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately by return e-mail and promptly destroy the original message and any attachments.

CIRCULAR 230 NOTICE: This e-mail communication, including any attachments, are not intended to render tax advice, unless expressly stated herein otherwise. Pursuant to federal regulations we are required to inform you that to the extent that this message or any attachment concerns tax matters, it is not intended to be used and



cannot be used by a taxpayer for the purpose of avoiding penalties that may be imposed by law, or for the purpose of promoting, marketing, or recommending to another party any tax-related matter(s) addressed herein.

Jonathan Robe

From: Jonathan Robe
Sent: Thursday, May 15, 2025 9:40 AM
To: josh@joshbrownesq.com; Thomas N. Spyker
Subject: RE: State ex rel. Nguyen, et al. vs. Clement, et al. | Fourth Dist. (Athens Cnty) Case No. 24CI0011 | Nelsonville Objection
Attachments: PROPOSED Joint Stipulation 2025.05.14.pdf

Counsel:

As indicated, I want to take the opportunity with you to propose a resolution to the issues raised in the City' Objection filed today (see below email).

The City proposes the parties agree to the attached PROPOSED Joint Stipulation as to the authenticity of Mr. Voltolini's legal opinions which Relators apparently intend to rely upon as evidence. Such stipulation would obviate any need for Mr. Voltolini's affidavits/testimony and therefore would avoid the issue raised by the City's Objection while allowing Relators their full evidence.

Please let me know if this proposal is agreeable to all parties involved. If possible, I'd like to have the stipulation filed with the Court by Friday, May 16, 2025. However, I understand if you need more time to consider the stipulation. In any case, I would like to have any stipulation filed with the Court no later than next week so as not to hold up the Court's consideration of this action.

I look forward to hearing from you. Please let me know if you have any questions or need additional information.

Best regards,
Jonathan

From: Jonathan Robe
Sent: Wednesday, May 14, 2025 7:32 PM
To: 'josh@joshbrownesq.com' <josh@joshbrownesq.com>; Thomas N. Spyker <tspyker@reminger.com>
Cc: Tasha Ruth <tasharuth@4thdistrictappeals.com>
Subject: State ex rel. Nguyen, et al. vs. Clement, et al. | Fourth Dist. (Athens Cnty) Case No. 24CI0011 | Nelsonville Objection

Counsel:

Please find service copies of the attached Objection and Exhibit, which were filed in the above-referenced case today on behalf of the City of Nelsonville. I'm copying the Court's Magistrate on this service email because, as the City notes in its Objection, the City is available for a conference call with the Court, should the Court deem it necessary to have one. I will follow up separately with counsel to see if the City can facilitate a stipulation as suggested by the City in its Objection as a way to speedily resolve the issue raised.

Best regards,



Jonathan

Jonathan E. Robe

Attorney-at-Law

Patent Attorney

Licensed in Ohio, Virginia, and District of Columbia

Registered to practice before the U.S. Patent and Trademark Office

Robe Law Office

14 W. Washington St.

P.O. Box 727

Athens, Ohio 45701

Tel.: (740) 593-5577

Fax: (740) 592-5280

CONFIDENTIALITY NOTICE: This e-mail communication, including any attachments, is intended only for the use of the designated recipient(s). This communication may contain information that is privileged, confidential or otherwise exempt from disclosure under applicable law. If the recipient of this communication is not the designated recipient or the employee or agent responsible for delivering this communication to the designated recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately by return e-mail and promptly destroy the original message and any attachments.

CIRCULAR 230 NOTICE: This e-mail communication, including any attachments, are not intended to render tax advice, unless expressly stated herein otherwise. Pursuant to federal regulations we are required to inform you that to the extent that this message or any attachment concerns tax matters, it is not intended to be used and cannot be used by a taxpayer for the purpose of avoiding penalties that may be imposed by law, or for the purpose of promoting, marketing, or recommending to another party any tax-related matter(s) addressed herein.

IN THE FOURTH DISTRICT COURT OF APPEALS
ATHENS COUNTY, OHIO

STATE OF OHIO, ex rel. Margarita
Nguyen, *et al.*,

Relators,

v.

Opha Lawson, *et al.*,

Respondents.

Case No. 24CA0011

Judge Smith, *presiding*
Judge Abele
Judge Wilkin

JOINT STIPULATION AS TO AUTHENTICITY OF LEGAL OPINIONS ISSUED BY
ATTORNEY MATHEW VOLTOLINI FOR THE CITY OF NELSONVILLE

Joshua J. Brown, Esq.
Josh Brown Law, LLC
1554 Polaris Parkway, Suite 325
Columbus, Ohio 43240
josh@joshbrownesq.com
Counsel for Relators

Thomas N. Spyker, Esq.
REMINGER CO., L.P.A.
200 Civic Center Drive, 8th Floor
Columbus, Ohio 43215
Phone: (614) 228-1311
Fax: (614) 232-2410
tspyker@reminger.com
*Counsel for Respondents Opha Lawson,
Tony Dunfee and Gregg Clement*

Jonathan E. Robe (100698)
Robe Law Office
14 W. Washington St.
Athens, Ohio 45701
Phone (740) 593-5576
Fax (740) 593-5280
Jonathan.Robe@robelaoffice.com
*Nelsonville City Attorney
Counsel for Third Party City of Nelsonville*



IN THE FOURTH DISTRICT COURT OF APPEALS
ATHENS COUNTY, OHIO

STATE OF OHIO, ex rel. Margarita
Nguyen, *et al.*,

Relators,

v.

Opha Lawson, *et al.*,

Respondents.

Case No. 24CA0011

Judge Smith, *presiding*
Judge Abele
Judge Wilkin

JOINT STIPULATION AS TO AUTHENTICITY OF LEGAL OPINIONS ISSUED BY
ATTORNEY MATHEW VOLTOLINI FOR THE CITY OF NELSONVILLE

Relators seek to introduce into evidence two opinions Attorney Mathew Voltolini authored at the request and instruction of the City of Nelsonville. *See* Relators' Motion for Leave to File Amended Relators' Petition at Exs. H and I (including copies of each of the two legal opinions Mr. Voltolini authored). Relators submitted affidavits of Mr. Voltolini attesting to the authenticity of the two legal opinions he authored. *See id.*

Because Mr. Voltolini is both former legal counsel to the City of Nelsonville (and therefore cannot be a fact witness concerning matters touching on the City's privileged and confidential material and information) and because he isn't a necessary witness in this case, the City filed an objection to any attempt to rely upon Mr. Voltolini's testimony in this case. *See generally* Third Party City of Nelsonville's Objection to Attorney Mathew Voltolini's Testimony (filed May 14, 2025).

To avoid unnecessary litigation while preserving the City's lawful (and unwaived) privilege and confidentiality, the parties hereby jointly stipulate to the authenticity of the two legal opinions Relators wish to include in the evidence. The City of Nelsonville has no objection to this

stipulation of the parties or inclusion of the two legal opinions as evidence. The City understands the soundness of each of the two legal opinions is a live issue of controversy between the parties in this case.

Jointly and Respectfully submitted,

Joshua J. Brown, Esq.
Josh Brown Law, LLC
1554 Polaris Parkway,
Suite 325
Columbus, Ohio 43240
josh@joshbrownesq.com
Counsel for Relators

Thomas N. Spyker, Esq.
REMINER CO., L.P.A.
200 Civic Center Drive,
8th Floor
Columbus, Ohio 43215
Phone: (614) 228-1311
Fax: (614) 232-2410
tspyker@reminger.com
Counsel for Respondents
Opha Lawson,
Tony Dunfee and Gregg
Clement

Jonathan E. Robe (100698)
Robe Law Office
14 W. Washington St.
Athens, Ohio 45701
Phone (740) 593-5576
Fax (740) 593-5280
Jonathan.Robe@robelaoffice.com
Nelsonville City Attorney

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing was served upon the following counsel of record via e-mail on May __, 2025 as follows

Joshua J. Brown, Esq.
Josh Brown Law, LLC
1554 Polaris Parkway, Suite 325
Columbus, Ohio 43240
josh@joshbrownesq.com
Counsel for Relators

Thomas N. Spyker, Esq.
REMINER CO., L.P.A.
200 Civic Center Drive, 8th Floor
Columbus, Ohio 43215
Phone: (614) 228-1311
Fax: (614) 232-2410
tspyker@reminger.com
*Counsel for Respondents Opha Lawson,
Tony Dunfee and Gregg Clement*

Jonathan E. Robe (100698)
Robe Law Office
Nelsonville City Attorney

Jonathan Robe

From: Joshua Brown <josh@joshbrownesq.com>
Sent: Monday, May 19, 2025 4:24 PM
To: Jonathan Robe
Cc: Thomas N. Spyker
Subject: Re: State ex rel. Nguyen, et al. vs. Clement, et al. | Fourth Dist. (Athens Cnty) Case No. 24CI0011 | Nelsonville Objection

I appreciate the email. We're going to file a response.
Thank you,

- josh

Josh Brown, Esq.
Josh Brown Law, LLC.
1554 Polaris Parkway, Suite 325
Columbus, OH 43240
Phone: (614) 383-8886
Fax: (614) 388-3947
www.linkedin.com/in/joshbrownesq

CONFIDENTIAL:

The information contained in this e-mail and any attachments accompanying this transmission are confidential and may also be subject to the attorney-client privilege, the attorney work product doctrine, or may be otherwise legally privileged. The information contained in this e-mail is intended only for the use of the individual or entity to whom it is addressed. If you are not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are notified that any use, dissemination, distribution, copying, or any action taken in reliance on the content of this e-mail, is strictly prohibited. If you have received this e-mail in error, please immediately notify the sender by telephone and/or e-mail and destroy and permanently delete the original e-mail and all copies thereof. Thank you for your cooperation.

On Thu, May 15, 2025 at 9:40 AM Jonathan Robe <jonathan.robe@robelaoffice.com> wrote:

Counsel:

As indicated, I want to take the opportunity with you to propose a resolution to the issues raised in the City' Objection filed today (see below email).



The City proposes the parties agree to the attached PROPOSED Joint Stipulation as to the authenticity of Mr. Voltolini's legal opinions which Relators apparently intend to rely upon as evidence. Such stipulation would obviate any need for Mr. Voltolini's affidavits/testimony and therefore would avoid the issue raised by the City's Objection while allowing Relators their full evidence.

Please let me know if this proposal is agreeable to all parties involved. If possible, I'd like to have the stipulation filed with the Court by Friday, May 16, 2025. However, I understand if you need more time to consider the stipulation. In any case, I would like to have any stipulation filed with the Court no later than next week so as not to hold up the Court's consideration of this action.

I look forward to hearing from you. Please let me know if you have any questions or need additional information.

Best regards,

Jonathan

From: Jonathan Robe

Sent: Wednesday, May 14, 2025 7:32 PM

To: 'josh@joshbrownesq.com' <josh@joshbrownesq.com>; Thomas N. Spyker <tspyker@reminger.com>

Cc: Tasha Ruth <tasharuth@4thdistrictappeals.com>

Subject: State ex rel. Nguyen, et al. vs. Clement, et al. | Fourth Dist. (Athens Cnty) Case No. 24CI0011 | Nelsonville Objection

Counsel:

Please find service copies of the attached Objection and Exhibit, which were filed in the above-referenced case today on behalf of the City of Nelsonville. I'm copying the Court's Magistrate on this service email because, as the City notes in its Objection, the City is available for a conference call with the Court, should the Court deem it necessary to have one. I will follow up separately with counsel to see if the City can facilitate a stipulation as suggested by the City in its Objection as a way to speedily resolve the issue raised.

Best regards,

Jonathan

Jonathan E. Robe

Attorney-at-Law

Patent Attorney

Licensed in Ohio, Virginia, and District of Columbia

Registered to practice before the U.S. Patent and Trademark Office

Robe Law Office

14 W. Washington St.

P.O. Box 727

Athens, Ohio 45701

Tel.: (740) 593-5577

Fax: (740) 592-5280

CONFIDENTIALITY NOTICE: This e-mail communication, including any attachments, is intended only for the use of the designated recipient(s). This communication may contain information that is privileged, confidential or otherwise exempt from disclosure under applicable law. If the recipient of this communication is not the designated recipient or the employee or agent responsible for delivering this communication to the designated recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately by return e-mail and promptly destroy the original message and any attachments.

CIRCULAR 230 NOTICE: This e-mail communication, including any attachments, are not intended to render tax advice, unless expressly stated herein otherwise. Pursuant to federal regulations we are required to inform you that to the extent that this message or any attachment concerns tax matters, it is not intended to be used and cannot be used by a taxpayer for the purpose of avoiding penalties that may be imposed by law, or for the purpose of promoting, marketing, or recommending to another party any tax-related matter(s) addressed herein.