

20-6491
No. _____

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

IN RE MARIO ALLAN MONTANO

Petitioner

On Petition for a Writ of Mandamus to the
Michigan Supreme Court

PETITION FOR A WRIT OF MANDAMUS

MARIO ALLAN MONTANO, Petitioner

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November 14, 2020

QUESTIONS PRESENTED

The Michigan Supreme Court failed to rule on the Petitioner's motions to waive fees in multiple cases before the Court. Based on this failure, the Michigan Supreme Court issued multiple orders against the Petitioner in uncontested cases without jurisdiction to do so.

QUESTION I

Did Chief Justice Bridget M. McCormack fail to rule on multiple Petitioner motions to waive fees in multiple cases in the Michigan Supreme Court?

QUESTION II

Did Chief Justice McCormack issue multiple orders dismissing uncontested Petitioner cases without jurisdiction based on her failure to issue orders regarding Petitioner motions to waive fees?

QUESTION III

Did the Michigan Supreme Court violate jurisdiction by issuing orders in two uncontested Petitioner cases on May 26, 2020 and August 13, 2020 dismissing the cases and sanctioning the Petitioner without jurisdiction based on Chief Justice McCormack's failure to review and issue orders on Petitioner motions to waive fees?

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. The Respondent is the Michigan Supreme Court.

LIST OF CASES

1. *Wimmer v. Montano*, No. 161152, Michigan Supreme Court, Judgment entered May 26, 2020.
2. *Montano v. Michigan Court of Appeals*, No. 161299, Michigan Supreme Court, Judgment entered August 13, 2020.
3. *Wimmer v. Montano*, Nos. 161466, 161645, Michigan Supreme Court, Judgment entered October 5, 2020.
4. *Wimmer v. Montano*, Nos. 161471, 161666, Michigan Supreme Court, Judgment entered October 5, 2020.
5. *Wimmer v. Montano*, Nos. 161473, 161668, Michigan Supreme Court, Judgment entered October 5, 2020.
6. *In Re Montano*, Nos. 161475, 161670, Michigan Supreme Court, Judgment entered October 5, 2020.
7. *In Re Montano*, No. 161499, Michigan Supreme Court, Judgment entered October 5, 2020.
8. *In Re Montano*, Nos. 161622, 161848, Michigan Supreme Court, Judgment entered October 5, 2020.

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(October 5, 2020)

Appendix F - Decision of the Michigan Supreme Court Dismissing Case Nos. 161475, 161670
(October 5, 2020)

Appendix G - Decision of the Michigan Supreme Court Dismissing Case No. 161499, (October
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Appendix H - Decision of the Michigan Supreme Court Dismissing the Case Nos. 161622,
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IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR A WRIT OF MANDAMUS

The Petitioner respectfully prays that a writ of mandamus be issued with regard to the judgments presented below:

OPINIONS BELOW

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

1. Decision Dismissing case No. 161152 issued on May 26, 2020 (Appendix A),
2. Decision Dismissing case No. 161299 issued on August 13, 2020 (Appendix B),
3. Decision Dismissing case Nos. 161466, 161645 issued on October 5, 2020 (Appendix C),
4. Decision Dismissing case Nos. 161471, 161666 issued on October 5, 2020 (Appendix D),
5. Decision Dismissing case Nos. 161473, 161668 issued on October 5, 2020 (Appendix E),
6. Decision Dismissing case Nos. 161475, 161670 issued on October 5, 2020 (Appendix F),
7. Decision Dismissing case No. 161499 issued on October 5, 2020 (Appendix G) and,
8. Decision Dismissing case Nos. 161622, 161848 issued on October 5, 2020 (Appendix H).

JURISDICTION

The Petitioner seeks the issuance of extraordinary writs from this Court based on the actions or lack of action of the Michigan Supreme Court, the highest state court in Michigan. The writs sought deal with Michigan Supreme Court (“MSC”) orders issued from May 26 – October 5, 2020 (Appendices A-H).

The jurisdiction of the MSC as specified in Michigan Court Rules, MCR 7.303(A) and MCR 7.303(B) provides no means for the Petitioner to seek extraordinary writs against the MSC. There is no other adequate means that the Petitioner is aware outside of this action to seek extraordinary writs relative to the Michigan Supreme Court.

This Court has discretionary review jurisdiction to issue extraordinary writs and decide this matter pursuant to 28 U.S.C. § 1651(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

“No person shall be denied the equal protection of the laws; nor shall any person be denied the enjoyment of his civil or political rights or be discriminated against in the exercise thereof because of religion, race, color or national origin. The legislature shall implement this section by appropriate legislation.” Mich. Const. Art. I § 2

“No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. U.S. Const. Amend. V

“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

“A person who is unable to pay a filing fee may ask the supreme court to waive the fee by filing a motion and an affidavit disclosing the reason for that inability.” MCL 600.244(2)

STATEMENT OF THE CASE

PROCEEDINGS AND FINDINGS OF FACT

The Honorable Kameshia D. Gant (“**Judge Gant**”) was assigned to the case of *Montano v. Montano*¹ (“**12-802216-DO**”) and *Wimmer v. Montano*² (“**17-854298-PP**”) on May 4, 2019.

Judge Gant issued an order denying an uncontested Petitioner motion in 17-854298-PP on September 4, 2019. The Petitioner filed a claim of appeal of the order denying the motion with the Michigan Court of Appeals (“**COA**”) on September 20, 2019. The case of *Wimmer v. Montano*³ (“**COA 350711**”) was initiated on September 20, 2019. Appellant’s Brief was entered with COA 350711 on November 13, 2019. COA 350711 has been uncontested with the opposing party failing to file a single document into the case since the day the case was initiated. Appellant’s Motion for Peremptory Reversal was entered with COA 350711 on February 8, 2020.

Petitioner’s Motion to Waive Fees was entered with the case of *Wimmer v. Montano*⁴ (“**MSC 161121**”) on March 12, 2020. The Motion to Waive Fees provided irrefutable evidence showing that the Petitioner had been receiving federal financial assistance to purchase health insurance under the Affordable Care Act a/k/a Obamacare since January 1, 2020. Chief Justice McCormack of the MSC issued an order granting the Petitioner a fee waiver in MSC 161121 on March 18, 2020.

An order denying the Petitioner Motion for Peremptory reversal was entered with COA 350711 on March 18, 2020. The Petitioner filed an application for leave to appeal the order along with a motion to waive fees showing that he received benefit under Obamacare with the MSC on March 22, 2020. The Petitioner’s fees were conditionally waived pending the outcome of the

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

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

³ *Wimmer v. Montano*, 350711 (Mich. Ct. App.).

⁴ *Wimmer v. Montano*, 161121 (Mich. May 26, 2020).

motion to waive fees. The case of *Wimmer v. Montano*⁵ (“MSC 161152”) was initiated on March 22, 2020. MSC 161152 has been uncontested since the day it was initiated. Chief Justice McCormack has failed to review or issue an order on the motion to waive fees in MSC 161152 since the day the case was initiated.

The Petitioner filed a Complaint for Writ of Superintending Control against Judge Gant with the COA on April 9, 2020. The case of *In Re Montano*⁶ (“COA 353392”) was initiated on April 9, 2020. COA 353392 has been uncontested since the day the case was initiated.

The Petitioner filed a Complaint for Writ of Superintending Control against the Michigan Court of Appeals and a Motion to Waive Fees showing that he had been receiving benefit under Obamacare with the MSC on May 5, 2020. The Petitioner’s fees were conditionally waived pending the outcome of the motion to waive fees. The case of *Montano v. Michigan Court of Appeals*⁷ (“MSC 161299”) was initiated on May 5, 2020. MSC 161299 has been uncontested since the day it was initiated. Chief Justice McCormack has failed to review or issue an order on the motion to waive fees in MSC 161299 since the day the case was initiated.

Judge Gant issued a sua sponte opinion and order against the Petitioner in 17-854298-PP on May 11, 2020. Judge Gant issued two orders in case 12-802216-DO refusing to review and issue a decision on two of the Petitioner motions on May 11, 2020. Judge Gant issued three orders in case 12-802216-DO refusing to review and issue a decision on three of the Petitioner’s motions on May 20, 2020.

The MSC issued an order dismissing MSC 161152 on May 26, 2020. (Appendix A). The order sanctioned the Petitioner \$500 for a vexatious and frivolous pleading pursuant to MCR

⁵ *Wimmer v. Montano*, 161152 (Mich. May 26, 2020).

⁶ *In Re Montano*, 353392 (Mich. Ct. App. June 16, 2020).

⁷ *Montano v. Michigan Court of Appeals*, 161299 (Mich. August 13, 2020).

7.316(C) payable to the clerk of the MSC. The Petitioner paid the \$500 sanction to the Clerk on May 27, 2020.

The Petitioner filed an application for leave to appeal the two orders issued by Judge Gant in 12-802216-DO on May 11, 2020 and a motion to waive fees showing the benefit under Obamacare with the COA on May 29, 2020. The case of *Wimmer v. Montano*⁸ (“COA 353685”) was initiated on May 29, 2020. COA 353685 has been uncontested since the day it was initiated.

The Petitioner filed a motion to dismiss MSC 161299 on June 3, 2020.

The Petitioner filed an application for leave to appeal the three orders issued by Judge Gant in 12-802216-DO on May 20, 2020 and a motion to waive fees showing the benefit under Obamacare with the COA on June 5, 2020. The case of *Wimmer v. Montano*⁹ (“COA 353753”) was initiated on June 5, 2020. COA 353753 has been uncontested since the day it was initiated.

An order denying the Petitioner’s motion to waive fees was entered with COA 353685 on June 9, 2020.

The Petitioner filed a Complaint for Superintending Control against Judge Gant and a motion to waive fees showing the benefit under Obamacare with the COA on June 14, 2020. The case of *In Re Montano*¹⁰ (“COA 353802”) was initiated on June 14, 2020. COA 353802 has been uncontested since the day it was initiated.

The Petitioner filed an application for leave to appeal the opinion and order issued by Judge Gant in 170854298-PP on May 11, 2020 and a motion to waive fees showing the benefit under Obamacare with the COA on June 15, 2020. The case of *Wimmer v. Montano*¹¹ (“COA 353820”) was initiated on June 15, 2020. COA 353820 has been uncontested since the day it was initiated.

⁸ *Wimmer v. Montano*, 353685 (Mich. Ct. App. July 14, 2020).

⁹ *Wimmer v. Montano*, 353753 (Mich. Ct. App. July 14, 2020).

¹⁰ *In Re. Montano*, 353802 (Mich. Ct. App. July 14, 2020).

¹¹ *Wimmer v. Montano*, 353820 (Mich. Ct. App. July 14, 2020).

The Petitioner filed an interlocutory application for leave to appeal the order denying a fee waiver in COA 353685 and a motion to waive fees showing the benefit under Obamacare with the MSC on June 15, 2020. The Petitioner's fees were conditionally waived pending the outcome of the motion to waive fees. The case of *Wimmer v. Montano*¹² ("MSC 161466") was initiated on June 15, 2020. MSC 161466 has been uncontested since the day it was initiated. Chief Justice McCormack has failed to review or issue an order on the motion to waive fees in MSC 161466 since the day the case was initiated.

The COA issued orders denying the fee waivers in COA cases 353753, 353802 and 353820 on June 16, 2020. The COA issued an order dismissing COA 353392 on June 16, 2020.

The Petitioner filed an interlocutory application for leave to appeal the order denying a fee waiver in COA 353753 and a motion to waive fees showing the benefit under Obamacare with the MSC on June 16, 2020. The Petitioner's fees were conditionally waived pending the outcome of the motion to waive fees. The case of *Wimmer v. Montano*¹³ ("MSC 161471") was initiated on June 16, 2020. MSC 161471 has been uncontested since the day it was initiated. Chief Justice McCormack has failed to review or issue an order on the motion to waive fees in MSC 161471 since the day the case was initiated.

The Petitioner filed an interlocutory application for leave to appeal the order denying a fee waiver in COA 353820 and a motion to waive fees showing the benefit under Obamacare with the MSC on June 16, 2020. The Petitioner's fees were conditionally waived pending the outcome of the motion to waive fees. The case of *Wimmer v. Montano*¹⁴ ("MSC 161473") was initiated on June 16, 2020. MSC 161473 has been uncontested since the day it was initiated. Chief Justice

¹² *Wimmer v. Montano*, 161466 (Mich. October 5, 2020).

¹³ *Wimmer v. Montano*, 161471 (Mich. October 5, 2020).

¹⁴ *Wimmer v. Montano*, 161473 (Mich. October 5, 2020).

McCormack has failed to review or issue an order on the motion to waive fees in MSC 161473 since the day the case was initiated.

The Petitioner filed an interlocutory application for leave to appeal the order denying a fee waiver in COA 353802 and a motion to waive fees showing the benefit under Obamacare with the MSC on June 16, 2020. The Petitioner's fees were conditionally waived pending the outcome of the motion to waive fees. The case of *In Re Montano*¹⁵ ("MSC 161475") was initiated on June 16, 2020. MSC 161475 has been uncontested since the day it was initiated. Chief Justice McCormack has failed to review or issue an order on the motion to waive fees in MSC 161475 since the day the case was initiated.

The Petitioner filed an application for leave to appeal the order dismissing the case in COA 353392 and a motion to waive fees showing the benefit under Obamacare with the MSC on June 19, 2020. The Petitioner's fees were conditionally waived pending the outcome of the motion to waive fees. The case of *In Re Montano*¹⁶ ("MSC 161499") was initiated on June 19, 2020. MSC 161499 has been uncontested since the day it was initiated. Chief Justice McCormack has failed to review or issue an order on the motion to waive fees in MSC 161499 since the day the case was initiated.

The Petitioner filed a Complaint for Superintending Control against Judge Gant and a motion to waive fees showing the benefit under Obamacare with the COA on June 25, 2020. The case of *In Re Montano*¹⁷ ("COA 353957") was initiated on June 25, 2020. COA 353957 has been uncontested since the day it was initiated.

¹⁵ *In Re Montano*, 161475 (Mich. October 5, 2020).

¹⁶ *In Re Montano*, 161499 (Mich. October 5, 2020).

¹⁷ *In Re Montano*, 353957 (Mich. Ct. App. August 11, 2020).

The COA issued an order denying a fee waiver in COA 353957 on July 14, 2020. The COA issued orders dismissing COA cases 353685, 353753, 353802 and 353820 based on the Petitioner not paying the court fees on July 14, 2020. The interlocutory applications with the MSC regarding the fee waivers in the four cases had not been addressed when these four orders were issued.

The Petitioner filed an interlocutory application for leave to appeal the order denying a fee waiver in COA 353957 and a motion to waive fees showing the benefit under Obamacare with the MSC on July 15, 2020. The Petitioner's fees were conditionally waived pending the outcome of the motion to waive fees. The case of *In Re Montano*¹⁸ ("MSC 161622") was initiated on July 15, 2020. MSC 161622 has been uncontested since the day it was initiated. Chief Justice McCormack has failed to review or issue an order on the motion to waive fees in MSC 161622 since the day the case was initiated.

The Petitioner filed an application for leave to appeal the order dismissing the case in COA 353685 and a motion to waive fees showing the benefit under Obamacare with the MSC on July 17, 2020. The Petitioner's fees were conditionally waived pending the outcome of the motion to waive fees. The case of *Wimmer v. Montano*¹⁹ ("MSC 161466-645") was initiated on July 17, 2020. MSC 161466-645 has been uncontested since the day it was initiated. Chief Justice McCormack has failed to review or issue an order on the motion to waive fees in MSC 161466-645 since the day the case was initiated.

The Petitioner filed an application for leave to appeal the order dismissing the case in COA 353753 and a motion to waive fees showing the benefit under Obamacare with the MSC on July 17, 2020. The Petitioner's fees were conditionally waived pending the outcome of the motion to

¹⁸ *In Re Montano*, 161622 (Mich. October 5, 2020).

¹⁹ *Wimmer v. Montano*, 161466, 161645 (Mich. October 5, 2020).

waive fees. The case of *Wimmer v. Montano*²⁰ (“MSC 161471-666”) was initiated on July 17, 2020. MSC 161471-666 has been uncontested since the day it was initiated. Chief Justice McCormack has failed to review or issue an order on the motion to waive fees in MSC 161471-666 since the day the case was initiated.

The Petitioner filed an application for leave to appeal the order dismissing the case in COA 353820 and a motion to waive fees showing the benefit under Obamacare with the MSC on July 17, 2020. The Petitioner’s fees were conditionally waived pending the outcome of the motion to waive fees. The case of *Wimmer v. Montano*²¹ (“MSC 161473-668”) was initiated on July 17, 2020. MSC 161473-668 has been uncontested since the day it was initiated. Chief Justice McCormack has failed to review or issue an order on the motion to waive fees in MSC 161473-668 since the day the case was initiated.

The Petitioner filed an application for leave to appeal the order dismissing the case in COA 353802 and a motion to waive fees showing the benefit under Obamacare with the MSC on July 19, 2020. The Petitioner’s fees were conditionally waived pending the outcome of the motion to waive fees. The case of *In Re Montano*²² (“MSC 161475-670”) was initiated on July 19, 2020. MSC 161475-670 has been uncontested since the day it was initiated. Chief Justice McCormack has failed to review or issue an order on the motion to waive fees in MSC 161475-670 since the day the case was initiated.

The COA issued an order dismissing COA 353957 based on the Petitioner not paying the court fees on August 11, 2020. The interlocutory application in MSC 161622 regarding the order denying the fee waiver had not yet been decided when the COA issued this order.

²⁰ *Wimmer v. Montano*, 161471, 161666 (Mich. October 5, 2020).

²¹ *Wimmer v. Montano*, 161473, 161668 (Mich. October 5, 2020).

²² *In Re. Montano*, 161475, 161670 (Mich. October 5, 2020).

The Petitioner filed an application for leave to appeal the order dismissing the case in COA 353957 and a motion to waive fees showing the benefit under Obamacare with the MSC on August 11, 2020. The Petitioner's fees were conditionally waived pending the outcome of the motion to waive fees. The case of *In Re Montano*²³ ("MSC 161622-848") was initiated on August 11, 2020. MSC 161622-848 has been uncontested since the day it was initiated. Chief Justice McCormack has failed to review or issue an order on the motion to waive fees in MSC 161622-848 since the day the case was initiated.

The MSC issued an order dismissing MSC 161299 on August 13, 2020 (Appendix B). The order sanctioned the Petitioner \$1000 payable to the Clerk of the MSC for a vexatious and frivolous pleading pursuant to MCR 7.316(C). The order stated that the Clerk was to reject all Petitioner filings in non-criminal matters until the sanction was paid ("**Filing Injunction**"). The order stated that the Petitioner was required to pay fees upfront in all cases eliminating conditionally waived fees associated with filing a motion to waive fees ("**Fee Waiver Injunction**"). The Petitioner cannot afford and has not paid the \$1000 sanction to date. The Petitioner is totally blocked from defending himself or litigating in the MSC since he cannot afford the \$1000 sanctions, or the court fees as affirmed by Chief Justice McCormack on March 18, 2020.

Chief Justice McCormack issued six orders dismissing MSC Cases 161466-645, 161471-666, 161473-668, 161475-670, 161499, and 161622-848 for the Petitioner's failure to pay court fees on October 5, 2020 (Appendices C-H). The Court fees in all six cases had been conditionally waived pending review of the motion to waive fees in all six cases when Chief Justice McCormack issued the orders. Each order contains a filing injunction requiring the Clerk to reject all Petitioner

²³ *In Re. Montano*, 161622, 161848 (Mich. October 5, 2020).

filings until sanctions in MSC 161152 and 161299 are paid. There was no legal authority provided in all six orders to justify the orders issued.

SUMMARY OF THE FACTS

MSC cases 161152, 161299, 161466-645, 161471-666, 161473-668, 161475-670, 161499, and 161622-848 (“**the eight MSC cases**”) were all uncontested (Appendices A-H). The motions to waive fees in the eight MSC cases contained irrefutable proof that the Petitioner was receiving federal financial benefit under Obamacare. The court fees for the eight MSC cases have been conditionally waived since the day the cases were initiated. Chief Justice McCormack failed to review or issue an order regarding the motion to waive fees in the eight MSC cases.

The MSC issued sanctions against the Petitioner payable to the clerk for a vexatious and frivolous pleading pursuant to MCR 7.316(C) in MSC 161152 and MSC 161299 (Appendices A-B). The Petitioner has paid the \$500 sanction issued in MSC 161152. The Petitioner has not paid the \$1000 sanction in MSC 161299. A filing injunction and a fee waiver injunction were issued without any legal authority justification in MSC 161299 (Appendix B).

The court fees were conditionally waived in MSC Cases 161466-645, 161471-666, 161473-668, 161475-670, 161499, and 161622-848 (“**the six MSC cases**”) as of October 5, 2020. Chief Justice McCormack issued orders in each of the six MSC cases for the Petitioner’s failure to pay court fees on October 5, 2020 (Appendices C-H). A filing injunction was issued in all six MSC cases. No legal authority was provided to justify any of the orders issued in all six cases.

REQUESTED RELIEF

The Petitioner, MARIO ALLAN MONTANO respectfully requests this Honorable Court to:

1. Enter an order requiring the Respondent to issue orders setting aside the orders in Appendices A-H.
2. Enter an order requiring the Respondent to re-open all eight cases closed based on the orders in Appendices A-H.
3. Enter an order requiring the Respondent to issue orders to grant the Petitioner a fee waiver in all eight cases associated with the orders in Appendices A-H.
4. Enter an order requiring the Respondent to reimburse the Petitioner \$500 for sanctions that he has paid in MSC 161152.

REASONS FOR GRANTING THE PETITION

The result of the Respondent's actions was the dismissal of eight uncontested Petitioner cases, sanctions totaling \$1,500, a filing injunction and a fee waiver injunction. As a result of these orders the Petitioner has no ability to defend or litigate any existing or new matter in the Respondent's court. The orders issued against the Petitioner were without merit and due to a failure of the Respondent to take proper actions in all eight uncontested cases as will be seen below.

NO BASIS OR JURISDICTION TO ISSUE SANCTIONS

The Respondent issued sanctions of \$500 and \$1000 payable to the Clerk against the Petitioner in MSC Cases 161152 and 161299 pursuant to MCR 7.316(C) (Appendices A-B). The Petitioner paid \$500 to the Clerk for the sanctions in MSC 161152. Both cases were uncontested by the opposing party.

“The Court may, on its own initiative or the motion of any party filed before a case is placed on a session calendar, dismiss an appeal, assess actual and punitive damages, or take other disciplinary action when it determines that an appeal or original proceeding was vexatious because

the matter was filed for purposes of hindrance or delay or is not reasonably well-grounded in fact or warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; or” MCR 7.316(C)(1)(a)

a pleading, motion, argument, brief, document, or record filed in the case or any testimony presented in the case was grossly lacking in the requirements of propriety, violated court rules, or grossly disregarded the requirements of a fair presentation of the issues to the Court.” MCR 7.316(C)(1)(b).

The orders in Appendices A-B fail to identify any facts showing that the uncontested pleadings in both cases met the expectations in MCR 7.316(C)(1) to justify a claim that the pleadings were vexatious. Furthermore, the Respondent dismissed the cases and did not review the pleadings to make such an assessment. There was absolutely no basis for ordering sanctions.

“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 7.316(C)(2).

The opposing party did not incur any actual damages since they did not contest either case. The Respondent had no basis to issue sanctions in any amount in either case against the Petitioner pursuant to MCR 7.316(C)(2).

The grounds in MCR 7.316(C) were not met and the Respondent had no basis in merit or jurisdiction to issue the sanctions against the Petitioner shown in Appendices A-B. The Respondent deprived the Petitioner of \$1,500 without any merit under the color of Michigan state law. The Respondent deprived the Petitioner of his rights in Mich. Const. Art. I § 2, U.S. Const. Amend. V and U.S. Const. Amend. XIV § 1 by issuing sanctions in the orders found in Appendices A-B.

NO BASIS OR JURISDICTION TO ISSUE A FILING INJUNCTION

The Respondent issued orders in all eight cases stating that the Clerk of the Court was required to reject all Petitioner filings until sanctions were paid (“**Filing Injunction**”) (Appendices A-H). All eight orders provide no legal authority to justify issuing such an order.

“**Filing of Documents and Other Materials.** The clerk of the court shall process and maintain documents filed with the court as prescribed by Michigan Court Rules and the Michigan Trial Court Records Management Standards and all filed documents must be file stamped in accordance with these standards. The clerk of the court may only reject documents that do not comply with MCR 1.109(D)(1) and (2), are not signed in accordance with MCR 1.109(E), or are not accompanied by a required filing fee or a request for fee waiver, unless already waived or suspended by court order.” MCR 8.119(C).

MCR 8.119(C) does not provide authority for the clerk of the court to reject litigant filings for failure to pay a sanction. The filing injunction order in all eight cases by the Respondent violates Michigan state law pursuant to MCR 8.119(C). The Respondent deprived the Petitioner of his rights in Mich. Const. Art. I § 2, and U.S. Const. Amend. XIV § 1 by issuing filing injunctions in the orders found in Appendices A-H.

NO BASIS OR JURISDICTION TO GRANT A FEE WAIVER INJUNCTION

The Respondent issued the following order in MSC 161299, “We further direct the Clerk of this Court not to accept any documents from the plaintiff that require a fee unless the plaintiff pays the fee at the time of submission.” (“**Fee Waiver Injunction**”). MCL 600.244(2) provides the statutory right for a litigant unable to afford filing fees to petition the Respondent for a waiver. Chief Justice McCormack recognized that the Petitioner was unable to afford court fees by granting a fee waiver to the Petitioner in MSC 161121 on March 18, 2020. The issuance of the Fee Waiver Injunction eliminates the Petitioner’s ability to litigate in the MSC since he cannot afford to pay filing fees up front.

“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).

The Respondent’s Fee Waiver Injunction violates MCR 7.319(C). The Respondent stated no legal authority providing any authority by which to supersede MCR 7.319(C). The Respondent deprived the Petitioner of his rights in Mich. Const. Art. I § 2, and U.S. Const. Amend. XIV § 1 by issuing the fee waiver injunction found in Appendix B.

NO JURISDICTION TO ISSUE EIGHT ORDERS

The fees in all eight cases shown in Appendices A-H have been conditionally waived pending a review and order on the motions to waive fees since the day the cases were initiated pursuant to MCR 7.319(C). Chief Justice McCormack has failed to review and issue any orders on the motions to waive fees since the day the cases were initiated. The issuance of all eight orders dismissed the respective cases.

“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).

The fees had not been paid or a fee waiver granted in all eight cases when the Respondent issued the orders. The Respondent did not have jurisdiction to issue the orders in Appendices A-H pursuant to MCR 7.315(D). The Respondent did not have jurisdiction to dismiss all eight cases. The Respondent deprived the Petitioner of his rights in Mich. Const. Art. I § 2, and U.S. Const. Amend. XIV § 1 by issuing all orders dismissing cases in Appendices A-H.

THE PETITIONER IS ENTITLED TO A FEE WAIVER IN ALL CASES

The Petitioner filed a motion to waive fees in MSC 161121 that showed he received benefit under Obamacare. Chief Justice McCormack issued an order granting a fee waiver in MSC 161121 on March 18, 2020.

The Respondent provides internal operating procedures (“IOP”) further refining court rules. The IOPs of the Respondent do not address guidelines for granting fee waivers.

“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.

The Respondent may consult the COA IOPs to determine a procedure for granting fee waivers in cases.

“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.” IOP 7.219(G)-2.

The COA IOP 7.219(G)-2 applies to the COA and MSC pursuant to IOP 7.300. The Respondent is required to grant a fee waiver if the Petitioner shows the receipt of public assistance pursuant to MCR 2.002(C). All motions to waive fees filed by the Petitioner with the Respondent showed that he was a recipient of public assistance under Obamacare. Federal assistance under Obamacare is determined based on an individual’s income.

“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).

The Petitioner met the expectations in MCR 2.002(C)(6) based on receiving financial benefit under Obamacare. The Respondent was required to grant the Petitioner a fee waiver in all eight cases pursuant to IOP 7.219(G)-2 and IOP 7.300. The Respondent failed to review and even issue an order regarding the motions to waive fees. The Respondent deprived the Petitioner of his right to a fee waiver in all 8 cases. The Respondent deprived the Petitioner of his rights in Mich. Const. Art. I § 2, and U.S. Const. Amend. XIV § 1 by depriving him of his right to a fee waiver in 8 cases in the Respondent’s court.

CONCLUSION

The Respondent deprived the Petitioner of his constitutional rights in eight uncontested cases. The deprivation of the indigent Petitioner's rights egregiously harmed him in error by dismissing eight cases, sanctioning him \$1,500 he could not afford, a filing injunction and a fee waiver injunction. The issuance of these orders has deprived the Petitioner of any ability to defend himself or litigate any matter in the Respondent's court. The Respondent's actions have egregiously abused and harmed the Petitioner without merit. The Respondent has subjected the indigent Petitioner to an absolute travesty of justice under state law.

The petition for a writ of mandamus should be granted.

Respectfully submitted,



Mario Allan Montano, Petitioner

Date: November 14, 2020