

NO: 2018-CA-0917

**COURT OF APPEAL, FIRST CIRCUIT
STATE OF LOUISIANA**

TYRONE BUTLER

Plaintiff/Appellant

versus

**REVERAND RICHARD SANDBERG and
THE MORAL ALLIANCE OF ST. HELENA**

Defendants/Appellees

**On Appeal from the 21st Judicial District Court
Parish of St. Helena, Case No. 22103 “D”
Honorable Douglas Hughes
Civil Proceeding**

DEFENDANTS-APPELLEES’ ORIGINAL BRIEF

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CONCISE STATEMENT OF THE CASE

While the quality of representation provided to Butler in the lawsuit initiated by his **two** chosen counsel of record and their firm “left much to be desired,” *Austin v. McCotter*, 764 F.2d 1142, 1144 (5th Cir. 1985), neither their ineffective assistance, nor the criminal conviction of **one** of them (but not the other), and not even their failure to comply with legal and ethical requirements, excuse or otherwise provide grounds for Butler’s constant and frivolous assaults on the district court’s reasoned and appropriate judgment. Butler filed his frivolous action to retaliate against Defendants’ constitutionally-protected speech four years ago, and then failed to timely respond to Defendants’ Special Motion to Strike, failed to appear at the hearing on Defendants’ Special Motion to Strike, failed to respond to Defendants’ Motion for Attorney’s Fees, failed to respond to Defendants’ Motion to Set Hearing on Motion for Attorney’s Fees, and failed to appear at the hearing on Defendants’ Motion for Attorney’s Fees. All of these motions and notices were duly served on Butler’s counsel of record at their address of record, and Defendants even exceeded their obligations by providing service at all known addresses of Butler’s counsel. Defendants admittedly did not serve one of Butler’s attorneys – attorney Thiel – at his government-provided housing (*i.e.*, jail), but that is irrelevant given that **Defendants and the Court served Butler’s other counsel of record, DeVonna Ponthieu, who was not disbarred or jailed like Thiel, at the address of record.**

Now, after his frivolous lawsuit was dismissed with prejudice and after failing to respond to numerous motions or appear at numerous hearings, Butler cries out to this Court for relief from a judgment of attorney's fees that the district court was statutorily obligated to impose on him for his reckless disregard for the law. Butler now appeals this case in the same manner he began it, by premising his argument on a fanciful and fictional account of the proceedings below, by blaming everyone (including the district court) for the abysmal failures of his counsel, by ignoring outright the very existence of one of Butler's attorneys, and by submitting an unquestionably frivolous argument to this Court. Neither Butler's fiction nor his arguments have any merit. The judgment of the 21st Judicial District Court should be affirmed, and this Court should award Defendants-Appellees reasonable attorney's fees for responding to Butler's frivolous appeal. *See* La. Code Civ. Proc. art. 2164.

COUNTER STATEMENT OF THE ISSUES PRESENTED

(1) Whether service on counsel of record at the address of record listed in all filings in the district court, and at all known addresses of counsel of record, via actual delivery by commercial carrier comports with due process and Louisiana law.

(2) Whether a party who fails to file any response or other exception in the district court, and fails to timely object to the Final Judgment from which he appeals, can challenge the findings of the district court for the first time on appeal.

STATEMENT OF THE FACTS

A. **Butler's Fictional And Supposedly "Undisputed" Tale Of The Proceedings Below.**

Butler's appeal begins much the same way his entire litigation has progressed, by blaming others for the failure of his chosen counsel to provide adequate representation to him or to follow the district court's and Louisiana Bar's rules governing attorneys. In fact, he premises his entire claim on the absurd notion that the critical facts of this appeal are somehow "**not in dispute.**" (Original Brief of Appellant Tyrone Butler, "Butler Br." at 2) (emphasis added), a misrepresentation he then repeats. (*Id.* at 8). Those purportedly "undisputed" facts are as follows:

(A) No personal or domiciliary service, or service by certified mail, return receipt request, or **delivery by commercial carrier** was ever made on **any attorney of Appellant, Tyrone Butler**, for the August 25, 2017 hearing; (B) No personal or domiciliary service, or service by certified mail return receipt requested, or delivery by commercial carrier, was made on appellant, Tyrone Butler, for the August 25, 2017 hearing; (C) Tyrone Butler, appellant, never received notice of the August 25, 2017 hearing.

(*Id.* at 2, 8) (emphasis added).

If Butler's version of the "undisputed" facts reflected reality, or came even marginally close to the truth of what occurred in the proceedings below, the parties would not be before this Court. Indeed, the allegedly "undisputed" facts that Butler recites to this Court are the **central dispute** this Court is being asked to adjudicate. One need only review Butler's own Issues Presented for Review to determine that

his “undisputed” facts are the heart of the matter before this Court. (*See* Butler Br. at 5). Fatally for Butler’s appeal, however, his fictional narrative crumbles upon even cursory review. As the district court knew when rendering judgment on August 25, 2017 – and as the facts of this case make unequivocally clear: Butler’s counsel of record (though deficient in their pursuit of his patently frivolous claims) received service of all proceedings in this matter, including the briefing and hearing leading up to the Judgment which Butler now decries.

B. The Factual Account Of The Actual Proceedings Below.

1. Butler’s Frivolous Lawsuit, and His Two Chosen Lawyers.

On July 31, 2013, Butler filed a Petition for Damages against Defendants, Reverend Richard Sandberg and the Moral Alliance of St. Helena, seeking to punish them for their constitutionally protected speech and civic activity in publicly opposing a police jury resolution favorable to Butler’s “sexually oriented business” – a euphemistically named “Gentlemen’s Club” that eventually became a brothel or hotbed of illegal drugs and prostitution.¹ (Petition for Damages, at 1).

Critical to this appeal is the actual undisputed fact that **Butler’s Petition was signed by Butler’s chosen counsel, DeVonna Ponthieu.** (*Id.* at 2). Also appearing

¹ *See, e.g., Notorious strip club raided, numerous arrests made in probe over prostitution and drugs*, WBRZ 2 ABC News Report, available at <http://www.wbrz.com/news/notorious-strip-club-raided-numerous-arrests-made-in-probe-over-prostitution-and-drugs/> (last visited August 21, 2018).

on this initial pleading with attorney Ponthieu was her colleague, attorney Michael L. Thiel, and their law firm, The Law Offices of Michael Thiel. (*Id.*) Proving true the old adage that “birds of a feather flock together,” **one** (and only one) of Butler’s two chosen attorneys – Michael Thiel – was arrested during the pendency of this litigation, convicted of crimes, jailed in a federal penitentiary, and apparently disbarred. (Butler Br. at 2, 5, 8). Butler’s appeal repeats Mr. Thiel’s unfortunate fate often, and is premised entirely upon Butler’s half-true argument that Mr. Thiel’s extra-curriculars and resulting incarceration fully deprived Butler of the requisite notice and opportunity to be heard in the case. (*Id.*) Missing completely from Butler’s brief, however, is any mention whatsoever of the also undisputed facts that his second lawyer, Ms. Ponthieu, who actually signed the Petition: (1) was never arrested, convicted, jailed or disbarred for anything, (2) never even sought permission to withdraw from her representation of Butler, let alone actually withdraw, and (3) remains Butler’s counsel of record in the case below **to this very day**.

2. The Dismissal of Butler’s Frivolous Lawsuit.

The Petition contained an erroneous statement of facts, completely lacked evidence to support the claims therein, and was directed entirely at constitutional protected speech and civic activity. (Petition for Damages at 1-2). On September 23, 2013, Defendants filed an Answer and Affirmative Defenses, and simultaneously

filed a Special Motion to Strike and Memorandum in Support. (*See* Defendants’ Special Motion to Strike). A hearing on Defendants’ Special Motion to Strike was set and duly noticed for January 24, 2014. (Notice of Hearing on Defendants’ Special Motion to Strike). **Butler failed to timely respond to Defendants’ Motion to Strike and failed to appear at the January 24th hearing.** (*See* Motion to Reinstate Petition for Damages, ¶2). Therefore, pursuant to La. Code Civ. Proc. art. 971, Defendants asked the district court to rule based on the substantive briefing. The district court granted Defendants’ Special Motion to Strike, and soon thereafter memorialized its ruling in an Order entered on February 5, 2014. (Order Granting Defendants’ Special Motion to Strike at 1).

Not content to let things go, however, on January 30, 2014 Butler filed a Motion to Reinstate his Petition for Damages, blaming his absence on his own counsel’s inability to appear at the hearing, purportedly because of bad weather. (Motion to Reinstate Petition for Damages, ¶2). Defendants filed their Response in Opposition to Butler’s Motion to Reinstate the Petition for Damages on February 10, 2014, to which Butler replied. (*See* Defendants Renewed Special Motion to Strike). On May 14, 2014, after Butler filed an opposition to Defendants’ Special Motion to Strike, the trial court struck Butler’s opposition as “grossly untimely” and reaffirmed that Defendants’ Special Motion to Strike was granted, dismissing

Butler's claims with prejudice. (*See* Order Granting Defendants' Renewed Special Motion to Strike at 1).

3. Defendants-Appellees' Fee Petition and the Hearing Notice Were Properly Served on Butler's Counsel of Record.

On September 20, 2016, Defendants submitted a Motion for Attorney's Fees and Costs pursuant to the mandatory provision of La. Code Civ. Proc. art. 971.² (*See* Defendants' Motion for Attorney's Fees and Costs). Defendants' Motion was supported by detailed billing records and supporting documentation. (*See* Defendants' Motion for Attorney's Fees and Costs, Affidavit of J. Michael Johnson in Support of Motion for Attorney's Fees, and Affidavit of Horatio G. Mihet in Support of Motion for Attorney's Fees with Exhibits A-B). All told, Defendants submitted over **65 pages** of time entries detailing the work that their counsel were required to perform, as well as several affidavits demonstrating the reasonableness of the work performed and hourly rates claimed. (*Id.*).

Butler's counsel of record – including attorney Ponthieu – were served with Defendants' Motion for Attorney's Fees at the address of record listed on all pleadings filed by Butler. (Declaration of Daniel J. Schmid in Support of Response Opposing Butler's Motion for New Trial, "Schmid Decl.," ¶4 and Ex A

² La. Code Civ. P. Art. 971(B) provides that a Defendant prevailing under a special motion to strike "**shall** be entitled to recover reasonable attorney's fees and costs." *Id.* (emphasis added).

thereto). Though not required, out of an abundance of caution, Defendants also served Butler's counsel of record – Ms. Ponthieu – at an address that was listed on the Louisiana Bar's website. (Schmid Decl. ¶5 and Ex. B).

On April 4, 2017, Defendants submitted a motion to set a hearing on their fee petition, which was officially filed by the Court on May 19, 2017. (Schmid Decl. Ex. C). That same day, **Defendants also served a copy of the motion to set a hearing on Butler's counsel of record via actual delivery by commercial carrier.** (Schmid Decl. ¶ 6 and Ex D). On May 23, 2017, this district court granted Defendants' Motion and set a hearing for August 25, 2017. (*See* Notice of Hearing on Defendants' Motion for Attorney's Fees). On June 8, 2017, **the district court served notice on all counsel of record at all addresses of record** informing counsel that the Court had set a hearing on Defendants' Motion for Attorney's Fees and Costs for August 25, 2017. (Schmid Decl. ¶8 and Ex. E); (*see also* Reasons for Judgment Denying New Trial at 1).

4. Butler's Default on the Fee Petition.

Pursuant to La. Dist. Ct. Rule 9.9(c), Butler was required to submit his opposition memorandum at least eight (8) calendar days before the scheduled hearing. *Id.* As before, Butler again failed to submit any opposition whatsoever to Defendants' Motion.

The district court heard argument on Defendants’ Motion for Attorney’s Fees and Costs on August 25, 2017. **Consistent with what had occurred at every other hearing in this litigation that Butler himself commenced, neither Butler nor his counsel of record appeared at the hearing.** At that hearing, the district court granted Defendants’ Motion for Attorney’s Fees and awarded Defendants \$55,551.85 in fees and costs. (Notice of Final Judgment, August 25, 2017). Final Judgment was signed at that hearing, and the clerk’s office issued its Notice of Judgment, which was signed and mailed to all counsel of record, including Butler’s counsel of record, **on August 30, 2017.** (Schmid Decl. Ex. F).

5. Butler’s Untimely Motion for New Trial.

On September 13, 2017, Butler belatedly filed a motion for new trial with the district court. (Butler’s Motion for New Trial). Butler complained that he never received notice of the August 25, 2017 hearing or of Defendants’ Motion for Attorney’s Fees. (*Id.* at ¶ 7). He requested that the district court grant him a new trial because he was allegedly deprived of due process. (*Id.* ¶ 8).

Yet again, however, Butler’s frivolous motion for a new trial was – as all his other responses had been to that point in the litigation – “grossly untimely.” (*See* Defendants’ Response in Opposition to Motion for New Trial at 4-6). The district court, being without authority to entertain an untimely motion for new trial,

denied Butler's motion. (*See* Order Denying Motion for New Trial at 1). Butler has now appealed to this Court.

SUMMARY OF THE ARGUMENT

Butler received legally sufficient service of all motions and notices in the district court, including Defendants' Motion for Attorney's Fees, Defendants' Motion for a Hearing on Defendants' Motion for Attorney's Fees, and the district court's Notice of Hearing. All motions and notices were duly served on counsel of record for Butler at the address of record in the district court. Under binding Louisiana law, service on counsel of record is *per se* service on a party, and constitutes valid service. Butler's contention that he received no notice of the August 25, 2017 hearing or the August 25, 2017 Final Judgment is utterly without merit.

The district court acted well within its discretion in awarding Defendants the reasonable attorney's fee to which they were statutorily entitled by prevailing on their Special Motion to Strike. Butler failed to file any exception to Defendants' Motion for Attorney's Fees, failed to appear and object at the hearing on Defendants' Motion for Attorney's Fees, and failed to file a timely motion for new trial challenging the award of attorney's fees to Defendants. Butler is therefore precluded from raising this issue for the first time on appeal.

In any event, the district court's award of attorney's fees to Defendants was based solely on their counsel's work on their two Special Motions to Strike, was

supported by substantial documentary evidence and testimony, and was therefore reasonable.

LEGAL ARGUMENT

The unchanging fact of this litigation is that attorneys Michael Thiel and Devonna Ponthieu were, and to this day still are, Butler's counsel of record. Only after August 25, 2017 did Butler's appellate counsel, attorney Carter, **join** Butler's other **co-counsel** in these proceedings. However, neither Thiel nor Ponthieu have ever – **not even to this day** – filed a motion to withdraw as counsel. While Butler proffers what might perhaps be a reasonable excuse for Thiel's inability to provide continued representation (*i.e.*, he remains incarcerated), he has not and cannot provide any rationale for Ponthieu. Attorney Ponthieu entered an appearance for Butler, signed every pleading in the district court prior to the Final Judgment, and has never withdrawn from her representation of Butler.

Service of motions and notices upon counsel of record at the address of record with the district court is legally sufficient and satisfies due process. This Court cannot reverse the judgment of the district court on the basis of counsel's failure to comply with binding legal obligations towards this Court, the district court, the Louisiana Bar, their clients, and all adverse parties. Butler's appeal is thus utterly devoid of merit, and the district court's judgment must be affirmed.

I. BUTLER RECEIVED LEGALLY SUFFICIENT NOTICE OF THE FEE PETITION AND AUGUST 25, 2017 HEARING, AND SUCH NOTICE SATISFIES DUE PROCESS.

A. Michael Thiel and DeVonna Ponthieu Are Butler's Counsel of Record and Have Not Moved For or Been Granted Permission to Withdraw.

“Filing the initial petition or first responsive pleading constitutes enrollment, and no further notice of enrollment is needed.” La. Dist. Ct. Rule 9.12 cmt. An enrolled attorney thus becomes counsel of record. *Id.* As counsel of record, “[e]nrolled attorneys have, apart from their own interests, continuing legal and ethical duties to their clients, to all adverse parties, and the court.” La. Dist. Ct. Rule 9.13. Those requirements include remaining counsel of record until the matter has concluded or a court has granted permission to withdraw. *See, e.g.,* La. Dist. Ct. Rule 9.13(b) (no attorney can withdraw from representation without submitting a formal motion to withdraw to the presiding judge); La. Rule of Prof’l Conduct 1.16(c) (“A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating representation.”). Indeed, until such time as the court grants a withdrawing attorney’s motion to withdraw as counsel of record, **he or she remains counsel of record in the case** with continuing obligations to the client, the court, and adverse parties. *See, e.g., Smith v. LeBlanc*, 966 So.2d 66, 75 (La. App. 1 Cir. 2007); *D’Aubin v. Pop’s RV Outlet, Inc.*, 138 So.3d 655 (La. App. 1 Cir. 2014) (rules relating to withdrawing as counsel of record are mandatory and must be

complied with by all counsel of record). Thus, as Michael Thiel and DeVonna Ponthieu have neither moved for nor been granted permission to withdraw, they remain counsel of record for Butler in this matter to this day.

B. Service on Butler’s Counsel of Record Was Legally Sufficient and Satisfied Due Process.

Butler contends that “[m]ailing a notice to the address of a dis-barred attorney who is incarcerated shocks the conscience as to being due process.” (Butler Br. at 12). What actually shocks the conscience, however, is the effrontery with which Butler blatantly misrepresents the factual record and his glaring omission of key facts in the record. Butler’s lack of candor to this tribunal is astounding. He complains to this Court that service on his dis-barred attorney living in government housing (*i.e.*, prison) shocked his conscience. And yet his conscience has no qualms about premising this entire appeal on a half-truth.

As Benjamin Franklin taught us, however, a half truth is still a whole lie.³ **Service was indisputably also made on attorney Ponthieu, who is Butler’s counsel of record, at her address of record and at an additional address Defendants found on their own for Ponthieu.** Butler does not claim that Ponthieu was dis-barred or incarcerated. In fact, he says absolutely nothing about Ponthieu.

³ *'Half a truth is often a great lie': Did Benjamin Franklin really say that?* PolitiFact, available at <https://www.politifact.com/truth-o-meter/article/2013/dec/17/did-benjamin-franklin-say-half-truth-often-great-l/> (last visited August 21, 2018).

He completely ignores her existence. Butler's obfuscation notwithstanding, his contention that his counsel never received notice of the hearing or the judgment is demonstrably fallacious.

As this Court has unequivocally held: “[i]t is well settled that notice to an attorney of record is notice to the client.” *Jones v. Rodrigue*, 771 So.2d 275, 281 (La. App. 1 Cir. 2000) (emphasis added); *Grantham v. Dawson*, 666 So.2d 1241, 1245 (La. App. 2 Cir. 1996) (same). “To meet [due process] requirements, notice to counsel of record must be effected under circumstances from which it can at least be reasonably presumed that notice resulting from such service will be communicated to the litigant.” *Rawley v. Rawley*, 357 So.2d 286, 289 (La. App. 1 Cir. 1978). The natural corollary to this rule is that service effectuated at the address of record for counsel of record satisfies due process and constitutes valid service.

In *Jones*, the appellant sought reversal based on the allegation that the trial court failed to personally notify him of the judgment. *Jones*, 771 So.2d at 281. But, “the record [did] not disclose any notice to the court that appellant was no longer being represented by Mr. Johnson at the time the notice of final judgment was sent. Thus, **the fact that the appellant failed to receive personal notice of the final judgment cannot be attributed to the trial court.**” *Id.* (emphasis added).

In *Grantham*, the defendants complained that they did not receive proper notice of a motion. *Grantham*, 666 So.2d at 1245. But, the court noted that

defendants could “point to no part of the record, and we find none, indicating that the health care provider knew that Dawson no longer represented the parents at the time the extension motion was filed and acted upon by the judge.” *Id.* The Court went so far as to say that the moving party’s attorney “**had no obligation to determine who actually represented the Granthams at that instant.**” *Id.* (emphasis added). The Court found that service was effective and noted that the attorney receiving the notice has a duty to inform the client of such a motion, even if the representation has been terminated.

Here, the same is true. Both attorneys Thiel and Ponthieu indicated to the district court and to all parties that they were counsel of record for Butler. In the Petition for Damages filed by Butler on July 31, 2013, Ponthieu signed the initial pleading as counsel of record. Ponthieu indicated to the district court and to all parties that her correct mailing address was 200 Oak Street, Hammond, Louisiana 70403. On February 3, 2014, in the last pleading submitted to the district court by Butler prior to Defendants’ Motion for Attorney’s Fees and Motion for a Hearing, Ponthieu moved to Reinstate the Petition for Damages under the letterhead indicating that her address of record remained 200 Oak Street, Hammond, Louisiana 70403. **At no time, and in no pleading filed with the district court, did Ponthieu seek to withdraw as counsel or otherwise indicate that her address of record had changed.** Thus, she was and remains counsel of record, and her address of

record for purposes of service by the Court and Defendants was always, and remains to this day, 200 Oak Street, Hammond, Louisiana 70403. This is the address where Defendants-Appellee served her with the fee motion and the motion for hearing, and this is the address where the trial court served her with the Notice of the August 25, 2017 hearing.

The legal and professional woes of attorney Thiel, while certainly troubling, are of no consequence here, because **he did not alone represent Butler**. In fact, attorney Thiel himself never signed any pleading submitted to the district court. It was always Ponthieu who signed Butler's pleadings below (on behalf of herself and the firm). There is no allegation, nor could there be, that counsel of record Ponthieu is incarcerated or was otherwise unable to represent Butler as counsel of record. Proper service was indisputably made on Ponthieu at her address of record. (*See* Schmid Decl. Ex. E). Defendants also went the extra mile, out of an abundance of caution, to serve her with copies of the motion for attorney's fees and the motion for hearing at an additional address unknown to the official record in the district court. (Schmid Decl. Exs. B, C, D). Ponthieu thus had legally sufficient notice, and that alone constitutes legally sufficient notice to Butler. *Jones*, 771 So.2d at 281.

Ponthieu has not moved to withdraw in this matter, nor has she been given permission to withdraw. As such, she is still Butler's counsel of record. Service on her, at her address of record, thus constitutes legally sufficient service on Butler. *See*

Smith v. LeBlanc, 966 So.2d 66, 75 (La. App. 1 Cir. 2007) (if an attorney's motion to withdraw is not signed and approved by the court, he is still attorney of record and **service is effectual by mailing a copy to his address of record**); *id.* ("until such time as his motion to withdraw as counsel was acted on by the trial court, [counsel of record] has a duty to his client to notify her about the [pleading]."). Even if Butler is to be believed that attorney Ponthieu apparently failed to comply with her ethical duties to him, he might have a claim against her but that would not render service ineffectual in any way. The district court's service of the notice of hearing on the counsel of record at the address of record is likewise legally effective and sufficient.

The only cases where service was not considered effective due to the clerk mailing it to the wrong address involved matters where the mistaken address was **not** counsel's fault. *See, e.g., JCM Const. Co., Inc. v. Orleans Parish Sch. Bd.*, 860 So.2d 610 (La. App. 4 Cir. 2003) (service not effective where service to counsel of record was sent to the wrong address through no fault of counsel of record); *Rawley*, 357 So.2d at 289 (service on counsel of record was insufficient, but **only because "the record establishe[d] beyond doubt that service was made on counsel known by Appellees attorney to have previously withdrawn."**).

Here, just as in *Jones*, any alleged error or deficiency of service "cannot be attributed to the trial court." *Jones*, 771 So.2d at 281. Nor can it be attributed to

Defendants' counsel, as they have no legal obligation to ensure that the address of record for Butler's counsel is correct. *Grantham*, 666 So.2d at 1245. And, as the record demonstrates, Defendants' counsel even went above and beyond to ensure that all pleadings were served on Ponthieu by serving such pleadings via actual delivery by commercial carrier to all known addresses for Ponthieu, not just the address of record filed in the district court. The address of record was where the district court and Defendants could "reasonably presume[] that notice resulting from such service will be communicated to the litigant." *Rawley*, 357 So.2d at 289. It thus satisfied due process.

Butler's recourse lies not with this Court and not with Defendants, but with his ineffectual counsel of record, if they indeed failed to notify him of the fee petition and the hearing. Both attorneys Thiel and Ponthieu have legal and ethical obligations to keep the court and opposing parties reasonably apprised of the address of record where service can be effectuated. *See, e.g.*, La. Code Civ. Proc. Ann. art. 863(A) ("Every pleading of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated."); La. Dist. Ct. Rule 9.7 ("Each pleading shall be signed by an attorney or by the self-represented party. The **correct mailing address**, street address, phone number, facsimile number, and email address, if any, of the person signing the pleading, and in the case of an attorney, the Louisiana Bar Identification Number, **shall appear below the**

signature.” (emphasis added)); La. Rule Prof’l Conduct 1.1(c) (A lawyer is required to comply with all of the requirements of the Supreme Court’s rules, including “timely notification of change of address.”). The purpose of maintaining an address of record is to inform the court where service can be effectuated. As such, under Article 863, “[c]ounsel is under an obligation to keep the court informed as to his correct address.” *Wesley v. Moon*, 442 So.2d 752, 53 (La. App. 1 Cir. 1983). Failure to do so does not negate otherwise effective service. *Cf. JCM Const.*, 860 So.2d 610.

Butler’s counsel received service at the address of record. As it is black letter law and binding precedent in this circuit that “notice to an attorney of record is notice to the client,” *Jones*, 771 So.2d at 281, Butler received legally sufficient notice. His due process rights were thus not violated, and his appeal is therefore frivolous.

II. THE DISTRICT COURT’S AWARD OF ATTORNEY’S FEES TO DEFENDANTS FOR THEIR DEFENSE AGAINST A SEEMINGLY ENDLESS BARRAGE OF FRIVOLOUS FILINGS BY BUTLER WAS REASONABLE.

In his seemingly endless pursuit of avoiding the consequences of filing an utterly frivolous action against Defendants, Butler once again seeks relief from the attorney’s fees resulting from his ill-advised efforts at silencing Defendants’ constitutionally-protected speech and civic activities. Butler is doing nothing more than “thumbing his nose at the trial court with each and every additional pleading he files.” *Cox v. O’Brien*, 147 So.3d 809, 815 (La. App. 2 Cir. 2014). Perhaps sensing that his blatant misrepresentation of the supposedly “undisputed” record would be

laid bare, Butler retreats to a position that, should this Court find service in the proceedings below legally sufficient, the award was nevertheless unreasonable and cannot be sustained. This argument fails for many reasons: (1) Butler failed to timely object or file any exceptions in the district court, and has thus waived such objections and cannot raise them for the first time on appeal; (2) the district court's award of attorney's fees was supported by substantial documentation and sworn testimony, and was thus well within the proper exercise of its discretion; and (3) Butler even now fails to identify a single time entry which he claims was unreasonably awarded to Defendants, or to otherwise adduce any evidence to support his complaint.

A. By Failing To Respond To Defendants' Motion For Attorney's Fees In The District Court, Butler Waived His Objection.

It is black letter law that a party's failure to timely object or file an exception to a motion in the trial court renders him unable to assert such an objection on appeal. *See, e.g., State v. Holmes*, 5 So.3d 42, 88 (La. 2008) (noting the "settled rule that a new basis for an objection may not be urged for the first time on appeal"); *Bailey v. Bolton*, 755 So.2d 254, (La. App. 1 Cir. 1998) (failure to assert timely exception in the district court waives argument and thus a party "cannot argue this alleged error for the first time on appeal"); *Scarborough v. O.K. Guard Dogs*, 879 So.2d 239 (La. App. 1 Cir. 2004) (judgment granted by the trial court cannot be reduced on appeal where the party fails to timely file its objections with the trial court, because the alleged error is waived on appeal); *In re Lomm*, 195 So.2d 416, (La. App. 4 Cir.

1967) (award of attorney's fees cannot be reduced or otherwise reversed where appellant failed to timely file an exception to the motion in the trial court).

Here, Butler seeks to have this Court reverse an award of attorney's fees flowing from a motion to which Butler never responded with any exception, objection or otherwise. Butler's counsel of record was served with legally sufficient notice of the motion for attorney's fees, served with legally sufficient notice of Defendants' motion for a hearing on their motion for attorney's fees, and served with legally sufficient notice of the hearing on Defendants' motion. *See supra* Section I. Despite receiving legally sufficient notice of all such motions and notices, Butler failed to file any exception whatsoever in the trial court. Having failed to timely object, Butler has waived any objection to Defendants' motion for attorney's fees and the reasonableness of the award.

Should Butler contend that he did object upon the district court entering the Final Judgment awarding attorney's fees, even that contention is without merit. The district court entered Final Judgment on August 25, 2017, awarding Defendants the challenged attorney's fees. Notice of that judgment was served on all counsel of record on August 30, 2017. (*See* Notice of Final Judgment). Thus, a motion for new trial was required to be filed within seven days of the challenged judgment. *See* La. Code Civ. Proc. Ann. art. 1974 ("The delay for applying for a new trial shall be seven days."). If not filed within that seven-day period, the motion for a new trial is

of no legal consequence. Indeed, motions for new trial are of no legal effect if not filed within the mandatory seven-day delay period. *See, e.g., Bodenheimer v. Bodenheimer*, 709 So.2d 306, 307 (La. App. 5 Cir. 1998) (“In order to be effective, the motion for new trial **must be filed timely.**” (emphasis added)).

As the Final Judgment was issued on August 25, 2017 and legally noticed on August 30, 2017, Butler was required to file his motion for new trial by **September 11, 2017**. This deadline does not include Saturdays, Sundays, or Labor Day, as all represent legal holidays excluded by the statute. *See Williams v. Atmos Energy Corp.*, 42 So.3d 409, 411 n.2 (La. App. 5 Cir. 2010) (“In counting the seven-day delay period to file an application for new trial, Saturdays and Sundays are legal holidays and are not counted.”). However, Butler did not file his motion for new trial until September 13, 2017, **two days after the delay period had expired**. His motion was therefore fatally untimely and could not be entertained by the district court. Indeed, because Butler failed to file his motion for new trial within the mandatory seven-day period imposed by the plain language of Article 1974, the district court was divested of authority to entertain his motion. *See, e.g., Smith v. Allied Waste Indus, Inc.*, 169 So.3d 385, 386 (La. App. 1 Cir. 2015) (“The actions of the trial court cannot circumvent the clear deadlines established by law.”); *O.M.E.R. S.p.A. v. Vendredi II*, 560 So.2d 34, 38 (La. App. 4 Cir. 1990) (“In the absence of a timely application for a new trial, the trial court cannot alter the substance of its judgment

after the time allowed for the new trial motion.”); *Zeigler v. Ziegler*, 420 So.2d 1342, 1344 (La. App. 3 Cir. 1982) (same); *Mitchell v. Louisiana Power & Light Co.*, 380 So.2d 743, 745 (La. App. 4 Cir. 1980) (“the trial court had no authority to grant a new trial or to recall, set aside or modify the judgment rendered on November 8, 1973, since the application for a new trial was not timely filed”).

Thus, because Butler did not file any timely exception to Defendants’ Motion for Attorney’s Fees and did not timely file his motion for new trial objecting to the district court’s Final Judgment, he has waived any objection to that award in this Court. His appeal should be rejected and the order of the district court affirmed.

B. The District Court Has Broad Discretion In Setting The Amount Of Attorney’s Fees.

Even if Butler had not waived his arguments as to the reasonableness of the fees awarded, and even if he could now be heard to complain (for the first time), the trial court’s award was reasonable and well within its wide discretion to determine the amount of the mandatory fee award.

The district court was statutorily obligated to award Defendants their reasonable attorney’s fees and costs. La. Code Civ. P. Art. 971(B). The trial court is given wide discretion with respect to what constitutes a reasonable amount. *See Kem Search, Inc. v. Sheffield*, 434 So.2d 1067, 1070 (La. 1983). As this Court has unequivocally held, “[t]he trial court is vested with great discretion in arriving at an award of attorney’s fees.” *Deutsch, Kerrigan & Stiles v. Fagan*, 665 So.2d 1316,

1323 (La. App. 1 Cir. 1995); *Monet v. Lyles*, 638 So.2d 727, (La. App. 1 Cir. 1994) (same); *see also Filson v. Windsor Court Hotel*, 990 So.2d 63, 67 (La. App. 4 Cir. 2008) (same). Additionally, “[t]he exercise of this discretion will not be reversed on appeal without a showing of clear abuse of discretion.” *Deutsch*, 665 So.2d at 1323 (emphasis added).

Despite the vast discretion given to the district court below, Butler now contends that the district court was without discretion to award the amount Defendants painstakingly documented with detailed billing records. (Butler Br. at 13-14). Butler’s only support for that contention is that Defendants can only recover fees associated with the special motion to strike and not with any other parts of the litigation. (*Id.* at 14). Indeed, in Butler’s own authority, the court held that a reduction in the amount of attorney’s fees was warranted, **but only as to those fees associated with a different aspect of the litigation, i.e., a venue challenge.** *Delta Chem. Corp. v. Lynch*, 979 So.2d 579, 588 (La. App. 4 Cir. 2008). It did not indicate or even suggest, as Butler does here, that the amount of fees associated with the special motion to strike should be reduced. *Id.* Here, Butler has not identified a single time entry included in the Court’s award which Butler contends to have been devoted to anything other than the motion to strike. Butler’s factual failure is fatal to his argument.

Butler's failure is not accidental. As the record before this Court plainly indicates, Defendants' counsel spent time on no other issues in their representation of Defendants. Defendants' counsel was forced to respond to a frivolous complaint filed by Butler, expend time researching and presenting a special motion to strike under Article 971, and forced to travel from out of state to a January 24, 2014 hearing to present their motion to strike. **All of that time was spent on the special motion to strike.** As noted above, neither Butler nor his counsel bothered to show up at the scheduled hearing on Defendants' special motion to strike, and Defendants' motion was granted.

Seemingly not deterred, Butler again sought to pursue his frivolous claim by filing a motion to reinstate his petition for damages on February 10, 2014. Again, Defendants were forced to expend effort to file a **second** motion to strike, submit briefing on that motion, and submit further arguments in support of that motion. On May 14, 2014, the district court again granted Defendants' motion to strike. Thus, all efforts in the proceedings below were directly tied to the special motions to strike.

More problematic for Butler's contention, however, is that in *Delta Chemical* the appellate court reversed the district court's award of attorney's fees because the party requesting such fees provided a "completely inadequate" record from which the court could reasonably determine what efforts were expended only on the motion to strike. *Delta Chem.*, 979 So.2d at 588. In the proceedings below, the record

presented to the district court was the complete opposite. Indeed, counsel provided over **65 pages** of detailed billing records, detailed affidavits supporting their rates and experience, and documented all expenses incurred in the representation. *See infra* Section II.C. Thus, Butler’s attempt to tarnish the discretion exercised by the district court below is – as all his other arguments heretofore in this matter – frivolous.

The district court had broad discretion to determine the amount of the fees deemed reasonable, had ample evidence upon which to make that determination, and found sufficient documentation to justify the award it issued to Defendants. The district court was well within its discretion to reach such a conclusion, and its award should be upheld in full.

C. The District Court’s Award Of Statutorily Required Attorney’s Fees Was Reasonable.

According to this Court, the fundamental measure of attorneys’ fees is reasonableness, considering the factors set forth by Rule 1.5 of the Rules of Professional Conduct. *See Mayeur v. Campbell*, 666 So.2d 366, 370 (La. App. 1 Cir. 1995). Rule. 1.5 states:

The factors to be considered in determining the reasonableness of a fee include the following: (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the

results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services.

See Rivet v. State, Dep't of Transp. & Dev., 680 So.2d 1154, 1161-62 (La. 1996) (citing Art. 16 La. Rules of Prof'l Conduct R. 1.5). The Louisiana Supreme Court has noted additional factors that it considers in determining the reasonableness of attorney's fees:

The factors to be considered by the trial court in making an award of attorney's fees are: (1) the ultimate result obtained; (2) the responsibility incurred; (3) the importance of the litigation; (4) the amount of money involved; (5) the extent and character of the work performed; (6) the legal knowledge, attainment, and skill of the attorneys; (7) the number of appearances involved; (8) the intricacies of the facts involved; (9) the diligence and skill of counsel; and (10) the court's own knowledge.

Id. at 1161.

Courts are not required to give weight to any one factor; rather, they must consider each factor in light of the specifics of each case. *See, e.g., Brandner v. Staf-Rath, L.L.C.*, 102 So.3d 186, 189 (La. App. 5 Cir. 2012), *writ denied*, 102 So.3d 62 (La. 2012). In this case, the factors all support the reasonableness of Defendants' attorney fees. Under the relevant factors, \$55,551.85 was a reasonable attorney's fee, and the district court's decision to award those fees and costs should be affirmed.

1. Defendants’ Attorneys’ Fees Calculation is Presumed Reasonable.

It must be noted at the outset that Butler presented no evidence below, and thus has no evidence here, from which to argue that either the hourly rates claimed by and awarded to Defendants’ attorneys, or that any of the numerous specific time entries submitted and awarded, were unreasonable. Even now Butler wholly fails to identify a single time entry which he claims was unreasonably awarded to Defendants, or to otherwise adduce any evidence to support his complaint that the fees and costs awarded were excessive. This is reason alone to reject Butler’s belated attack. *See, e.g., Delta Land & Investments, LLC v. Hunter Estates, Inc.*, 211 So.3d 1255, 1261 (La. App. 2 Cir. 2017) (party alleging fee award is excessive bears burden of proof to “demonstrate by a preponderance of the evidence that the fee is clearly excessive”). Butler indisputably fails to meet that burden.

Beyond Butler’s evidentiary failures, Defendants’ claimed fees were supported by the extensive record and reasonable. The most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate.” *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983); *see also Covington v. McNeese State Univ.*, 118 So.2d 343, 348 (La. 2013) (same). The product of this multiplication constitutes the “lodestar” amount. *Pennsylvania v. Delaware Valley Citizens’ Council for Clean Air*, 478 U.S. 546, 563 (1985). “A ‘strong presumption’ exists that the lodestar

figure represents a ‘reasonable fee.’” *Id.* at 351 (quoting *Delaware Valley Citizens*, 478 U.S. at 351) (emphasis added); *see also City of Burlington v. Dague*, 505 U.S. 557, 562 (1992) (“We have established a strong presumption that the lodestar represents the ‘reasonable’ fee.”). Defendants’ fee petition was based on this method and the district court was therefore required to presume it was reasonable as calculated.

Up to the point that Defendants’ submitted their motion for attorney’s fees, Defendants’ counsel devoted 176.3 hours to defending against Plaintiff’s frivolous lawsuit, and prevailed on the merits—**twice**. The breakdown of Defendants’ fee calculation to that point was as follows:

<u>Attorney</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Horatio Mihet	6.9	\$325	\$2,242.50
Mandi Campbell	94.1	\$225	\$21,172.50
Stephen M. Crampton	16.10	\$400	\$6,440.00
Daniel J. Schmid	37.3	\$180	\$6,714.00
Richard L. Mast	6.2	\$200	\$1,240.00
Legal Assistant	15.7	\$80	\$1,256.00
Combined	176.3		\$39,065.00

(*See* Exhibit A to Affidavit of Horatio G. Mihet in Support of Defendants’ Motion for Attorney’s Fees, “Mihet Fee Aff.”).

Defendants provided detailed time entries, personally and contemporaneously recorded by their attorneys and legal staff, which detail the specific tasks performed

by each timekeeper. Detailed billing records were provided to the district court as evidence of Defendants' lodestar calculation. (*See* Mihet Fee Aff., Ex. A).

In the time leading up to Defendants' hearing on their motion for attorney's fees, counsel also expended 56.1 hours on behalf of Defendants. (*See* Supplemental Affidavit of Horatio G. Mihet in Support of Motion for Attorney's Fees, "Mihet Supp. Aff." ¶8). Defendants again presented detailed billing and time records to the district court to support their requested fees, noting that Mr. Mihet had expended an additional 18.1 hours, that Mr. Schmid has expended an additional 36.1 hours, and that their legal assistant had devoted 1.9 hours. (*See id.* ¶ 8; *see also* Mihet Supp. Aff. Exhibit A). Using the same rates mentioned above, Defendants submitted a supplemental request demonstrating that Defendants expended an additional \$12,535.50 in attorney's fees. Thus, as a result of Butler's frivolous action, Defendants incurred \$51,600.50 in attorney's fees.

Additionally, the rates used in calculating the lodestar reflected in Defendants' fee petition were, and are, reasonable, and as Attorney Robertson testified to the district court via sworn affidavit, they are "well within the range of fees charged by attorneys in firms with significant national experience in First Amendment and anti-SLAPP litigation." (*See*, Affidavit of J. Michael Johnson in Support of Defendants' Motion for Attorney's Fees, "Johnson Aff." at ¶¶ 7-11). A reasonable rate for an attorney with Mr. Mihet's experience is \$325 per hour. (*Id.* ¶ 8). A reasonable rate

for Mr. Crampton is \$400 per hour. (*Id.* ¶ 7). A reasonable rate for Ms. Campbell is \$225 per hour. (*Id.* ¶ 9). A reasonable rate for Mr. Mast is \$200 per hour. (*Id.* ¶ 10). A reasonable rate for Mr. Schmid is \$180 per hour. (*Id.* ¶ 11). Butler presented no evidence below, and thus has no basis here, to argue otherwise.

2. The Time Spent By Defendants' Counsel Was Reasonable.

“Counsel for the prevailing party should make a good faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary, just as a lawyer in private practice is ethically obligated to exclude such hours from his fee submission.” *Hensley*, 461 U.S. at 434. But, “where a [l]itigant has obtained excellent results, his attorney should recover a fully compensatory fee. Normally this will encompass **all hours reasonably expended on the litigation.**” *Id.* (emphasis added). Recovery for all hours is particularly appropriate where, as here, a party has obtained an excellent result on all claims brought against him. *See, e.g., id.* at 436 (“the most critical factor . . . is the degree of success obtained”); *Farrar v. Hobby*, 506 U.S. 103, 114 (1992) (same); *Albright v. Good Shepherd Hosp.*, 901 F.2d 438, 440 (5th Cir. 1990) (“Plaintiffs obtaining excellent results are entitled to recover full compensation, even if they do not prevail on every contention.”).

Here, Defendants prevailed on every contention and succeeded in having Butler’s entire case dismissed -- **twice**. As such, Defendants were certainly entitled to be awarded the entirety of the fee requested in their motion for attorney’s fees.

Butler filed his Complaint alleging that Defendants had defamed him through their constitutionally protected speech and civic activism. Defendants were required to bring two separate Motions to Strike due to the frivolous nature of Butler's claims, Butler's failure to prosecute his claims, and because of Butler's failure to even appear at the hearing. Additionally, throughout this litigation, Defendants' counsel worked to quickly and efficiently resolve the issues presented from Butler's frivolous claims. (*See, e.g.*, Johnson Aff. ¶ 6; Mihet Fee Aff. ¶ 9).

Moreover, Defendants' counsel exercised significant discretion and good judgment in their billing, **voluntarily excluding from their fee request a substantial portion of the attorney's fees caused by Butler's frivolous lawsuit.** In particular, Defendants' discretionary reductions totaled **28.2 hours**. Those substantial voluntary reductions were also presented to the district court as demonstration of the reasonableness of Defendants' request. (*See* Mihet Fee Aff. Ex. A). All of the remaining time that Defendants included in their fee request was eminently reasonable. As such, the fees requested in Defendants' Motion were, and are, reasonable, and the district court was well within its discretion to award as it did.

3. The Experience of Defendants' Counsel Warranted Defendants' Fee Request.

A reasonable attorney's fee is determined by the facts of an individual case. *Filson v. Windsor Court Hotel*, 990 So.2d 63, 67 (La. App. 4 Cir. 2008) (citing

Gottsegen v. Diagnostic Imaging Servs., 672 So.2d 940, 943 (La. App. 5 Cir. 1996)).

This case involved complex questions of constitutional law and First Amendment rights. In the jurisdiction of the district court where Butler commenced his frivolous lawsuit, there are very few attorneys who practice such complex constitutional litigation and even fewer who practice in the complex area of anti-SLAPP litigation on behalf of defendants. (See Johnson Aff. ¶ 5). Defendants' legal team was highly experienced in litigation concerning constitutional rights, particularly the First Amendment. (See Mihet Fee Aff. ¶ 7). In determining the reasonableness of Defendants' attorney's fees, the expertise and skill of Defendants' attorneys is certainly relevant and warrant the attorney's fees requested in this Motion. See, e.g., *State Dep't of Transp. & Dev. v. Williamson*, 597 So.2d 439 (La. 1992) (holding that an award of \$175,000 is appropriate when the "attorneys involved in [the] case were experienced attorneys who were very diligent and skillful in handling the case").

In the proceedings below, Defendants' counsel worked skillfully and diligently to obtain the best possible result for Defendants. (See, e.g., Johnson Aff. ¶ 6; Mihet Fee Aff. ¶ 9). Indeed, the experience of Defendants' counsel in First Amendment matters and in anti-SLAPP statutes was important to adequately protect Defendants' rights. Such expertise was necessary in this case, where First Amendment rights were at risk despite the fact that the petition was couched in terms of a state law claim for defamation. Counsel for Defendants invested substantial time

and skill in researching and drafting Defendants’ special motion to strike and supporting memorandum, and, because of Butler’s failure to prosecute his claims or defend against the Motion to Strike the first time, Defendants’ counsel **were forced to pursue the motion to strike on two separate occasions**. Thus, Butler’s own conduct, and that of his counsel of record in the proceedings below, necessitated the work that Defendants’ counsel were required to expend in the proceeding and further bolsters the reasonableness of their request.

The complexity of the legal issues presented by Butler’s claims involving the most cherished fundamental liberties masquerading as state tort claims further supported the reasonableness of Defendant’s legal fees. *See Miller v. Ecung*, 676 So.2d 656, 658-59 (La. App. Ct. 1996) (increasing the amount of attorney’s fees awarded to above that requested in the fee motion because, “[b]eyond the short time spent in the courtroom, the record shows well-drafted pleadings, pre-trial and post-trial memoranda”). In the proceedings below, Defendants’ motions and memoranda reflected their counsel’s substantial skill and expertise in significant constitutional issues relevant to this case. In addition, cases in which the constitutional rights of individuals and groups are threatened are not regularly heard in St. Helena Parish, but Defendants’ counsel possessed the requisite skill and expertise to expose the sham inherent in Butler’s claims and present a proper defense in this matter. As such, the fees requested by Defendants were, and are, reasonable.

4. The Non-Taxable Costs Awarded Were Reasonable.

“[A] prevailing party on a special motion to strike shall be awarded reasonable attorney fees and **costs**.” La. Code Civ. P. Art. 971(B) (emphasis added). All costs sought by Defendants were directly incurred as a result of the litigation and are therefore included in the mandatory grant. *See Watters v. Dep’t of Social Servs.*, 15 So.3d 1128, 1162 (La. App. Ct. 2009) (noting that expenses incurred as a result of litigation are those properly includable in an award of costs). Defendants sought reimbursement for \$3,177.91 in non-taxable costs, as follows: (a) \$631.32 in filing fees and service of process expenses; (b) \$171.87 in shipping and courier expenses; (c) \$1,621.75 in travel expenses; (d) \$614.97 in computerized research expenses; and (e) \$138.00 in other litigation-related expenses. Defendants’ costs were also substantially documented in detailed billing records and invoices provided to the district court. (*See Mihet Fee Aff. Exs. A-B*). In the time between the filing of their motion for attorney’s fees and the hearing on such motion, Defendants’ counsel was required to expend an additional \$776.44 in costs, which were also documented in detailed billing records and invoices provided to the district court. (*See Mihet Supp. Aff. ¶ 11 and Ex. B*). Thus, Defendants incurred a documented expense amount totaling \$3,954.35.

III. THIS COURT SHOULD AWARD APPELLEES REASONABLE ATTORNEYS FEES AND COSTS FOR BUTLER'S FRIVOLOUS APPEAL.

Consistent with his original Petition for Damages and every subsequent pleading that he has been filed in this litigation, Butler's appeal is utterly frivolous. This Court should award Defendants-Appellees the reasonable attorney's fees and costs associated with responding to Butler's never-ending frivolous pursuit of this action. Louisiana law provides that this Court "shall render any judgment which is just, legal, and proper upon the record on appeal. **The Court may award damages, including attorney's fees, for a frivolous appeal.**" La. Code Civ. P. art. 2164 (emphasis added). As this Court has said, where – as here – "the proposition advocated" has "no basis in law or fact [and] was scantily briefed," an award of attorney's fees is appropriate for the party defending the frivolous appeal. *Roland v. Roland*, 519 So.2d 1177, 1179 (La. App. 1 Cir. 1987); *see also Zeringue v. Zeringue*, 654 So.2d 721, 723 (La. App. 1 Cir. 1995) (award of attorney's fees for defending frivolous appeal is appropriate where, as here, "there were no serious legal questions involved in the appeal").

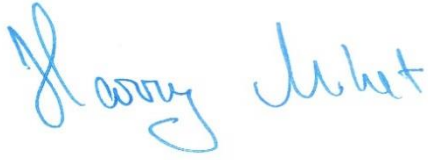
Here, Butler presents no serious legal questions and his appeal has no basis in law or fact. In fact, had Butler presented this Court with the fact that he had more than one counsel, it would have been plainly obvious that his positions are "without legal merit" and that this appeal raises no legitimate issues. *Zeringue*, 654 So.2d at

723. Instead, Butler blatantly misrepresents the record arguing that only Mr. Thiel was his counsel of record and completely omits any reference to the counsel of record that signed every pleading in the district court below – Ms. Ponthieu. *See supra* Section I. Had Butler bothered to even acknowledge Ponthieu’s presence as counsel of record in the proceedings below, this Court would have seen that service on counsel of record at the address of record is legally sufficient. *Id.* However, knowing that such an admission would be fatal to his appeal in this Court, Butler intentionally misleads this Court, fails to acknowledge the actual facts in the record below, and utterly fails to present any merited issues. His appeal ends the same way his original Petition for Damages began this litigation -- frivolously. This Court should award Defendants-Appellees the attorney’s fees and costs for defending this appeal, to be proven by subsequent affidavits and other competent evidence.

CONCLUSION

Because Butler’s counsel of record received legally sufficient service at the address of record for all motions, petitions, hearings, and filings in the proceedings below, and because the district court was well within its discretion to credit the substantial documentation presented to the court in support of Defendants’ motion for attorney’s fees, this Court should affirm the Final Judgment of the district court.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing response was served on all known counsel of record through the means indicated below:

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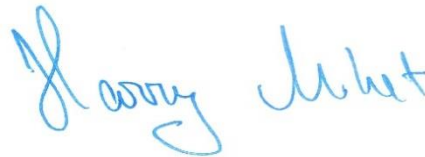
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On this 22nd day of August, 2018



Horatio G. Mihet