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STATE OF MINNESOTA DISTRICT COURT

COUNTY OF OTTER TAIL SEVENTH JUDICIAL DISTRICT

Craig Stevenson and
Marie Stevenson,

Plaintiffs,

v.

Sean Christopher Stevenson,
Renee Stevenson,
Lisa Stevenson-Allen, and
Ashley Anderson,

Defendants.

Court File No.: 56-CV-20-2928
Case Type: Other Civil

SUPPLEMENTAL DECLARATION OF CRAIG STEVENSON

STATE OF MINNESOTA)
) SS.
COUNTY OF OTTER TAIL)

Craig Stevenson declares as follows:

1. I am one of the Plaintiffs in the above-captioned matter.

2. I have been married to Plaintiff Marie Stevenson ("**Marie**") for over 34 years.

3. This declaration contains new and supplemental information to my July 22, 2024 declaration, which was filed on July 26, 2024, and should be used in combination with my earlier declaration. (Doc. 504.)

4. My attorneys did not assist me with the crafting of this declaration.

Defendants' Criticism of Me

5. In Defendants' Response in Opposition to Plaintiffs' Motion to Disqualify and Vacate Order filed with the Court on August 30, 2024, Defendants expend considerable resources to cast aspersions on me, rather than challenging the actual

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results of my research and analyses.

6. For example, Defendants state:

> Craig claims to have conducted extensive research into Judge Miller's orders – despite lacking the necessary qualifications - comparing them to other cases and asserting that Judge Miller consistently misapplied the law, mischaracterized evidence, and engaged in selective citation to support his rulings. Craig even alleges that Judge Miller improperly used ellipses to conceal material information.

(Doc 520, at 23-24.)

7. Due to time constraints I will limit my response to some of the most egregious criticisms made by Defendants.

Defendants' Criticism of My Qualifications

8. I am a 1978 graduate of Eagle Bend High School.

9. I graduated from Wadena Area Vocational Technical Institute in 1980 after completing a 2-year course in Electronics Technology.

10. My education and experience in business over the last 40+ years is more than sufficient to qualify me to read Judge Miller's orders to determine whether they contain omissions, miscitations, misquotations, and other irregularities.

11. In fact, my extensive experience repairing electronic devices and computers and writing computer software makes me uniquely qualified to perform the type of comparative analysis required to analyze Judge Miller's orders.

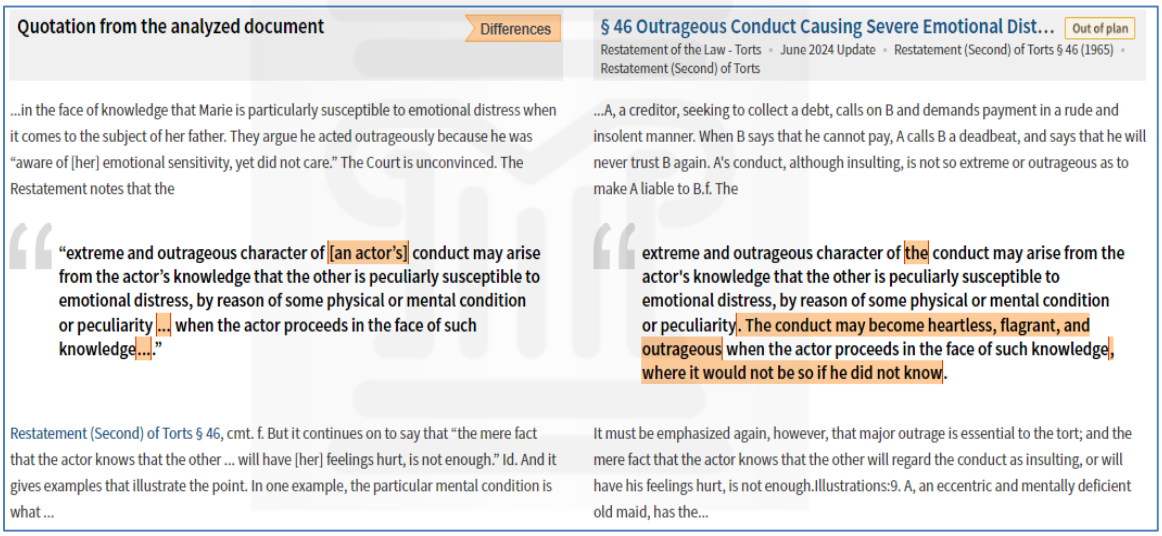
12. However, to ensure the accuracy of my analyses, I also used Westlaw Judicial Quick Check to perform an analysis of each of Judge Miller's orders and I compared the results to my own manual analysis of the same orders.

13. Westlaw is used by both the Court and by Attorney Tentinger, so its qualifications to perform these basic analyses should not be in question.

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14. Westlaw found many of the same omissions and other irregularities which I found during my manual analyses of Judge Miller's orders.[1]

15. In one example, Westlaw found and highlighted text from the Restatement regarding IIED which was omitted by Judge Miller and replaced with ellipses:



16. This appears to be a material omission by Judge Miller given the facts in this case surrounding Marie's IIED claim.

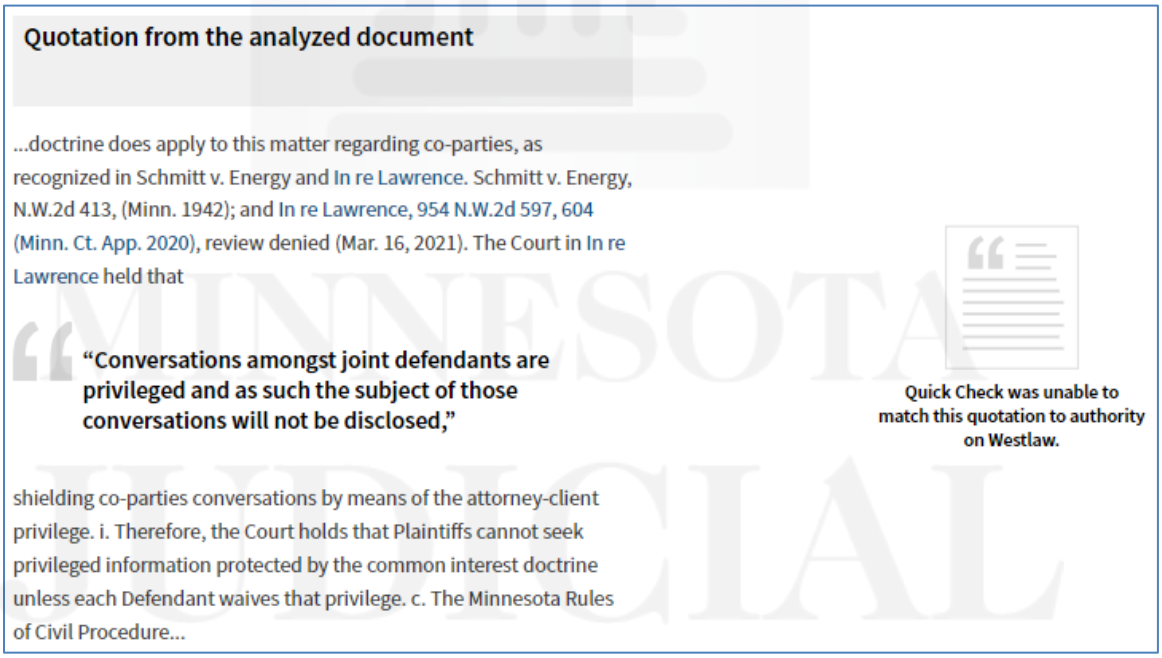
17. In another example, Westlaw found that *Schmitt v. Emery*, a 1942 case first introduced by Defendants and adopted by Judge Miller to justify his conclusion that inter-Defendant communications are privileged and are subject to the common interest doctrine, had been overruled in 1981:

[1] The results of these Westlaw analyses may be duplicated by anyone with access to Judge Miller's orders and to Westlaw.

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18. In another example, Westlaw was unable to match Judge Miller's quotation that "Conversations amongst joint defendants are privileged and as such the subject of those communications will not be disclosed" to any authority on Westlaw:



19. As I explained in my previous declaration, despite Judge Miller's claim, this quote does not exist in *In re Lawrence*. (Doc. 504, ¶¶ 238-253.)

20. Obviously, Westlaw could not find authority for a quote which does not exist.

Defendants' Criticism of My Knowledge

21. Defendants claim I made an "unfounded assertion" that I know "the true holding

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of *In re Lawrence*, 954 N.W.2d 597". (Doc. 520, at 25.)

22. In my previous declaration, I quoted the Syllabus by the Court in *In re Lawrence* as my source for the holding of the case, which required no interpretation or independent knowledge on my part. I simply let the *In re Lawrence* Court speak for itself. (Doc. 504, ¶ 243.)

23. As shown in the following screen snip, Westlaw also corroborates the information in my declaration and deposition testimony regarding the actual holding of *In re Lawrence*, but Westlaw differs significantly with Judge Miller's quotation and interpretation, on which he based his ultimate conclusion:[2]



In re Lawrence

Court of Appeals of Minnesota. • December 21, 2020 • 954 N.W.2d 597 • 2020 WL 7484756 • A20-0382 • 37 Citing References

LITIGATION — Privileges. Corporation whose attorneys represented corporation and selling shareholders could not waive attorney-client privilege on behalf of shareholders.

Hide synopsis

Background: Sellers of shares of truck and trailer leasing business as part of a corporate reorganization brought action against buyers to recover damages for breach of contract and nonpayment. The District Court, Hennepin County, Edward T. Wahl, J., granted buyer's motion for authority to view transferred communications. Sellers sought writ of prohibition.

Holding: The Court of Appeals, Reilly, J., held that as matter of first impression, waiving the joint-client privilege required the consent of all joint clients.

Writ of prohibition granted.

24. Westlaw corroborates my findings and Defendants have not yet identified any **factual errors** in my declarations.

Defendants' Criticism of My Research

25. Regarding the extent of my research, Defendants indicate "[t]he lengths to which Craig has gone are alarming and exceed what is reasonable or appropriate of a litigant appearing before the Court." (Doc. 520, at 24.)

26. The quest for truth should alarm no one.

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[2] Additional information regarding *In re Lawrence* and how it relates to this case is contained in my July 22, 2024 declaration. (Doc. 504, ¶¶ 238-253.)

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27. It is entirely reasonable and appropriate for a litigant to research the rulings in his case, especially if the litigant has reason to believe that relevant evidence is being improperly withheld and he is not being treated fairly and impartially by the presiding judge.

28. In fact, the Minnesota Judicial Branch website states:

> MCRO is an online platform for public access to state district court records and documents, allowing the public to search for and retrieve public court documents without having to go to a court facility or the State Law Library. Since its launch in March 2021, more than seven million district court case documents have been downloaded through the application, with nearly 800 new downloads occurring every hour.
>
> "When the Minnesota Judicial Branch set out to develop a fully-functional remote access product for court records and documents, our goal was to increase access, transparency, and convenience in our court system," said Minnesota Supreme Court Chief Justice Lorie S. Gildea. "MCRO is one of the most notable innovations of the Judicial Branch, and it is effectively meeting the high demand for information in a manner that is accessible and responsive to the people we serve."[3]

29. Apparently, the original goal of MCRO was to "**increase** access, transparency, and convenience in our court system", not to discourage people from accessing or using this information for fear of alarming the court system itself.

30. MCRO and Westlaw have been invaluable tools to help me uncover irregularities contained in Defendants' motions and Judge Miller's orders.

31. For example, in just one instance detailed above, MCRO and Westlaw allowed me to uncover that in his December 21, 2021 Order denying our motions to compel, Judge Miller had incorrectly attributed a **quote from Defendants Answers to Interrogatories** as the holding of *In re Lawrence*, then he combined

[3] Source: https://mncourts.gov/About-The-Courts/NewsAndAnnouncements/ItemDetail.aspx?id=2140

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this quote, which **did not actually exist in *In re Lawrence***, with the holding of an **overruled case** (*Schmitt v. Emery*) in order to apply the common interest doctrine, which had been specifically **disavowed by the Minnesota Court of Appeals** at the time of his order.[4]

32. In computer terms from my world, the multitude of errors which permeated the data inputs in Judge Miller's decision-making process regarding the common interest doctrine could not help but result in an erroneous final decision.[5]

33. It is Judge Miller's flawed decision-making process, occurring **prior to his final decisions**, which Plaintiffs challenge, in addition to his non-disclosure of Clerk Morrison's relationship to Attorney Hansen's father, Judge Mark F. Hansen.

Defendants' Criticism of My Conduct

34. In their response, Defendants also state: "Such conduct should be viewed with caution." (Doc. 520, at 24.)

35. In a footnote to the previous statement, Defendants state: "The troubling nature of Craig's conduct is further underscored by his previous action of including the unsolicited production of a photograph of a firearm he owns, with bullets in the magazine. (Tentinger Aff., Ex. 2.)"

36. Defendants' cautionary statements about me and my research remind me of a quotation attributed to Thomas Paine: "It is error only, and not truth, that shrinks from inquiry."

---

[4] *Energy Pol'y Advocs. v. Ellison*, 963 N.W.2d 485, 501 (Minn. Ct. App. 2021), rev'd and remanded, 980 N.W.2d 146 (Minn. 2022)

[5] Source: https://en.wikipedia.org/wiki/Garbage_in,_garbage_out

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37. However, in reality the photograph referenced by Defendants was produced as evidence to show Marie's long-standing fear of her father and the actions I took to protect her following word of a potential physical threat to her life.

38. In fact, Defendants were the first party to insert my gun into the record by describing the **confidential** photograph in detail in a public document. (Doc. 113, at 3.)

39. As Plaintiffs previously explained on September 23, 2021, "Craig bought the gun with a permit he obtained in 1992 and has never actually fired the gun... It was Marie's extreme fear of [her father] that prompted Craig to purchase the gun in 1992, and it is the only reason the gun is relevant to this case." (Doc 124, at 6.)

40. Defendants failed to mention any of this information in their response.

41. Similarly, Judge Miller did not mention this seemingly important information in his June 16, 2023 Order Granting Summary Judgment, ("**Plaintiffs' Summary Judgment Order**").

Defendants' Criticism of Me For Asserting Judge Miller Misapplied the Law, Mischaracterized Evidence, and Engaged in Selective Citation to Support His Rulings.

42. In response to Defendants' criticism I offer the following examples.

Example #1: Material Facts in Dispute and Summary Judgment

43. In Plaintiffs' Summary Judgment Order, Judge Miller made the following statements in his legal analysis:

> Here, Craig has admitted to taking Renee's moveable property without her consent. That admission establishes all of the above-referenced elements, save for his intent. **Craig does deny that he intended to permanently deprive Renee of the property in question.** But, of course, the fact that he did not return the property until prompted could reasonably support the opposite inference.

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(Doc. 429, at 24.) (emphasis added)

44. As Judge Miller acknowledged, the allegation of theft was denied by me, as cited in Plaintiffs' Memorandum of Law in Opposition to Defendants' Motion for Summary Judgment. (Doc. 394, at 12.)

45. My denials regarding the theft of Renee's property created a disputed material fact.

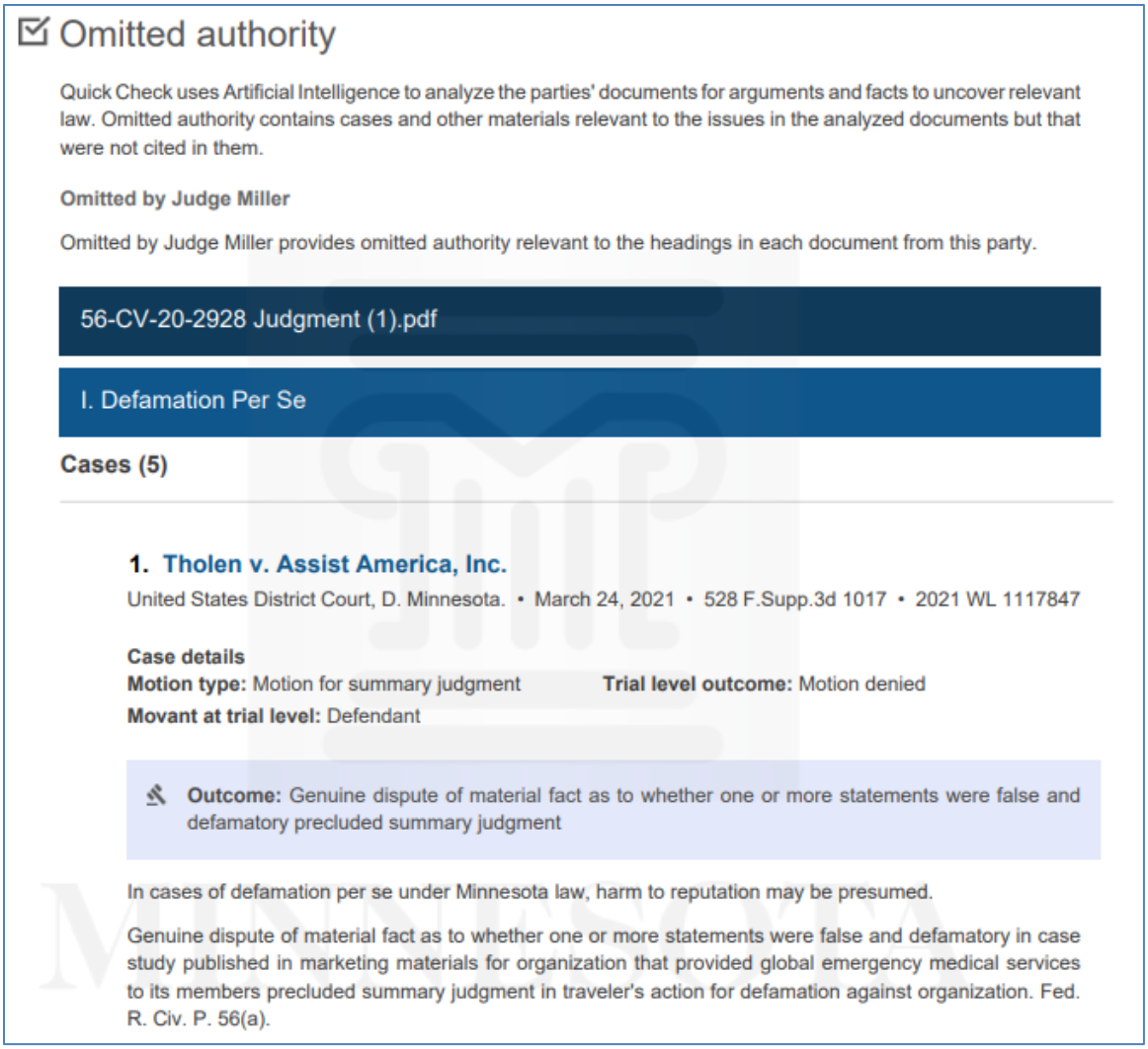
46. There were many other disputed material facts in our case.

47. As detailed in my July 22, 2024 declaration, Judge Miller cited to very old case law in Plaintiffs' Summary Judgment Order, from as far back as 1882 to support his conclusions regarding defamation. (Doc. 504, ¶¶ 53-57.)

48. However, according to Westlaw, Judge Miller omitted the following authority which is much more recent (2021) and appears to be extremely relevant given the evidence presented in our case:

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Omitted authority

Quick Check uses Artificial Intelligence to analyze the parties' documents for arguments and facts to uncover relevant law. Omitted authority contains cases and other materials relevant to the issues in the analyzed documents but that were not cited in them.

Omitted by Judge Miller

Omitted by Judge Miller provides omitted authority relevant to the headings in each document from this party.

56-CV-20-2928 Judgment (1).pdf

I. Defamation Per Se

Cases (5)

1. Tholen v. Assist America, Inc.

United States District Court, D. Minnesota. • March 24, 2021 • 528 F.Supp.3d 1017 • 2021 WL 1117847

Case details
Motion type: Motion for summary judgment **Trial level outcome:** Motion denied
Movant at trial level: Defendant

Outcome: Genuine dispute of material fact as to whether one or more statements were false and defamatory precluded summary judgment

In cases of defamation per se under Minnesota law, harm to reputation may be presumed.

Genuine dispute of material fact as to whether one or more statements were false and defamatory in case study published in marketing materials for organization that provided global emergency medical services to its members precluded summary judgment in traveler's action for defamation against organization. Fed. R. Civ. P. 56(a).

49. The Outcome section of Westlaw's analysis of *Tholen* states, "Genuine dispute of material fact as to whether one or more statements were false and defamatory precluded summary judgment".

50. As detailed in my July 22, 2024 declaration, Judge Miller did not base his summary judgment decision in our case on the presence or absence of disputed material facts. (Doc. 504, ¶¶ 33-48.)

Example #2: IIED, The Actor's Knowledge, and Cafferty

51. In Plaintiffs' Summary Judgment Order, Judge Miller made the following statements in his legal analysis:

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> The Court is unconvinced. The Restatement notes that the "extreme and outrageous character of [an actor's] conduct may arise from the actor's knowledge that the other is peculiarly susceptible to emotional distress, by reason of some physical or mental condition or peculiarity **…** when the actor proceeds in the face of such knowledge**…**." Restatement (Second) of Torts § 46, *cmt. f*. But it continues on to say that "the mere fact that the actor knows that the other **…** will have [her] feelings hurt, is not enough." *Id*. And it gives examples that illustrate the point.

(Doc. 429, at 29-30.) (emphasis added to denote ellipses)

52. However, Judge Miller omitted key portions of this quote and replaced them with ellipses. The complete and accurate quote from the Restatement is:

> The extreme and outrageous character of the conduct may arise from the actor's knowledge that the other is peculiarly susceptible to emotional distress, by reason of some physical or mental condition or peculiarity. **The conduct may become heartless, flagrant, and outrageous** when the actor proceeds in the face of such knowledge, **where it would not be so if he did not know**. It must be emphasized again, however, that major outrage is essential to the tort; and the mere fact that the actor knows that the other **will regard the conduct as insulting**, or will have his feelings hurt, is not enough.

Restatement (Second) of Torts § 46, cmt. f. (emphasis added to denote omitted text)

53. Judge Miller's miscitation changed the meaning of the Restatement text by omitting portions that explain how an actor's conduct may become heartless, flagrant, and outrageous based on his knowledge of the victim's peculiar susceptibility to emotional distress.

54. However, as even Judge Miller's truncated citation clearly shows, the actor's knowledge of a victim's peculiar susceptibility to emotional distress is an important factor in IIED cases.

55. Judge Miller recognized this important factor in an **earlier order** – citing *Cafferty v. Garcia's of Scottsdale, Inc.* – while ignoring or intentionally concealing its importance (and the existence of *Cafferty*) at summary judgment. (Doc. 504, ¶

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94.)

56. The *Cafferty* court also specifically cited to the very same Restatement comment that Judge Miller cited in Plaintiffs' Summary Judgment Order:

> The extreme and outrageous character of the conduct may arise from the actor's knowledge that the other is peculiarly susceptible to emotional distress, by reason of some physical or mental condition or peculiarity. The conduct may become heartless, flagrant, and outrageous when the actor proceeds in the face of such knowledge, where it would not be so if he did not know. It must be emphasized again, however, that major outrage is essential to the tort; and the mere fact that the actor knows that the other will regard the conduct as insulting, or will have his feelings hurt, is not enough. Restatement (Second) of Torts § 46 comment f (1965).

Cafferty v. Garcia's of Scottsdale, Inc., 375 N.W.2d 850, 853 (Minn. Ct. App. 1985)

57. However, unlike Judge Miller, the *Cafferty* court did not omit any text from the Restatement comment or use ellipses to conceal anything.

58. Judge Miller failed to apply *Cafferty* in order to analyze whether Sean's conduct rose to the level of being extreme and outrageous because of his knowledge of Marie's sensitivity and because of Sean's actions in the face of such knowledge.

59. Judge Miller did not mention *Cafferty* in Plaintiffs' Summary Judgment Order, despite *Cafferty* being prevailing Minnesota case law regarding Intentional Infliction of Emotional Distress, and despite mentioning *Cafferty* himself in a previous order. (Doc. 366, at 36.)

60. Evidence in the record clearly shows Marie's reaction to Sean's first letter, including security system video and audio of her panic attack, along with the actual contents of the emails Craig and Marie sent to Sean before his second contact. (Doc. 398, at 3; Doc. 390, Ex. 16.)

61. Sean sent his second letter, which included 25 pages of Craig and Marie's emails,

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which contained Marie's contact information and detailed some of our efforts to protect her, **after** being made aware of Marie's history with her father and her reaction to Sean's first letter.

62. Based on the record, Judge Miller was fully aware of Marie's peculiar sensitivity to emotional distress as Judge Miller himself stated in Plaintiffs' Summary Judgment Order:

> Plaintiffs' emails to Sean informed him that Marie was especially sensitive, particularly on the subject of her Father.

(Doc. 429, at 30.)

63. Furthermore, based on the transcript of the Summary Judgment Hearing, Judge Miller was aware that Sean had knowledge about Marie's reaction to his first contact with her estranged father and proceeded with additional contacts in the face of such knowledge:

> THE COURT: Let me ask, you would agree though that **after Sean became aware that Marie was aware that there was a letter sent to Melvin**, I'm just gonna use his first name, --
> MR. TENTINGER: Mm-hmm.
> THE COURT: -- that **he sent correspondence after that**.
> MR. TENTINGER: **That is correct**.
> THE COURT: Okay.

(Doc. 421, Tr. 20:14-22.) (emphasis added)

64. Judge Miller was informed of Marie's fear of her father and her peculiar susceptibility to emotional distress caused by contacts with her father, which was confirmed by childhood medical records from 1987 and current medical testimony in the form of two separate Independent Medical Examinations of Marie.

65. One of these examinations was performed by **Defendants'** expert which, due to

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its support for Marie's IIED claim, was introduced into the record by **Plaintiffs**. (Doc. 398, Ex. F.)

66. Judge Miller did not mention this evidence in Plaintiffs' Summary Judgment Order.

Example #3: Spousal Privilege

67. In its December 6, 2022 Order and Memorandum Granting in Part, Denying in Part, and Reserving in Part Six Pre-Trial Motions, the Court ordered the production of a security system video from Plaintiffs' home which was protected by spousal privilege. (*See* Doc. 366, at 35-38, 56.)

68. In the order, the Court justified its granting of Defendants' motion to compel the production of this video as follows:

> The Court also agrees with Defendants that spousal privilege does not protect the recording of the panic attack. Defendants argue both that having a panic attack is not a communication protected by the privilege, and also that Plaintiffs have waived any privilege. The Court need not address the first argument because the second is clearly meritorious. The holder of an evidentiary privilege may waive it explicitly or by implication. *State v. Walen*, 563 N.W.2d 742, 752 (Minn. 1997). She may do so by waiving privilege as to a portion of the material. *See State v. Madigan*, 68 N.W. 179, 180 (Minn. 1896) ("If the [privilege holder] does not wish a repulse, he should not attack [using the privilege]."). That waiver extends to all "[]related communications." *State v. Gore*, 451 N.W.2d 313, 319 (Minn. 1990). Waiver by implication also occurs where the privilege holder places the subject matter of the privileged communication at issue by asserting a claim or defense. *Kern v. Janson*, 800 N.W.2d 126, 132 n.3 (Minn. 2011).

(Doc. 366, at 37.)

69. The Court concluded that Plaintiffs had waived spousal privilege and cited case law in support of its conclusion.

70. Each of the Court's citations related to attorney-client or physician-patient privilege, not spousal privilege.

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71. For example, the Court stated:

> The holder of an evidentiary privilege may waive it explicitly or by implication. *State v. Walen*, 563 N.W.2d 742, 752 (Minn. 1997).

(Doc. 366, at 37.)

72. *State v. Walen* actually states:

> A client can waive his or her **attorney-client** privilege either by explicit consent or by implication. See generally 8 Wigmore, Evidence § 2327 (McNaughton rev. 1961).

State v. Walen, 563 N.W.2d 742, 752 (Minn. 1997) (emphasis added.)

73. Judge Miller also **omitted** portions of *Walen* that discuss the **limitations** of any waiver of privilege:

> The final question we must address is the scope of Walen's waiver. **We must identify and allow the waiver to reach only those communications that were relevant to the issue of ineffective assistance of counsel.** 8 Wigmore, Evidence § 2327 (McNaughton rev.1961).

State v. Walen, 563 N.W.2d 742, 753 (Minn. 1997) (emphasis added)

74. Judge Miller's miscitation changed the meaning of *Walen* by attempting to improperly broaden the scope of the waiver.

75. Judge Miller's citation to *State v. Gore* stated:

> That waiver extends to all "[]related communications." *State v. Gore*, 451 N.W.2d 313, 319 (Minn. 1990).

(Doc. 366, at 37.)

76. However, *State v. Gore* actually states:

> Although disclosure of privileged information by the holder of the privilege is usually said to result in implied waiver, it is no doubt more accurate to say that when the holder of a privilege destroys the confidentiality of information by disclosure, the information loses its privileged character and the holder may no longer assert the privilege with respect to the disclosed information. That preclusion is, however, limited by the scope of the disclosure; here the defendant's testimony of the amount of drugs he ingested and his attempt to

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> slash his wrists **did not cause loss of the privilege with respect to unrelated communications** by the defendant to the physician.

State v. Gore, 451 N.W.2d 313, 318-19 (Minn. 1990) (emphasis added)

77. Judge Miller changed the phrase "unrelated communications" to "[]related communications", which resulted in a miscitation of *State v. Gore* by attempting to improperly broaden the scope of the waiver.

78. In fact, *State v. Gore* limited the scope of the waiver to only the very specific topics revealed by the defendant about his discussion with his physician.

79. Judge Miller totally ignored precedential case law from the Minnesota Supreme Court which indicates that the **spousal privilege** in Minnesota is unusually strong, even in the face of criminal conduct:

> Facts indicating that a couple was engaged in joint criminal conduct is not a sufficient basis to deny either spouse the benefit of the marital privilege set forth in Minn.Stat. § 595.02, subd. 1(a).

State v. Gianakos, 644 N.W.2d 409, 410 (Minn. 2002)

80. Because of Judge Miller's order, Plaintiffs were forced to file a writ of prohibition with the Minnesota Court of Appeals to protect their rights.

81. The Court of Appeals granted Plaintiffs' writ on February 21, 2023, ruling that "the district court exceeded its authority" in ordering Plaintiffs to produce the video. (*In re Stevenson*, No. A23-0077, 2023 WL 2662579, at *3 (Minn. Ct. App. Feb. 21, 2023)).

Example #4: Costs and Disbursements

82. In his October 13, 2023 Order and Memorandum Regarding Costs and Disbursements, Judge Miller stated:

> Faced with costs and disbursements that are partially justified and partially

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> unjustified, trial courts sometimes resort to simply splitting the difference between a full award and no award. *See, e.g.*, *Alonzo v. Menholt*, 2023 WL 2354626 (Minn. Dist. Ct. Jan. 24, 2023) (trial court order).

(Doc. 466, at 11.)

83. Judge Miller cited *Alonzo* to justify "splitting the difference between a full award and no award" for **Defendants'** costs and disbursements for **Defendants'** expert who performed forensic examinations of **Defendants'** phones at **Defendants'** request in an attempt to recover **Defendants'** text messages which were deleted by **Defendants**.

84. Judge Miller cited the trial court order from *Alonzo* which involved questionable and untimely Independent Medical Examinations which had been **agreed to by both parties**:

> While the Court did not order an IME pursuant to Rule 35.01 in this case, in practice, **IMEs often occur as a result of an agreement between the parties, which is apparently what occurred in this case**.
>
> The reasonableness of the IMEs in this case is questionable. The Defendants filed for summary judgment in July of 2022, arguing that Plaintiffs' claim for negligent selection of independent contractor is not a recognizable claim in Minnesota. In other words, the summary judgment motion related to a legal issue wholly separate from any injuries suffered by Plaintiffs during the underlying accident. Considering this, and the fact that much of the IMEs took place following the filing of said Motion, the Court does not find awarding the entirety of the IMEs costs reasonable. The Defendants are entitled to **half of the IMEs costs** - $13,569.17. The same analysis shall apply to the travel expenses incurred by Plaintiffs and reimbursed by the Defendants. The Defendants are entitled to **half of the travel expenses** - $1,544.70.

Alonzo v. Menholt, 2023 WL 2354626 (Minn.Dist.Ct. Jan. 24, 2023) (trial court order) (emphasis added)

85. However, Judge Miller cited *Alonzo* to justify requiring **Plaintiffs** to pay half the cost for **Defendants'** forensic expert, even though there was no agreement between the parties to hire Carney Forensics, the forensic examinations were

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timely and necessary because of **Defendants'** deletion of evidence from their own cell phones, Sean had committed perjury by lying under oath about the deletion of some of this evidence, Defense Counsel Ross Tentinger had falsely claimed the forensic examination of Lisa's phone was "never completed", only a single report from Lisa's phone was belatedly disclosed to Plaintiffs nearly 6 months later after discovery had closed, and the remaining Carney Forensics reports from Lisa's phone have never been disclosed at all.

86. I was able to independently locate *Alonzo* by using the following Westlaw keyword search within Minnesota:

+"Taxation of Costs and Disbursements" & +"half"

87. The trial court order for *Alonzo* appeared as the most relevant Westlaw search result and I saved the link to the exact search I performed.[6]

Section Summary

88. As shown by the examples in this section, Judge Miller misapplied the law, mischaracterized evidence, and engaged in selective citation to support his rulings.

Defendants' Criticism of Me For Alleging Judge Miller Improperly Used Ellipses to Conceal Material Information

89. Because of Judge Miller's extensive use of ellipses in Plaintiffs' Summary Judgment Order, I began to research the proper use of ellipses.[7]

---

[6] Westlaw link: https://www.westlaw.com/SharedLink/28cbf8e0fa134e518b4323492687c74b?VR=3.0&RS=cblt1.0

[7] Additional information regarding Judge Miller's use of ellipses may be found in my July 22, 2024 declaration. (Doc. 504, ¶¶ 19-32.)

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90. My findings mirrored what I had been taught about the proper use of ellipses in high school, which is that ellipses should be used rarely and must not alter the meaning of the underlying text.

91. According to the Associated Press:

> Quotes must not be taken out of context. We do not alter quotations, even to correct grammatical errors or word usage. If a quotation is flawed because of grammar or lack of clarity, it may be paraphrased in a way that is completely true to the original quote. If a quote's meaning is too murky to be paraphrased accurately, it should not be used. Ellipses should be used rarely and must not alter the speaker's meaning.

Source: https://www.ap.org/about/news-values-and-principles/telling-the-story/quotations

92. According to the Georgetown University Law Center:

> **THE ELLIPSIS (. . .)**
>
> **ELLIPSIS:** An ellipsis (three periods separated by spaces) is used to indicate the omission of one or more words from a quotation.[6]
>
> **Advantage:** Ellipses help writers retain conciseness in legal writing and draw clearer meaning out of quoted language by permitting the omission of text that is not necessary for the present discussion.
>
> **Disadvantage:** The overuse of ellipses may suggest that you are manipulating the authority and thus may harm your credibility with the reader.
>
> **CAUTION:** Use care not to omit material that is necessary to retain the original meaning of quote.[7]
>
> [6] For more information on omissions from quotations, see THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION R. 5.3, at 70-71 (Columbia Law Review Ass'n et al. eds., 18th ed. 2005).
>
> [7] Lawyers may be subjected to sanctions for misrepresenting the meaning of quoted language through selective omission. *See Precision Specialty Metals, Inc. v. United States*, 315 F. 3d 1346 (Fed. Cir. 2003) (affirming formal reprimand for government attorney whose omission broadened the original meaning of a quoted passage)

Tips for Effective Punctuation in Legal Writing, The Writing Center at GULC

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(Source: https://www.law.georgetown.edu/wp-content/uploads/2018/11/Tips-for-effective-punctuation.Suther.Roberts.2006.revised.pdf)

93. I then examined *Precision Specialty Metals, Inc. v. U.S.* in much greater detail and searched for summaries that referenced the case.[8]

94. I found several citations which indicated Judge Miller's extensive use of ellipses, to conceal the omission of relevant and material text which resulted in a miscitation of the original text, was improper.[9]

95. My declarations contain many examples of Judge Miller's improper use of ellipses in his various orders in Plaintiffs' case.

Defendants' Criticism of Me For Alleging Judge Miller Used Evidence Selectively

96. In Plaintiffs' Summary Judgement Order, Judge Miller cited two examples from the Restatement which were purported to be similar to Plaintiffs' case:

> In one example, the particular mental condition is what permits the actor's conduct to be distressing at all: "A knows that B **…** believes in witchcraft. In order to force B to sell A his farm, A goes through the ritual of putting a 'hex' on [B's] farm, causing B to believe that it is bewitched**…**. A is subject to liability to B for [emotional distress]." *Id., illus. 10*. In the other example, the condition simply makes the plaintiff more sensitive to ordinary sources of distress: "A is an otherwise normal girl who is a little overweight, and is quite sensitive about it. Knowing this, B tells A that she looks like a hippopotamus. **…** B is not liable to A [for emotional distress]." *Id., illus. 13*. These examples illustrate that the law will take notice when a person uses the unusual vulnerability of a plaintiff to seek an unconscionable advantage. But the law will not go so far as to allow a person to use an assertion of fragility to enforce a heckler's veto. To go that far would practically be to transform the objective inquiry contemplated by the Restatement into a question of what the Plaintiff subjectively finds to be outrageous.

---

[8] Source: https://casetext.com/case/precision-specialty-metals-inc-v-us/case-summaries

[9] *See Bayou Inspection Servs., Inc. v. Orion Constr. LP*, CIVIL ACTION No. 11-2643, at *2-3 (E.D. La. Mar. 13, 2013). *See Anderson Eye Care of W. Tenn. v. Auto-Owners Ins. Co.*, 1:23-cv-01092-STA-jay, at *5 (W.D. Tenn. Oct. 10, 2023).

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(Doc. 429, at 30.) (emphasis added to denote ellipses)

97. One illustration cited by Judge Miller involved witchcraft and the other involved a sensitive overweight girl whose feelings were hurt when someone said she looked like a hippopotamus.

98. However, Judge Miller intentionally omitted key portions of the Restatement text:

> A knows that B, **a Pennsylvania Dutch farmer, is extremely superstitious, and** believes in witchcraft. In order to force B to sell A his farm, A goes through the ritual of putting a "hex" on **the** farm, causing B to believe that it is bewitched **so that crops will not grow on it. B suffers severe emotional distress and resulting illness**. A is subject to liability to B **for both**.

Restatement (Second) of Torts § 46, cmt. f, illus. 10. (emphasis added to denote omitted text)

> A is an otherwise normal girl who is a little overweight, and is quite sensitive about it. Knowing this, B tells A that she looks like a hippopotamus. **This causes A to become embarrassed and angry. She broods over the incident and is made ill.** B is not liable to A.

Restatement (Second) of Torts § 46, cmt. f, illus. 13. (emphasis added to denote omitted text)

99. The emphasized portions of the Restatement text were intentionally omitted and replaced with ellipses by Judge Miller.

100. Judge Miller's miscitation changed the meaning of the Restatement text.

101. The omitted portions make it clear that neither of the two illustrations quoted by the Court bear much similarity to the facts in Plaintiffs' case, since Marie's IIED claim had nothing to do with farming, witchcraft, hexes, hippopotamuses, mere embarrassment, brooding, or weight gain, and these illustrations did not mention how an actor's knowledge of another person's peculiarities and sensitivities and his actions in the face of that knowledge might affect his liability.

102. Furthermore, in his summary judgment analysis, Judge Miller implied that there

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are only two examples (illustrations) contained in Restatement comment f ("In one example…", "In the other example…") and stated explicitly, "This case is far more like the second example than like the first." (Doc. 429, at 30.)

103. However, there are actually **five illustrations** in this comment from the Restatement, numbered 9 through 13, and two of them relate specifically to an actor's knowledge of the other person's peculiarities and sensitivities and when an actor is subject to liability based on his actions in the face of that knowledge.

104. Judge Miller quoted illustrations 10 and 13, but failed to quote illustrations 11 and 12:

> Illustration 11: A, who knows that B is pregnant, intentionally shoots before the eyes of B a pet dog, to which A knows that B is greatly attached. B suffers severe emotional distress, which results in a miscarriage. A is subject to liability to B for the distress and for the miscarriage.
>
> Illustration 12: A is in a hospital suffering from a heart illness and under medical orders that he shall have complete rest and quiet. B enters A's sick room for the purpose of trying to settle an insurance claim. B's insistence and boisterous conduct cause severe emotional distress, and A suffers a heart attack. B is subject to liability to A if he knows of A's condition, but is not liable if he does not have such knowledge.

Restatement (Second) of Torts § 46, cmt. f, illus. 11-12.

105. These two illustrations are much more similar to the facts and evidence in this case than the examples cited by Judge Miller, since they contain references to an actor's actions in the face of his knowledge of the victim's vulnerability to emotional distress, but these two illustrations were intentionally omitted by Judge Miller.

106. Judge Miller's miscitation changed the meaning of the Restatement text by concealing the most relevant illustrations.

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107. Judge Miller quoted one illustration from before the most relevant illustrations and one illustration from after the most relevant illustrations.

108. Minnesota courts have held that:

> A misrepresentation may be made by an affirmative statement that is itself false or by concealing or not disclosing certain facts that render facts disclosed misleading.

Heidbreder v. Carton, 645 N.W.2d 355, 367 (Minn. 2002)

Defendants' Criticism of Me For Analyzing Judge Miller's Orders in Other Cases and Alleging Judge Miller Ignored Relevant Case Law

109. In their response, Defendants' state:

> Craig's obsession led him to go back and "analyze" Judge Miller's orders in other, unrelated cases as far back as 2018.

(Doc. 520, at 24.)

110. Defendants also criticize me for presenting arguments that Judge Miller "ignored relevant caselaw". (Doc. 520, at 25.)

111. However, in order to determine whether Judge Miller treated us fairly and impartially, it was necessary to analyze Judge Miller's orders in other, unrelated cases which addressed similar issues, such as discovery, motions to compel, spoliation, contradictory statements under oath, summary judgment, etc.

112. If Judge Miller applied the law consistently in similar cases involving different parties, Plaintiffs might disagree with his decisions, but we would have no basis to question his fairness and impartiality.

113. Conversely, given similar facts, if Judge Miller applied the law inconsistently and ruled in Plaintiffs' case arbitrarily and differently than he did in other cases, Judge Miller's fairness and impartiality could reasonably be questioned.

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Example #1: Liberal Exchange of Information and Motions to Compel

114. As I detailed in my July 22, 2024 declaration, Judge Miller used two very different standards for discovery. (Doc. 504, ¶¶ 199-223.)

115. In one case Judge Miller promoted the "liberal exchange of information."

116. In Plaintiffs' case Judge Miller severely limited discovery, including the application of the common interest doctrine to inter-Defendant communications.

The (Non-Existent) Common Interest Doctrine

117. The following section contains supplemental information to my July 22, 2024 declaration regarding Plaintiffs' motions to compel and subsequent letters for reconsideration. (Doc. 504, ¶¶ 238-253; 269-270.)

118. Judge Miller's December 21, 2021 Order Denying Plaintiffs' Motions to Compel applied the "common interest doctrine" to inter-Defendant communications:

> The common interest doctrine does apply to this matter regarding co-parties, as recognized in *Schmitt v. Energy* [sic] and *In re Lawrence*. *Schmitt v. Energy*, N.W.2d 413, (Minn. 1942); and *In re Lawrence*, 954 N.W.2d 597, 604 (Minn. Ct. App. 2020), review denied (Mar. 16, 2021). The Court in *In re Lawrence* held that "Conversations amongst joint defendants are privileged and as such the subject of those conversations will not be disclosed," shielding co-parties conversations by means of the attorney-client privilege.

(Doc. 154, at 13.)

119. However, *In re Lawrence* contains no such quote. (*See In re Lawrence*, 954 N.W.2d 597.)

120. Instead, the quote was from **Defendants' Answers to Interrogatories**, was used by Defendants to avoid answering Plaintiffs' interrogatories, and was subsequently quoted in **Defendants' Opposition Memorandums**. (Lisa: Doc. 111, at 4; Sean: Doc. 108, at 5,9; Renee: Doc. 109, at 8.)

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121. Neither *Schmitt v. Emery*[10] nor *In re Lawrence* support Judge Miller's conclusion.

122. In fact, *Schmitt v. Emery* was overruled by *Leer v. Chicago, M., St. P. & P. Ry. Co.*, Minn., 308 N.W.2d 305 on July 17, 1981, over 40 years prior to Judge Miller's order.

123. Furthermore, at the time of Judge Miller's order, the Minnesota Court of Appeals had explicitly stated:

> **Respondents urge this court to recognize the common-interest doctrine for the first time, but we decline the invitation to do so.** As we have stated many times, "the task of extending existing law falls to the supreme court or the legislature, but it does not fall to this court." *Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987), review denied (Minn. Dec. 18, 1987). **Because the common-interest doctrine is not recognized in Minnesota**, its application is not authorized by section 13.393. Accordingly, the common-interest doctrine is not an exception to the disclosure requirements of the MGDPA. Thus, the district court erred by applying the common-interest doctrine.

Energy Pol'y Advocs. v. Ellison, 963 N.W.2d 485, 501 (Minn. Ct. App. 2021), *rev'd and remanded*, 980 N.W.2d 146 (Minn. 2022) (emphasis added)

124. Information about this **precedential** Minnesota Court of Appeals case was provided to Judge Miller at least five times. (Doc. 83, at 19; Doc. 115, at 8-9; Doc. 118, at 8-9; Doc. 121, at 8-9; Doc. 166, at 1.)

125. Judge Miller ignored this case law.

126. The common interest doctrine wasn't formally recognized by the Minnesota Supreme Court until September 28, 2022, over 9 months later, and then only for otherwise attorney-client privileged communications. (*See Energy Pol'y Advocs. v. Ellison*, 980 N.W.2d 146 (Minn. 2022))

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[10] The Court's citation to *Schmitt v. Energy* is incorrect. The correct case title is *Schmitt v. Emery*. Lisa's response to Plaintiffs' Motion to Compel miscites this case as Schmitt v. Emergy. (Doc. 111 at 5.) It appears as if this citation was copied from Lisa's response and the word "Emergy" was changed to "Energy", but Judge Miller did not check the actual case itself for accuracy before using it to support his conclusion.

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127. Defendants and Defense Counsel took full advantage of Judge Miller's ruling regarding the common interest doctrine, and refused to supplement undisclosed pre-litigation communications or disclose post-litigation communications.

128. During their depositions, Defendants, on the advice of their attorney, refused to answer questions about their activities or discuss inter-Defendant communications following the hiring of an attorney:

- Renee's Deposition: (Doc. 386, Ex. 18, Tr. 267:24-268:9; 275:13-278:9; 283:7-283:20; 284:19-286:19.)
- Sean's 1st Deposition: (Doc. 387, Ex. 20, Tr. 198:1-199:20; 200:10-23.)
- Lisa's 2nd Deposition: (Doc. 387, Ex. 19, Tr. 292:5-296:14; 251:22-257:16; 327:3-23.)

129. Judge Miller ignored prevailing law and prevented Plaintiffs from discovering inter-Defendant communications by using a doctrine which **did not exist** at the time of his order.

130. Furthermore, despite Sean **admitting** to his attorney that he had deleted evidence after the start of litigation and **admitting** that he lied about it under oath, Judge Miller refused to compel the production of post-litigation inter-Defendant communications which might prove conclusively when this evidence was deleted, the extent of the deletion, who was involved, and whether there was any coordination between Defendants surrounding its deletion.

131. Judge Miller then refused to sanction Lisa and Renee for spoliation, despite this missing evidence:

> In weighing the evidence in order to exercise its discretion, the Court concludes that Plaintiffs have not shown that either Renee or Lisa destroyed (or failed to preserve) relevant evidence after they were aware of impending litigation.

(Doc. 366, at 15.)

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132. Because Judge Miller would not compel the production of post-litigation communications between Defendants, and because of Defendants' selective spoliation of pre-litigation communications, our ability to prove whether "Renee or Lisa destroyed (or failed to preserve) relevant evidence after they were aware of impending litigation" was severely limited.

133. Judge Miller did not analyze whether Defendants' obligation to preserve evidence began when Sean received his first cease-and-desist letter from Fergus Falls Attorney Sarah Duffy, on August 3, 2020, which threatened further legal action.

134. Judge Miller did not analyze whether Defendants' obligation to preserve evidence began when Sean received his second cease-and-desist letter from Apple Valley Attorney Matthew Schaap, on September 10, 2020, which threatened further legal action and contained a preservation notice.[11]

Example #2: Spoliation of Evidence

135. Based on information gathered from call detail records provided by AT&T, a total of 51 texts were exchanged between Sean and Lisa surrounding Sean's first contact with Marie's estranged father. (Doc. 396, at 49.)

136. These texts, exchanged between May 25, 2020 and June 8, 2020, were **never produced** by Defendants and forensic examinations of Sean's and Lisa's cell phones indicated **all 51 texts had been deleted from both phones**.

137. In addition, spoliated texts between Sean and Lisa surround nearly every significant event in this case. (Doc. 396, at 47-50.)

[11] Lisa and Renee received similar cease-and-desist letters shortly thereafter.

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138. This information was in the record prior to summary judgment and was known to Judge Miller:

> In their briefing, Plaintiffs identify 67 unrecoverable messages they believe are likely to have been relevant based on their dates. (Doc. 287, at 16; Doc. 298, at 16; Doc. 295, 16-17) Based on its review of the record as a whole, the Court agrees that, of the messages Plaintiffs identify, the messages exchanged between Sean and Lisa on two dates in May and June 2020, around the time Sean sent letters to Melvin Liebsch, would likely have been relevant to show Sean and Lisa's knowledge, planning, motive, intent, or other state of mind.

(Doc. 366, at 11.)

139. During the March 15, 2023 Summary Judgment Hearing, Plaintiffs' Attorney, Matthew Schaap, also made Judge Miller aware of the impact of Defendants' spoliated evidence prior to his summary judgment order:

> I also note, Your Honor, that you know Rule 56.04 is not one that the Court I think took lightly when it issued its earlier order as to the spoliation discussion. The Court invited the plaintiffs to present evidence that they had been hindered in defending this motion or motions for summary judgment by the limited discovery that was provided and the spoliation that occurred. We've now essentially asserted that it's not a throwaway. It's not a request that should be ignored or minimized. We've gone into great depth, both before this and in this opposition to illustrate why Rule 56.04 should be applied and the Court should not grant summary judgment at this stage, on this record.

(Doc. 421, Tr. 61:1-13.)

140. Judge Miller did not apply Rule 56.04 and did not mention the spoliation of this critical evidence in Plaintiffs' Summary Judgment Order.

141. Judge Miller concluded that Sean's actions were not extreme and outrageous and were not directed at Marie despite the fact that almost the entirety of the evidence surrounding this event had been spoliated by Sean and Lisa.

142. Judge Miller granted summary judgment without considering the prejudicial effect of this spoliated evidence.

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143. However, Judge Miller was much more concerned about the potential prejudicial effect of spoliated evidence **in a different case**. (*See David E Grosz and David E Grosz, as trustee of the David E. Grosz Trust U/A dated February 26, 1996 vs Radiant Creative Homes, LLC a/k/a Radiant Creative Homes LLC*.)

144. In his March 18, 2022 Order and Memorandum Denying Plaintiffs' Motion to Amend Complaint in *Grosz*, Judge Miller stated:

> **However, the Court does believe that this Motion to Amend would be unfairly prejudicial to Defendant.** It has been years since Plaintiffs initiated this Complaint, and the parties have been through extensive discovery over this time period. Plaintiffs' Motion to Amend would drastically alter the course of this lawsuit at a very late stage in the suit itself. **Further, the Court is concerned with the potential spoilation of evidence due to Plaintiffs' destruction of Defendant's construction, which would make it incredibly difficult for Defendant to fairly defend itself from Plaintiffs' proposed claims.** Accordingly, Plaintiffs' Motion to Amend the Complaint shall be denied.

Grosz, Court File No. 56-CV-18-3239, Doc. 84, at 9. (emphasis added)

145. In *Grosz*, Judge Miller was concerned about the prejudicial effect of *potentially* spoliated evidence, even though a tremendous amount of high-quality relevant evidence was still available:

> There is absolutely no question that Radiant had ample opportunities to inspect the home, and in fact did inspect the home prior to litigation, but chose to sit on its hands for almost four (4) years and now has the audacity to say that Grosz destroyed evidence. **The further reality is that Grosz has produced almost four hundred (400) documents, the majority of those being photographs of the property before and during remediation, not to mention an inspection report containing detailed explanations for each photograph. Finally, Radiant even had some of its subcontractors inspect the home. (Inspection Sign—In Sheet, Ex. of the McCamy Dec).** This is not [a] case about spoliation.

Grosz, Court File No. 56-CV-18-3239, Doc. 80, at 7. (emphasis added)

Notifications to the Court Regarding Sean's Backups

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146. In an attempt to recover evidence spoliated by Defendants, Judge Miller was alerted and informed regarding Sean's backups on the following dates and in the following ways:

- September 23, 2021, Plaintiffs' Reply Memorandum of Law in Support of Their Motion to Compel Discovery from Defendant Sean Christopher Stevenson and for Other Relief. (Doc. 118, at 1 n. 1; Doc. 118, at 3.)
- September 24, 2021, Motion to Compel Hearing. (Doc. 231, Tr. 21:11-21.)
- October 31, 2022, Supplemental Declaration of Matthew J. Schaap, (Doc. 351, at 66-70.)
- December 5, 2022, Letter to the Court regarding discovery issues. (Doc. 363.)
- March 1, 2023, Plaintiffs' Memorandum of Law in Opposition to Defendants' Motion for Summary Judgment. (Doc. 394, at 22-23.)
- March 1, 2023, Second Declaration of Craig Stevenson. (Doc. 396, ¶¶ 169-173.)
- March 22, 2023, Amended Second Declaration of Craig Stevenson. (Doc. 419, ¶¶ 169-173.)
- September 11, 2023, Plaintiffs' Memorandum of Law in Opposition to Defendants' Motion for Sanctions. (Doc. 454.)
- September 11, 2023, Declaration of Craig Stevenson in Opposition to Sanctions. (Doc. 456, ¶¶ 29-32.)

147. The level of detail I provided to Judge Miller regarding Sean's phone and text backups is significant.

148. For example, in my March 22, 2023 declaration, I stated:

> 169. Craig confirmed that during a typical installation and setup of an Android phone similar to the phones used by Sean, Lisa, Renee, and Ashley, a Google account is required to install apps from the Google Play Store, such as SyncTech SMS Backup & Restore and other apps used by Defendants. In addition, the user's Google account provides drive space for phone backups which are enabled by default during installation. Craig also confirmed that

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> cloud backups were enabled by default when SyncTech SMS Backup & Restore was installed.
>
> 170. Sean testified repeatedly that he did not have any backups of the texts he exchanged with the other Defendants and that the SyncTech SMS Backup & Restore program he used to produce all of his texts with Makayla was only used to print the text chain with Makayla. Sean also testified that he deleted the program after using it to print the texts with Makayla.
>
> 171. Craig contacted the developer of SyncTech SMS Backup & Restore, who confirmed that the program would only print from a backup file and that all texts exchanged with all contacts were contained in a single backup file. It is therefore impossible for Sean to have printed his texts with Makayla without having a backup file of all of his texts in his possession following the receipt of the cease-and-desist letter from Attorney Matthew Schaap on September 10, 2020, which contained a preservation notice.
>
> 172. This backup file has not been produced. If the backup file no longer exists, Sean had to have deleted it **after** he printed the texts with Makayla on September 13, 2020, and **after** he had been informed that he had a duty to preserve evidence.
>
> 173. Defendants' denial of a conspiracy is not credible given the sheer number of communications that occurred surrounding every significant event in this case, especially when juxtaposed with the lack of production of forwarded emails, the timing of deleted texts and the apparent lack of any routine backups of texts, emails, or entire cell phones, even though these backup systems are enabled by default.

(Doc. 419, ¶¶ 169-173.) (emphasis in original)

149. Despite Plaintiffs alerting Judge Miller to Sean's backups **nine times over the course of almost two years**, and providing significant detail about the existence and content of these backups, which existed **after Sean had a duty to preserve evidence**, Judge Miller never mentioned Sean's backups in any of his orders or correspondence and never responded to Plaintiffs' alerts and requests for access to this evidence.

150. Furthermore, as explained in ¶¶ 146-153 of my July 22, 2024 declaration, Judge Miller intentionally **omitted and concealed** references to Sean's backups in a

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quotation of a statement by Plaintiffs used in his December 6, 2022 order.

Carney Forensics Image of Lisa's Cell Phone

151. Plaintiffs continued our efforts to recover spoliated evidence from Lisa's cell phone.

152. As I detailed in my March 22, 2023 declaration, an earlier forensic image of Lisa's cell phone, taken by Carney Forensics on May 9, 2022, is available but was never provided to Plaintiffs by Defendants, even though an agreement was in place to do so prior to the close of discovery. (Doc. 419, ¶¶ 174-188; *See* Doc. 363.)

153. Attorney Ross Tentinger stated the following in a June 27, 2022 Letter to Plaintiffs' Attorney Matthew Schaap:

> "As for Lisa's phone, John Carney is working on a forensic examination of her phone now and is in possession of the phone."
>
> "For the moment, her phone is not available for an additional examination."

(Doc. 292, Ex. 17.)

154. Both of these statements by Attorney Tentinger are verifiably false, since Defendants' own invoices reveal that John Carney had shipped Lisa's phone back to her, over a month earlier, on May 10, 2022.

155. Information contained in my March 22, 2023 declaration was brought to Judge Miller's attention **prior to summary judgment**.

156. Judge Miller took no action regarding the false statements and obstruction related to the earlier forensic image of Lisa's cell phone.

157. Plaintiffs also brought much of this information to Judge Miller's attention in a letter dated July 20, 2023, following summary judgment, and requested that

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Defendants be ordered to produce the improperly withheld reports which Attorney Tentinger had falsely claimed did not exist. (*See* Doc. 437.)

158. Plaintiffs also informed Judge Miller that Defendants were intentionally withholding relevant, material, and discoverable evidence in a concerted and coordinated effort to obstruct discovery and prevent Plaintiffs from prosecuting their case.

159. Judge Miller refused to address the withheld reports without a motion and ignored the obstruction, false statements, and deception by Defendants and Defense Counsel. (Doc 443, at 5.)

160. In similar fashion, Plaintiffs detailed additional discovery misconduct on September 25, 2023 in connection with a Rule 11 sanctions motion filed by Defendants.

161. During oral argument, Plaintiffs' attorney stated:

> So the difficulties we had with the discovery process were borne out in sort of the concealment and lack of disclosure by the defendants. So in their first memorandum one of the perceived discovery abuses for claims that they were subjected to too many depositions or too much discovery. So for example, Exhibit I in my declaration is document 457, shows an original redaction by defendants of a text from Sean to Lisa. And it said, "**Guess I was right. Spoke to mom, she sees no reason to give in. I'm the same. You?**" So everything after "Spoke to mom" was **redacted in two places** on the original report that was produced to us in May of 2022.
>
> They should not have redacted anything in that text, but they did. And we would not have known about this impropriety or concealment of evidence, but **they missed redacting it in another report two days later**. They inadvertently forgot to redact all instances of the text, so we found out what they did. There is no excuse for them to redact that text. It was about this case. It was a communication about my clients. And **its evidence that the defendants were actively attempting to conceal evidence about this case**.

(Doc. 469, Tr. 19:23-21:2.) (emphasis added)

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162. Judge Miller took no action to address Defendants' and Defense Counsels' intentional concealment of relevant evidence and obstruction of discovery.

Example #3: Lisa's Contradictory Statements Under Oath

163. Lisa was a witness in a high-profile criminal trial in Otter Tail County in May 2001 against her former pastor, Mervin Kelley ("**Mr. Kelly**").

164. Lisa testified during that trial that she was receiving counseling from Mr. Kelley in part due to childhood abuse, and the counseling relationship was a key portion of the State of Minnesota's criminal case against Mr. Kelley. (*See State of Minnesota vs. Mervin Leroy Kelley*, Court File No. 56-K2-00-001198.)

165. However, during her July 22, 2022 sworn deposition in the instant case, Lisa denied this abuse occurred.

166. In a letter to the Court dated June 2, 2023, **prior to the Court's summary judgment decision**, Plaintiffs provided documentation showing the specific contradictory statements between Lisa's deposition testimony in 2022 and her testimony during the criminal trial in 2001. (Doc. 424.)

167. Plaintiffs explained to the Court why this evidence of contradictory testimony, under oath, should cast doubt as to the veracity of Lisa's sworn testimony in this case.

168. Judge Miller ignored Lisa's misconduct, did not respond to Plaintiffs' letter, and granted Defendants' motion for summary judgment, in its entirety, despite this evidence. (Doc. 424; Doc. 429.)

169. However, Judge Miller viewed contradictory testimony under oath to be a very serious matter **in a different case** which also involved summary judgment.

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170. In his January 15, 2019 Order and Memorandum Granting Motion for Summary Judgment in *Brian Azure vs Jennie Bucholz,* Judge Miller took into consideration a Defendant's contradictory testimony under oath:

> Defendant's bankruptcy schedule from June of 2017 fails to disclose ownership of either vehicle that is subject to this action. **The Defendant's current claim that she was in possession of the vehicles in 2016 is clearly inconsistent wither [sic] her previous bankruptcy petition.** Further the Bankruptcy Court accepted the Defendant's petition. **Finally, this Court finds that the Defendant would derive an unfair advantage if not estopped from asserting the inconsistent position she now presents, as she would be allowed to argue two different positions, under oath, in two separate legal proceedings.** The Court will disregard Defendant's affidavit, claiming that she has an ownership interest in the cars – since she did not claim she owned the vehicle at the time of the bankruptcy proceeding. **Because the Court must disregard the claim that contradicts a previous claim under oath, Defendant has not shown the existence of a material fact in dispute.**

Brian Azure vs Jennie Bucholz, Court File No. 56-CV-18-2338, Doc. 46, at 4. (emphasis added)

171. In *Azure*, Judge Miller ruled contradictory testimony by the Defendant, under oath, was so serious that it negated the existence of a material fact in dispute and resulted in the granting of Plaintiff's motion for summary judgment.

172. In *Stevenson*, Judge Miller did not "disregard [Lisa's] claim that contradicts a previous claim under oath", and Lisa was "allowed to argue two different positions, under oath, in two separate legal proceedings."

173. Judge Miller's treatment of Lisa with regard to her conflicting testimony was especially unusual given the facts in our case.

174. For example, Judge Miller failed to analyze whether the involvement of Lisa, a Licensed Professional Clinical Counselor (LPCC) with extensive education,

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training, and experience[12], a "Master's in Community Counseling"[13], and who possessed knowledge that Marie had moved away from home while still in high school[14], made Sean's actions to contact Marie's estranged father even more extreme and outrageous.

175. According to the hearing transcript, Judge Miller was aware of Lisa's involvement in Sean's action to contact Marie's estranged father and Lisa's education, experience, training, and occupation at least as far back as May 2, 2022. (Doc. 235, Tr: 3:15 – 6:12.)

176. However, Judge Miller did not mention Lisa's education, experience, training, occupation, or her knowledge of Marie's history in Plaintiffs' Summary Judgment Order. (*See* Doc. 429.)

Example #4: Summary Judgment Analyses

177. In their response, Defendants specifically criticize me for analyzing Judge Miller's summary judgment orders from other cases:

> Strangely, Craig went so far as to review the case histories of the undersigned counsel and their firms, citing summary judgment orders from unrelated cases to argue that Judge Miller is biased in this matter.

(Doc. 520, at 24.)

178. However, as detailed in my July 22, 2024 declaration, my analyses revealed Judge Miller decided summary judgment in Plaintiffs' case much differently than he and other judges decided summary judgment in other cases involving other parties.

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[12] Sources: https://www.linkedin.com/in/lisa-stevenson-679a7b42/; Doc. 389, Exhibit 19, Tr: 7:15-8:14; 11:25-14:24; Tr: 31:19-32:5.

[13] Source: https://www.watersedgechc.com/bios/lisa-stevenson/

[14] *See* Doc. 389, Exhibit 19, Tr: 183:9-184:6.

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(Doc. 504, ¶¶ 33-68; 284-285.)

179. The significance of my findings in this area cannot be overstated. Judge Miller's summary judgment orders, and the legal reasoning behind them, are remarkably consistent with each other, consistent with prevailing law, and consistent with all other summary judgment orders I analyzed, irrespective of party, counsel, or judge, with one significant exception: Plaintiffs' Summary Judgment Order.

Section Summary

180. As shown by the examples in this section, regardless of the issue, Judge Miller treated Plaintiffs much differently than he did other parties in other cases with similar facts.

181. This unequal treatment could only be uncovered by analyzing Judge Miller's and other judges' orders in other, unrelated cases and comparing them to Judge Miller's orders in Plaintiffs' case.

Defendants' Criticism of Me For Researching Judge Miller Himself

182. In their response, Defendants' state:

> In particular, rather than limiting his focus to the specific legal issues at hand, Craig has engaged in an extraordinary level of scrutiny and surveillance of Judge Miller's personal and professional activities, which go beyond the boundaries of appropriate conduct for a litigant.

(Doc. 520, at 24.)

> Craig's declaration even reveals that he went so far as to look up Judge Miller's personal address and scrutinized the locations where the Judge previously held hearings.

(Doc. 520, at 24.)

183. Information about Judge Miller included in my declaration is publicly available

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and can be located using search engines such as Google and MCRO.

184. This information is necessary to estimate the quantity and timing of contacts at court facilities which likely occurred between Judge Miller and Senior Judge Mark F. Hansen, the father of Defense Attorney Kirsten Hansen.

185. Furthermore, Judge Miller was not surveilled in any way by me as Defendants appear to suggest.

186. In contrast, Defendants hired multiple private investigators to directly surveil Plaintiffs inside and outside their home, and interview their friends and acquaintances, without disclosing any of this evidence.

187. Plaintiffs found out for the first time, in Defendants' Notice and Application for Taxation Of Costs and Disbursements, that Defendants had Marie surveilled by Crescent Investigations for **21.75 hours** on the day of her **4-hour** Independent Medical Examination in St. Cloud.

188. Defendants failed to produce any report or accompanying video from Crescent Investigations, despite discovery requests for all documents relating to or referencing Plaintiffs.

189. Defendants also failed to provide any privilege log withholding this report or any accompanying video.

190. This issue was brought to Judge Miller's attention in Plaintiffs' Objection and Memorandum of Law in Opposition to Defendants' Application for Costs and Disbursements. (Doc. 438, ¶ 24.)

191. Judge Miller took no action to compel the production of this evidence.

192. In Defendants' July 13, 2023 Notice and Application for Taxation of Costs and

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Disbursements, invoices show that Marie's medical records were provided to a third party (Trivent Systems Inc) for analysis and four confidential security system videos from inside Plaintiffs' home were provided to a Court Reporter (Chaser Court Reporting) for transcription. (Doc. 432, at 207-208.)

193. Neither the analysis from Marie's medical records nor the transcripts were produced to Plaintiffs or used by Defendants in any motion, nor were Plaintiffs provided with any signed Assurance of Confidentiality by Defense Counsel or by the companies to whom these records were divulged.

194. Plaintiffs brought many of these issues to the Court's attention in their July 20, 2023 Objection and Memorandum of Law in Opposition to Defendants' Application for Costs and Disbursements. (Doc. 438.)

195. However, Judge Miller took no action regarding these violations.

James E. Morrison, Judge Miller's Current Law Clerk and Judge Mark F. Hansen's Former Law Clerk

196. In her June 19, 2024 letter to the Court responding to Plaintiffs' letter requesting Judge Miller's voluntary recusal (Doc. 487), Defense Attorney Kirsten Hansen ("**Attorney Hansen**") stated:

> For the record, **my father retired in 2016** and Judge Sharron [sic] Grewell Benson was appointed to replace him. I am not entirely certain if I met Mr. Morrison, or any of my father's prior law clerks. **This matter was not sued out for four years after my father's retirement** and it was **only as an abundance of caution that I told the Court who I was**, because it would not be readily apparent to anyone that I had any relationship with a retired judge in Otter Tail.

(Doc. 490.) (emphasis added)

197. In Defendants' Response in Opposition to Plaintiffs' Motion to Disqualify and

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Vacate Order filed with the Court on August 30, 2024, Defendants state:

> The suggestion that a law clerk's former employment relationship—terminated six years prior—could create a conflict of interest merely because the daughter of the former employer appears before the court is unsubstantiated and does not merit the disqualification of either the law clerk or the judge.

(Doc. 520, at 17.)

198. According to the Office of the Minnesota Secretary of State, Judge Hansen's retirement was effective September 2, 2016.[15]

199. However, according to Minnesota Court Records Online ("**MCRO**"), Judicial Officer Mark F. Hansen was still quite active following his 2016 retirement.

200. According to MCRO, Judicial Officer Mark F. Hansen participated in **754** Hearings during 2017, of which **480** were held in Otter Tail County.

201. According to MCRO, Judicial Officer Mark F. Hansen participated in **1,056** Hearings during 2018, of which **214** were held in Otter Tail County.

202. According to MCRO, Judicial Officer Mark F. Hansen participated in **301** Hearings during 2019, of which **10** were held in Otter Tail County.

203. According to MCRO, Judicial Officer Mark F. Hansen participated in a total of **2,111** hearings subsequent to his retirement in 2016, of which **704** were held in Otter Tail County.

204. According to MCRO, Judicial Officer Mark F. Hansen held 6 hearings on December 6, 2019 in the Master Courtroom at the Otter Tail County Courthouse:

- 56-CV-19-3433, *Roger West vs Jamie Hutchins*
- 56-CR-19-333, *State of Minnesota vs Kevin Ray Wentworth*
- 56-PR-19-3488, *In re the Guardianship and/or Conservatorship of Elmer Ernest Wischnack*

[15] Source: https://officialdocuments.sos.state.mn.us/Document/Details/111841

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- 56-CR-19-3539, *State of Minnesota vs Sheryl Marlene Komestakes*
- 56-CR-19-2969, *State of Minnesota vs Austin Christopher Reece*
- 56-CR-19-1486, *State of Minnesota vs Justin Randall Wilson*

205. These hearings occurred **over 3 years** following Judge Hansen's retirement.

206. Judge Hansen's post-retirement activity can be explained by the fact that following his retirement he became a senior judge for the State of Minnesota.[16]

207. In her June 19, 2024 letter to the Court, Attorney Hansen did not mention her father's status as a senior judge or his activity **following** his retirement in 2016.

208. In Defendants' Response, Attorney Hansen failed to mention that her father was still actively participating in hearings through at least December 2019, many of which were held in Otter Tail County.

209. According to MCRO, it wasn't until 2020, the year in which Plaintiffs filed their lawsuit, that Judge Hansen ceased to be involved in any Minnesota judicial proceedings in an official capacity.[17]

210. In contrast to the statement in her letter that "it was only as an abundance of caution that I told the Court who I was", Attorney Hansen stated at the beginning of the first hearing in our case that **her father specifically "told" her** to inform Judge Miller about her relationship to Judge Hansen.[18]

211. Furthermore, according to file metadata, James Morrison authored documents for Judge Miller as early as September 25, 2018, **over two years prior** to the filing of

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[16] Source: https://trellis.law/judge/mark.f.hansen

[17] Plaintiffs do not intend to disparage Judge Hansen in any way. It is clear to Plaintiffs that Judge Hansen told Attorney Hansen to disclose their relationship.

[18] "I was told to tell the Court this. My father is retired Judge Mark Hansen. He told me I needed to let you know in case you thought there was a conflict. I don't think there is, but when I'm told by somebody to tell you. I'm sorry. I just wanted to make sure that was on the record." (Doc. 226, Tr. 3:20-4:6.)

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Plaintiffs' lawsuit. (*See Thumper Pond Resort, LLC d/b/a Thumper Pond Resort vs Stock Building Supply Midwest, LLC, Kaashagen & Sons, Inc. n/k/a BJK Construction, Inc., Badger Midwest Holdings, LLC, Gorski and Associates, LLC, MiTek USA, Inc.*, Court File No. 56-CV-16-3000):

- 09/25/2018 – Order and Memorandum Regarding Costs and Disbursements. (Doc. 318.)
- 10/10/2018 – Administrative Order. (Doc. 330.)
- 10/22/2018 – Administrative Order. (Doc. 331.)

212. Attorney Kirsten Hansen is listed, along with lead attorney Garth Unke, as Active Attorneys for Kaashagen & Sons, Inc. n/k/a BJK Construction, Inc. (*See* Case Register)

213. Attorney Kirsten Hanson and Attorney Garth Unke are both shareholders at Stich, Angell, Kreidler & Unke, PA.[19]

214. James Morrison authored documents for Judge Miller within months of Judge Miller's appointment to the bench by Governor Dayton on May 7, 2018.[20]

215. James Morrison was working as a law clerk in Otter Tail County for the entirety of Plaintiffs' case.

216. Based on MCRO, Attorney Kirsten Hansen and Attorney Garth Unke have been involved with three cases in Otter Tail County which were decided at summary judgment:

- April 12, 2018 – *Thumper Pond Resort, LLC d/b/a Thumper Pond Resort vs Stock Building Supply Midwest, LLC, Kaashagen & Sons, Inc. n/k/a BJK Construction, Inc., Badger Midwest Holdings, LLC, Gorski and*

[19] Source: https://stichlaw.com/

[20] Source: https://www.mncourts.gov/About-The-Courts/Overview/JudicialDirectory/Bio.aspx?jid=1685

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Associates, LLC, MiTek USA, Inc., Court File No. 56-CV-16-3000, Doc. 256.[21]

- June 16, 2023 – *Craig Stevenson, Marie Stevenson vs Sean Stevenson, Renee Stevenson, Lisa Stevenson-Allen, Ashley Anderson*, Court File No. 56-CV-20-2928, Doc. 429.[22]
- July 10, 2024 – *Raymond Kvalvog vs Garth Unke, Stich, Angel, Kreider, & Unke, P.A.*, Court File No. 56-CV-23-1466, Doc. 78.[23]

217. All three cases were dismissed at summary judgment in favor of Attorney Hansen's and/or Attorney Unke's clients and Attorney Unke himself in one case.

218. According to file metadata, all three summary judgment orders were authored by James Morrison.

Conclusion

219. As a layperson, Judge Miller's actions, only some of which I have detailed in my declarations, cause me to seriously question his fairness and impartiality.

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[21] The presiding judge in the case at the time of this summary judgment order was The Honorable Judge Waldemar Senyk, Judge Miller's immediate predecessor.

[22] Judge Miller is the presiding judge in this case.

[23] Judge Miller was the presiding judge in this case.

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I declare under penalty of perjury that everything I have stated in this document is true and correct.

Dated: September 8, 2024

Craig S. Stevenson

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