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**COURT OF APPEALS**

**STATE OF WISCONSIN  
COURT OF APPEALS  
DISTRICT IV**

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Leonard Pozner,  
Plaintiff-Respondent

v.

**Appeal No. 2024AP001361**

James Fetzer,  
Defendant-Appellant

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

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**BRIEF OF APPELLANT**

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### STATUTES

Wisconsin Stats. Chapter 757. General Provisions Concerning Courts of Record, Judges, Attorneys and Clerks, Section 757.19 Disqualification of judge, specifically. 757.19(2) 8

### CASES

*Pozner v Fetzer, et al., 18 CV 3122* (2018). 8

### RULES

Wisconsin Rules of Civil Procedure, Ch. 802 *Pleadings allowed.* 4, 5, 6, 8

## STATEMENT OF ISSUES PRESENTED FOR REVIEW

**Issue 1: May a Circuit Court Judge deny a Motion to Open Judgment Pursuant to Extrinsic Fraud and Fraud upon the Court without a response from the Plaintiff or reply from the Defendant in violation of Wisconsin Rules of Civil Procedure, Chapter 802. before due process pleadings and discovery have occurred?**

*General area of the law.* According to Wisconsin Rules of Civil Procedure, Chapter 802.01:

**Chapter 802.01 Pleadings allowed; form of motions:**

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

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 the motion without soliciting a response from the Plaintiff and a reply from the Defendant (Appendix 1).

*Necessary facts.* This was no ordinary motion but one 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 (Appendix 2),

*Policies that should be followed.* Obviously and without requiring argument, the Wisconsin Rules of Civil Procedure ought to be followed. The interesting question is not what the Circuit Court should have done but why it violated the ordinary practice by soliciting the required answers and replies from the Plaintiff and the Defendant.

**Issue 2: May a Circuit Court Judge deny a Request for Relief from Judgment or Order without a response from the Plaintiff and a reply from the Defendant in violation of Wisconsin Rules of Civil Procedure, Chapter 802 before due process pleadings and discovery have occurred?**

*General area of the law.* As before, the Circuit Court again violated Wisconsin Rules of Civil Procedure, Chapter 802. In this case, Dr. Fetzer had pointed out to the presiding judge, The Honorable Frank Remington, that his order denying Dr. Fetzer's Motion to Open Judgment Pursuant to Extrinsic Fraud and Fraud upon the Court was in violation of Chapter 802—specifically, 802.01—of Wisconsin Rules of Civil Procedure (Appendix 3) and nevertheless Judge Remington did it again (Appendix 4), making this instance even more egregious than the prior.

*Necessary facts.* Judge Remington did not bother with a written response but simply wrote (in his own handwriting) on Dr. Fetzer's proposed order, "DENIED. Neither factually or (sic) legally meritorious" with no reasons given (Appendix 4).

*Policies that should be followed.* The Wisconsin Rules of Civil Procedure must

be followed to ensure that the due process and Constitutional rights of litigants are upheld rather than for Courts to be arbiters of both facts and law as occurred here.

**Issue 3: May a Circuit Court Judge grant a Motion to Seal or Redact a Court Record in violation of Wisconsin Rules of Civil Procedure, Chapter 802, before pleadings, without a response from the Defendant and a reply from the Plaintiff, when the Court has denied due process discovery and cross- examination of the evidence?**

*General area of the law.* For the third time, the Circuit Court violated Wisconsin Rules of Civil Procedure. Plaintiff submitted a Motion to Seal or Redact a Court Record (Appendix 5) and Judge Remington granted the motion and ordered it sealed without submitting the Motion to the Defendant for his response and Plaintiff for her reply (Appendix 6).

*Necessary facts.* The Motion was to seal Dr. Fetzer's Motion to Open Judgment Pursuant to Extrinsic Fraud and Fraud upon the Court and a supporting affidavit, which thereby denied the public to access of what otherwise would have been a public record.

*Policies that should be followed.* The purpose of the Wisconsin Rules of Civil Procedure are designed to safeguard the due process and Constitutional Rights of litigants and to ensure the process not be warped or corrupted by parties whose own personal or professional interests may be at stake. Those parties could even include the participating attorneys or the court itself, as in the present case. What has occurred here illustrates why the rules of civil procedure exist and must be faithfully followed.

## STATEMENT OF THE CASE

Statement of the Case presented by Dr. Fetzer in his Motion to Open Judgment Pursuant to Extrinsic Fraud and Fraud upon the Court dated June 17, 2024 (Case #23AP1002), which is attached herein as Exhibit B, requires supplementation only by the recent proceedings addressed above, which along the 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

1. Dr. Fetzer submitted his MOTION TO OPEN JUDGMENT PURSUANT TO EXTRINSIC FRAUD AND FRAUD UPON THE COURT on June 17, 2024 (Appendix 2).
2. Circuit Court Judge Remington issued his Decision and Order Denying James Fetzer's Motion for Relief from Judgment on June 20, 2024 (Appendix 1).
3. Dr. Fetzer submitted his Request for Relief from Judgment or Order on June 20, 2024 (Appendix 3).
4. Emily Feinstein submitted her Motion to Seal or Redact a Court Record on June 20, 2024 (Appendix 4)
5. Circuit Court Judge Remington Denied Dr. Fetzer's Request for Relief from Judgment or Order on June 24, 2024 (Appendix 5).
6. Circuit Court Judge Remington issued his Order to Seal or Redact a Court Record on June 24, 2024 (Appendix 6)
7. Emily Feinstein submitted her Notice of Motion and Motion for Sanctions and Order to Show Just Cause on June 24, 2024 (Appendix 7).
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 (Appendix 8).

## 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 (Appendix 1) but even more peremptorily with Dr. Fetzer's REQUEST FOR RELIEF FROM JUDGMENT OR ORDER (Appendix 4), 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.

The contrast with Judge Remington's handling of Emily Feinstein's Motion for Sanctions and Order to Show Just Cause (Appendix 7) could not be more striking. It was noticed the same day it was filed (Appendix 8), which shows that Judge Remington follows Wisconsin Rules of Civil Procedure when it suits his aims or goals and otherwise simply disregards them. The pattern of bias and prejudice against Dr. Fetzer is apparent, because of which Dr. Fetzer has filed a MOTION TO RECUSE JUDGE FRANK REMINGTON PURSUANT TO WIS. STATS. 757.19(2)(g) docketed on July 9, 2024.

## CONCLUSION

In *Pozner v. Fetzer 18CV3122*, the Circuit Court has violated its obligations under the Wisconsin Rules of Civil Procedure, Chapter 802. 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), must be reversed and restored to the docket for due process in accord with Wisconsin Rules for Civil Procedure.

Respectfully submitted,

electronically signed by:

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

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