IN THE CIRCUIT COURT FOR THE SECOND JUDICIAL CIRCUIT
WHITE COUNTY, CARMI, ILLINOIS

PEOPLES NATIONAL BANK, N.A., a National Bank,	)	
	)	
PLAINTIFF,	)	
VS.	)	
	)	
EVERGREEN ENERGY, L.L.C., a dissolved	)	
Limited Liability Corporation, et al.,	)	**No. 2017-LM-28**
	)	
DEFENDANTS.	)	
And	)	
	)	
GRAND RIVERS COMMUNITY BANK, an Illinois	)	
Banking Corporation,	)	
	)	
PETITIONER.	)	

REPLY AND MEMORANDUM OF LAW
TO DEFENDANTS' OBJECTION AND MEMORANDUM IN OPPOSITION

and

RESPONSE TO DEFENDANTS' MOTION TO CORRECT AND SUPPLEMENT THE RECORD

Now Comes **GRAND RIVERS COMMUNITY BANK,** individually and by its attorney, **MELISSA K. SIMS,** and does hereby file this **Reply and Memorandum of Law to Defendants' Objection and Memorandum in Opposition** filed with this court on July 26, 2018 and **Response to Motion to Correct and Supplement the Record** filed on July 20, 2018.

On July 10, 2018 Grand Rivers Community Bank sought intervention in this cause and a vacation of orders surreptitiously entered by Judge Mark Stanley, a brother-in-law of the Defendant, Gary Evans, on June 14th. In response, Plaintiff, Peoples National Bank

and Defendants, Gary Evans and his various corporations (hereinafter the "Evans Defendants") then filed a flurry of pleadings attempting to supplement, correct and add purported "remittals" to the June 14th proceeding.

The Evans Defendants, through their attorney, Daniel R. Robinson, Jr., stated in an unverified Motion filed with this Court on July 20th and sought an amendment of the record:

> 4. After counsel for Peoples tendered the judgment to the Court, Judge Mark Stanley disclosed in open court that he was Gary Evans' brother-in-law.
>
> 5. After Judge Stanley's disclosure, and outside the presence of Judge Stanley and counsel for Peoples, the undersigned conferred with Gary Evans concerning Judge Stanley's disclosure.

Six days later, new counsel for Peoples National Bank, Attorney Robert Duckels, filed a "Remittal of Disqualification" in an unverified document:

> Peoples National Bank N.A. ("PNB"), through undersigned counsel, states that, on June 14, 2018, White County Associate Circuit Judge Mark R. Stanley, upon being presented with a consent judgment that had already been executed by the parties, (a) Judge Stanley revealed in open court that he was the brother-in-law of Gary L. Evans; (b) asked the parties and their lawyers to consider whether they wished to waive disqualification; (c) the parties, acting separately, and after counsel for the Defendants privately conferred with his client outside the courtroom, agreed to waive disqualification; and (d) following notification to Judge Stanley by the parties that they agreed that Judge Stanley need not disqualify himself, Judge Stanley executed the consent judgment presented by the parties.

For the reasons states herein, these cryptic and unverified statements do not satisfy Illinois Supreme Court rules on disqualification and remittal and are meaningless.

Now, Grand Rivers Community Bank responds to the Evans Defendants' Motion to Correct and Supplement the Record and Defendants' Objection and Memorandum of Law in Opposition and in support thereof, states:

I. JUDGE STANLEY WAS DISQUALIFIED THE SECOND HE ALLEGEDLY DISCLOSED THAT HE WAS A FIRST-DEGREE FAMILY MEMBER OF GARY EVANS AND HE LACKED AUTHORITY TO PROCEED.

A. Assertions that Judge Stanley properly disqualified himself are are pure sophistry.

After receiving Grand Rivers Community Bank's motion detailing with specificity, the machinations of June 14, 2018, the Evans Defendants now attempt to further manipulate the record. It is blatantly obvious that the lawyers and Judge Stanley never consulted with the Illinois Supreme Court Canons of Ethics on June 14th and the lawyers are now attempting to mold the record to suit their purpose. As detailed in this Reply, they cannot now do so, and Illinois Supreme Court Rules make this clear.

> **D. Remittal of Disqualification.**
>
> A judge disqualified by the terms of Section 3C may disclose ***on the record*** the basis of the judge's disqualification and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree that the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding. ***This agreement shall be incorporated in the record of the proceeding.*** (Illinois Supreme Court Rule 63, emphasis added.)

The plain language of Illinois Supreme Court Rule 63(D) simply reads that "on the record" means a transcript of what occurred. The basis for judicial disqualification must be on the record and any agreement to proceed despite the disqualification must be incorporated contemporaneously into the record of that proceeding. Attempts to correct, supplement or notices of remittal filed afterwards are worthless. Judge Stanley was disqualified the second he allegedly made this disqualification and therefore lacked authority to proceed on June 14th. His orders are void and unenforceable. The inquiry should stop there. But, the parties to the June 14th orders are claiming extrajudicial statements and for purposes of this Reply, Grand Rivers Community Bank will address those.

Judge Stanley was unqualified immediately upon allegedly stating his disqualification to the attorneys present on June 14th. In *Tramonte v. Chrysler Corp*, 136 F.3d 1025 (5th Cir. 1998), the Fifth Circuit ruled that District Court Judge Mary Ann Lemmon was unqualified to proceed when she stated on the record that members of her family were present or past owners of Chrysler automobiles, though she stated that she believed family members did not wish to join the class action. The Fifth Circuit ruled that Judge Lemmon had a duty to be watchful of disqualifying circumstances and ***decide the specific basis for any decision to be clear upon the record***. *Tramonte* at 1029 (*emphasis added*). Because she stated that her family members owned Chryslers but did not detail her disqualification, all orders entered by Judge Lemmon were vacated and the parties had to start over. This makes perfect sense. All orders and any judgment rendered are compromised for the failure to address these fundamental legal issues.

Likewise, Illinois Supreme Court Rule 63(D) requires that the judge state the basis for the disqualification ***on the record*** prior to the parties' waiver which ***shall be incorporated in the record of the proceeding***. The purpose of the **exact reason for disqualification** is mandatory which is why the basis for the disclosure must be on the record. How else can a party waive what it does not know? Without a record of the proceeding, posterity will never know what the actual basis for disqualification and all orders was entered post are invalid. This is the purpose of having a record. To properly assess whether an appearance of impropriety warrants a judge's recusal, a reviewing court must know and understand all the relevant facts. *Hassebrock v. Ceja Corp.*, 2015 ILApp (5th Dist. 2015).

There are no facts for the record relating to Judge Stanley's alleged disqualification on June 14th.

B. Further, the record of proceeding must state the exact basis of the disqualification. Judge Stanley failed to disclose his personal, business and legal relationship with Defendants both before and after he became judge.

What was the basis of Judge Stanley's alleged disqualification? Was it just that Gary Evans is Judge Stanley's brother-in-law? Did Judge Stanley ever represent Gary Evans and give advice to Gary Evans and/or his corporations?[1] Logic dictates that counsel should have posed these questions to scrutinize other disqualifying circumstances. Did they ever speak about this matter? Did they ever speak about the

[1] The undersigned counsel has been admitted to practice law for more than twenty years. In that time, she has provided countless instances of legal advice to her family, extended family and their in-laws. Therefore, the attorney makes the argument—which is confirmed by public records-- that it is extremely unlikely that Judge Stanley has not been a legal advisor to family members, including in-laws. This simple fact alone has the appearance of impropriety and this should have been addressed by counsel.

Grand Rivers Community Bank matter involving his mother-in-law's residence? Claiming that a judge is a first-degree family member to a party only begs further questions as to other indices of actual bias, prejudice and appearances of impropriety under Illinois Supreme Court Rule 63. To properly assess all potential appearances of impropriety, disclosures must be made on the record of proceeding for every appearance of impropriety. It is absurd that a judge related to a party in the first-degree could state every possible appearance of impropriety.

Further, Illinois Supreme Court Rule 63(C)(1) requires a judge disqualify himself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to specific instances listed as a) through e). 63(C)(1)(a) requires disqualification for a personal bias or prejudice concerning a party but what constitutes "personal bias or prejudice" is not defined. The failure to define the standard does not excuse this conduct.

The United States Supreme Court has held that an objective inquiry must be made to determine not whether the judge is, subjectively biased, but whether the average judge in his position is likely to be neutral or whether there is an unconstitutional potential for bias. *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 129 S.Ct. 2252, 173 L.Ed.2d 1208 (2009). Entering an order involving a parent, sibling or child would shock the conscience of most members of the bench and bar. Recusal is **required** when the "probability of actual bias on the part of the judge…is too high to be constitutionally tolerable." *Withrow v. Larkin*, 421 U.S. 35, 47, 95 S.Ct. 1456, 43 L.Ed.2d 712 (1975). For the reasons stated herein, there is demonstrated actual bias or prejudice involving Gary Evans and his corporations. The

standard for when a judge's impartiality might reasonably be questioned include this actual bias or prejudice standard under 63(C). Without a doubt, Judge Stanley has recused himself in many cases in his years on the bench and it is doubtful he afforded those litigants an opportunity to waive his disqualification.

Identifying all potential conflicts are extremely important because a waiver is predicated on that ***specific disclosure***. There is no blanket disqualification recognized under Illinois law. The Evans Defendants fail to address this very important issue in their attempts to now cover their tracks. Not at all surprising and easily verified in minutes on a search of the White County public records, Judge Stanley has represented Gary Evans and his corporate defendants in all types of litigation. Given the close relationship, it is also not surprising that Gary Evans and Lauren Abbey Evans sought counsel even after Judge Stanley became a judge.

None of the following information was relevant to the initial pleading by Grand Rivers Community Bank because the June 14th orders were—and are--*ipso facto* void. The Evans Defendants have introduced new "evidence" and Grand Rivers Community Bank responds in kind.[2] A review of White County, Illinois filings with the Recorder of Deeds and the Circuit Clerk's office indeed reveals that Judge Stanley has advised Gary Evans personally and his various corporate identities since at least 1993, according to publicly available documents (easily accessible to the attorneys herein who should have verified this basic premise prior to filing their pleadings).

[2] The following is not all the impeachable evidence Grand Rivers Community Bank holds. It brings a portion of information to light to refute the allegations made by opposing counsel.

C. Judge Stanley's other disqualification: representation of Gary Evans and his various corporations.

Evidence of representation by Judge Stanley according to easily accessible and readily available public records is attached hereto as **Exhibits 1-25** and are detailed as follows:

1. Assignment of Oil and Gas Lease dated April 22, 1993 to Kerogen Resources, Inc., prepared by Stanley Law Offices, Wayne County Recorder of Deeds, Book 433, page 913.
2. Assignment of Oil and Gas Lease dated February 25, 1994, from Kerogen Resources, Inc to Ron Absher, prepared by Stanley Law Offices, Wayne County Recorder of Deeds, Book 436, Page 442.
3. Claim for Statutory Oil and Gas Lien, Kerogen Resources, Inc., dated January 19, 1997, prepared by John Stanley, White County Recorder of Deeds Volume 265, Page 12.
4. Assignment of Oil and Gas Lease to Kerogen Resources, Inc., dated May 2, 1995, prepared by Mark Stanley, Stanley Law Office, White County Recorder of Deeds, Volume 265, Page 11-12.
5. Assignment of Oil and Gas Lease to Kerogen Resources, Inc, dated April 19, 1995, prepared by Mark R. Stanley, Stanley Law Office, White County Recorder of Deeds, Volume 265, Page 13-14.
6. Warranty Deed to Gary and Denita Evans, dated July 21, 1997 White County Recorder of Deeds, Volume 374, Page 234-235.
7. Claim for Statutory Oil and Gas Lien, for Kerogen Resources, Inc., dated May 20, 1997, notarized by David L. Stanley, White County Recorder of Deeds Volume 14, Page 102.
8. Warranty Deed to Gary Evans and Denita Evans prepared by Stanley Law Office,[3] dated December 15, 1999, and recorded with the White County Recorder of Deeds as Volume 394, Page 37.
9. White County Cause 1998DT0092, People of the State of Illinois v. Gary Evans, represented by Mark Stanley, entire docket and court file.
10. Warranty Deed from Dale Franklin Frashier and Janice Ann Frashier prepared by Stanley Law Office and notarized by Mark Stanley, dated October 4, 2001, recorded in White County Recorder of Deeds in Volume, Page 009.
11. Warranty Deed to Janice Frashier, prepared by Stanley Law Office, notarized by Mark Stanley, dated January 21, 2001, recorded in the White County Recorder of Deeds in Volume 407 and Page 42.

[3] notarized by Angela Lueke with file string ARL and who is now employed as a Deputy Clerk in White County and discussed later in this Reply

12. Corporate Warranty Deed to Gary Evans, prepared by Mark R. Stanley, dated October 27, 2003, recorded in White County Recorder of Deeds, Volume 419, Page 248.
13. Warranty Deed, from Gary Evans, prepared by Mark R. Stanley, dated March 12, 2004, recorded in White County Recorder of Deeds, Volume 421, Page 316.
14. Quitclaim Deed to Gary Evans, prepared by Mark R. Stanley, dated March 11, 2004, recorded in White County Recorder of Deeds, Volume 421, Page 314.
15. Kerogen Resources, Inc. v. Robinson et al, Wayne County Cause 2004-CH-05, represented by Mark R. Stanley, filed March 17, 2004, docket, complaint and dismissal letter.
16. Kerogen Resources, Inc. v. Rhodes et al., White County Cause 2004-CH-09, represented by Mark R. Stanley, filed February 20, 2004, docket, order confirming sale and affidavit of Judicial Sale by Mark R. Stanley attached.
17. Foreclosure Conveyance, Kerogen Resources, Inc., represented by Mark R. Stanley, Dated January 7, 2004, recorded in White County Recorder of Deeds as Volume 296, Page 184.
18. Assignment of Oil and Gas Lease, from Gary Evans and Kerogen Resources, Inc. prepared by Mark R. Stanley, dated January 27, 2005, recorded in White County as Volume 296, Page 277.
19. Assignment of Oil and Gas Lease from Gary Evans and Kerogen Resources, Inc. to Ron Absher, represented by Mark R. Stanley dated March 30, 2005, recorded in White County Recorder of Deeds Document 2005-1179.
20. Corrected Foreclosure Conveyance for Kerogen Resources, Inc., prepared by Mark R. Stanley, dated March 2, 2005, recorded in White County Recorder of Deeds as 2005-0936.
21. Foreclosure Conveyance from Gary Evans for A-Tek Drilling & Production Co., dated May 19, 2006 prepared by Mark R. Stanley, recorded in White County Recorder of Deeds as Volume 301, Page 273-274.
22. Foreclosure Conveyance by Gary Evans prepared by Mark R. Stanley, dated May 9, 2006, recorded in White County Recorder of Deeds as Volume 301, Page 250.
23. Corrective Foreclosure Conveyance by Gary Evans prepared by Mark R. Stanley, dated January 7, 2006, recorded in White County Recorder of Deeds as Volume 301, Page 345.
24. In Re: The Marriage of Gary Evans and Patricia M. Evans, Gary Evans represented by Mark R. Stanley, White County Cause 2005-D-50, court file and docket attached.
25. Articles of Amendment, G E Cementing, Inc. to G E Drilling, Inc., dated October 12, 2005, filed by Mark R. Stanley, recorded in White County Recorder of Deeds as Volume 144, Page 12-14.

Of course, these are only public records of representation by Judge Stanley to Gary Evans and his corporations. Legal advice can often take the form of personal consultation not publicly available.

D. ***Gary Evans and Lauren Abbey Evans sought counsel from Judge Stanley.***

Not only did Judge Stanley advise Gary Evans and some of the Evans Defendants prior to becoming a judge, Grand Rivers Community Bank has learned that Gary Evans and Lauren Abbey Evans, (member owners of Evergreen Drilling, LLC) sought counsel from Judge Stanley regarding asset and debt protection.

Oil prices plummeted in the Spring of 2015 to $45.00 per barrel and Gary Evans and Evergreen Drilling, LLC faced insolvency.

Gary Evans and Lauren Abbey Evans—owners of now defunct Evergreen Drilling, LLC-met with Judge Mark Stanley personally in early 2015 regarding their financial dilemma.

Subsequently, a flurry of deeds was conveyed by Gary Evans dumping assets to Lauren Abbey Evans. The first of those deeds which is attached hereto as **Exhibit 26** was

an "Assignment of Overriding Royalty Interest" dated April 23, 2015 from Gary L. Evans to Lauren A. Evans for nine tracts of land. Other deeds followed from Gary Evans to Lauren Abbey Evans are attached hereto as **Exhibits 27-30** and are the subject of the fraudulent conveyance action in White County Cause 2017-CH-29. One of these deeds **(Exhibit 28)** includes the home of Judge Stanley's mother-in-law, Janice Frashier, for whom Judge Stanley also has provided legal counsel. (**Exhibits 10 and 11**).

In addition to providing counsel to his family even after he became a judge, Judge Stanley has also maintained a close relationship with Gary Evans and Lauren Abbey Evans, even hosting a bridal shower at his home for Lauren Abbey Evans within the past three years. There are most likely many more instances of the appearance of impropriety given the close nature of Judge Stanley, Gary Evans and Lauren Abbey Evans. Yet, Peoples National Bank and the Evans Defendants maintain in their pleadings that Judge Stanley properly disqualified himself. Again, the evidence Grand Rivers Community Bank now reveals was not necessary in Grand Rivers Community Bank's original July 10th pleading as the record *ipso facto* revealed Judge Stanley's orders were void. Since then, the Evans Defendants have opened the door and created a dispute over an alleged disqualification which is now why Grand Rivers Community Bank responds with these chilling facts.

E. Actual bias or prejudice cannot be waived under Illinois Supreme Court Rule 63(D).

Illinois Supreme Court Rule 63 requires that a judge should disqualify himself in a proceeding in which his **impartiality might reasonably be questioned**, including but not limited to instances where he has an **actual bias or prejudice** and if the judge is within a third-degree familial relationship of the parties. 63(D) provides a mechanism for remittal disqualifications other than personal bias or prejudice:

> "…. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party…." Illinois Supreme Court Rule 63(D) (*emphasis added)*

Simply being a one-degree relation from a party is only a part of the disqualification. For a remittal of a disqualification to be valid, the record must reflect each specific instance of disqualification which raises the appearance of impropriety. There is **none** here. Supreme Court Rule 63 requires a record of this proceeding and seasoned legal professionals knew, or should have known, that. Had the counsel and court consulted the Supreme Court Rules on June 14th, they would have realized that the disqualification(s) and remittal must have been on the record and incorporated into the record of the proceeding. So, why was there no record? The failure to have a record of proceeding---when a record is so readily available--smacks of chicanery.

F. There is likewise no evidence of record that Judge Stanley properly identified his disqualification under 63(C)(e)(iii).

Under Illinois Supreme Court Rule 63(C)(e)(iii), a judge must also recuse himself if a person within a third-degree familial relationship has more than a *de minimus* interest that **could be substantially affected by the proceeding**. Plaintiff and Defendants fail to

cure this in their attempts to correct, supplement or provide remittals for the June 14th matter. As Grand Rivers Community Bank claimed in its July 10th pleading, Judge Stanley's mother-in-law, Janice Frashier, was one of the grantors of quitclaim deeds to Lauren Abbey Evans for which Grand River Community Bank seeks to void as fraudulent. Janice Frashier is also a first-degree family member from Judge Stanley and her home is at stake. This is more than *de minimus*.

Lauren Abbey Evans, who is a niece of Judge Stanley and is within a third-degree familial relationship is the recipient of those deeds and is also a member owner of Evergreen Drilling, LLC. As a member owner and recipient of those deeds, she, too has more than a *de minimus* interest in this cause. There is no evidence of record, either before or after July 10th, which shows Judge Stanley stated the basis of this disqualification on the record.

Did Judge Stanley know about Grand Rivers Community Bank's fraudulent conveyance action? The court case received coverage in a local newspaper on November 6, 2017.[4] The undersigned counsel was approached in November in White County court, and in federal court in Benton, following publication of this article by two different attorneys who saw the article and commented to her upon seeing Grand Rivers Community Bank on the docket at those courthouses. White County is a very small county, population 14,665[5], and it seems highly unlikely that Judge Stanley did not know

[4] Howser, Jack "Another Foreclosure Filed" Gary Evans and Abbey have been sued by Grand Rivers Community Bank, *The Disclosure,* November 6, 2017.
[5] "State & County QuickFacts". United States Census Bureau.
https://en.wikipedia.org/wiki/White_County,_Illinois#cite_note-QF-1, retrieved September 5, 2018

of Grand Rivers Community Bank's cause 2017-CH-28, which sought deeds from his brother-in-law and mother-in-law to his niece be declared as void and fraudulent. An evidentiary hearing will cast light on this issue, something the Evans Defendants resist.

G. There was no record of proceeding, though one was easily obtained and was readily available.

If the events of June 14th were completely legitimate and transparent as counsel now claim, then, why was there no record of proceeding? Illinois Supreme Court Rule requires, to waive the disqualification "all agree that the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding. This agreement shall be incorporated in the record of the proceeding." (Illinois Supreme Court Rule 63(D) *emphasis added*.)

Read *in pari materia* with Illinois Supreme Court Rule 46, a transcript is required. The lawyers and Judge Stanley know this. It is common knowledge in the legal community that when a matter is of importance, the court reporter should take a transcript. A "record of the proceeding" is defined under Illinois Supreme Court Rule 46 which states that "the official record of court proceedings may either be taken by stenographic means or by an electronic recording system. All transcripts prepared as the official record of court proceedings shall be prepared pursuant to applicable supreme court rules." Rule 63(D) mandates a record of proceeding and Rule 46 defines what is a record of proceeding. As a rule of statutory interpretation, laws of the same matter and on the same subject must be construed about each other. *People v. Taylor*, 221 I..2d.157 (Ill. Sup. Ct. May 18, 2006). There is no record of proceeding of June 14, 2018, though one

could have easily been obtained by counsel and the court had they wished their hearing to be publicly available. So, why would seasoned legal professionals not have had a court reporter and transcript of the proceeding had they consulted the rules as they now claim?

The undersigned counsel contacted Karen Crisel, the Court Reporter Supervisor for the Second Judicial Circuit via e-mail to inquire if there was a record of proceeding for June 14, 2018 in White County, Illinois.

Gmail

Melissa Sims <mksims@melissaksims.com>

White County court reporter for 6/14/2018

Melissa Sims <mksims@melissaksims.com> Mon, Jul 23, 2018 at 9:21 AM
To: kec22@jeffil.us

Ms. Crisel,

I have contacted you as the listed court reporter supervisor for the Second Circuit. I have been trying to track down who was the court reporter in White County for 6/14/2018. The website says that Robin is the court reporter, however, I have learned that she is no longer so employed. Could you kindly let me know who would have been assigned to this courthouse in the afternoon on this date? Thank you very much and have a great day.

--
Melissa K. Sims

"Life's most persistent and urgent question is,
'What are you doing for others?' "
Martin Luther King, Jr.

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Ms. Crisel advised that Robin O'Neal was assigned to White County on June 14, 2018 and took no report of proceedings and that she was assigned to White County all day.

by Google

White County court reporter for 6/14/2018

Karen Crisel <kec22@jeffil.us> Mon, Jul 23, 2018 at 9:57 AM
To: Melissa Sims <mksims@melissaksims.com>

Ms. Sims,

I have checked with Robin O'Neal who was the court reporter assigned to White County on 6/14/18, and she told me she took no proceedings on that date. There was no record made on any of the proceedings held on that date.

Sincerely,

Karen E. Crisel

Court Reporter Supervisor

Office of the Chief Judge, Second Judicial Circuit

Jefferson County Justice Center

911 Casey Avenue

Mt. Vernon, IL 62864

(618) 244-8036

(618) 244-8038 (fax)

Gmail by Google

Melissa Sims <mksims@melissaksims.com>

White County court reporter for 6/14/2018

Melissa Sims <mksims@melissaksims.com> Mon, Jul 23, 2018 at 9:53 AM
To: Karen Crisel <kec22@jeffil.us>

Thank you! For clarification purposes, was she there in the afternoon?

Sent from my iPhone

Gmail by Google

Melissa Sims <mksims@melissaksims.com>

White County court reporter for 6/14/2018

Karen Crisel <kec22@jeffil.us> Mon, Jul 23, 2018 at 10:12 AM
To: Melissa Sims <mksims@melissaksims.com>

Yes. She was there all day that day.

There is no electronic recording capability for White County according to Ms. Crisel. Moreover, a record of the proceeding would have required the parties to state their agreement under oath: something the participants still have not provided.

Thus, because there was no record of proceedings on June 14, 2018 as to:

(1) the disqualification allegedly made by Judge Stanley on June 14, 2018;
(2) the specific disqualifications of **all** matters which interfere with the appearance of impropriety, including more than *de minimus* effects for Judge Stanley's niece and mother-in-law and actual bias and prejudice (Judge Stanley's close personal relationship, prior representation of Gary Evans and his entities, his hosting of a bridal shower for member owner Lauren Abbey Evans of Evergreen Drilling, LLC and his advice to Gary Evans and Lauren Abbey Evans in 2015) pursuant to Illinois Supreme Court Rule 63; and,
(3) the agreement of all parties on the record of proceedings as required by Illinois Supreme Court Rule 63(D)

any amendment of the record is improper.

H. Judge Stanley was immediately disqualified and lacked authority to proceed on June 14, 2018 without proper remittals incorporated into the record of proceeding.

In *Woods v. Durkin,* 183 Ill.App.3d 870, 539 N.E.2d 920, 132 Ill.Dec. 357 (3rd Dist. 1989), the trial judge disclosed on the record (i.e., *verbatim* transcript) the basis of his disqualification. At that time, the Third District ruled that the judge was disqualified immediately and could not proceed:

> "In the instant case, the judge himself brought the conflict to the attention of the attorneys before the trial began thus creating a prima facie case of disqualification. **Thus, the judge did not have discretion on whether or not he could continue the case, he was disqualified**.[6]

The Appellate Court then ruled on the requirement of contemporaneous remittals:

> "(T)this is a case where the judge, at the first hearing, determined that he was disqualified. Judge Johnson's declaration of disqualification is completely in accordance with the ethical Canons (07 Ill.2d R. 63), and he is to be commended for being so forthright in complying with the Canons. However, while we are sympathetic to Judge Johnson's position in

[6] *Woods* at 874

> proceeding with the case, his actions in proceeding were contrary to the provisions of the Canons. (107 Ill.2d R. 63) The provisions are mandatory, they are addressed to the judge and require that he disqualify himself in certain circumstances. ***Thus, Judge Johnson was disqualified and should not have continued unless the Remittal of Disqualification requirements*** (Ill.Rev.Stat.1987, ch. 110A, par. 63(D)), ***were satisfied***." *Woods* at 874 (*emphasis added*).

Although *Woods* was decided based on the old 63(D), the language regarding disqualification and contemporaneous remittal is intact. The Illinois Supreme Court upheld the ruling in *Woods* that further confirmed that a judge who is disqualified must obtain a remittal before continuing. *F.D.I.C. v. O'Malley*, 163 Ill.2d 130 (1994) (also noting that the trial judge would have been disqualified had there been proof of actual prejudice from his prior involvement with the F.D.I.C. *O'Malley* at 140). This is not only good practice, it is common sense.

The agreement on the record of proceeding—the *verbatim* transcript—must follow the disqualification on the record with the agreement of the parties and lawyers. The Evans Defendants filed a Motion to Correct and Supplement the Record **36 days** after their June 14th hearing and only after it was brought to their attention by Grand Rivers Community Bank. The "Motion to Correct and Supplement" is not verified.

Peoples National Bank followed suit and filed its self-serving "Notice of Filing of Remittal of Disqualification Pursuant to 63(D)" **42 days** after the June 14th hearing. This Notice of Filing was submitted by Attorney Robert Duckels--who was not in the courtroom on June 14th -- and is likewise not verified. There is still nothing in the record signed by the parties and the lawyers who allegedly agreed that this happened. And, nothing is verified under oath.

The *Woods* court placed the blame on counsel and the trial judge:

> "We believe the judge and the attorneys failed to understand or apply the ethical standard and share the responsibility for the problems created. We note that if the rulings had been adverse to the defendant rather than the plaintiff, the defendant could now be claiming that the judge should not have proceeded." *Woods* at 875.

This court should do the same.

I. This court has lost jurisdiction to amend or to correct the record.

The Evans Defendants seek now to correct the record--as if the record was wrong--rather than place the blame squarely where it lies. The Evans Defendants seek a judicial order in its Motion to Correct and Supplement. Peoples National Bank "remittal" is meaningless for the reasons stated above. This court lacks authority to proceed on the Evans Defendants' motion. Neither filing is verified and neither includes agreement from an officer or director of Peoples National Bank with settlement authority.

Let's be clear--there is no record to supplement or correct. The participants in "open court"[7] on June 14th wanted it that way. Peoples National Bank and the Evans Defendants had their chance and did not proceed on June 14th according to the rules. They cannot now amend anything. A trial court loses jurisdiction over a case and thus authority to vacate or modify its judgment 30 days after entry of judgment unless timely post judgment motion is filed. 735 ILCS 5/2-1301.

It appears the closest legal authority which would support the Evans Defendants' motion would be akin to a *nunc pro tunc* remedy. Though an order may be amended by

[7] The term is used here pejoratively.

a *nunc pro tunc* order to correct a clerical error, it cannot be amended to correct a judicial error.

Courts do, however, retain jurisdiction to correct non-substantial matters of inadvertence or mistake. *People v. Nelson*, 2016 IllApp4th 140168 (4th District 2016.) This is not one of those cases. A *nunc pro tunc* order may not be used to supply omitted judicial action. *Beck v. Stepp* 144 Ill.2d 232, 162 Ill.Dec. 10, 579, NE2d 824 (1991). Here, the Evans Defendants seek to supplement the record and recreate an unverified bystander's report without authority to do so. Counsel and the court made a critical mistake on June 14th and this court has no authority to supplement the record or make *nunc pro tunc* determinations.

The only method for Evans Defendants to amend or correct the record other than a scrivener's or clerical error is through a "bystander's report" pursuant to Supreme Court Rule 329, which remedy is unavailable to them as there is no appeal. The common law record stands and it proves that Judge Stanley's participation was intentionally secreted. Moreover, no participant to the alleged open court disqualification has filed any pleading under oath, a detail not unnoticed by Grand Rivers Community Bank and should not likewise go unnoticed by this court. Why was the official record destroyed if there was no skullduggery?

II. THE COMMON LAW RECORD AND THE CONFLICTING DOCKETS PROVE THAT JUDGE STANLEY'S PARTICIPATION IN THE JUNE 14TH PROCEEDING WAS INTENTIONALLY SECRETED, CONTRARY TO THE NEW POSITION ASSERTED BY COUNSEL.

There have been two sets of dockets[8] for the June 14, 2018 event.

Prior to June 29, 2018, the official docket and the entire physical court record made no mention of Judge Stanley's participation in the June 14th court appearance. The Administrative Office of the Illinois Courts has advised the undersigned counsel that the judici (online) docket is not the official docket; rather, the official docket is in the original court file—and that official docket has been destroyed.

A. While the judici online docket is considered the unofficial court docket, only it revealed Judge Stanley entered the June 14th judgment.

On June 29, 2018, the judici docket (online) for this cause was as follows:

Date	Entry	Judge
Entered Under: PEOPLES NATIONAL BANK, NA		
06/14/2018	Judgment filed. (Judge Stanley's signature) Judgment filed. (not signed. Filed in error)	ARL
06/14/2018	PL APPEARS. AGREED JUDGMENT ENTERED	UNASSIGNED
05/24/2018	Motion to Strike Affirmative Defenses filed by MACDONALD, CHERIE.	GCW
05/04/2018	Defendant's Answer To First Amended Complaint filed	UNASSIGNED

As can be plainly seen from above, the judici docket specifically names Judge Stanley in the entry field purportedly by White County Deputy Clerk ARL.[9] Other notable observations are:

- The judge who entered the order provided no initials.
- The judge only wrote that "Plaintiff (PL)" appeared.
- None of the attorneys nor Defendants appeared according to the docket.

[8] The term "docket" is used colloquially and may be a misnomer. It is also referred to as a "record sheet." According to the Administrative Office of the Illinois Courts, each county refers to the history of proceedings differently. Some counties call this a "record of action" or "record of proceeding," The undersigned attorney uses this term to refer to the right-hand side of the original and physical court file, a history of the events which occurred, and which are part of the common law record which constitutes the Report of Proceedings on appeal.

[9] Deputy Clerk ARL is also named in deeds notarized at Judge Stanley's law office for Gary Evans in 2003. Her initials are also included in the database string of the deed at the bottom left hand side of the recorded document.

- The Judgment is also referred to being filed in error and not signed.

Deputy Clerk ARL advised the undersigned counsel--when questioned why the judge's initials are missing--that the "judge wrote it that way and it could not be changed." There were changes and someone edited Deputy Clerk ARL's entry on the official docket to obscure Judge Stanley's involvement in the official record. The judici docket is remarkably different from the official docket as it existed in the original court file on June 29th.

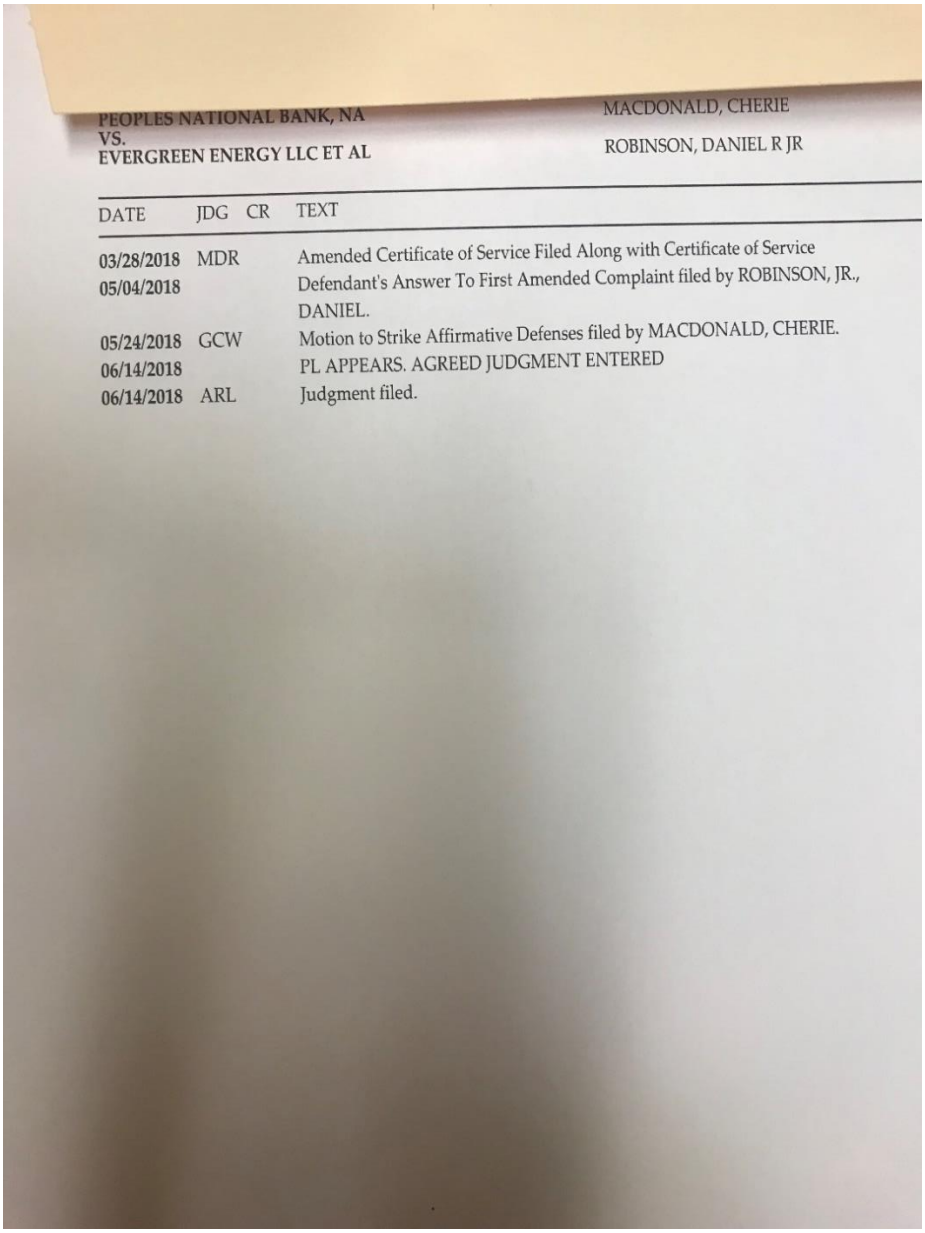
The official docket made no mention of Judge Stanley's participation, whether the Defendant or his counsel appeared and ARL's entry--which came after--was edited and the following was removed:

"(Judge Stanley's signature.) Judgment filed. not signed. Filed in error"

The undersigned counsel pointed out this discrepancy of the two dockets to Deputy Clerk ARL on June 29, 2018. The deputy clerk at first said that they were the same. Then, she checked her computer and confirmed that they were, in fact, different dockets. The official docket in the court file was then removed by the deputy clerk, thrown in the trash, and replaced with the judici docket in the presence of the undersigned. No explanation was given as to why the dockets were different. The official record has been seriously compromised. The official court docket now sits in a White County landfill.

B. The destroyed official docket

Fortunately, prior to its destruction and upon seeing the blatant coverup, the undersigned counsel took a photograph of the official docket[10] as it existed on June 29th prior to confronting Deputy Clerk ARL and attaches the photograph[11] as follows:



PEOPLES NATIONAL BANK, NA
VS.
EVERGREEN ENERGY LLC ET AL

MACDONALD, CHERIE
ROBINSON, DANIEL R JR

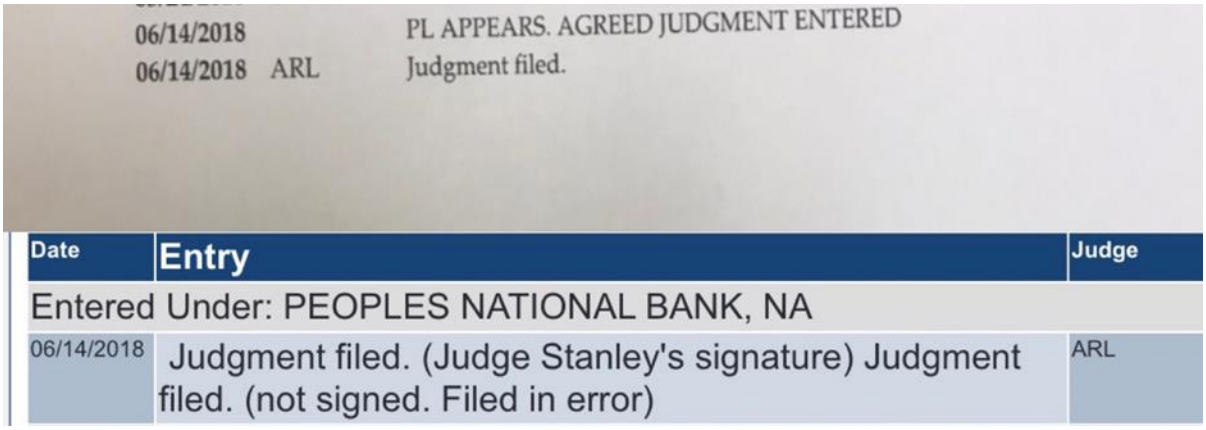
DATE	JDG	CR	TEXT
03/28/2018	MDR		Amended Certificate of Service Filed Along with Certificate of Service
05/04/2018			Defendant's Answer To First Amended Complaint filed by ROBINSON, JR., DANIEL.
05/24/2018	GCW		Motion to Strike Affirmative Defenses filed by MACDONALD, CHERIE.
06/14/2018			PL APPEARS. AGREED JUDGMENT ENTERED
06/14/2018	ARL		Judgment filed.

[10] This photograph was not submitted with Grand Rivers Community Bank's pleading on July 10, 2018.
[11] This photograph was paid for as a copy to the White County Circuit Clerk by Grand Rivers Community Bank counsel.

Viewing these dockets alongside reveals the deception. Someone took the time and effort to edit the last entry to remove any indication Judge Stanley participated. Had this docket made it online to judici, no one would have ever known Judge Stanley entered this order. Nothing referencing Judge Stanley's involvement appeared in the official court docket. And this entry had to have been edited after ARL's entry.

Moreover, the official docket has no judge's initials listed for the June 14th hearing. If everything was transparent as the Defendants now claim, why not? That alone is incriminating but viewed in totality with other facts paints an insidious picture.

The two dockets adjacent to one another:



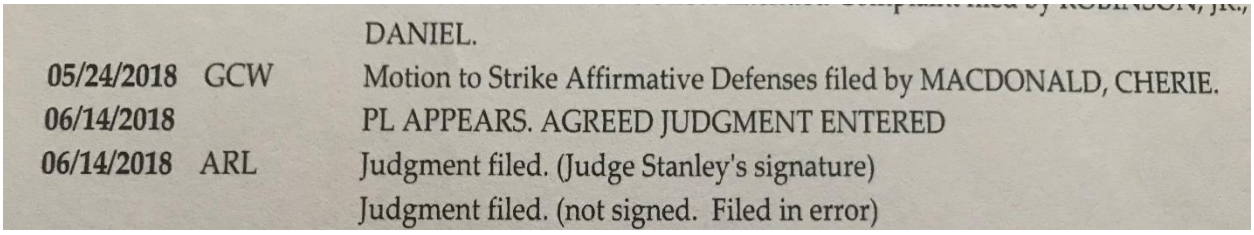
06/14/2018	PL APPEARS. AGREED JUDGMENT ENTERED	
06/14/2018 ARL	Judgment filed.	

Date	Entry	Judge
Entered Under: PEOPLES NATIONAL BANK, NA		
06/14/2018	Judgment filed. (Judge Stanley's signature) Judgment filed. (not signed. Filed in error)	ARL

According to the official docket, no one other than the Plaintiff appeared. There is no disqualification on the record. There are no remittals. Judges enter their own dockets according to White County Circuit Clerk Kelly Fulkerson. It is glaringly apparent that Judge Stanley did not want the record to reflect that his brother-in-law's counsel appeared before him and that he entered judgment for the very reason Grand Rivers Community Bank brings this action.

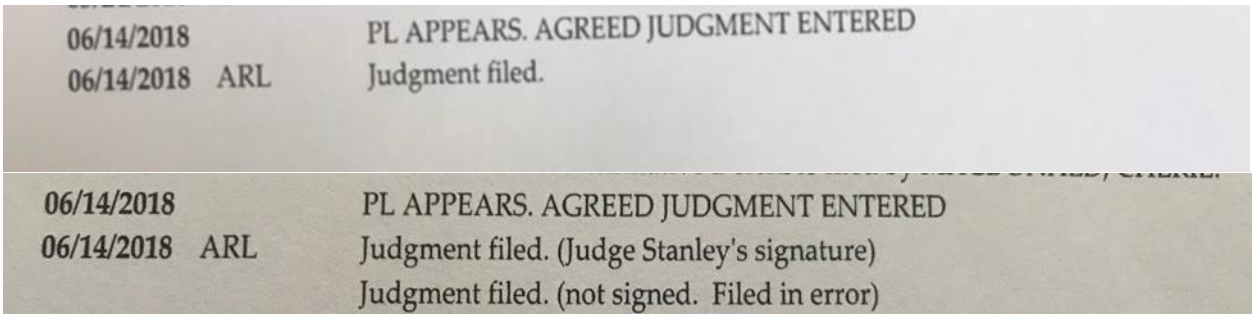
But, WHO edited Deputy Clerk ARL's entry which specifically named Judge Stanley? Deputy Clerk ARL's entry was entered **after** Judge Stanley's entry. This alone justifies judicial intervention and a testimony by all participants under oath.

Following this discovery, White County has changed the way in which it has dockets in the court files. On August 27, 2018, when viewing the original court file as it now exists with White County Circuit Clerk Kelly Fulkerson, the undersigned counsel inquired why there is now no docket in the court file. Circuit Clerk Fulkerson said that the dockets are now kept in the clerk's computer to be printed out as needed. She also advised that judges enter their own docket entries. The clerk provided counsel with the official docket as it appeared on August 27, 2018, and it is as follows with respect to the June 14th proceeding:



		DANIEL.
05/24/2018	GCW	Motion to Strike Affirmative Defenses filed by MACDONALD, CHERIE.
06/14/2018		PL APPEARS. AGREED JUDGMENT ENTERED
06/14/2018	ARL	Judgment filed. (Judge Stanley's signature)
		Judgment filed. (not signed. Filed in error)

Viewing the destroyed official docket alongside the new official docket reveals the stark contrast:



06/14/2018		PL APPEARS. AGREED JUDGMENT ENTERED
06/14/2018	ARL	Judgment filed.

06/14/2018		PL APPEARS. AGREED JUDGMENT ENTERED
06/14/2018	ARL	Judgment filed. (Judge Stanley's signature)
		Judgment filed. (not signed. Filed in error)

There was a coverup and this court must discover why, and, who was involved.

C. The seven distinct efforts of concealment of Judge Stanley's participation.

Reviewing the common law record as it existed on June 29, 2018, there is absolutely no indication that Judge Stanley was the judge who entered the judgment and memoranda. The common law record and official docket proved that the judgment is void on its face. There are seven distinct and concerted efforts which concealed Judge Stanley's participation in the official record:

1. The signatures on the three orders are indecipherable.
2. The judge's initials are withheld.
3. There was no court reporter though one was readily available and easily accessible.
4. The attorneys intentionally did not have any alleged disqualification on the record.
5. The judge's entry fails to indicate that the Defendant or counsel appeared.
6. Deputy Clerk ARL's entry was edited to remove Judge Stanley's participation: "(Judge Stanley's signature.) Judgment filed. (not signed. Filed in error.)
7. The official docket was removed and destroyed by Deputy Clerk ARL.

After Grand Rivers Community Bank exposed these shenanigans on July 10th, Peoples National Bank and the Evans Defendants now pretend that the caper was in open court and on the record. However, the facts impeach their position. White County Circuit Clerk Kelly Fulkerson advised the undersigned counsel that judges enter their own dockets. An audit review of 53 of Judge Stanley's court appearances in White County prior to and following the June 14th reveal that **Judge Stanley's initials appear in every docket entry, *sans* 2017-LM-28**.[12] Judge Stanley's initials in the instant cause are hidden from public view and could not be edited by the deputy clerk.

[12] Juvenile cases were not reviewed and compared as those are confidential. Counsel obtained these hearings and dockets using Courtlook on judici.

Those cases and the docket entry of appearances before Judge Stanley are as follows:

Court file Date	Entry	Judge	CR
2017 CM10 06/14/2018	FTC 8-16-18	MRS	
2007 CM 245 06/14/2018	DEF APPEARS PT/REVIEW 7-11-2018 @ 10:00am nic. Pre-trial set for 07/11/2018 at 10:00 in courtroom A.	MRS	
2007 CM 112 06/14/2018	DEF APPEARS PT/REVIEW 7-11-2018 @ 10:00am nic.	MRS	
2008 CF 14 6/14/2018	DEF APPEARS PT/REVIEW 7-11-2018 @ 10:00am nic.	MRS	
2007 CM 170 06/14/2018	DEF AND ASA. DEF PLEADS GUILTY. 2 YEAR CT SUPERVISION PR WRITTEN ORDER ON FILE. REV 9-6-18 @ 8:30AM NIC.	MRS	
2018 CM 67 6/14/2018	DEF AND ASA. DEF PLEADS GUILTY. 2 YEARS SUP PER WRITTEN ORDER ON FILE. REV 9-6-18 @ 8:30 AM NIC	MRS	
2018 CM 68 06/14/2018	Bond declared forfeited. 30-Day Notice to issue.	MRS	
2018 CM 70 06/14/2018	DEF APPEARS. FA GIVEN. MR SHINKLE APPOINTED PD. ARRAIGNMENT 7-5-18 @ 9:00AM NIC.	MRS	
2017LM 16 06/14/2018	NO ONE APPEARS.	MRS	
2018 LM 12 06/13/2018	Mr. Easton Appears. Status 7/25/18 at 9:30 a.m. Order filed.	MRS	
2018 OP 51 06/13/2018	Petitioner and Respondent appear. ON request of Petitioner, EOP extended to 9/5/18 at 9:30 a.m. Order entered.	MRS	
2018 SC 72 06/13/2018	Petitioner appears. Defendant appears. Defendant in default. Default Judgment entered in the amount of $463.30 plus costs.	MRS	
2016TR 1540 6/12/2018	ORDER ON FAILURE TO APPEAR	MRS	

2017MR10			
8/08/2018	MR WHITE FTA. MS COSTELLO APPEARS. CT DENIES PLAINTIFFS MOTION FOR DEFAULT. CAUSE SET FOR CMC ON 9-5-18 @ 10:00 PARTIES MAY APPEAR BY PHONE. DEF TO NOTIFY MR WHITE. MR WHITE ARRIVES LATE. CT HEARS MOTION FOR DEFAULT FILED BY PET. CT FINDS THE RESP HAS FILED AN ANSWER. CT DENIES PETIONERS MOTION FOR DEFAULT.MR WHITE TO FILE BRIEF ON OR BEFORE 9-24-18,RESP TO FILE RESPONSIVE BRIEF ON OR BEFORE 11-8-18, PET'S REPLY BRIEF DUE 11-26-18. CAUSE SET FOR HEARING 1-9-19 @ 11:00AM NIC. CLERK TO ALLOW 1 HOUR. CMC IS VACATED FOR 9--5-18 AND INSTEAD CT WILL HEAR PETIONERS MOTION FOR PRELIMINARY INJUCTION ON 9-5-18 @ 10:00AM PARTIES MAY APPEAR BY PHONE.	MRS	
06/06/2018	Mr. White appears. Defendant FTA. Cause set for hearing on all pending motion 8/8/18 at 9:30 a.m. Mr. White to send notice.	MRS	
2017MR11			
08/08/2018	MR WHITE FTA. MS COSTELLO APPEARS. CT DENIES PLAINTIFFS MOTION FOR DEFAULT. CAUSE SET FOR CMC ON 9-5-18 @ 10:00 PARTIES MAY APPEAR BY PHONE. DEF TO NOTIFY MR WHITE. MR WHITE ARRIVES LATE. CT HEARS MOTION FOR DEFAULT FILED BY PET. CT FINDS THE RESP HAS FILED AN ANSWER. CT DENIES PETIONERS MOTION FOR DEFAULT.MR WHITE TO FILE BRIEF ON OR BEFORE 9-24-18, RESP TO FILE RESPONSIVE BRIEF ON OR BEFORE 11-8-18, PET'S REPLY BRIEF DUE 11-26-18. CAUSE SET FOR HEARING 1-9-19 @ 11:00AM NIC. CLERK TO ALLOW 1 HOUR. CMC IS VACATED FOR 9--5-18 AND INSTEAD CT WILL HEAR PETIONERS MOTION FOR PRELIMINARY INJUCTION ON 9-5-18 @ 10:00AM PARTIES MAY APPEAR BY PHONE.	MRS	
06/06/2018	Mr. WHite appears. Defendant FTA. Cause set for hearing on all pending motions 8/8/18 at 9:30 a.m. Mr. White to send notice.	MRS	
2018 OP 48			
06/06/2018	Petitioner appears. Respondent fails to appear. 2 year Order of Protection entered.	MRS	
2010CM25			
06/06/2018	DEF APPEARS. RECOG AUTHPORIZED. COLLECTIONS.	MRS	
2017CF15			
08/01/2018	PRETRIAL 9-19-18 @ 1:00PM NIC	MRS	
06/06/2018	PT reset by agreement to 8-1-18 @ 1:00pm	MRS	ROB
2017CM165			
06/06/2018	REVIEW 6-25-18 @ 1:00pm nic.	MRS	ROB
2005CF124			

06/26/2018	DEF WITH MR DOWNEN SA APPEARS. CAUSE SET FOR Review ON 8-28-18 @ 10:00AM NIC	MRS	
2011CF44			
08/07/2018	REV 9-18-18 @ 1:30PM	MRS	
07/03/2018	rev 8-07-18 @ 1:30pm.	MRS	
2015TR332			
06/26/2018	DEF WITH MR DOWNEN SA APPEARS. CAUSE SET FOR Review ON 8-28-18 @ 10:00AM NIC	MRS	
2017CF143			
06/26/2018	DEF WITH MR DOWNEN. SA APPEARS. PT RESET TO 8-28-18 @ 9:00AM NIC	MRS	
2017CF155			
6/26/2018	DEF WITH MR DOWNEN. SA APPEARS. PT RESET TO 8-28-18 @ 9:00AM NIC	MRS	
2017CF185			
06/26/2018	DEF WITH MR PARRISH. SA APPEARS. PT RESET BY AGREEMENT TO 7-30-18 @ 9:00AM NIC. STATE TO FILE AMENDED INFO.	MRS	KAT
04/24/2018	States Attorney. By agreement, reset to 06-05-18 at 9:00a.m. SA to notify Mr. Parrish.		MRS
01/23/2018	Defendant with Mr. Parrish. SA Pre-trial set for 03/27/2018 at 9:30 in courtroom A. Notice given.	MRS	
2017CM60			
06/05/2018	MR DOWNEN APPEARS FOR THE DEF. MR FISHER APPEARS FOR ILLINOIS ATTY GENERAL. CT HEARS MOTION TO RECONSIDER FILED 3-19-18. CT TAKES MATTER UNDER ADVISMENT. FTC JUDGE STANLEY ONLY 6-26-18	MRS	AND
2017TR724			
06/26/2018	DEF WITH MR DOWNEN SA APPEARS. CAUSE SET FOR REVIEW ON 8-28-18 @ 10:00AM NIC	MRS	
2018CF100			
6/26/2018	DEF WITH MR DOWNEN SA APPEARS. DEF WAIVES FA. CAUSE SET FOR PH ON 8-28-18 @ 10:00AM NIC	MRS	KAT
2018CF105			
08/07/2018	BY AGREEMENT SENTENCING RESET TO 9-18-18 @ 1:30PM. CLERK TO SEND NOTICE TO MS BLADES.	MRS	
07/03/2018	sentencing hearing reset to 8-07-18 @ 1:30pm. clerk to send notice to ms Blades. (no sex offender eval on file)	MRS	
2018CF27			
06/26/2018	BY AGREEMENT PH/ARRAIGNMENT RESET TO 8-28-18 @ 9:00AM MR DOWNEN TO NOTIFY DEF. DEF WITH MR DOWNEN SA APPEARS. DEF WAIVES FA. CAUSE SET		

	FOR PRELIM HEARING ON 8-28-18 @ 10:00AM NIC	MRS	KAT
2018CF99			
06/26/2018	DEF WITH MR DOWNEN SA APPEARS. DEF WAIVES FA. CAUSE SET FOR PH ON 8-28-18 @ 10:00AM NIC	MRS	
2018CM23			
06/26/2018	DEF WITH MR DOWNEN SA APPEARS. DEF WAIVES FA. CAUSE SET FOR PT ON 8-28-18 @ 10:00AM NIC	MRS	
2018DT4			
06/26/2018	DEF WITH MR DOWNEN. SA APPEARS. BY AGREEMENT CAUSE SET FOR MOTION HEARING 8-28-18 @ 1:00PM NIC	MRS	KAT
2018DT8			
06/26/2018	DEF WITH MR DOWNEN. SA APPEARS. PT RESET TO 8-28-18 @ 9:00AM NIC. ON REQUEST OF DEF JUDICIAL HEARING CONT TO 8-28-18 @ 9:00 FOR STATUS	MRS	
2018MR19			
06/26/2018	DEF WITH MR DOWNEN. CASE TO TRRACK WITH 18-CF-99. BY AGREEMENT NO RESPONSIVE PLEADINGS REQUIRED BY DEF AT THE TIME.	MRS	KAT
2018TR208			
06/26/2018	DEF WITH MR DOWNEN. SA APPEARS. PT RESET TO 8-28-18 @ 9:00AM NIC. ON REQUEST OF DEF JUDICIAL HEARING CT TO 8-28-18 @ 9:00 FOR STATUS	MRS	
2018TR261			
6/26/2018	DEF APPEARS. ARRAIGNMENT CONDUCTED. DEF PLEADS NOT GUILTY. CT APPOINTS MR SHINKLE AS PD. PT 8-1-18 @ 9:00AM NIC.	MRS	
2018TR297			
08/07/2018	RESET TO 9-20-18 @ 10:00AM.	MRS	
06/26/2018	RESET TO 8-7-18 @ 9:00AM NIC	MRS	
05/29/2018	RESET TO 6-26-18 @ 9:00AM	MRS	
2018TR67			
06/26/2018	DEF WITH MR DOWNEN. SA APPEARS. BY AGREEMENT CAUSE SET FOR MOTION HEARING 8-28-18 @ 1:00PM NIC	MRS	
2015CF33			
08/07/2018	DEF WITH MR TURPIN. SA APPEARS. BY AGREEMENT PT CONT TO 9-20-18 @ 10:00AM NIC.	MRS	
06/26/2018	PT RESET BY AGREEMENT TO 8-7-18 @ 9:00AM NIC	MRS	
2018CM52			
08/07/2018	SA APPEARS. RESET TO 9-18-18 @ 9:00AM. CLERK TO SEND NOTICE.	MRS	
06/26/2018	DEF WITH HIS ATT. DEF WAIVES FORMAL ARRAINMENT AND PLEADS NOT GUILTY. PT 8-7-18 @ 9:30AM NIC	MRS	

05/10/2018	DEF WITH HIS ATTY. SA APPEARS. FA GIVEN. ARRAIGNMENT 6-26-2018 @9:30AM Arraignment set for 06/26/2018 at 9:30 in courtroom A.	MRS

D. No civil cases in White County on Thursdays

The undersigned counsel was attempting to set this cause for a hearing on August 27, 2018, which happens to be a Thursday. Counsel was advised by White County Circuit Clerk Kelly Fulkerson that, in no uncertain terms, the case could not be heard on a Thursday because there are "no civil cases heard in White County on Thursdays." She advised that Thursdays are reserved for criminal only cases.

June 14th was a Thursday. June 14th was not a regularly scheduled civil hearing date. For some reason, this cause was never "assigned" to any judge, yet, Grand Rivers Community Bank cause was assigned to Judge Dinn, who only appears in White County on Fridays.[13] The instant case was not on the docket. There was no motion filed. There was no court reporter--though one was available and easily accessible. The cause was not heard in "open court." If anything, the June 14th hearing was concealed, and Judge Stanley's participation was intentionally secreted.

Counsel was further advised by Deputy Clerk ARL on June 29th, an attorney (which one we do not know) called the morning of June 14th to coordinate the appearance that afternoon, which is in direct conflict with the unverified positions of Peoples National Bank and the Evans Defendants. Notwithstanding all these machinations, the

[13] Opposing counsel deride Grand Rivers Community Bank for not moving more expeditiously. Unlike Peoples National Bank, Grand Rivers Community Bank was restricted by the court's schedule. Judge Dinn only sits in White County on Fridays and those dates are heavily filled for hearings. This case, however, was never assigned to any judge, for a reason unclear to counsel.

judgment is also not valid because the record is devoid of any mention of LLC members who should have consented to the judgment and the alleged disqualification by Judge Stanley, a problem opposing counsel has not addressed either.

III. THERE IS NO EVIDENCE THAT THE LLC MEMBER OWNER DEFENDANTS HAVE AGREED TO THE JUDGMENT OR HAVE AGREED TO JUDGE STANLEY'S DISQUALIFICATION

A. Gary Evans signed the June 14th judgment as member/agent of two LLCs.

There is no evidence of record that Gary Evans has authority for other LLC members, a fundamental legal roadblock to the entry of the orders on June 14th. The June 14th judgment has Gary Evans purported signature six times. In the two lines for the Limited Liability Corporation defendants, Evergreen Energy, LLC and Evergreen Drilling, LLC, Gary Evans is listed on the judgment as the "Member/Manager & Agent."

APPROVED AS TO FORM AND SUBSTANCE:

Evergreen Energy LLC
By: _____
Gary Evans, Member/Manager & Agent

Evergreen Properties of Illinois LLC
By: _____
Gary Evans, Member/Manager & Agent

G.E. Drilling, Inc.
By: _____
Gary Evans, President

G.E. Services, Inc.
By: _____
Gary Evans, President

Evergreen Drilling LLC
By: _____
Gary Evans, Member/Manager & Agent

Kerogen Resources, Inc.
By: _____
Gary Evans, President

B. Effective July 1, 2017, LLC members in Illinois no longer have agency authority.

Owners of Limited Liability Corporations are referred to as "members." The Illinois Limited Liability Act (805 ILCS 180/1*et seq.*) was amended effective July 1, 2017

which removed the statutory agency default provision. The widely publicized amendments to the Limited Liability Company Act include numerous provisions regarding member managed companies. The amendments implemented major changes to the "statutory apparent authority" previously granted to member managed companies.

Under the former Limited Liability Company Act, each member was designated as an agent to act on behalf of the company for carrying on its ordinary course of business unless the operating agreement stated otherwise and the person with whom the member was dealing with knew the member lacked authority. These changes were well discussed in the legal community. [14] [15] [16] [17] [18]

805 ILCS 180/13-5

Sec. 13-5. No agency power of a member as member.

(a) A member is not an agent of a limited liability company solely by reason of being a member.

Under the new Act, a member owner no longer has the power of agency solely by reason of being a member. Effective July 1, 2017, there is no longer "statutory apparent

[14] Abrams, Andrew *"2017 Ushers Sweeping Changes for Illinois LLC's"* December 2016 https://blogs.lawyers.com/attorney/limited-liability-company-law/2017-ushers-sweeping-changes-for-illinois-llcs-40947/

[15] Halber, Andrew, *"Important Changes to Illinois LLC Act Take Effect July 1"* June 30, 2017 https://www.foxrothschild.com/publications/important-changes-to-illinois-llc-act-take-effect-july-1/

[16] Waltz, Palmer & Dawson, "CHANGES TO THE ILLINOIS LIABILITY COMPANY ACT" December 26, 2016 http://www.wpdlegal.com/changes-illinois-limited-liability-company-act/

[17] Duggan Bertsch "Illinois Enacts Sweeping Changes to LLC Act" https://www.dugganbertsch.com/content/illinois-enacts-sweeping-changes-llc-act

[18] Thomas, William R., Ottosen Britz, "Sweeping changes made to the Illinois Limited Liability Company Act" Winter 2018 https://www.ottosenbritz.com/2018/sweeping-changes-made-to-the-illinois-limited-liability-company-act/

authority." The new Act rejects statutory apparent authority and eliminates the default provisions that a member is an agent solely by owning membership interests.

The new Act also has added a provision that allows the LLC to file a "Statement of Authority" with the Secretary of State's Office, which will either state the authority or the limitation of any member, manager, or person of the LLC to transfer real estate on behalf of the LLC or enter into any other transaction that would bind the LLC. A real-life example would allow this Statement of Authority to be recorded in the county in which the LLC-owned real estate is situated. By recording this document, constructive notice would be provided on behalf of the LLC as to who has the authority to act on behalf of the LLC.

Three of the defendants in this matter are Limited Liability Corporations. Those three defendants are: Evergreen Energy, LLC, Evergreen Drilling, LLC and Evergreen Properties of Illinois, LLC. Peoples National Bank was aware that there were more than one-member owners of two of the defendant LLCs. All these LLCs were either not in good standing or involuntarily dissolved according to Plaintiff's complaint filed herein. Even without the amended Act, the authority to agree to a judgment or waive a conflict for a dissolved LLC is questionable under Illinois law.

2. Defendant, Evergreen Energy LLC, is an involuntarily dissolved Illinois limited liability company ("Evergreen Energy"), with a principal office in White County, Illinois. As of May 8, 2017, the office of the Illinois Secretary of State reports that the members of Evergreen Energy are Gary L. Evans ("Evans") and Scott W. Pugsley, residents of White County, Illinois.

3. Defendant, G.E. Drilling, Inc., is an Illinois corporation ("G.E. Drilling"), which the office of the Illinois Secretary of State reports is not in good standing as of May 8, 2017. Evans is the President of G.E. Drilling.

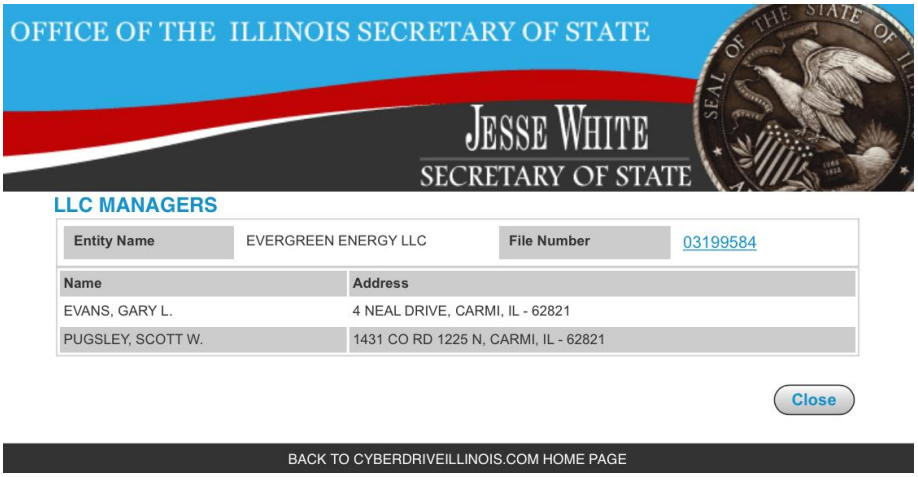
4. Defendant, Evergreen Drilling LLC, is an Indiana limited liability company ("Evergreen Drilling"), which the office of the Indiana Secretary of State reports is pending administrative dissolution, and is not in good standing in Illinois as of May 8, 2017. Evergreen Drilling's principal Illinois office is in White County, Illinois, and Evens is one of two members of Evergreen Drilling.

The Complaint and First Amended Complaint filed herein name the members of Evergreen Energy, LLC as Gary Evans and Scott Pugsley in paragraph 2. Those allegations were not denied specifically by Defendants who agreed that the public records speak for themselves. [19] The law firms in this cause practice corporate law.[20] [21] There is nothing in the record or pleadings which discuss the operating agreements, statements of authority or agent/manager designations for these LLCs, which is a fatal mistake regarding proper remittals of Judge Stanley's alleged disqualification. Without evidence of record of authority, the members had to have agreed to the judgment and Judge Stanley's alleged disqualification.

[19] However, the complaints only refer to Gary Evans being one of the members of Evergreen Drilling, LLC. The other member owner---who was conveniently unnamed--but referred generally-- was Lauren Abbey Evans--Judge Stanley's niece, Peoples insider and recipient of asset dumps to avoid creditors. Again, those deeds were created and recorded following Judge Stanley's meeting with Gary Evans and Lauren Abbey Evans in the Spring of 2015.
[20] https://www.fsolegal.com/services/
[21] https://www.greensfelder.com/practices-areas-Business-Services.html

A. ***There is no evidence of record that all members of the LLC defendants agreed to the judgment, conveyed the remittal of Judge Stanley's disqualification or were given an opportunity to challenge credit of sold collateral which does not appear on the judgment.***

The Illinois Secretary of State lists Gary L. Evans and Scott W. Pugsley as member managers of Evergreen Energy LLC:



The new Act requires a form to be filed with the Illinois Secretary of State to place the public on notice that a member has authority to bind the LLC and serve as agent.

805 ILCS 180/13-15

Sec. 13-15. Statement of authority.

(a) A limited liability company may deliver to the Secretary of State for filing a statement of authority. The statement:

(1) must include the name of the company and the address of its principal place of business; and

(2) may state the authority, or limitations on the authority, of any member or manager of the company or any other person to:

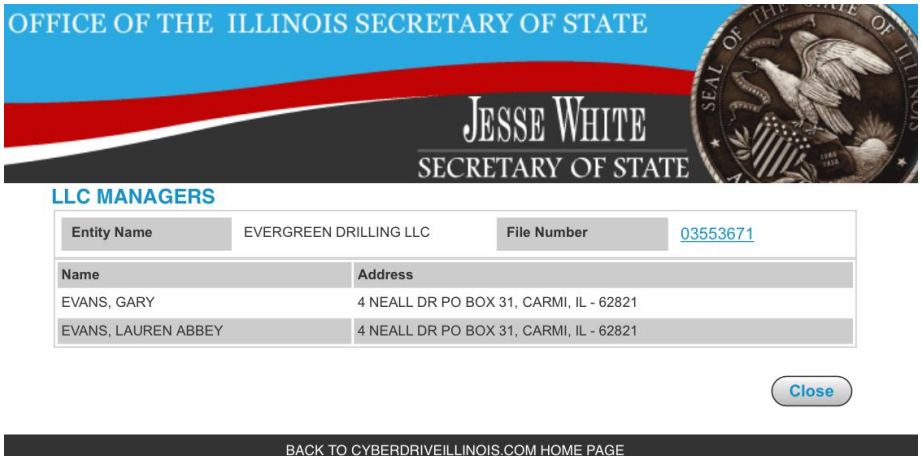
(B) enter into other transactions on behalf of, or otherwise act for or bind, the company.

A review of the White County Recorder of Deeds office does not reveal any 13.15 Statement of Authority recorded for Gary L. Evans to act as on behalf of or otherwise bind Evergreen Energy, LLC. No filing has been submitted to the Illinois Secretary of State either. Without this form or other evidence of agency authority, Scott W. Pugsley, the other listed member manager, must have also signed the judgment and conveyed his remittal of Judge Stanley's disqualification to bind Evergreen Energy, LLC.

Based upon the evidence of record, Gary Evans had no authority to agree to the judgment or to waive Judge Stanley's alleged disqualification on behalf of Evergreen Energy, LLC. Likewise, there is no evidence produced by Peoples National Bank and the Evans Defendants that Lauren Abbey Evans agreed either. No one discussed this newly enacted and widely publicized requirement on June 14th?

Why is this so important? Because member owners could—and will--be subject to a **$7,893,462.23** judgment and those members will cry foul. They also have a right to have the property seized and applied to the judgment in a reasonably commercial manner. Illinois law allows post judgment piercing of the corporate veil for collection. *Buckley v. Abuzir*, 2014 Ill.App.(1st) 130469 (1st Dist. 4th Div. 2014). Piercing the corporate veil is not a cause of action, but rather, a means of imposing liability in an underlying cause of action. *Peetoom v. Swanson*, 334 Ill.App3d 523, 527 (2002). A judgment creditor may choose to file a new action to pierce the corporate veil to hold individual shareholders and directors liable for the judgment of the corporation. *Westmeyer v. Flynn*, 382 Ill.App3d 952, 956 (2003).

Piercing the corporate veil is the most litigated issue in corporate law. Robert B. Thompson, Piercing the Corporate Veil: An Empirical Study, 76 Cornell L.Rev. 1036 (1991). And, piercing the corporate veil is statistically successful. American courts pierce the corporate veil 48.51% of the time, Illinois does so 52.50% of the time. Peter B. Oh, Veil-Piercing 89 Tex.L.Rev. 81, 107, 115 (2010). There was no evidence presented at either the judgment phase or the later attempts at remittal that Scott W. Pugsley agrees to the judgment or to the disqualification of Judge Stanley. Likewise, Lauren Abbey Evans has not submitted any remittal. Lauren Abbey Evans is the other member of Evergreen Drilling, LLC, according to the Illinois Secretary of State. Lauren Abbey Evans was the recipient of quitclaim deeds from her father, Gary Evans and her grandmother, Janice Frashier (and mother-in-law of Judge Stanley) and for which Grand Rivers Community Bank seeks to declare fraudulent.


OFFICE OF THE ILLINOIS SECRETARY OF STATE

JESSE WHITE
SECRETARY OF STATE

LLC MANAGERS

Entity Name	EVERGREEN DRILLING LLC	File Number	03553671

Name	Address
EVANS, GARY	4 NEALL DR PO BOX 31, CARMI, IL - 62821
EVANS, LAUREN ABBEY	4 NEALL DR PO BOX 31, CARMI, IL - 62821

Close

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There is a very real possibility that the **$7,893,462.23** judgment could be collected against LLC defendant members, who would then, no doubt, object to the entry of the judgment, the application of collateral and the alleged disqualification of Judge Stanley.

This also leads to a very interesting observation which affects the disposition of property as it relates to the balance due under the terms of the June 14th order. The June 19, 2017 Order of Replevin reflected the value of the personal property seized by the White County Sheriff totaled $6,000,000.00:

IT IS THEREFORE ORDERED that the Sheriff of White County, Illinois, or other proper officer of White County, Illinois, having received from Peoples or another person or entity on its behalf, a bond of sufficient security in double the value of the Disputed Property (valued at $ 6,000,000.00), and take said Disputed Property which may be found in White County, Illinois as the Disputed Property may be kept, and summon the Defendants to answer the Complaint (Count I of which seeks replevin) or otherwise appear in this action, and

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17-LM-28

Several public and private sales were evidently conducted by Peoples National Bank following the June 19th Order of Replevin. On March 27, 2018, Peoples National Bank filed its Amended Complaint and alleged the value of the personal property in the replevin action was $6,000,000.00:

50. The value of the Personal Property is unknown, but is approximately $6,000,000.00.

WHEREFORE, PNB respectfully requests the Court to:

A. Enter an Order for Replevin in accordance with 735 ILCS 5/19-109 directing the

Yet, the Complaint and Amended Complaint allege the following as due and owing on the Notes 0375 and 1781:

Complaint

Note 0375:

17

Principal	$4,434,463.70
Interest	$ 399,310.69
Late charges	$ 238,675.52
Total	$5,072,449.91

Interest continues to accrue at the rate of $523.5130757 per day.

Note 1781:

Principal	$2,775,815.79
Interest	$ 165,303.20
Total	$2,941,118.99

Interest continues to accrue at the rate of $327.7004752 per day.

Amended Complaint

15. As of May 2, 2017, the amount due on Note 0375, as modified by the Agreement, was $5,072,449.91, not including PNB's attorneys' fees and costs, as follows:

Principal	**$4,434,463.70**
Interest	**$ 399,310.69**
Late charges	**$ 238,675.52**
Total	**$5,072,449.91**

Interest continues to accrue at the rate of $523.5130757 per day.

16. As of May 2, 2017, the amount due on Note 1781 (referred to by PNB as XXXXXX-X0000), as modified by the Agreement, was $2,941,118.99, not including PNB's attorneys' fees and costs, as follows:

Principal	**$2,775,815.79**
Interest	**$ 165,303.20**
Total	**$2,941,118.99**

Interest continues to accrue at the rate of $327.7004752 per day.

The June 14th judgment does not include any credit for the personal property that was seized, something creditors and LLC members will want to know. The judgment amount does reflect a reduction of principal in the amount of $545,372.38, which is less than 1/10th the $6,000,000.00 value as verified by Peoples National Bank in its Replevin Order and Amended Complaint. However, the source of this credit is unexplained. Three drilling rigs, valued in the millions, were sought for replevin, yet appear not to be credited. Also interesting is a Notice of Private Sale of Collateral filed August 8, 2018 (nearly two months post judgment) by new counsel, Attorney Robert Duckels. Yet, the judgment was already rendered.

The calculation of the amount due is very important, not only to others who could be bound by this entry (such as LLC member owners who could be subject to a piercing action), but also to creditors who may stand in line behind this enormous judgment which should have been reduced by the sale of seized property. Creditors should be allowed to intervene to find out what happened with the collateral. Is it sold? Is it still in the names of the Evans Defendants and subject to levy?

One of the drilling rigs is not even located in White County. Upon information and belief, a drilling rig owned by Evergreen Drilling, LLC, is located in Canadien, Texas, yet, there is no evidence that this rig was seized or subject to any order of this court. It has no Vehicle Identification Number or title registration. Can this drilling rig be levied by Grand Rivers Community Bank (or another judgment creditor) now that the instant cause is dismissed and there was no order of replevin encompassing property outside White

County? These are not only questions why intervention should be allowed, but also why intervention is mandatory.

IV. GRAND RIVERS COMMUNITY BANK HAS STANDING TO VACATE THE JUNE 14, 2018 JUDGMENT AND MEMORANDA

A. The July 10th filing by Grand Rivers Community Bank established a **prima facie** *case that the June 14th judgment and memoranda are void.*

Following receipt of Grand Rivers Community Bank's motion, Peoples National Bank and the Evans Defendants decided to pick their poison and claim that the judge properly disqualified himself. Grand Rivers Community Bank has a direct interest in this action and has the right to an evidentiary hearing on the "facts" of disqualification and remittal that Peoples National Bank and the Evans Defendants now assert. Judge Stanley's alleged disqualification and remittal are at issue. Counsel has subjected themselves, their clients and Judge Stanley to testimony and have waived privilege with respect to this issue that have created. When Grand Rivers Community Bank filed its motion on July 10th, the voidness of Judge Stanley's orders appeared was *prima facie* for the following reasons:

- The official docket failed to include any reference to Judge Stanley entering the orders on June 14th;
- There was no record of proceeding for any disqualification for Judge Stanley; and,
- There was no record of proceeding for any remittal of the parties for any disqualification of Judge Stanley.

An evidentiary hearing was not necessary based upon the July 10th pleading. The judgment and memoranda were— and are--void. An evidentiary hearing would have only been necessary for the court to investigate potential frauds on the court, sanctions

and contempt findings using its inherent powers. Subsequently, however, Plaintiff and Defendants moved to create a factual scenario which fails for the numerous reasons stated *supra*. In doing so, they have assumed a position of no return and must see the consequences unfold in a public forum.

It is evident that the judgment is void *ab initio* and Judge Stanley should never have proceeded. But, what is even more disturbing is the flurry of attempts to legitimize the proceeding, even when the facts so clearly support otherwise. It is well settled that a void order may be challenged at any time because an:

> "order or decree entered by a court which lacks jurisdiction of the parties or of the subject matter, or which lacks the inherent power to make or enter the particular order involved, is void, and may be attacked at any time or in any court, either directly or collaterally." Sarkissian v. Chicago Board of Education, 201 Ill. 2d 95 (July 3, 2002) (quoting Barnard v. Michael, 392 Ill. 130, 135 (1945)).

The court has a "**duty** to vacate void judgments * * *.". Wierzbicki v. Gleason, 388 Ill.App.3d 921, 931, 906 N.E.2d 7 (1st Dist. 2009). And those void judgments can be vacated any time. Petitions alleging an order or judgment is void, brought under paragraph (f) of section 2–1401, do not have to be brought within two years of the void order or judgment. Sarkissian, 201 Ill.2d at 104. Unlike typical section 2–1401 petitions, petitions brought in this manner do not need to allege a meritorious defense or due diligence.

The judgment and memoranda entered on June 14th are void because Judge Stanley was disqualified to act for the following reasons:

- Judge Stanley was disqualified to preside over this cause to avoid the mere appearance of impropriety;
- Judge Stanley was disqualified to preside over this cause as he is a first-degree family member of one of the defendants;
- Judge Stanley is objectively biased and/or prejudiced disqualifying him from proceeding based upon both his prior representation and his recent advice to family member clients;
- Judge Stanley's niece and mother-in-law have more than a *de minimus* interest in this suit and/or the disposition of property because of this suit.
- Judge Stanley did not state for the record what his exact reasons for disqualification were;
- There is no record of proceedings of the June 14th hearing (though one was easily obtainable and readily available);
- Judge Stanley's bias and prejudice cannot be waived or remitted;
- None of the parties agreed to the remittal prior to any order being entered—remittal must be prior to any order being entered;
- This court lacks jurisdiction to correct or amend the record more than thirty days after a final judgment;
- Even if some of the parties later provided remittal (none under oath), not all the parties have done so (No one with authority from Peoples National Bank has agreed to a disqualification, neither has Scott Pugsley nor Lauren Abbey Evans);
- The record shows that there have been seven distinct and concerted efforts to secret Judge Stanley's participation in the June 14th court appearance.

For all these reasons, the June 14th orders are void. "A void judgment is not entitled to the respect accorded a valid adjudication but may be entirely disregarded or declared inoperative by any tribunal in which effect is sought to be given to it. It is entitled to none of the consequences of a valid adjudication. It has no legal or binding force or efficacy for any purpose or at any place… It is not entitled to enforcement…All proceedings founded on the void judgment are themselves regarded as invalid." 30 Am Jur Judgments 44, 45.

***B. No special standing is necessary to promote the interests of justice and seek voidance of the June 14th judgment and memoranda. This court should vacate the orders* sua sponte.**

Peoples National Bank and the Evans Defendants assert that Grand Rivers Community Bank has no standing to vacate the judgment. Contrary, even a stranger has standing once the court is aware of the voidness. Courts have a **duty** to vacate and expunge void orders from court record and thus may declare an order void *sua sponte*. *In re: Application of Will County Collector*, 2018 IL App 3d., 160659 (3rd Dist. 2018), quoting *County Treasurer and Ex Officio County Collector of Cook County*, 333 Ill.App..3d 355 (1st Dist., 5th Div. 2002). That duty is clear in this case. The June 14th orders in this cause are void when Grand Rivers Community Bank filed its pleading on July 10th and are void now. Nothing that Peoples National Bank and the Evans Defendants have done since July 10th remedies the voidness.

C. Void orders can be attacked at any time or in any proceeding.

Under federal law, which is applicable to the states, the United States Supreme Court stated that if a court is:

> "without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void, and form no bar to a recovery sought, even prior to reversal in opposition to them. They constitute no justification; all persons concerned in executing such judgments or sentences, are considered, in law, as trespassors." *Eliot v. Piersol*, 1 Pet. 328, 340, 26 U.S. 328, 340 (1828).

American jurisprudence has long held that a void order can be attacked in any proceeding and at any time where the validity of the judgment comes into issue. *Rose v. Himely*, 4 Cranch 241, 2 L.Ed 608 (1808); *Pennoyer v. Neff*, 95 U.S. 714, 24 L.Ed. 565 (1877); *Thompson v. Whitman* 18 Wall 457, 21 L.Ed. 897 (1873); *Windsor v. McVeigh* 93 U.S. 274, 23 L.Ed. 914 (1876); *McDonald v. Mabee* 243 U.S. 90, 37 Sct 343, 61 L.Ed. 608 (1917); *U.S. v. Holtzman*, 762 F.2d 720 (9th Cir. 1985).

Illinois follows this principle. A void judgment or order can be attacked at any time or in any court, either directly or collaterally. *JoJan Corp. v. Brent*, 307 Ill.App.3d 496 (1st Dist. 3rd Div. 1999). Because Judge Stanley was disqualified to act and failed to proceed according to Illinois Supreme Court Rule 63(D), any order entered by him is void under Illinois law. See *Wood*, supra. And, that void order can be attacked at any time by a person affected by it. *EMC Mortgage Corp. v. Kemp*, 2012 IL 113419 367 Ill.Dec. 474, 982 N.E.2d 152 (2012.) This is precisely what Grand Rivers Community Bank has done.

It is well settled in Illinois that a judgment order or decree entered by a court which lacks jurisdiction or the inherent power to make or enter the order involved may be attacked at any time or in any court, either directly or collaterally. *Barnard v. Michael*, 392 Ill. 130, 135, 63 N.E.2d 858 (1945.) Here, Grand Rivers Community Bank seeks to vacate the void orders directly under 735 ILCS 5/2-1301 rather than a petition under 735 ILCS 5/2-1401 collaterally and it has that right.

For the obvious reasons to narrow the issues as to timing and to do justice to the court system, Grand Rivers Community Bank sought to intervene within thirty days following entry of the void orders. Had Grand Rivers Community Bank sought relief in this action post thirty days, the participants to the void proceedings would have, no doubt, declared the move untimely and without jurisdiction.

V. THE COMBINED MOTION TO INTERVENE AND VACATE IS A PERMISSIBLE DIRECT ATTACK ON THE VOID ORDERS ENTERED ON JUNE 14TH

Plaintiff and Defendants quibble about the title under which Grand Rivers Community Bank brought its action; *i.e.*, that it should have been stylized as a "Petition"

rather than a "Motion". The statute requires that the applicant file a petition with the grounds accompanied by the initial proposed pleading. The July 10th was labeled as a combined pleading primarily because the grounds and motion were so interconnected that separate filings would be duplicative. Undersigned counsel gladly will seek leave of court to amend the face of the pleading to reflect it as a petition if the court so requires.

A. Grand Rivers Community Bank has individual standing to intervene as of right pursuant to 735 ILCS 5/2-408(a).

Grand Rivers Community Bank has individual standing pursuant to 735 ILCS 5/2-408(a). The Evans Defendants claim that Grand Rivers Community Bank withheld from this court that it had filed a *lis pendens* notice in its claw back case, White County Cause 2017-CH-29. It was not necessary to the July 10th motion, but it is instructive in this Reply. On October 19, 2017, Grand Rivers Community Bank recorded *lis pendens* notice **(Exhibit 31)** with the White County Recorder of Deeds, placing all those subsequent on notice that property in question is involved in litigation. 735 ILCS 5/2-1901.

After a party records a *lis pendens*, all subsequent purchasers and lien claimants are bound. *Bank of New York v. Langman*, 2013 IL App (2d) 120609 (2nd Dist. 2013). Those subsequently acquiring an interest in the property, including lien claimants, shall be bound by the proceedings to the same extent and in the same manner as if he were a party. *Oxequip Health Industries, Inc. v. Canalmar, Inc.*, 94 Ill.App.3d 955 (1st Dist, 5th Div. 1981). But, the statute does not pertain to priority of creditors, but rather, operates to give potential claimants constructive notice of the proceedings. *In re: Estate of Denten*, 2012 IL App.2d 110814 (2nd Dist. 2012). The Seventh Circuit has held that "the Illinois *lis pendens*

statute does not give the filer a lien, for filing requires neither the title holder's consent nor judicial intervention. The *lis pendens* just gives notice to purchasers of the land that there may be superior interests." *In re: Leonard*, 125 F3d 543, 545, (7th Cir. 1997).

While the *lis pendens* does not, by itself, give Grand Rivers Community Bank first in line preference, it does give Grand Rivers Community Bank the right to intervene in this action. In a recent case, the Second District ruled that a *lis pendens* claimant could have intervened in the mortgage foreclosure action but could also pursue a separate action. *Lake County Grading Company, LLC v. Forever Construction Company, et al.,* 2017 IL App.2d 160359, 414 Ill.Dec.108, 79 N.E.3d 743 (2nd Dist. 2017).

In *Lake County Grading*, the lienholder filed a *lis pendens* but pursued a separate action because it claimed that it did not believe it had authority to intervene in a mortgage foreclosure action. *Lake County Grading* at 756. At oral argument on appeal in the law case, First Midwest argued that Lake County Grading should have intervened rather than file its separate action. *Id.* No doubt had Grand Rivers Community Bank collaterally attacked Judge Stanley's void orders in another proceeding, the Evans Defendants and Peoples National Bank would parrot First Midwest's argument and claim Grand Rivers should have intervened rather than collaterally attack the judgment.

The Illinois Second District Court of Appeals ruled that a direct attack on the judgment was the most prudent course of action: "w(W)hile this would have been the most prudent course, requiring those redundant actions would (1) impose an undue burden… (2) excuse the affirmative conduct… and (3) not further burden the *lis pendens* purpose." *Id*. Such is the case here. The Second District confirmed that a ***lis pendens***

claimant should pursue a direct attack **on a judgment**. The court reviewed the intervention statute and cases interpreting permissive and of right intervention under 735 ILCS 5/2-1301(e). The same provision by which Grand Rivers Community Bank brings its action. Furthermore, a collateral attack may excuse the other affirmative conduct of the June 14th hearing.

B. Grand Rivers Community Bank meets all the requirements under the statute.

735 ILCS 5/2-408 allows intervention as of right when:

1) A statute confers an unconditional right to intervene;
2) The representation of the applicant's interest by existing parties is or may be inadequate and the applicant may be bound by an order of judgment in the action; or
3) The applicant is so situated as to be adversely affected by a distribution of property in the custody or subject to the control or disposition of the court or a court officer.

Because Grand Rivers Community Bank has perfected a *lis pendens* on real property in White County and because Grand Rivers Community Bank has a recorded memorandum of judgment in White County, it has a statutory interest in the distribution of the Defendants' property under 408(a)(1). Whether distribution of assets occurs in this cause of action or collaterally in White County Cause 2017-CH-29, the issue of priority and voidness of Judge Stanley's orders will be decided directly or collaterally.

The purpose of intervention is to expedite litigation by disposing of the entire controversy among persons involved in one action to prevent the multiplicity of suits. *People ex rel. Alvarez v. Price*, 350 Ill. Dec 105, 408 Ill.App.3d 457, 948 N.E.2d 174 (1st Dist. 2011). Peoples National Bank argues that Grand Rivers Community Bank is just a creditor. Not so. Grand Rivers Community Bank has preference and will have priority of

preference upon the distribution of assets once the orders are declared void and this court should resolve this matter and not leave it for another court in another jurisdiction.

C. Grand Rivers Community Bank has also a right to intervene as a creditor.

But, even if it were just a creditor, it still has standing as of right under subsections (2) and (3) because Judge Stanley's void orders effectively block other Evans Defendant creditors from collection. The Evans Defendants dumped assets into the name of a Peoples insider, Lauren Abbey Evans, and no judgment has been rendered against her… yet. One of the assets unloaded into her name is the homestead of Judge Stanley's mother. And these asset dumps following a meeting between Judge Stanley, Gary Evans and Lauren Abbey Evans in Spring of 2015. Who knew about this, who procured these orders and how this happened **must** be subject to an evidentiary hearing.

D. An evidentiary hearing is required.

Grand Rivers Community Bank is not only entitled to intervene as of right under all three subsections of 408(a), it must be allowed an evidentiary hearing if this court does not void the orders *sua sponte* as void, which it could—and should. Cook County Judge Gillis abused her discretion and was reversed for failing to allow a hearing on the petition to intervene when it was alleged that the movant had a statutory right to intervene. *In re: County Treasurer and Ex-Officio County Collector*, 2017 IL App (1st) 152951 (1st Dist, 2nd Div. 2017).

When a movant seeks to intervene as a matter of right, "the trial court's discretion is limited to determining timeliness, inadequacy of representation and sufficiency of interest; once these threshold requirements have been met, the plain meaning of the

statute directs the petition be granted." *City of Chicago v. John Hancock Mutual Life Insurance Co.*, 127 Ill.App.3d 140, 143, 82 Ill.Dec. 166, 468 N.E.2d 428 (1984). Taken the facts as true in the July 10th pleading, this court must allow the petition to intervene and grant Grand Rivers Community Bank an evidentiary hearing. *In re: County Treasurer* at 17, *Strader v. Board of Education of Community Unit School Dist. Number 1,* 351 Ill.App 438, 451, 115 N.E.2d 539 (1953) see also *Urbaitis v. Commonwealth Edison*, 143 Ill.2d 458, 475, 159 Ill.Dec. 50, 575 N.E.2d 548 (1991).

Grand Rivers Community Bank also meets the permissive joinder standard. For permissive intervention, courts should allow intervention if the movant does not possess another adequate remedy. *Hammond v. Cape Industries*, Inc., 53 Ill.Dec. 679, 97 Ill.App.3d 877, 424 N.E.2d 92 (1981) (overruled on other grounds); *Johnson v. Cape Industries, Inc.,* 46 Ill.Dec. 586, 91 Ill.App.3d 192, 414 N.E.2d 470 (1981). Timeliness is key. Generally, in cases of both permissive intervention and intervention as of right, a movant must be timely. *RTS Plumbing Co., Inc. v. DeFazio,* 180 Ill.App.3d 1037 (1st Dist, 3rd Div. 1989).

VI. CLOSING

Grand Rivers Community Bank moved immediately upon discovering the voidness of Judge Stanley's orders. The pleading stated with particularity why it has standing and why the orders are void. Nothing the Defendants have introduced cures the voidness and this court lacks jurisdiction to correct or supplement anything because no record exists. The failure to perfect the record lies squarely on the shoulders of those present, and those present who either should have known better or who coordinated this event.

Grand Rivers Community Bank seeks justice in the form of an order declaring the June 14th order and memoranda void, a hearing on the matter and costs and fees as sanctions to be apportioned against those responsible.

Respectfully submitted,

GRAND RIVERS COMMUNITY BANK

BY: _____
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