

MAZANEC, RASKIN & RYDER Co., L.P.A.

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Celebrating More than 35 Years of Excellence

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March 23, 2017

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709 Deer Trail Court
Loveland, Ohio 45140

Neal Oury
401 Lowell Avenue
Loveland, Ohio 45140

Re: *Spoliation Warning – Possible Defamation of Mayor Mark Fitzgerald*

Dear Mr. Osborne, Ms. Rebeccaschild, Ms. Mershon, Ms. Bomar, and Mr. Oury:

Please be advised; this office and the undersigned have the privilege of representing Mr. Mark Fitzgerald, personally and relative to the matters discussed in this letter, in his capacity as the Mayor of Loveland, Ohio. It has come to our attention that each of you may have made and/or continue to make false and defamatory statements regarding Mr. Fitzgerald's tenure as City Administrator of North College Hill, Ohio.

This letter will advise that on behalf of our client, we are investigating and considering whether your various comments and publications are actionable, as a matter of law. Accordingly, you are hereby instructed not to destroy, conceal or alter any paper or electronic files or other data generated by and/or stored on your personal computer(s), "smart phones", storage media (e.g., hard disks, floppy disks, thumb drives, backup tapes, etc.), or any other portable electronic information holding/sharing device, voicemail, or any other electronic data (hereinafter and collectively, "Data"). Please be aware that your failure to comply with this Notice can result in sanctions being

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imposed upon you by a Court of competent jurisdiction for spoliation of evidence or potential evidence.

In the event an action for defamation or any other cause of action is commenced against you, we expect to obtain from you, personally and through discovery, a number of documents and tangible things including (without limitation) files stored on your computer(s) and all other electronic storage media. In order to avoid spoliation, you will need to provide the requested Data on the original media.

In the context of the above-referenced potential litigation, we also anticipate possibly bringing a Motion requesting an Order for the preservation of documents and Data from destruction or alteration. Notwithstanding, this Notice obligates each of you to preserve Data and any other documents independently of any Order on such Motion.

The Data, and the storage media on which it resides, contains or may contain relevant and discoverable information beyond that which may be found in printed documents. Therefore, even where a paper copy exists, this Notice applies to all Data and documents in their electronic form along with information about such Data and those documents contained on all media. This Notice applies equally to all paper printouts of all documents that contain unique information after they were printed out (such as paper documents containing handwriting, signatures, marginalia, drawings, annotations, highlighting and redactions) along with all other paper documents for which no corresponding electronic files or Data exists.

Moreover, this Notice applies equally to all Data contained on all cellular phones, tablets, hard drives, hard disks, thumb drives, floppy disks and backup media used in your personal computer(s) and all other electronic media sharing or storage device(s), regardless of whether the Data is "active" or not readily available to an ordinary user, including (without limitation) "deleted" files and "file fragments". As you may know, although a user may "erase" or "delete" a file, all that really is erased is a reference to that file in a table on the hard disk (i.e. unless overwritten with new data, an "erased" or "deleted" file can be as intact on the disk as any "active" file you would see in a directory listing.

"Data", as used herein, includes but is not limited to the following:

All digital or analog electronic files, including "deleted" files and file fragments, stored in machine-readable format on magnetic, optical or other storage media, including the hard drives or floppy disks used by you on your personal computer(s) or any other electronic media sharing or storage device and their backup media (e.g., other hard drives, backup tapes, floppies, Jaz cartridges, CD-ROMs) or otherwise, whether such files have been reduced to paper printouts or not.

More specifically, you are required to preserve all e-mails, both sent and received, whether internally or externally; all word-processed files, including drafts and revisions; all spreadsheets,

including drafts and revisions; all databases; all CAD (computer-aided design) files, including drafts and revisions; all presentation data or slide shows produced by presentation software (such as Microsoft PowerPoint); all graphs, charts and other data produced by project management software (such as Microsoft Project); all data generated by calendaring, task management and personal information management (PIM) software (such as Microsoft Outlook or Lotus Notes); all data created with the use of personal data assistants (PDAs), such as PalmPilot, HP Jornada, Cassiopeia or other Windows CE-based or Pocket PC devices; all data created with the use of document management software; all data created with the use of paper and electronic mail logging and routing software; all Internet and Web-browser-generated history files, caches and "cookies" files generated at your workstation and on any and all backup storage media; and any and all other files generated by users through the use of computers and/or any other telecommunications or electronic media storage and sharing devices, including but not limited to voice mail.

Further, you are to preserve any log or logs of network use by yourself, whether kept in paper or electronic form, and to preserve all copies of your backup tapes and the software necessary to reconstruct Data on those tapes, so that there can be made a complete, bit-by-bit "mirror" evidentiary image copy of the storage media of each and every personal computer and/or workstation and or electronic media sharing or storage devices, and network server used by you, as well as image copies of all hard drives retained by you and no longer in service, but in use at any time from January 1, 2012 to the present.

You are also not to pack, compress, purge or otherwise dispose of any Data, files and parts of files unless a true, complete and correct copy of such Data and files is made. Likewise, you are to preserve and not destroy all passwords, decryption procedures (including, if necessary, the software to decrypt the files); network access codes, ID names, manuals, tutorials, written instructions, decompression or reconstruction software, and any and all other information and things necessary to access, view and (if necessary) reconstruct any Data relevant to this Notice.

"Data" is further identified as follows:

1. Business Records: All documents and information about documents containing backup and/or archive policy and/or procedure, document retention policy, names of backup and/or archive software, names and addresses of any offsite storage provider.
2. All Data and e-mail and information about e-mail (including full message content, header information and logs of e-mail system usage, whether sent or received) within which the following terms are used:

"Fitzgerald", "Mark Fitzgerald", "Mr. Fitzgerald", "Mayor Fitzgerald", "Mayor", "Loveland", "North College Hill", "NCH", "Hamilton County", "Montgomery County", "Administrator", "fraud", "misrepresentation", "suit", "taxpayer", "deceit", "deception", "deceive", "conspire", or "conspiracy".

With regard to online storage and/or direct access storage devices attached to your personal computer(s): you are not to modify or delete any Data or electronic data files, "deleted" files and file fragments existing at the time of the delivery of this Notice, which meet the definitions of Data set forth in this Notice, unless a true and correct copy of each such electronic Data file has been made and steps have been taken to assure that such a copy will be preserved and accessible to the undersigned.

With regard to all Data used for offline storage, including magnetic tapes and cartridges and other media that, at the time of the delivery of this Notice, contained any Data meeting the criteria listed herein: you are to stop any activity that may result in the loss of such Data, including rotation, destruction, overwriting and/or erasure of Data or such media in whole or in part. This request is intended to cover all removable Data used for Data storage in connection with their computer systems, including magnetic tapes and cartridges, magneto-optical disks, floppy diskettes and all other media, whether used with personal computers, minicomputers or mainframes or other computers, and whether containing backup and/or archive Data sets and other Data and electronic Data, for all of their computer systems.

You are not to dispose of any Data or Data storage devices and/or media that may be replaced due to failure and/or upgrade and/or other reasons that may contain Data meeting the criteria for Data, herein.

With regard to Data meeting the criteria listed herein, which existed on fixed drives attached to stand-alone microcomputers and/or network workstations at the time of delivery of this Notice: you are not to alter or erase such Data, and not to perform other procedures (such as data compression and disk de-fragmentation or optimization routines that may impact) such Data, unless a true and correct copy of the Data has been made of such active files and of completely restored versions of such deleted Data and file fragments, copies have been made of all directory listings (including hidden files) for all directories and subdirectories containing such files, and arrangements have been made to preserve copies of such.

You are to preserve copies of all Data, application programs and utilities which may be used to process Data covered by this Notice.

You are to maintain an activity log to document modifications made to any Data and Data processing system that may affect the system's capability to process any Data meeting the criteria, regardless of whether such modifications were made by employees, contractors, vendors and/or any other third parties.

The following steps should immediately be taken in regard to all personal computers used by you:

1. As to fixed drives attached to such computers:

- (i) a true and correct copy is to be made of all Data on such fixed drives relating to this Notice, including all active files and completely restored versions of all deleted Data, electronic files and file fragments;
 - (ii) full directory listings (including hidden files) for all directories and subdirectories (including hidden directories) on such fixed drives should be written; and
 - (iii) such copies and listings are to be preserved until the above-referenced potential litigation reaches its final resolution.
2. All floppy diskettes, magnetic tapes and cartridges, and other media used in connection with such computers prior to the date of delivery of this Notice containing any Data relating to this matter are to be collected and put into storage pursuant to this Notice.

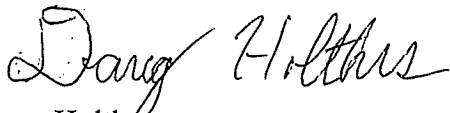
With regard to Data created subsequent to the date of delivery of this Notice, relevant evidence is not to be destroyed and you are to take all and whatever steps are necessary and appropriate to avoid destruction of evidence.

In order to assure that your obligations to preserve Data, documents and things will be met, please forward a copy of this Notice to all persons and entities with custodial responsibility for the items referred to in this Notice.

Thank you.

Very truly yours,

MAZANEC, RASKIN & RYDER CO., L.P.A.



Doug Holthus

DPH/ccc