**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**
**TO PEOPLES NATIONAL BANK'S NOTICE OF FILING OF REMITTAL AND MEMORANDUM OF LAW IN OPPOSITION**
**AND CROSS MOTION FOR SANCTIONS**

Now Comes **GRAND RIVERS COMMUNITY BANK,** individually and by its attorney, **MELISSA K. SIMS,** and does hereby file this **Reply and Memorandum to Peoples National Bank's Notice of Filing of Remittal** filed July 26, 2018 **and Peoples National Bank's Memorandum of Law in Opposition and Cross Motion for Sanctions** filed August 8, 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 stated herein, these unverified cryptic statements do not satisfy Illinois Supreme Court rules for judicial disqualification and remittal. Now, Grand Rivers Community Bank responds in this Reply 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 a proper disqualification which meets Illinois Supreme Court Rules are pure sophistry.

After receiving Grand Rivers Community Bank's motion detailing with specificity, the machinations of June 14, 2018, Peoples National Bank and 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] 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

[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.

party in the first-degree could state every possible appearance of impropriety. 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 disqualify a family member judge, a laundry list of disqualifications must be on the record for each 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. Peoples National Bank fail to address this very important issue in its self-serving "remittal." 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 his counsel even after becoming 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 parties to the June 14th orders 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 also 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).

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

[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.

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, dated December 15, 1999, and recorded with the White County Recorder of Deeds as Volume 394, Page 37.[3]
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 to around $45.00 per barrel in the Spring of 2015, and Gary Evans and the Evans Defendants faced insolvency.


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

Subsequently, several deeds were 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. Given the apparent close nature of the family, it appears the list for factors constituting the appearance of impropriety is longer than what is in this Reply. Yet, Peoples National Bank maintain in its 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 revealed Judge Stanley's orders were void. Since then, Peoples National Bank has 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 familial 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 of proceeding 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, amend 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.

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. 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. Peoples National Bank states nothing about this in its remittal.

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 subsequently approached in White County court, and in federal court in Benton, following publication of this article by two 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 of Grand Rivers Community Bank's cause 2017-CH-28, which sought deeds from his brother-in-law and

[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

mother-in-law to his niece be declared as void and fraudulent. An evidentiary hearing will cast light on this disqualification, a hearing that Peoples National Bank resists.

### *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:

> **Illinois Supreme Court Rule 46:**
>
> 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 a record of proceeding. As a rule of statutory interpretation, laws of the same matter and on the same subject must be construed in reference to 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 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 9:21 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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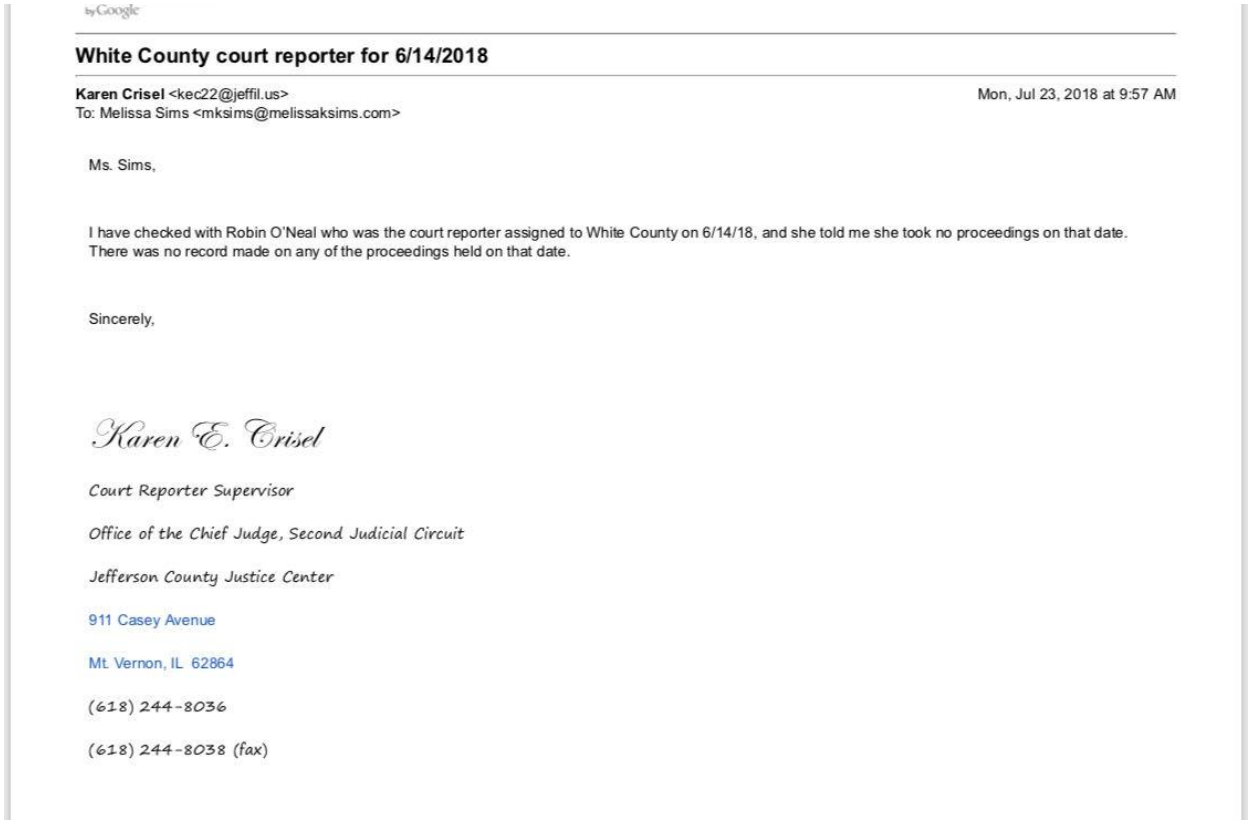
Ms. Crisel advised that Robin O'Neal was assigned to White County on June 14, 2018 and took no report of proceedings and that she was assigned to White County all day.



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)

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**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, prior representation of Gary Evans and his corporation, the *de minimus* effect of the ruling on his 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 alleged post judgment remittal of disqualification otherwise is improper.

Peoples National Bank correctly notes that Illinois Supreme Court Rule 63(D) now no longer requires a written waiver by the parties of a judge's disqualification. But Peoples National Bank misses the mark. New 63(D) still requires that the disqualification and remittal be on the record and incorporated in the record of the proceeding, *i.e.,* a *verbatim* transcript. This rule makes perfect sense. A verbal assessment in open court and on the record immediately following a disclosure by the judge is much more effective than a written waiver. The Illinois Supreme Court does note in the Committee Commentary of Rule 63 that "As a practical matter, a judge may wish to have all parties and their lawyers sign the remittal agreement." Even now, there is no signed remittal agreement by all the parties and their lawyers.

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

Peoples National Bank claims that timing is not important. Contrary, it is fatally important to their position. 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 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 the judge who is disqualified must obtain a remittal

[6] *Woods* at 874

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).

The new 63(D) is not remarkably different from the old 63(D) other than the agreement must still be incorporated in the record of proceedings, i.e., *verbatim* transcript. The failure of immediate remittals as detailed in *Woods* is even more pronounced under new 63(D). The new 63(D) has a temporal component ignored by Peoples National Bank in its pleading. It is abundantly clear, given the ruling in *Woods, O'Malley* and the amended 63(D), that timing is still critically and fatally important:

> "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(D) *emphasis added*.)

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.

## 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[7] 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.*

[7] 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.

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.[8] 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.
- 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.

[8] 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. It appears that she was formerly employed at Judge Stanley's law office.

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[9] as it existed on June 29th prior to confronting Deputy Clerk ARL and attaches the photograph as follows:

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

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

MACDONALD, CHERIE

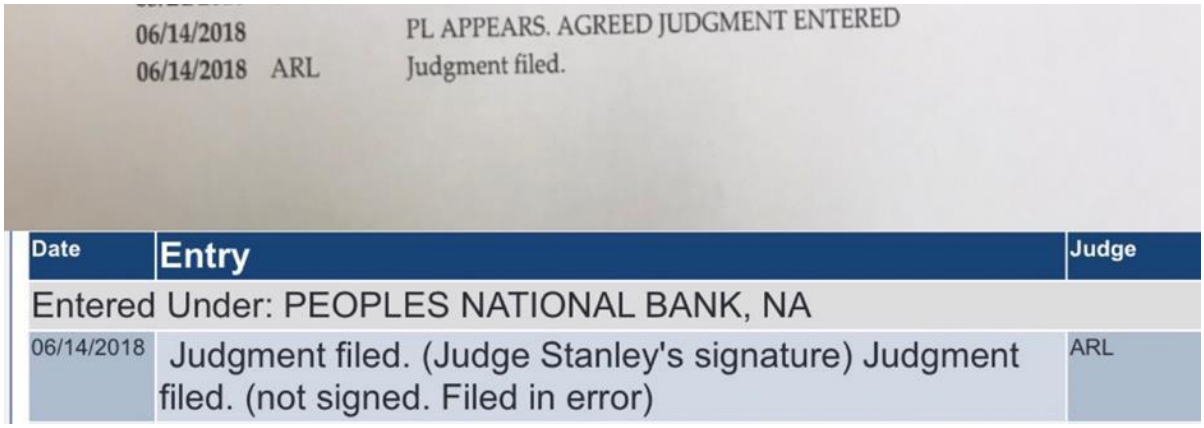
ROBINSON, DANIEL R JR

| 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. |

Who edited this docket? Judge Stanley's participation was covered up. But, opposing counsel chastise Grand Rivers Community Bank and its counsel for bringing this to the court's attention? Its counsel has a duty to do so and will not be moved by threats of sanctions.

Viewing these dockets alongside reveals the deception. 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 Plaintiff and Defendants now claim, why not? That alone is incriminating but viewed in totality with other facts paints an insidious picture.

Here are the two dockets adjacent to one another:



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

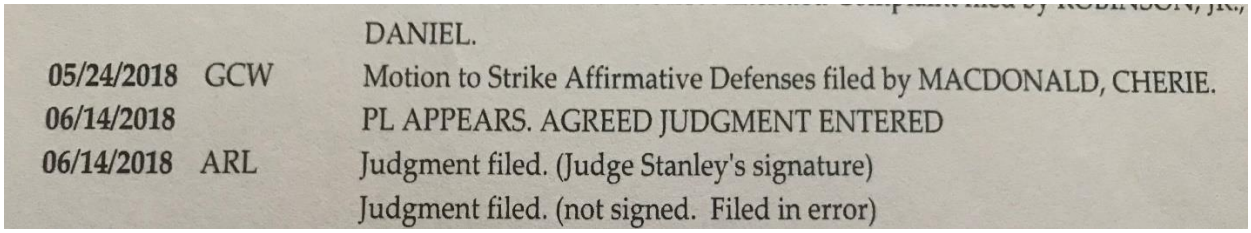
| Date | Entry | Judge |
|---|---|---|
| Entered Under: PEOPLES NATIONAL BANK, NA | | |
| 06/14/2018 | Judgment filed. (Judge Stanley's signature) Judgment filed. (not signed. Filed in error) | ARL |

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.

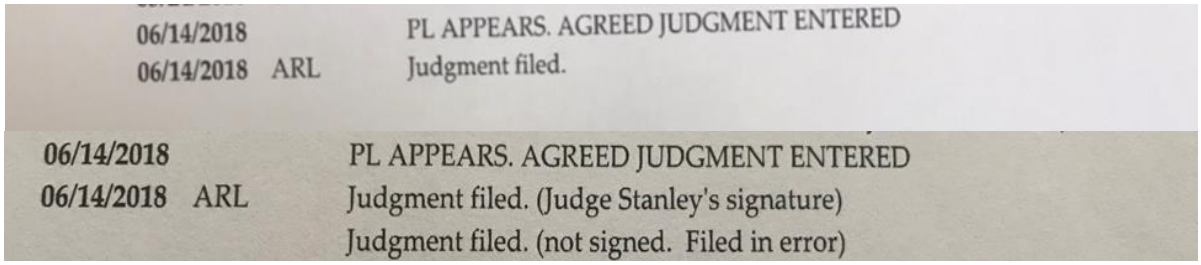
But, WHO edited Deputy Clerk ARL's entry which specifically named Judge Stanley? Deputy Clerk ARL's entry was entered **after** Judge Stanley's entry. This alone justifies judicial intervention and a testimony by all participants under oath.

Following this discovery, White County has changed the way in which it has dockets in the court files. In fact, the court files have no dockets in the physical file. 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** versus **current** official docket:



| | | |
|---|---|---|
| 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 also, who was involved.

### *C. The seven 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. The attorneys did not request the alleged disqualification be on the record.
4. A record of proceeding was readily available and easily accessible.
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 now pretends 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**.[10] Judge Stanley's initials in the instant cause are hidden from public view and could not be edited by the deputy clerk.

[10] Information obtained through counsel's Courtlook subscription on judici. Juvenile proceedings could not be viewed by the unsigned counsel.

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.[11] 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 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

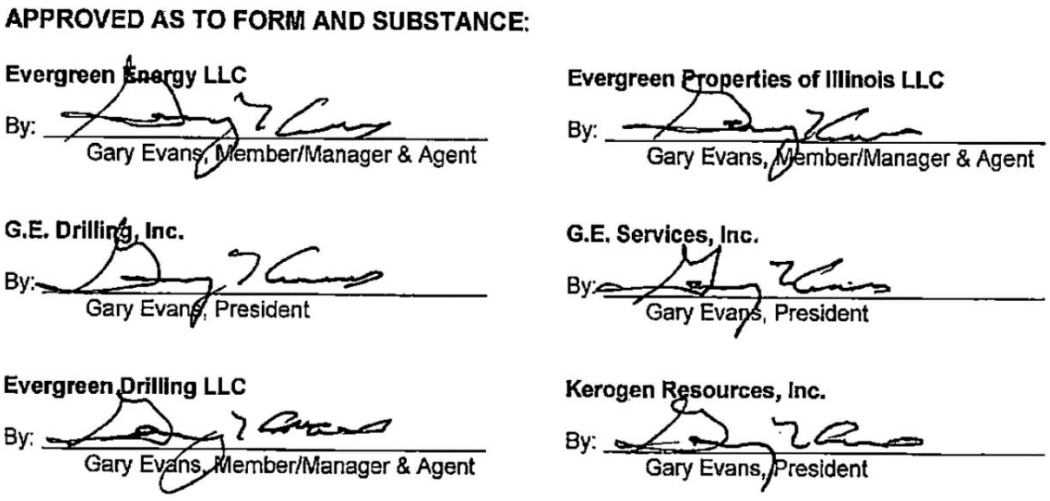
[11] Grand Rivers Community Bank takes issue with the argument that it should have moved more expeditiously. Judge Dinn is only available in White County on Thursdays and plaintiff was restricted by the court's limited availability.

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 ALLEGED 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."




### *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 widely publicized in the legal community. [12] [13] [14] [15] [16]

**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.

[12] 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/

[13]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/

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

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

[16] 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/

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 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 and all are defunct. 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 for Gary Evans to act on behalf of 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.[17] The law firms in this cause practice corporate law.[18] [19] 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. These

[17] 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.
[18] https://www.fsolegal.com/services/
[19] https://www.greensfelder.com/practices-areas-Business-Services.html

members had to have agreed to the judgment, application of seized collateral and Judge Stanley's alleged disqualification.

C. ***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:


OFFICE OF THE ILLINOIS SECRETARY OF STATE

JESSE WHITE
SECRETARY OF STATE

LLC MANAGERS

| Entity Name | EVERGREEN ENERGY LLC | File Number | 03199584 |
|---|---|---|---|

| Name | Address |
|---|---|
| EVANS, GARY L. | 4 NEAL DRIVE, CARMI, IL - 62821 |
| PUGSLEY, SCOTT W. | 1431 CO RD 1225 N, CARMI, IL - 62821 |

Close

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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

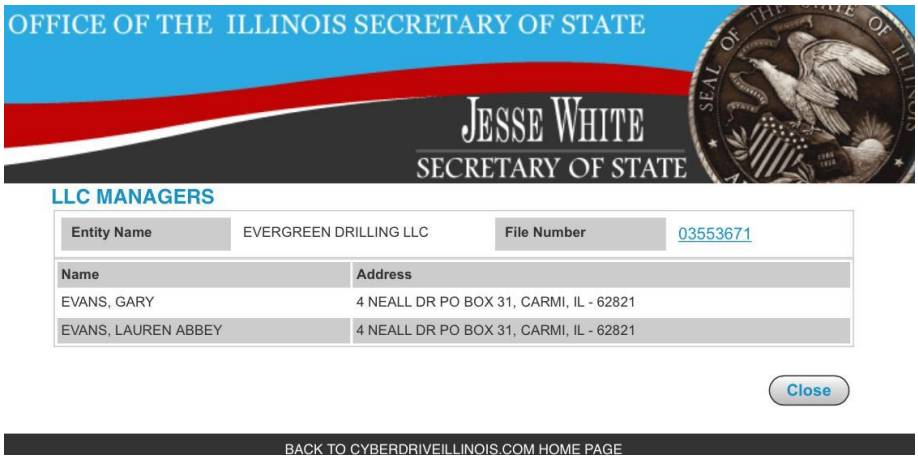
(2) may state the authority, or limitations on the authority, of any member or manager of the company or any other person to:

(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 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.




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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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 other creditors and other LLC members will no doubt question. 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. THE FAILURE TO E-FILE THE MEMORANDA OF JUDGMENT ALSO RENDERS THE MEMORANDA VOID

Also secreted from the record are two memoranda of judgment entered by Judge Stanley on June 14, 2018. Peoples National Bank ignores this very important issue in its responsive pleadings. The memoranda of judgment signed by Judge Stanley were neither e-filed prior to their entry nor after they were executed. Obviously, viewed in *toto* with the other events of June 14th, it is safe to say that these omissions were by design.

### *A. Illinois Supreme Court Rules mandate all documents be e-filed.*

The Illinois Supreme Court mandated e-filing effective January 1, 2018. On January 22, 2016, the Illinois Supreme Court entered Order M.R. 18368 announcing mandatory e-filing of civil cases in the Illinois Supreme, Appellate and Circuit Courts. The January 22, 2016 Order required e-filing through a single, centralized electronic filing manager (EFM), called eFileIL, mandated dates for the implementation of eFileIL, and included integration with each court's case management system. Effective January 1, 2018, civil e-filing in Illinois Trial Courts became mandatory, with eFileIL currently implemented in the Supreme Court, Appellate Court, and 93 Trial Courts.

On May 30, 2017, the Supreme Court amended the January 22, 2016 Order to further facilitate the Illinois Courts' statewide move to an electronic filing system. The May 30, 2017 amended Order M.R. 18368 addresses court and vendor fees for e-filing, exempts incarcerated pro se litigants, furthers the migration of counties with stand-alone e-filing systems, allows permissive criminal e-filing, and includes the implementation of a statewide remote access system.

Courts in Illinois have required all documents be e-filed before reviewing. The undersigned counsel has personally experienced the strict application of this mandatory requirement in White County before the Honorable Judge Thomas J. Dinn. Judge Dinn required proposed orders, pleadings and memoranda be e-filed before he either considered any document or signed any order. Moreover, Grand Rivers Community

Bank was advised by the clerk's office that memorandum of judgment must be e-filed.[20] Every attorney in White County knows that any document or order must be e-filed and the court will not entertain any document which does not comply with e-filing rules.

Illinois Supreme Court Rule 9 is likewise unequivocal.

> **Rule 9. Electronic Filing of Documents**
>
> (a) Electronic Filing Required. Unless exempt as provided in paragraph (c), all documents in civil cases shall be electronically filed with the clerk of court using an electronic filing system approved by the Supreme Court of Illinois.

### *B. Excusable neglect of counsel is not a defense and the failure to comply should be a basis to vacate the memoranda even without the underlying judgment being void.*

Peoples National Bank provides no excuse for its failure to comply with this mandate. Just to be sure, Grand Rivers Community Bank addresses this matter and exposes that even excusable neglect is no defense. Given the totality of the circumstances and the very real possibility[21] that the memoranda of judgment were concealed to avoid this very proceeding, the failure to e-file both the proposed memoranda of judgment and the signed memoranda of judgment was intentional. The memoranda of judgment are therefore ineffective even if the underlying judgment was valid.

[20] Opposing counsel argue that Grand Rivers Community Bank was unsure of its claim and proposed two different orders. This is truly smoke and mirrors. Grand Rivers Community Bank sought judgment in the amount of a default interest amount. Two proposed judgments were e-filed because it was unclear which judgment Judge Dinn would enter on June 15th. Grand Rivers Community Bank followed the rules and opposing counsel make issue with this dutiful obligation.

[21] Note that Exhibits 27-30 which are the deeds Grand Rivers Community Bank seeks to declare fraudulent are entitled "Do Not Publish."

When a filing error is based on an attorney's inattentiveness to or negligence regarding e-filing procedures, courts have left the attorney little leeway—repeatedly rejecting arguments for excusable neglect:

- An attorney's failure to receive electronic notice of summary judgment because of known computer problems does not constitute excusable neglect. *Robinson v. WIX Filtration Corp*, LLC, 599 F.3d 403 at 409–10, 412–13 (4th Cir. 2010).
- Rejecting excusable neglect because an attorney's failure to familiarize himself with filing procedures led him to missing a deadline. *Kanoff v. Better Life Renting Corp.* 350 F. App'x 655, 657–58 (3rd Cir. 2009).
- An attorney's failure to comply with local e- filing rules "can hardly be considered the result of excusable neglect." *McDowell- Bonner v. D.C.,* 668 F. Supp. 2d 124, 126–127 (D.D.C. 2009).
- Failing to attach supporting documents to motion for summary judgment response was not excusable neglect. *Satterlee v. Allen Press*, 455 F. Supp. 2d 1236, 1243–45 (Kan. D.C. 2006).
- Mere belief that a jury demand was timely filed electronically by counsel familiar with the electronic filing system was deemed "either carelessness or an oversight on the part of counsel," and the jury demand was denied as being untimely. *Richardson v. Image Sensing Sys., Inc*., No. C10-5629, 2011 WL 917523, (W.D. Wash. Mar. 16, 2011).
- Equitable tolling was not available to the plaintiff because by waiting until "last possible day" to file, the plaintiff's attorney's filing errors—which led to missed deadline—were not beyond his control. *Kellum v. Comm'r of Soc. Sec*., 295 F. App'x 47, 50 (6th Cir. 2008).
- Equitable tolling of the filing period was not available when the post office incorrectly told the plaintiff's attorney that a complaint would reach the courthouse by the deadline when the plaintiff's attorney knew that electronic filing was available. *Ward v. Astrue*, Case No. 5:09cv380/RS/EMT, 2010 WL 4386544 (N.D. Fla. Oct. 29, 2010).
- Arguing that the court should consider a document timely filed because the attorney mistakenly believed that document was timely failed because "counsel's unfamiliarity with an electronic filing system" does not support a finding of equitable tolling. *Perry v. Accurate Staffing Consultants*, Civil No. 3:10-CV201-FDW-DCK, 2010 WL 2650881 (W.D.N.C. June 30, 2010); *Johnson v. Astrue*, Civil Action No. 3:09-CV-46, 2010 WL 2365527 (D. W. Va. June 8, 2010).

Two cases which have allowed excusable neglect as a defense to e-filing notices and procedures are not applicable here because in these two cases, counsel at least

**attempted** to comply with the rules. *Flagship West, LLC v. Excel Realty Partners, L.P.*, No. CV-F-02-5200 OWW/DLB, 2007 WL 1574967 (E.D. Cal. May 30, 2007) and *Pace v. AIG*, No. 8 C 945, 2010 WL 4530357 (N.D. Ill. Nov. 1, 2010). In *Flagship West,* defense counsel timely filed a posttrial motion but did not meet the court's deadline to file a memorandum in support of that motion. When filing the memorandum, the attorney "failed to complete the technical steps required for electronically filing of documents" by not clicking "next" on the "last screen necessary to commit the transaction." Counsel correctly filed the following day, after the deadline. The court was persuaded that excusable neglect existed because the filing attorney "attempted to comply" with the order of the court. Such is not the case here.

In *Pace*, the court found excusable neglect after an electronic notice was diverted into a blocked e-mail folder at appellant's counsel's law firm because the firm's e-mail system classified the notice as spam. 2010 WL 4530357. Although the court called the question "close" and questioned why the notice evaded all six attorneys of record for the appellants, it found no reason to "doubt the veracity of counsel's explanation here, [that was] supported by an affidavit and evidence from his firm's information technology manager." No affidavits have been filed by the participants who have also tried to evade testimony to verify the actions of June 14th. We have not heard from Peoples National Bank in house counsel, Cherie MacDonald, as to why these memoranda were not e-filed.

Neither *Flagship West* nor *Pace*, however, may provide shelter for counsel in similar predicaments. Federal courts—on the whole—seem to take the attitude that "counsel's decision to represent a [party] in federal court obligate[s] [counsel] to become familiar

with electronic filing." *Johnson v. Astrue*, 2010 WL 2365527. Likewise, the Illinois courts should mandate such compliance. Viewing this neglect in the totality of circumstances should warrant voidness of the memoranda on this basis alone. There must be consequences for such blatant disregard. Peoples National Bank should not be rewarded for its conduct.

## V. 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. The attorneys moved to correct and file a remittal to cover their tracks. They chastise Grand Rivers Community Bank and attempt to intimidate its counsel, seeking sanctions for bringing this action and not immediately withdrawing its motion upon receiving its self-serving "remittal". Grand Rivers Community Bank and its counsel will not be dissuaded by such mau-mau. There was deceit on this court and on the judicial system as a whole. Grand Rivers Community Bank and its counsel are duty bound to bring forth this action.

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, waiving privilege for issues they affirmatively asserted. 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 at 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 case and the memoranda signed by him on June 14th;
- 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 (Nothing on file from a person with authority from Peoples National Bank, Scott Pugsley 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 AmJur 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 particular 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.

## VI. 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 amend the face of the pleading to reflect it as a petition if the court so requires. There is nothing wrong with a petition accompanying the relief sought.

### *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, 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 a judgment is 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. Additionally, attacking Judge Stanley's judgment in another proceeding may have excused the affirmative conduct surrounding the June 14th matter.

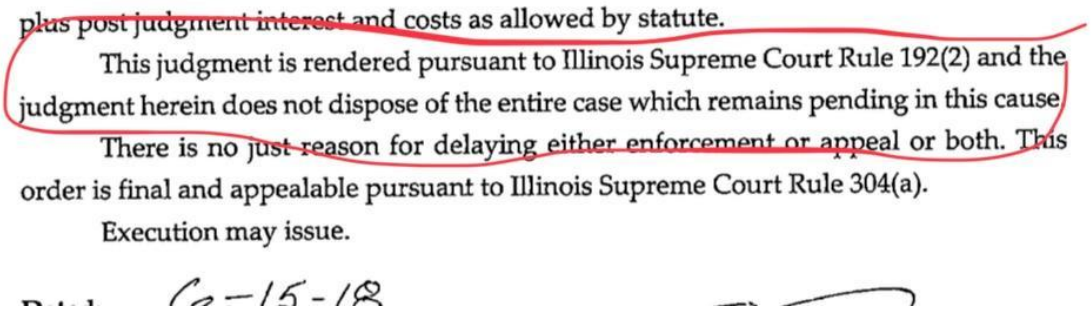
***B. Grand Rivers Community Bank meets all the requirements under the statute.***

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 in this cause or collaterally in another forum. 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.

Peoples National Bank makes issue with Grand Rivers Community Bank's pending action in 2017-CH-29, that somehow, Grand Rivers Community Bank no longer has a claim for fraudulent conveyance because only one count was plead. The complaint was properly pled, an answer was filed and an order for partial summary judgment one of the major issues in the case was rendered on June 15th specifically reserving other issues pursuant to Illinois Supreme Court Rule 192(2):



plus post judgment interest and costs as allowed by statute.

This judgment is rendered pursuant to Illinois Supreme Court Rule 192(2) and the judgment herein does not dispose of the entire case which remains pending in this cause.

There is no just reason for delaying either enforcement or appeal or both. This order is final and appealable pursuant to Illinois Supreme Court Rule 304(a).

Execution may issue.

Entered: 12-15-18

***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. Peoples National Bank wants Grand Rivers Community Bank to go away and stop asking questions. This court should not let them have their way.

Peoples National Bank argues that Grand Rivers is somehow late to the game because it claims it send notice of a private sale in this cause. If Peoples National Bank did send this notice, it is of no consequence. Grand Rivers did not sleep on any rights. Any private sale has nothing to do with a void order entered some nine months after this alleged notice of sale.

Interestingly enough, Grand Rivers Community Bank is named in the Complaint and the First Amended Complaint. Perhaps Grand Rivers Community Bank should have been named a party from the beginning.

**Complaint**

46. PNB has been advised that the Vehicles and some of the other Personal Property located at 645 W. Highway 14, Carmi, Illinois (the "Real Property"), which was the subject of a mortgage foreclosure (White County Case No. 17-CH-1), and later conveyed by deed in lieu of foreclosure to Grand Rivers Community Bank ("Grand Rivers").

47. PNB has been advised that the Real Property is to be sold by Grand Rivers to a third party on July 1, 2017, such that the Personal Property located at the Real Property must be moved prior to that date.

48. The Debtors have wrongfully detained the Personal Property

**First Amended Complaint**

46. PNB has been advised that the Vehicles and some of the other Personal Property located at 645 W. Highway 14, Carmi, Illinois (the "Real Property"), which was the subject of a mortgage foreclosure (White County Case No. 17-CH-1), and later conveyed by deed in lieu of foreclosure to Grand Rivers Community Bank ("Grand Rivers").

47. PNB has been advised that the Real Property is to be sold by Grand Rivers to a third party on July 1, 2017, such that the Personal Property located at the Real Property must be moved prior to that date.

***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. The parties filed objections to the intervention application and introduced new "evidence" to refute the voidness of the orders. This "evidence" if it is allowed, must be subject to an evidentiary

hearing, especially considering the machinations as detailed in the July 10th pleading and this Reply.

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 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).

## V. CLOSING

Grand Rivers Community Bank moved *immediately* upon discovering the voidness of Judge Stanley's orders. It 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. There is nothing in Peoples National Bank's remittal or objections which is admissible and relevant to the events of June 14th. If anything, the remittal and objections create more of a spotlight on the conduct. 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.

The remittal should be rendered void and the claim for sanctions be denied.

Respectfully submitted,

**GRAND RIVERS COMMUNITY BANK**

**BY:** _____

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