

**State of Michigan
In the Circuit Court for the County of Iron
Circuit Division**

William J. Vajk,
Plaintiff

Hon. C. Joseph Schwedler

v.

Case No. I08-3982-CZ

John Archocosky,
Defendant

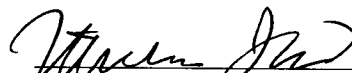
**Notice of Motion and
Proof of Service**

Please take notice that Plaintiff's Motion to Vacate Judgment and Disqualify Judge Schwedler will be brought for hearing on Wednesday, May 13, 2009 at 11:30 AM Central Daylight Time or as soon thereafter as I may be heard at the Iron County Circuit Court, 2 S. 6th Street in Crystal Falls, Michigan.

William J. Vajk, being first duly sworn, deposes and says that on April 18, 2009, he served the following documents on Susan D. MacGregor (P41741) the attorney for the Defendant John Archocosky, by first class mail prepaid, at 220 West Washington Street, Ste 500, Marquette, MI 49855-4344.

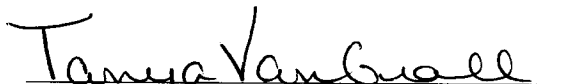
Motion of William J. Vajk to Vacate Judgment and to Disqualify Judge Schwedler

Affidavit of William J. Vajk



William J. Vajk

Subscribed and sworn to before me on 18 April 2009



Notary Public Iron County

My Commission Expires 6-16-13



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**Motion of William J. Vajk
to Vacate Judgment and to
Disqualify Judge Schwedler**

The Plaintiff, William J. Vajk, pro se, moves to Vacate the Judgment of Dismissal executed on April 1, 2009, and that the Honorable C. Joseph Schwedler be disqualified from further proceedings in this case. Plaintiff's Affidavit and Exhibits in support of this motion are submitted herewith.


Wherefore the Plaintiff prays the courts will provide the following relief:

- 1) Vacate the judgment of dismissal executed on April 1, 2009
- 2) Assign the case to a neutral judge from another circuit since the 41st Circuit has been compromised. The case is complete in the pleadings and requires no additional pleadings or hearings.

Respectfully Submitted



William J. Vajk



date

William J. Vajk
5113 W. US2 Highway
Iron River MI 49935
3 April 2009

Judicia Secretary
Forty-first Circuit Court
705 S. Stephenson Ave.
P.O. Box 609
Iron Mountain MI 49801

Dear Secretary:

It appears that Judge C. Joseph Schwedler is elected as probate judge for Iron County but sits on the bench as a judge for District and Circuit Courts as well. I have found the authority under which he occupies the District Court bench, MCL 600.810a(1), however I have been unable to find any authorization for him to act as Circuit Judge for the Forty-first Circuit. It appears that the Forty-first Circuit is limited by statute to two judges (MCL 600.542). Both of the positions authorized by that statute are currently occupied by elected individuals other than Judge Schwedler.

Please identify the specific source for the authority under which Judge C. Joseph Schwedler sits as a judge on the Forty-first Circuit.

If you are unable to provide the information requested in this inquiry, please refer the question to someone who can.

Thank you.

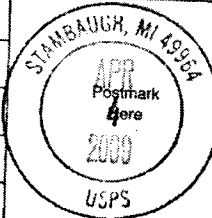
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Sent To

Street, Apt. No., or PO Box No. Judicia Secretary - Forty-first Circuit Court
 City, State, ZIP+4 705 S. Stephenson Ave. - P.O. Box 609
Iron Mountain MI 49801

PS Form 3800, June 2002 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
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Judicia Secretary
 Forty-first Circuit Court
 705 S. Stephenson Ave.
 P.O. Box 609
 Iron Mountain MI 49801

2. Article Number
(Transfer from service label)

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PS Form 3811, August 2001

Domestic Return Receipt

102595-01-M-2509

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A. Signature Mike Zanon Agent
 Addressee

B. Received by (Printed Name) MIKE ZANON C. Date of Delivery

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type
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 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

Date: January 21, 2009

To: Mayor and Council Members

From: John Archocosky, Manager

RE: Monthly Activity Report

In case I missed it, Happy New Year to all. 2009 seems to be starting out with a loud bang, at least here at City Hall. Several issues have cropped up since my last report. Some of them good and some of them are a little frustrating.

With the upcoming retirement of our HR Administrator Carol LaRochelle, the City requested applications to select her replacement. We worked through the Michigan Works office in Caspian which was a huge time saver and help to the City. Through their program, we received over 50 applicants from which to choose. Michigan Works tested and prequalified the candidates, and our staff interviewed the top four individuals. I'm pleased to advise that Rachel Andreski was selected by the staff as Carol's replacement and started work on January 5th. Rachel comes to us from STS/AECOM where she worked on Iron River City projects for the past 10 plus years. Although we received many well qualified applications, Rachel's first hand knowledge and experience with several of our infrastructure projects truly made her an ideal choice. We are sorry to see Carol retire, but she has promised to stick around and be available with the training process with Rachel. Carol's official retirement date is January 23rd.

On December 29th, I was served personally at my home, with a Summons and Complaint from the Circuit Court for the County of Iron. Plaintiff, Mr. William J. Vajk, filed a Freedom of Information request on December 1st with the City Clerk, requesting 5 different pieces of information relative to City ordinances, along with substantial supporting documentation. Following the City's FOIA Policy, the staff estimated the costs of researching, locating, and copying the information requested. As required in the FOIA Policy, we advised Mr. Vajk that we believed the information he requested would cost approximately \$60 to try to locate, and then produce copies. Mr. Vajk responded by complaining the costs were too high. Much of the supporting information he was requesting however, required that it be located and retrieved from the City's document storage area, which had been packed away during the consolidation of the three communities back in 2000. Keep in mind that at the time of consolidation, the files from all three communities were simply placed in unmarked boxes, delivered to 2nd level of the former City Fire Hall and stacked on the floor. There were literally thousands of documents deposited in this fashion to the storage area. Mr. Vajk apparently believed the City was being unreasonable in estimating the cost of retrieving the information, and filed a law suit against me personally. This matter has now been turned over to Attorney Susan MacGregor from Marquette who will be representing the City of Iron River in this litigation. Apparently Mr. Vajk, who is a land owner but not a resident of the City, claims this is the first of "many" such demands and suits he plans against the City. It is unfortunate that the FOIA law, that was intended to provide access to our government, is often abused by some individuals and ends up costing taxpayers both time and dollars to satisfy the whims of one or two individuals who simply have an "axe to grind". Hopefully the legal matter will be satisfied without excessive expenses to our City residents.

During the second week of the New Year the DPW discovered a water leak had developed somewhere near the top of the riser column of the Hunter Road water tank. Although it hasn't affected our water distribution service, it caused a tremendous amount of ice to develop inside the column of the tank. Our crew has been working several extra hours to thaw the ice buildup so we can determine where the leak is actually located. Hopefully it will be located in such a place that it can be easily repaired. Although we haven't been able to verify it, we believe that a small valve used to flush the tank during cleaning operations may have failed and began leaking. As a result of the extremely cold weather we have been experiencing, the thawing process has been going very slowly. I hope our Water Department employees can resolve this problem without having to perform any expensive repair work.

The cause for the icing problem above is representative of the long term lack of maintenance of the City's well houses elevated storage tanks. The lack of maintenance is not the fault of the Water Department, but more so the result of the City most recently being forced to invest almost every available dollar in replacing the 80 year old distribution systems that were neglected for so many years in the past. Along with our engineers, we have begun the process of redefining the City's needs of having multiple wells and an over abundance of water storage, which should eventually be reduced. I believe by eliminating some of this infrastructure and upgrading the remainder, we can continue to supply our water customers in quantities which will be more than adequate to meet their needs, as well as the growth and safety of the City. This project is currently underway, and the results will be generated for the Council by early summer. Once the study is complete, it will become a major element of our long range planning.

The end of December 2008 and the beginning of January 2009 have proven to be colder than normal. The snow and freezing rain we had a few weeks ago have caused slippery conditions on almost every street in town. The DPW has been maintaining the roads as well as possible by spreading salt and sand, but slippery conditions continue to exist. Hopefully next week's forecasted warm-up will help thaw some of the ice.

In the "Pending Issue List," you will see that several of our projects are finally ready to be closed out and removed from the list. The City's Brownfield Authority has really become active with the clean-up activities getting underway at the former Central School. The DDA's Central School MSHDA Housing Project, the Rental Rehab Project and others are continuing to make good progress as well. 2009 appears to be shaping up as one with many challenges, but also many opportunities.

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Affidavit of William J. Vajk

On 4 April 2009 it came to my attention that the validity of the Honorable C. Joseph Schwedler's hearing this case in the 41st Judicial Circuit Court at Crystal Falls, Michigan, is not clear. I was advised that Judge Schwedler was not elected to the Circuit Court, but had only been elected to the Probate Court for Iron County, Michigan. I immediately wrote a letter to the 41st Circuit Court at Iron Mountain, Michigan, asking for information about the source of Judge Schwedler's authority to preside in the 41st Circuit Court. A copy of that letter, and evidence that it was received by the 41st Circuit, are attached to the Motion transmitting this affidavit as Exhibit "K". No reply to that request has been forthcoming to the date of this affidavit despite an answer is a duty owed to your Affiant, and with a limited timeframe to formally investigate Judge Schwedler's status, I undertook studies utilizing my only available resource, a slow telephone line connection to the internet.

When a litigant steps into any court in the United States, the presumption is that the court, the judge, and court officers are all there by legitimate means. Information to the contrary emerged slowly. Eventually I found a Supreme Court Order of November 2007 assigning Judge Schwedler to the bench of the 41st Circuit Court at Iron County.

The Supreme Court Annual Report for 2007 does not show Judge Schwedler on the 41st Circuit Court effective 1/31/08 so his actual status remains in doubt in other Supreme Court reports leaving some question about whether or not the Supreme Court is aware of its prior act. Still, he sits on the bench of the 41st Circuit Court at Crystal Falls.

There are only two judgeships authorized by statute in the 41st Circuit and those two were already filled. (MCL 600.542, filled by Judge Celello and Judge Barglind.) In order to add Judge Schwedler to the 41st Circuit Court, another judgeship, beyond those authorized by statute, was added by a form of default inherent in the Supreme Court Order of November 2007. That action by the Supreme Court violates MCL 600.550, MCL 600.410(a), and Article IV, Section 27 of the Michigan Constitution.

The October 2007 Supreme Court Order, standing alone, was an unsatisfactory showing of authority. I continued to research the questions by downloading and studying the Michigan Constitution as well as the information available on the State Court Administrative Office (SCAO) web pages and the Michigan Compiled Laws (MCL), especially Section 600. The SCAO information made it abundantly clear that there exists an excess of Judges in the 41st Circuit and that excess has existed for several years.

In reading the Constitution and the MCL it became apparent that the required mechanisms, designed to as part of an overall system designed to afford equal protection and due process required by the Michigan Constitution, for installing judges in the State of Michigan, had been thwarted. Judge Schwedler's appointment can only be politically based in the absence of any actual caseload need for him to sit on the 41st Circuit Court bench. The entire process has been extraordinary as well as outside the mechanisms authorized by the Michigan Constitution and the Michigan statutes.

Further details supporting diminishing requirements of the 41st Circuit are available on the SCOA's web pages displaying additional facts demonstrating that the legal justifications for adding another judgeship to the 41st Circuit do not exist. Between 2002 and 2007 the 41st Circuit experienced a reduction of 397 filings annually apparently resulting in a reduction approximating 11.3% of case filings. The region served by the circuit also experienced a population decline between 1990 and 2006 of approximately 2.1%. There remains a plethora of additional information on the SCAO's web page evidencing the impropriety of assigning another Circuit Court Judge to the 41st Circuit. Nevertheless, the information provided herein is adequate to lend dispositive substance to the parent motion and this affidavit as required by MCR 2.003 *et seq.*

The Michigan Constitution clearly requires that new or discontinued judgeships result from a process in which the Supreme Court justifies the need, in terms of increased or decreased caseload, in a request to the state legislature. The legislature then, through its own deliberative process, either adds to or reduces the number of Circuit Court judgeships for each Circuit by statute, or takes no action. These steps are all codified in a combination of the Michigan Constitution Article IV and the MCL 600 subset. The entire process leads eventually to Circuit Judges elected in non-partisan elections.

There are only two legal means for assignment of Circuit Judges to the bench. The Governor is authorized to appoint replacement judges to fill unexpired terms. Otherwise, Circuit Court judges must be elected and periodically re-elected. There is no provision for appointment of "judges of general jurisdiction," only for concurrent jurisdiction by judges of "limited jurisdiction" who may be thus appointed by the Supreme Court after authorization by the Legislature. Please see Michigan Constitution, Article VI Section 15.

Expressio unius est exclusio alterius, the expression of one thing is the exclusion of another, is recognized in Michigan. The combining of Probate and Circuit Court judges, as is the case in Judge Schwedler's appointment, is thus clearly prohibited.

The purpose of going through all these processes is to assure, as much as possible, that Circuit Court Judges sitting on Michigan court benches are politically neutral, precisely the opposite of the results achieved by the illegal appointment of Judge Schwedler.

The election laws of the State of Michigan have also been violated by Judge Schwedler's appointment. The scheme required by the Michigan Constitution and Statutes requires the consent of the populace in the region served by the Circuit Court to initially, and subsequently to periodically, approve a new Circuit Judge's public office.

Judge Schwedler has been elected Probate Judge, a position of limited jurisdiction as defined by the Michigan Constitution, yet he currently serves as a judge over a Court of General Jurisdiction absent the consent of the people of the 41st Circuit. Given the novel inventive extralegal mechanism that has placed him in this position, lacking this challenge or another like it, it is a reasonable certainty that he could continue to serve in this capacity without approval by the people until he is forced to retire because of age. That possibility too, is repugnant to the Michigan Constitution. And in any event, serial temporary assignments are in fact a constructive permanent assignment, doubly repugnant to the Michigan Constitution.

All this is illegal under the Constitution of the State of Michigan and must be immediately corrected.

The result, in the instant case, is that an illegally appointed partisan judge is hearing a Freedom of Information (FOIA) case involving a local politician, John Archocosky, who, ironically, illegally occupies the position of City Manager of the City of Iron River. Mr. Archocosky, as City Manager, is required by the Iron River City Charter to live within the city limits of Iron River. As the Summons for this case indicates, his home address is without the city of Iron River. In Exhibit "L", accompanying the Motion to which this Affidavit is attached, the Defendant admits that he was served at his home.

The Defendant also admits that in his view, legitimately and legally submitted FOIA requests from this Plaintiff are, in his mind, an abuse of the legal process. Defendant has written, "It is unfortunate that the FOIA law, that was intended to provide access to our government, is often abused by some individuals and ends up costing taxpayers both time and dollars to satisfy the whims of one or two individuals who simply have an 'axe to grind.'" See Exhibit "L, attached." It is this toxic attitude by the Defendant public servant, unfortunately somewhat prevalent in Iron County Politics, that has forced this case into court in the first instance.

As a matter of further evidence to the purely political nature of these allegedly judicial proceedings, I offer Judge Schwedler's finding that, "There's no allegation that Mr. Archocosky is the person who was even in charge of these records. He is the City Manager, but I don't know where these records are." The quote appears in the transcript for the February 26 hearing in this case beginning at the bottom of Page 19. It is clear in the pleadings, with identical exhibits from both the Plaintiff and the Defendant, that Defendant Archocosky wrote in email to the Plaintiff on December 4, 2008, at 1:19PM,

"Please direct any future FOIA correspondence to me." Plaintiff's Exhibit "H"

memorialized the event. Exhibits previously submitted in the pleadings are incorporated herein by reference.

Since that wasn't enough to convince the Court, Plaintiff subsequently submitted the "City of Iron River Freedom of Information Act Policy" as an uncontested exhibit (Plaintiff's Exhibit "J".) Paragraph 1.2 therein states that the City Manager designates the Clerk as the FOIA Coordinator. In paragraph 1.0 the City Manager is designated as the head of the City of Iron River for FOIA Appeals. The evidence submitted to the Court is clear and unmistakable in that Defendant Archocosky is indeed a person responsible for city records leading to the unmistakable conclusion that Defendant Archocosky was, and is, "in charge of these records."

At a hearing on April 1, Judge Schwedler reaffirmed his findings disclosed during the bench trial on February 26, including the above-cited quote holding Archocosky blameless.

Judge Schwedler's determination relating to the responsibility of Defendant Archocosky for the requested records was, unfortunately, a prohibited transparently political determination. It is clearly a form of personal bias favoring the Defendant in defiance of clear evidence provided to the Court in pleadings. This example of the politicization of the case is provided in isolation because it is the easiest such example to demonstrate beyond the shadow of any doubt. The balance of Judge Schwedler's decisions were identically political in nature but are much too lengthy to be argued in this motion and affidavit. Plaintiff incorporates them, and the supporting briefs and arguments, by reference. The specifics argued herein are more than adequate to find that

Judge Schwedler sits on the 41st Circuit Court bench illegally as a political appointee.

I freely admit that the decisions made by the Court in this case were the reason for reviewing all aspects of the case in preparation for an appeal but that they alone were never the reason for requesting the disqualification of Judge Schwedler. The reasons for requesting disqualification are actions by the Michigan Supreme Court, apparently bending to political pressures, are as stated in this motion and supporting documents. They are, unfortunately, further supported by Judge Schwedler's actions on the Bench of the 41st Circuit Court.

In addition, in the light of the politicization of the 41st Circuit Court including the appointment of Judge Schwedler to the bench for other than codified forthright reasons, the One Court of Justice in Michigan stands besmirched at all levels. Plaintiff senses that any Appellate Process arising out of this Court may be tainted. At the very least, at this time, the appointment of Judge Schwedler, as it was undertaken, gives the impression that equal protection and due process have not been available at any time to Plaintiff in this Court.

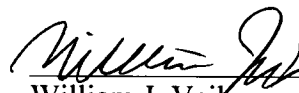
As a direct consequence, it is Plaintiff's impression that any Appellate Process arising out of this Court might be equally compromised. After all, if Plaintiff cannot receive equal protection and due process in the Circuit Court then what assurance is there that the next higher Court would behave any differently.

And precisely on point, it is Plaintiff's due to receive equal protection and due process at every stage of litigation. Plaintiff should not be required to undertake the additional time and expense to litigate at the appellate level in order to achieve a just result after the trial court failed in those particular duties owed him. To do so would give

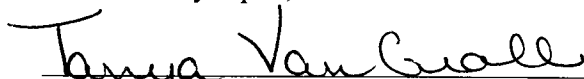
a free pass to the trial court to behave in any fashion it prefers, with absolutely no consequences for repetitive misbehavior. This is especially true when the judge will never have to stand for election, under the present scheme of things, and thereby will never have to obtain ratification or condemnation of his judicial conduct, by the people.

To close out this affidavit it is necessary for Plaintiff to state, under oath, that he holds Judge Schwedler in the highest personal regard. The failures of the 41st Judicial Circuit, indeed the "One Court of Justice" in Michigan, to afford me Equal Protection and Due Process appear to be systemic rather than particular. Judge Schwedler appears to be an honorable man trapped in a system that imposes distasteful requirements on him as a Judge. My complaint is not that I would not vote for him as a Circuit Judge, but rather that no one has had the legal opportunity to vote for, or against, his holding the position of Circuit Judge, a judge of general jurisdiction, that he presently holds. I have not been afforded protection equal to those who reside in Circuit Court regions where legally seated judges are available. And it is clear that due process has not been afforded me in the case giving rise to this motion and it's supporting documents.

I, the undersigned William J. Vajk, under the penalties of perjury, say that all the statements in the above and foregoing affidavit are true to the best of my knowledge.


William J. Vajk
Apr 18, 2009
date

Subscribed and sworn to before me
this 18th day April, 2009


Tanya Van Gualle
Notary Public Iron County, Michigan

My Commission expires 6-16-13

