Reconsideration Motion Exhibits A-E

EXHIBIT A:

Decision and Order Denying James Fetzer's Motion to Recuse (August 22, 2024)

FILED
08-22-2024
CIRCUIT COURT
DANE COUNTY, WI
2018CV003122

BY THE COURT:

DATE SIGNED: August 22, 2024

Electronically signed by Frank D Remington
Circuit Court Judge

STATE OF WISCONSIN CIRCUIT COURT BRANCH 8 DANE COUNTY

LEONARD POZNER,

Plaintiff,

v. Case No. 2018-CV-3122

JAMES FETZER,

Defendant.

DECISION AND ORDER
DENYING JAMES FETZER'S MOTION TO RECUSE

INTRODUCTION

James Fetzer asks me to recuse under Wis. Stat. § 757.19(2)(g). That section requires a judge recuse if "he or she cannot, or it appears he or she cannot, act in an impartial manner." I deny Fetzer's motion because I conclude that I can act, and that it appears I can act, in an impartial manner.

DECISION

Fetzer's present motion to recuse comes in the wake of, most recently,[1] two orders related to execution on a judgment against Fetzer. The first order granted Leonard Pozner's motion to

[1] For a more thorough history of this litigation, *see Pozner v. Fetzer,* No. 2023AP1001, unpublished slip op. (WI App Feb. 8, 2024) (per curiam) (*Pozner III*).

disburse funds. That order applied Wisconsin's rules for execution to explain why some of Fetzer's property was not exempt and, therefore, must be disbursed to Fetzer's judgment creditor. Decision and Order (Jun. 14, 2024), dkt. 598; *see also* Order Granting Leonard Pozner's Motion to Disburse Funds (Jun. 20, 2024), dkt. 614 (a followup order more specifically addressing Pozner's motion). Three days after that first order, Fetzer accused the Court of participating in a vague conspiracy to commit fraud. The second order liberally construed Fetzer's rambling accusations as a motion for relief from judgment, then denied that motion. Decision and Order (Jun. 20, 2024), dkt. 615. Based principally on these two orders—the first disbursing Fetzer's funds and the second denying relief based on a vague conspiracy theory—Fetzer says that I have "repeatedly demonstrated that [I] cannot act in an impartial manner …." Fetzer Recusal Mot., dkt. 630:1. As a result, Fetzer claims a "breach of due process and … Civil Procedure." *Id.* at 1-2.

Fetzer now asks me to recuse under Wis. Stat. § 757.19(2)(g). That section requires a judge must recuse: "When a judge determines that, for any reason, he or she cannot, or it appears he or she cannot, act in an impartial manner." As our supreme court has held, this determination "concerns not what exists in the external world subject to objective determination, but what exists in the judge's mind." *State v. American TV and Appliance of Madison, Inc.,* 151 Wis. 2d, 175, 181-82, 443 N.W.2d 662 (1989). Plainly put, "the determination … is subjective." *Id.* at 182.

I deny Fetzer's motion because I conclude I can act in an impartial manner and, moreover, that it appears I can act in an impartial manner. Although Wisconsin law requires that I go no further than make this subjective determination of "what exists in the judge's mind," I note that objective facts also strongly weigh against any finding of bias. This case was remanded for me to decide one very simple issue: whether Fetzer could produce evidence that showed his property was exempt from execution on Pozner's judgment. Fetzer left no room for bias to infect any

decisions on that issue because, given the simplicity of the issue presented—to repeat, the issue was: whether Fetzer could produce evidence—Fetzer produced no evidence. The reason why Fetzer produced no evidence was probably because, as he later conceded at oral argument, he did not actually dispute any facts asserted by Pozner's motion. Tr. of Jun. 11 Hr'g, dkt. 597:3-4. No reasonable person would look at Fetzer's failure to produce evidence and then conclude that failure was the result of judicial bias and/or some vague conspiracy.

Accordingly, I conclude Fetzer fails to show any reason, subjective or otherwise, why Wis. Stat. § 757.19(2)(g) requires my recusal.

ORDER

For the reasons stated,

IT IS ORDERED that James Fetzer's motion to recuse is denied.

This is NOT a final order for purpose of appeal. Wis. Stat. § 808.03(1).

EXHIBIT B:

Defendant's Motion to Recuse
Judge Frank Remington
Pursuant to Wis. Stats. 757.19(2)(g)

(July 9, 2024)

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

CASES

RULES

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 pursing) 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.

1

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

No.	*Due Process Fairness*	*Conduct of the Court*
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

No.	*Plaintiff's Claim*	*Defendant's Claim*
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 *sua sponte* 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 EXTRINISIC 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.

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Submitted the 9th day of July 2024.

EXHIBIT C:

Plaintiff's Response in Opposition to Defendant's Motion to Recuse

(July 24, 2024)

STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

LEONARD POZNER,
Plaintiff,

vs.

Case No. 18CV3122

JAMES FETZER;
MIKE PALECEK;
WRONGS WITHOUT WREMEDIES, LLC;
Defendants.

PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO RECUSE

INTRODUCTION

Plaintiff Leonard Pozner opposes Defendant James Fetzer's baseless Motion to Recuse. Fetzer argues that because the Court keeps denying his motions, the Court must be biased against him. Not surprisingly, Fetzer fails to mention the number of times the Court's rulings have been upheld on appeal. Regardless, ruling against a party does not require a circuit court to recuse.

This Court should deny Fetzer's Motion to Recuse for two reasons. First, Fetzer cannot meet his burden under Wis. Stat. § 757.19(2)(g). This Court has not suggested that it cannot act in an impartial manner and there is not even a suggestion of an appearance of impartiality. Second, Fetzer has no evidence of subjective or objective bias, and thus fails to establish a basis for recusal on due process grounds. Fetzer offers no evidence to support his motion, much less evidence sufficient to meet his burden of proving judicial bias by a preponderance of the evidence. This Court should deny the Motion to Recuse.

ARGUMENT

I. Fetzer Has Not Shown Recusal Is Appropriate Under Wis. Stat. § 757.19(2)(g).

In bringing his Motion to Recuse, Fetzer fails to allege that the Court cannot act in an impartial manner or that there is an appearance that the Court could act in an impartial manner. Under Wis. Stat. § 757.19(2)(g) a court must recuse if the court determines that it could not act in an impartial manner or there would be an appearance that it could not act in an impartial manner. The Court made no such determination. *See State v. Am. TV & Appliance of Madison, Inc.*, 151 Wis.2d 175, 183, 186, 443 N.W.2d 662 (1989) (denying a motion to recuse and noting the moving party failed to allege Justice Bablitch made a subjective determination of actual or apparent bias). A judge must recuse under Wis. Stat. § 757.19(2)(g) only if that judge subjectively determines he or she is actually or apparently biased. *Id.* at 183; *State v. Harrell*, 199 Wis. 2d 654, 664, 546 N.W.2d 115 (1996) (concluding that whether a judge is actually or apparently biased is solely for that judge to decide). Indeed, a reviewing court will not second guess a judge's determination. *State v. Carivou*, 154 Wis. 2d 641, 646, 454 N.W.2d 562 (Ct. App. 1990).

Here, the Court has not determined he was actually or apparently biased, nor should it. Rather than rely on facts, Fetzer "assume[s] any Circuit Court Judge" whose impartiality is questioned would "step aside and recuse himself." Dkt. 630 at 7-8. Fetzer cannot support his motion with an assumption.

II. Even If Defendant Fetzer Argued Due Process Requires Recusal, Fetzer Cannot Meet that Standard Either.

Fetzer makes a number of references to due process issues but fails to establish a basis for recusal on due process grounds. To do so, Fetzer would need to provide evidence under either a subjective or objective standard that this Court is biased against him. *In re Paternity of B.J.M.*, 2020 WI 56, ¶ 21, 392 Wis. 2d 49, 944 N.W.2d 542. With respect to the subjective approach,

Wisconsin courts apply the same standard as that under Wis. Stat. § 757.19(2)(g). *State v. Rochelt*, 165 Wis. 2d 373, 379, 477 N.W.2d 659 (1991). As discussed above, Fetzer cannot meet that standard. As explained below, Fetzer cannot meet the objective standard either.

Under the objective standard, a party can establish judicial bias in two ways. *State v. Goodson*, 2009 WI App 107, ¶ 9, 320 Wis. 2d 166, 771 N.W.2d 385. First, a party can establish objective bias by proving objective facts that demonstrate the judge "in fact treated [the party] unfairly." *Id.* Second, a party can establish objective bias by showing there is an appearance of bias that "reveal[s] a great risk of actual bias." *State v. Herrmann*, 2015 WI 84, ¶ 40, 364 Wis. 2d 336, 867 N.W.2d 772 (quoting *State v. Gudgeon*, 2006 WI App 143, ¶ 23, 295 Wis. 2d 189, 720 N.W.2d 114); *see also In re Paternity of B.J.M.*, 2020 WI 56, ¶ 24. Regardless of reason, parties can only obtain recusal based on due process concerns in extreme circumstances. *State v. Pinno*, 2014 WI 74, ¶ 94, 356 Wis. 2d 106, 850 N.W.2d 207. Indeed, recusals required under due process lie at "the outer boundaries of judicial disqualifications," while "[m]ost matters relating to judicial disqualification [do] not rise to a constitutional level." *Id.* (quoting *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 876 (2009)).

For example, in *State v. Herrmann*, the circuit court, during the sentencing hearing of a defendant convicted of killing someone while driving drunk, explained that her sister had been killed by a drunk driver and stated that she "ha[d] to make [the defendant] pay." 2015 WI 84, ¶¶ 48-60. Despite these facts, the Wisconsin Supreme Court found recusal was not warranted. In contrast, a circuit court who failed to disclose a string of social media interactions with a party and subsequently reached a decision entirely in the party's favor introduced serious risk of actual bias and due process required recusal. *See In re Paternity of B.J.M.*, 2020 WI 56, ¶¶ 29–35.

Far from evincing an extreme case in which due process requires recusal, Fetzer fails to offer any objective evidence establishing the Court treated him unfairly or appeared biased to an extent that reveals a great risk of actual bias. Fetzer expends considerable energy on describing three adverse rulings: (1) this Court's Decision and Order Denying Fetzer's Motion for Relief From Judgment (Dkt. No. 615); (2) this Court's denial of Defendant Fetzer's Proposed Order (Dkt. No. 624); and (3) this Court's Order on Motion to Seal or Redact a Court Record (Dkt. No. 619). *See generally* Dkt. No. 630. Fetzer seems to think that this Court is biased against him because he lost these baseless motions but, "judicial rulings alone almost never constitute a valid basis for a bias or partiality motion." *Liteky v. United States*, 510 U.S. 540, 555 (1994) (evaluating 28 U.S.C. § 455, the federal recusal statute, under an objective bias standard). And for good reason. If parties could force a judge to recuse by pointing to the number of adverse rulings against them, the recusal rules would incentivize parties to engage in bad-faith papering of a court whenever they want a new judge. Accordingly, "only in the rarest circumstances" do adverse judicial rulings by themselves "evidence the degree of favoritism or antagonism" required to establish objective bias. *Id.* None exist here.

Because a court may opine on a party's legal arguments "without being subject to recusal," Fetzer cannot rely on this Court's statements on his filings to support recusal. *State ex rel. Dressler v. Circuit Court*, 163 Wis. 2d 622, 644, 472 N.W.2d 532 (Ct. App. 1991). This Court described the Motion for Relief from Judgment as "rambling," called Fetzer's so-called experts "not helpful," and concluded that his Proposed Order was "[n]either factually or logically meritorious." Dkt. 630 at 7–9. Unless a party can show that the judge's opinion comes from an extrajudicial source or reveals "such a high degree of favoritism or antagonism as to make fair judgment impossible,"

judicial remarks "critical or disapproving of, or even hostile to, counsel, the parties, or their cases" provide no basis to challenge a judge's impartiality. *Liteky*, 510 U.S. at 555.

For example, in *State v. Pirtle*, the Court of Appeals held a judge's remark that the defendant was a "piece of garbage" did not show the judge was biased. *State v. Pirtle*, 2011 WI App 89, ¶ 35, 334 Wis. 2d 211, 799 N.W.2d 492. The court acknowledged that "expressions of impatience, dissatisfaction, annoyance, or even anger" within the bounds of a judge's "ordinary efforts of courtroom administration" are "immune" from claims of bias or partiality. *Id.* at ¶ 34 (quoting *Liteky*, 510. U.S. at 555–56). The court reasoned that the judge's statement that the defendant was a "piece of garbage" resulted from the judge's "justifiable frustration" with the defendant's disruptive behavior and did not "in any sense of the word, reflect objective bias." *Id.* The court thus rejected the defendant's claim of judicial bias. *Id.*

Like the judge's remark in *Pirtle*, the statements quoted by Fetzer cannot show judicial bias because they do not reveal any extrajudicial source for the Court's opinion. To the contrary, they reveal the Court's evaluation of legal arguments Fetzer advanced throughout this litigation. *Cf. State v. Rodriguez*, 2006 WI App 163, ¶ 36, 295 Wis. 2d 801, 722 N.W.2d 163 (holding a judge's evaluation of a defendant's case and potential arguments on an ineffective assistance of counsel claim did not constitute a basis for recusal). And unlike the judge's remark in *Pirtle*, the Court's statements were not personally directed at Fetzer. This further lowers any possibility the statements show a high degree of antagonism such that fair judgment would be impossible. Fetzer cannot show objective bias with his attempt to cherry-pick statements of this Court.

Lastly, Fetzer appears to argue that the fact this Court did not recuse itself under certain provisions of the Code of Judicial Conduct shows the Court was actually or apparently biased. *See* Dkt. 630 at 7–8. Fetzer misunderstands the Code of Judicial Ethics, which only "governs the ethical

conduct of judges" and "has no effect on their legal qualification or disqualification to act." *State v. Am. TV & Appliance of Madison, Inc.*, 151 Wis. 2d at 185.

CONCLUSION

Fetzer lacks both legal and evidentiary support for his Motion to Recuse. Fetzer fails to offer any evidence of subjective or objective bias and thus fails to overcome the presumption that a judge acts fairly, impartially, and without prejudice. For the reasons set forth above, Mr. Pozner respectfully requests the Court deny Fetzer's Motion to Recuse.

Dated: July 24, 2024

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EXHIBIT D:

Defendant's Reply

(July 31, 2024)

STATE OF WISCONSIN	CIRCUIT COURT	DANE COUNTY

LEONARD POZNER,

Plaintiff,

vs. Case No. 18CV3122

JAMES FETZER,

Defendant.

DEFENDANT'S REPLY

NOW COMES James H. Fetzer, Ph.D., Pro Se Defendant, with a Reply to the Response from Plaintiff's attorneys filed on July 24, 2024, to Dr. Fetzer's Motion to Recuse Judge Frank Remington Pursuant to Wis. Stats. 757.19(2)(g) filed July 9, 2024. Plaintiff's Response observes (correctly) that ruling against a party *per se* does not require a circuit court to recuse. But this case involves conduct by Judge Remington that has been egregiously biased in favor of the Plaintiff and against Dr. Fetzer, including (most recently) repeated violations of basic due process rights under Wisconsin Rules of Civil Procedure.

Plaintiff argues that Dr. Fetzer cannot meet his burden for recusal, alleging that there is not even the appearance of partiality and that there is no basis for objecting on due process grounds. Both are in blatant contradiction with Judge Remington's conduct in this case from the beginning, which Dr. Fetzer has previously documented and will (at least, in part) summarize here. All previous submissions in Case No. 18CV3122 are incorporated and adopted for the purpose of this Reply.

BACKGROUND

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) asserts, *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). In relation to the 26 exhibits A-Z supporting Dr. Fetzer's Motion to Open Judgment Pursuant to Extrinsic Fraud and Fraud Upon the Court filed on June 20, 2024 (cited below as "MOJ"), Dr. Fetzer submits the following proofs of clear bias and partiality by Judge Remington, who was acting in collusion with the Pozner attorneys.

ARGUMENT

(1) Judge Remington Suppressed the Affidavit of Kelley Watt

Judge Remington's approach was to manufacture a predetermined outcome by finding that Dr. Fetzer had libeled Leonard Pozner by declaring a death certificate that Pozner himself had provided to Dr. Fetzer's research colleague, Kelley Watt, to be fake. It was done by substituting a different and complete death certificate in the Complaint. The published death certificate, unlike the substitution, had no file number nor state or town certification. Under CT law, not even parents are allowed to possess incomplete death certificates. Kelley Watt's Affidavit exposes the fraud and vitiates the case against Dr. Fetzer but was suppressed by Judge Remington in collusion with the Pozner attorneys (MOJ, Exhibits J, K, and V).

(2) Judge Remington Dismissed Proof that Nobody Died at Sandy Hook

Judge Remington excluded Dr. Fetzer's proof that nobody died at Sandy Hook on both legally and logically absurd grounds, when he declared that, "whether or not Sandy Hook ever happened or not is not relevant to this – the – the truthfulness or the accuracy of the death certificate". But the death certificate states the decedent died at Sandy Hook

on December 14, 2012, of "multiple gunshot wounds" (MOJ, Exhibit M). Once again, the proof amassed in Dr. Fetzer's co-edited book, *Nobody Died At Sandy Hook: It was a FEMA Drill to Promote Gun Control* (2015; 2nd ed., 2016), was inconsistent with Pozner's position, thereby producing disputed facts that, had they been admitted, required a jury.

(3) Judge Remington Set Aside Reports of Two Forensic Document Experts

Having restricted the issue to the authenticity or truthfulness of the death certificate and having disallowed extensive and detailed proof Dr. Fetzer had submitted in defense, Dr. Fetzer provided reports of two (2) forensic document experts—Larry Wickstrom and A.P. Robertson—who found not only that the incomplete death certificate published by Dr. Fetzer was fake but that the complete death certificate attached to the Complaint was also fake (along with two others obtain from the Town of Newtown and from the State), Judge Remington simply dismissed them as "someone else's opinion" and said, "I just don't think they were helpful" (MOJ, Exhibit R, pages 163 and 165). Their uncontested reports (again) vitiated the case against Dr. Fetzer by proving his statements were true.

(4) Judge Remington denied Dr. Fetzer Discovery on his Counterclaims

To ensure that Dr. Fetzer not discover more proof of the non-occurrence of mass murder or that the decedent had not died at Sandy Hook, Judge Remington took the further step of bifurcating the case to deny Dr. Fetzer discovery on his counterclaims of Abuse of Process, Fraud and Theft by Deception, and Fraud upon the Court, a deft maneuver to cut off Dr. Fetzer's access to new evidence that might strengthen his case (MOJ, Exhibit N). This denial of Dr. Fetzer's right to discovery has now been used to claim that Dr. Fetzer had not made allegations of Fraud upon the Court in a timely manner, brought about by Judge Remington's denial of Dr. Fetzer's discovery rights.

(5) Judge Remington Refused to Admit Proof that Noah Pozner is a Fiction

Dr, Fetzer repeatedly advanced proof that the alleged decedent, Noah Pozner, was not a real person but a legal fiction created out of photographs of his purported older half-brother, Michael Vabner. Dr. Fetzer raised the issue by moving to expand DNA testing to include, not just Noah Pozner and Leonard Pozner, but Michael Vabner and Reuben Vabner, whom Dr. Fetzer had concluded to be the basis for "Noah" and for "Leonard" (MOJ, Exhibit O). This fact has now been substantiated by the Affidavit of Brian Davidson, P.I., who has also established that the party who testified as "Leonard Pozner" in Madison is not the same person as the "Leonard Pozner" of Sandy Hook, whose image has appeared millions of times around the world (MOJ, Exhibits W, X, and Y). This has enormous importance, not least of all because it implicates Pozner's attorneys in the subornation of perjury.

(6) Judge Remington Refused to Acknowledge Dr. Fetzer as a Media Person

To lower the bar for finding Dr. Fetzer liable, Judge Remington declined to rule that Dr. Fetzer had media standing as an investigative journalist, even though Dr. Fetzer had submitted a brief laying out his experience as an investigative journalist/reporter for decades, including paid assignments (MOJ, Exhibit U). Even more blatantly, Dr. Fetzer was being sued over three sentences in a book he had co-edited and another in a separate publication to which he had contributed. *How could Judge Remington, who insisted that he read every document submitted to the court, have missed this?*

(7) When Dr. Fetzer tried to Expose the Impostor, he was Sanctioned

Among the most important tells that Judge Remington was acting in concert with the Pozner attorneys is that, when Dr. Fetzer attempted to expose the party who had testified under the name of "Leonard Pozner" as an impostor (because

he was too young and too small to be the Sandy Hook Pozner), Dr. Fetzer sent the video deposition to Wolfgang Halbig for confirmation. Judge Remington took offense and held Dr. Fetzer in Contempt of Court, adding attorney fees in the amount of $650,000 to the $450,000 that would be awarded by the jury for his purported defamation of Leonard Pozner, thereby protecting himself and the Pozner attorneys, when Dr. Fetzer had told the truth (MOJ, pages 11-15).

Judge Remington has been so eager to avoid his exposure that he has now violated Dr. Fetzer's due process rights by abandoning the Wisconsin Rules of Civil Procedure, Chapter 802, not once or twice, but three times: (1) by rejecting Dr. Fetzer's Motion to Open Judgment Pursuant to Extrinsic Fraud and Fraud upon the Court filed on June 20, 2024; (2) by rejecting Dr. Fetzer's Request for Relief from Judgment or Order filed on June 20, 2024, and (3) by granting Plantiff's Motion to Seal or Redact a Court Record filed on June 24, 2024.

The Pozner Response thus fails. It was not making decisions *per se* that deprived Dr. Fetzer of his legal rights but the decisions that Judge Remington made. The pattern of ruling to deny Dr. Fetzer's motions and facts to produce no disputed facts when the case was factually contradictory from the beginning reveals that Judge Remington was acting with partiality and bias—of a rather extreme variety given he manufactured the absence of disputed facts to apply Summary Judgment—in a case that had to be sent to a jury for fact resolution. This goes far beyond the *appearance* of partiality and bias.

. Judge Remington, together with the Pozner attorneys in opposition—including Jake Zimmerman (*Pro Hac Vice*), Genevieve Zimmerman (WI #1100693), and Emily M. Feinstein (WI SBN: 1037924)—acted in concert to deprive Dr. Fetzer his right to present a valid defense

by violating the Wisconsin Rules of Civil Procedure and denying Dr. Fetzer his right to a trial by jury. They (separately and jointly) sabotaged these proceedings by going so far as to suborn perjury by an impostor witness. And when Dr. Fetzer attempted to expose the fraud, he was (in no uncertain terms) smacked down by Judge Remington, lest the deception become known. They don't want to be held to account for multiple violations of Supreme Court Rules and Rules of Civil Procedure whereby they committed Fraud upon the Court (*Dekker,* 214 Wis. 2d at 21) by eliminating disputed facts and fabricating a case against him.

RELIEF SOUGHT

By suppressing the Affidavit of Kelley Watt, dismissing proof that nobody died at Sandy Hook and that Noah Pozner was a legal fiction, setting aside the reports of two forensic document experts, denying Dr. Fetzer discovery on his counterclaims, failing to acknowledge Dr. Fetzer as a media person and holding him in contempt when he sought to expose the impostor witness—together with his more recent procedural violations to suppress the proof of his egregious misconduct as quickly as possible—Judge Remington has egregiously violated Wis. Stats. Chapter 757. General Provisions Concerning Courts of Record, Judges, Attorneys and Clerks, under Section 757.19(2)(g) Disqualification of Judge. Dr. Fetzer therefore again moves that Judge Remington recuse himself from this case and any further associated proceedings.

Respectfully submitted,

Electronically signed by: */s/ James H. Fetzer, Ph.D.*

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Submitted the 31st day of July 2024.

EXHIBIT E:
Brief of Appellant

(July 19, 2024)

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV

Leonard Pozner,
Plaintiff-Respondent

v.

Appeal No. 2024AP001329

James Fetzer,
Defendant-Appellant

Appeal From the Circuit Court of Dane County
Case No. 2018CV003122
Judge Frank D. Remington, Presiding

BRIEF OF APPELLANT

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Issue 1: May Pozner garnish reimbursements of exempt funds, such as those that are exempt under Wisconsin Statutes 815.18(3)(j)?

General area of the law: Pozner has once again entered an area where the law is silent and for good reason. Creditors have not garnished the payback of petty no-interest loans originating from the exempt funds in the same account. This involves the deprivation of the right of debtors and their family members to conveniently use and protect exempt funds in a bank account. Exemption of retirement and insurance benefits under Wisconsin statute 815.18(3)(j).

Necessary facts: On March 17, 2023, a hearing was held to determine the contents of Dr. Fetzer's UW Credit Union bank account where Janice Fetzer, Dr. Fetzer's wife, testified that several deposits shown in her check book for the subject UWCU account were paybacks of exempt funds originating from that same account. Janice then provided a list of the of nine deposits, six of which were paybacks from family members who used the credit card associated with that account. The amounts paid back were to the penny except for one which was underpaid, not overpaid. A second hearing was held on April 25, 2024, in response to the Court of Appeals' Decision Filed and Dated February 8, 2024. But Pozner did not change his accounting of funds proposed for garnishment.

Policies that should be followed: The lawful way to garnish funds from an account is to determine the source of that money to be non-exempt. The source of funds from family members were originally from the same exempt funds from the

same account. Pozner should have determined from Janice Fetzer's testimony which funds in the account were paybacks of exempt funds in the same account and then omitted them from non-exempt funds deposited and in other accounts and then deducted the $5,000 exemption from that and garnished any positive balance. Funds from Social Security or derived from retirement accounts are exempt. Those who prosecute garnishments must not garnish funds from such sources, where Mrs. Fetzer was reviewing funds from Dr. Fetzer's retirement account.

Issue 2: May Pozner garnish funds, or may the Circuit Court Order them to be garnished, inconsistent with the Court of Appeals' Decision filed and dated February 8, 2024?

This Court already ruled in its Decision filed and dated February 8, 2024 (hereafter "Court of Appeals' Decision"), that Mrs. Fetzer's funds cannot be garnished; Pozner's subsequent attempt to garnish Mrs. Fetzer's funds thus ignores this Court's prior opinion. It must not be permitted to stand and ought to be appropriately sanctioned for the abuse of judicial resources and if the Defendant's time and expenses.

General area of the law: Lower courts are required to follow the orders and decisions of higher courts, in this case, the Circuit Court must follow the orders and decisions of the Court of Appeals, District IV.

Necessary Facts: In response to Defendant Fetzer's previous appeal for failure to hold a hearing at which objections could be raised to the Proposed Garnishment Order and on the ground that Pozner was garnishing funds that were exempt (including retirement and

insurance benefits under Wisconsin statute 815.18(3)(j), A second hearing was held on April 25, 2024, in response to Court of Appeals' Decision. But Pozner did not change his accounting of funds proposed for garnishment. Even though the Court of Appeals specifically noted that creditor-garnishers are only entitled o garnish property belonging to the debtor or in which the debtor has an interest, the Court still ordered that funds belonging to Janice Fetzer—including her half of federal and state income tax refunds—be garnished.

Policies that should be followed: The Court of Appeals reversed the garnishment order and directed that further proceedings be conducted consistent with its opinion. A hearing was conducted on April 25, 2024, but property belonging to Dr. Fetzer's wife—including her half of state and federal income tax returns—were garnished nevertheless, which was inconsistent with the Court of Appeals Decision.

STATEMENT OF THE CASE

The Statement of the Case presented by Dr. Fetzer in his Brief of Appellant filed on July 24, 2023 (Case #23AP1002) requires supplementation only by the proceedings addressed above, which along with other documents submitted in this case in the past are hereby incorporated and reaffirmed lest this court be subject to redundant reporting.

STATEMENT OF FACTS

The Statement of Facts by Dr. Fetzer in his Brief of Appellant filed on July 24, 2023, pages 11-12 (Case #23AP1002), requires supplementation only by those proceedings addressed above, which with other documents submitted in this case in the past are hereby incorporated and reaffirmed lest the court be subject to redundant reporting. The Court of Appeals, District IV, Decision was filed and dated February 8, 2024 (Appendix 2). A scheduling hearing was

held on April 25, 2024 (Appendix 3). In response to the Circuit Court's request, Dr. Fetzer submitted portions of his prior submission in his earlier appeal to the Court of Appeals (Appendix 4). Affidavits by Pozner and Plaintiff's Reply were submitted on May 13, 2024, and May 15, 2024 (Appendices 5 and 6). An oral hearing was held on June 11, 2024 (Appendix 7). Dr. Fetzer submitted an Answer to a query from the court on June 11, 2024 (Appendix 8). The Non-Final Order Granting Motion was filed on June 15, 2024 (Appendix 9). And the Signed Final Order Granting Motion was filed June 20, 2024 (Appendix 1).

ARGUMENT

The argument likewise remains the same, but bears repeating. The Court of Appeals in its Decision reversed and directed that additional proceedings be conducted to render a new opinion that was consistent with its opinion. That was only done in the most perfunctory and non-responsive fashion by holding a hearing but not addressing the key point the Court of Appeals had made by citing *Prince Corp* (Appendix 2, page 12):

> ***Prince Corp.***, 369 Wis. 2d 387, ¶¶34-35 (creditor-garnishor entitled to garnish only property belonging to the debtor or in which the debtor has an interest and only in the amount that the debtor could require the garnishee to pay the debtor).

No response was forthcoming from Pozner or the Court to Dr. Fetzer's admonitions during the hearing that what was taking place was inconsistent with the Court of Appeals opinion, that it was garnishing non-debtor properties in violation of *Prince Corp*, and that the Circuit Court could be held in contempt by the Court of Appeals (Appendix 7). Dr. Fetzer was dumbfounded less by the non-response of Pozner to the Court of Appeals opinion than by the failure of the Circuit Court to acknowledge its own actions were inconsistent with the opinion of the Court of Appeals.

Plaintiff's arguments that the funds were comingled and could not be separated are contradicted by the content its own briefs and exhibits, where Exhibit A (page 2) attached to Appendix 5, Affidavit of Randy J. Pflume in Support of Plaintiff's Response (May 13, 2024) reiterates Mrs. Fetzer's accounting of each deposit:

Deposits to Retirement (Schwab) Account Other than from Schwab (during past 12 months):

3/21/22. From daughter for COSTCO	65.32
3/30/22 WI Tax Return	1,486.00
4/06/22 Federal Tax Return.	521.00
5/06/22 From daughter for COSTCO + Jim's lawsuit reimbursement	60.00 331.05
6/15/22 From daughter for COSTCO	159.00
8/08/22 From daughter for COSTCO.	153.88
9/02/22 Jim's FEDEX reimbursement	94.96
9/23/22 From daughter for 80th birthday	100.00
12/01/22 Jim's FEDEX reimbursement.	1,000.00

NOTE: SUPPORTING DOCUMENTS ATTACHED HERETO including copies of Schwab Account for past 12 months.

The arguments presented in Defendant's previous brief thus remain applicable in whole.

Once Mrs. Fetzer's accounting had entered into evidence, the specious claim of being unable to disentangle comingled funds came apart at the seams. These are all transactions in relation to a (Schwab) retirement account, which is protected from garnishment. One after

another of these transactions was merely reimbursing funds from a protected account after they had been used for transactions only involving Mrs. Fetzer (3/21/22; 5/06/22 regarding daughter's reimbursement); 6/15/22; 8/08/22; and 9/23/22). How could Pozner's attorneys reasonably suggest any of these transactions were subject to garnishment? They know that Mrs. Fetzer is not a debtor, yet they included five transactions merely reimbursing her or, in the case of the fifth (9/23/22), a $100 birthday gift, which Pozner proposes to garnish.

As though those inclusions were not obnoxious enough, Mr. Pflume would include Mrs. Fetzer's share of their joint income tax return. Dr. Fetzer has taken it as common knowledge that refunds on joint income tax returns are equally divisible by each spouse. Based upon an unsuccessful search of IRS statutes such as 26 U.S. Code § 6013 and Wisconsin case law, Dr. Fetzer has been unable to find case law specifying how they are lawfully distributed. Notably, Mr. Pflume does not cite Wisconsin case law that would entitle Pozner to take Mrs. Fetzer's portion of their income tax refund as payment for her husband's indebtedness, which appears to be in violation of Wisconsin case law cited by the Court of Appeals (District IV), when it rendered its prior Decision (filed and dated February 8, 2024) of *Prince Corp. 369 Wis. 387* (2016), which precludes creditor-garnishers from garnishing property from parties other than the debtor. Not only does Mr. Pflume appear to lack a basis in Wisconsin case law to support his proposal to garnish property of Mrs. Fetzer, but what the Court of Appeals (District IV) in its earlier decision itself cited appears to be violated by Mr. Plume *even after being noticed.*

Mrs. Fetzer has understood the importance of having Social Security and (Schwab) funds separated from other sources of income, but the stance of Pozner appears to be that she or Dr. Fetzer cannot even engage in transactions using those accounts without running the risk of garnishment—even when merely reimbursing the account for money that was used from it:

As Dr. Fetzer has previously explained, a proper account should have been straightforward:

> This non-earnings garnishment procedure was mismanaged by Pozner, his attorneys, and the circuit court. The reasonable procedure would have been to determine how much money Fetzer received in 2022 from non-exempt sources and then deduct the $5000 aggregate exemption (under 815.18(3)(k)) and garnish the positive balance if any. This is how simple it could have been by asking the correct questions:

Honest Correct Manner of Determining Non-Exempt Annual Income		
	Income	**non-exempt**
1	UWCU-WI Income Tax Return (1/2 of Joint Return)	$743.00
2	UWCU-Federal Income Tax Return (1/2 of Joint Return)	$260.50
3	Summit Credit Union	$46.06
4	State Bank of Cross Plains (public donations Fetzer Legal Defense)	$0.00
5	UWCU-Birthday Gift to Janice from daughter	$0.00
6	Old Age Retirement ($1,700/mo) exempt	$0.00
7	Social Security ($2,476.00/mo) exempt	$0.00
	Sub Total	**$1,049.56**
	Deduction	$5,000.00
	Grand Total - Distribute Nothing.	**-$3,950.44**

(Appendix 4, page 13). Yet the Circuit Court's Proposed Garnishment Order ignores all that and accepts Pozner's assertion that all these properties are non-exempt from garnishment:

Deposit Date	Deposit Account	Amount
3/3/2022	UW Account (Deposit)	$549.59
3/21/22	UW Account (Deposit from daughter)	$65.32
3/30/2022	UW Account (WI Tax Return)	$1,486
4/6/2022	UW Account (Fed. Tax Return)	$521.00
5/6/2022	UW Account (the Debtor's reimbursement for lawsuit)	$391.05
6/15/2022	UW Account (Deposit from Daughter)	$159.00
8/8/2022	UW Account (Deposit from Daughter)	$153.88
9/2/2022	UW Account (Deposit from the Debtor for Fed Ex)	$94.96
9/23/2022	UW Account (Deposit)	$100.00
12/1/2022	UW Account (Deposit from the Debtor for Fed Ex)	$1,000
12/21/2022	Summit Credit Union Answer	$46.06
12/27/2022	State Bank Cross Plains Answer	$2,437.60
	Claimed Exemption Wis. Stat. § 815.18(3)(k)	-$5,000
	Amount Subject to Garnishment	**$2,004.46**

Pflum Aff., dkt. 558:2.[2] According to Pozner, Fetzer's wife "specifically identified" these deposits (Appendix 9, page 5), which include her half of federal and state income tax returns ($743 and $260.50), reimbursements from our daughter for shopping at COSTCO ($159 and $153.88) as well as additional reimbursements from Dr. Fetzer for FEDEX legal expenses

($1,000), which are properly exempt. Thus, the amount claimed ($2,004.46) ought to be reduced by that combined sum ($2,315.38) leaving a negative balance that is not subject to garnishment ($310.92). It's that plain and simple.

FIRST IMPRESSIONS

The State Bank of Cross Plains (12/27/2022) deserves special attention from this Court. These were funds donated to Dr. Fetzer's Legal Defense Fund though a GiveSendGo.com Account (GiveSendGo.com/fundingfetzer), which Dr. Fetzer established to assist in paying legal fees accumulated in the defense of his Constitutional Rights under the 17th and 14th Amendments, which are egregious in this case, especially by denying Dr. Fetzer the right to a trial by jury in the face of massively disputed facts. As Dr. Fetzer has explained in the past and in the latest (updated) version of his appeal, none of these funds are going to be used to pay liabilities Dr. Fetzer has incurred but only for his legal expenses in fighting for his rights:

> As a former Marine Corps officer, I was obligated to carry this case to the US Supreme Court (to no avail). The Circuit Court of Dane County denied the right to present a defense and to have the disputed facts decided by a jury. **I have been saddled with $1.1m in liens** as a result of a **SLAPP (Strategic Lawsuit against Public Participation)** to punish those who speak out and expose fraud and corruption by the government. I am doing what I can to protect your rights.
>
> If this case stands, then we can be deprived of life, liberty or property without due process of law. I am doing this for all of use but I need your help! I have the law and the evidence on my side. What I don't have is the money. I am doing this for the sake of the nation. None of these funds will be used to pay the liability I am fighting but only for legal expenses incurred. Lend a hand if you can. Thanks!

Dr. Fetzer has been unable to find specific case law to cite in support of this exception to garnishment procedures, suggesting this may qualify as a "First Impression" case, which raises an issue not previously addressed by the Court or within the Court's jurisdiction, where there appears to be no binding authority (https://www.law.cornell.edu/wex/first_impression).

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Soliciting funds to support a legal defense, as Dr. Fetzer has done, with assurance to donors

that they will not be used to pay off the liability being opposed in court, but then having those funds subject to garnishment, represents a form of theft by deception or fraud. No donors should be defrauded by supporting a fight against unjust judgments and having their donations appropriated to satisfy those judgments instead.

Dr. Fetzer believes this case should be used to establish a suitable precedent under the law. Such an exception, which appears to be legally appropriate, would further reduce the amount of funds properly available for garnishment by an additional among of $2,437.60. Dr. Fetzer has been at a loss over how the Circuit Court could proceed in committing such obvious errors and rendering an opinion inconsistent with the Court of Appeals. The Court and Pozner appear to be engaging in conduct precluded by SCR 20.3.1, *Meritorious claims and contentions,* and SCR 20.3.3, *Candor toward the tribunal*, and deserving of reprimands of such form and variety as the Court finds to be appropriate in this case.

CONCLUSION

Based upon the foregoing arguments and evidence, the Circuit Court Order 615 granting Pozner's Motion for Distribution of Funds should be reversed. The Circuit Court and Pozner should be sanctioned for transgressing these Supreme Court Rules and for failing to produce a new opinion as this Court directed. In addition, this case should also be used to establish a precedent for Wisconsin by exempting donations to legal defense funds from garnishment.

Respectfully submitted.

Electronically signed by: */s/ James H. Fetzer, Ph.D.*

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Signed this 18th day of July 2024.