

FILED
07-09-2024
CIRCUIT COURT
DANE COUNTY, WI
2018CV003122

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

LEONARD POZNER,

Plaintiff

vs.

Case No. 2018-CV-003122

JAMES FETZER,

Defendant

**MOTION TO RECUSE JUDGE FRANK REMINGTON
PURSUANT TO WIS. STATS. 757.19(2)(g)**

NOW COMES James H. Fetzer, Ph.D., Pro Se Defendant, with a Motion to Recuse Judge Frank Remington pursuant to Wisconsin Stats. Chapter 757. General Provisions Concerning Courts of Record, Judges, Attorneys and Clerks, under Section 757.19 Disqualification of judge, specifically 757.19(2) *Any judge shall disqualify himself or herself from any civil or criminal action when one of the following situations occurs: (g) when a judge determines that, for any reason, he or she cannot, or it appears he or she cannot, act in an impartial manner* (emphasis added).

Judge Remington has repeatedly demonstrated that he cannot act in an impartial manner in this case, most recently by (1) the Decision and Order of the Circuit Court denying Dr. Fetzer's Motion to Open Judgment Pursuant to Extrinsic Fraud and Fraud upon the Court filed June 20, 2024, without allowing due process complaint, answer, reply between the parties; by (2) this Court's Decision and Order denying Dr. Fetzer's Request for Relief filed June 24, 2024, protesting this breach of due process and Wis.

Rules of Civil Procedure, Ch. 802, and instead committing the offense again; and by (3) this Court's Order on Motion to Seal or Redact a Court Record filed June 22, 2024, again in violation of due process and Ch. 802 requirements, attached herein as Exhibits A, D, and F. By his actions in issuing these orders, Judge Remington has demonstrated that he cannot act (or appear to act) in an impartial manner and must recuse himself from this case and any associated proceedings.

JURISDICTION

Statutes

18 USC § 241 and § 242 *Violation of Constitutional Rights Under Color of Law* 9
 Wisconsin Stats. Chapter 757. General Provisions Concerning Courts of Record, Judges, Attorneys and Clerks, Section 757.19 Disqualification of judge, specifically 757.19(2) 13

CASES

United States v Throckmorton, 98 U. S. 61 (1878) 12
Pozner v Fetzer, et al., 18 CV 3122 (2018). 9

RULES

Wisconsin Rules of Civil Procedure, Ch. 802 *Pleadings allowed* 9, 13

Wisconsin Code of Judicial Conduct, Ch. 60 12

at <https://www.wicourts.gov/sc/rules/chap60.pdf>

SCR 60.02 *A judge shall uphold the integrity and independence of the judiciary.* 7, 13

SCR 60.03 *A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.* 7, 13

SCR 60.03(1) *A judge must act at all times in a manner that promotes confidence in the integrity and the impartiality of the judiciary.* 7, 13

SCR 60.04 *A judge shall perform the duties of judicial officer impartially and diligently.* 7, 13

SCR 60.04(hm) *A judge shall also afford every person who has a legal interest in a proceeding, or to that person's lawyer, the right to be heard consistent with the law; and,* 7, 13

SCR 60.04(4) . . . *a judge shall recuse himself in a proceeding when the facts and circumstance the judge knows or reasonably should know . . . would reasonably question the judge's ability to be impartial* 7, 13

Wisconsin Code of Judicial Conduct, Ch. 20

at <https://www.wicourts.gov/sc/rules/chap20b.pdf>

SCR 20:3.1, *Meritorious claims and contentions* 12

SCR 20.3.3 *Candor toward the tribunal* 12

STATEMENT OF THE CASE

In each of the three matters cited above, Judge Remington denied Dr. Fetzer's rights to due process and civil procedure in violation of Wisconsin Rules of Civil Procedure,

Chapter 802.01 Pleadings allowed; form of motions:

(1) PLEADINGS. There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross claim, if the answer contains a cross claim; a 3rd-party complaint, if a person who was not an original party is summoned under s. [803.05](#), and a 3rd-party answer, if a 3rd-party complaint is served. No other pleading shall be allowed, except that the court may order a further pleading to a reply or to any answer.

The sequence of motion-response-reply qualifies as a fundamental desideratum of due

process and civil procedure: parties are entitled to participate in the fact-finding and decision-making process following the Rules of Civil Procedure. The Circuit Court is not permitted to rule on a motion without following those rules, which it violated by ruling on these motions without soliciting responses from the Plaintiff or replies from the Defendant (or response from Defendant and reply from Plaintiff in the case of F).

Exhibits A and D are not ordinary motions but ones that implicated the Circuit Court and the Plaintiff's attorneys in multiple serious violations of law, including the denial of Dr. Fetzer's right to a trial by jury, the suppression of copious specific and detail evidence on his behalf (including the exclusion of reports from two document experts supporting Dr. Fetzer), and even the subornation of perjury by introducing a witness whose identity Dr. Fetzer had challenged but was prevented from pursuing) in depriving Dr. Fetzer of his Constitutional Rights under Color of Law. Exhibit F was thus intended to conceal these motions from public access by sealing them on specious grounds. By the Circuit Court's actions in issuing these decisions and orders, Judge Remington has demonstrated that he cannot act (or appear to act) in an impartial manner and must recuse himself from this case and any associated proceedings.

STATEMENT OF FACTS

1. Dr. Fetzer submitted his MOTION TO OPEN JUDGMENT PURSUANT TO EXTRINSIC FRAUD AND FRAUD UPON THE COURT on June 17, 2024 (Exhibit B).
2. Circuit Court Judge Remington issued his Decision and Order Denying James Fetzer's Motion for Relief from Judgment on June 20, 2024 (Exhibit A).
3. Dr. Fetzer submitted his Request for Relief from Judgment or Order on June 20,

2024 (Exhibit C).

4. Emily Feinstein submitted her Motion to Seal or Redact a Court Record on June 20, 2024 (Exhibit D)

5. Circuit Court Judge Remington Denied Dr. Fetzer's Request for Relief from Judgment or Order on June 24, 2024 (Exhibit E).

6. Circuit Court Judge Remington issued his Order to Seal or Redact a Court Record on June 24, 2024 (Exhibit F)

7. Emily Feinstein submitted her Notice of Motion and Motion for Sanctions and Order to Show Just Cause on June 24, 2024 (Exhibit G).

8. Circuit Court Judge Remington issued his Notice of Briefing Schedule Regarding Plaintiff's Motion for Sanctions and Order to Show Just Cause on June 24, 2024 (Exhibit H).

ARGUMENT

Circuit Court Judge Remington acted immediately to dismiss Dr. Fetzer's MOTION TO OPEN JUDGMENT PURSUANT TO EXTRINSIC FRAUD AND FRAUD UPON THE COURT (Exhibit A) but even more peremptorily with Dr. Fetzer's REQUEST FOR RELIEF FROM JUDGMENT OR ORDER (Exhibit D), in which Dr. Fetzer observed that the Court was violating the Wisconsin Rules for Civil Procedure. Rather than placing them on the docket and establishing a briefing schedule for Response Brief and Reply Brief (as Judge Remington did with the Plaintiff's Motion for Sanctions and Order to Show Cause (Exhibit H)), he immediately dispatched them in violation of the Rules for Civil Procedure that he, as a Wisconsin Circuit Court Judge, was obligated to follow.

Judge Remington's DECISION AND ORDER DENYING JAMES FETZER'S MOTION FOR RELIEF FROM JUDGMENT (Exhibit A) begins by minimizing Dr. Fetzer's Motion:

**DECISION AND ORDER
DENYING JAMES FETZER'S MOTION FOR RELIEF FROM JUDGMENT**

INTRODUCTION

James Fetzer published fake stories accusing Leonard Pozner of fabricating his child's death certificate. Pozner sued for defamation and, in 2019, a jury awarded him \$450,000. Now, five years later, Fetzer complains that the verdict was the product of a vast conspiracy to commit fraud. As a result of my participation in the supposed fraud, Fetzer asks me to sanction myself then order a new trial. I liberally construe Fetzer's rambling papers to seek relief from judgment under Wis. Stat. § 806.07, then deny Fetzer's motion because it does not establish any grounds for relief.

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Judge Remington's assertions about *Pozner v. Fetzer et al.*, 18CV3122 (2018), for example, are not only false but provably false based on the Complaint, which alleged four sentences Dr. Fetzer had published—three in his edited book, *Nobody Died At Sandy Hook* (2015; 2nd ed., 2016) and one sentence in another publication—had defamed Leonard Pozner by saying that an incomplete death certificate published in the book (with no file number and neither town nor state certification) was fake, where Dr. Fetzer and co-author Kelley Watt made no claims about who had produced the document and did not name Leonard Pozner or any other party as having been responsible, contrary to Judge Remington's assertions (Exhibit I).

As Dr. Fetzer's MOTION TO OPEN JUDGMENT PURSUANT TO EXTRINSIC FRAUD AND FRAUD UPON THE COURT (Exhibit B) observes, the Complaint itself claims that the death certificate attached to the Complaint—a complete death certificate (with file number and both town and state certifications)—“was not materially different from the one released publicly by Plaintiff” (Exhibit I, paragraph 18). The death certificate published by Dr. Fetzer (Exhibit J) was instead an incomplete death certificate (with no file number and neither town

nor state certifications), which was confirmed by Kelley Watt (to whom Pozner had released it) to be the same as the one he gave her (Exhibit K, paragraph 22):

22. A copy of the death certificate that Plaintiff sent to me appears on page 181 of Ch. 11 and appears to be indistinguishable from Exhibit H of Defendant's Answer to Plaintiff's Responses and Objections to Defendant's Second Set of Requests for Admissions.

(See the death certificate Watt affirms the Plaintiff sent to her on page 181 of Exhibit J.)

Two forensic document experts whose reports were dismissed by Judge Remington as “not helpful” concluded that both of these death certificates as well as two others Dr. Fetzer introduced into evidence are fake, where the Circuit Court continues to defend provably false claims to support its verdict finding Dr. Fetzer guilty of defamation for declaring of a fake document—according to undisputed forensic document experts—that it was “fake”.

Judge Remington goes further to mock Dr. Fetzer's assertion of a conspiracy to commit fraud by claiming that, “As a result of my [Judge Remington's] participation in the supposed fraud, Fetzer asks me to sanction myself then order a new trial. I liberally construe Fetzer's rambling papers to seek relief from judgment under Wis. Stat. 805.07, then deny Fetzer's motion because it does not establish any grounds for relief”. But Dr. Fetzer had no intent for Judge Remington to sanction himself but rather to act in accordance with Supreme Court Rules SCR 60.02, SCR 60.03, SCR 60.03(1), SCR 60.04, and most appropriately,

SCR 60.04(hm) A judge shall also afford every person who has a legal interest in a proceeding, or to that person's lawyer, the right to be heard consistent with the law; and,

SCR 60.04(4) . . . a judge shall recuse himself in a proceeding when the facts and circumstance the judge knows or reasonably should know . . . would reasonably

question the judge's ability to be impartial

Dr. Fetzer (mistakenly, it turns out) assumed that any Circuit Court Judge confronted with allegations of impropriety of this magnitude would step aside and recuse himself. But Judge Remington did precisely the opposite. And were more proof of dereliction of duty required, Dr. Fetzer's submissions—both his MOTION FOR JUDGMENT and subsequent REQUEST FOR RELIEF—and substantiated by 26 exhibits that run (in totality) 548 pages, where each aspect of his allegations against Judge Remington and the Pozner attorneys are supported by specific and detailed evidence (Exhibits B and C). There is nothing “rambling” about them. The enormity of the deception thereby displayed boggles the mind. Here are the sections of Dr. Fetzer's MOTION TO OPEN JUDGMENT PURSUANT TO EXTRINSIC FRAUD AND FRAUD UPON THE COURT (Exhibit B), which provide proof contradicting his claims:

THE EXTRINSIC FRAUD (Exhibit B, pages 2-4)

FRAUD UPON THE COURT (Exhibit B, pages 4-7)

FRAUD UPON THE COURT IN DANE COUNTY (Exhibit B, pages 7-11)

DEPOSITON OF IMPOSTOR (Exhibit B, pages 11-13)

CONTEMPT OF COURT (Exhibit B, pages 12-15)

APPEAL DENIED (Exhibit B, pages 15-16)

each of which substantiated by thorough and abundant documentation via Exhibits A-Z, including key Affidavits by Kelley Watt (substantiating that the published death certificate was the same as provided to her by the Plaintiff, which Pozner's attorneys ignored), and by Wolfgang Halbig and by Brian Davidson, P.I., proving that the party who testified in Dane County under the name “Leonard Pozner” was not the same person from the Sandy Hook crime scene whose photograph has appeared millions of times around the world.

Similarly, Judge Remington's immediate dismissal of Dr. Fetzer's sequel REQUEST FOR RELIEF FROM JUDGMENT OR ORDER (Exhibit D), was abrupt and to the point:

DENIED! Neither factually or logically meritorious. F.D. Remington June 24, 2024

Unfortunately, it was also unresponsive to the evidence Dr. Fetzer presented therein, which included two charts displaying the major defects in procedure and the determination of facts that occurred in this case, which substantiate Dr. Fetzer's allegations that Judge Remington promptly dismisses. Exhibit C, page 3):

DUE PROCESS IMPROPRIETIES

<i>No.</i>	<i>Due Process Fairness</i>	<i>Conduct of the Court</i>
1.	The parties agreed to a jury trial on the merits.	A jury trial on the merits was requested (Exhibit J) but denied; the Court insisted on a damages trial which returned a punitive \$450,000 judgment—having sidestepped a trial on the merits totally. Decision and Order on Post-Verdict Motions (Dec. 12, 2019)
2.	Discovery on the merits and damages are fundamental elements of trial by jury	Defendant was denied discovery on counterclaims and damages due to bifurcation resulting in the unfair damages judgment. Telephone Motion Hearing (Apr. 18, 2019) Exhibit N
3.	In normal course, hearings with the parties are required before judgments are entered	Summary Judgment and Order were entered (a) before Plaintiff's answer, (b) before Defendant's reply, and (c) before a hearing. Decision and Order, Jun. 20, 2024 (Exhibit 1)
4.	In normal course, hearings with the parties are required before judgments are entered	Motions to Seal and Order to seal were entered without a hearing. Order on Motion to Seal or Redact a Court Record (Ju. 22, 2024) Exhibit 4
5.	Complaints of fraud must be plead with particularity	The Court Opinion made light of the detail submitted as if to imply that the particularity requirement to show fraud was somehow inappropriate. Decision and Order, Jun. 20, 2024 ("Fetzer's rambling papers.") Exhibit 1

These are egregious violations of Dr. Fetzer's due process and Constitutional Rights under Color of Law, 18 U.S.C. § 241 and § 242 *Violation of Constitutional Rights Under Color of Law*, and Wisconsin Rules of Civil Procedure, Ch. 802. Dr. Fetzer pointed out to Judge Remington that his Decision and Order Denying James Fetzer's Motion for

Relief from Judgment (Exhibit A) was a violation of Rules of Civil Procedure 802.01 *Pleadings allowed; form of motions*, which made no difference to Circuit Court Judge Remington, who declares that Dr. Fetzer's claims are "Neither factually or (sic) legally meritorious" (Exhibit D). But Judge Remington has devoted no more time to Dr. Fetzer's chart related to mishandling of factual issues than he has to his procedural improprieties.

Thus, Dr. Fetzer introduced a second chart, this one related to Disputes of Material Fact (Exhibit C, pages 3-4):

DISPUTES OF MATERIAL FACT

<i>No.</i>	<i>Plaintiff's Claim</i>	<i>Defendant's Claim</i>
1.	Sandy Hook was real with 26 dead. Exhibit J.	Sandy Hook was a FEMA L366 "course" Planning for the Needs of Children in Disasters managed by Contact Christopher Ackley in Bridgeport CT just 18 miles from Newtown CT. Nobody died. Crisis actors were employed. Exhibit L This Court disallowed material evidence proving the FEMA teaching drill. Exhibit M
2.	Death certificate was complete with file number, town, and state certifications was claimed to be "not materially different from published version." Exhibit J.	Published death certificate was incomplete with no file number and neither town nor state certification. Exhibit K
3.	No experts were provided to authenticate death certificate. Only the words of unqualified attorney were provided and must be considered unremarkable. Exhibit J	Two uncontested expert witnesses verified complete and incomplete versions were both fake. Court acted <i>sua sponte</i> to ignore these experts as "not helpful," thus biasing the inquiry. Exhibit R
4.	The witness deposed by Plaintiff named "Leonard Pozner" was never verified as a real person.	Defendant posited that "Leonard Pozner" was an imposter fiction and was denied discovery to verify it due to the bifurcation of the case by the Court. Telephone Motion Hearing (Apr. 18, 2019) Exhibit N

Much of Dr. Fetzer's MOTION TO OPEN JUDGMENT PURSUANT TO EXTRINSIC FRAUD AND FRAUD UPON THE COURT (Exhibit B) was devoted to the manner in which Judge Remington excluded Dr. Fetzer from presenting evidence in his defense by disallowing proof that Sandy Hook had been a FEMA exercise (for which Dr. Fetzer had even published the FEMA manual), by bifurcating the case to disallow discovery about his counterclaims for Abuse of Process, Fraud and Theft by Deception, and Fraud upon the Court, and even setting aside the reports of two forensic document experts (who were unopposed and concluded that Dr. Fetzer's claims regarding the death certificate that he had published were accurate and true, which meant there was no foundation for finding Dr. Fetzer liable for defamation, because what Dr. Fetzer has published about it was true.

In the present instance, we have an instant replay. Judge Remington wants to exclude Dr. Fetzer's evidence that he—in collaboration with Pozner's attorneys—perpetrated a massive Fraud upon the Court, which he wants to suppress as effortlessly and decisively as he did with Dr. Fetzer's proof that Sandy Hook had been a FEMA drill where nobody died. That is Judge Remington's style. For confirmation, notice that Judge Remington had no problem docketing Emily Feinstein's Motion to Seal or Redact a Court Record (Exhibit E), requesting sealing both Dr. Fetzer's MOTION TO OPEN JUDGMENT PURSUANT TO EXTRINSIC FRAUD AND FRAUD UPON THE COURT (Exhibit B) but also the Affidavit of Wolfgang Halbig (cited as "Exhibit W") on the grounds that they identify the address of Leonard Pozner, who (according to Ms. Feinstein) "Mr. Pozner is a crime victim. has (sic) faced threats to himself and his children. and (sic) could face more if his address is publicly available." Had this Motion to Seal a Court Record

(Exhibit E) been docketed for responses and replies, its sham intent (to bury Dr. Fetzer's allegations against Judge Remington and Pozner attorneys) would have been promptly exposed.

Mr. Pozner's address does not even appear in the Halbig affidavit; and, far from being a crime victim, this "Mr. Pozner" is the impostor witness who testified in Dane County and is a party to the Fraud upon the Court perpetrated by Judge Remington and the numerous Pozner attorneys, including Ms. Feinstein. Similarly, Emily Feinstein's further Motion for Sanctions and Order to Show Just Cause (Exhibit G), does not appear to be meritorious or filed in good faith. Both are in violation of SCR 20:3.1 and SCR 20.3.3. That they were noticed the same day they were filed by Judge Remington (Exhibit H) shows that he follows Wisconsin Rules of Civil Procedure when it suits his aims or goals and otherwise simply disregards them. The pattern is apparent. When Dr. Fetzer submits motions that uphold his due process and other Constitutional rights, Judge Remington suppresses them or disregards them; but when Pozner attorneys submit motions harmful to Dr. Fetzer, he will uphold them—and even expedite them—regardless of their merit.

When Judge Remington attempts to deny Dr. Fetzer's MOTION TO OPEN JUDGMENT PURSUANT TO EXTRINSIC FRAUD AND FRAUD UPON THE COURT (Exhibit A) on basis of Statute of Limitations considerations, he thereby ignores the precedent set by *United States v Throckmorton*, 98 U.S. 61 (1878)—that Fraud upon the Court may be brought at any time in any court when a party has been prevented from presenting a valid defense—which Dr. Fetzer would have cited in response as well as that the statute of limitations for fraud in Wisconsin is six years (where violations of due process rights are of greater importance and

judicial significance) and where Dr. Fetzer would have argued for an extension on the basis of medical incapacity during 2023, where he suffered a heart attack in February 2023, open-heart (double-bypass) surgery in June, and was engaged in a cardio-rehabilitation program for much of the rest of the year. Dr. Fetzer would secure a notarized statement in support. But the denial of his due process rights by Judge Remington precluded him from doing so.

CONCLUSION

That Judge Remington has not only violated his obligations under the Wisconsin Rules of Civil Procedure, Chapter 802, but also the Rules of the Supreme Court—including SCR 60.02, SCR 60.03, SCR 60.03(1), SCR 60.05, SCR 60.04(hm), and perhaps most notably SCR 60.04(4)—by not recusing himself from multiple and serious allegations of judicial misconduct (supported by 26 Exhibits A-Z and 548 pages of documentation) virtually defies belief. As the Wisconsin Code of Judicial Ethics, Ch. 60 (page 231) has observed, *impartiality* demands the absence of bias or prejudice in favor of, or against, particular parties, or classes of parties, as well as maintaining an open mind in considering issues that may come before the judge. The pattern of bias and prejudice displayed toward Dr. Fetzer boggles the mind.

Judge Remington's Decision and Order Denying James Fetzer's Motion for Relief from Judgment (June 20, 2024), Denial of Request for Relief from Judgment or Order (June 24, 2024), and Order to Seal or Redact a Court Record (June 24, 2024), violate Wis. Stats. Chapter 757. General Provisions Concerning Courts of Record, Judges, Attorneys and Clerks, under Section 757.19 Disqualification of judge, specifically 757.19(2) *Any judge shall disqualify himself or herself from any civil or criminal action*

when one of the following situations occurs: (g) when a judge determines that, for any reason, he or she cannot, or it appears he or she cannot, act in an impartial manner.

Dr. Fetzer therefore moves that Judge Remington recuse himself from this case and any further associated proceedings.

Respectfully submitted,

/s/ James H. Fetzer, Ph.D.

James H. Fetzer, Ph.D.
Pro Se Defendant
800 Violet Lane
Oregon, WI 53575
(608) 835-2707
jfetzer@d.umn.edu

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