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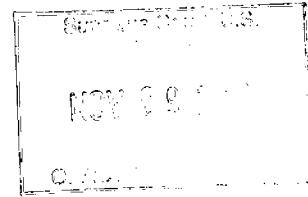
No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

MARIO ALLAN MONTANO, Petitioner,

v.

IVY ALICE WIMMER, Respondent.



ON PETITION FOR A WRIT OF CERTIORARI TO THE  
MICHIGAN SUPREME COURT

***PETITION FOR WRIT OF CERTIORARI***

Mario Allan Montano, Petitioner

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November 8, 2020

## **QUESTION PRESENTED**

The Michigan Supreme Court issued three orders against the Petitioner on October 5, 2020 that have resulted in the total deprivation of any ability for the Petitioner to litigate any existing or future matter in the Michigan Supreme Court. The questions presented are:

- I. Whether the Michigan Supreme Court violated its jurisdiction in issuing three orders dismissing the Petitioner's cases thus depriving the Petitioner of his right to equal protection under the law pursuant to U.S. Const. Amend. XIV § 1.
- II. Whether the Michigan Supreme Court violated its jurisdiction by issuing filing and court fee injunctions against the Petitioner depriving him of his right to equal protection under the law pursuant to U.S. Const. Amend. XIV § 1.

## **LIST OF PARTIES**

Pursuant to Supreme Court Rule 14, the following is a list of all parties to the proceeding in the court whose judgment is sought to be reviewed:

1. Mario Allan Montano, Petitioner and a man naturally born in the United States.
2. Ivy Alice Wimmer, Respondent and a woman naturally born in the United States.

## **LIST OF CASES**

1. *Montano v. Montano*, No. 2012-802216-DO, 6<sup>th</sup> Mich. Cir. Ct. Judgment entered May 6, 2013.
2. *Wimmer v. Montano*, No. 2017-854298-PP, 6<sup>th</sup> Mich. Cir. Ct. Judgment entered June 20, 2017.
3. *Wimmer v. Montano*, No. 353685, Mich. Ct. App., Judgment entered July 14, 2020.

4. *Wimmer v. Montano*, No. 353753, Mich. Ct. App., Judgment entered July 14, 2020.
5. *Wimmer v. Montano*, No. 353820, Mich. Ct. App., Judgment entered July 14, 2020.
6. *Wimmer v. Montano*, Nos. 161466, 161645, Mich., Judgment entered October 5, 2020.
7. *Wimmer v. Montano*, Nos. 161471, 161666, Mich., Judgment entered October 5, 2020.
8. *Wimmer v. Montano*, Nos. 161473, 161678, Mich., Judgment entered October 5, 2020.

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Appendix C - Decision of the 6<sup>th</sup> Mich. Cir. Ct. Refusing to Issue a Ruling on Petitioner's Motion for Relief from Protective Orders and Sanctions in No. 2012-802216-DO (May 11, 2020)

Appendix D - Decision of the 6<sup>th</sup> Mich. Cir. Ct. Refusing to Issue a Ruling on Petitioner's Motion for Relief from the Support Enforcement Order issued on May 14, 2019 in No. 2012-802216-DO (May 11, 2020)

Appendix E - Decision of the 6<sup>th</sup> Mich. Cir. Ct. Refusing to Issue a Ruling on Petitioner's Second Amended Motion to Remove and Forever Bar Plaintiff's Counsel in No. 2012-802216-DO (May 20, 2020)

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**IN THE SUPREME COURT OF THE UNITED STATES**

**PETITION FOR WRIT OF CERTIORARI**

The Petitioner respectfully prays that a writ of certiorari issue to review the judgments below.

**OPINIONS BELOW**

The unpublished judgments from the Michigan Supreme Court, the highest court in Michigan, to be addressed are:

1. Decision Dismissing case Nos. 161466, 161645 and issuing a filing injunction against the Petitioner on October 5, 2020 (Appendix Q);
2. Decision Dismissing case Nos. 161471, 161666 and issuing a filing injunction against the Petitioner on October 5, 2020 (Appendix R); and
3. Decision Dismissing case Nos. 161473, 161668 and issuing a filing injunction against the Petitioner on October 5, 2020 (Appendix S).

The unpublished judgments from the Michigan Court of Appeals to be addressed are:

1. Decision to Dismiss the Case and Sanction the Petitioner in No. 353685 on July 14, 2020. (Appendix N)
2. Decision to Dismiss the Case and Sanction the Petitioner in No. 353753 on July 14, 2020. (Appendix O)
3. Decision to Dismiss the Case and Sanction the Petitioner in No. 353820 on July 14, 2020. (Appendix P)

## **JURISDICTION**

The decisions from Mich. to be reviewed were issued on October 5, 2020 and are found in Appendices Q-S. This Petition is timely filed per Rule 13. The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a)

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

“All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. **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.**” U.S. Const. Amend. XIV § 1.

## **STATEMENT OF THE CASE**

### **BACKGROUND**

Mario Allan Montano, the Petitioner, married Ivy Alice Wimmer, the Respondent, on April 20, 1996 in Ferndale, MI (Oakland County, Michigan). The Respondent initiated the case of *Montano v. Montano*<sup>1</sup> (“Divorce Case”) on October 26, 2012. A Consent Judgment of Divorce (“JOD”) and a Uniform Spousal Support Order (“USSO”) were entered with the Divorce case on May 6, 2013.

The root cause of issues in the Divorce Case is the fact that the specifications of spousal support in the JOD and the USSO conflict with each other. The Petitioner was unemployed as of November 9, 2016. A Uniform Spousal Support Order (“Modified USSO”) was entered with the Divorce Case on November 9, 2016. The entry of the Modified USSO changed the Petitioner’s 5-year payment of \$3000 per month to a permanent payment and added a lump sum of \$133,498.41 to his obligation despite being unemployed.

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<sup>1</sup> *Montano v. Montano*, 2012-802216-DO (6<sup>th</sup> Mich. Cir. Ct. March 28, 2013).

The Modified USSO is still the judgment of record in the Divorce Case. The Petitioner's efforts to correct these issues in the Divorce Case have been met with protective orders and sanctions against the Petitioner by multiple courts in the State of Michigan.

The Respondent filed a Petition for an ex parte Personal Protection Order against the Petitioner initiating the case of *Wimmer v. Montano*<sup>2</sup> ("PPO Case") on June 20, 2017. An ex parte Personal Protection Order against the Petitioner ("PPO") was issued on June 20, 2017. The Petitioner had lived 800 miles away from the Respondent for a year and 9 months when the PPO was issued. The PPO was subsequently extended four times and recently expired on November 1, 2020.

## PROCEEDINGS AND FACTS

### TRIAL COURT ACTIONS

The Honorable Kameshia D. Gant ("Trial Court") was assigned to the Divorce Case and the PPO Case on May 4, 2019. The Respondent filed one motion into the Divorce Case on August 29, 2019. That motion is the only document that the Respondent has filed into the Divorce Case since January 1, 2018. The motion the Respondent filed did not request that a surety bond be issued against the Petitioner. The Petitioner had five motions that had been entered with the Divorce Case but not yet reviewed by the Trial Court as of November 13, 2019.

The Trial Court issued a sua sponte opinion and order for the Divorce Case on November 13, 2019 (Appendix A). The following order was issued against the Petitioner, "the defendant shall be required to file a surety bond with the Oakland County Clerk's Office for costs in the amount of \$2,500 for each motion, objection or any other pleading filed with this court to cover all costs and any other recoverable expenses that may be awarded by the trial court. The surety

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<sup>2</sup> *Wimmer v. Montano*, 2017-854298-PP (6<sup>th</sup> Mich. Cir. Ct. June 20, 2017).

bond for costs shall returned to the defendant should he prevail on the filing at issue. Failure to file the surety bond for costs shall result in the proposed filing being rejected as unfiled.” (“**Divorce Bond**”).<sup>3</sup>

The Petitioner could and cannot afford a \$2,500 surety bond to file a motion, objection or pleading in the Divorce Case. The issuance of the divorce bond meant that the Petitioner had no ability to defend himself or litigate by filing new motions in the Divorce Case as of November 13, 2019. The Respondent had not requested the divorce bond order nor had the Respondent incurred any financial damage by Petitioner actions in the Divorce Case since January 1, 2018 when the divorce bond was issued *sua sponte*.

A hearing on four of the Petitioner motions in the Divorce Case entered before the divorce bond was issued was held on February 19, 2020. The Trial Court stated that the Petitioner had to purchase a \$2,500 bond for each of the hearings for the motions that had already been entered with the Divorce Case during the hearing. It is an irrefutable fact that the divorce bond says no such thing and only deals with filing. The Trial Court failed to issue any order regarding its claims on February 19, 2020. The Petitioner scheduled 2 hearings in May of 2020 regarding five of his motions entered with the Divorce Case before November 13, 2019 just to get written orders issued.

Chief Justice Bridget M. McCormack of the Michigan Supreme Court (“**MSC**”) issued an order granting a court fee waiver to the Petitioner in the case of *Wimmer v. Montano*<sup>4</sup> (“**MSC 161121**”) on March 18, 2020. The issuance of this order meant that the Chief Justice had recognized that the Petitioner was indigent and could not afford court fees.

The Trial Court issued a *sua sponte* opinion and order in the PPO Case that contained the same bond issued in the Divorce case as applied to the PPO Case (“**PPO Bond**”) on May 11,

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<sup>3</sup> Appendix A at 5 ¶ 1, highlighted.

<sup>4</sup> *Wimmer v. Montano*, 161121 (Mich. May 26, 2020).

2020.<sup>5</sup> The Respondent had not requested the PPO Bond nor had the Respondent filed a document in the PPO Case for over a year when the PPO Bond was issued. The Petitioner was effectively deprived of any ability to file a motion in the PPO Case to litigate matters or defend himself due to the issuance of the PPO Bond order.

The Trial Court disposed with oral argument on the five Petitioner motions scheduled for hearing in the Divorce Case in May of 2020. The Respondent had not filed an opposing pleading on any of the motions which were uncontested. The Trial Court issued five orders refusing to hear the motions as seen in Appendices C-G. The orders claimed that the Petitioner was required to post a \$2,500 bond despite the fact all five motions were already entered with the Divorce case.

#### *MICHIGAN COURT OF APPEALS ACTIONS*

The Petitioner filed an application for leave to appeal the Trial Court orders in Appendices C and D along with a Motion to Waive Fees with the Michigan Court of Appeals (“COA”) on May 29, 2020. The case of *Wimmer v. Montano*<sup>6</sup> (“COA 353685”) was initiated with the COA on May 29, 2020. The Motion to Waive Fees contained proof that the Petitioner had been receiving federal financial assistance under the Affordable Act a/k/a Obamacare to purchase health insurance since January 1, 2020.<sup>7</sup> The Petitioner simply wanted to get a hearing on his motions. The Respondent has not been represented by counsel and has not filed a single document into COA 353685 since the day it was initiated.

The Petitioner filed an application for leave to appeal the three Trial Court orders in Appendices E-G along with a Motion to Waive Fees with the COA on June 5, 2020. The case of *Wimmer v. Montano*<sup>8</sup> (“COA 353753”) was initiated with the COA on June 5, 2020. The

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<sup>5</sup> Appendix B at 5 ¶ 1, highlighted.

<sup>6</sup> *Wimmer v. Montano*, 353685 (Mich. Ct. App. July 14, 2020).

<sup>7</sup> All motions to waive fees by the Petitioner contained the proof of financial assistance under Obamacare.

<sup>8</sup> *Wimmer v. Montano*, 353753 (Mich. Ct. App. July 14, 2020).

Petitioner simply wanted to get a hearing on his motions. The Respondent has not been represented by counsel and has not filed a single document into COA 353753 since the day it was initiated.

Judge Elizabeth Gleicher of the COA denied the motion to waive fees in COA 353685 on June 9, 2020 (Appendix H). The Petitioner was ordered to pay the previously waived fees by June 30, 2020. The Petitioner filed an interlocutory application for leave to appeal the order denying a fee waiver in Appendix H and a motion to waive fees with the MSC on June 14, 2020. The case of *Wimmer v. Montano*<sup>9</sup> (“MSC 161466”) was initiated on June 14, 2020. The Respondent has not been represented by counsel or filed a single document into MSC 161466 since the day the case was initiated. A Notice of Filing the Interlocutory Application was entered with COA 353685 on June 14, 2020.

The Petitioner filed an application for leave to appeal the PPO Bond in Appendix B along with a Motion to Waive Fees with the COA on June 15, 2020. The case of *Wimmer v. Montano*<sup>10</sup> (“COA 353820”) was initiated with the COA on June 15, 2020. The Respondent has not been represented by counsel and has not filed a single document into COA 353820 since the day it was initiated.

Judge Gleicher issued orders denying fee waivers in COA 353753 and COA 353820 on June 16, 2020 (Appendices I-J). Judge Gleicher issued an order denying the Petitioner’s motion for reconsideration of the order denying a fee waiver in COA 353685 on June 16, 2020 (Appendix K). The Petitioner was required to pay the fees in all three cases as of June 16, 2020.

The Petitioner appealed the orders denying the fee waivers in COA 353753 and COA 353820 initiating the interlocutory application cases of *Wimmer v. Montano*<sup>11</sup> (“MSC 161471”)

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<sup>9</sup> *Wimmer v. Montano*, 161466 (Mich. October 5, 2020).

<sup>10</sup> *Wimmer v. Montano*, 353820 (Mich. Ct. App. July 14, 2020).

<sup>11</sup> *Wimmer v. Montano*, 161471 (Mich. October 5, 2020).

and *Wimmer v. Montano*<sup>12</sup> (“MSC 161473”) on June 16, 2020. The Petitioner filed motions to waive fees in both MSC cases on the same day. The Respondent has not obtained counsel or filed a single document into either case since the day they were initiated. A Notice of Filing the Interlocutory Application was entered with COA cases 353753 and 353820.

Judge Gleicher issued orders denying the Petitioner’s motions for reconsideration of the orders denying the fee waivers in COA 353753 and COA 353820 on June 23, 2020 (Appendices L-M). As of June 23, 2020, the fee waivers had been denied by the COA in COA Cases 353685, 353753 and 353820. The orders denying fee waivers in all three COA cases were not yet disposed of since they were pending on application in MSC cases 161466, 161471 and 161473. The Petitioner had filed notices of filing applications for leave to appeal the orders denying fee waiver in each of the COA cases as of June 23, 2020.

The Petitioner could not afford and had not paid the court fees in the three COA cases as of July 14, 2020. The appeals of the orders denying fee waivers were pending on application in MSC Cases 161466, 161471 and 161473 as of July 14, 2020. Chief Judge Murray issued orders dismissing COA cases 353685, 353753 and 353820 for failure to pay the court fees pursuant to MCR 7.201(B)(3) and MCR 7.216(A)(10) on July 14, 2020 (Appendices N-P). The Petitioner was sanctioned for a frivolous and vexatious appeal in the amount of \$750 pursuant to MCR 7.216(C)(1) in each case for a total of \$2,250 sanctioned. The clerk of the COA was ordered to reject all Petitioner filings in non-criminal matters until the sanctions were paid.

#### *MICHIGAN SUPREME COURT ACTIONS*

Since the Petitioner is indigent, the issuance of the three orders on July 14, 2020 means that the Petitioner has had no means to litigate or defend himself in any non-criminal matter in the

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<sup>12</sup> *Wimmer v. Montano*, 161473 (Mich. October 5, 2020).

COA since July 14, 2020. The Petitioner appealed the three orders issued and filed motions to waive fees initiating the application cases of *Wimmer v. Montano*<sup>13</sup> (“MSC 161466-645”), *Wimmer v. Montano*<sup>14</sup> (“MSC 161471-666”) and *Wimmer v. Montano*<sup>15</sup> (“MSC 161473-668”) a few days later.<sup>16</sup> The Respondent has not had counsel appear on her behalf or file a single document into any of these three cases since they were initiated. All Petitioner court fees had been conditionally waived in all MSC cases pending a decision on the motions to waive fees as of July 19, 2020.

The MSC had not ruled on any of the motions to waive fees relative to the three MSC Cases as of October 5, 2020. The MSC had not ruled on the interlocutory questions regarding the denial of fee waivers in the three associated COA cases as of October 5, 2020. Chief Justice McCormack issued three orders dismissing MSC Cases 161466-645, 161471-666 and 161473-668 based on the Petitioner not paying filing fees in the cases on October 5, 2020 (Appendices Q-S). Chief Justice McCormack issued an order instructing the Clerk not to accept any filings from the Petitioner till he paid sanctions levied in other cases (“**Filing Injunction**”). Chief Justice McCormack issued orders in all three cases stating the Petitioner would be deprived of a conditional waive fees when he files a motion to waive fees in all future cases (“**Fee Waiver Injunction**”). Each of the orders does not cite any legal authority for the orders having been issued.

Chief Justice McCormack knew that the Petitioner was indigent based on an order she had previously issued on March 18, 2020. Based on the three orders issued on October 5, 2020, Chief Justice McCormack deprived the Petitioner of any means to file pleadings to defend himself or litigate in the Michigan Supreme Court in all current and future cases.

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<sup>13</sup> *Wimmer v. Montano*, 161466, 161645 (Mich. October 5, 2020).

<sup>14</sup> *Wimmer v. Montano*, 161471, 161666 (Mich. October 5, 2020).

<sup>15</sup> *Wimmer v. Montano*, 161473, 161668 (Mich. October 5, 2020).

<sup>16</sup> The interlocutory application cases were consolidated with the newly filed cases.

## **REASONS FOR GRANTING THE PETITION**

The Petitioner has been deprived of rights in the Trial Court, COA and the MSC. The information below will show that these rights were denied based on violations by the state courts of the Petitioner's rights pursuant to U.S. Const. Amend. XIV § 1.

### **TRIAL COURT DEPRIVATION OF PETITINER RIGHTS**

The Divorce Bond issued by the Trial Court in the Divorce Case only affects new filings of Petitioner motions, pleadings and objections as seen in Appendix A. The Divorce Bond is moot and irrelevant relative to any and all filings previously entered with the Divorce Case. The Petitioner had already paid motion fees for all filings entered with the Divorce Case prior to the issuance of the Divorce Bond. The Trial Court refused to hear five Petitioner motions that had previously been entered with the Divorce Case as seen Appendices C-G. The Trial Court refused to hear the motions based on an errant claim that the Petitioner was required to file a \$2500 bond to have a hearing for each motion based on the divorce bond order.

The Petitioner had properly followed all required procedures by filing five motions and paying the required court fee for the motions pursuant to Michigan Court Rule, MCR 2.119(A) and (G) prior to the issuance of the Divorce Bond. The Petitioner had met all timing expectations for filing and scheduling of a hearing on the five contested motions<sup>17</sup> pursuant to MCR 2.119(C) and (D). The Trial Court violated the expectations for reviewing and issuing an order pursuant to MCR 2.119(A) by issuing orders refusing to review the five motions. The Trial Court deprived the Petitioner of equal protection under the laws of the State of Michigan by depriving him of his right to a hearing and orders deciding the five motions pursuant to U.S. Const. Amend. XIV § 1.

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<sup>17</sup> The Respondent did not respond to an offer to stipulate to orders necessitating the need to file motions.

The proper relief for the Trial Court's violations is a writ of mandamus instructing the Trial Court to review the five motions and issue an order deciding each of the motions.

"Motion. On motion of a party against whom a claim has been asserted in a civil action, if it appears reasonable and proper, the court may order the opposing party to file with the court clerk a bond with surety as required by the court in an amount sufficient to cover all costs and other recoverable expenses that may be awarded by the trial court, or, if the claiming party appeals, by the trial and appellate courts. The court shall determine the amount in its discretion. MCR 3.604(E) and (F) govern objections to the surety." MCR 2.109(A).

The issuance of a surety bond by any trial court in the State of Michigan requires the filing of a motion by a party requesting a surety bond be issued against an opposing party. Furthermore, the filing of such a motion by a party must be based on a claim against that party by an opposing party pursuant to MCR 2.109(A). The Trial Court in the PPO Case issued the PPO Bond against the Petitioner *sua sponte* on May 11, 2020 as seen in Appendix B.

The Trial Court DID NOT have jurisdiction or legal authority to issue the PPO Bond since the Respondent had not filed a motion pursuant to MCR 2.109(A). The Trial Court violated the Petitioner's right to equal protection under the law in MCR 2.109(A) violating U.S. Const. Amend. XIV § 1. The result is that the Petitioner has a total barrier to litigating matters or defending himself in the PPO Case.

The proper relief for Trial Court's issuance of the PPO Bond is an order setting aside the PPO Bond.

### **COA DEPRIVATION OF PETITIONER RIGHTS**

#### *DEPRIVATION OF PETITIONER'S RIGHT TO A WAIVER OF FEES*

The Petitioner filed a motion to waive fees in COA cases 353685, 353752 and 353820. Each of those motions provided irrefutable evidence that the Petitioner had been receiving federal financial assistance to purchase health care under the Affordable Care Act a/k/a Obamacare.

The Michigan Court of Appeals Internal Operating Procedure, IOP 7.219(G)-2 states, “A party may move to waive fees owing to the Court by filing a motion conforming to MCR 7.211 that is accompanied by an affidavit disclosing the reason for the inability to pay the fee. Under MCR 2.002(C), receipt of public assistance requires the suspension of the fees.”

The Petitioner had properly filed a motion to waive fees and affidavit as required pursuant to IOP 7.219(G)-2 in all three COA cases at the time of case initiation.

“For purposes of this rule, means-tested public assistance includes but is not limited to any other federal, state, or locally administered means-tested income or benefit.” MCR 2.002(C)(6).

Federal assistance to purchase healthcare under Obamacare is based on the income of those who obtain health insurance via Obamacare. The federal assistance received by the Petitioner meets the expectations in MCR 2.002(C)(6). The COA was required to grant the Petitioner a fee waiver in COA Cases 353685, 353753 and 353820. The Petitioner was entitled to a fee waiver in all three cases.

Judge Gleicher’s denials of the fee waivers and the motions for reconsideration of the orders denying fee waivers in Appendices H-M deprived the Petitioner of his right to a fee waiver. Judge Gleicher deprived the Petitioner of equal protection under the law pursuant to U.S. Const. Amend. XIV § 1.

The proper relief for the deprivation of the Petitioner’s right to a fee waiver is an order setting aside all of the orders issued by Judge Gleicher denying fee waivers and the entry of a new order in each case granting the Petitioner a fee waiver.

#### *DEPRIVATION OF PROPERTY AND EQUAL PROTECTION UNDER THE LAW*

The Petitioner had filed interlocutory applications against the orders denying the fee waiver initiating MSC Cases 161466, 161471 and 161473 as of July 14, 2020. The COA was aware that the interlocutor applications had been filed based on the record of the related COA cases.

“Discretionary Review. The Supreme Court may review by appeal a case pending in the Court of Appeals or after decision by the Court of Appeals. (see MCR 7.305) ” MCR 7.303(B)(1).

The MSC had discretionary review jurisdiction over the COA’s orders denying a fee waiver as of July 14, 2020 pursuant to MCR 7.303(B)(1). The MSC had not reviewed any of the applications or issued any orders in the three cases as of July 14, 2020.

“Appeal After Court of Appeals Decision. If leave to appeal is denied after a decision of the Court of Appeals, the Court of Appeals decision becomes the final adjudication and may be enforced in accordance with its terms. If leave to appeal is granted, jurisdiction over the case is vested in the Supreme Court, and subchapter 7.300 applies.” MCR 7.305(H)(3).

The orders denying the fee waivers issued by Judge Gleicher were not final and could not be enforced by the COA because the MSC had jurisdiction over the orders pursuant to MCR 7.303(B)(1) and MCR 7.305(H)(3).

Chief Judge Murray issued 3 orders dismissing COA cases 353685, 353753 and 353820 because the Petitioner had not paid the court fees on July 14, 2020 (Appendices N-P). Chief Judge Murray enforced the orders denying fee waivers in violation of jurisdiction in MCR 7.303(B)(1) and MCR 7.305(H)(3). Chief Judge Murray DID NOT have jurisdiction to issue the three orders on July 14, 2020.

Each of the orders issued sanctions against the Petitioner in the amount of \$750 pursuant to MCR 7.216(C)(1). The Respondent had not filed a single document into each of the three COA cases since their initiation and had not experienced any financial damages.

“Damages may not exceed actual damages and expenses incurred by the opposing party because of the vexatious appeal or proceeding, including reasonable attorney fees, and punitive damages in an added amount not exceeding the actual damages.” MCR 7.216(C)(2).

Even if Chief Judge Murray had jurisdiction to issue the orders dismissing the cases, he had no basis for issuing sanctions in the amount of \$750 since the Respondent did not suffer any

financial damage pursuant to MCR 7.216(C)(2). The criteria in MCR 7.216(C)(1)(a) or (b) to claim a vexatious proceeding were not met. Under MCR 7.211(C)(8), the COA has no jurisdiction to issue sanctions in a dismissed case.

Each of the orders states that the Clerk must reject all Petitioner filings until the sanctions are paid pursuant to MCR 7.216(A)(10). MCR 8.119(C) provides the only times when a Clerk may reject a litigant's filings. The payment of a sanction to the clerk is not a basis for rejecting filings pursuant to MCR 8.119(C). MCR 7.216(A)(10) provides general powers to issue orders to the COA. The legal expectations in the specific MCR 8.119(C) conflict with the general authority in MCR 7.216(A)(10) relative to the Clerk rejecting filings based on a litigant not paying a sanction.

Under the doctrine of *In Pari Materia*, the more specific authority governs over the more general authority when there is a conflict. See *Reynolds v Hasbany MD PLLC*, 323 Mich App 426, \_\_\_ (2018) (finding that where two statutes contain jurisdictional conflict, the more specific statute must be interpreted as intending to constitute an exception to the more general statute). MCR 8.119(C) governs filing rejection over MCR 7.216(A)(10). Even if Chief Judge Murray had jurisdiction to dismiss the three cases, he DID NOT have jurisdiction to issue an order for the Clerk to reject Petitioner filings pursuant to MCR 8.119(C).

The Petitioner has not paid the \$2,250 in sanctions to the Clerk of the COA. Chief Judge Murray's issuance of the orders in COA cases 353685, 353753 and 353820 deprived the Petitioner of equal protection under the law pursuant to U.S. Const. Amend. XIV § 1 as well as depriving the Petitioner of proper under U.S. Const. Amend. V.

The proper relief for the COA's violation of the Petitioner's rights is to set aside the orders issued by Chief Judge Murray on July 14, 2020.

## **MICHIGAN SUPREME COURT DEPRIVATION OF PETITIONER RIGHTS**

The MSC failed to issue an order regarding the Petitioner's two motions to waive fees in each of MSC cases 161466-645, 161471-666 and 161473-668. Each of the motions to waive fees provided irrefutable proof that the Petitioner had been receiving federal financial assistance under Obamacare since January 1, 2020.

The Internal Operating Procedures of the Michigan Supreme Court, IOP 7.300 do not directly address the criteria for granting a fee waiver in a case.

"Except where the Supreme Court operates differently than the Court of Appeals by statute or court rule, the Court of Appeals IOPs may be consulted to determine Supreme Court practice and procedure on matters not specifically addressed in these IOPs" IOP 7.300 at 2.

Pursuant to IOP 7.219(G)-2 and MCR 2.002(C)(6), the MSC would have been required to grant the Petitioner a fee waiver in each case had the motions been reviewed. Based on this same premise, the MSC would have been compelled to reverse the COA orders denying fee waivers in the interlocutory application MSC cases 161466, 161471 and 161473.

The Petitioner's fees had been conditionally waived in MSC cases 161466-645, 161471-666 and 161473-668 as of October 5, 2020. The Petitioner had not paid any fees into those cases as of October 5, 2020. A decision on the motions to waive fees by the MSC was pending on October 5, 2020.

"A party who is unable to pay a filing fee may ask the Court to waive the fee by filing a motion and an affidavit disclosing the reason for that inability. There is no fee for filing the motion but, if the motion is denied, the party must pay the fee for the underlying filing." MCR 7.319(C).

As of October 5, 2020, the Petitioner had no obligation to pay any fees since his motions to waive fees had not been denied by the MSC pursuant to MCR 7.319(C).

"A motion may not be decided, or an order entered by the Court unless all required documents have been filed and the requisite fees have been paid." MCR 7.315(D).

Since the MSC had not issued an order on the motion to waive fees and the Petitioner had paid no fees, the MSC had no jurisdiction to issue an order in any case pursuant to MCR 7.315(D) on October 5, 2020. All three MSC cases were uncontested by the Respondent as of October 5, 2020. Chief Judge McCormack issued orders dismissing all three cases, issuing a filing injunction and a fee waiver injunction in each case on October 5, 2020 (Appendices Q-S). The orders state no legal authority for their issuance.

Chief Justice McCormack had absolutely no jurisdiction to issue a filing or fee waiver injunction in all 3 cases. The basis for dismissing the cases was that the Petitioner had failed to pay filing fees. The Petitioner had no obligation to pay filing fees. The MSC failed to issue orders to grant a fee waiver to the Petitioner in each case. Chief Justice McCormack did not have jurisdiction to issue any of the three orders. Chief Justice McCormack's orders deprived the Petitioner of equal protection under the law pursuant to U.S. Const. Amend. XIV § 1.

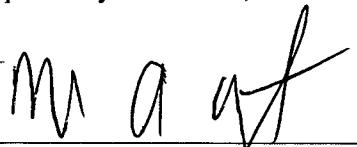
The proper relief to these issues is to set aside all three orders presented in Appendices Q-S, re-open the cases and to enter an order granting a fee waiver in each of the cases.

## **CONCLUSION**

The Petitioner has been deprived of his rights to litigate and defend himself in his Michigan Trial Court Divorce and PPO Cases, and all current and future cases in the Michigan Court of Appeals and Michigan Supreme Court by Court violations of his rights under the U.S Constitution. The Petitioner was deprived of these rights in cases that were uncontested by the Respondent. The Petitioner has been egregiously harmed and is a victim of a travesty of injustice by the Michigan Court system without basis or merit.

The petition for a writ of certiorari should be granted. If this petition is not challenged, relief should simply be granted by this Court via summary disposition pursuant to Rule 16.1.

Respectfully submitted,



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Mario Allan Montano, Petitioner

Date: November 8, 2020