

**From:** cpa@wmnc.biz  
**To:** [ADMcomment](#)  
**Subject:** Canon 7 of the Judicial Code of Conduct comments on change  
**Date:** Saturday, June 23, 2018 6:48:52 PM  
**Attachments:** [Complete Petition.pdf](#)

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ADM comment: If judges and justices are allowed to solicit contributions from lawyers and the public, how do you end up with an impartial person who has a tax free account bank account that is never audited, and kept from public view by MCL 15.243(1)(r) as an "exempt" account in the Freedom of Information Act. I filed a Petition for a Writ of Certiorari before the U.S. Supreme Court asking that very question. Cert was denied with no explanation. A motion and an appeal by leave before the Michigan Supreme Court were both denied with no explanation. Motions to compel a circuit court judge and three appellate court justices were all denied with no explanation. Subpoena's were denied with no explanation.

The doctrine that silence affirms says that everybody is using MCL 15.243(1)(r) to enrich themselves. If this is going to be the case, then why not make it at least fair for anybody appearing before the court, and change the name of the court house to the auction house. That way the judge can start out asking the plaintiff or defendant to open the bidding on their decisions. If one side knows this is how it works and other does not, then this becomes a fair system to both party's.

It would be far better for our state and the nation, if the Michigan Supreme Court just asked the legislature to repeal MCL 15.243(1)(r), and judges and justices remained impartial to both sides.

Pat Foster, CPA

No. \_\_\_\_\_

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In the  
**Supreme Court of the United States**

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Pat Foster,

*Petitioner,*

v.

John C, Kleussendorf and John T, Benson, and  
Ganges Township, John Hebert, Supervisor,

*Respondents.*

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**On Petition for Writ of Certiorari  
to the Michigan Supreme Court**

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**PETITION FOR WRIT OF CERTIORARI**

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## QUESTION PRESENTED

The State of Michigan's Freedom of Information Act, Act 442 of 1976 provides for public documents to be open to public inspections. Unless specifically exempted, all documents must be open to public inspection. MCL 15.243(1)(r) specifically exempts "*Records of a campaign committee including a committee that receives money from a state campaign fund.*" Because Judges and Justices are all elected in Michigan, so their campaign finance bank accounts are exempted from disclosure under the Act.

However, Michigan Court Discovery Rules do allow litigants to request production of documents from a Judge or Justice under MCR 2.310(D)(1), "*A request to a nonparty may be served at any time....*"

Do litigants have the right to see through discovery an elected official's campaign finance bank accounts protected from public view by statute?

## LIST OF PARTIES

The following is a list of all parties to the proceedings in the court below, as required by Rule 24.1(b) and Rule 29.1 of the Rules of the Supreme Court of the United States.

Hudson v. Kleussendorf:

1. Pat Foster, Petitioner,
2. Blanche Hudson, Plaintiff
3. John Kleussendorf,
4. John Benson,

Pat Foster v. Ganges Township, John Hebert  
Supervisor:

5. Ganges Township, John Hebert  
Supervisor

Circuit Court Judges:

6. Judge Kevin Cronin, 48<sup>th</sup> Judicial  
Circuit Court, Michigan
7. Judge Margaret Z. Bakker, Chief Judge  
48<sup>th</sup> Judicial Circuit Court, Michigan

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## PETITION FOR A WRIT OF CERTIORARI

Pat Foster respectfully petitions for a consolidated writ of certiorari to review the two judgments of the Michigan Supreme Court regarding the issue of discovery by litigants of campaign finance bank accounts that are secret by statute. This consolidated petition has an extension of time to file until Oct. 23, 2017 under Application No. 17A193. See App. C. It was again extended for 60 days after Dec. 21, 2017 for corrections. See C2 - 3

### OPINIONS RENDERED

A. *Blanche Hudson & Pat Foster v. John Kleussendorf & John Benson:*

May 31, 2017 - Motion for a subpoena filed on Dec. 5, 2017 to the Michigan Supreme Court to see the campaign finance bank account of Judge Kevin Cronin was denied without explanation. App. A

June 2, 2016, a motion to compel Judge Cronin to produce his campaign finance reports was denied without explanation by the Michigan Court of Appeals (COA). App. A2

Oct. 11, 2016, an appeal of the lower court's order for summary disposition was affirmed by the COA not addressed in this petition. See App. A3 - 15

September 22, 2016, the Michigan Court of Appeals denies without explanation my "*Motion to Compel Justices Douglas B. Shapiro, PJ, Joel P. Hoekstra, and Deborah A. Servitto, JJ to Produce Their Campaign Finance Reports.*" App. A15

April 18, 2016, Judge Cronin issues a Sua Sponte order denying my motion filed on April 1, 2016 to compel him to show me his campaign finance reports. His stated explanation for denying my motion was “*A final order disposing this case was filed on June 6, 2015. Therefore, the proofs and additional discovery in this case is (are) closed.*” App. A16 - 17

November 16, 2016, a subpoena request to see Judge Cronin’s campaign finance bank account in *Foster v. Ganges Township* was declined by Judge Bakker with no explanation. App. A23

**B. *Pat Foster v. Ganges Township, John Hebert Supervisor:***

July 25, 2017, the Michigan Supreme Court denied my Interlocutory Appeal of the Court of Appeals denial of my motion for a subpoena of Judge Margaret Z. Bakker’s Campaign Finance Bank Statements. See App. B

April 18, 2017, the Michigan Court of Appeals denies my motion for a subpoena to discover the bank statements of Judge Cronin’s Campaign Finance Bank Account without explanation. App. B2

February 22, 2017, Judge Margaret Z. Bakker, the declined my subpoena to the Fifth Third Bank for copies of her bank statements for the “*Committee to Elect Margaret Bakker Circuit Court Judge for the period starting January 1, 2012 and ending December 31, 2016.*” App. B11

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**JURISDICTION**

Rule 10(c) of the Supreme Court Rules and 28  
U.S. Code § 1257(a)

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**U.S. SUPREME COURT  
RULE CONSTRUED**

Rule 10(c):

“a state court.... has decided an important  
question of federal law that has not been, but should  
be settled by this Court,...”

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**FEDERAL STATUTE CONSTRUED**

28 U.S. Code § 1257(a):

“where the validity of a statute of any State is  
drawn in question...”

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**STATEMENT OF CURRENT DISPOSITIONS  
IN BOTH CASES**

*Hudson/Foster v. Kleussendorf/Benson:*

Summary disposition was affirmed by the Court of Appeals, and the Michigan Supreme Court denied appeal by leave. The Motion for a Subpoena to see the campaign finance bank accounts of Judge Cronin was denied. The case is still active because the COA vacated in total Judge Cronin's order for costs and sanctions, and remanded it back to the lower court for reconsideration.

*Pat Foster v. Ganges Township:*

The Michigan Supreme Court has heard an Interlocutory appeal of a motion before the COA for a subpoena to see the campaign finance bank accounts of the Honorable Margaret Z. Bakker. Two appeals remain before the COA on summary disposition, and costs plus sanctions. Currently all briefs have been filed and a hearing has been set for Feb. 14, 2018.

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**CONSTITUTIONAL PROVISION AS APPLIED  
TO THE MICHIGAN STATUTE & CODE**

U.S. Constitution, Amendment XIV, Section 1; “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, *without due process of law*, nor deny to any person within its jurisdiction the equal protection of the laws.”

MCL 15.243(1)(r) “Records of a campaign committee including a committee that receives money from a state campaign fund” are specifically exempt from public disclosure under the Michigan Freedom of Information Act, Act 442 of 1976.

Michigan Code of Judicial Conduct, Canon 2. (A) (A) “*A judge must avoid all impropriety and appearance of impropriety*”.

The issue before the Court is how can a litigant receive due process, if judges and justices who are elected and have a tax free public account that is not subject to audit or public disclosure “*avoid all impropriety and appearance of impropriety*” if they decline discovery on these accounts? Do those denials breach the “due process” provisions of the Fourteenth Amendment?

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## STATEMENT OF THE CASE

### **I. Hudson v. Kleussendorf History:**

*2008 General Election, Judge Cronin wins recount, Pat Foster audits election results:*

After the 2008 General Election in Allegan County, Judge Cronin first won his seat on the circuit court in a very close recount with William Bailargeon who had two volunteers for every table that was recounting the ballots. I attended that recount and photographed numerous ballot container seals. Judge Cronin only had one volunteer to count the 49 precincts that were requested to be counted. His volunteer was Jason Watts, the son of the Allegan County Clerk, Joyce Watts who was responsible for securing the ballots from the date the recount was requested to the date of the recount.

August 23, 2009, I led four groups of volunteers in Allegan County to photograph and count the ballots of that election under the Michigan Freedom of Information Act. The conclusion of my audit was based upon an audio<sup>1</sup> of the Allegan County Clerk at a hearing for a recount in 2006. The County Clerk admitted that the new tabulators that came out under the Help America Vote Act had modems on them that she could access the tabulators by telephone to see the results after each machine was

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<sup>1</sup> Audio is part of a YouTube video:  
<https://youtu.be/SVmD42L6CI0>

tested and sealed. The 2008 recount of Judge Cronin's circuit court race disallowed 25 out of 49 precincts requested for 14 precincts with the incorrect number of ballots in the ballot container, and 11 precincts with improperly attached seals. I photographed the seals of two ballot containers in my audit that I used multiple times in briefs before both the circuit and appellate courts. One was like a garbage tie only pulled up very loosely, so it could be cut, compromised, and pulled up tight. The second had the smooth end of the tie cut off, and it was pulled up tight indicating that this precinct had been compromised. Since the Secretary of State's election officer who was running this recount accepted these two ballot containers, while rejecting 11 others, I came to the conclusion that the County Clerk and the state were involved in the possible theft of the election that gave Judge Cronin his seat on the circuit court.



*John Kleussendorf and John Benson:*

The defendants, John Kleussendorf and John Benson purchased their property uphill and across the street from my property and adjacent to Ms. Hudson's property on January 10, 2010, or 140 days after the start of my election audit.

They filled in a storm drain in front of their house and placed metal stakes out into the physical private road in our development. Then Mr. Benson filed an Ex Parte Personal Protection Order (PPO) against me which was signed by Judge Margaret Z. Bakker on May 4, 2012. I filed a motion to terminate the PPO against me, and Judge Bakker set it for an evidentiary hearing which was not heard until Feb. 6<sup>th</sup> and decided on Feb. 27, 2013 over 10 months after the Court approved a restraining order for 12 months against me.

I had instructed my attorney to subpoena all of the media that the defendants claimed to have to support their claim for an ex parte PPO. It arrived after the first hearing, and it showed that the petitioner, Mr. Benson had filed a petition for a restraining order with false, vulgar statements that he had alleged I said on November 26, 2011. The entire dialog was on the subpoenaed video, which proved his allegations were false. He had also sworn to those statements under oath at the first hearing. My attorney had gone into chambers on Feb. 27, 2013 just prior to the second hearing, and Judge Bakker suppressed this video from being entered into evidence.

*Civil Suit Hudson/Foster v. Kleussendorf/Benson:*

Defendants had placed a fence on the private platted road known as Mallard Street, and placed a physical dam on their property on their side of a

fence. The dam was 8” from the culvert outlet that ran under Ms. Hudson’s driveway. Neither the lower court, nor the court of appeals ever addressed this picture.



## **II. Procedural History (Hudson v. Kleussendorf):**

Circuit Court, 48<sup>th</sup> Judicial Circuit – Michigan:

Oct. 11, 2013, Plaintiffs filed the original complaint with pictures of two dams defendants placed on their property to block the flow of storm water.

Mar. 20, 2014, Plaintiffs’ motion for change of venue was denied Apr. 22, 2014.

May 15, 2015, Defendants’ motion for security for costs. July 30, 2014 Court accepted and required plaintiffs to post a \$30,000 bond. Sep. 11, 2014 Plaintiffs posted the bond.

August 4, 2014, Defendants’ motion for partial summary disposition filed. The motion was heard and granted on Oct. 15, 2015. Plaintiffs filed an Interlocutory Appeal before the Michigan Court of Appeals on Oct. 31, 2015. On Mar. 25, 2015, my appeal by leave was denied “for failure to persuade the Court of the need for immediate appellate review.”

Sept. 23, 2014, Plaintiffs filed Affidavits of Merit that included a video showing exactly how the

blockages the defendants placed in the storm drain was damaging both plaintiffs' properties. Also included was the deposition of the man who took care of the road and storm drains for a period between 15 to 20 years, He stated that the defendants placed a fence on what had been a traveled road, and blocked an existing storm drain.

Oct. 16, 2014, Plaintiffs' Motion to Compel defendants to disclose who was paying their legal fees because of the \$30,000 bond we posted was denied by the lower court on Dec. 11, 2014. Plaintiffs' filed an Interlocutory Appeal on Dec. 29, 2014 with the Michigan Court of Appeals. Mar. 25, 2015, the COA denied our appeal Interlocutory Appeal "for failure to persuade the Court of the need for immediate appellate review."

Dec. 8, 2014, Plaintiffs file a motion to allow counsel to withdraw from the case. The Court allowed counsel to withdraw on Mar. 11, 2015.

Feb. 8, 2015, Defendants Motion for Summary Disposition. Hearing held May 11, 2015 and Court granted motion on June 6, 2015. Plaintiffs filed a Claim of Appeal with the Michigan Court of Appeals on June 11, 2015. The COA affirmed the lower court's order on Oct. 11, 2016. See A3 – 14. Plaintiff Pat Foster appealed to the Michigan Supreme Court on Nov. 21, 2016. The higher court declined to hear it May 31, 2017. It is not an issue in this petition.

Mar. 4, 2015, Plaintiffs filed a motion for Judge Cronin to disqualify himself based upon pictures of the two seals photographed during his 2008 election recount. Motion was heard, denied, and filed on Mar. 3, 2015. The denial was appealed to the Chief Judge, the Honorable Margaret Z Bakker on April 2, 2015. The Court affirmed the lower court's opinion on Apr. 29, 2015.

July 2, 2015, Defendants filed a motion for costs and attorney fees with payment of the security bond. Motion was heard on Feb. 3, 2016, and the Court issued an opinion on May 3, 2016 accepting defendants' motion accessing \$43,837.30 in costs and attorney fees. The order was appealed to the COA on May 21, 2016. The appeal was heard on Sep. 6, 2017, and the order was vacated in total and remanded to the lower court for reconsideration on Sep. 19, 2017.

April 1, 2016, Plaintiffs' motion to compel the court to produce his campaign finance reports was filed.  
App. A24 - 26

Apr 18, 2017, the Court issued a sua sponte order denying our motion because "A final order disposing this case was filed on June 6, 2015. Therefore, the proofs and additional discovery in this case is closed." The Court erred, the final order was issued on May 3, 2016. See App's A16 -17

Michigan Court of Appeals:

May 21, 2016, Motion to Compel Judge Cronin to Produce His Campaign Finance Reports was denied on June 2, 2016 by Justice Joel P. Hoekstra acting under MCR 7.211(E)(2). App. A2

Sept. 19, 2016, Plaintiffs after serving the COA Justices a request to produce their campaign finance reports under MCR 2.310(D) on Apr. 28, 2016, we filed a motion to compel them to provide us with these reports. Our motion was denied without explanation on Sept. 22, 2016. App. A15

Michigan Supreme Court:

December 5, 2016, a motion for a subpoena under MCR 7.305(1) was brought before the Michigan Supreme Court based upon a subpoena that was requested at the lower court and declined on April 18, 2017. The subpoena was to the United Bank in Hopkins that Judge Cronin reported to the Secretary of State as his depository location for his public campaign finance bank account. The request was for "Bank statements for the Committee to Elect Kevin Cronin for Judge for the years 2013 through 2016". See App's A18 - 22.

May 31, 2017, the motion for a subpoena was denied without explanation. See App. A

### III. Petition for a Writ of Mandamus against Ganges Township:

Ganges Township issued building permits to build on Blue Goose Avenue, which is a private road within our platted development. It comes off of 122<sup>nd</sup> Avenue, a public road and comes down a 43' hill heading north where it turns and goes west. Mallard Street goes east.

My lots in Recreation Development Subdivision No. 1 are at the bottom of the 43' hill on Mallard Street shaded in grey. My lots border on a channel off of Lake Hutchins which is the lowest level water can flow. Kleussendorf and Benson blocked the storm drain coming onto their property, which is adjacent to Ms. Hudson's parcel, both uphill and south of my property. This blockage

resulted in storm water being diverted onto my property.



Ganges Township's building permits were to two parcels which are on the east and west side of

Blue Goose Avenue coming off of 122<sup>nd</sup> Avenue. There are storm drains on both sides of Blue Goose Avenue. The property on the east side, the parcel owner was required to install a 12” culvert under his driveway. That allowed storm water to freely flow down to the Kleussendorf dam resulting in storm water backing up and going over Mallard Street flooding my property. The parcel owner on the west side of Blue Goose Avenue was allowed to build right over the storm drain without placing any culverts so that the storm water would flow out onto Blue Goose Avenue and down to my property where I was now the focal point of the majority of water flowing down a 43 foot hill into the development.

I filed a Petition for a Writ of Mandamus to require Ganges Township to comply with the Land Division Act of 1967(LDA) which governs platted developments, because Blue Goose Avenue was private and dedicated to the use of the lot owners and adjacent property owners. The township’s position on their building permits was that Blue Goose Avenue was private, therefore they did not have to comply with the Rules & Regulations of the Allegan County Road Commission, and my position cited the LDA definition of “*accessible*”, MCL 560.102(j)(ii) “Is served by an existing easement that provides vehicular access to an existing road or street and that meets all applicable location standards of the state transportation department or

county road commission under 1969 PA 200, MCL 247.321 to 247.329. and of the city or village...”

The consolidating issue is that the township, Kleussendorf, and Benson are all attempting to flood me out of my home, and are closely working with each other to complete that task.

#### **IV. Procedural History (Foster v Ganges):**

April 20, 2016, I filed a Petition for a Writ of Mandamus to require Ganges Township to comply with the Land Division Act of 1967. The building permit issued to Joncie LaFontaine at 2210 Blue Goose Avenue that caused me to file my petition was issued on February 5, 2016. Judge Kevin Cronin was assigned to hear the case.

May 18, 2016, Defendants file a motion for summary disposition and sanctions.

May 23, 2016, I filed “*Plaintiff’s Motion to Compel the Court to Produce his Campaign Finance Reports*” based upon MCR 2.310(D)(4). This motion was filed based upon a Request to Produce to the Court his Campaign Finance Reports under MCR 2.310(D) sent to Judge Cronin on April 22, 2016. A hearing was set for June 13, 2016. Judge Cronin called for a special hearing on June 9, 2016 and disqualified himself.

Oct. 14, 2016, I received a notice to appear on Nov. 23, 2016 for a pre-trial hearing before Judge Cronin.

Oct. 17, 2016, Judge Cronin filed an “Amended Disqualification”, and Judge Bakker was assigned to the case.

Oct. 31, 2016, Defendants filed a renewed motion for summary disposition and sanctions.

Nov. 2, 2016, Petitioner filed a Request for Judge Bakker to Produce the Campaign Bank Statements of her Campaign Finance Account. She refused personal service at the circuit court window, and it was refiled and served by mail on Nov. 9<sup>th</sup>. She never complied with the request.

Nov. 9, 2016, Petitioner filed a motion for an adjournment, because Defendants’ motion for summary disposition pointed directly to Judge Cronin’s decisions in Hudson v. Kleussendorf. That case still had not been decided by the Court of Appeals at that point.

Nov. 9, 2016, Petitioner placed an Affidavit of Merit into the court record with an attached video showing the flooding of my property as the direct result of the townships’ failure to require a culvert under Ms. LaFontaine’s driveway going over the storm drain.

Nov. 10, 2016, Petitioner filed an answer to defendants' renewed motion for summary disposition and sanctions.

Nov. 22, 2016 Judge Bakker sent out a notice that the Nov. 23, 2016 hearing date would be heard on Dec. 5, 2016. I did not receive the notice prior to going to court on Nov. 23<sup>rd</sup>.

Dec. 5, 2016 Judge Bakker denied my motion for an adjournment and refused to accept my affidavit of merit with attached video into evidence. She ruled in favor of defendants' motion for summary disposition.

Dec. 12, 2016, defendants filed a Taxation of Costs requesting \$190.66 in costs and \$12,654.08 in attorney fees under MCR 2.111(E). I filed an objection to defendants' Order for Taxation of Costs under the 7 Day Rule. The service to the defendants' attorneys' address and PO Box was returned to me on Jan. 7, 2017 as undeliverable. I mailed it a second time on Jan. 10, 2017 with a hearing date set for Jan. 30, 2017.

At the Jan. 30, 2017 hearing, the court would not allow me to address my argument under the 7 day rule that there was nothing "frivolous" about requesting the township to comply with the law. The court denied my objection. I then filed a subpoena to inspect the bank statements for the Committee to Elect Margaret Bakker Circuit Court Judge.

February 22, Judge Bakker declined my subpoena. The final order was issued on Feb. 7, 2017. App. B11

*Appellate and Supreme Court Procedural History:*

Feb. 8, 2017, I filed for an appeal of summary disposition before the Michigan Court of Appeals.

Mar. 4, 2017, I filed for an appeal before the Court of Appeals on costs and sanctions.

Apr. 4, 2017, I filed a motion for a subpoena that Judge Bakker had declined.

Apr. 18, 2017, the Court of Appeals denied my motion for a subpoena with no explanation. App. B2

May 25, 2017, an application for leave to appeal was filed with the Michigan Supreme Court. See App. B2 – B10.

July 25, 2017 the Michigan Supreme Court ordered that *“the application for leave to appeal the April 18, 2017 order of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the question presented should be reviewed by this Court.”* App. B

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## REASONS FOR GRANTING THE WRIT

### **I. Due process – *Caperton v. Massey*, US; 129 S Ct 2252; 173 L Ed 2d 1208 (2009):**

The *Caperton* case and “*due process*” was my central argument in all of my filings in an attempt to allow discovery.

*Hudson/Foster v. Kleussendorf/Benson*

Apr. 1, 2016, the first motion to compel Judge Cronin to produce his campaign finance reports backed up with bank statements stated: “This motion is being brought under the standards established by the United States Supreme Court in *Caperton v Massey*, US; 129 S Ct 2252; 173 L Ed 2d 1208 (2009). That case dealt with a State Supreme Court Justice having been asked to recuse himself because of indirect campaign contributions from Don Blankenship, Massey’s chairman and principal officer. In a 5 to 4 split decision, the U.S. Supreme Court held in favor of Caperton that ‘*due process requires recusal*.’” See App. A25.

Dec. 5, 2016, Brief filed in support of motion for subpoena before the Michigan Supreme Court. The following cites were made: “The Tumey Court concluded that the Due Process Clause incorporated the common-law rule that a judge must recuse

himself when he has ‘a direct, personal, substantial, pecuniary interest’ in a case.” *Tumey v. Ohio*, 273 U.S. 510. 47 S.Ct. 793, 92 L.Ed. 749 (1948); *Caperton v. A.T. Massey Coal Co., Inc.*, 129 S.Ct. 2259 (2009).

“Due process requires an objective inquiry into whether the contributor’s influence on the election under all the circumstances ‘would offer a possible temptation to the average...judge to...lead him not to hold the balance nice, clear and true’ “ *Tumey*, supra, at 532, 47 S.Ct. 437. *Caperton*, supra 2264. App. B10

*Foster v. Ganges Township*

May 25, 2017, My application for an interlocutory leave to appeal a denied COA motion for a subpoena to get copies of the bank statements of Judge Margaret Z. Bakker’s campaign finance account was filed, and my brief in support of that appeal cited the following:

“The fact that MCL 15.243(r) creates a secret account in which a judge can receive tax free money for decisions, and they refuse to show this account through multiple efforts of discovery by a litigant, there exists more than an ‘*appearance of impropriety*,’ but a very high probability that if they attempt to hide these accounts from the public there exists an actual

*impropriety*. “Due process requires an objective inquiry into whether the contributor’s influence on the election under all the circumstances ‘would offer a possible temptation to the average...judge to...lead him not to hold the balance nice, clear and true’ ‘ *Tumey v. Ohio*, 273 U.S. 510, 47 S.Ct. 43, L. Ed. 749 (1948); *Capterton v. A.T. Massey Coal Co., Inc.*, 129 S.Ct. 2264 (2009). ‘Recognizing the deprivation of the right to an impartial judge as a structural error and explaining that [t]he entire conduct of the trial from beginning to end is obviously affected ... by the presence on the bench of a judge who is not impartial’; *Rose v. Clark*, 478 U.S. 570, 577, 106 S.Ct. 3101, 92 L.Ed.2d 460 (1986); *People v. Stevens*, 498 Mich.162, 869 N.W.2d 246 (2015)” See App’s. B9 – 10.

## **II. Secrecy:**

The Michigan Freedom of Information Act, MCL 15.232(e) defines a “*Public Record*” as a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created. Public record does not include computer software. This act separates public records into the following 2 classes:

(i) Those that are exempt from disclosure under section 13.

(ii) All public records that are not exempt from disclosure under section 13 and which are subject to disclosure under this act.”

Under Section 13, MCL 15.243(1)(r) “Records of a campaign committee including a committee that receives money from a state campaign fund” are specifically excluded under the act from public disclosure. Campaign finance bank accounts in Michigan are secret by statute.

“As Edmund Burke, a noted 18th Century statesman and philosopher, wrote:

In all justice, as in all government, the best and surest test of excellence, is the publicity of its administration; for, whenever there is secrecy, there is implied injustice.

With regard to ‘secrecy,’ Lord Acton said:

Everything secret degenerates, even the administration of justice; nothing is safe that does not show how it can bear discussion and publicity.

In addition, President John F. Kennedy stated:

‘The very word secrecy is repugnant in a free and open society; and we are as a people inherently and historically opposed to secret societies, to secret oaths, and to secret proceedings. We decided long ago that the dangers of excessive and unwarranted concealment of pertinent facts far outweighed the dangers which are cited to justify it.’

On the issue of ‘secrecy,’ I stand by Edmund Burke, Lord Acton, and President Kennedy. A justice's duty to inform the public about what the justice believes the public needs to know—no more, no less—regarding how this Court conducts the people's judicial business is more important than some judges' desire to make the judiciary a ‘secret club.’

The Michigan Supreme Court should not be a ‘secret club.’ When elected twice by the people, I did not join one.

CORRIGAN, YOUNG, and MARKMAN, JJ.”

*Brady v. Attorney Grievance Com'n*, 486 Mich. 997; 793 N.W.2d 398 (2010)

President Johnson stated in his signing statement to the first act allowing public disclosure of public documents in 1966:

*“The measure I sign today, S. 1160, revises section 3 of the Administrative Procedure Act to provide guidelines for the public availability of the records of Federal departments and agencies.*

*This legislation springs from one of our most essential principles: a democracy works best when the people have all the information that the security of the nation will permit.”*

The “*security of the nation*” goes directly to the intent of legislators in creating laws that make the bank accounts of elected officials secret. These

accounts should by law show what the campaign finance laws have required these elected officials to file as campaign finance reports. If they differ dramatically, then this does not involve our national security, but it does show motives of why a Judge or Justice would want to hide the money they received for fear that it could be linked to their decisions.

“The *Tumey* Court concluded that the Due Process Clause incorporated the common-law rule that a judge must recuse himself when he has ‘a direct, personal, substantial, pecuniary interest’ in a case.” *Tumey v. Ohio*, 273 U.S. 510, 47 S.Ct. 793, 92 L.Ed. 749 (1948); *Capterton v. A.T. Massey Coal Co., Inc.*, 129 S.Ct. 2259 (2009). There is no way of determining if they have a “*personal, substantial, pecuniary interest*” unless discovery allows us to see those accounts.

The intent of the legislators was to provide a tax free bank account for elected officials to take money for decisions that would be kept secret from public view. There is nothing in an elected officials’ public bank accounts that affects anything other than what they are required by law to report. If there is a substantial difference, than they should not be hearing the case before them.

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## CONCLUSION

Syllogism used in my brief before the Michigan Supreme Court. App B9:

- “1. All elected officials have secret financial accounts that can be used for illegal gains.
2. Elected officials who have illegal gains will attempt to keep anyone from seeing their secret accounts.
3. Judges Bakker and Cronin are both elected officials who have tried to keep me from seeing their secret accounts, therefore they have something illegal in their accounts that may affect my case.”

Respectfully submitted,

Mary Pat Foster  
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Email: CPA@WMNC.biz

*Pro se*

**App. A**

Michigan Supreme Court  
Lansing, Michigan

**Order**

May 31, 2017  
SC 154789 & (95), COA 327878,  
And Allegan CC: 13-052422-NZ

BLANCHE HUDSON,  
Plaintiff,

and

PAT FOSTER,  
Plaintiff-Appellant,

v.

JOHN C. KLEUSSENDORF AND JOHN T.  
BENSON

Defendants-Appellees

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On order of the Court, the application for leave to appeal the October 11, 2016 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court. The motion for a subpoena is DENIED.

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

May 31, 2017 Larry S. Royster, Clerk

**App. A2**

**Court of Appeals  
State of Michigan**

**ORDER**

Blanche Hudson v John C Kleussendorf

Docket No. 327878

LC No. 13-052422 NZ

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Motion to Compel Judge Cronin to Produce His  
Campaign Finance Reports

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Filed May 21, 2016

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Joel P. Hoekstra, Judge, acting under MCR  
7.211(E)(2), orders:

The motion to compel Judge Cronin to produce  
his campaign finance reports is DENIED.

June 2, 2016 Joel P. Hoekstra

App. A3

STATE OF MICHIGAN  
COURT OF APPEALS

---

BLANCHE HUDSON,

UNPUBLISHED

Plaintiff,

And

PAT FOSTER,

Plaintiff-Appellant,

v

JOHN C. KLEUESSENDORF and JOHN  
T. BENSON,

Defendants-Appellees.

No. 27878, LC No. 13-052422-NZ

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Dated: October 11, 2016

Before: Shapiro, P.J., and Hoekstra and Servitto, JJ.

Per Curiam

## App. A4

Plaintiff<sup>1</sup> appeals as of right the trial court's grant of summary disposition in favor of defendants on plaintiff's various claims arising from a property dispute. For the reasons explained in this opinion, we affirm.

Plaintiff and defendants reside across the street from each other on Mallard Street in Fennville, Michigan. Plaintiff's property was platted as part of Recreation Development Subdivision No. 1 ("the subdivision"), while defendants' home is on property adjacent to the subdivision. Mallard Street—as accessed through Blue Goose Avenue—provides the only means of access to defendants' property and that of other property similarly adjacent to the subdivision. Mallard Street is a private drive included in the 1965 plat dedication which created the subdivision. Notably, the plat dedication specifies that "Blue Goose Avenue and Mallard St. is [sic] dedicated as private to the use of the lot owners *and adjacent property owners.*"

In 2000, plaintiff initiated a lawsuit against Richard Saputo, the former owner of defendants' property, seeking to prevent Saputo from accessing his property via Blue Goose Avenue and Mallard Street. Plaintiff took the position that the streets in question were private roadways solely for use by the

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<sup>1</sup> Plaintiff Blanche Hudson is not a party to this appeal, and the term "plaintiff" as used in this opinion refers to plaintiff Pat Foster.

## App. A5

subdivision. That case ended when plaintiff voluntarily stipulated to a dismissal with prejudice.

In 2003, several property owners in the subdivision sued plaintiff, who had constructed fencing which interfered with use of Mallard Street. In 2005, the Allegan Circuit Court ordered plaintiff to remove the obstructions. The court held that the 1965 plat dedication created an easement over both Blue Goose Avenue and Mallard Street “limited to reasonable ingress and egress throughout the subdivision.”

In the present case, plaintiff again seeks to prevent neighbors from using Mallard Street. In particular, plaintiff sought to permanently enjoin defendants from using Mallard Street for any purpose based on the contention that the private roadway was solely for use by the subdivision. Aside from defendants’ use of Mallard Street to access their property, plaintiff also brought

claims of negligence, trespass, encroachment, and nuisance, alleging that defendants made changes to their property and/or

Mallard Street that caused water to drain onto plaintiff’s property, resulting in property damage. Plaintiff asked that defendants be compelled to remove their improvements and to re-dig a purported drainage ditch.

Following defendants’ motion for summary disposition, the trial court granted summary disposition under MCR 2.116(C)(7) and (C)(10). The trial court concluded that res judicata and laches

## App. A6

barred plaintiff's efforts to prevent defendants from using Mallard Street. Regarding plaintiff's other various claims, the trial court granted summary disposition under MCR 2.116(C)(10) because no material questions of fact remained. Plaintiff now appeals as of right.

On appeal, we review a trial court's decision on a motion for summary disposition de novo. *Beckett-Buffum Agency, Inc v Allied Prop & Cas Ins Co*, 311 Mich App 41, 43; 873 NW2d 117 (2015). Likewise, "whether res judicata bars a subsequent action is reviewed de novo." *Adair v State*, 470 Mich 105, 119; 680 NW2d 386 (2004). When a party's claim is barred by res judicata, summary disposition is properly granted under MCR 2.116(C)(7). *Beyer v Verizon N Inc*, 270 Mich App 424, 435-436; 715 NW2d 328 (2006). In comparison, "[a] motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint" and is properly granted when, viewing the evidence in a light most favorable to the nonmovant, there is no "genuine issue regarding any material fact." *Beckett-Buffum Agency, Inc*, 311 Mich App at 43. "A genuine issue of material fact exists when the record, giving the benefit of any reasonable doubt to the opposing party, leaves open an issue on which reasonable minds could differ." *Ernsting v Ave Maria College*, 274 Mich App 506, 510; 736 NW2d 574 (2007).

In this case, insofar as the trial court granted summary disposition under MCR 2.116(C)(7), the decision was correct because res judicata precludes plaintiff's claims that defendants are not allowed to access their property over Blue Goose Avenue and Mallard Street.

## App. A7

The doctrine of res judicata is employed to prevent multiple suits litigating the same cause of action. The doctrine bars a second, subsequent action when (1) the prior action was decided on the merits, (2) both actions involve the same parties or their privies, and (3) the matter in the second case was, or could have been, resolved in the first. [*Adair*, 470 Mich at 121 (citations omitted).]

It is undisputed that in 2000 plaintiff filed suit against Richard Saputo, a prior owner of defendants' property, and asserted that he could not use Mallard Street and Blue Goose Avenue to access his property. It is also undisputed that plaintiff agreed to dismissal of that case with prejudice. "[A] voluntary dismissal with prejudice acts as an adjudication on the merits for res judicata purposes." *Limbach v Oakland Co Bd of Co Rd Comm'rs*, 226 Mich App 389, 395; 573 NW2d 336 (1997). See also *Adam v Bell*, 311 Mich App 528, 532; 879 NW2d 879 (2015). Accordingly, the 2000 lawsuit was decided on the merits and the first element of res judicata was established. The second element of res judicata was established because the 2000 lawsuit involved plaintiff, i.e., the same party, and Saputo, defendants' undisputed predecessor in interest, i.e., defendants' privy. See *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 13 n 9; 672 NW2d 351 (2003) ("[A] privy includes one who, after rendition of the judgment, has acquired an interest in the subject matter affected by the judgment through one of the parties, as by inheritance, succession, or purchase."). The third requirement of res judicata was established because

## App. A8

the matter at issue in the instant case, i.e., whether the owners of defendants'

property have the legal authority to access their property over Blue Goose Avenue and Mallard Street, was, or could have been, resolved in the 2000 lawsuit. Accordingly, the trial court did not err in ruling that *res judicata* precluded plaintiff's claims that defendants could not access their property over Blue Goose Avenue and Mallard Street.<sup>2</sup> See *Adair*, 470 Mich at 121.

Plaintiff next argues that the trial court erred in granting summary disposition in favor of defendants on claims of negligence, trespass, encroachment, and nuisance. These various claims relate to property improvements, such as landscaping and fencing, implemented by defendants. Plaintiff maintains that some of the improvements were made to Mallard Street and that ultimately the improvements resulted in water runoff to plaintiff's property. The trial court granted summary disposition under MCR 2.116(C)(10) finding that no

material question of fact remained with respect to (1) whether the improvements were within defendants' property boundaries and (2) whether the improvements caused water to flow to plaintiff's

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<sup>2</sup> Given this conclusion, we need not address plaintiff's substantive arguments concerning defendants' right to access their property via Blue Goose Avenue and Mallard Street. We likewise find it unnecessary to consider whether laches barred these claims by plaintiff or whether the 2005 litigation also served to preclude plaintiff's claims in this case.

## App. A9

property. Plaintiff now argues that the trial court's decision was erroneous. We disagree.

“To establish a prima facie case of negligence, a plaintiff must prove four elements: (1) a duty owed by the defendant to the plaintiff, (2) a breach of that duty, (3) causation, and (4) damages.” *Quinto v Woodward Detroit CVS, LLC*, 305 Mich App 73, 75; 850 NW2d 642 (2014) (quotation marks and citation omitted). In comparison:

Trespass is an invasion of the plaintiff's interest in the exclusive possession of his land . . . . In Michigan, recovery for trespass to land is available only upon proof of an unauthorized direct or immediate intrusion of a physical, tangible object onto land over which the plaintiff has a right of exclusive possession. Moreover, the intrusion must be intentional. [*Terlicki v Stewart*, 278 Mich App 644, 653654; 754 NW2d 899 (2008) (quotation marks, citations, and brackets omitted).]

Encroachment involves an interference with or an intrusion onto property such as by building or making improvements on another's land or easement. See generally *Kratze v Indep Order of Oddfellows, Garden City Lodge No 11*, 442 Mich 136, 142; 500 NW2d 115 (1993); *Choals v Plummer*, 353 Mich 64, 71-73; 90 NW2d 851 (1958); *Longton v*

*Stedman*, 182 Mich 405, 414; 148 NW 738 (1914). Finally, an individual is subject to liability for private nuisance for a nontrespassory invasion of another's interest in the private use and enjoyment of land if (a) the other has property rights and privileges in

## App. A10

respect to the use or enjoyment interfered with, (b) the invasion results in significant harm, (c) the actor's conduct is the legal cause of the invasion, and (d) the invasion is either (i) intentional and unreasonable, or (ii) unintentional and otherwise actionable under the rules governing liability for negligent, reckless, or ultra hazardous conduct. [*Cloverleaf Car Co v Phillips Petroleum Co*, 213 Mich App 186, 193; 540 NW2d 297 (1995) (citation omitted).]

Damage occurring due to "natural causes" cannot be a private nuisance.<sup>3</sup> See *Ken Cowden Chevrolet, Inc v Corts*, 112 Mich App 570, 573; 316 NW2d 259 (1982).

In this case, for purposes of our analysis, plaintiff's various claims involve two important contentions: first, that defendants made improvements outside their property to Mallard Street itself, and second, that improvements made to defendants' property and/or Mallard Street caused water to flow to plaintiff's property, resulting in

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<sup>3</sup> Under Michigan's surface-water laws: "The owner of the lower or servient estate must accept surface water from the upper or dominant estate in its natural flow. By the same token, the owner of the dominant estate may not, by changing conditions on his land, put a greater burden on the servient estate by increasing and concentrating the volume and velocity of the surface water." *Boylan v Fifty Eight LLC*, 289 Mich App 709, 726-727; 808 NW2d 277 (2010) (citation omitted).

## App. A11

property damage. Plaintiff maintained that the improvements to Mallard Street constituted tortious conduct, and that the water runoff caused by defendants' improvements similarly supported claims of negligence, trespass, encroachment, and nuisance. However, plaintiff's basic contentions are factually unsupported and thus the trial court property granted summary disposition to defendants. Contrary to plaintiff's assertion that defendants made improvements to Mallard Street, the record shows that any improvements were solely on defendants' property. Jack Shepard, a surveyor retained by *plaintiff*, testified that defendants' improvements were within defendants' property boundaries. A report by Nederveld Engineering confirmed that defendants' improvements were located entirely on their property and did not encroach on Mallard Street. Specifically, the report concluded that "the improvements to [defendants'] property including the swale, fence, driveway, and landscaping are located within [defendants'] property boundaries and do not encroach on the Mallard Street [right-of-way] or [plaintiff] Hudson property." Plaintiff has offered no evidence to the contrary, and thus there is no merit to plaintiff's claims that defendants improperly made improvements to Mallard Street.<sup>4</sup>

Plaintiff's assertion that defendants' improvements have resulted in increased water runoff to plaintiff's property are similarly without factual support. In a letter written in 2001 to other owners in the subdivision, plaintiff wrote that "water drainage" was an issue and plaintiff

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<sup>4</sup> We note that plaintiff has presented no evidence to support the claim that defendants' improvements violated local zoning ordinances.

## App. A12

suggested the installation of a sump pump or other, alternative solution. Thus, plaintiff's own statements demonstrate that problems with runoff preexisted defendants' improvements, which occurred after their purchase of the property in 2010. Further, Nederveld Engineering's unrebutted engineering report determined that rainwater does not flow from defendants' property onto plaintiff's property. The report concluded that any accumulation of rainwater on plaintiff's property "is the result of inadequate stormwater management and run-off from Blue Goose and the [Blanche] Hudson property." Aside from vague and self-serving allegations unsupported by evidence, plaintiff offers nothing to contradict Nederveld's conclusions. See *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996) ("Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations . . . but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists."). Thus, summary disposition was properly granted to defendants on plaintiff's claims of negligence, trespass, nuisance, and encroachment premised on the assertion that defendant's improvements resulted in increased water runoff to plaintiff's property.

Plaintiff next argues that summary disposition was improper because defendants allegedly did not serve plaintiff with the "conclusions" of the Nederveld report. Because plaintiff did not object to the trial court's consideration of the report on this basis, plaintiff's claim is unpreserved and reviewed for plain error,

## App. A13

which occurs if “(1) an error occurred (2) that was clear or obvious and (3) prejudiced the party, meaning it affected the outcome of the lower court proceedings.” *Cheesman v Williams*, 311 Mich App 147, 161; 874 NW2d 385 (2015) (quotation marks and citation omitted). Plaintiff has not shown plain error because there is no evidence that defendants did not serve plaintiff with the report. The report, including the “conclusions” page, was attached to defendants’ motion for summary disposition, which was served on plaintiff. And, in fact, at one of the hearings in the trial court, plaintiff demonstrated familiarity with the report, complaining because the report showed a “swale” where plaintiff contended there was a “drainage ditch.” Moreover, even assuming plaintiff did not receive the report or the “conclusions” page in particular, plaintiff has failed to explain, and the record does not reveal, how defendants’ alleged failure to serve plaintiff with this document affected the outcome of the proceedings. In short, plaintiff has not shown plain error. *See id.*

Finally, plaintiff argues that the trial court, along with defendants and other persons and entities, conspired to do a legal act in an illegal manner contrary to MCL 750.157a. Plaintiff also accuses several persons of perjury and other criminal offenses. However, plaintiff’s argument on this point is not well-briefed. “Criminal and civil liability are not synonymous,” *Aetna Cas & Sur Co v Collins*, 143 Mich App 661, 663; 373 NW2d 177 (1985), and it is largely unclear to what purpose plaintiff cites these various criminal provisions in the context of this civil litigation involving a property dispute. *See People v Williams*, 244 Mich App 249, 254; 625 NW2d 132 (2001) (“[A] civil action is completely separate and independent from a criminal action.”). We note that one of plaintiff’s

## App. A14

attachments on appeal involves a request for criminal charges against various people and entities. However, “[t]he authority to prosecute for violation of [criminal] offenses is vested solely and exclusively with the prosecuting attorney.” *Id.* at 253, citing Const 1963, art 7, § 4; MCL 49.153. Plaintiff is not a prosecutor but rather, at most, the purported victim of the alleged criminal acts and, as such, plaintiff has no authority to determine whether criminal charges should be brought. “[N]owhere in the laws of this state have crime victims been given the authority to determine whether the [penal] code has been violated or whether the prosecution of a crime should go forward or be dismissed.” *Williams*, 244 Mich App at 254. Accordingly, plaintiff is not legally entitled to assert criminal charges against defendants or any other party, and we decline to entertain plaintiff’s allegations of criminal conduct in the course of this civil litigation.

Affirmed.

Douglas B. Shapiro /s/

Joel P. Hoekstra /s/

Deborah A. Servitto /s/

**App. A15**

Court of Appeals  
State of Michigan

**ORDER**

Blanche Hudson v John C Kleussendorf

Docket No. 327878

LC No. 13-052422 NZ

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“Motion to Compel Justices Douglas B. Shapiro, PJ,  
Joel P. Hoekstra, and Deborah A. Servitto, JJ to  
Produce Their Campaign Finance Reports” is  
**DENIED**

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Filed Sept. 9, 2016

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Before Shapiro, PJ, Hoekstra, and Servitto

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The Court orders that the “Motion to Compel Justices  
Douglas B. Shapiro, PJ, Joel P. Hoekstra, and Deborah A.  
Servitto, JJ to Produce Their Campaign Finance Reports” is  
**DENIED**.

Sept. 22, 2016 Douglas Shapiro, Chief Justice

**App. A16**

**STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF  
ALLEGAN 48<sup>TH</sup> JUDICIAL CIRCUIT**

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BLANCHE HUDSON and PAT FOSTER,  
Plaintiffs,

vs.

JOHN KLEUESSENDORF and JOHN BENSON,  
Defendants.

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Case No. 13-052422-NZ

**SUA SPONTE ORDER ON MOTION TO  
COMPEL JUDGE CRONIN'S CAMPAIGN  
FINANCE RECORDS**

At a session of said Court held in the County Building  
in the City and County of Allegan, State of Michigan,  
on the 18<sup>th</sup> day of April, 2016 Present:  
The Honorable Kevin Cronin, Circuit Judge.

This Court, having reviewed the Plaintiffs'  
motion and responses thereto, finds and  
ORDERS the following:

## App. A17

1. On April 1, 2016, the Plaintiffs filed a motion pursuant to MCR 2.310(D)(4) to compel Judge Cronin to provide his campaign finance records.
2. A final order disposing this case was filed on June 6, 2015. Therefore, the proofs and additional discovery in this case is closed.<sup>1</sup>
3. The Plaintiffs filed a motion to disqualify Judge Cronin on March 4, 2015. This motion was considered and denied.
4. **THEREFORE**, the Plaintiffs motion is **STRICKEN** and will be removed from the Court's docket without hearing.

IT IS SO ORDERED AND ADJUDGED.

April 18, 2016

Kevin Cronin, Circuit Judge

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<sup>1</sup>Under Michigan law, MCR 7.202(6)(a)(iv) provides that post judgment orders “awarding or denying attorney fees or costs under MCR 2.403, 2.405, 2.625 or other law or court rule” are considered “final orders” that are separately appealable. The final order in this case on costs and sanctions did not occur until May 3, 2016, or 15 days after the Court issued their Sua Sponte Order on April 18, 2016. See *TGINN Jets, LLC v Hampton Ridge Props, LLC*, unpublished opinion per curiam of the Michigan Court of Appeals

App. A18

**STATE OF MICHIGAN  
IN THE SUPREME COURT**

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Supreme Court Case No. 154789  
Court of Appeals No. 327878  
Circuit Court Case No. 13-52422-NZ

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Pat Foster,  
Plaintiff-Appellant

v.

John C. Kleuessendorf and John T. Benson,  
Defendants-Appellees

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Motion brought before the Michigan Supreme Court based upon a subpoena to see Judge Cronin's campaign finance bank account that was declined by Judge Bakker in my Petition for a Writ of Mandamus against Ganges Township while still in the lower court.

Filed December 5, 2016

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## App. A19

### BRIEF IN SUPPORT OF MOTION FOR SUBPOENA

#### ARGUMENT AND LAW

**Question I:** Should the Court authorize a subpoena of bank statements for Judge Cronin's public account, the Committee to elect Kevin Cronin judge at the United Bank in Hopkins, Michigan?

**Standard of Review:** "...matters of law are reviewed de novo." *People v. LeBlanc*, 465 Mich. 575, 579; 640 N.W.2d 246 (2002).

**Preservation of error:** Denial of a subpoena requested for discovery without explanation.

**Argument:** Judges and justices are allowed to maintain a campaign finance account, and if they cumulatively do not accumulate more than \$1,000 while in office they are allowed to retire from the bench with no accounting of what is in that account as long as their debts are paid. Judge Cronin during the 2008 General Election showed approximately \$11,850 in pre-general contributions and \$4,250 in his amended post-general totaling over \$16,000 from outside contributors. January 21, 2009 after being

## **App. A20**

elected to the 48<sup>th</sup> Judicial Circuit Court, Judge Cronin filed an Amended Organization Statement requesting a waiver of reporting. He has served 8 years on the bench, and has not filed one campaign finance report since then, and the \$1,000 limit is cumulative over all 8 years.

If you have nothing to hide, my original request could have simply been answered with a written statement saying that he has not taken in enough funds to file a report. That was not done by either Judge Cronin or the Court of Appeals. My request for a subpoena only covered the period of time that he was involved in our civil suit to determine if he had taken money from the defendants' attorney.

April 30, 2015, prior to the hearing for summary disposition scheduled for May 11, 2015, I filed three affidavits with the court. One was my affidavit, and I stated on # 8) "On March 30, 2015, after the hearing for Judge Cronin to recuse himself, I was walking down the hall with Mr. Cudney, the Defendants' attorney, and I asked him if he would be

## App. A21

willing to settle our civil case. He said no, and that the Court was going to give him my “30,000, and if I appealed, I would also lose that appeal.” Subsequent events proved that Mr. Cudney knew exactly what was going to happen. You can only know that much of the future if it has already been determined prior to hearings and appeals.

“The Tumey Court concluded that the Due Process Clause incorporated the common-law rule that a judge must recuse himself when he has ‘a direct, personal, substantial, pecuniary interest’ in a case.” *Tumey v. Ohio*, 273 U.S. 510. 47 S.Ct. 793, 92 L.Ed. 749 (1948); *Caperton v. A.T. Massey Coal Co., Inc.*, 129 S.Ct. 2259 (2009).

“Due process requires an objective inquiry into whether the contributor’s influence on the election under all the circumstances ‘would offer a possible temptation to the average...judge to...lead him not to hold the balance nice, clear and true’ “ *Tumey*, supra, at 532, 47 S.Ct. 437. *Caperton*, supra 2264.

The issue in Michigan was to block the average citizens’ right to see these accounts by making campaign finance accounts an exception to the

## **App A22**

Freedom of Information Act, MCL 15.243(r). In order to “hold the balance nice, clear and true” litigants must have some access through discovery to determine if the court is *prejudiced or biased* against them before the court admits so in a motion, while running away from it.

**App. A23**

STATE OF MICHIGAN  
48<sup>th</sup> Judicial Circuit

**SUBPOENA**  
Order to Produce  
Case No. 16-56487-AW

Pat Foster,

Plaintiff,

v.

Ganges Township, John Hebert Supervisor,

Defendants.

In the Name of the people of the State of Michigan  
to: United Bank, 102 W. Main St., Hopkins, MI  
49328

You are ordered to Produce/permit inspection or  
copying of the following items: Bank statements for  
the Committee to Elect Kevin Cronin for Judge for  
the years 2013 through 2016.

Declined - mzb<sup>1</sup> 11/16/16

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<sup>1</sup> Margaret Z. Bakker, Chief Judge of Allegan County

**App. A24**

**STATE OF MICHIGAN**

**CIRCUIT COURT FOR THE COUNTY OF  
ALLEGAN**

BLANCHE HUDSON AND PAT FOSTER,

Plaintiffs,

v

JOHN C. KLUESSENDORF AND JOHN T.  
BENSON,

Defendants.

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File No. 13-52422-NZ

Honorable Kevin Cronin, Circuit Court Judge

48<sup>th</sup> Judicial Circuit

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**MOTION TO COMPEL THE COURT  
TO PRODUCE HIS CAMPAIGN FINANCE  
REPORTS**

Now comes the Plaintiffs to request the  
Court to Compel Itself to produce its own  
campaign finance reports under MCR

2.310(D)(4) to show contributions and expenditures for a period covered from September 1, 2013 to March 14, 2016.

This motion is being brought under the standards established by the United States Supreme Court in *Caperton v Massey*, US; 129 S Ct 2252; 173 L Ed 2d 1208 (2009). That case dealt with a State Supreme Court Justice having been asked to recuse himself because of indirect campaign contributions from Don Blankenship, Massey's chairman and principal officer. In a 5 to 4 split decision, the U.S. Supreme Court held in favor of Caperton that "*due process requires recusal.*"

Under the State of Michigan Statutes, the legislators provided two laws giving all elected judges and justices a tax free account to accept "*contributions*" that can be used to have the court abuse it's discretion in violation of the current laws in favor of the party making the contribution(s), Michigan Election Law allows under MCL 169.235 (2) "*a candidate committee for an officeholder who is a judge or a supreme court justice*" to not have to file their campaign finance reports. The Michigan State Legislators closed the backdoor for

## A26

public inspection of these records by making an exception under the Freedom of Information Act, MCL 15.243(1)(r), which specifically exempts *“Records of a campaign finance committee including a committee that receives money from a state campaign fund.”* Since all campaign records are public information, this excludes only our justice system from public review.

### **Prayer for Relief**

Plaintiffs respectfully request that the Court either recuse itself from any further actions in this case or produce its campaign finance reports with copies of bank statements from your campaign account so that we can verify that the Court has not accepted any contribution(s) that might have influenced its decisions in this case.

Date: 4-1-16

Pat Foster, Plaintiff

Date: 4-1-16

Blanche Hudson, Plaintiff

**App. B**  
**Michigan Supreme Court**  
**Lansing, Michigan**

**Order**

July 25, 2017  
SC 155827, COA 336937,  
Allegan CC 16-056487-AW

PAT FOSTER,  
Plaintiff-Appellant,

v.

GANGES TOWNSHIP AND GANGES TOWNSHIP  
SUPERVISOR  
Defendants-Appellees

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On order of the Court, the application for leave to appeal the April 18<sup>th</sup>, 2017 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

July 25, 2017    Larry S. Royster,  
Clerk of the Michigan Supreme Court

**App. B2**

**STATE OF MICHIGAN**  
**Court of Appeals**

**ORDER**

Pat Foster v Ganges Township  
Docket No. 336937  
LC No. 16-056487-AW

By Murphy, Markey, and Boonstra

The Court orders that the motion for subpoena is  
**DENIED.**

William B. Murphy, Presiding Judge

A true copy entered and certified by Jerome W.  
Zimmer Jr., Chief Clerk, on April 18, 2017.

Jerome W. Zimmer, Jr., Chief Clerk

**App. B3**  
**IN THE MICHIGAN SUPREME COURT**

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SC No: 155827  
COA: 336937  
Allegan CC: 16-056487-AW

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Pat Foster,  
Plaintiff-Appellant

v.

Ganges Township  
Defendants-Appellees

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**PLAINTIFF-APPELLANT'S APPLICATION  
FOR LEAVE TO APPEAL**

**MOTION FOR A SUBPOENA TO GET  
COPIES OF THE BANK STATEMENTS OF  
THE COMMITTEE TO ELECT MARGARET  
Z. BAKKER JUDGE**

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Appeal from the Michigan Court of Appeals  
Murphy, W., Markey, J., Boonstra, M,  
Filed May 25, 2017

**APPEAL**

I appeal by leave the decision made by the Michigan Court of Appeals in Grand Rapids on April 18, 2017. They denied with no explanation my Motion for a Subpoena to get copies of the bank

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statements of the Committee to Elect Margaret Z. Bakker Judge. Pat Foster v. Ganges Township, COA Docket No. 336937.

### Questions Presented under MCR 7.305(B)(1):

1. The Freedom of Information Act, MCL 15.243(r), “*Records of a campaign committee including a committee that receives money from a state campaign fund*” are specifically exempted from public disclosure under this act. This statute directly conflicts with Canon 2(A) of the Michigan Code of Judicial Conduct: “*A judge must avoid all impropriety and appearance of impropriety*”. A tax free campaign bank account that is held to be secret from the public is an “*appearance of impropriety*.” Since a Michigan statute makes campaign finance accounts secret, shouldn’t any litigant be able to see those accounts to make sure that there is not an actual impropriety under Canon 2 of the Michigan Code of Judicial Conduct? Grounds: MCR 7.305(B)(1) The issue involves a substantial question about the validity of a legislative act.
- 2.

## FACTS

### *Defendant/Appellee*

The Court has the right to use judicial discretion to settle disputes.

***Statutory Conflicts of Interest:*** Under the Michigan Finance Act, MCL 169.224(5) “When filing a statement of organization, a committee, other than an independent committee, a political committee, or

## App. B5

a political party committee, may indicate in a written statement signed by the treasurer of the committee that the committee does not expect for each election to receive an amount in excess of \$1,000 or expend an amount in excess of \$1,000. The treasurer of a committee of an incumbent judge or justice is considered to have made the statement required under this subsection following appointment or election of that judge or justice and is not required to file a written statement under this subsection indicating that the committee does not expect for each election to receive or expend an amount in excess of \$1,000.”

MCL 169.224(8) “A candidate committee that files a written statement under subsection (5) or that is considered to have made a statement under subsection (5) is not required to file a dissolution statement under subsection (7) if the committee failed to receive or expend an amount in excess of \$1,000 and 1 of the following applies:

(a) The candidate was defeated in an election and has no outstanding campaign debts or assets.

(b) The candidate vacates an elective office and has no outstanding campaign debts or assets.”

The Freedom of Information Act is subject to all public documents except those that are specifically exempted. MCL 15.243 (r) “Records of a campaign committee including a committee that receives money from a state campaign fund” are specifically exempted from public disclosure under the act.

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### ARGUMENT AND LAW

**I. Question:** Since a Michigan statute makes campaign finance accounts secret, shouldn't any litigant be able to see those accounts to make sure that there is not an actual impropriety under Canon 2 of the Michigan Code of Judicial Conduct?

**Standard of review:** This Court reviews a trial court's decision to grant or deny discovery for an abuse of discretion. *Shinkle v. Shinkle* (On Rehearing), 255 Mich.App. 221, 224, 663 N.W.2d 481 (2003). The issue of privilege has a bearing on whether materials are discoverable, MCR 2.302(B)(1) ("[p]arties may obtain discovery regarding any matter [that is] not privileged"). "Once we determine whether the privilege is applicable to the facts of this case, we can determine whether the trial court's order was an abuse of discretion." *Baker v. Oakwood Hosp. Corp.*, 239 Mich.App. 461, 468, 608 N.W.2d 823 (2000)

**Preservation of error:** Failure of the Court of Appeals to deny a subpoena request for the bank statements of Judge Margaret Z. Bakker's campaign finance account with no reason given by the court.

**Argument:**

If every elected official in our country has a "privileged" account, then that is an authority to all elected officials to take money for decisions by statute. The Michigan Court system must comply with Canon 2A. of the Michigan Code of Judicial Conduct that says "*A judge must avoid all impropriety and appearance of impropriety.*" The very fact that each judge has a public, tax free bank account that is held to be secret from public scrutiny

## App. B7

means that those judges must open those accounts to a litigants' discovery to assure impartiality.

My house and property are both now being flooded by two causes from different incidents that each judge ruled on to keep the flooding continuing.

### ***Attempts to obtain discovery in Foster v. Ganges:***

Judge Cronin disqualified himself twice. The first time was on June 9, 2016 at a special hearing where he called in both the defendants and I. This was done four days prior to his having to hear my Motion to Compel him to show me his campaign finance account on June 13, 2017. Five months later on October 14, 2016, the Chief Judge of Allegan County, the Honorable Margaret Z. Bakker assigned the case back to Judge Cronin for a pre-trial hearing set for November 23, 2016. On October 17, 2016, Judge Cronin filed an "*amended order of reassignment/disqualification*" This order was not put into the mail to me until October 27, 2016.

On November 2, 2016, I filed a request for Judge Bakker to produce the campaign bank statements of her campaign finance account through an audit confirmation request under MCR 2.310(D). I served this request to Judge Bakker personally at the window for the hearing clerk who takes the judges' copies of all pleadings. Approximately one week later, I received the entire package back with a cover letter from Anne Lange, Secretary to Judge Bakker stating: "*Please find enclosed materials dropped off at the Circuit Court window on November 2, 2016. They are being returned to you because they are not properly filed.*" On November 10, 2016, I

## App. B8

placed into the mail the request to produce Judge Bakker's campaign finance bank statements. Under MCR 2.310(4) I had to give Judge Bakker at least 14 days before I could file a Motion to Compel.

On November 22, 2016, Judge Bakker rescheduled the November 23<sup>rd</sup> hearing to December 5, 2016. I showed up on November 23<sup>rd</sup> and was told that the hearing had been rescheduled. On December 5, 2016, Judge Bakker refused to accept my Affidavit of Merit, which included the video *Foster v. Ganges* into evidence. She ruled in favor of summary disposition, which puts the case out of her court into the Court of Appeals. I filed a subpoena request with the 48<sup>th</sup> Judicial Circuit Court in February, 2017. It was declined on 2/22/2017 by "mzb"(Margaret Z. Bakker).

On April 4, 2017, I filed a motion for a subpoena before the Michigan COA, which was declined on April 18, 2017 without explanation of the defendants filing a reply to my motion. It is now being appealed to this court.

### ***Formal logic:***

There are two forms of formal logic where a set of premises (facts) are used to prove a conclusion. First, where the truth lies outside of your premises, it is defined as inductive reasoning. The majority of cases before a court involve inductive reasoning. Second, when the truth of your argument lies within the premises, this is called deductive reasoning, or the facts are prima facie evidence. Deductive reasoning received a tool from the Greek philosopher,

## **App. B9**

Aristotle in his Logic. He defined syllogism<sup>1</sup> as an argument of a form containing a major premise and a minor premise connected with a middle term and a conclusion. Based upon formal logic, my argument under deductive reasoning using a syllogism is as follows:

1. All elected officials have secret financial accounts that can be used for illegal gains.
2. Elected officials who have illegal gains will attempt to keep anyone from seeing their secret accounts.
3. Judges Bakker and Cronin are both elected officials who have tried to keep me from seeing their secret accounts, therefore they have something illegal in their accounts that may affect my case.

Under Aristotle's syllogism, if the first two statements are true, then the last statement must also be true.

### ***Law:***

The fact that MCL 15.243 (r) creates a secret account in which a judge can receive tax free money for decisions, and they refuse to show this account through multiple efforts of discovery by a litigant, there exists more than an "*appearance of impropriety*," but a very high probability that if they

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<sup>1</sup> Webster's Universal College Dictionary, © 1997, pg. 798

## **App. B10**

attempt to hide these accounts from the public there exists an actual *impropriety*. “Due process requires an objective inquiry into whether the contributor’s influence on the election under all the circumstances ‘*would offer a possible temptation to the average...judge to...lead him not to hold the balance nice, clear and true*’“ *Tumey v. Ohio*, 273 U.S. 510. 47 S.Ct. 43, L. Ed. 749 (1948); *Capterton v. A.T. Massey Coal Co., Inc.*, 129 S.Ct. 2264 (2009). “Recognizing the deprivation of the right to an impartial judge as a structural error and explaining that [t]he entire conduct of the trial from beginning to end is obviously affected ... by the presence on the bench of a judge who is not impartial”; *Rose v. Clark*, 478 U.S. 570, 577, 106 S.Ct. 3101, 92 L.Ed.2d 460 (1986); *People v. Stevens*, 498 Mich.162, 869 N.W.2d 246 (2015). Appellant’s subpoena request will prove either impartiality or an impropriety that should not exist in a court room.

## **RELIEF SOUGHT**

I respectfully have two requests of the court. First, I ask that my Motion for a Subpoena in SC No. 154789 be consolidated with this motion. Second, I ask that the court remand both subpoena requests to the trial court for the appropriate approvals.

May 25, 2017 Pat Foster, Appellant-Plaintiff

**App. B11**

STATE OF MICHIGAN  
48<sup>th</sup> Judicial Circuit

**SUBPOENA**  
Order to Produce  
Case No. 16-56487-AW

Pat Foster,

Plaintiff,

v.

Ganges Township, John Hebert Supervisor,

Defendants.

In the Name of the people of the State of Michigan  
to: Fifth Third Bank. 1511 Lincoln Rd. Allegan, MI  
49010

You are ordered to Produce/permit inspection or  
copying of the following items: Bank statements for  
the Committee to Elect Margaret Bakker Circuit  
Court Judge for the period starting January 1, 2012  
and ending December 31, 2016.

Declined -- mzb<sup>1</sup> 2/22/17

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<sup>1</sup> Margaret Z. Bakker, Chief Judge of Allegan County and party  
whose records are requested to be subpoenaed.

App. C  
Supreme Court of the United States  
Office of the Clerk  
Washington, DC 20543-0001

August 18, 2017

Mr. Pat Foster  
6079 Mallard Drive  
Fennville, MI 49408

Re: Pat Foster v.  
John C. Kluessendorf, et al.  
Application No. 17A193

Dear Mr. Foster:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Kagan, who on August 18, 2017, extended the time to and including October 23, 2017. This letter has been sent to those designated on the attached notification list.

Sincerely,

Scott S. Harris, Clerk  
Clayton Higgins, Case Analyst

**App. C2**

**SUPREME COURT OF THE UNITED STATES  
OFFICE OF THE CLERK**

**WASHINGTON, DC 20543-0001**

**December 21, 2017**

Pat Foster  
6079 Mallard Street  
Fennville, MI 49408

**RE: Foster v. Kleussendorf (MISC No. 154789)  
Foster v. Ganges Township (MISC No. 155827)  
No: 17A193**

Dear Mr. Foster:

Returned are 40 copies of the petition for writ of certiorari in the above-entitled case postmarked on October 23, 2017 and received on October 26, 2017, which fails to comply with the Rules of this Court.

The order(s) of the Court of Appeals of Michigan (dated October 11, 2016 in case number 327878 and April 18, 2017 in case number 336937) must be included in the appendix. Rule 14.1 (i). Each order must be reproduced so that it complies with Rule 33 1.

The lower court caption, showing the name of the issuing court or agency, the title and number of the case, and the date of entry, must be included with the opinion in the appendix to the petition. Rule 14.1(i)(ii).

Kindly correct the petition so that it complies in all respects with the Rules of this Court and return it to this Office promptly so that it may be docketed. Unless the petition is submitted to this Office in corrected form

### **App. C3**

within 60 days of the date of this letter, the petition will not be filed. Rule 14.5.

Three copies of the corrected petition must be served on opposing counsel. Rule 29.3.

When making the required corrections to a petition, no change to the substance of the petition may be made.

Sincerely,  
Scott S. Harris, Clerk

By:  
Clayton R. Higgins, Jr.  
(202) 479-3019